Jasminka Dedić, Vlasta Jalušič and Jelka Zorn

THE ERASED

ORGANIZED INNOCENCE AND THE POLITICS OF EXCLUSION

Peace Institute
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1. Jalušič, Vlasta 2. Zorn, Jelka

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Contents

ORGANIZED INNOCENCE

Vlasta Jalušič

This book comprises two essays on citizenship and exclusion. Both are products of an ongoing Peace Institute project entitled »Contemporary Citizenship: The Politics of Inclusion and Exclusion« that commenced in 2001. If I had to sum up this project in one sentence, I would say that we have been studying the implications of the concept of contemporary citizenship and policies for political equality in the globalized world. The focus of our attention is on various minorities and groups and their role in political decision-making and social cohesion. In our understanding, the concept of citizenship includes dimensions beyond that of status, or in other words, we attempt to problematize the now hollow classical conception of citizenship where citizenship is solely a legal status. In globalized circumstances, this concept no longer fulfills its original function, which embraced the protection of a whole range of rights of the individual while adding to it significant political and ethical dimensions. The main questions we seek to answer are: what are the origins of exclusion from the status of citizenship in Slovenia and other countries of Central and Eastern Europe? and how does this affect active citizenship, democracy and politics, or rather, political inclusion in new democracies?

The studies are the result of two research grants[1] that were awarded within the Peace Institute research program of 2002. The researchers Jasminka Dedić and Jelka Zorn jointly tackled the subject of mass violation of human rights in Slovenia during its recent history, when the country was emerging as an independent state, and the repercussions of these violations in the sovereign country. The case in point is a series of violations that were mainly concealed or

[1] The Fellowship Program at the Peace Institute is intended for young researchers who wish to deal with daunting problems concerning various public policies and to examine their implications for the lives of individuals. It is funded by donations from the Open Society Institute.

denied (and, moreover, continue to be denied despite evidence to the contrary), thus rendering service to a phenomenon I have chosen to call »organized innocence« (I'll expand on the meaning of this phrase later in the text). The most important issues in this connection are formal exclusion from citizenship status, on the one hand, and (related) general exclusion from human rights on the other. Both affected the erased group of Slovenian residents.

The first study examines the issues and paradoxes of contemporary citizenship understood as status, and its implications in the context of the disintegration and succession of former socialist countries. Within this frame, the author analyzes the case of erased residents, treating it as a special and symptomatic mass violation of human rights. Although in this example violations were not directly and formally linked with citizenship status, the connection between the two nevertheless exists, since they occurred in the process of determining the body of nationals and residents; in circumstances such as those resulting from the dissolution of the former Yugoslavia and the succession of states, this process is susceptible to violations. As Jasminka Dedić points out at the beginning of her essay, »citizenship in itself embodies legalized discrimination, since it presupposes a legitimate distinction between *citizens and non-citizens*. It is precisely this problem that makes our task – *the demonstration of illegitimate discrimination within legitimately discriminatory procedures* – even more difficult.«[2] The first detail that attracts attention is the fact that violations in Slovenia occurred despite relatively just initial regulations on the acquisition of citizenship, a statement of good intentions and other motions to this effect. The second is the fact that violations began to occur more than a decade ago, and the situation remained unchanged even after 1999, the year of the first in a series of judgments of the Constitutional Court alerting the public to the unconstitutionality of erasure. The third important detail is the blatant fact that the public and politicians not only take these violations perfunctorily but also brand those who draw attention to injustice as defamers of and traitors to the country. Since the case in point does not involve random individual violations of human rights but legalized discrimination, one could speak of *systematic public*

2 See Dedić's text in this book.

justification or organized lying of system representatives[3] (i.e. a systematic violation of not only human rights but laws of basic humanity as well).

The second study concentrates on the group of affected (erased) persons and evolves out of their narratives. As the author Jelka Zorn explains, the questions posed, the methods of field data gathering, the analysis and so on, are based on the *advocacy perspective* in research. The purpose of this approach is to redirect attention from the dominant discourse to the narratives of affected people.

Our goal in publishing this book is not to »discredit the state of Slovenia,« as some politicians and civil servants would like to interpret our public advocacy for erased citizens. Our engaged approach to research and public advocacy for erased citizens are aimed at restoring the state's lost dignity – by interrupting the silence. We endeavor to achieve acknowledgement of the injustice done to these people and to raise public awareness that active citizenship and civic judgment are a necessity which could help forestall future systematic violations of this kind. In publishing this book, we would like to encourage first the acknowledgement and then the consolidation of the facts among the public (in other words, »saying what this actually is«). In order to achieve this, we find it necessary to alert the public to existing laws, i.e. current legal regulation of human rights, as well as past events and practices which have been, for quite some time now, the cause of bitter struggle on the part of various political elites striving to offer interpretations that best suit their interests. In this struggle, many facts, numbers and procedures have been either denied or interpreted in a manner that takes the edge off the accusation that this was a case of systematic violation of human rights. In order to counterbalance these attempts, the authors in this book present a number of relevant documents and procedures (Dedić), and narratives of affected people (Zorn). The underlying assumption here is that certain significant facts were (although accessible) unknown to the public, or were held back or concealed. Facts do not consist solely of decisions, or documents stashed in drawers, or

[3] The first person to draw attention to this by presenting evidence was the mentor of the researchers and the defender of the Association of the Erased Residents of Slovenia, Matevž Krivic, who in many public debates exposed the faulty logic behind the justification of officials extending even to systematic lying.

interpretations offered by administrative bodies; they also include events, which, however, obtain factual value only when exposed to the public eye. Accordingly, in our understanding, numerous testimonies and stories of the discriminated victims of erasure belong in the class of the most important facts.[4] Jelka Zorn gives these people the opportunity to talk and thus brings to light the reasons behind their incapacity and the perpetuated victim position. Owing to such an approach, both studies are far from being uninvolved academic papers, since both enable the sufferers of discrimination to become persons whose voice is heard, although the truth they tell is appalling and »we,« the citizens of Slovenia who feel co-responsible for the acts of our representatives, would prefer not to hear it.[5]

So, even though the act of erasure itself, which is the focus of our attention here, was not directly related to the status of citizenship, this book explicates the essential link between it and various aspects of the contemporary conception of citizenship, whereby citizenship is understood in the wider sense of the word and not solely as a legal status.[6] Therefore, let me first say a few words about this.

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[4] This is particularly important in view of the debates that try to reduce the question of human rights violations to a discussion about the supposedly problematic status of the victims (for example, the argument that persons in question were officers of the Yugoslav Peoples Army who were disloyal to Slovenia). One of the main methods of argumentation that opens the possibility of systematic violation of human rights is drawing a distinction between »guilty« and »innocent« victims. Supposedly, it is permissible to discriminate against »guilty« victims. Their demonization and dehumanization (it is all their fault, in fact they are not victims at all) inverts the relation between perpetrators and victims. The perpetrators (in this case officials responsible for the erasure) become »victims« of evil and disloyal residents who are allegedly dangerous enemies of the people and the state, and certainly not »ordinary people.«

[5] I was myself one of those who at first did not believe that such a major violation was possible in Slovenia; i.e. I was one of those who – despite certain warnings (for example by the Helsinki Monitor and Mladina) – managed to turn a blind eye hoping that the numbers were not that high and that the injustices would soon be repaired. For this reason I was distressed when the authors presented their results (especially the testimonies of victims) at the international conference on contemporary citizenship organized by the Peace Institute in November 2002, and to the group of ambassadors in February 2003. Although by that time I already knew many facts and had read the outlines of the studies, I was deeply shocked (and I believe I was not the only one), that such a loss of humanity and basic human ties should have been possible in democratic Slovenia.

[6] Jasminka Dedić writes: »[i]n most cases it was not a refusal to grant citizenship that represented the act of discrimination, because the majority of these people did not apply for citizenship for a variety of reasons. Discrimination against these people occurred when they were deprived, without any objective or legitimate reason, of statuses they had enjoyed until then. However, a certain number of people from this group did apply

The state, its foundation and human rights

The general belief prevalent in Slovenia and neighboring countries alike, is that Slovenia is a state based on respect for human rights despite random violations that occur now and then. This is the image that Slovenia enjoys at home and abroad thanks to the legacy of civil movements from the 1980s and their struggle for the rule of law. »Slovenians« thus earned the reputation of »righteous people«. At this point it seems appropriate to stress that velvet revolutions in other East European countries were also based on powerful human rights movements and civil societies which made the transition to parliamentary democracy a relatively peaceful process. The activities of groups such as Charter 77 in Czechoslovakia, Solidarity in Poland, Odbor za varstvo človekovih pravic (Committee for the Protection of Human Rights) in Slovenia and other oppositional groups led to the foundation of states of which each and every one appeals to human rights in its constitution. The legacy was, therefore, promising and seduced some into believing that respect for human rights in these states would be automatically ensured. But the majority of these countries, if not all, stumbled at the very beginning. Regardless of whether a country maintained continuity as an international legal subject, or emerged after the dissolution of the former multinational state, the question that cropped up was that of who would be entitled to the status of citizen and who, perhaps, would be excluded from it.[7]

The communist regime was based on a system of collective rights and an understanding of citizenship as an obligation and duty. It embraced a number of ritualistic practices involving obligatory participation on the part of citizens beginning in childhood. For the individual living in a communist country, citizenship represented primarily membership that arose from one's belonging to a country, or

for citizenship, so the erasure, i.e. the loss of permanent residence in Slovenia, was a consequence of the rejection of their application or withdrawal of citizenship.« (Dedić, in this book.) In other words, this is a clear case of inclusion and exclusion related to the determination of status that is in one way or another linked to citizenship.

7 In Slovenia disagreement about the definition of the Slovenian state had already occurred at the time of writing the constitution in 1991: the nationalist part of the political spectrum intended – as happened in Macedonia – to proclaim Slovenia not a state of its citizens but a »sovereign state of the Slovenian nation«. Nevertheless, the wording defining Slovenia as »the state of all its citizens« was later accepted.

possession of a specific passport, although in many cases the passport had no value at all since citizens of many countries could not travel abroad.[8] The collective subject of rights was the corpus of working people; citizens identified with it to a considerable extent and the majority of rights, among these many participatory rights, issued from employment. While this arrangement excluded many rights that in T. H. Marshall's classification belong to the first and second generation of human rights (i.e. civil rights, which, according to Marshall, form the basis of a capitalist economy, and political rights in the sense of freedom of political association) (Marshall 1991 [1950], 16–19), it also introduced a kind of comprehensive »social citizenship.« In terms of certain civil rights, social citizenship was indeed exclusive, but (through the rights of workers or rights arising from work) it did enable the inclusion of certain social rights, agendas and individuals that would be excluded from, or non-existent in, the traditional liberal concept of citizenship in a nation-state. One could argue that under the communist system citizenship was a kind of social membership in an all-embracing state and that it was only partly linked to national sovereignty (which was relevant primarily in international contexts). In the former SFRY such social membership was enjoyed by the vast majority of people.

To sum up: in the communist (socialist) system, citizenship, in the sense known elsewhere, meant very little apart from an entitlement to possess a passport. Accordingly, it had significance only outside one's country and that only for citizens who were allowed to travel abroad. With the transition to nation-states and a market economy, citizenship began to mean almost everything. Within a country, citizenship (or at least habitual residence) became literally the general condition for access to the majority of rights and opportunities. In Slovenia and many other Central and East European countries, non-citizens can hardly get jobs or are even banned from certain kinds of jobs (which are contingent on knowledge of the language if not citizenship status). These persons' right to work is limited; they do not have social rights nor the right to health protection. In short, only by acquiring citizenship does such a person cease to be a »naked human being« and truly becomes a person. However, since those who

[8] Yugoslavia was an exception in this respect from the seventies on.

have no social or other means of support cannot acquire citizenship, they are entangled in a kind of endless loop involving citizenship issues and rights, meaning issues that in the past, before the dissolution of Yugoslavia or at the time of the formation of Slovenia, were not yet perceived as capable of having fatal consequences.

Undoubtedly, the various types of exclusion characteristic of the transition phase in Central and East European countries, including Slovenia, are largely part of a global trend and a result of the disintegration of federal states and the formation of new nation states. With the transition to capitalism and multi-party democracy, Central and Eastern Europe became part of the global system and thus had to come to grips with problems related to citizenship and the nation-state similar to those experienced by western countries. In the wake of globalization and market fundamentalism, and as a result of new nation-state contexts, this region succumbed to, or was affected by, (new) totalitarian temptations, which indeed are different from those in the communist past but no less problematic or dangerous because of that. These temptations are related to the issues of migration, refugees and various newly emphasized and politicized identities, and to the mechanisms of exclusion and inclusion of various population segments that are not assimilated in one or another way. Perhaps these new temptations are even more dangerous, since the key player in this game is not so much the devouring state which attempts, in a leviathan manner, to control everything, but a different, much more dispersed totalitarianism of mass society and enforced homogenization. While this new variety of totalitarian temptation has been gaining momentum and mobilizing some segments of society, the (emerging) rule of law and protection of human rights continue to be relatively weak. Moreover, all of this is coupled with an all-embracing public »normalization« of exclusion practices and discrimination, while drawing additional strength from the influential neo-liberal discourse that encourages politics marked by social, political and ethnic differentiation. This context provides ample room for several problematic standpoints which allow the assumption that human rights in Slovenia are (probably) not violated, and even that violations »cannot happen« in Slovenia.

The first such problematic standpoint is the conviction that »development« and »civilization« are automatic processes. It involves a

kind of substantial belief that the new country (Slovenia) is based on human rights and that this alone is a warrant of their protection or, in other words, that the exercise of human rights is an automatic process.

The second hypothesis rests on a belief that the new state is free of any responsibility for the past by definition and that those who created it are innocent and untouchable (the underlying implication is that its citizens have only recently shaken off the yoke of discrimination, so the state's primary task is to protect »Slovenianness«). At the same time, the traditional kindheartedness, humanity and tolerance of its people are seen as a warrant that people will be treated kindly. Those who do not go along with the state or do not recognize its kindness, are labeled as its enemies or as opponents. Another variation of the same tune is the viewpoint that those who call for respect for law and justice are actually making fun of »our country,« abusing »our« laws for their own interests, and »toying« with the rule of law, while others – the imaginary »we«, the majority – will pay the bill.

The third hypothesis, arising from the second, is that evil things happen (can happen) only in our neighborhood, down there in the Balkans, in those horrible wars. This is a re-directing of focus. The proximity of not only horrendous violations of human rights but also mass slaughter suggests the conclusion that everything else is a »lesser evil«. This creates the impression that the violations occurring in our country (administrative errors) are negligible compared to what happened »there« (ethnic cleansing). In short, in order for an act to be designated as bad or evil, it needs to be at least as bloody as were atrocities committed in Bosnia. What indeed is 18,300 erased people compared to 9,000 killed in Srebrenica! This conviction hides another assumption – that evil is necessarily planned centrally and perpetuated by evidently evil people.

Belief in automatic processes

The main problem related to human rights is as follows: if and where human rights are not ensured by the sovereign (nation) state, violations continue to occur. And precisely this hides a paradox: although modern states have been founded and exist precisely in order to

implement and protect human rights through the mechanisms they have at their disposal, human rights are most frequently and most radically violated by the representatives of the ruling power in nation states. It is true that certain recent concepts promise the development of a new, post-national citizenship based solely on human rights, thus giving rise to hope, but for the time being states as political units are the only actors that (can) provide spaces in which human rights can be not only exercised but also *voiced* in the name of all those who are excluded.

As Hannah Arendt argues in her analysis of the relationship between human rights and the state ruled by law, the main problem of those who are deprived of human rights, or whose rights are violated, is that they are left without a space where they could be heard as individuals and where their opinion would be deemed important and become publicly relevant. The most important component of the deprivation of human rights, leading to one's loss of freedom, life, equality before the law, freedom of expression and so on, is the loss of the chance to be seen and heard. People who are deprived of human rights thus cease to be politically relevant and are reduced to »naked« human beings whose words are not heeded regardless of how loud they speak (for example, refugees, asylum seekers and the erased group). A person thus loses all rights the moment he/she becomes simply a human being without profession, job, citizenship, opinion or activity with which he/she can identify; this is the point at which a person represents solely an absolute, unique individuality, which, however, loses its meaning when devoid of a political framework (paraphrased from Arendt 1951, 296 ff).

It is precisely this detail that alerts us to the fact that the main human right is »the right to have rights« (ibid.; see also Bellamy and Warleigh 2001, 3–66). And this right can be exercised only if ensured by the state. In the absence of a state that is willing to secure protection of human rights not only on paper but also by creating a stable framework for their expression and defense, human rights have no meaning regardless of how loudly they are proclaimed. However, this necessitates the existence of a link between the citizen and the state. Institutions based on law are not sufficient (institutions are by no means perpetual motion machines capable of taking the place of state officials and citizens). What is also needed is awareness about

the significance of rights and citizens' responsibility, which is a stance that, in turn, exacts responsibility from the state and its political representatives. In the absence of such awareness, we risk becoming a mass of careless individuals providing room for major violations of rights that could have repercussions for minorities and the majority population alike.

Organized innocence

For more than a decade, the major part of the Slovenian political elite endorsed anti-Balkans and pro-western state mythologies that originated in the 1980s and were re-affirmed in the 1990s while drawing on western myths about civilization and barbarism. This gave rise to a myth enshrouding the foundation of the Slovenian state that enabled the logic to which I previously referred as »organized innocence.« What I have in mind is a myth about a kind of absolute collective innocence of the nation, which could be paraphrased along the following lines: Slovenians never oppressed anyone and never did wrong to anyone; moreover, throughout history we were the victim of foreign peoples, totalitarian regimes and so on. If they happened to be violent, they took to killing their fellow Slovenians (under the pressure of external totalitarianism). The identity of the Slovenian people is that of a trusting nation which is (usually) the victim of global politics that descends on it like a natural disaster. The smallness and past oppression render this nation and its state (through an a priori absolution from any responsibility) incapable of doing wrong to anyone. This is an attitude that is the source of the incessantly perpetuated (and allegedly historically grounded) feeling of fear and threat. In responding to the analyses of hostility and intolerance, certain national-scientific ideologists claim that Slovenians are not xenophobic, but that the case in point is the defensive nationalism of a small nation; others[9] refer to this phenomenon as »passive xenophobia.«

There is a serious problem behind such victim identity. Many collective national movements prove that victim identity is not only dangerous but also incapable of producing an independent political community that could accept responsibility for itself or others as

[9] E.g. the psychologist Vid Pečjak who participated in a POP TV panel discussion where the topic of erasure was discussed.

long as it falls back upon its own ill-fate and vulnerability. One such example is Israel where the political elite, despite the horrible experience of the Jewish people and despite fifty years of state tradition, is not yet capable of assuming political responsibility but continues to pursue a politics of war, legitimizing it by victim identity and presumed a priori collective innocence.

Thanks to numerous democratic movements in the 1980s, the newly formed Slovenian state earned the positive image of a community that expressed solidarity with those who were the victims of discrimination. It indeed had a chance to reaffirm itself as a state truly based on human rights and the principles of civil responsibility, rather than on victim national/ethnic identity. But it let this chance slip by. Proof lies in the numerous examples of exclusion, tolerated xenophobia, hostility and public intolerance, and the case of »the erased,« which could be understood as the original sin committed at the time of the struggle for independence. Responsible attitudes towards the world and the environment, solidarity and humanity of the movements from the 1980s, all vanished. Of course, as Hannah Arendt wrote, this collective »humanity« understood as a kind of elementary link that evolves in non-democratic systems »has never yet survived the hour of liberation, of freedom, by so much as a minute« (Arendt 1994, 18). It is precisely this reason that necessitates that »humanity« and protection of rights be ensured through law and civic judgment from the moment the state is founded, instead of relying on any kind of fictitious kindness or arbitrary benevolence. One serious problem that prevented the public in the newly formed Slovenian state from properly understanding the meaning of human rights was the fact that not only ordinary people but also state officials continued to consider the protection of human rights a matter of Slovenian or Christian »goodness,« »benevolence« and »humanity,« »tolerance« and the like, rather than the responsibility of a just and powerful state which ensures effective practical care for human rights through its government and administration.

The policy of »lesser evil:« the truth and the imagination

This text was taking shape in an atmosphere of extraordinarily heated public debate about erasure and enraged reactions from those

responsible for erasure to the public exposure of its effects.[10] The implied message most loudly echoing from this debate was as follows: It's not true and it's not possible. And vice versa, since it is not possible, presumably because allegations were pure »science fiction,« it cannot be true. It seems that we are not far from the moment when those who draw attention to erasure and systematic violations committed by administrative workers (who are either responsible for the act of erasure or defend racist positions, or both) will be proclaimed state enemy number one, because they »cast a shadow over the process of gaining independence and over the people who deserve credit for it.« Their warnings are presented to the public as treason and defamation of the state and its politicians. Politicians are portrayed as untouchable, and that is also the stance they assume themselves. Any criticism of their work is labeled as an attack on the state and its foundations. Obedient and patriotic citizens are expected to join the ranks or at least to keep their mouths shut.

As early as 1995, the *Annual Report of the Human Rights Ombudsman* (at that time the human rights ombudsman was the present minister of justice Ivo Bizjak), read as follows: »*Five years after Slovenia gained independence there are still many individuals who are encountering problems more or less closely connected to it*. In most cases these are related to the procedures for acquiring Slovenian citizenship, the regulation of foreigner status, payment of military pensions, and matters involving military apartments. *We believe it is high time that the state finally resolve these questions. The uncertainty and distress experienced by numerous individuals who cannot resolve one of the mentioned existential problems, need to be ended as soon as possible. In numerous procedures, facts referring to the period of gaining independence are still taken into account and negative legal consequences for the individual are based on these facts.* We believe that after five years it is not permissible to consider any allegation about the actions of an individual if the suspicion of committing a criminal offence is not present. In the case of a criminal offence, the legally prescribed procedures should be carried out« (Annual Report 1995, 140).

[10] See »Odprto pismo« (An Open Letter) dated April 18, 2003, that was signed by a group of artists, writers, poets, ambassadors and former politicians including Evgen Bavčar, Vinko Beznik, Andrej Šter, Dane Zajc, Niko Grafenauer, Matjaž Kmecl, Tadej Labernik, Polde Bibič and others. See <http://izbrisani.siol.net/poziv.htm> (access 30. 5. 2003).

The Report for 1996 referring to the same problems states: »Once the provisions of the Law on Foreigners began to be applied, the 'strays' [described in this report as 'defined as foreigners, but *de facto permanent residents* in Slovenia,' V. J.] were erased from the population register. *Without a doubt, no procedure was carried out and no act issued.* Complainants consistently claim that they were given no explanations or instructions. *Their personal documents were confiscated and destroyed, when the administrative bodies took hold of them*. In the view of the minister of internal affairs the removal from the register was done ex lege« (Annual Report 1996, 87).

Similar conclusions could be found in the report for 1997.

Despite this, in 2003, the former minister of internal affairs (his term coincided with the annual reports mentioned above) wrote in one of his contributions to the public debate: »Although the proverb says that 'only in the mill does one repeat things twice', I am expected to explain to magister Krivic[11] for the third time why his *confabulations about the presumed erasure of persons from the Register of Permanent Residents,* allegedly committed by the government in February 1992, are mistaken.«

Even after the new judgment of the Constitutional Court confirming the unlawfulness of erasure, the former minister, referring to one specific case of erasure, maintained that the erased person »*exploited* the *benevolence* of the state that *took him under its roof and tolerated* his stupid and dishonest conduct, in an attempt to submit an exaggerated claim for compensation, and on top of that *throws mud at it and defames it in front of the domestic and international public*. In so doing he is assisted by the master of law, the former fighter for human rights, the mass media pundit, the former judge of the Constitutional Court, Matevž Mišo Krivic.«[12] In his letter to the daily *Delo* in April 2003, he stated that the assumption that »*the story of erasure involved planned and carefully controlled ethnic cleansing, whereby the ruling power presumably followed the principle of national homogenization to 'do away with' those others, ... is stereotyped and involves clichés characteristic of science fiction.*«[13]

[11] See footnote 3 in this text.

[12] *Mladina,* April 14, 2003, 4 (emphasis by V. J.).

[13] »Smo legalni ilegalci ali ilegalni legalci« (Are We Legal Illegals or Illegal Legals), Sobotna priloga, *Delo,* April 26, 2003.

The cited example clearly points to the assumption that the state (and its officials) understand human rights as primarily based on »benevolence.« Viewed from this perspective, where the state appears as a kind of homestead, the erased residents should actually be grateful to the Slovenian state because in most cases the administrative measure has not been carried to completion although it could have been (e.g. people without documents were not automatically expelled from the country). Were one's benevolence sufficient to ensure human rights, they would not need to be defined or written down, since we would all live »under the same roof« as one big loving family.[14]

The second assumption implied in this statement is that only a dreadful act involving direct physical violence, murder or blood, and resulting from conspiracy, coordination, meticulously planned and centrally directed activity, can be considered ethnic cleansing. If either of these conditions is not fulfilled, then it must be something else, some lesser, or negligible evil, or a small mistake, or not even that. This reveals the predominant and completely mistaken perception of circumstances that led to such measures. When answering the question of how this was possible, Jelka Zorn exposes the systematic mechanism behind these events that created circumstances in which apparently no one was »directly« guilty or responsible, since no one perceived his/her own acts as being »evil,« as long as these were based on »pure« administrative procedure. In short, the executors of the measure never gave though to what they were actually doing. As banally ordinary bureaucrat Adolf Eichmann argued in his own defense, they thought that they were only executing the orders of the ruling power and that in so doing they were even acting »benevolently.« This is precisely one of the most horrible components of erasure of which the perpetrators are obviously not aware.

[14] One argument of the organized group of the opponents of the constitutional judgement in favor of the erased residents is, for example: »The independent state of Slovenia was founded on the basis of *its residents'* will expressed at the plebiscite. At the beginning of its existence, by means of legislation *it also accepted with open arms all non-Slovenes who at that time lived in its territory*. Speaking of 'erasure', 'ethnic cleansing in the Slovenian way', 'discriminatory treatment' of non-Slovenians etc. is not only malicious fabrication but a notorious falsehood. *Slovenia as a state is bound* to deny such reproaches vehemently and with strong determination.« Emphasized by V. J., <http://izbrisani.siol.net/> (30. 5. 2003.).

Horror, evil and citizenship as a (collective?) responsibility

If we consider the legal dimensions of human rights protection and compare these to the stories of erased citizens, we will see that their case brings to light something horrible that seems to be incomprehensible. It is immediately clear that a great injustice was committed. It is irrelevant whether there was some monster behind it, an evil creature thirsty for the blood of »non-Slovenes« (according to some, this would be a necessary condition if one is to refer to erasure as an administrative cleansing as Neva Miklavčič Predan described it), or the administrative erasure was an innocent act that involved impersonal bureaucratic methods – a transfer of data presumably fueled by good intentions and based on legal regulations. No one took much notice of erasure (some, however, were aware of its potential consequences and attempted to prevent it through parliamentary procedure, as Jasminka Dedić explains in her study). Jelka Zorn poses the question of *how it was possible* that people working at district offices who had known erased individuals for decades nevertheless destroyed their documents and »forgot« them practically overnight. *How was it possible* that a person became »nobody« overnight? Zorn draws attention to the »abandonment of ethical dilemma,« which, in her opinion, was possible solely because administrative workers were willing to convince themselves that they could do anything as long as the directive came from the top i.e. they had the »legal basis« provided.[15] It is true that this measure was not implemented without exception and was not invariably carried to completion, since erased individuals mentioned numerous people who tried to »help« them and who did actually help them; for example, certain police officers did not deport them, others helped them find another kind of solution to the problem and so on.

The horrors of administrative erasure and its consequences are multifold. First of all, erasure was carried out despite certain warnings and away from the eyes of the majority. It was not only the pub-

[15] One of the administrators at the district office told the researcher that clerks must »respect the law regardless of ethical dilemmas, since this is the only way to bring into effect the principles of the rule of law. Also in the case of people who at some point found themselves in the situation that you are criticizing, we acted correctly within the valid legal norms, and within that framework we tried to help them as best we could« (personal email to J. Zorn, March 2, 2003).

lic in general that was not aware of this event – even erased people themselves did not at first recognize what had actually happened. In short, the initial step went by unnoticed, since people were not notified of erasure. The consequence of this was the deplorable logic of a bureaucratic machine that is capable of pulverizing individuals and placing them in a position in which they can only rely on the mercy of administrative workers and the environment in which they live. It is horrifying that for almost a whole decade erased people could not speak up as a group; that the Helsinki Monitor in Slovenia alerted the public to erasure, but only rare individuals were willing to believe its statements, because it was accused of presumably defending the officers of the former Yugoslav People's Army (hereafter referred to as YPA). Also horrifying are the lies of administrative bodies claiming that the case in point was not a systematic violation of human rights, and politicians' legitimization and denials of erasure, which in their view was just a »normal operation of the state.« Even more horrible is the mobilization of the »organized innocence« sentiment which at the time of the preparation of this book was in full swing. Certain former and present politicians and officials, for example Andrej Šter, Zmago Jelinčič and Slavko Debelak, maintain that erased people and their advocates harm the state by »throwing mud at the state« and »at the process of gaining independence« in an attempt to incite the Slovenian population (and taxpayers) to turn against erased residents and their advocates. The purpose of this attempt to push the entire state and its citizens into violations, and mass mobilization aimed against the erased residents and their advocates[16] is nothing short of an attempt to evade responsibility and virtually collectivize guilt at the expense of Slovenian citizens.[17] And last but not least: it is horrible that the majority of other politicians remain silent.

[16] In principle this is not far from generally more extreme events in Croatia, where the leaders of patriotic war speak up immediately, and citizens in the streets mobilize themselves against slander of the »patriotic war« and rally around those who are accused of or responsible for crimes. Only that in Slovenia this is restricted to readers' letters and fostered by the policy of the media who invite citizens to spectacles where they can openly »philosophize« about their opinions, stereotypes and prejudices regarding the rights of others (e. g. the POP TV broadcast, Trenja, about erased residents, March 6, 2003).

[17] The former Minister of the Interior, Andrej Šter, described the question of whether »Slovenia should expose the agents of the struggle for independence to the reproach

One problem that we encounter when trying to understand what happened is the perpetuated conviction that the bureaucratic apparatus has done nothing shocking, apart from, perhaps, a small »mistake,« or even not a mistake at all, although there is ample evidence to the contrary. However, the blatantly unlawful erasure that occurred on February 26, 1992, was not a »legal error« arising from incompetence in legal matters, but a deliberately discriminatory political act for which the top national leaders are responsible.[18] As I pointed out earlier, the problem here is the view that in order for a violation of human rights to be designated a crime, it should involve an unexpected, unimaginable violence arising from an elaborate, secret plan directed by evil people. But »these people have not experienced anything bad,« maintains the former minister, Andrej Šter (ibid.). After all, Slovenia is a friendly state.

When one brings together all said and done, one can establish that in this case the violation of human rights was a phenomenon involving explicitly totalitarian components. So, we need to collectively face the reality of violations in order to be able to seriously speak of future democracy in Slovenia. I know that this statement will lash into fury everybody, particularly liberals who would prefer to sweep this event under the carpet. My use of the term »collective« is deliberate, because I want to stress that what is needed first is to begin to talk about the personal responsibility and guilt of those who caused injustice, and then to accept political responsibility on behalf of the collective body. After all, this was an act implemented by the state and its administration, which is under control of the political elite. Another important element that is involved here is the general per-

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that they acted illegally« as a »bizarre and imprudent concept«. Matevž Krivic responded with the question: »After World War I we had 'the exaltation of the Solun volunteers', after World War II the 'untouchability' of leading partisans, and after Slovenian independence in 1991 the 'untouchability' of leading activists of the independence war? The appeal to bring people to account for their deeds is for you a 'bizarre and imprudent concept' ... Eccentrics ... of course, harbor eccentric ideas, for example, that the perpetrators should assume responsibility for the illegal acts they performed regardless of their former merits.« (M. Krivic: »Šteru, drugič« [Reply to the second letter of Mr. Andrej Šter], MAG, 23. 4. 2003.)

[18] Cf. M. Krivic: »Pismo g. Šteru« (A letter to Mr. Šter), March 14, 2003 and »Pihal je ksenofobni veter. Intervju z dr. Ljubom Bavconom« (The Xenophobic Wind Was Blowing. An Interview with Dr. Ljubo Bavcon), *Mladina*, 2. 6. 2003, pp. 23–24; see also Dedić, in this book.

ception of the concepts of state, law, citizenship rights and political judgment, and state administration apparatus. As Jelka Zorn has shown, on the one hand we have a hideous structure, systematic and even direct violence that produced the disappearance of civilians, and on the other, there is the »civic culture« that is generated by such events. What if such civic culture prevails? What I have in mind is the culture of organized lying, carelessness of citizens' and bureaucrats, such as that which enabled the denial of erasure, denial of facts, mobilization of »organized innocence« to counter the conclusions of the Constitutional Court, and the unjustifiable silence of some leading politicians.[19] Certain political parties and individuals have been trying to persuade the public that this was nothing bad and have even resorted to the dissemination of hostility and racism. Do we really want to be citizens of such a state?

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[19] Matevž Krivic, the defender of the Association of the Erased Residents of Slovenia, wrote in his article »Uradne laži o izbrisanih« (Official Lies about the Erased): »If the Minister of the Interior dares to make a practically false public statement on TV that the injustice committed ... needs to be rectified for 'only' about 4,200 people, because for the others it was put right afterwards (and even if the number of these people were 11,600 and not 14,100, as the minister is misinforming the public) and if Peterle, Bandelj and Jelinčič compete for the title of the one who most 'patriotically' thunders against the deprived people, then, of course, it is no wonder that ordinary people take the bait of such inflamatory rhetorics.« (The article was published in the daily *Dnevnik* on March 13, 2003, but this part was omitted.)

DISCRIMINATION IN GRANTING SLOVENIAN CITIZENSHIP

JASMINKA DEDIĆ

The main purpose of this study is to analyze discrimination in granting Slovenian citizenship. Synchronization of the operation of various state bodies on all levels has led us to the conclusion that the citizenship granting procedure, following the disintegration of the common country, involved massive and systematic violations of human rights in Slovenia.

The complexity of the problem first becomes obvious at the conceptual level and in connection with the definition of concepts and factors that will be analyzed in this study. The precise definition of concepts has great significance for this study, since it represents the basis of our analysis of violations and restrictions of fundamental human rights and freedoms, which, in turn, are a result of the violation of non-discrimination and equality principles.

The first problem we have to resolve is the paradoxical relationship between the concepts of »citizenship« and »discrimination,« the two notions that constitute the point of departure and are at the core of this study. Citizenship itself *embodies legalized discrimination*, since it presupposes a legitimate distinction between *citizens and non-citizens*. It is precisely this problem that makes our task – *the demonstration of illegitimate discrimination within legitimately discriminatory procedures* – even more difficult.

The next point at issue is the definition of the concept of *discrimination*. It can be either *indirect* or *direct*. Moreover, the principle of *non-discrimination* should be considered in relation to the principle of *equality*, itself a multi-dimensional concept, which embraces both *formal equality* and *substantive (actual) equality*. In line with this approach, I will also analyze human rights in relation to civil rights and the rights of foreigners (non-citizens), and will attempt to explain the relation between universal human rights and citizenship.

Furthermore, I will define the concept of *citizenship* and analyze it in the contexts of domestic and international legal systems. Since, in our example, a violation of the principle of non-discrimination was most of the time closely connected to sovereignty issues during the period 1991–1992, I will also examine the issue of state succession inasmuch as it relates to citizenship and compare the approaches adopted by former SFRY republics to resolving the status of individuals who were nationals of other republics but were living in their territories at the time of the dissolution of the common country (1991–1992).

The secondary goal of this study is to analyze the conflict between domestic and international legal standards for human rights protection on the one hand, and the principle of sovereignty on the other, which confers upon the country the right of discretion in determining and defining, subject to the principle of non-discrimination, to whom it will grant its citizenship. By balancing these two occasionally contradictory interests, the study aims to propose acceptable approaches to the resolution of this conflict i.e. by adhering to the standards of human rights protection. Since this problem becomes even more complex in the case of the disintegration of a state and the formation of successor states, close attention will be devoted to an analysis of the implications of succession for the issue of citizenship.

As regards the long term purpose of this study, we hope to contribute towards the exposure and elimination of discrimination in Slovenia, which, however, presupposes the restitution of status to certain individuals and compensation for the damage they have suffered. This study should, therefore, be understood as a constructive critique intended to warn that, in addition to »grand« issues such as *sovereignty*, *nation*, *statehood*, and *citizenship*, which are given high priority at the time of dissolution or formation of a country, it is (primarily) the individual who should matter most, because this is the kind of situation in which the individual may become a mere subject of selection for inclusion into or exclusion from a newly emerging political community. Furthermore, through this critique we hope to highlight the need for a different understanding of past events in Slovenia, which should enable us to face the violations of human rights that were directly connected with the building of a new nation state.

In the final part of this study I will evaluate the data obtained and the conclusions reached, and will use these in pursuing the secondary goals of this study: to explain the main causes that led to discrimination in citizenship granting procedures, and to appraise these in the light of domestic and international norms of human rights protection. However, my evaluation will go beyond the analysis of discriminatory procedures to include recommendations for the conceptualization of effective anti-discrimination measures that would have the power to eliminate discrimination on a racial or ethnic basis, the two most frequently encountered forms of discrimination in the procedures of granting citizenship in general.

The anti-discrimination legislation of the EU, based on Article 13 of the consolidated version of the Treaty establishing the European Community, is part of the EU's obligatory *acquis communitaire* that is binding on all candidate states. Accordingly, Slovenia is obliged to adopt legislation conforming to these standards before it joins the EU. The essential new feature of the Directive of the Council of Europe (2000/43/EC) »on the implementation of the principle of equality of people regardless of their ethnic or racial origin«, commonly known as the »Directive on racial equality«, and of the »Directive on the establishment of a general framework for equal treatment in employment and occupation »(2000/78/EC) is that the burden of proof is shifted from the victim of discrimination to the discriminator, regardless of whether the latter is a public or private sector entity. In formulating our recommendations to executive and legislative branches, we aimed to propose the adoption of such anti-discrimination measures that would ensure a high level of protection against illegal discrimination, and the establishment of an independent body that would effectively examine potential complaints about racial and ethnic discrimination and would be authorized to adopt binding decisions.

This study is primarily based on the human rights approach used by activists in their advocacy for human rights. Proceeding from current international standards for the protection of human rights, I focus on discrimination against certain groups among the population in the citizenship granting procedure (these groups were almost invariably marginalized/excluded ethnic minorities living in Slovenia). I thoroughly examined various sources such as international

standards for the protection of human rights, international laws, domestic legislation pertaining to these areas and relevant EU legislation, as well as court decisions, the personal documentation of people whose rights were violated, and other primary sources such as reports, officially published data and so on. The majority of these sources are available on the Internet; other valuable sources were interviews conducted by Jelka Zorn with the victims of discrimination, and materials supplied by my mentors Matevž Krivic, Msc, and Dr. Vlasta Jalušič.

Definition of basic concepts

Citizenship

The Slovenian term *državljanstvo* combines the notions of *citizenship* and *nationality* which in English have different meanings. Citizenship denotes the legal relationship between the individual (citizen) and the state regulating a set of mutual rights and obligations arising from this relation (Horn 1998, 40). We could say that citizenship is a concept that denotes the relation of rights and duties between the citizen and the sate within the domestic legal system. *Nationality* has several meanings, but it commonly denotes the legal bond between the person (citizen) and the state in international law where a national is the subject of diplomatic protection provided by the state that granted him/her citizenship. The difference between the concepts of *citizenship* and *nationality* is best demonstrated with the example of *EU citizenship*. Article 17 (former article 8) of the Treaty specifies that an EU citizen is every person who holds the nationality of one of its Member States.

As mentioned earlier, Slovene does not make this distinction (neither do German, Russian and some other languages). Or, to be more precise, in Central and Eastern Europe the term »nationality« is frequently used to denote belonging to an ethnic group. In order to avoid potential ambiguities, in this study I will adhere to the definition of the term »nationality« as found in the European Convention on Nationality, where paragraph a) of Article 2 specifies that »'nationality' means the legal bond between a person and a State and does not indicate the person's ethnic origin[.]« Furthermore, I will take into account the ruling of the International Court of Justice on the case of

Nottebohm in which the definition of nationality is somewhat broader. In this case, the court introduced the test of a »genuine and effective link,«[1] on the basis of which it is possible to establish whether a state is justified in granting citizenship to a specific individual. Several factors need to be considered in such a case, among these habitual residence, family ties, participation in public life and so on. The test of the International Court of Justice for the establishment of whether a state is justified or not in granting citizenship to a person can also be used as an important criterion for identifying discrimination in the procedures for acquiring Slovenian nationality.

However, citizenship is not just a legal category, so it should be considered within a wider social context. For Balibar, for example, citizenship, in the narrow sense of the word, denotes »a comprehensive exercising of political rights,« and in the wider sense »a cultural initiative or an effective presence in the public sphere (having an opportunity to »be heard«);« as a result, citizenship was codified only in order to denote temporary balance, a relationship between powers and interests (Balibar 1994, 46). Balibar warns against a distorted understanding of citizenship, that is to say, against attempts to upgrade the existing definition with the aim of equalizing citizenship and ethnic belonging. He also cautions against the treatment of citizenship as a »legal fiction« which is allegedly nothing short of a guise for domination. Both perspectives ignore one important dimension

[1] Nottebohm was a German citizen who spent most of his life in Guatemala. He acquired citizenship in Liechtenstein through naturalization at the beginning of the Second World War. As a German citizen, Nottebohm had to leave Guatemala because of the war. When he wanted to return to Guatemala, he was refused entry into the country although, in addition to German citizenship, he had the citizenship of neutral Liechtenstein. By this act Guatemala refused to recognize the citizenship granted to Nottebohm by Liechtenstein in contravention of the principle of international law according to which the granting of citizenship is entirely within the competence of the country's jurisdiction. Guatemala's argument was that Nottebohm had no close links with Liechtenstein, on the basis of which Liechtenstein could grant him citizenship. The Court upheld the principle that a country can use its discretion to determine the manner of citizenship acquisition based on domestic legislation, and that citizenship thus granted must be recognized by other countries according to international law. However, in cases where two or more countries grant citizenship to the same person, such a case is no longer within the competence of domestic jurisdiction but of international law and third countries which are confronted with such a situation. The case of Nottebohm (stage 2), Liechtenstein v. Guatemala, decision taken on April 6, 1955 <http://www.icj-cij.org/icjwww/idecisions/isummaries/ilgsummary550406.htm> (March 25, 2003).

– the dynamic relationship between the citizen and the state – since both understand citizenship as a static link between the two.

In his classic work entitled *Social Class and Citizenship* (1950), T. H. Marshall described the three types of modern citizenship corresponding to the three stages in the development of human rights, or rather, generations of human rights. According to this typology, citizenship includes *civil*, *political* and *social* elements. Civil citizenship, which developed in the 18th century, includes freedom of expression, thought and belief, the right to own property, the right to conclude contracts, and the right to just trial. Political citizenship is a product of the 19th century and it includes the right to participate in public affairs and the right to vote. Finally, social citizenship coincides with the emergence of the 20th century welfare state, and it includes the right to social security and the right to share in the social welfare; these rights ensure the individual a decent life according to the prevailing social, economic and cultural standards of a society.

In the era of economic globalization in which the role of sovereign national states has been decreasing, the concept of modern citizenship, which is inseparable from the nation-state, is inevitably undergoing changes. Some theoreticians (e.g. Kymlicka, Evans, Linklater, Young, Rosenfeld and others) speak of the evolution of a new type of citizenship, which, on the one hand, is believed to transcend the limits of the political community coinciding with the borders of nation-states (a prototype of such citizenship is EU citizenship), and on the other, becomes fragmented under the pressure of particular social groups (women, homosexuals, religious, ethnic and racial minorities). In addition to the formal equality ensured by formal (universal) citizenship, these particular groups demand substantive equality as well, a condition which frequently contradicts the concept of citizenship as understood by modern nation states. Accordingly, Balibar (1994, 53) justifiably draws a parallel between the »struggle for citizenship« and the »struggle for equality (of rights),« which brings us to the core of the problem on which this study will attempt to shed some light.

With respect to the historical development and formation of individual nation states, we distinguish between three basic types of nation state which formed the basis for the development of three different concepts of citizenship (Rosenfeld 1998, 14):

The »German model,« where *ethnos* prevails over *demos*. The nation precedes the establishment of the nation state, meaning that such a nation is *pre-political* and based on common ethnic origin, language and culture. In this model, the nation has deeper roots than the state, and, in line with such a relationship between the nation and the state, nationality is determined by the principle of blood relation (*ius sanguinis*). Let us stress for the purpose of this study that the legislations of SFRY successor states are primarily based on the *ius sanguinis* principle.

The »French model,« where *demos* prevails over *ethnos*. The nation is a product of the previously founded democratic nation state, so it is *political* and interconnected through the common language which, however, prevailed only after the revolution, and its purpose was to establish a unified French nation.

The »American model,« where the constitution is the source of both *ethnos* and *demos*. The American state and nation originated from the US Constitution which preceded, and shaped, the state, the nation and the concept of citizenship. The American model of citizenship is based primarily on the principle of territoriality (*ius soli*).

The German and French models can be described as *collectivist,* although proceeding from different theoretical frameworks. The French Republican model of citizenship stems from Rousseau's concept of the social contract between the individual and society as a whole, where the individual has a dual function: as a member of the Sovereign he is bound to individuals, and as a member of the State to the Sovereign. This implies a close, organic link between citizenship and the state (Rousseau in Rosenfeld 1998, 18). The German ethnic concept of citizenship has its roots in Herder's romantic nationalism, in which elements that are stressed as important for the building of the German nation are a common language, blood and land, all three being the constituents of the German state (Guibernau in Bešter 2001, 178).

In contrast to the collectivist French and German models, the American model is expressly *individualistic* and founded on Locke's theory of social contract, according to which parties to the contract form an association in order to protect their natural rights in such a way that they establish a limited government which is not allowed to interfere with the autonomous sphere of the individual (Locke in

Rosenfeld 1998, 17). According to Locke's liberal vision, it is the individual who retains all rights while the state assumes obligations, which is an expressly individualistic understanding of citizenship.

Discrimination

The principles of non-discrimination and equality form the foundations of the protection of basic human rights and freedoms and civil rights, with non-discrimination being one of the main principles imposing restrictions on the right to discretion in granting citizenship. Paragraph one of Article 5 of the *European Convention on Nationality* specifies that »[t]he rules of a State Party on nationality shall not contain distinctions or include any practice which amounts to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.« Discrimination in granting citizenship is also prohibited by the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination Against Women*. I will return to these issues later in the text when I will analyze citizenship in relation to the protection of human rights and basic freedoms.

As has been established in the introduction, we distinguish between two types of discrimination, i.e. *direct* and *indirect*. This distinction is important in order to be able to identify the causes and the negative consequences of discrimination and to eliminate these effectively. For the purpose of this study, I will use the definitions of direct and indirect discrimination as found in the Directive on racial equality (Directive 2000/43/EC), Article 2, paragraph 2(a), which states that *direct discrimination* »shall be taken to occur where one person is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;« *indirect* discrimination »shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary« (ibid., subparagraph b), paragraph 2, Article 2).

The principle of *equality* is inseparable from the principle of prohibition of discrimination, while equality itself includes *formal* and

substantive (actual) equality, which are correlates of direct and indirect discrimination. The essence of formal equality is that similar examples and situations are treated equally or similarly, and that different examples and situations require different treatments. The purpose of formal equality is to eliminate direct discrimination. Both concepts focus on the ensuring of equality and the prohibition of discrimination against certain individuals.

However, formal equality, which is just an empty ideal without real content, does not guarantee substantive (actual) equality or, in other words, insistence on solely formal equality increases existing inequalities between social groups. Substantive equality is, therefore, concerned with the issues of social marginalization and exclusion of underprivileged individuals and groups. In contrast to formal equality, the ensuring of substantive equality is of a collectivistic nature, because its purpose is to ensure equal opportunities and improve the situation of marginalized groups. The ultimate goal is to achieve substantive equality for all individuals, but this can be attained only through the elimination of indirect discrimination against underprivileged and marginalized groups. When eliminating indirect discrimination and securing substantive equality, it is necessary to introduce *positive protection,* the purpose of which is to provide *equal opportunities*. While positive protection can be implemented through various measures, it is most frequently realized through anti-discrimination legislation, while their common goal is to »furnish« the content of formal equality.

Although the ensuring of substantive equality through the elimination of inequality is oriented towards groups, it is ultimately the individual who is entitled to it. When implementing anti-discrimination measures, it is necessary to ensure both aspects of equality – formal and substantive – in order to be able to secure substantive equality for all individuals and eliminate illegitimate discrimination.

Human rights and citizenship

The concept of human rights covers those rights to which man is entitled by birth. Therefore, universal human rights should be distinguished from those rights to which the person is entitled on the basis of domestic law. All human beings who are under the jurisdiction of states that are willing to ensure human rights must be ac-

corded universal human rights (Bieliunas 1998, 107–108). We should point out, however, that basic human rights and freedoms are enshrined in international common law, with some of these being *ius cogens* (e.g. prohibition of slavery and prohibition of torture and inhumane treatment), meaning that they are binding on all states regardless of whether or not a state recognizes these rights.

One conclusion arising from this is that international standards for the protection of human rights apply to all persons in the territory of a signatory state, regardless of whether that person is a national or a foreigner. Therefore, according to the *Universal Declaration on Human Rights*, both nationals and foreigners are entitled to the rights recognized by the Declaration except the voting right, the right to take part in the government of one's country and the right to equal access to public service in one's country (Article 21), which are reserved for the nationals of a country.

Similarly, in the *International Covenant on Civil and Political Rights* only political rights specified under Article 25 are reserved for nationals, while each signatory state undertakes to ensure the rights recognized by this Covenant to »all individuals within its territory.« Article 13 of this Covenant allows the expulsion of a foreigner who lawfully stays in the territory of the signatory state »only in pursuance of a decision reached in accordance with law.« Article 7 of the *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live* prohibits »[i]ndividual or collective expulsion of such aliens on grounds of race, colour, religion, culture, descent or national or ethnic origin.«

The general rule that signatories should ensure all rights to both nationals and foreigners without discrimination has been confirmed by the UN Human Rights Committee in its *General Comment No 15* (paragraph 4), which specifies that foreigners also enjoy the protection of the *International Covenant on Civil and Political Rights*, while signatories must consistently respect the standards laid down by this Covenant in their legislation and in practice.

The International Covenant on Economic, Social and Cultural Rights (Article 2, paragraph 3) prescribes that only developing countries »with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals«. Any

restriction of basic human rights and freedoms on the basis of nationality, except for political and economic rights in developing countries, represents a violation of the international standards for the protection of human rights.

The basic principle observed by international common law that pertains to the rules of citizenship acquisition and loss, allows every state *to determine, in accordance with its own laws, who its citizens will be*. This implies that in the area of citizenship acquisition, states have considerable discretion in exercising their sovereignty, which is a practice that partly contradicts the diminishing sovereignty of states in the area of international legal protection of human rights. However, states are not completely free of legal obligations when granting or revoking citizenship, given that they must respect international conventions, international law and the general legal principles relating to citizenship. *The sovereignty of states in this respect is particularly limited in the case of succession of states*.

The international legal standards pertaining to human rights lay down the five basic principles that should govern decisions about the granting or withdrawal of nationality. These are: the right to a nationality, the principle of preventing statelessness, the prohibition of arbitrary deprivation of nationality, equality of men and women, and the principle of non-discrimination. This means that, when legally regulating the rules for nationality acquisition and loss, countries are obliged to respect international legal standards, general legal principles and binding court rulings. To put it differently, although nationality acquisition and loss are regulated by the legislations of individual states, the sovereignty of the country in this area is restricted by the five basic principles mentioned above.

The right to a nationality, the principle of preventing statelessness, the prohibition of arbitrary deprivation of nationality, and the principle of equality of men and women

The basic principle laid down by the International Court of Justice in the case of Nottebohm mentioned earlier was that a state is not obliged to recognize nationality granted to a person by another state if genuine and effective links between the person and that state do not exist. There are tendencies to extend this principle so as to

include the obligation of the state to grant nationality to a person who maintains genuine and effective links with that state, as well as prohibition of depriving a person of his/her nationality if that person maintains genuine and effective link with the state in question.

The principle of the genuine and effective link is also confirmed by certain international standards for the protection of human rights, which ensure the right to nationality and prohibit any arbitrary deprivation of nationality. Article 15 of the *Universal Declaration on Human Rights* laid down the doctrine that became the point of departure for all later international standards regarding human rights connected with nationality. The principle that everybody is entitled to nationality also encompasses the prohibition of statelessness. An arbitrary deprivation of nationality is taken to be any deprivation that occurs despite genuine and effective links between the person and the state. Such an example would be the revocation of citizenship in the case of a person who has been living in a country for a long time and is linked to that country through family, social, and economic ties and the like.

Every person is free to change nationality, with a state being obliged to respect such a decision if that person is entitled to dual or multiple nationality.

The most important standards protecting human rights pertaining to the area of nationality are as follows:

- *Universal Declaration on Human Rights (Article 15)*

  1. Everyone has the right to a nationality.
  2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

- *International Covenant on Civil and Political Rights (Article 24)*

  3. Every child has the right to acquire a nationality.

- *International Convention on Elimination of All Forms of Racial Discrimination (Article 5)*

  In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the fol-

lowing rights:
(d) Other civil rights, in particular:
(iii) The right to nationality;

- *Convention on the Elimination of All Forms of Discrimination Against Women (Article 9)*

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

- *Convention on the Rights of the Child*

(Article 7) 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
(Article 8) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

- *European Convention on Nationality (Article 4)*

The rules on nationality of each State Party shall be based on the following principles:

a everyone has the right to a nationality;
b statelessness shall be avoided;
c no one shall be arbitrarily deprived of his or her nationality;
d neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.

The principle of non-discrimination

The principle of non-discrimination is the fifth principle that must be respected when regulating citizenship. However, one should first distinguish between *legitimate* and *non-legitimate* discrimination. Legitimate or non-arbitrary discrimination in granting nationality is one

based on genuine and effective links (the case of Nottebohm) between the person and the state. In other words, legitimate discrimination when granting nationality is one that is not arbitrary. In this context it is held that nationality is not granted arbitrarily if the decision is based on the principle of blood relation (*ius sanguinis*), territory i.e. place of birth (*ius soli*), or habitual residence in the country *(ius domicili*), with the last mentioned method being applied in the case of naturalization. If nationality is acquired through naturalization, the duration of residence in a country before a person becomes eligible to apply for its nationality is laid down by the law. The *European Convention on Nationality*, for example, stipulates that this period should not be longer than 10 years. In such cases discrimination is not arbitrary because it takes into account genuine and effective links between the person and the state.

The rules and principles governing the acquisition of nationality prohibit discrimination on the basis of sex, race, religion, skin color, and national or ethnic origin. This type of discrimination is strictly prohibited by several international standards for the protection of human rights. These include:

- *International Convention on the Elimination of All Forms of Racial Discrimination (Article 1):*

  3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

- *European Convention on Nationality (Article 5)*

  1. The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.
  2. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

- *European Convention on Human Rights and Fundamental Freedoms (Article 14)*

  The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion,

political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- *Protocol No 12 to the European Convention on Human Rights and Fundamental Freedoms (Article 1)*

  1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Citizenship and succession of states

The concept of the succession of states is defined by the *Vienna Convention on the Succession of States in Respect of Treaties* from 1978 (Article 2, paragraph 1(b)) and the *Vienna Convention on the Succession of States in respect of State Property*, *Archives and Debts* from 1983 (Article 2, paragraph 1(a)). Both Conventions include the definition that »'succession of States' means the replacement of one State by another in the responsibility for the international relations of territory,« and a statement that »[t]he present Convention applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.« (European Commission for Democracy through Law 1998, 25).

In the case of territorial transfers, or redistribution of sovereignty, *the question of the nationality of the inhabitants of the territory subject to the change of sovereignty ceases to be solely a matter of domestic law* (ibid.) Since succession involves at least two sovereign states »*rules of international law affect the conferment and withdrawal of nationality. However, these rules do not in principle have a direct effect on the nationality of individuals which remains to be determined by the domestic law of the States directly concerned and, where applicable, by self-executing provisions of international treaties concluded among them*« (ibid. 26).

A document dealing with the influence of succession on nationality entitled *The Draft Articles on Nationality of Natural Persons in Relation to the Succession*, prepared by the International Law Commission (ILC), was presented to the UN General Assembly in 1999. This document elaborates the basic principles observed in granting,

i.e. acquiring, nationality in situations in which the sovereignty of one country is transferred to one or more countries. A special emphasis is placed on the prevention of statelessness in the case of succession, since this is precisely the kind of circumstance that most frequently leads to statelessness. In order to avoid statelessness, which may be a consequence of delays in the adoption of legislation regulating nationality in a newly formed state, *it is considered that all persons with habitual residence in the territory of a successor state become its citizens on the day of succession*.

In this document, habitual residence in the territory of a successor state is a standard criterion for the acquisition of the nationality of that state, except in cases where the successor state ordains another principle by law.[2] Paragraph 1 of Article 14 explicitly states that »[t]he status of persons concerned as habitual residents shall not be affected by the succession of States.« Paragraph 2 of Article 14 specifies that »[a] State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.«

Article 16 stipulates that »[p]ersons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State,« and Article 17 that »[a]pplications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.«

According to Article 18, states are obliged to »exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States« and to »seek a solution to eliminate or mitigate such detrimental effects.« The issues that should be given special attention are dual or multiple nationality, the unity of the family, military obligations, pensions and other social security benefits, the right of residence and so on.

[2] SFRY successor states recognized the former republican citizenship as a criterion for citizenship acquisition.

Given that the prevention of statelessness is one of the imperatives of the international law, a number of countries signed bilateral and multilateral agreements for the prevention of statelessness.

The *UN Convention on the Reduction of Statelessness* specifies, in Article 8, Paragraph 1, that »[a] Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.« Article 10 refers to the transfer of territory to a successor state:

> 1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a Party to this Convention includes such provisions.
> 2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

The problem of statelessness becomes especially conspicuous when state borders change and new states are formed. Furthermore, stateless persons are the most vulnerable population group, since by being deprived of nationality they are also deprived of their legal status, civil rights and liberties and every form of diplomatic protection.[3] Statelessness is most frequently found in those new countries that adopt the principle of *ius sanguinis* (the principle of blood relation) as the predominant principle in granting nationality. This was the case in the countries that succeeded SFRY.

With the fall of communism in Central and Eastern Europe and the dissolution of socialist multi-national federations – the Soviet Union, Czechoslovakia, and SFR Yugoslavia – the newly formed sovereign states began to gravitate towards the maximum possible national homogeneity. One consequence of this tendency was a large

[3] Statelessness was widespread between the two world wars. The causes should be sought among the peace agreements concluded after the First World War, whereby an absolute priority at the time of the establishment of new nation states in Central and Eastern Europe was given to collective principles (the right to self-determination and protection of newly formed national minorities) over individual rights. Or, as Hannah Arendt says, it was the end of the transformation of the state from an instrument of law to an instrument of nation; the nation predominated over the state, and the national interest took precedence over law (Arendt 1976 [1948], 275). According to Arendt, the most obvious effect of transformation was a large number of stateless persons in Europe.

number of stateless persons,[4] which is a situation that is comparable to that following the dissolution of Austria-Hungary after the First World War.

In contrast to western countries, which were formed on the basis of the civil principle, statehood in Central and Eastern Europe is based on an ethnic principle. Countries such as France, England, and the US represent communities of citizens, while Germany and other Central and East European countries are primarily communities of predominant ethnic groups. As a result, two conflicting tendencies have recently become obvious: in western Europe, nationality is increasingly turning into a kind of territorial belonging, while in Central and Eastern Europe ethnic belonging plays an important role in the building of a nation (Horn 1998, 80).

All new post-socialist countries formed in the early 1990s were overwhelmed by national homogenization, with a contributing factor being the definition of the body of nationals based on ethnic belonging according to the *ius sanguinis* principle. For example, by setting extremely high standards for assessing knowledge of the Estonian language,[5] Estonia has excluded a large number of Russian-speaking persons. Another similar example is the Czech Republic which, through amendments to the law on the acquisition and loss of citizenship in the Czech Republic in 1993,[6] excluded from its citizenship the Slovak Roma, because among the requirements for acquiring Czech citizenship were a clean criminal record and uninterrupted residence in the territory of the Czech Republic. On the other hand, new countries grant citizenship to members of their ethnic groups living outside of the country. The case in point is Croatia, which granted Croatian citizenship to all persons who felt themselves to be members of the Croatian nation.

Both tendencies in defining the basic body of nationals were also present in the processes of gaining independence and national

[4] The situation is most worrying in Estonia, where approximately 175,000 persons have no citizenship. The residence status of a further 30,000 to 40,000 citizens is not regulated, which amounts to 14% of the 1.5 million total population (Second report on Estonia 2002, paragraph 38).

[5] The law on citizenship was passed on January 19, 1995, RT I 1995, 12, 122; amended on October 18, 1995; RT I 1995, 83, 1442, and December 8, 1998, RT I 1998, 111, 1827.

[6] Law No 40/1993 Coll., Law No. 272/1993 Coll., Governmental directive No 337/1993 Coll., Law No. 140/195 Coll., Law No.. 139/1996 Coll., Law No. 194/1999 Coll.

homogenization in Slovenia. For example, there were attempts to revoke citizenship for those citizens who acquired it under Article 40 of the Citizenship Act but retained the citizenship of their homeland (Bosnia and Herzegovina, Croatia, Macedonia, or FR Yugoslavia). On the other hand, the Citizenship Act enables expatriate Slovenians and their kin to the third degree to acquire Slovenian citizenship (Article 13). Moreover, drafters of the law on Slovenes without Slovenian citizenship[7] envisaged special benefits and rights for this group of people.

The interest of the collective (nation) in countries with a body of nationals thus defined prevails over the interest of those individuals who do not fit into the picture of national homogeneity. Naturally, it is not always possible to require that the interests of the individual should invariably take precedence over the interests of the collective (the state) i.e. over the rights of others. What is needed is the *balancing* of these conflicting interests. Given that the state, as a collective, has absolute predominance and has at its disposal more alternative solutions than the individual, it is obliged to exercise self-restriction in order to prevent arbitrary intrusions into the autonomous sphere of the individual, as well as to protect the individual.

As regards nationality, this means that the state should not arbitrarily deny or revoke nationality in the case of an individual who has genuine and effective links with that state. The individual's rights can only be limited by legislation or rules that are in conformity with a *legitimate objective*, the choice of which is objectively justified and proportional, meaning that *in pursuing a legitimate and legally permissible objective, the state can place only minimal restrictions on the rights of the individual*.

With the development of the human rights protection system after the Second World War, the individual became the subject of international law, while national sovereignty of states was gradually restricted in this respect. The emergence of new countries exposed the flaws in the international standards for the protection of human rights, particularly with regard to the question of ensuring adherence to these standards on the part of a state in the process of defining a body of nationals (discretion in determining a body of nation-

[7] Poročevalec 80/98 dated 24. 12. 1998.

als is one of the main attributes of national sovereignty). This question has been addressed by several international institutions for international law and human rights protection. I have already mentioned the efforts of the International Law Commission and the United Nations, whose goal was to ensure that the individual will acquire nationality or retain status in the case of state succession. Other international standards that refer to the area of nationality in relation to state succession include the *European Convention on Nationality* adopted by the Council of Europe (1997), and the *Declaration on the Consequences of State Succession for the Nationality of Natural Persons*, adopted by the European Commission for Democracy through Law (the Venice Commission) operating under the auspices of the Council of Europe.

- *European Convention on Nationality*

> Article 18, paragraph 1: In matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights and the principles contained in Articles 4 and 5 of this Convention[.]
> Article 20, paragraph 1: Each State Party shall respect the following principles:
> a nationals of a predecessor State habitually resident in the territory over which sovereignty is transferred to a successor State and who have not acquired its nationality shall have the right to remain in that State [sic];
> b persons referred to in sub-paragraph a shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights.

- *Declaration on the Consequences of State Succession for the Nationality of Natural Persons*

The Declaration places an obligation upon states to respect the principle of democracy, the rule of law and human rights in the case of state succession. According to Article 3, the conditions for acquisition and loss of nationality must be laid down by law. Laws regulating the area of nationality must be clear, coherent, and non-retroactive, and must respect fundamental rights and freedoms. In addition, the state must ensure an effective right of appeal against decisions involving the deprivation, revocation or refusal of nationality.

Article 10, paragraph a) states that »[t]he successor State shall grant its nationality to permanent residents of the transferred territory who become stateless as a result of the succession[.]« Article 16 stipulates that »[t]he exercise of the right to choose the nationali-

ty of the predecessor State, or of one of the successor States, shall have no prejudicial consequences for those making that choice, in particular with regard to their right to residence in the successor State and their movable or immovable property located therein.« Requesting a person with that status to leave the country, or expulsion of such a person from the territory of a successor state, is incompatible with international human rights norms.

These provisions do not regulate the area of nationality directly, but refer to persons who enjoyed all rights arising from the nationality of a predecessor state but lost these rights in the process of succession (Schärer 1998, 100). Therefore, the status of persons who had the nationality of a predecessor state but have not acquired the nationality of a successor state must be regulated in a manner that would enable them to continue to live undisturbed in a successor state. This effectively means that the successor state should accord to such persons a kind of intermediate status positioned between that of nationals and other foreigners.

In its ruling U-I-284/94 (dated February 4, 1999), the Constitutional Court of the Republic of Slovenia gave its opinion regarding the status of persons with habitual residence who had not acquired the nationality of a successor state (the Republic of Slovenia in this example). It concluded that the erasure of permanent residents of the Republic of Slovenia who had not acquired Slovenian nationality was unconstitutional.[8] The Court was of the opinion that the basic

[8] Depending on the source, estimates of the number of erased persons range from 83,000, based on the document of the Ministry of Internal Affairs concerning administrative matters relating to aliens No. 0012/1-252/62-96 dated March 4, 1996 (although the number derived from this document cannot be considered correct because the document states the number of aliens on December 31, 1995) to 62,816, which is a number given to the Helsinki Monitor by the Ministry of Internal Affairs in 2000. However, the Helsinki Monitor for Slovenia estimates that the number of erased persons is much higher, i.e. around 130,000 (see IHF 2001 report: Slovenia, 271). Given the large number of erased persons, HMS refers to it as a »silent« or »administrative ethnic cleansing.« According to interior ministry data, which were obtained from individual district authorities, on February 25, 1992 the register of permanent residents contained 29,064 records of such persons (Source: Alien and Citizen Statuses, a press conference by the office for administrative internal affairs, June 19, 2002). An analysis of these official data (in the opinion of Matevž Krivic, legal adviser to the Association of Erased Residents of Slovenia, the official data are probably correct) yields the approximate number of 18,3000 unlawfully erased records. The total number of 29,000 should be reduced by 9,500, the number of 'erroneously' erased records of people who voluntarily unregistered before erasure, and a further 1,200 records of people who unregistered soon after the official erasure without even knowing that erasure had taken place.

rights of these persons were violated because »[t]he said persons registered their permanent residence in the territory of Slovenia in conformity with applicable laws and regulations and actually resided in the territory of Slovenia,« and that »[i]n the light of the development of modern protection of human rights, the issue that has also become the object of international negotiations is the position of persons with permanent residence in the territory of the countries dissolved subsequent to 1990 who were citizens of the predecessor state and have not acquired citizenship in the successor state« (US RS U-I-284/94, B.-I., paragraph 13).[9]

In the former common country, the nationals of other republics who held Yugoslav nationality and lived in Slovenia enjoyed the same rights as nationals of the former Republic of Slovenia, if they had habitual residence in Slovenia. With the dissolution of SFRY, which was succeeded by five states (Bosnia-Herzegovina, Croatia, Macedonia, Slovenia and FR Yugoslavia), the constitutional law for the implementation of the *Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia*, Article 13, enabled nationals of other republics with permanent residence in the Republic of Slovenia to acquire Slovenian citizenship *ex lege* in accordance with Article 40 of the Citizenship Act (UL RS 1/91, 30/91, 38/92, 13/94, 96/2002), on condition that they applied for Slovenian citizenship within six months of the Citizenship Act coming into force i.e. by December 26, 1991.

Nationals of SFRY who did not hold the nationality of the former Socialist Republic of Slovenia and who did not apply for or were refused Slovenian citizenship came under the jurisdiction of the Aliens Act. In accordance with Article 81, paragraph 2 of the Aliens Act (UL RS 1/91), »the provisions of [the Aliens Act] shall begin to apply two months after the expiry of the deadline within which they might have applied for citizenship of the Republic of Slovenia, or from the issuing of a final decision.« This meant that nationals of other republics who did not acquire Slovenian citizenship became foreigners on February 26, 1992. However, the Aliens Act did not provide for the transitory status of SFRY nationals who did not apply for

[9] The latest decisions of the Constitutional Court of the Republic of Slovenia No. U-I-246/02 (April 3, 2003) confirmed the standpoint from 1999 and advised the legislature about the meaning and purpose of decision No. U-I-284/94 (February 4, 1999).

Slovenian citizenship or were refused it, so these persons became de-facto foreigners illegally residing within the territory of Slovenia and were obliged to settle their status.

An explanation of the legislature's decision can be found in the draft Aliens Act (May 24, 1991), in which the initiative to institute temporary legal status for SFRY nationals who did not apply for Slovenian citizenship was rejected. In justifying such a move, the drafters of the law explained that it was an issue »that does not need to be regulated by the Aliens Act, but by agreements between countries.«[10] This explanation could mean that in 1991 the legislature was not aware of the potential consequences of a failure to deal with the legal status of former SFRY nationals who had not acquired Slovenian citizenship.

Yet certain other sources indicate that this was a purposeful political decision, »the goal of which was to produce certain consequences« (Mekina 2002, 5). The Demos majority in the then National Assembly turned down a proposed amendment to Article 81 tabled in 1991 by Metka Mencin, a deputy from the Liberal Democracy of Slovenia, even though the then Demos government *supported it*. This amendment proposed that »SFRY nationals who are nationals of some other republic and do not apply for Slovenian citizenship but have a registered permanent residence in Slovenia, or have a job in Slovenia, on the date of this law coming into effect, are issued permanent residence permits« (ibid). This proposal clearly indicates that there was an awareness in the National Assembly of the implications for these people if their status was not adequately regulated.

Had this amendment been adopted, the persons who were subsequently unlawfully *erased*, would have been automatically issued permanent residence permits. It is, therefore, paradoxical that although the then Demos government approved of this proposal, the Demos majority in the parliament *voted it down*. The unlawful *erasure* that took place approximately half a year later, and was implemented by the Ministry of Internal Affairs of that same government, was a purposeful *political act* of a discriminatory nature.

Metka Mencin, the proposer of the amendment mentioned above, also confirmed that the reasons for rejecting the proposed amend-

[10] Explanation, page 3, item 6 in the Decision of the Constitutional Court No. U-I-284/94 dated February 4, 1999, B.-I., paragraph 8.

ment were primarily political: »In the then Demos, the fear of foreigners was quite effectual and in this respect Demos's operation was quite harmonized« (Metka Mencin in ibid.). Subsequent excuses by the government claiming that the erasure was lawful were explicitly denied by the Constitutional Court of the Republic of Slovenia in 1999.

By analyzing solely official explanations of the legislation pertaining to the establishment of the independent state, one could form the impression that the legislature failed to regulate the legal status of these persons because it expected that it would become the subject of interstate agreements between successor states of SFRY, and that the legal status of nationals of other former Yugoslav republics living in Slovenia remained unresolved because eventually these agreements were not realized, primarily owing to wars in other successor states.

The situation of these persons radically deteriorated when, on February 26, 1992, the administrative bodies *transferred* their records from the register of permanent residents to the register of foreigners, in accordance with the second paragraph of Article 81 of the Aliens Act. The most serious consequence of this data *transfer* was not the fact that these persons became foreigners in Slovenia – they also *lost their habitual resident statuses*, meaning that, effectively, they were *erased* from the register of Slovenian residents. The erasure was implemented »by right of office,« and the erased individuals were not notified in any way of this move. The ruling of the Constitutional Court from 1999 read:

> Neither should competent authorities have effected the transfer of these persons from the existing register of permanent population to the record of foreigners ex officio, without any decision or notification addressed to the person concerned. There was no statutory basis whatsoever for them to act so. The Act on the Record … which is invoked by the Government in its explanations does not contain any provisions on the removal of permanent residence from register on the basis of the Act itself [sic] (US RS U-I-284/94, B.-I., paragraph 14).

The erasure was implemented on the basis of an internal decision taken by the Ministry of Internal Affairs, meaning that the Government *did not have the legal basis to implement it*. As a result, the Constitutional Court resolved that, when the government realized that the Aliens Act »could not also be applied in practice to citizens of other republics, it should have proposed that the legislature regu-

late their legal position, and should not have interfered with legislative power by a resolution.« (ibid.).

Citizenship regulations relating to state succession in other SFRY successor states

Following the dissolution of SFR Yugoslavia, citizenship of Slovenia was derived from citizenship in the former Socialist Republic of Slovenia. Accordingly, it should be interpreted in relation to the legislation that regulated the citizenship of the former federation and its constituent republics. The citizenship of the former SFRY and citizenship of individual republics was regulated by the following laws:

- 1945 – the law on Citizenship of the Federal People's Republic of Yugoslavia (later amended several times);
- 1964 – a new law on Citizenship of the Socialist Federal Republic of Yugoslavia;
- 1974 – SFRY adopted a new constitution establishing the federation of republics; consequently, every citizen automatically acquired dual citizenship i.e. federal and republican, whereby federal citizenship derived from republican citizenship (The Constitution of SFRY 1974, paragraph 2, Article 249);
- 1976 – Article 10 of the Law on Citizenship of SFRY stipulated that the citizenship of SFRY is determined on the basis of republican citizenship;
- 1975 – 1979; individual republics adopted laws on citizenship.[11]

The basic principle observed in the acquisition of SFRY citizenship and citizenship of individual republics was the *ius sanguinis* principle, which in certain cases was combined with the principle of domicile (*ius domicile*) and the principle of land (*ius soli*). Another option was acquisition of citizenship through naturalization, whereby the conditions for the acquisition of federal citizenship were identical to those applying to citizenship of individual republics. The acquisition of citizenship through naturalization was based on the principle of the *unity* of citizenship, meaning that every citizen of SFRY was automatically also a citizen of one of its constituent republics and

[11] Bosnia and Herzegovina, Službeni list no. 10/1977; Montenegro, Službeni list no. 26/1975; Croatia, Narodne novine no. 32/1977; Macedonia, Služben vesnik no. 19/1977; Slovenia, Uradni list no. 23/1976; Serbia, Službeni glasnik no. 45/1979.

vice versa. The loss of SFRY citizenship entailed the loss of citizenship of a respective republic, but if a person acquired citizenship from another republic, *the loss of citizenship of one republic did not entail an automatic loss of federal citizenship*. The federal law on citizenship from 1976 did not contain any provision regulating the change of republican citizenship. The conditions under which one could acquire citizenship of a republic were laid down by individual republics, particularly in cases where spouses came from different republics and in cases involving the nationality of their underage children.

In principle, after the disintegration of SFRY in 1991–1992 citizens of individual republics should have automatically acquired citizenship of one among its successor states, in accordance with the laws regulating this issue in the newly formed states. These new states actually enabled citizens of other republics with habitual residence in their territory to acquire their citizenship if they met certain conditions, with these conditions varying from one republic to another.

The Republic of Croatia

Comparable to the Citizenship Act of the Republic of Slovenia, the Croatian law on citizenship envisages four methods of citizenship acquisition: based on the principle of blood relation (*ius sanguinis*), by birth in the territory of the Republic of Croatia (*ius soli*), through naturalization and through an international agreement. The basic principle observed in granting Croatian citizenship is *ius sanguinis* or the principle of consanguinity (Borič 1998, 201), which is applied to Croats living in other parts of SFRY, primarily Bosnia and Herzegovina. The *ius soli* principle is applied subject to restrictions; its function is to prevent statelessness.

Persons who held citizenship of the former Socialist Republic of Croatia, automatically acquired citizenship of the newly formed Republic of Croatia, as defined in Article 30, paragraph 1 of the Law on Croatian Citizenship. Persons who did not hold Croatian citizenship when this law came into force had to fulfill the following conditions (Article 30, paragraph 2): the applicant had to be a member of the Croatian nation; he/she had to have a registered domicile in the territory of the Republic of Croatia when the law came into effect; he/

she had to give a written statement that he/she considers himself/herself a Croatian citizen (ibid., 202).

Problems emerged in relation to the registration and obtaining of the citizenship certificates (*domovnica*) which were issued by the local authorities. Persons who were not entered in the register, or whose records were destroyed in the war, had to prove that they were citizens of the Republic of Croatia. It was mainly ethnic Serbs who settled in the east Slavonia region after 1991, and Serb refugees from other Croatian regions who had problems proving that they were citizens of Croatia.

It is clear from the law regulating the acquisition of Croatian citizenship that the use of the principle of consanguinity enables ethnic Croats who do not have genuine or effective link with Croatia to acquire Croatian citizenship, which is a practice in contravention of the international legal standards for non-discriminatory granting of citizenship.

Bosnia and Herzegovina

Of all the successor states, Bosnia and Herzegovina had the most liberal laws on the acquisition of citizenship at the time of the foundation of the new state. According to this law, all persons who on April 6, 1992 held SFRY citizenship and were domiciled in the territory of the Republic of Bosnia and Herzegovina became its citizens.[12] Paragraph 7 of Article I of the Constitution of Bosnia and Herzegovina (Annex 4 to the Dayton Peace Agreement), introduced, in addition to the citizenship of Bosnia and Herzegovina, the citizenship of individual entities i.e. Republika Srpska and the Federation of Bosnia and Herzegovina. Citizens of these entities automatically became citizens of the Republic of Bosnia and Herzegovina if they had been citizens of the Republic of Bosnia and Herzegovina before the Constitution came into force.[13] The Constitution obliged the House of Representatives of Bosnia and Herzegovina to adopt legislation regulating the issue of naturalization.

[12] The Decree dated October 6, 1992, which came into force as a Law on April 23, 1993.

[13] In harmony with paragraph 1 of Article XII of the Constitution, the Constitution comes into force on the date of signing the Dayton Peace Agreement (the General Framework Agreement), i.e. on December 14, 1995.

The House of Representatives adopted the law on citizenship only as late as July 27, 1999. According to Article 2 of this law, the citizens of both entities are considered the citizens of Bosnia and Herzegovina, while any change in citizenship between entities does not have implications for citizenship of Bosnia and Herzegovina.

Paragraph 1 of Article 39 provides that persons who voluntarilly acquired the citizenship of another country before this law came into force will lose citizenship in Bosnia and Herzegovina unless they renounce the citizenship of another country within five years, unless provided otherwise by a bilateral agreement with that country. Renounciation of citizenship is not required if it is not possible, or if such a requirement would not be reasonable. This provision came into force on January 1, 2003, but the High Representative of the International Community in Bosnia and Herzegovina extended the deadline for the conclusion of bilateral agreements to January 1, 2013.

Article 40, paragraph 1, details the establishment of the commission whose task it is to revise the status of naturalized persons who acquired Bosnia and Herzegovina citizenship after April 6, 1992 and before the Constitution came into force.

The Citizenship Act of Bosnia and Herzegovina is problematic because it envisages revocation of citizenship for those persons who acquired citizenship in another country. This provision has the most serious implications for refugees who acquired the citizenship of the country in which they found refuge, and those citizens of Bosnia Herzegovina who acquired citizenship in other successor states, primarily Croatia and Slovenia.

The Former Yugoslav Republic Macedonia

Before the law on Macedonian citizenship came into force in 1992, conditions for acquiring Macedonian citizenship were favorable. After 1992, citizens who had lived in Macedonia for at least 15 years could acquire citizenship of the Republic of Macedonia if within a year of this Act coming into force they submitted a request, and provided that they had a permanent source of income.

Those individuals who did not acquire Macedonian citizenship under favorable conditions or within the period of one year of the

law coming into effect, either because they did not apply for it or did not fulfill the conditions, had to apply for citizenship through regular naturalization.

The condition that a person must have a permanent source of income had discriminatory effects on certain segments of the population, particularly ethnic Albanians and Roma, since unemployment and poverty among this population segment were very high (Second Report 2001, 5–6).

The Federal Republic of Yugoslavia (Serbia and Montenegro)

The Federal Parliament adopted the law on Yugoslav citizenship on July 16, 1996. According to this law, all persons who on April 27, 1992 held citizenship in the Republic of Montenegro or the Republic of Serbia as well as their children born after that date, automatically became citizens of the Federal Republic of Yugoslavia. Citizens of other former republics of SFRY who were domiciled in the territory of the former SFRY on April 27, 1991 could also acquire Yugoslav citizenship, provided that they did not hold citizenship in another republic and that they submitted an application within one year (by January 1, 1998). Citizens of former SFRY living abroad who did not acquire citizenship in another country could also apply for citizenship in the Federal Republic of Yugoslavia (Borič 1998, 205–206).

It should be stressed that the FRY law on citizenship is discriminatory against the citizens of successor states, since citizens of other successor states are requested to renounce other citizenship, despite the principle allowing dual citizenship.

Citizenship in the legal system of the Republic of Slovenia

Over the past 12 years the legislation regulating the citizenship of Slovenia has been the subject of many amendments and supplements, coupled with a number of proposals, appeals to the Constitutional Court, initiatives and so on. This indicates a discrepancy between reality (practice) and political decisions; in the period 1991–2002 the political atmosphere was such that it favored the maximum possible restrictions on the granting of Slovenian citizenship to persons of non-Slovene ethnic origin. The climax was an initiative

to hold a referendum on the revocation of citizenship for those persons who acquired it under Article 40 of the Citizenship Act.

The milestone that represented a break with such a restrictive approach was the Act Amending and Supplementing the Citizenship Act of the Republic of Slovenia, adopted in 2002. This act relaxed several requirements for citizenship acquisition through naturalization; for example, the condition that a person must have a guaranteed dwelling and good command of the Slovene language was abandoned for certain groups of applicants (for persons with health problems, persons over 60 who have been living in Slovenia for 15 years, and persons who have completed at least elementary education in Slovenia). The goal of these amendments was to harmonize the law on citizenship with the principles and rules of the *European Convention on Nationality,* which is a first codification in the area of citizenship on the international level.

Article 12 of the Constitution of the Republic of Slovenia specifies that »Slovene citizenship shall be regulated by law.« The Citizenship of the Republic of Slovenia Act was adopted alongside other legislation at the time when Slovenia became a sovereign state, and it is based on the following principles: prevention of statelessness, continuity of former citizenship through succession, freedom of a person to decide, equality of parents in deciding the citizenship of underage children, equality of children born within and without wedlock, equality of men and women in citizenship acquisition processes, effectiveness of the citizenship of the Republic of Slovenia in the cases of dual citizenship, relative tolerance towards dual citizenship (the acquisition of citizenship in another country does not mean that a person automatically loses Slovenian citizenship), and protection of personal data.

The most important legal acts that regulate the methods of citizenship acquisition in successor states, are as follows:

- *Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia*

  The nationals of other republics who, on the date of the plebiscite on the independence and sovereignty of the Republic of Slovenia, i.e. on December 23, 1990, had a registered permanent residence in the Republic of Slovenia and actually live in Slovenia, have rights and obligations equal to those applying to other nationals of the Re-

public of Slovenia, except in cases specified in Article 16 of this Act, until the date they acquire the citizenship of Slovenia under Article 40 of the Citizenship of the Republic of Slovenia Act or until the expiration of the deadlines specified in Article 81 of the Aliens Act.

- *Citizenship of the Republic of Slovenia Act, June 25, 1991*

Article 39: Any person who held citizenship of the Republic of Slovenia and of the Socialist Federal Republic of Yugoslavia according to existing valid regulations is considered to be a citizen of the Republic of Slovenia. *Article 40, the first paragraph:* A citizen of another republic that had permanent residence in the Republic of Slovenia on the day of the Plebiscite on the independence and autonomy of the Republic of Slovenia on December 23, 1990 and actually lives here, can acquire citizenship of the Republic of Slovenia, on condition that such a person files an application with the administrative agency competent for internal affairs of the community where they reside. *Article 40, second and third paragraphs:* Regardless of whether the person fulfils the conditions from the preceding paragraph a petition for citizenship of the Republic of Slovenia is turned down if the person has since June 26, 1991 committed a criminal offence […] [sic] directed against the Republic of Slovenia or other values which in accordance with the provision of the first paragraph of Article 4 of the Constitutional Law on the Implementation of the Fundamental Constitutional Deed on Independence of the Republic of Slovenia are protected by the penal legislation of the Republic of Slovenia, irrespective of where the offence was committed. If criminal proceedings were instigated for the offence, the procedure for the acquisition of citizenship is suspended until the criminal proceedings are finished. Regardless of whether the person fulfils the conditions from the first paragraph of this Article, the petition may be turned down if the reasons from item 8 of the first paragraph of Article 10 of this Act apply to the petitioner.

- *Act Amending and Supplementing the Citizenship of the Republic of Slovenia Act-Č of 14 November 2002 (Article 19):*

Citizenship of the Republic of Slovenia may be requested within one year of the entry into force of this act by an adult person who on 23 December, 1990 was registered as a permanent resident in the territory of the Republic of Slovenia, and who from that day on has also been living without interruption in the Republic of Slovenia, if such person fulfils the conditions under points 5, 6, 8 and 10 of paragraph one, Article 10 of this act.

In making a decision based on the preceding paragraph, the competent body may [sic], regarding fulfilment of the condition under point 6 of paragraph one, Article 10 of this act and fulfilment of the condition under point 8 of paragraph one, Article 10 of this act, take into account the length of residence of the person in the country, their personal, family, economic, social and other ties that link the person to the Republic of Slovenia, and the consequences that would be caused for the person by rejection of the request for citizenship of the Republic of Slovenia.

Applications shall be lodged by applicants at the ministry responsible for the interior. Applicants shall be exempt from payment of any of the costs of the procedure pursuant to this article.

Apart from these basic provisions, one who wants to understand the issues of succession in the area of citizenship should also be acquainted with other legal provisions, regulations, decisions of the Constitutional Court of the Republic of Slovenia, and other documents that regulate this area. Other legal sources pertaining to succession issues in the area of citizenship and status of aliens are as follows:

- *Statement of good intention, 6 December 1990:*

1. Through the will expressed in the plebiscite by the Slovene nation, the Italian and Hungarian ethnic communities and all other voters in the Republic of Slovenia, may Slovenia finally and actually become a sovereign, democratic and social state based on the rule of law. It should be based on work and enterprise, on social justice and security for all, on environmental responsibility and on the best Slovenian and European traditions. In this regard it will develop politically a parliamentary democracy, and on the level of modern awareness it will protect human and civic rights and freedoms … The Slovenian state also guarantees to the Italian and Hungarian ethnic communities in the independent Republic of Slovenia all rights as laid down in the constitution, laws and international acts concluded and recognised by the Socialist Federal Republic of Yugoslavia. In the same way it shall guarantee to all members of other nations and nationalities the right to universal cultural and linguistic development, and to all those with permanent residence in Slovenia, that they may acquire Slovenian citizenship, if they so desire …

- *Regulation on the criteria for determining fulfilment of certain conditions for acquiring citizenship of the Republic of Slovenia through naturalisation, from 1994*

- *Aliens Act of 25 June 1991 (Article 81):*

Up until the final effectiveness of a decision in the administrative procedure for obtaining citizenship of the Republic of Slovenia, the provisions of this act shall not apply to citizens of the SFR Yugoslavia who are citizens of another republic, and who within six months of the entry into force of the act governing citizenship of the Republic of Slovenia apply for citizenship of the Republic of Slovenia pursuant to Article 40 of the said act.
For citizens of the SFR Yugoslavia who are citizens of another republic, and who have not applied for citizenship of the Republic of Slovenia within the deadline from the preceding paragraph or to whom a negative decision has been issued, the provisions of

this act shall begin to apply two months after the expiry of the deadline within which they might have applied for citizenship of the Republic of Slovenia, or from the issuing of a final decision.[14]

- *The Settling of the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia Act*

A permanent residence permit may be issued to a citizen of another SFRY successor state (hereinafter: alien) who had permanent residence registered in the territory of the Republic of Slovenia on 23 December, 1990 and who has continued to live in the Republic of Slovenia since that date, or to an alien who was residing in the Republic of Slovenia on 25 June 1991 and has continued to do so without interruption since that date, regardless of the provisions of the Aliens Act, if they fulfil the conditions prescribed in this Act.

- *Decisions by the Constitutional Court of the Republic of Slovenia*

Constitutional Court decision U-I-266/95, 20 November 1995 (B.-II):
The court ruled that the initiative for holding a referendum on revoking citizenship of the Republic of Slovenia acquired pursuant to Article 40 of the citizenship act was counter to the constitution, because »revoking citizenship by a law would signify an encroachment on the protection of rights to privacy and personal rights laid down in Article 35 of the constitution, and on the right to personal dignity and security under Article 34 of the constitution« and counter to the principles of a state based on the rule of law (Article 2 of the constitution).

Constitutional Court decision U-I-284/94, 4 February 1999 (B.-II, paragraph 19):
The court determined that paragraph two, Article 81 of the Aliens Act was counter to the constitution, »... because it does not regulate the legal position of persons who, after the expiry of the deadlines in paragraph two, Article 81, have become aliens. This has caused violations of the principles of a state based on law, the principle of equality and in certain cases (in cases of deportation or expulsion) possibly also violations of human rights and freedoms, which under the constitution and international law pertain to all persons who reside legally in its territory, irrespective of citizenship«.

[14] In its decision U-I-284/94 (February 4, 1999) the Constitutional Court invalidated the second paragraph of Article 81 of the Aliens Act because it was counter to the Constitution.

The court determined that the provisions of the Aliens Act, applied as the legal basis for settling the status of citizens of other republics who had not acquired Slovenian citizenship, should not have been used in their case, and that the application of these provisions was counter to the constitution. Owing to the erroneous interpretation of the Aliens Act, these persons were placed in an unequal position compared to those aliens that were citizens of third countries and had permanent residence in the Republic of Slovenia at the time the act entered into force, whereby a violation was committed against the principle of equality before the law under Article 14 of the constitution, and equal protection of rights under Article 22 of the constitution.

Constitutional Court decision Up-60/97, 15 July 1999:
The court reiterated its findings in decision no. U-I-284/94, whereby Article 81 of the Aliens Act was counter to the constitution, owing to an unconstitutional legal vacuum. The court also determined »... *that complainants should be recognised as permanently resident* [sic] at the address where they were registered prior to their illegal deletion from the records of permanent residents for the period up to adoption of the ZUSDDD or up until the expiry of the deadlines that will be laid down by this act for the settling of status«.[15]

Constitutional Court decision U-I-89/99, 6 October 1999:
The court annulled the provision of paragraph three, Article 40, inasmuch as it related to the reason of danger to public order, since »for laying down this additional condition, the legislature had no reason justified in the predominant and legitimate public interest which would reflect secure trust in the law« (US RS U-I-89/99, B.-II., paragraph 14).

Constitutional Court decision U-I-295/99, 18 May 2000:
The decision annulled the first, second and third indents, Article 3 of the act regulating the status of citizens of other successor states to the former SFR Yugoslavia; »[because] the conditions ... are stricter

[15] Notwithstanding this decision of the Constitutional Court, the persons concerned were not accorded their status retroactively for the period from February 26, 1992 when their permanent resident status was cancelled, up to the adoption of the law settling the status of former SFRY nationals or the expiry of deadlines.

than the conditions for canceling the permanent residence of aliens, this violates the principle of trust in the law pursuant to Article 2 of the constitution and the principle of equality pursuant to paragraph two, Article 14 of the constitution ...«

Constitutional Court decision U-I-246/02, 3 April 2003:
The Constitutional Court ruled that the act regulating the status of citizens of other successor states to the former SFR Yugoslavia was counter to the constitution, since it did not recognise the permanent residence of citizens of other successor states to the SFR Yugoslavia from 26 February 1992, when they were deleted from the register of permanent residents. The court therefore determined a six-month deadline for the legislature to eliminate this variance with the constitution. The court also ruled that special provision should be made for the status of persons ordered deported owing to their non-settled legal status in the Republic of Slovenia.

With this ruling, the court also advised the legislature how decision no. U-I-284/94 should be interpreted, such that »in compliance with the aforementioned Constitutional Court decision, the legislature should put in order the entire period in which these persons did not have a legally settled status« (US RS U-I-246/02, B.-II. paragraph 14).

Discrimination in the procedures of granting Slovenian citizenship related to the settlement of succession issues

In order to better illustrate the discrimination that occurred in Slovenia, I will introduce a typology of Slovenia's body of nationals. In so doing, I do not intend to make distinction between various »categories« of Slovenian nationals. My sole objective is to facilitate identification of the types of discrimination in the procedure of granting Slovenian citizenship and of the causes of such discrimination. Based on the method of citizenship acquisition, the body of nationals can be divided into three main groups:

1) The initial body of nationals of the Republic of Slovenia. Persons in this group acquired Slovenian citizenship automatically in accordance with the principle of blood relation (*ius sanguinis*). These are the persons who held citizenship in the former Socialist Republic of Slovenia before the dissolution of SFRY.

2) Exceptional naturalization of nationals of other republics of the former SFRY as part of the succession process. Persons in this group acquired citizenship *ex lege* on the basis of Article 40 of the Citizenship Act. Approximately 174,000 citizens applied for citizenship on this basis; of these, 171,000 were granted citizenship, while 2,400 were rejected (Tujski in državljanski statusi 2002). However, these figures do not include subsequent revision procedures, which in some cases led to revocation of the citizenship acquired under Article 40. In addition, several applications for citizenship under Article 40 have not yet been resolved.

3) Acquisition of citizenship by regular or extraordinary naturalization. This group includes those persons who acquired citizenship either through regular naturalization (Article 10 of the Citizenship Act) or extraordinary naturalization (Articles 12 and 13 of the Citizenship Act). To date, 16,000 people have acquired Slovenian citizenship through regular naturalization, and approximately 3,400 through extraordinary naturalization, which is 19,400 persons altogether. Approximately 4,000 applications were rejected; of these 3,500 were classified as regular naturalization and approx. 500 as extraordinary naturalization.[16]

The principle of non-discrimination was mainly violated in procedures pertaining to the settlement of succession issues, i.e. citizenship acquisition on the basis of Article 40. The majority of violations occurred in connection with the erasure of permanent residents who did not acquire Slovenian citizenship under Article 40.

In the erased persons group, in most cases it was not a refusal to grant citizenship that represented the act of discrimination, because the majority of these people did not apply for citizenship for a variety of reasons. Discrimination against these people occurred when they were deprived, without any objective or legitimate reason, of statuses they had enjoyed until then. However, a certain number of people from this group did apply for citizenship, so the erasure, i.e. the loss of permanent residence in Slovenia, was a consequence of the rejection of their application or withdrawal of citizenship.

In some cases, erasure from the register of permanent residents and the denial or withdrawal of Slovenian citizenship resulted in de

[16] Source: Tujski in državljanski statusi 2002.

facto statelessness, although, viewed from the legal perspective, this should not have happened, given that every citizen of the former SFRY also held citizenship in one of its republics. However, this legal fiction did not always work in practice. It was particularly problematic in cases where a person was born in the Republic of Slovenia to a father of non-Slovene nationality. These persons should have automatically acquired the nationality of another republic, but many were not actually entered in the register of the other republic because of war and ethnic cleansing in these regions. A disproportionately large number of persons without citizenship is found among the »non-autochthonous« Roma population, a group affected by the erasure more severely than any other ethnic group.[17] In addition, the unreasonably long processing time for applications, that in some cases took years (some applications are still processed), is also considered a violation of human rights.

The citizenship granting procedures involved various forms of discrimination. These were manifested as various violations of human rights and freedoms, such as equality before the law, the right to personal dignity, the right to citizenship, the right to equal protection of rights, the right to personal freedom, freedom of movement, the right to family and private life, the right to social security, the right to medical security, the right to work, the right to residence and others.

At this point I find it necessary to stress that the vast majority of applications were resolved in conformity with the law and the principle of non-discrimination. Nevertheless, this cannot be used as a justification for discrimination against tens of thousands of people,

[17] According to estimates from the European Roma Rights Center, there are approx. 2,500 to 3,000 non-autochthonous Roma living in Slovenia, of which at least two thirds do not have Slovenian citizenship. The extent of statelessness among this non-autochthonous Roma population is very high (Perić 2001, 35). This shows that the criterion of autochthony played an important role in granting/refusing Slovenian citizenship, although *such a criterion is not legally defined in any document.* When the Constitutional Court was confronted with the question of when a certain ethnic (minority) group is deemed to be »autochthonous,« it adopted a criterion recognized by the international law that a minority is autochthonous if at least three generations of the group have lived within a certain territory i.e. over a period of 100 years (Decision by the Constitutional Court U-I-416/98, March 22, 2001, B.-I., paragraph 6). The criterion of autochthony did not have any legal implications, since it was not used as a direct criterion for granting citizenship, although in general it does influence the principle of *ius sanguinis* i.e. automatic acquisition of citizenship. Members of »non-autochthonous« ethnic groups had to acquire citizenship according to Article 40 of the Citizenship Act observing the principle of *ius domicili.*

particularly not because the largest number of victims came from the most marginalized ethnic or social groups (e.g. the Roma, convicts etc.). Another group seriously affected were officers of the former Yugoslav People's Army who were designated as »enemies« of, or »aggressors« against, the newly formed state.[18] The military aggression against Slovenia and the ten-day war that followed led to amendments to Article 40 of the Citizenship Act and the addition of second and third paragraphs. The provisions found in the amended Article 40 would lead one to believe that applications for citizenship by former YPA officers would have been decided on the basis of the second paragraph (i.e. *committed* a criminal offense directed against the Republic of Slovenia). However, the legal implications of newly gained independence rendered this provision inapplicable. In her commentary on Article 40 of the Citizenship of The Republic of Slovenia Act, Nada Končina wrote:

»Obviously, when adopting the Act Amending and Supplementing the Citizenship Act, the legislature was not aware of all legal consequences of the formation of the independent state of the Republic of Slovenia. Paragraph 2 that was added to Article 40 is practically impossible to implement, since it is based on the criminal offense as defined in sections 15 and 16 of the Penal Code of SFRY; these are primarily criminal offenses directed against the nation and the state, but against one's own nation and one's own state. Since at the time of aggression Slovenia was already independent, all criminal charges were rejected, because nationals of other republics, i.e. the nationals of SFRY, did not fight against their own nation or their own state; therefore, there were no elements of such criminal offenses [sic]. In practice, all such cases were processed based on the third paragaph newly added to Article 40, according to which it was necessary to establish whether the admission of an individual represented a threat to public order, defense and national security. Participants in these demanding processes of establishment [of threat] were professional departments responsible for this area (the Mini-

[18] Former YPA officers were unlawfully denied or withdrawn citizenship on the basis of the list known as »800 dangerous persons,« which, even according to the 1997 statement of Mirko Bandelj, the then interior minister, »did not have a basis in legal regulations and was unacceptable from the perspective of a state governed by the rule of law« (Dnevnik, September 25, 1997).

stry of Defense, the Security and Intelligence Service, the police, and natural persons as witnesses)« (Končina 1993, 136).

The establishment of any »threat to the state« posed by specific individuals was, therefore, unlawful, because it was based on provisions in the third paragraph (i.e. »threat to the security or defense of Slovenia«)[19] which refer to a current threat (at the time of the decision), but were used retroactively.[20]

This interpretation was confirmed by the Constitutional Court of the Republic of Slovenia in its decisions U-I-147/92 dated May 6, 1993 (OdlUS II, 45), Up-115/94 dated December 2, 1996, and U-I-89/99 dated June 10, 1999 meaning that decisions based on Article 40 and adopted after December 14, 1991 should have sought to establish, among other things, whether the person fulfilled the conditions defined in the third paragraph. As stressed above, the ministry should have assessed the current threat or threat at the time of decision taking, and not during the war for independence.

The law was amended owing to the military aggression against Slovenia in June 1991 and was intended to prevent persons who committed criminal offenses during the war (the second paragraph of Article 40), and those who »participated in the aggression or whose conduct was expressly disloyal,« from acquiring Slovenian citizenship. It was precisely »participation in the aggression and expressly disloyal conduct,« or even mere attribution of »participation in the aggression and expressly disloyal conduct« that was the intention behind the third paragraph of Article 40, although no such formulation could be found in this paragraph. In fact, had this paragraph contained any explicit formulation to this effect, it would have been unconstitutional, owing to its de facto retroactive effect. The third paragraph is still used to prevent persons who still presumably present a threat to the security or defense of Slovenia from acquiring

[19] According to the interior ministry data, 195 applications for citizenship were turned down on the basis of Article 40 because of the threat to the security and defense of the state.

[20] In its comments on the Citizenship Act issued in 1993, the interior ministry itself pointed out that it was necessary to establish whether »granting of citizenship represents a threat to public order, defense or security of the state.« In other words, it is necessary to establish whether a person will pose a threat *in the future* and not whether he/she posed a threat *in the past*. Despite this interpretation, the ministry and the courts continue to establish a presumed past threat, one posed to Slovenia at the time of aggression, in June 1991.

Slovenian citizenship, although these persons are no longer the employees of the military and most of them have become retired in the meanwhile. Undoubtedly, when rejecting application by these persons, the Ministry of Internal Affairs should prove any presumed current threat (not a past threat) posed by the applicant, or should support its decisions by adequate arguments, but no such proof can be found in any single decision of this kind.[21]

Another reason that may lead to the rejection of an application for citizenship in accordance with the provisions of the third paragraph of Article 40 is a threat to public order. This provision applies to persons who committed criminal acts or minor offenses, meaning that they represent a potential threat to public order.[22] In issuing its decision on this part of the disputable third paragraph, the Constitutional Court stated that »for laying down this additional condition the legislature had no reason justified in the predominant and legitimate public interest which would outweigh the protected trust in the law« (US RS U-I-89/99, B-II, paragraph 14).

As a matter of fact, it is evident from legislative documents that the third paragraph of Article 40 was added with the intention of preventing persons who »participated in the aggression or whose conduct was expressly disloyal« from acquiring citizenship. The legitimate public interest that was a reason for adding this paragraph was protection of the state – i.e. its security and defense. According to the Constitutional Court of the Republic of Slovenia, »[a]t the time of the adoption of this Act it was possible to predict that persons potentially threatening public order would be among applicants for citizenship under Article 40« (ibid.). Accordingly, the Court decided that the legislature did not have a legal basis justifiable by the predominant or legitimate public interest that would outweigh the principle of the protection of trust in the law.

The most disturbing element in all this was the fact that the rule of law was forsaken. The courts proved to be an extension of the execu-

[21] According to Matevž Krivic, the legal adviser to many erased persons.

[22] According to the interior ministry data, 179 applications for citizenship were turned down on the basis of Article 40 for reasons of threat to public order. (Source: Tujski in državljanski statusi 2002.) However, it should be added that the number of rejected applications is higher, since several persons had their citizenship revoked on the basis of provisions in Article 40.

tive branch of the government, particularly in cases involving former officers of the YPA. This is fully counter to the principle of the distribution of power in a state governed by the rule of law. In addition, the legislature did not express any willingness to remedy the injustice suffered by the erased persons through the conduct of executive and administrative bodies. Moreover, the constitutional appeal from the *Association of the Erased Residents of Slovenia,*[23] in which they requested that the status of erased citizens should be regulated retroactively beginning with the date of the erasure, i.e. February 26, 1992, met with a negative and extremely formalistic response by the Legislative and Legal Affairs Service of the National Assembly. In the words of the representative of this service, the conduct of the state towards erased citizens was invariably »correct« and »grounded in the Constitution. It is possible that unlawful procedures occurred in certain individual examples.« According to this representative, the possibility of retroactive regulation of their status was »practically unrealizable« (Mekina and Mlinarič 2002, 2).

Viewed from the perspective of the interpretation of legal norms regulating the area of citizenship, it is possible to speak of direct discrimination against the erased people and former officers of the YPA in the citizenship granting procedure. Particularly discriminatory was the treatment of the former YPA's officers, owing to the discriminatory application of Article 40. Indirect discrimination occurred in cases where persons who had genuine and effective links with the Republic of Slovenia[24] were arbitrarily denied or withdrawn Slo-

[23]The Association of Erased Residents of Slovenia – The Association for Human Rights was established in February 2002, precisely 10 years after erasure from the register. The main goals of the association are to achieve a full remedy for the injustices suffered by erased persons and to achieve acknowledgement of their responsibility on the part of those who adopted the decision to erase these citizens from the register and implement this measure on all levels.

[24]One such example is the case of M. K., 35, who was a citizen of Bosnia and Herzegovina but had family in Slovenia and has been living in Slovenia since the first year of his life. M. K. acquired Slovenian citizenship under Article 40, but had revoked it at the end of his prison term in 1997, for reasons of threat to public order. As a consequence, he lost permanent resident status in Slovenia and all rights arising from it. Owing to the loss of citizenship, he lost the right to residence in a non-profit establishment, and was not entitled to social security because he was unemployed. Ever since then M. K. has been a homeless person, but since he is not a citizen of Slovenia, he is not entitled to reside in the shelter for homeless people. Source: information supplied by M. K. through informal interviews held in Ljubljana, November–December 2002.

venian citizenship. In certain cases discrimination was manifested as an unreasonably long processing time for applications.

As stressed earlier in the text, non-arbitrary methods of granting citizenship are those based on the principle of blood relation (*ius sanguinis*), territoriality (*ius soli*) and domicile (*ius domicili*). The former republican citizenship, which was acquired on the basis of *ius sanguinis* principle, was the legal basis for determination of the initial body of nationals of Slovenia. The acquisition of Slovenian citizenship through exceptional naturalization under Article 40 of the Citizenship Act and through regular or extraordinary naturalization is based on the *ius domicili* principle. These procedures were legitimate and non-discriminatory.

In accordance with the definition of indirect discrimination, application of the provisions found in the third paragraph of Article 40 when assessing requests for citizenship by former YPA officers would not have been discriminatory had it been objectively *justified by a legitimate goal*. Protection of security and defense of the Republic of Slovenia are undoubtedly legitimate goals. However, these goals would not have been jeopardized by granting citizenship to former officers of the YPA, because their conduct could have posed a threat to Slovenia in June 1991, during the war for independence, but that is not the threat referred to in the third paragraph of Article 40, which refers to current (not past) threat. In addition, the third paragraph was also applied to those persons who allegedly posed a threat to public order, which is an interpretation that was rejected by the Constitutional Court (see above).

The legislation pertaining to the acquisition of citizenship through naturalization that has been in use until now is thus discriminatory primarily because the decision-taking body could reject an application for citizenship although there existed a genuine and effective link between the applicant and the state (Slovenia). This had grave consequences for numerous individuals and their families.

Article 19 of the *Act Amending and Supplementing the Citizenship of the Republic of Slovenia Act* represents an attempt to finally put in order succession issues pertaining to the area of citizenship by enabling adult persons to acquire Slovenian citizenship if they had a registered permanent address in Slovenia on December 23, 1990 and have been living in Slovenia since that date. In addition, the appli-

cant must apply for citizenship within one year of this Act coming into force, and must fulfill the conditions under points 5, 6, 8 and 10 of paragraph 1, Article 10 of the Citizenship Act.[25] When establishing whether a person fulfills conditions laid down in items 6 and 8, the administrative body can decide whether to »take into account the length of residence of the person in the country, their personal, family, economic, social and other ties that link the person to the Republic of Slovenia, and the consequences that would be caused for the person by rejection of the request for citizenship of the Republic of Slovenia.«[26]

Evidently, this provision is based on the principle of genuine and effective links as introduced by the International Court of Justice in the case of Nottebohm. This also is the fundamental principle enshrined in the *European Convention on Nationality*. According to the explanation of the drafters of the Act Amending and Supplementing the Citizenship of the Republic of Slovenia Act, the »[g]oal of the act is to enable persons who have genuine and effective links with the Republic of Slovenia to acquire its citizenship, with the purpose of establishing a legal bond between the state and the individual regardless of the ethnic origin of that person.« The amended law on citizenship thus tries to harmonize primarily the existing legal norms in the Republic of Slovenia pertaining to the area of citizenship with the *European Convention on Nationality*.

However, in order to fully regulate this area in accordance with international and domestic standards for human rights protection,

[25] »5. that the person must have a command of the Slovenian language necessary for everyday communication, which is confirmed by the certificate of an exam in the Slovene language at a basic level.
6. that the person has not been sentenced in the state of which he/she was a citizen or in the Republic of Slovenia to a prison term longer than one year and for a criminal offence prosecuted by law if such an offence is punishable by the laws of his/her own country or by the laws of the Republic of Slovenia;
8. that the person's admission to citizenship of the Republic of Slovenia poses no threat to public order or the security and defense of the State.
10. that the person issues a statement in which he/she states that by becoming a citizen of the Republic of Slovenia he/she acknowledges the legal system of the Republic of Slovenia.

[26] In the opinion of Matevž Krivic, a former judge of the Constitutional Court, this formulation is illogical, since free considerations cannot be the basis for deciding whether a person fulfils conditions. Since the facts that are established are personal, family, economic and other links with Slovenia, these should be defined as the purpose of decision based on free considerations and not as a criterion for establishing whether a person fulfils conditions laid down in items 6 and 8 of this article.

the legislator should adopt a special law which would entitle the erased persons to acquire citizenship if they so desire, and would regulate their status retroactively, so as to reinstate the continuity of their status after February 26, 1992. In addition to regulating the status of persons that were erased and other victims of discrimination in the procedures of citizenship acquisition, this law should also redress injustices suffered by these people. Article 26 of the Constitution prescribes that »[e]veryone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or body performing such function or activity under state authority, local community authority or as a bearer of public authority.«

According to Article 18 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* »'[v]ictims' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.«

The erased persons were the victims of an unlawful and unconstitutional act of erasure and related illegal conduct of governmental bodies, so they are entitled to receive compensation for various kinds of damage caused to them. Although their human rights were violated in various ways depending on the case, the source of violation was always the same: it was erasure from the register. Accordingly, the first step should be the elimination of the effects of erasure, followed by the establishment of the kind and extent of damage suffered by these individuals.

The most important stage in the protection of human rights is the adoption of binding international standards. Yet the obligation of the state extends beyond the ratification of documents pertaining to the protection of human rights and beyond periodical reports on the implementation of these standards within the domestic legal system. The best indicator of the level of human rights protection is the level of protection enjoyed by marginalized ethnic and other social groups. Foreigners or non-citizens definitely belong among these groups. Another positive indicator is the application of the rule of law in

such a way that the victims of human rights violations are rehabilitated and violators sanctioned within the shortest possible time.

Anti-discrimination legislation in the Republic of Slovenia

Slovenia inherited or ratified the most important international documents for the protection of human rights.[27] The *European Convention on Human Rights and Fundamental Freedoms* was incorporated into its domestic legal system. Among the international documents regulating the protection of human rights in the area of citizenship, Slovenia ratified/inherited the *Convention Relating to the Status of Stateless Persons*[28] and the *Convention on the Nationality of Married Women.*[29] It did not ratify the *Convention on the Reduction of Statelessness* nor the *European Convention on Nationality,* of which the latter lays down very important standards pertaining to this area.

Anti-discrimination measures and particularly anti-discrimination legislation play an important role in the prevention of discrimination. However, protection against discrimination within the domestic legal system in Slovenia is very deficient, given that its legislation includes only a few anti-discrimination provisions. It is precisely the lack of effective anti-discrimination measures that over the past decade has contributed to the spread of various forms of the discrimination which affected the *erased* persons among others. Moreover, the Slovenian legislation does not include any provision penalizing racist or discriminatory conduct on the part of the police or other civil servants (Minority Protection in Slovenia 2001, 512) although this is a prerequisite for the functioning of the rule of law in a state that has made commitment to respect human rights.

[27] Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights (July 6, 1992), International Covenant on Civil and Political Rights (July 6, 1992), Facultative Protocol to the International Covenant on Civil and Political Rights (July 16, 1993), Convention on the Elimination of All Forms of Racial Discrimination (July 6, 1992), Convention on the Elimination of All Forms of Discrimination against Women (July 6, 1992), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (July 16, 1993), Convention on the Rights of the Child (July 6, 1992), European Convention on the Protection of Human Rights and Fundamental Freedoms (June 28, 1994), and European Social Charter (revised) (July 1, 1999).

[28] The Convention was adopted by the Conference of Plenipotentiaries on September 28, 1954 and entered into force on June 6, 1960. Slovenia ratified it on July 6, 1992.

[29] General Assembly resolution 1040 (XI) of 29 January 1957 entry into force 11 August 1958. Slovenia ratified it on July 6, 1992.

The experiences of other European countries (particularly EU member states) show that the adoption of effective anti-discrimination legislation significantly reduces the amount of discriminatory treatment on the basis of race, religion, ethnic origin and the like. Anti-discrimination legislation has a preventive effect, while it also imposes sanctions on violators and ensures compensation for or rehabilitation of the victims of discrimination, protecting them against potential retributive measures.[30]

Article 14 of the Constitution ensures the universal prohibition of discrimination by stating that »[...] everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance.«

Another convention binding on Slovenia is the *Convention on the Elimination of All Forms of Racial Discrimination*. Article 4 of this convention prescribes that

> States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, […]
> (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

However, the UN Committee on the Elimination of Racial Discrimination (CERD) has established »that the legislation presently in force doesn't seem to respond to all the requirements of article 4 of the Convention, which are mandatory. It is also noted that no information on condemnation of individuals and organizations that disseminate ideas of racial superiority or use racial violence was provided by the State party in its report.« Also, the »Committee remains concerned« that the »efforts to sensitize and train civil servants and public officials on human rights and racial discrimination are still

[30] The laws that ensure effective protection against discrimination are, for example, the Race Relations Act of 1976 in the UK, amended in 2000; in the Netherlands this is regulated by the Equal Treatment Act, 1994; in Belgium by the Law on Prevention of Certain Acts Inspired by Racism or Xenophobia, 1981. <http://eumc.eu.int/publications/Article13/index.htm>.

insufficient.« Accordingly, the Committee has recommended that Slovenia should »strengthen its human rights sensitization and training programmes, especially with regard to law enforcement and military personnel[,]« as well as »take all appropriate measures to inform the general public about existing judicial remedies for victims of racism or xenophobia« (Concluding Observations 2001, paragraphs 9 and 10).

The European Commission Against Racism and Intolerance (ECRI) reached a similar conclusion. In its opinion, Slovenia should devote special attention to the following areas: ensuring full and consistent implementation of legislation aimed at combating racism and discrimination; combat against an increasing tendency to distrust and stigmatize non-Slovenes; immediate adoption of measures which will resolve the problems of refugees and asylum seekers; adoption of preventive measures to resolve problems that could arise from this; and promotion of tolerance among and on the part of politicians (Report on Slovenia 1998, 6).

Slovenia also adopted the declaration according to Article 14 of the Convention by which it recognizes the competence of the Commission to receive and process petitions by individuals or groups of individuals claiming to be the victims of violations of rights laid down by the Convention on the part of a signatory state.[31]

On March 7, 2001 Slovenia signed Protocol No. 12 to the *European Convention on Human Rights*, but it has not yet been ratified. In contrast to Article 14 of the Convention, which prohibits discrimination in enjoying rights and freedoms guaranteed by the Convention, Protocol No. 12 contains a general prohibition of discrimination in enjoying rights and freedoms guaranteed by law.[32]

The European Commission likewise noted (Regular Report 2002, 24) that Slovenia did not make sufficient effort to ensure conformity with the anti-discrimination legislation of the EU which it adopted on the basis of Article 13 of the Treaty, i.e. Council Directive 2000/43/EC of 29 June, 2000 implementing the principle of equal treatment be-

[31] Slovenia recognized the competence of the Commission according to Article 14 on November 10, 2001.

[32] Article 1: »The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.«

tween persons irrespective of racial or ethnic origin (*Directive on Racial Equality*) and Council Directive 2000/78/EC of 27 November, 2000 establishing a general framework for equal treatment in employment and occupation (*Directive on Equality in Employment and Occupation*). Apart from the provision in the Employment Act, which prohibits direct or indirect discrimination on the basis of sex, race, age, health condition or disability, religious or other conviction, sexual orientation and ethnic origin, and the provision by which the burden of proof is transferred from the potential victim of discrimination to the employer,[33] Slovenia has not adopted any general measure against discrimination based on race or ethnic origin.

The Directive on racial equality explicitly prohibits direct or indirect discrimination on a racial or ethnic basis in the public or private sector in the area of employment, work, working conditions, social security, health care, social advantages, education, access to or supply of goods and services (particularly housing) and so on.

Differences in treatment based on citizenship are beyond the scope of the Directive on racial equality, as are the provisions and conditions pertaining to entry to and residence of third countries' nationals or stateless persons in a country, as well as any difference in treatment arising from the legal status of third countries' nationals and stateless persons (Council Directive 2004/43/EC, paragraph 2 of Article 3). Such a formulation may prove dangerous because a state may interpret it too loosely and use it as a justification for discrimination against third countries' nationals in the areas of education, employment and access to housing. In such a case the Directive would lose its *raison d'etre*, since it is precisely the nationals of third countries who are most frequently the victims of racial or ethnic discrimination. Therefore, this provision should be understood in its narrow meaning, i.e. in such a way that it applies only to the area of immigration policy and naturalization (Goldston 2001, 69). This manner of interpretation is also supported by paragraph 13 of the Preamble to the Directive on racial equality, which states that »prohibition of discrimination should also apply to nationals of third countries.«

The EU anti-discrimination legislation is part of the *acquis communitaire* that must be incorporated into the domestic legal systems of EU candidate countries. Since the adoption of such legislation is a

[33] The Employment Act, paragraphs 3 and 4 of Article 6, UL RS št. 42/2002.

prerequisite for combating racial and ethnic discrimination, it is necessary to adopt the highest possible standards for the protection against discrimination. The key role here should be played by one or more independent bodies that would have the authority to receive and process complaints, provide assistance to victims of discrimination, launch independent investigations into discrimination, publish independent reports and make recommendations on the efficiency of the implementation of anti-discrimination legislation (Article 13). It is also recommended that such a body have the authority to adopt binding decisions. This, of course, would not diminish the role of the courts, since persons concerned would still enjoy the right to judicial protection. Sanctions should be effective, proportional, dissuasive, and may also comprise compensations for victims of discrimination (Article 15).

The Standards laid down by the European Court for Human Rights in the area of Citizenship

I have already stressed that states enjoy considerable discretion when implementing their sovereignty in the area of citizenship and immigration policy. However, this discretion in granting citizenship and adopting and implementing immigration regulations is not absolute, but limited by international acts and domestic standards for the protection of human rights. When deciding who will become their nationals, and who will be allowed to enter their territories and reside therein, states frequently violate the principles of non-discrimination, equality before the law, prohibition of torture and inhumane treatment, the right to personal freedom, freedom of movement and the right to family and private life.

A number of countries make a distinction between various categories among the population in such a way that they accord certain human rights to their nationals only, which is in contravention of the international legal protection of human rights. For example, Article 9 of the *International Covenant on Economic, Social and Cultural Rights*, states that »[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.« However, the Constitution of the Republic of Slovenia recognizes the right to social security only for nationals. The first paragraph of Article 5 of the Social Welfare Act states that »all citizens of

the Republic of Slovenia with permanent residence in Slovenia, and aliens who have permanent residence permits in Slovenia« are entitled to social security. This had fatal implications for the erased persons.

Since the majority of economic and social rights are tied to habitual residence in Slovenia, by losing habitual resident status a person also loses economic and social rights. Through the act of erasure, the erased persons had their rights to employment, protection against unemployment, health insurance, pension, housing and so on unlawfully annulled, meaning that they were excluded from the social protection network. Owing to evictions and the cessation of military pension payments, former officers of the YPA and their relatives were among the most severely affected groups. In addition, the system of social care also failed in the case of the erased persons, in conflict with Article 2 of the Constitution, which states that Slovenia is a welfare state governed by the rule of law.

At the same time, Slovenian citizenship as a status has exclusive effects not only on those who did not acquire Slovenian citizenship but also those who acquired it under Article 40 of the Citizenship Act. The most illustrative example is a provision in the Pension and Disability Insurance Act (Article 189, first paragraph) which states that the insurance period also covers the period of »child care during the first year [...] if during that period the mother or the father had no insurance on another basis, if the child was the citizen of Slovenia during that period, and if it had permanent residence in the Republic of Slovenia.« In practice, this provision is interpreted and applied in a discriminatory manner, since persons whose children had other than Slovenian republican citizenship at the time of birth, before Slovenia became a sovereign country, are excluded although they were habitual residents in Slovenia. Since such an interpretation of this provision excludes almost uniquely Slovenian nationals of non-Slovene origin, it can at the very least be considered indirect discrimination. However, if we take into account that prior to gaining independence, i.e. before the dissolution of SFRY, all nationals of SFRY enjoyed equal rights within the entire territory of SFRY, one could even speak of direct discrimination.

In addition to making a distinction between various categories of nationals, countries frequently resort to discriminatory protection

of human rights, meaning that nationals enjoy a higher level of protection than non-nationals. Some theoreticians call this the chauvinism of rights (Bhabha 1998, 614). This is counter to the principle of non-discrimination and equality before the law.

The *European Court for Human Rights* (ECHR) has adopted a standpoint that the deportation of an alien could mean a violation of Article 8 of the *European Convention on Human Rights*, which ensures the right to respect for private and family life.[34] In several of its decisions the Court laid down the standard that the signatory states commit themselves to maintain public order by implementing the right to supervise the entry, residence and expulsion of aliens among other things. However, if measures pertaining to this area intrude upon the right to private and family life (Article 8 of the Convention) these should be *prescribed by the law* and should be deemed *necessary in a democratic society*. Any such measure should pursue a *legitimate goal*[35] and should be proportional to that goal. In other words, the state must adopt the mildest measure through which it can still achieve a legitimate goal, since it has absolute supremacy compared to the individual and has at its disposal more alternative solutions and instruments than the individual.

In cases where the Court could not establish a violation of Article 8, one can find separate negative opinions of judges,[36] suggesting that the court is not unanimous on the issue of expulsion of an alien who has an effective and genuine link with a country. As a matter of fact, there exists a disagreement between a dominant group of jud-

[34] *Abdulaziz, Cabales and Balkandali v. United Kingdom*, decision dated May 28, 1985, Series A No. 94; *Berrehab v. the Netherlands*, decision dated June 21, 1988, Series A No. 318; *Moustaquim v. Belgium*, decision dated February 18, 1991, Series A No. 193; *Beldjoudi v. France*, decision dated March 26, 1992, Series A No. 234/A; *Nasri v. France*, decision dated July 13,.1995, Series A No. 320/B; *Mehemi v. France*, decision dated September 26, 1997, Reports 1997-VI.

[35] Article 8, paragraph 2: »There shall be no interference by a public authority with the exercise of this right [the right to private and family life, home and correspondence, J. D.] 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.«

[36] For example, dissenting opinion, judge Martens in *Boughanemi v. France*, judgment dated April 24, 1996, Reports 1996-II; dissenting opinion, judge Palm in *Bouchelkia v. France*, judgment dated January 29, 1997, Reports 1997-I; dissenting opinions, judges Baka and Van Dijk in *Boujlifa v. France*, judgment dated October 21, 1997, Reports 1997-VI.

ges who support an uncritical understanding of national sovereignty, and a minority who emphasize the importance of non-discriminatory application of the human rights protection norms (Bhabha 1998, 626).

In the *Mehemi v. France* case, the Court established that Article 8 was violated because this Algerian citizen who was born in France but lost French nationality when Algeria became independent, was expelled.[37] The Court decided that in this example the issue of nationality acquisition and loss was complex, so it did not support his expulsion from France.

The European Commission for Human Rights also had to resolve issues of nationality, although the European Convention on Human Rights does not ensure the right to a nationality. For example, in the case of *Salahddin Galip v. Greece,*[38] the Commission was of the opinion that revocation of nationality could represent a violation of the Convention, particularly if it included discriminatory elements. In the case of the *Kalderas Gypsies*,[39] where a group of nomads were refused the issuing of identification cards, the Commission decided that the discrimination on the basis of ethnic origin could be in contravention of Article 3 (prohibition of torture) and Article 14 (prohibition of discrimination), since such a treatment is degrading and thus represents a violation of human dignity. Similar conclusions were reached in the case of the *East African Asians*,[40] where nationals of the United Kingdom of Asian origin coming from east African colonies were subjected to immigration control. The Commission thus decided that racial discrimination is considered to be a degrading treatment, since to publicly single out a group of persons for differential treatment on the basis of race might, in certain circumstances, be a special form of affront to human dignity.[41]

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[37] Algeria became independent on January 1, 1963. Mehemi lost French citizenship because his parents, who had special civil status accorded to Algerians, did not fulfill all the conditions for the acquisition of French citizenship. He could not automatically acquire French citizenship at the age of 18 on the basis of special civil status.

[38] Decision dated August 30, 1995, application 17309/90.

[39] Decision dated July 6, 1977, application 7823 and 7824/77, Decisions and Reports, vol. 11, paragraph 57.

[40] Decision dated December 15, 1973, application 4403/70, Yearbook of the European Convention on Human Rights, vol. 13

[41] Ibid., 994.

The decisions of the European Commission for Human Rights and the European Court of Human Rights pertaining to nationality issues indicate a shift away from an approach which accepts, without reservations, the differential treatment of nationals and non-nationals, considered to be the implementation of the fundamental attributes of national sovereignty, towards an approach which advocates non-discriminatory guaranteeing of human rights to both nationals and non-nationals. This shift can be largely attributed to the diminishing role of the state in the formulation of immigration policy and national sovereignty in general. If viewed from the perspective of human rights protection, we could say that in reconciling the conflicting interests of the collective (the state) with those of the individual, the balance has been tipped in favor of the individual. This shift, which can also be identified in the decisions of ECHR stating that the expulsion of an alien could represent a violation of the right to private and family life, could have a positive effect on non-discriminatory provision of human rights for both nationals and non-nationals.

Conclusions and recommendations arising from this study

The main findings

- The vast majority of discriminatory acts in citizenship granting procedures resulted from regulation of succession issues in the area of citizenship.
- Slovenia allowed nationals of other former SFRY republics with habitual residence in Slovenia to acquire Slovenian citizenship *ex lege*. The majority of them used this option, so approximately 171,000 applicants acquired Slovenian citizenship *ex lege*, while 2,500 applications were turned down for various reasons. However, Slovenia failed to regulate a transitory status for habitual residents of Slovenia who were nationals of other SFRY republics and did not apply for citizenship, or whose application was turned down, or whose citizenship subsequently revoked.
- The most critical violations of human rights were a consequence of the erasure of tens of thousands of residents from the Register of Permanent Residents of Slovenia, which occurred on February 26, 1992 and was implemented by the Ministry of Internal Affairs on

the basis of an internal order without any legal basis and without notifying affected persons of this measure.

- In 1999, the Constitutional Court proclaimed this erasure from the RPR an unconstitutional act, stating that the government had overstepped its authorities by adopting the decision to apply the provisions of the Aliens Act to nationals of other republics, since their status should have been regulated by the legislative branch. The Court decided that the Aliens Act should not have been applied to the nationals of other former republics of SFRY who did not become Slovenian citizens, so it demanded that the government and the legislature recognize the status of permanent residents for the erased persons retroactively, from February 26, 1992 up to the adoption of a new law to regulate their status.
- In 1999, Slovenia adopted the act Settling the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia which indeed enabled erased persons and other persons with unregulated status to acquire Slovenian citizenship, but the period within which they had to apply was only three months. This law, furthermore, does not enable persons who did not reside uninterruptedly within the territory of Slovenia to acquire its citizenship, regardless of whether such a person was forced to leave Slovenia or was expelled as a result of erasure. Most importantly, it does not eliminate the consequences of erasure in such a way as to restitute the continuity of status during the period following the erasure on February 26, 1992 as required by the Constitutional Court.
- In November 2002, a new law on citizenship came into force. It is more liberal than the previous one and represents an attempt to bring the legislation pertaining to citizenship in line with international standards, particularly the *European Convention on Nationality* (1997). The new law on citizenship is an attempt to finally systematize the succession issues pertaining to citizenship by enabling all persons who, on December 23, 1990, had a registered permanent address in Slovenia and have been living in Slovenia ever since, to acquire Slovenian citizenship on condition that they submit application for citizenship within one year and meet certain other conditions. It is evident that this law tries to remove injustices caused through erasure. However, even this law (much like the law on the status of nationals of successor states), lays down the con-

dition of uninterrupted residence in Slovenia, meaning that those persons who were expelled in the meanwhile on the basis of an unconstitutional and unlawful act of erasure, are not entitled to acquire Slovenian citizenship. Moreover, this law too does not mention any remedy for injustices arising from erasure or continuity of status for the period since February 26, 1992.

- In April 2003, the Constitutional Court invalidated the act Settling the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia, because it did not regulate the legal status of erased persons retroactively, that is to say, from the day of unlawful erasure to the acquisition of a permanent residence permit. The Constitutional Court advised the legislature about the purpose and reason of its previous decision from 1999, and explicitly demanded that the legislature recognize permanent residence for all erased persons from the day of erasure.
- Since the establishment of the *Association of the Erased Residents of Slovenia* – the *Association for Human Rights* in February 2002, the media and the public have been expressing an increasing interest in erasure, its causes and consequences. Particular segments of civil society concerned with these and similar issues took action and began to coordinate their activities. Yet there is still no network which would connect and harmonize the operation of these segments, if only informally. This is partly due to the variety of strategies employed by individual civil society activists to expose and resolve problems, and, in certain instances, to a difference in their interests.

On the basis of these findings we can conclude that citizenship granting procedures related to succession issues were characterized by systematic and massive violations of human rights, which reflects de-facto institutionalized discrimination on all levels of executive and judicial branches of power and administrative bodies. The extent and depth of this phenomenon was most clearly revealed in the appeals of numerous politicians and various political factions to neglect the decision of the Constitutional Court. This was confirmation of the existence of a wider political consensus without which the implementation of erasure would not have been possible.

In connection with the erased persons and problems faced by former officers of the YPA, we can assert that the rule of law was vir-

tually entirely forsaken. The most serious violations occurred in the years immediately following the gaining of independence, with their number steadily decreasing recently, a fact that should probably be attributed to the decision of the Constitutional Court in 1999 to proclaim the erasure from the RPR, which represented one of the most serious forms of collective violation of human rights, an unconstitutional measure.

The legislation regulating citizenship issues and the status of nationals of other former republics of SFRY who did not acquire Slovenian citizenship was liberalized. However, the government and the National Assembly still lack political will to reinstate retroactively the statuses of victims of violations and to remedy damage suffered by these individuals.

Recommendations to the legislative and executive branches of the government

When deciding who will be granted citizenship, the state should respect human rights and fundamental freedoms and its decisions should be in accordance with the principle of the rule of law, as specified by the European Commission for Democracy through Law (1998, 29):

- codification of the citizenship issue must be accessible and comprehensible to citizen;
- any deprivation, revocation or refusal of citizenship must be based on valid laws;
- the definition of nationals must be free of any discriminatory elements in terms of human rights and fundamental freedoms;
- when granting or refusing citizenship, or in the case of change of nationality, the principle of proportionality must be respected, meaning that the state should take into account the implications of citizenship granting or refusal for the individual;
- when refusing to grant citizenship, the state must ensure the right to an effective complaint procedure or other judicial protection;
- when implementing or interpreting laws, competent bodies are obliged to seek an optimum solution in compliance with the principles of the Constitution and the fundamental rights;
- individual decisions must comply with international law in the human rights area.

As regards anti-discrimination legislation and the specific issues of discrimination that were the subjects of our study, Slovenia should take the following actions:

- adopt anti-discrimination legislation in harmony with the requirements laid down by the anti-discrimination legislation of the EU;
- ratify *Protocol No. 12 to the European Convention on Human Rights*;
- revise the existing domestic legislation and remove any potentially discriminatory provisions, especially if these disproportionately affect vulnerable social groups such as disabled people, old people, immigrants, the Roma and other ethnic minorities;
- recognize the status of permanent residents for people who were affected by unconstitutional erasure from the register of permanent residents and establish continuity of status for the period from February 26, 1992;
- adopt a special law that would enable remedies for damage suffered because of the erasure;
- investigate the violations and assess the role of individual actors in public and political life in Slovenia;
- launch a public debate on the discriminatory measures that occurred in the citizenship granting procedure and erasure in particular.

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THE POLITICS OF EXCLUSION DURING THE FORMATION OF THE SLOVENIAN STATE

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This study presents some crucial and typical experiences of people who were erased from the Registry of Permanent Residents of Slovenia (hereafter referred to as RPR) in 1992. On February 26, 1992 the Ministry of Internal Affairs erased from the said registry those persons who had permanent residence in Slovenia but were not included in the Registry of Citizens of the former Republic of Slovenia[1] and did not obtain Slovenian citizenship in 1991 and 1992 under Article 40. of the Citizenship of the Republic of Slovenia Act.

The Erased thus came under the jurisdiction of the Aliens Act[2]. Their previously recognized rights were annulled as were their permanent resident statuses, meaning that they were legally equated with foreigners on first entrance to the Republic of Slovenia. This effectively meant that, following erasure from the RPR, citizens of the former Yugoslavia living in Slovenia became not simply foreigners but also illegal residents in Slovenia, even though they already had homes in Slovenia, had formed families and social networks there, held jobs in Slovenia and had participated to varying degrees in local community life. Some of those *erased* were born in Slovenia[3] and had never actually known another homeland.

The purpose of this study is to shed light on the everyday experiences of people who were affected by this measure, one which sev-

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1 The legal institution called »citizenship of a republic« was unknown to ordinary people. Matevž Krivic, the former judge of the Constitutional Court, publicly stated on several occasions that in the former Yugoslavia this institution was even unknown to many lawyers.

2 In the Aliens Act the formulation is »aliens who reside in the Republic of Slovenia illegally.« Persons who were born in Slovenia also became foreigners who unlawfully resided in Slovenia.

3 Although born in Slovenia, these people were entered in the Republic's Register of Citizens based on the birthplace of their father, a procedure which follows the principle of citizenship acquisition by *ius sanguinis*.

eral years later, in 1999, was proclaimed unconstitutional by the Constitutional Court. The study has shown that the human rights of the persons who were erased from the registry were violated. These violations were not accidental, but *systematic*. First, the very act of erasure from RPR represented a violation of human rights, followed by further violations arising from the practical implementation of this measure and the characteristically humiliating treatment of these citizens suddenly turned »foreigners.«

The people who were erased from the RPR could not influence the course of events: they did not know what was going to happen, and when the measure was implemented, they were not notified but mainly learnt about it by accident. As a result, they were affected as individuals rather than a group, so accordingly, many of them tackled the problem individually. This type of attitude of the state towards the erased persons determined their political subjectivation; it was only a decade after the erasure that they ventured into the public arena to defend their rights and fight for them as an organized group.

Methodology

The main methodology used in our field research (which includes elements of ethnographic research) was semi-structured, in-depth interviews, mainly conducted at the homes of the erased individuals. Of 21 interviews altogether, 14 were held at interviewees' homes, 3 in the Dob prison, and 4 in the Center for Aliens in Ljubljana. The second main method used was the collecting of erased people's personal documentation. This documentation mainly consisted of official notifications, appeals by the erased persons and other correspondence that was exchanged with the Ministry of Internal Affairs, various courts, the government, head of the state, Human Rights Ombudsman and others. My field work also included many informal, non-structured interviews with the erased persons, participation through observation and several conversations (ranging from formal and structured ones to informal and non-structured exchanges) with various officials, police officers and others involved by duty in the process of implementation of this measure.

The in-depth interviews with erased individuals (of these two were group interviews) were of various lengths, lasting from two to eight

hours. I used a Dictaphone to record these interviews which I later transcribed (the transcriptions are 2 to 17 pages long). The transcriptions were stored together with photocopies of the corresponding personal documentation.

The method used in the analysis of this data perhaps most closely approaches one described by *grounded theory*, where theory arises from the context, i.e. data obtained systematically through qualitative analysis (Glaser, Strauss 1999 [1967]; Mesec 1998). The basis for the formulation of theoretical explanations was the material obtained during the field work (interviews, personal documentation and other written material, say, a transcript of the session of the National Assembly). I determined the concepts by carefully reading and coding the recorded interviews. In this study, some of these concepts appear as titles of individual chapters, which include selected passages from interviews and my theoretical explanations. This method is primarily inductive, meaning that the statements of erased persons were taken as a point of departure, rather than the other way round i.e. the use of the ethnographic material to corroborate the validity of a specific theory (ibid.; Emerson, Fretz, Shaw 1995; Charmaz 2000).

Research perspectives

Over the past decade, social scientists have been in agreement that scientific research is not a neutral process in terms of ideology and values (Denzin, Lincoln 2000; Lincoln, Guba 2000, Reinharz 1992). Our research, the questions it posed, the method of field data gathering, analysis and so on are all based on the *advocacy perspective*. This, in other words, means that the point of departure in this research was erased persons' narratives and that the most salient issue throughout the research study was their rights i.e. the researcher's sensitivity to their violation. This approach is quite complicated, in our case owing to the fact that the exclusion has been highly normalized and widespread – one method of constituting and justifying a division into the privileged and underprivileged group is the adoption and implementation of discriminatory laws and measures.[4]

[4] As Jasminka Dedić pointed out, the concept of citizenship is discriminatory in itself, since it makes a distinction between citizens and non-citizens (see Dedić's essay in this book).

The question that arises is to what an extent and in what way these people were able to exercise (other) human rights, given that they were suddenly deprived of civil (citizenship) rights. Of course, the corpus of human rights includes the right to citizenship, but our subject of interest in this specific case was the instruments used to protect (or violate) the human rights of these people, who lost the status of a citizen or a foreigner with permanent residence. According to Hannah Arendt, it is precisely a person without citizenship or a residence permit (e.g. a refugee, or, in our case, an »erased« person) who is a »person of human rights *par excellence*«, since such persons are entitled only to human rights and not also to civil rights, i.e. the rights arising from permanent residence (which ensure economic and social rights). The empirical data show that in everyday life the exercising of human rights is frequently linked to citizenship and a residence permit (a permanent residence permit), meaning that the defense of the right to citizenship or residence permit has special significance.

The manner in which the research situation was approached

Our research into discrimination against the erased residents of Slovenia could begin only after we learned about the problem, or, to put it differently, when erasure from the RPR was publicly articulated as an important issue. For this to happen, people who were affected by this measure had to begin to talk, and that occurred only ten years after the implementation of the measure by which they were erased from the RPR.

I obtained the addresses of people whom I later visited or with whom I had interviews[5] from the »Association of the Erased Residents of Slovenia.« The Association was established in February 2002, precisely ten years after the erasure from the RPR. Most individuals personally phoned the president of the Association (Aleksander Todorović), and explained their situation.[6] They wanted to be

[5] One interview was conducted with the help of Jasminka Dedić.

[6] In addition to the Association of the Erased Residents of Slovenia, there are other organizations that could provide information on the erased persons. For example, Helsinki Monitor in Slovenia maintains an even richer record of erased persons who turned to them for legal assistance. However, other organization are bound by the principle of personal data protection, while the Association of the Erased Persons was established with the purpose of engaging in public activism. They wanted to be »heard,« so they welcomed collaboration with researchers.

»heard,« to talk to someone who would understand their problems, but above all they wanted the wider public to become familiar with the injustice they suffered. Even M. S., one interviewee who is currently serving a prison term and whose communication with the external world is very limited, managed to get in touch with the president of the Association. Most of the people I visited already knew what the subject of my study was. They were glad to be able to participate and were thankful to be able to give me an interview.

People who shared with me the most traumatic experiences of their lives were occasionally worried that I would not be able to properly depict their tragic stories. These stories have been for years governed by bureaucratic rules, in contravention of the principles of democracy and equality and were incomprehensible to »common sense«. »The tape can stand anything,« was a comment by one interviewee. Some made preparations for the interview beforehand: they went out of their way to relate events in chronological order, and they prepared in advance a selection of the most important documents which they thought were vital for me to see. These documents were meant as proof that their accounts were true to reality. One of the interviewees, S. M., repeated several times that he could support with evidence everything he said. »I have gathered all documentation which clearly shows that I was erased and expelled. Take your time going through it.« (a recorded interview, June 13, 2002).

The political subjectivation of the erased individuals (their realization of what actually happened and the decision that it was necessary to unite efforts in the struggle for their rights) greatly facilitated, if not even made possible, my field research.

Political subjectivation of »The Erased«

The salient question is why a whole decade had to pass before the erased individuals made their experience public and began to fight *publicly* for their rights? Why did they not resist a long time ago? Why were they silent? Or, perhaps, we should better ask, why they were not »heard« earlier and why the erasure did not become a significant public issue ten years ago. The answer is multifold. One could even say that it is diffused across the entire study. *Indeed, each individual story indirectly speaks of reasons for silence and of the*

impossibility of public activity. Nevertheless, there were two main reasons that, broadly speaking, furnish an answer to the question posed above.

First and foremost, the erasure affected people individually. It tossed them into an unbearable and vulnerable situation: they were not informed that they were erased from the RPR; in other words, they did not receive any official notification of this radical move. They learned about it by accident or when suddenly faced with the repercussions of this measure (e.g. when they lost a job, had their documents taken away or something similar). Only then did they realize what had actually happened. The district authorities asked them to produce passports from their country of residence (other than Slovenia) and to apply for a renewal of residence permit procedure, as if they were first entering Slovenia. Thanks to such a method of »informing,« every particular case became an individual matter. They were thrust into isolation and *the responsibility for what happened was placed on them*. In addition, in accordance with the Aliens Act they were under threat of expulsion from the country, or »at least« of being fined for their »offense«, since with the act of erasure their remaining in Slovenia became illegal. The annulment of their social and economic rights (the right to employment, formation of the family, social assistance, pension, apartment purchase, medical insurance and so on) additionally aggravated their already hardly bearable situation which rendered them extremely vulnerable. In other words, it was not only their formal legal integrity that was shattered, but their sheer existence, health and even lives.

Many individuals that were affected by the erasure admitted in their interviews that they literally struggled for survival. Some recounted other people's stories which ended in death, for example, a story of a man who lost his medical insurance and could not remain in hospital. Frequent references to cases which ended in deaths indicate that they were aware of the extent of the consequences and experienced many fears, among these the fear of death. The existential threat, fears, the individualization of the problem, the taking of the responsibility upon their shoulders and the feeling that they were abandoned (no one spoke up for them save for the Helsinki Watch) forestalled their concerted effort and public action for as long as one decade.

Another factor that contributed to this situation was the dominant ideology in Slovenia in the 1990s, one that was hostile towards all non-Slovenes, including those who already had Slovenian citizenship. In 1993, 1994 and 1995 there were several public appeals to revise and revoke citizenship for those individuals who acquired it under Article 40 of the Aliens Act. A referendum on this issue was even proposed. The proposals were discussed by the National Assembly on two occasions. These public debates were part of the discourse that contributed to *the construction of cultural »Others,«* a group of people of non-Slovene origin. Such an attitude additionally and radically aggravated the situation of the erased individuals. It reduced their options and exhausted their courage to act publicly. Hannah Arendt wrote that the essential component of human rights violation lies precisely in the creation of conditions under which people *cannot fight for their rights*: they are left without any status and without the room necessary to make their opinions significant and their actions efficient (Arendt 1979 [1948]).

Only when some of these individuals obtained residence permits (permanent or temporary), and along with it certain rights, and only after they had established an informal social network[7] (that enabled them to exchange information and offer mutual assistance), could they appear in the public as a group (The Erased) and as such begin to fight for their rights. At about the same time, the public expression of ethno-nationalistic tendencies began to ease off: one decade after Slovenia gained sovereignty, appeals for the revocation of citizenship for citizens of non-Slovene origin subsided (since around 2000, racist oppression has been increasingly directed at new immigrants and refugees).

In 2002, ten years after the erasure, those who were affected established the Association of the Erased Residents of Slovenia.[8] They were joined (received support from) the former judge of the Consti-

[7] It was the Helsinki Monitor which contributed most to the establishment of the informal network. The Helsinki Monitor was the first, and for a long time the only non-governmental organization which advocated the rights of the erased people. It offered legal defense in individual cases and strived to remedy injustice on the level of the system. They tried to garner international publicity for this issue in an attempt to compel the Slovenian government to readdress the injustice and the damages it caused.

[8] Most of the credit for the establishment and media publicity of the Association go to its president, Aleksandar Todorović.

tutional Court of Slovenia, Matevž Krivic, who provided legal advocacy for the group and (in principle) for all others who were erased from the RPR.[9]

The Association made a vital contribution to the wider public's becoming informed about the existence and extent of this problem. It also raised the awareness of erased people about their rights and the rationale for collective self-defense (struggle for rights). One of the key issues in this context was *the naming of this measure*.

The word »erasure« has been in use for approximately one year now. Before that the terminology was dominated by bureaucratic formalism. Civil servants insisted that these individuals had only been moved from one database to another (from the database of citizens to that of foreigners). In addition, the dominant discourse constructed the image of Slovenia as the only success story among the ex-Yugoslav republics. The people who were affected found themselves caught between the glorification of Slovenia as a country that respects human rights, on the one hand, and their own experiences of the brutal violation of these rights, on the other. The conflict of terms governing this image was obviously too striking, so Matevž Krivic, the Helsinki Monitor and other advocates of their rights proposed a new name for the measure – instead of referring to it as the »reorganization of records«, the measure came to be called the »erasure«. *The new term* thus exposed the fact that what happened was a systematic violation of human rights rather than individual violations or mistakes.

In the next section I will present the accounts of the affected individuals in an attempt to illustrate the operation of the predominant hostile ideology (based on the feeling of threat to the nation and racism) that found expression in the attitude of civil servants, police officers, neighbors and other people. I will also explain what it meant to be erased, abandoned and isolated from the levers of social and political power as well as from like-minded, fellow-sufferers.

[9] Matevž Krivic advocates the rights of »the erased« in his numerous public statements and speeches, and through his dialogues with governmental representatives. The essential component of his advocacy is the conclusion that the erasure from the RPR was an unconstitutional measure, so the state must remedy the injustice and enter these people into the RPR retroactively, i.e. from the date of erasure (this requirement has been imposed on the legislature by the Constitutional Court). In addition, in his role as a lawyer, Matevž Krivic defends many individuals free of charge.

Cultural anesthesia

The Erased are, therefore, a group of people who in 1992 lost their civil (citizenship) rights, here understood in the wider sense of the word. They became formal and symbolic foreigners (foreigners seen as a threat) and were sucked into the whirlpool of bureaucratic procedures, demands and fees.[10] The majority of the citizens of Slovenia were oblivious to their suffering and experiences. To be more precise, physical persecution, discrimination and the resulting suffering of the erased individuals were not part of the public, media, scientific or political discourses. In addition, one conspicuous feature of this period was the incapacity of society as a whole to identify with or face their pain, because this was the pain of the Other. Allen Feldman named this phenomenon »*cultural anesthesia*«. It involves a suppression of unpleasant or controversial experiences and feelings of those who are construed as culturally Other (Fledman 1996; Zaviršek 2000). One among the participants at the assembly meeting of the Association, who himself was erased from the RPR, described this as follows:

> In this country one is much better off as a dog than as an erased citizen, since the rights of dogs are better protected and they are more often discussed in public than our rights. We could watch on television day by day reports on the fate of Milena Močivnik's dogs, while our sufferings or support for our rights were never mentioned (a testimony at the assembly, October 26, 2002).

What we have here is the cushioning of the events and suppression of feelings which could begin to undermine – had they been expressed and made public – the normalizing, silent presuppositions of everyday life and the legitimacy of the ruling power (Feldman 1996). Darja Zaviršek stressed that cultural anesthesia occurs when people do not want to hear about violence and suffering experienced by Others, so violence becomes »ghettoised« (Zaviršek 200, 138). In defining cultural anesthesia, Feldman drew on Adorno's analysis of the consequences of the Holocaust; for Adorno, the Holocaust was an exemplary objectivation of the Other, a necessity re-

[10] What I have in mind here are primarily court and administrative fees. For example, a work permit costs approximately 30,000 tolars, and the person who wants to acquire it must have a permanent residence permit and a medical certificate, both of which involve additional costs.

quired to unleash the social capacity to inflict pain upon the Other (ibid. 139). M. B., who is of ethnic Serbian origin, was revoked citizenship which he had previously obtained in 1993, under the pretense that he posed a threat to public order and peace. He stated that, after experiencing all possible forms of the violation of human rights (humiliation, ill-treatment, police violence, expulsions, deprivation of the right to buy the apartment[11]), he felt incapable of talking to anybody about the things he had gone through: »I could no longer talk to anybody, I could only think about what I was going to do ...« What actually prevented M. B. from talking to anybody was public silence and the cultural anesthesia which precluded sympathy for him or understanding of his suffering and experience. Many people with whom I talked identified a radical discrepancy between publicly defended values such as equality and the rule of law, on the one hand, and personal experiences on the other. In addition to administrative or police persecution, it was the silence of the public and their ignoring of the suffering that added to their pain. M. B., a member of the Association, described this as follows:

> For me, it was not various violations such as the seizure of documents or some such that were the most painful. You get through it somehow. What I found most painful was that gap between the incessant talk about democracy, the rule of law and human rights, which was in stark contrast to what we actually experienced. Our problems are not mentioned in public at all, because that could tarnish the perfect image of Slovenia as a democratic country. That suppression is the worst that happened to us (a diary record, November 2002).

One challenge for the researchers was how to translate into words and theory the several years of exclusion, torture and humiliation suffered by this group of people (people without papers), that is to say, events that were not a first-hand experience and of which we did not hear much before the beginning of this research. Can the mind comprehend what the body has not experienced? Our realization of what it meant to be erased came from interviews, not only by way of words (content) or documentation (representing bureaucratic red tape) – one could also sense the force of their experience through

[11] In the former socialist Yugoslavia, most apartments were socially owned and allocated to the employees who thus obtained the right to residence. When Slovenia became an independent state, the holders of the right to residence were entitled to purchase these apartments under favourable terms.

their body language and the tone of their voices. Once the erased residents and their supporters ventured into the public sphere, the cultural anesthesia somewhat subsided, but it has not disappeared completely, so it constitutes an integral component of this study.

The collective recounting of life stories and sharing of experiences gradually led to the formation of a community of erased individuals. The links thus established and the sharing of experiences contributed to the shaping of their collective defense, or political subjectivation, which, in the opinion of Hanna Arendt, is a special and fundamental human skill; it is different from all other skills relating to work, creativity and so on, and possibly the only human skill that is capable of preventing catastrophes such as totalitarianism. For Arendt, political activity or *vita activa* (active life) is a relation on which depends the life of every individual in this world (Arendt 1996 [1958]; Jalušič 1996).

The construction of symbolic foreigners and »legal freaks«[12] (persons without legal status)

Anyone who does not have citizenship of the Republic of Slovenia is an alien, says the first paragraph of Article 1 of the Aliens Act. While this formulation is not problematic in itself, it is disputable when applied to people who did not apply for Slovenian citizenship under Article 40 because they thought they were automatically entitled to it by virtue of having been born in Slovenia. But the real issue was that many people suddenly became foreigners without residence permits (without residential citizenship), even though they had it at the time when Slovenia became a sovereign country. In 1991, when the Aliens Act was in the parliamentary procedure, two parties (the ZSMS and ZKS) made an attempt to achieve the adoption of an amendment to Article 81 of this Act proposing that the citizens of other ex-Yugoslav republics who did not apply for Slovenian citizen-

[12] Hanna Arendt used the term »legal freak« to denote a person without citizenship, permanent residence and, consequently, without rights. She used this term in reference to refugees from the Second World War, primarily Jews from Eastern Europe who were revoked German citizenship acquired during the period of the Weimar Republic (Arendt 1979 [1948], 278). At the beginning of the 19th century, the term »freak« was used to denote unusual bodies that were the subjects of entertainment and profit. A freak represented a deviation from the norm, and from the medical perspective it was regarded as a pathological human being (Zaviršek 2000, 96)

ship but had permanent residence in Slovenia or worked in Slovenia, would be issued permanent residence permits. Had this amendment been accepted, the erasure would not have taken place (Mekina 2003). During the years that followed, it turned out that the obtaining of residence permits was an extremely complicated and time-consuming procedure (having a temporary residence permit was a precondition for applying for permanent residence).

The erasure and its practical implementation required an adequate ideological background, i.e. a specific symbolic construction of reality. After Slovenia became a sovereign state, people of non-Slovene origin were transformed into cultural Others who were insufficiently »Slovenized«[13], or foreigners fated to shoulder all the negative symbolical ballast. A »foreigner« became a label with a pejorative undertone, indeed a stigma. Such circumstances created the climate in which the ethical dilemma could be dismissed and, as civil servants were convinced, the implementation of the erasure was lawful (in fact, the implementation of the Aliens Act). These people were treated as new arrivals in Slovenia rather than as residents who had their homes and officially registered permanent residences in Slovenia.

The individuals who were erased from the RPR on February 26, 1992 never received any official document or notification. They learned about it individually, on various (chance) occasions. This means that they could not complain about this measure. Matevž Krivic named this act a »fraud« worse than robbery, since had these people been robbed, they would have known what happened to them.

T. D., who did not apply for Slovenian citizenship in 1991, has recalled for us the seizure of his documents. At that time he could not know what the consequences of the erasure would be, or how extensive these would be, nor did he know that many other people found themselves in an identical situation.

> In 1992 I wanted to renew my driver's license in Dravograd. The clerk asked me to bring my passport because she had to enter some data. She took my passport, went to another room and punched it. Since I intended to apply for citizenship anyway [under Article 10 of the Citizenship Act], I did not think this passport invalidation was

[13] The term »to Slovenize« was used by the then deputy in the National Assembly Marjan Poljšak, in his letter to a parliamentary group from 1993. We will return to this issue later in the text.

> very important. But it was strange, because the passport was issued in Dravograd and was valid until 1995. She said to me: »You can't have our documents.« I was left without documents. She did not renew my driver's license but told me that I'd have to renew it in my own country. I passed the driving test in Dravograd, so naturally, my driver's license was issued in Dravograd. »You can no longer have our driver's license,« said the clerk (a recorded testimony, June 26, 2002).

Similar episodes involving the invalidation of ID cards and passports by district officials were recounted by many other interviewees. This was probably one of the most frequent and most common ways in which people learned that they no longer were residents in Slovenia at their home addresses. The similarity of their stories suggests the conclusion that the invalidation of the erased citizens' documents was a »tactic« (employed by clerks who cheated or deluded these people into presenting their documents, which were then invalidated). Such tactics cannot be attributed to random »ingenuity,« but was the result of official instructions received from the top. M. B. lost not only his residence permit but his already obtained citizenship as well (this, indeed, happened only rarely). His story much resembles that of T. D. and many others.

> In 1992 I was granted citizenship under Article 40. In 1993 I went to collect my new documents. The clerk asked me to leave my old documents with her and come back in one week. My old documents were punched and they handed me a notice that my citizenship had been revoked (a recorded interview, June 26, 2002).

The erased people were instructed to apply first for temporary residence permits and then for permanent ones. In order to be eligible to apply for residence permits, they had to present a valid passport from another country. But the majority of them did not have another passport. In order to obtain a passport from another ex-Yugoslav republic, whose citizenship they were supposed to have (acquired while Yugoslavia was still one country), they first had to apply for permanent residence permits in that country and then for citizenship. This was an extremely complicated procedure, particularly for those individuals who had been born in Slovenia, or had lived in Slovenia for most of their lives, so they actually had no other homeland than Slovenia.

M. U. was born in Slovenia in the 1950s, and her mother was Slovene by nationality. She did not know that under the law she had

to apply for Slovenian citizenship. She learned that she was not a citizen of Slovenia only in 1992 when she had a child and went to a district office with her husband to enter the child in the registry of births. M. U. was seriously upset by the fact that she had officially been declared a foreigner although she had always seen herself as Slovene. The bureaucratic red tape prevailed over all other lines of reasoning. Accordingly, the damage thus caused and the violation of human rights ceased to be important issues deserving attention.

In June 1992 I had a baby. My husband and I went to the district office to enter the child in the register. The clerk told us that right then she was sending out the certificates of citizenship, but that I was not on the list because I was a Croat. It is very curious. My mother is Slovene, my father is a Serb, and I was born in Slovenia, but they proclaimed me a Croat. She referred me to another clerk in charge of those things. And that clerk was not friendly at all. She thrust in front of me some form which listed conditions and documents I needed to apply for citizenship. Among other things it said that I had to take an exam in Slovene. My mother had worked at the district authorities office all her life, and that clerk was her trainee while still a secondary school student. She is about the same age as I am. I lost my temper and said: »Aren't you ashamed? You've known me all your life; you know that I graduated from the Ptuj grammar school, and you are sending me to take an exam in Slovene.« That's what I said and threw the paper down. She answered that such were the rules and that I had to bring all that evidence. I was very upset and said some rude words, then broke into tears and left. Later on I was terrified whenever I even thought of that office.

I was very distressed because my documents expired at that time. I did not know what to do. I went to a former schoolmate who is a lawyer and explained my situation. We called the Croatian embassy in Ljubljana where a kind gentleman picked up the phone and told me not to worry – he said that I could get their passport immediately; I only had to register a permanent address somewhere in Croatia. But where? I don't have anybody in Croatia. My husband's father thought of a colleague at work who lived across the border. I went with my husband to Croatia, to this man, and asked him if I could register at their address. He agreed straight away and we signed the contract. I was a tenant, and he was the landlord. I sent this contract to the Croatian office, and they sent the citizenship certificate by fax. I took it to the district authorities in Varaždin and explained my situation. I told them that I did not intend to live in Croatia nor ask anything from them. All I needed from them was an ID card and a passport. So that I could become a human being at the age of forty. The clerk stared at me in surprise and said that she had to ask the prefect. I cried while I was waiting, I was on the verge of breaking down. If they don't give me these documents, I was thinking to myself, then I don't know where to go, there was no place for me on this earth. The clerk went to ask the prefect and came back in five minutes. She said that they would give me the documents. I got the Croatian passport and an ID card (that was in 1993). I applied for a residence permit in Ptuj only in 1999. All those years I lived illegally in my own apartment. I was not in a state to arrange my papers

earlier, because all that upset me so much. They gave me a permanent residence permit, but before that they summoned witnesses to testify that I really lived here. Everybody at the district office knew me, and they all know that I never lived in Croatia (a recorded interview, August 15, 2002).

How was it possible?

Racism (on the national level)

The question that arises is how it was possible that the clerks adhered to the administrative procedure even though it was obvious that it represented a violation of human rights and that »something was wrong,« as in the case of M. U. described above. Everybody at the district authority office knew that M. U. never lived in Croatia, that she was born in Slovenia, and had a family in Slovenia, but they nevertheless asked her to present a Croatian passport. The majority of people who were erased were not born in Slovenia but in another republic of ex-Yugoslavia, just like many others who obtained citizenship under Article 40. This is not an insignificant detail, because soon after Slovenia gained sovereignty the public discourse became obviously tainted by a negative, rejecting and even hostile attitude towards immigrants from other Yugoslav republics (Kuzmanić 1999; Erjavec, Hrvatin, Kelbl 2000; Olup 2003). In public discourse, and particularly media discourse, the territory of former Yugoslavia was transformed into an imaginary Balkans, the realm of violence, primitivism, irrationality, and so on. Slovenia purportedly differed radically from it by virtue of its traditionally European culture, one which was a synonym for democracy and respect for human rights (Vodopivec 2001, Kuzmanić 1999; Rizman 1999). »Back to Europe to where we always belonged« (Drnovšek in Žarkov 1995) and »This is a choice between Europe and the Balkans« (a statement by Drnovšek, quoted in Močnik 1999, 141), are just two among many symptomatic statements of the time that have not yet lost their currency. They imply »Balkanism,«[14] thus reinforcing the belief that those who want to join Europe must leave behind the Balkans since, presumably, »to belong in the Balkans« is incompatible with »to belong in Europe«

[14] »Balkanism« is a term used to denote an uncritical and simplified attribution of negative characteristics to the Balkans (where the Balkans is an imaginary space viewed from the perspective of the West). Simplifications and generalizations are frequently based on cultural, religious, ethnic and other prejudices (Todorova 2001).

(Vodopivec 2001, 396). Močnik wrote that in such examples »Balkanism was a mixture of flattery aimed at compelling »Europe« and the current hegemon to admit that this or that country did not belong in the »Balkans« and at mobilizing progressivism which encouraged the natives to make the effort to prove that they do not belong in the »Balkans« (Močnik 1999, 146).

Indeed, many media, as well as some deputies to the National Assembly, were trying to prove that they did not belong in the »Balkans« by reasserting the conviction that everything related to the Balkans was harmful and incompatible with Slovenian culture, including those citizens (with or without Slovenian citizenship) who had ethnic origins in other ex-Yugoslav republics. The right-oriented deputies repeatedly *requested (in 1993, 1994 and 1995) a revision and revocation of citizenships already acquired under Article 40*, because in their opinion, non-Slovenes were not sufficiently »Slovenized« and had dual citizenship. They even claimed that some acquired citizenship through criminal channels. The following is an excerpt from the proposal for a new law on citizenship forwarded to the parliamentary group on February 25, 1993 by Marjan Poljšak, an MP from the Slovenian National Party:

> A new law on citizenship should prescribe that a non-Slovene immigrant can become a citizen of Slovenia if he has never acted against the interests of the Slovenian nation and can prove, through his work and life, that he is being Slovenized.The veracity of Slovenization should be confirmed by authorized state and local bodies. In accordance with this clause, citizenship already acquired under currently valid law should be revised. This will save us from the potential emergence of any new national minority and Slovenes will be spared conflicts between nationalities. Non-Slovenes who do not become Slovenized will be foreigners in this country or will return to where they came from.

This quotation reveals racism, since one of the main traits of racism is precisely the conviction that certain categories of people cannot be incorporated into the existing rational order regardless of how hard they try (Bauman 1999 [1989], 65). Racism is the practice and rationalization of an attempt to construe an artificial social order through the elimination of certain elements (certain categories of people), which in the given reality do not fit into a perfect image of that reality, and there is no chance that they would change or adapt to that picture (ibid.). Certain categories of people cannot be »culti-

vated.« Their cultural conversion is not possible, because these categories are hopelessly immune to control and every attempt at adaptation, so they are destined to remain alien for ever. Racism, as understood by Bauman, is related to the strategy of alienation. If conditions allow for it, racism requires that the non-adapted category of people (those non-Slovenized in our example) be removed from the territory in which the »cultivated« group lives. Bilibar similarly understands racism as advocating a distance between the dominant group and other groups that are the victims of racism, since the mixing of these groups and cultures would necessarily lead to ethnic conflict. Therefore, the incompatible groups, that is to say, groups with »different« cultures, should be segregated from the rest of the population (Balibar 1991). The passage quoted above expresses precisely the same idea: if »non-Slovenized« groups could somehow vanish from the territory of Slovenia, the country would avoid conflict between ethnic groups and attain the ideal homogeneous structure of a society.

The realistic threats of citizenship revocation encouraged a negative attitude towards erased residents. From the perspective of the predominant racist discourse, these were people who, by failing to apply for Slovenian citizenship, actually showed that they lacked even the slightest wish to become »Slovenized.« This dehumanization and hostile attitude towards people of non-Slovene origin can be illustrated with Sašo Lap's statements in the National Assembly. His views epitomize the »spirit« of the time that governed discussions about citizenship of immigrants and their descendants, as well as the overall attitude towards the nations of the former Yugoslavia:

> Our nationalism always crops up in relation to the issue of citizenship and it remains within the limits of patriotism. […] The type of nationalism against which all Europe fights is the nationalism of the Balkan nations, one which incessantly triggers wars and street terrorism! The only type of nationalism in Slovenia that deserves to be blamed is the tribalism of the Albanian mafia, Serbian chauvinism and Muslim fundamentalism. Therefore, our state-formative patriotism is not of the same kind.[15]

Soon after the establishment of the sovereign country, public debates in Slovenia began to be suffused with racist speech, as illustrated

[15] Sašo Lap, 33rd extraordinary session of the National Assembly of the RS, October 27, 1995. At that time, Sašo Lap was a deputy to the National Assembly and the president of the Slovenska nacionalna desnica (Slovenian National Right) (Olup 2003).

above. This discourse invented »hierarchies« and drew division lines between »us« and »them.« It obviously became sufficiently naturalized and widespread to be internalized by bureaucracy and employed in the everyday treatment of erased citizens. Bureaucracy both sustained and generated it. Thanks to the racist prefixes and sub-tones, the revocation of permanent residence status appeared a natural and normal act.

The role of bureaucracy in the erasure: the dismissal of the ethical dilemma

The predominant, naturalized racist sub-tone of bureaucratic operation provides a partial answer to the question we posed above, i.e. how could the clerks carry out the administrative procedures by which they were violating human rights? Or, how could they implement this measure that was unconstitutional and in contravention of legal principles and equality? Again, Zygmund Bauman's conclusions (1999 [1989]) could be of some help in our search for an answer to this question. Bauman, who studied the history of the Holocaust, was primarily interested in how it happened that ordinary Germans were suddenly converted into perpetrators of mass murder. He pointed to the three main conditions that must be fulfilled for moral reservations about violence to become undermined: violence must be authorized (by state bodies), the tasks and acts must be made routine (individual tasks and roles must be specified in detail), and the victims of violence must be dehumanized (with the help of ideological definitions and indoctrination) (ibid. 21). The erasure from the RPR was a far cry from the horrible and destructive Holocaust. The two events are not comparable either in terms of intensity, brutality, or extent. But the logic of operation and the underlying legal structures are comparable, providing an answer to the question of how something like that came to be possible. How could the clerk at a district office require a person who was born in Slovenia and graduated from a Slovenian school to take an exam in Slovene? How could the police expel a person who lived in a small town in Slovenia for 30 years, had a family there and contributed significantly to the life and development of the local community? How could the police magistrate sign a document that represented a violation of human rights, and persecution of an individual and his family? Why didn't anyone

protest? How could the court rule that the police officer who beat and hurt a person erased from the RPR, was just carrying out his duty? How could the Ministry of Internal Affairs turn down applications for citizenship by individuals who were born in Slovenia and lived in Slovenia their whole lives? And how could it cancel their residence permits? How could the authorities deny pensions to former employees of the military and deny them the right to purchase their issued apartments? How could it happen that some people who were designated for expulsion ended up in the Center for the Removal of Aliens and remained there for several years?

If we adhere to Bauman's explanation, we will see that the systematic violation of human rights was possible because 1) the order to erase these people from the RPR came from »above,« from one of the main governmental bodies, i.e. the Ministry of Internal Affairs; 2) the actions and tasks related to the implementation of this measure were made routine (the clerks had to adhere to *the letter of the law*, i.e. the Aliens Act in this case) and 3) the victims of human rights violations (those erased from the RPR) were dehumanized (through the racist discourse aimed against non-Slovenes).

Bureaucracy operated by its internal rules: it clearly defined and registered its subject (the Erased), and separated it from the rest of the population (the erased individuals were referred to the »clerks responsible for foreigners«). The subjects of this bureaucratic action were dehumanized by means of technical and neutral treatment devoid of ethics; they were treated like objects rather than people. Bauman pointed out that bureaucracy is interested in the efficiency and rationalization of procedures and not in human destinies or subjective opinions. Such an ethically neutral approach can soon turn into the blame for and disapproval of those who resist or do not participate sufficiently and thus slow down the bureaucratic routine. The depersonalization and dehumanization of the »subject« of a bureaucratic procedure is more efficient if an ethically neutral attitude is employed. Conversely, once people are dehumanized, the humiliating attitude and ignoring of their actual status (on which, in our specific case, they had no influence and which has not been dependent on their will) no longer appears disputable. E. O.'s words excellently sum up an experience that was also described in one form or another by other interviewees:

> Whenever I came to the local office to ask something, or to file some application, and tried to explain to the clerk something about my situation, they always replied: »That's what the law says, madam, we obey the law.« That was invariably their answer. Nobody wanted to hear that those laws placed me in an impossible situation, a vicious circle of bureaucracy (a recorded interview, August 15, 2002).

Can the dismissal of the ethical dilemma be attributed, among other things, to the fact that the clerks actually hated E. O. or other erased individuals? In her analysis of the psychological response to inequality, exclusion and injustice, Darja Zaviršek writes that while open hostility is rare, invisible and unintentional hostility occurs much more frequently. It is manifested as the abandoning of the ethical dilemma and the lack of reaction on the part of people who are witness to injustice or abuse (Zaviršek 2000, 87). It is not to say that bureaucrats and other people who fail to react are malicious or that they approve of hostility and discrimination, but the problem is that they approve of the frame of mind that lies behind such administrative oppression (ibid.). Virtually no one approves of hostility towards foreigners and citizens of non-Slovene ethnic origin, but many »silently subscribe« to the claims that Slovene language and culture are »threatened«, that too many non-Slovenes live in Slovenia, that they »obtained Slovenian citizenship far too easily« and the like. The indifference of Slovenes was not a result of ignorance, but of the fact that they *agreed with the reasoning that served as the basis for exclusion i.e. the erasure from the RPR* (ibid. 88). Those who implemented the measure (the Ministry of Internal Affairs, district authorities, local police stations, centers for foreigners) and those MPs who in 1991 voted against the amendment to Article 81 of the Aliens Act, symbolically carried out the erasure on behalf of all others, i.e. citizens of Slovenia of Slovene ethnic origin and all those who conceded to the reasoning that served as the basis for the erasure.

Hanna Arendt (in Zaviršek 2000), who made an attempt to understand how the Holocaust could have actually happened, pointed out the decisive role and co-responsibility of bureaucrats. Elie Wiesel (in Zaviršek 2000), who survived the concentration camps, asked a similar question. The most important question he sought to explain was why the population remained indifferent. He arrived at the conclusion that these people actually agreed with the reasoning that led to

executions: they agreed with the Nazis that it was necessary to eliminate all those who were allegedly infecting their culture. Owing to this, the wider society could remain indifferent. »Ordinary people whose convictions were legitimized by the scientific authority of doctors, legal experts and clerks believed that it was necessary to exterminate all those who threatened their families, bodies and life« (ibid. 88, note 33).

According to Bauman, another characteristic of bureaucracy is that its primary objective or purpose disappears from its horizon (in our case this purpose was originally the arranging of the status of foreigners as prescribed by the Aliens Act). Instead, it focuses on the means of implementation, which then becomes an end in itself. For example, many erased individuals did not have any address or residence outside of Slovenia. This, in other words, means that they had to give a fake address in a foreign country when they filled in applications for residence permits in Slovenia. The clerks did not care whether such an address was genuine or fake. Their essential aim was to meet the rule according to which a foreigner applying for a residence permit in Slovenia must be a resident of another country (have an address in that country), otherwise a person could not be considered a foreigner. The testimony of Ž. N. illustrates this principle.

> My new passport issued in Serbia contains a non-existent address, and I also had to enter an imaginary address on the application form for a residence permit. That's what the clerks demanded from me. That is the address of a military hospital in Niš. You have to be tied to some place; you can't be tied to a telegraph pole (a recorded interview, May 5, 2002).

These were examples of the blind *obedience of the law*, devoid of every concern for the people. This occasionally led to bogus and absurd situations, as in the case of persons who were born in Slovenia and lived in Slovenia their whole lives. V. V., who was born in Slovenia while it was still a part of the former SFRY,[16] was erased

[16] Let us stress that actually all citizens of the countries newly formed within the territory of the former Yugoslavia conceded to the requirement that when entering their country of birth on one or another form, they must enter one of the currently internationally recognized countries (e.g. Slovenia, Croatia and so on), even though at the time of their birth these countries did not exist – international law recognized only SFRY. Accordingly, a correct entry for »country of birth« would be SFRY, since that was the country in which we all were born. However, the administrations of the newly formed countries do not allow such an entry.

from the RPR before he came of age. He applied for citizenship soon after the expiration of the deadline prescribed under Article 40 of the Citizenship Act. His application took six years to process and was eventually turned down. V. V. ended up with three residence addresses, although he had always had only one real address:

> My application for citizenship was turned down. In 1999 I applied for a residence permit under that law [ZUSDDD]. I got a resident visa two years ago [in August 2002; he applied on December 6, 1999]. My visa says that I am a citizen of Bosnia-Herzegovina. But I'm not. That's what I was told at the Bosnian embassy when I asked for their passport because I could not get a Slovenian passport. In the past I was a citizen of Yugoslavia, just like anybody else, but now I'm not a citizen of any country. They have different addresses in their records: one is the address at which my father used to live; the other is the address at which my mother used to live; and the third is the one in Kranj where I actually live. I have three permanent residence addresses, but in fact I live at one address and I never lived at the other two. I don't know any more what my official address is (a recorded interview, August 28, 2002).

One of the forces that sustains a bureaucratic machine is its own impetus and routine (Bauman, ibid. 106). When the Aliens Act provisions began to be implemented, along with the security measure for the removal of foreigners from Slovenia, this process simply went on despite the 1999 ruling of the Constitutional Court that the erasure was unconstitutional and that injustices had to be remedied.

Collective/public forgetfulness: »For them, the world was created in 1991«

The referential framework for the symbolic separation of Slovenia from the former common country, multi-national Yugoslavia, and resulting justifications for discrimination, were provided by ethnonationalism. One method of its production and a channel of its manifestation was the »collective/public forgetting.« Politicians, clerks, the media and ordinary people all »forgot« that these people were their former neighbors and co-workers (this obliviousness was particularly evident in the attitude towards former employees of the military). Such a stance was influenced by public memory, which is a ruling memory and one created on the basis of socially constructed processes that encourage the forgetting of certain events and the highlighting of others (Zaviršek 2000, 118). The people who were erased from the RPR suddenly ceased to be our co-villagers, neigh-

bors, co-workers or respected members of local communities. They became Foreigners (as we have already pointed out, they were not turned into foreigners with permanent residence in Slovenia, but they became *symbolic foreigners without residence permits*). Precisely the fact that they became Foreigners made possible their depersonalization and dehumanization. This was obviously a sufficient basis for the justification and rationalization of all further procedures that represented violations of their human rights and caused exclusion and suffering.

S. M., a former employee of the military, told us that he felt accepted by the local community and saw himself as one of them. One factor that contributed to this feeling was his job in the military. As an employee of the YPA, he was involved in local construction projects, in which his troops helped the villagers to build local infrastructure.

> »I've always been there, whenever something was going on in the village, either as the president of the board or in some other role. I was a high ranking member of the local firemen's society and also its secretary, then the secretary of the local tourist organization and so on. My troops and I have done a lot of work in the village: we built the beach on the river bank, we dug ditches for telephone cables, renovated the water pipes, and things like that, so I received the OF distinction from the republic which was handed to me by the then president of the Executive Committee of the Republic of Slovenia. I was very proud; I felt that people appreciated my work and that I was a useful member of the community (a recorded interview, June 13, 2002).

After Slovenia became an independent country, the attitude towards immigrants from other Yugoslav republics, particularly employees of the YPA, changed radically. Former military officials were socially transformed into »the public enemy.«[17] Their previous (long time) co-existence and sharing in community life lost significance: the newly formed political entity erased from its collective memory the life history which testified to a positive experience of co-exist-

[17] Schmitt, who based his theory of the political on the relation enemy-friend, wrote that an enemy as a political notion is not necessarily a subject of personal hatred because it is a public and not a personal enemy. A political enemy is not necessarily evil in the ethical sense or aesthetically ugly. It is simply the Other, a foreigner, and it is sufficient if it is existentially something other and alien, so that conflicts are possible in extreme circumstances (Schmitt 1932 [1994], 85). Of course, in our case these people were not existentially other or alien, but were made such through various measures and techniques used by the ruling power, media and popular racism. All of this was justified, or rather attributed a frame of reference, through ethno-nationalistic building of a new country and separation from an imaginary Balkans.

ence under the previous regime. This was just one among many ways in which Slovenia attempted to distance itself from the symbolic, imaginary Balkans which after the fall of the Berlin wall began to be transformed into a »threatening«, unwanted Balkans.

> I recall the situation in which I wanted to greet a man but he avoided me. I had known some of these people for 30 years, but they didn't want to know me any more. When they expelled me … you never forget such a thing … my wife almost fainted, the children were crying. Everybody in Brežice and Cerklje knew that I had been expelled, all of my neighbors, but nobody wrote a letter or asked why. They could have explained that they knew me and that I was okay, that I was not an aggressor.
> Why did my friends, with whom I shared the last crust of bread, turn their back on me? What did I do? Why did they turn away from me like that? Nobody even looked at me any more (a recorded interview, June 13, 2002).

Whether the erased individuals actually voted for Slovenia's secession at the referendum was not an issue of any importance. Nor was it any more important that they had paid money into the pension fund and the military housing fund, contributed to the construction of the infrastructure in Slovenia (the former YPA participated extensively in the construction of roads, railroads, military training grounds, digging of ditches for cables and so on), and had paid contributions to the funds out of which were financed the needs of local communities (the building of kindergartens and schools). Similarly unimportant became the fact that they had established families and homes in Slovenia. The tendency to forget these things and remove them from the collective memory made these facts irrelevant. Darja Zaviršek writes that among many historical events only those that are recounted remain »real,« that is to say, only events that are part of the public discourse or *master narrative* (Zaviršek 2000, 117–118). »In public memory, the only events that have actually happened are those that are recounted, meaning those events that have access to the public space through the ruling institutions.« On the other hand, public memory is exposed to the socially constructed processes of forgetting (ibid. 118).[18]

[18] There are two important things related to the erasure that the current legal institutions in Slovenia would like to consign to oblivion. First, their contribution to »public forgetfulness« regarding the continuity of the former state, and of laws that were valid before the formation of Slovenia as a sovereign country (for example, permanent resident status, military pensions etc.). Second, they would like to forget that erasure took place at

As already mentioned, former employees of the military were transformed by way of social construction into »public enemies«; the erasure from the RPR, inasmuch as it was mentioned in the public, was presented as an act that affected only specific individuals who by definition became suspicious persons and presented a »threat« to the public order, state security and defense (paragraph 3, modified, of Article 40 of the Citizenship Act). An extract from the account of M. S. given below clearly shows how the attitude of acquaintances and bureaucrats suddenly changed, once they recognized these people as »public enemies,« and how the ethical dilemma was dispensed with.

> Immediately after that, on Monday, I went to the district headquarters to register. I didn't know what status I had nor what I needed to do. I know people who work at that office because my workplace was nearby. I used to meet the mayor every morning, over there, by the railway; I went to the barracks and he to the district office. When I came to the district office he said in a very official voice: »And who are you?« It was somehow funny, that question, so I joked: »Sir Niko, I am an occupier – M. S.« He told me to see the clerk and settle the matter there. I filled in the form and paid the fee. She classified me as a foreigner, as if I had just arrived in Slovenia rather than lived here since 1965. I had to leave my ID card with them and never got it back (it was issued in Slovenia and was valid until 2001). The clerk then said that I first had to apply for a temporary residence permit. I did, but my application was turned down. I appealed against the decision. Owing to that unconstitutional law [erasure from the RPR] I suddenly became a foreigner after living in Slovenia for 30 years. All further replies from the ministry and the government were negative (a recorded interview, June 11, 2002).

M. S. made many more attempts over the following ten years to legalize his residence in Slovenia, but all were futile; the pile of paper he has gathered so far is nearly half a meter in height; it consists of various rulings, appeals and other »correspondence« with judicial and executive bodies.

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all. This was particularly manifested at the adoption of the act amending the Citizenship Act, in which Article 19 represents an attempt to mitigate certain consequences of the erasure but in such a way that erasure is ignored or rather, not recognized as an unconstitutional measure. This amending act includes the right of people who were permanent residents of Slovenia on December 23, 1990 to acquire Slovenian citizenship under essentially easier conditions than other foreigners, but the erasure is not mentioned in this context, and in addition, permanent resident status is not recognized retroactively, i.e. from the date when it was unlawfully revoked by the Ministry of Internal Affairs.

M. S. was deprived of his right to live within the territory of Slovenia, the right to receive pension, the right to buy the apartment allocated to him by the military, and on top of that he was expelled from Slovenia for several years. Below is how he summarized his views about the functioning and the »forgetfulness« of the new state:

> For them [the ruling power], the world was created in 1991; they do not recognize any law that existed before that. They don't have memories of anything before that date. They are drunk with sovereignty. They can hate me as much as they please, but – this is supposed to be a state governed by the rule of law! (a recorded interview, July 24, 2002).

Human rights and the vulnerability of non-citizens

> In 2001 I was given back citizenship.[19] I'm a completely new man now. The police do not torture me any more. If I'm stopped I give them my documents: they look at them, say thank you and let me go. In the past, they used to taunt me using names like »Chetnik;« they could beat me, but now they don't say anything. They knew I was without documents and that I was a Serb by nationality – that's why they could do with me whatever they pleased (a recorded interview, June 26, 2002).

The erased people found themselves in a situation in which their very existence and residence in Slovenia were considered a violation of the law. This was a sufficient basis for the imposition of a fine or punishment formulated as »a security measure of deportation from the country« (the Aliens Act, Article 50, Deportation of Aliens). A certain number of people designated for deportation were confined to centers for aliens.[20] This meant effectively that the police could put erased individuals behind bars,[21] even though they had not committed

[19] M. B. was granted citizenship in 1992 under Article 40 of the Citizenship Act. In 1993 he had his citizenship revoked and was automatically erased from the RPR. The decision on revocation of citizenship included an explanation that the procedure had been revised and that the revocation was final. The decision of the Supreme Court in 1994 that citizenship should be returned to M. B. was not respected. He was returned citizenship only at the request of the Constitutional Court.

[20] Many people received a document from the police that enabled them to live in their homes but on the condition that they begin the procedure of legalization of their residence in Slovenia. This meant that they had to register at the local police station on a monthly basis. This measure could be interpreted as an attempt to criminalize this group of people.

[21] The official formulation of this measure is found in Article 57 (»stricter police supervision«) and it says: »Stricter police supervision shall mean the restriction of movement to

any criminal offence. One among the interviewees, V. P., put it like this: »They killed us as individuals entitled to certain rights. Anything can happen to people who actually live here but are legally non-existent.« Hannah Arendt[22] wrote that a nation-state cannot exist once the principle of equality before the law is destroyed, since without such legal equality the nation dissolves into an anarchical mass of overprivileged and underprivileged individuals (Arendt 1979 [1948], 290). The incapacity to treat all individuals as legal persons (i.e. persons having the status of a citizen or of a foreigner with permanent or temporary residence) is dangerous since this may lead to such a group of people coming under the authority of the police, that is to say, the police regime. This could be a first step towards total domination, i.e. a situation in which any functioning (here understood as a struggle for the recognition of rights and an opportunity to be »heard« by the public) is rendered impossible. One can speak about total domination once the state establishes direct control over the people (their lives and bodies) with the help of bureaucracy or the police. The erasure created a situation in which the very presence of these people in Slovenia was a violation of the law, and naturally, such situations are dealt with by the police. The sociology of the police teaches us that the categories that first come under the police regime are those who lack power within important state and social institutions. A particular group of people becomes police property when the ruling elite hands over their problems to the police (Lee 1981 in Neocleus 2000, 81–82). The police regime works in such a way that it renders activity (*vita activa*) impossible, as has been mentioned earlier in this text. In symbolic terms, in such a context the police become the guardians of civil status.

Proof that legal principles and equality before the law were forsaken is the arbitrariness of the measure, reflected in the fact that neither the wider public nor the affected people knew in advance

the premises of the Centre« (Aliens Act, Article 57, the third paragraph). A very similar formulation is found in the 2002 Act Amending the Aliens Act: »Stricter police supervision shall mean the restriction of movement to the premises of the Center, in accordance with the house rules of the Center« (Act Amending the Aliens Act, Article 48, Ur. l. RS 87/2002).

[22] In her critical analysis of the modern nation-state, Hannah Arendt took the nation-states formed after the First World War as a point of departure. These countries did not grant citizenship to newly formed ethnic minorities.

which rules or laws would be applied to this group of people. Ironically, in 1991 Slovenia adopted the Statement of Good Intentions (see the text by Jasminka Dedic in this book). Yet even when the erasure actually took place, on February 26, 1992, neither the public nor those affected were informed about it. Such an arbitrary measure indicates the *arbitrary nature of the entire system*. Speaking in percentages, the share of people affected by this measure was comparatively large – approximately 1% of Slovenian citizens were erased, or in other words, one in every 100.

The fact that these individuals were placed under the authority of the police does not imply that the police consistently exercised their powers. Rather, it functioned as a *threat* since erased people were *continually aware that they could be subjected to a police procedure* at any time and that there was no institution in Slovenia to which they could turn for protection. In removing these people from Slovenia, the police actually violated primarily their rights to family life, personal safety and human dignity.

M. M. was born in Slovenia but did not have a Slovenian name. In an attempt to protect himself from the arbitrariness of and harassment by the police, he changed both his first name and the family name. But this did not help. His application for citizenship was rejected in 1994 because he had been sentenced to a prison term (Article 40 of the citizenship Act). One reason for harassment was thus replaced by a new one – the lack of identification documents as a result of his erasure from the RPR.

> I need some document to identify myself, to show who I am and what I am. If you don't have any document, anything can happen to you. By the time I can explain my situation to the police officer … Nothing I do can be legal; I can't open a company in my name.
> It is painful when you live in Slovenia your whole life and you don't get citizenship. The most painful was when they refused to register me as the father of my own child. It is also painful for my mother that I don't have citizenship, sometimes she says: I gave birth to three children, but I have only two of them. Many times I heard from the police officers things like: »Pick your things and get yourself to Bosnia.« Of course I cannot explain my status to every police officer, explain to them that I applied for citizenship, that I have a driver's license issued in Slovenia but no passport and things like that. They also told me that I was lucky that they did not take me to the border and send me away. But where could they send me? This makes you angry, and arouses hostility in you (a recorded interview, August 28, 2002).

M. B. described a situation illustrating the manner in which the police protected themselves against complaints and reinforced their supremacy and control.

> I went to the police station to complain because a police officer beat me and gave a statement about the event. They told me to wait for a police officer who was responsible for that area. I waited until that officer came to work and when he came I realized that it was the one against whom I complained (a recorded interview, June 26, 2002).

To put it differently, the harm that was inflicted upon the erased people extends beyond personal harm. It had an impact on the entire legal system and other public institutions which should have observed the principles of justice, equality before the law, legal protection and the like. It was inflicted by implementing an unconstitutional measure and by *permitting a group of people who were not related to any criminal offense but were simply deprived of their rights, to come under the authority of the police.*[23]

M. B. had his citizenship revoked in 1993. His account reveals the role of the police in the region of Koroška:

> There were raids in Ravne, home searches and street raids. If you didn't open the door, they broke in. We used to inform one another when somebody heard something. If, for example, they came for T. D. and someone else, I could expect that they would come for me too. I even slept under the bridge once in order to evade police harassment and expulsion (a recorded interview, June 26, 2002).

»Nothing helps, not even not being guilty«

The police had broad authorities regarding people without documents, including semi-legal options of threat and control. For example, the police could order stricter police supervision of specific individuals living in a center for foreigners. Such stricter supervision implies a restriction of movement[24] to the premises of the center only (Article 57 of the Aliens Act). The interpretation of this arti-

[23] Historically speaking, the police first acquired the authority to supervise people who lost the protection of the state in which they lived in the 1930s. A characteristic trait of that era's police practice was that it not only implemented the law but also became independent from the government and the ministries (Arendt 1979 [1948], 287).

[24] Effectively this is not the restriction of freedom of movement but the denial of personal freedom.

cle says that the police »should adopt such a measure if there is a suspicion that the alien will make attempt to avoid expulsion from the country« (Rakočevič 1999, 140).[25] Therefore, this is a case of protective custody. According to Goffman's classification of totalitarian institutions, the center for foreigners would belong in the group of institutions for »the protection of the community against certain dangers« (Goffman 1961 in Flaker 1998, 19). By confining the erased people to the center for foreigners, the state symbolically designated them as potentially dangerous.

B. R. moved to Slovenia in the early 1980s. Until 1991, when Slovenia became an independent country, she worked in a clothing factory. She learnt that she had lost the legal basis for residence in Slovenia in 1994 when a police officer came to her home. At the beginning of 2002, when I talked to B. R., she was still living in the center for foreigners.

> One day the police came to my door. I felt strange when I saw the police officer at the door. I didn't know why they were there. I didn't do anything, I didn't steal anything, I didn't do wrong to anybody. … They brought me to this center [the Center for Aliens, at that time still called »the Transit Center for Aliens«] and put me into a room, and that's how I came to be here. When I first came here [in 1994] it was so strange. I cried. I thought to myself: this is some kind of prison (a recorded interview, February 11, 2002).

N. D., a Rom from Ljubljana, is another individual who was erased from the RPR in 1992. When I talked to him in 2002 he still did not have a residence permit even though he has been trying very hard for years to obtain one.

> It is difficult if you don't have documents. I went to work; I deal in used steel. The policemen stopped me and asked me to show my documents. They found out that I didn't have a residence or work permit, and the paper confirming that I had applied for citizenship was not enough, so I had to go with them to the police station. They questioned me and I answered all the questions. They asked me questions for which they knew the answers in advance. They did what they wanted to: I had to go to

[25] The amended Aliens Act from 2002 defines the reasons for stricter supervision in a similar way: »Stricter police supervision is implemented through police order if – there is a suspicion that an alien will try to avoid enforced deportation or has already avoided such a measure; – it is necessitated by the reasons of public order and peace, national security or international relations« (Article 48 of the Act Amending the Aliens Ur. l. RS 87/2002).

> Viator.[26] Look, I'm an adult , I'm 33, but if, for example, I drive a car and see a policeman, I'm scared. Even if I'm 100% honest. I'm scared that they would stop me, find out that I don't have citizenship and send me to Bosnia, or Viator, or detain me for 5 hours at the police station. This can happen to me even when I'm with my child. Nothing helps, not even not being guilty of anything (a recorded interview, August 9, 2002).

These excerpts from our interviews speak of the production of an unusual value system (»Nothing helps, not even not being guilty of anything«). The usual legal order did not apply to *The Erased*. They could be »punished« (arrested, expelled, fined or taken to the police station for questioning) without suspicion of a criminal offense. They were punished merely because they found themselves in a specific situation, and on top of that one that was created by the ruling power itself and over which they had no influence. As a matter of fact, although it was the institutions of the legal order that had produced these »legal freaks«, that is to say, people without citizenship or residence permit, these same institutions could not »bear« to have people without documents in their own territory. Thus the questioning of N. D. was not aimed at obtaining information, but at sustaining and implementing control over people without documents. As Silke Bercht pointed out, the gathering of information in such situations serves only as an excuse or a pretense for police torture that is aimed at destroying one's personality and at *disseminating a symbolic message* implied by such an act (i.e. police questioning) (Bercht 2003). Bercht also stressed that police questioning in itself is a means of torture. It can lend apparent legitimacy to torture and produce a fictitious notion that brutality is only an auxiliary instrument of the truth and that, after all, the victim himself was responsible for everything that happened to him (Sofsky 2001 in Brecht 2003).

»Had I killed somebody at that time [during the war for independence], I would have served the term in jail by now and would be free«

Arendt pointed out that in countries with such anomalies of the legal order the entire hierarchy of values is turned upside down. She pro-

[26] Some people with whom I talked referred to the Center for Aliens, a relatively new institution, as »Viator«. Viator is popular name for a neighboring building, which is older and, more importantly, not burdened by the stigma attached to the Center for Aliens and the term »alien« itself in this context.

posed that, to establish whether someone was pushed beyond the limits of the general law,[27] one should answer the question of whether some individual would benefit from a criminal offense. If, for example, some petty theft could improve his/her legal situation, at least temporarily, it is a sure sign that the protection of human rights was fundamentally flawed. One former officer of the YPA was »punished« in 1992 by the revocation of citizenship and erasure from the RPR without investigation or the pronouncement of judgment on a criminal offense. He was also expelled and prohibited from returning to Slovenia, his only home, for five years. This man was placed in a situation that was beyond the limits of the law. He was not even allowed to have an attorney, nor was there anyone willing to hear what he had to say, meaning that he was denied a procedure that would normally apply to any other person who committed a criminal offense and was under investigation. M. A. was not punished as an ordinary offender would be under the Penal Code. Instead he ceased to exist as a legal person through the decision of the Ministry of Internal Affairs (even though his entire property, pension, his home and family were in Slovenia). M. A. is convinced that he would have been in a better position if he had committed a serious criminal offense.

> The worst of all was that I could not use any legal means to defend myself. That was the greatest sin of those who erased us. I could not fight against them, I mean fight politically, of course, although they left me the option of fighting with my fists and gun. I'm not so stupid as to kill or shoot. If I had shot a gun and killed someone at that time [during the war for independence], I'd have got ten years and would have served that term in jail by now and would be free. … They did everything they could to turn me into an enemy … They also punished me by not allowing me to return to Slovenia for five years. As a foreigner, I'd be allowed to come to the country and live here. … I am telling you this story as if it had happened to someone else, not me. I can't believe all that actually happened. In that transitional period of system change, at the beginning of the nineties, I believed that the transition would be democratic. We fought for the rule of law, where everybody would have the right to say what he believed; we fought for the power of arguments; we did not want power to become an argument, a sword wielded by the state, while I was turned into »nobody«. There was a discrepancy between their acts and their words (a recorded interview, June 26, 2002).

[27] The term »general law« is used to stress the difference from the special, extraordinary law that is applied in special or extraordinary circumstances. One such law is the Aliens Act which is applied only to non-citizens. A characteristic of extraordinary institutions, whose legal basis is provided by extraordinary circumstances, is that these laws have the power to lawfully eliminate some fundamental human rights (Agamben 1998).

Hannah Arendt pointed out that if a person without citizenship were a criminal, he/she would not be treated worse than other criminals; if such a person (stateless persons, the erased) had committed some criminal offense, he/she would have been treated just like any other criminal. By committing a criminal offense, the erased individuals would have won for themselves the rights to which persons prosecuted for crimes are entitled. They would have been handed an official document stating their alleged criminal offense against which they would have been able to complain. Such a person would know what he/she was accused of and what punishment is prescribed for such an offense. Instead of being an »anomaly« not envisaged by law, he/she would be an »anomaly« (a criminal) envisaged by law. But the erased people did not know for what offense they were being punished by the state, what could befall them during that time, how long the »punishment« was going to last, nor on which basis and to whom to complain.

An example of torture and an attempt at expulsion

R. N. moved to Slovenia in 1984. In 1991 he applied for citizenship. He did not receive an answer, neither positive nor negative. He was erased from the RPR just like all others who were not granted Slovenian citizenship. With the help of a social worker from the social care center, where he lived for several years, he obtained temporary residence permit that had to be extended on a yearly basis. In 1999 the police used violence against R. N. i.e. committed a hate-crime. Darja Zaviršek writes that the characteristic trait of hate crime is that it is not aimed solely at a person as an individual, but at a person a symbolizing something that is seen as »other« and unwanted and, therefore, has to be destroyed and discarded. The victimization of a person in such cases is not linked to a specific subject; the emphasis is on a message telling us what is desired in a specific society and what must be discarded (Zaviršek 2003). The offense allegedly committed by R. N., and one for which he could be detained by the police, was his non-possession of the required documents (his temporary residence permit was past the expiration date). The police officer overstepped his authority because he saw R. N. as a foreigner without citizenship, a Muslim, a man with long hair, in short, a person belonging to »Other«

culture. His body has become a »racialized body,« a body to which racist imagery was attached. Below is a somewhat longer extract from the account of R. N., because it is a symptomatic example of how human rights were violated in relation to the erasure. The extract illustrates the conduct of the police and the police magistrate in dealing with a person who illegally stayed within the territory of Slovenia, or in other words, *the lawful removal of a foreigner from the country*. In addition, the story shows how inefficient a complaint procedure becomes in cases in which human rights are violated. The following is R. N.'s account of the events:

In 1992 I applied for Slovenian citizenship according to all the valid rules, but there was no response. A social worker from the social care center where I lived because of psychological problems, convinced me that I would not be granted citizenship, so she helped me to obtain a Bosnian passport and a temporary residence permit. In 1999 my Bosnian passport expired, and I was truly tired of uncertainty. I decided to obtain by any means an answer to my application, either positive or negative. When I phoned the office at Beethovenova street, the sector for naturalization, I insisted that the clerk check the computer files and find out what my status was. She found me and sent an invitation to an interview. The official assured me that I would be granted Slovenian citizenship one hundred percent sure and that there was no point in extending the Bosnian passport since I was going to get a Slovenian passport. One week later, on September 14th, 1999, she informed me by phone that she had in her hands my citizenship certificate and that she was going to send it by post.
As a foreigner, I always had on me my temporary residence permit. On the 15th of September 1999, at the time when I officially became a citizen of Slovenia, I went to an eye specialist and met an old friend from Celje. I told him the happy news, that I had become a Slovenian citizen, and we went for a drink. That afternoon I was stopped by two police officers and asked to show my documents. I gave them my residence permit and told them that on the previous day I had become a Slovenian citizen. I also showed them my Bosnian passport, which indeed had expired. The police officer said that I had committed an offense. I asked him to call the Ministry of Internal Affairs and check my status. It was a working day, Wednesday, half past one, but he did not do it. The officer insisted that I had committed a serious offense and that I had to come with him. We went past the pub where my friend was still sitting and I waved to him. He told the police officer that we had just talked about my Slovenian citizenship. The police officer said that they were taking me to the police magistrate. My friend said that he wanted to come with me. One of the officers was very hostile towards me, because he saw that I had a Bosnian name, that I was a Muslim. The other was silent all the time. They first took me to the Center police station. I waited for around half an hour. They put me in a separate room. Then we went to the police magistrate. My friend was with me all the time.
The officer who took the matter in hand first went to the police magistrate alone. The other, silent policeman, guarded me outside in the meanwhile. In about ten minutes I

was asked to come in, and there was a payment order on the table. I cheered up because I thought I was only going to pay a fine – although I did not know what for – and that they would let me go. I shook the magistrate's hand and began to assure him »I will pay, I will pay …« We went out, the police officers were walking close to me, one at each side, but I did not know why. When we stepped into the street, my friend asked them: »What are you doing? Why don't you let him go?« The one who hated me and carried all my papers said: »He doesn't know anything. He was ordered to leave the country under police escort.« The magistrate had not told me this, I was told about it by the police officer when we were outside in the street; actually, he did not speak to me but to my friend. When I heard that – we were just walking past a pub with tables outside – I pulled away from them, grasped a beer glass from a nearby table and knocked myself with it in the head. They both jumped at me and threw me to the floor. One sat on my neck. I shouted at them to let me go. I almost choked. Blood was sprinkled all around. They tied my legs. I had wounds on my back because the police officer sat on my back and jumped. My friend then ran away (I later learned that he informed my social worker about the event;[28] she phoned the police station all night long to find out where I was and what was happening. They did not give her any information, so she called the interior ministry the first thing in the morning; she called the department for naturalization).

The officers called in reinforcements. They sent a Black Maria and I was thrown into it, all bloody and that. I thought they were going to kill me. I was telling them »let me go,« loudly. I was taken to the police station. I was beaten there. One hit me in the head … I was handcuffed and had my legs tied. They gave vent to their anger. They propped me up and said: »let's go now, walk.« I couldn't walk with my legs tied, so I fell.

I don't know for how long it went on. It was already dark. They took me to the hospital. There I was put on a trolley, all bloody and handcuffed, and rolled through the hospital. I looked like a criminal. When I arrived at the surgery they put me on a bed. I had both legs tied, had handcuffs on one hand and the police officer held me by the other hand, the wounded one. The doctor was stitching my wound and the officer said to him: »Take care, he might bite you.« The doctor replied »Ah, those junkies …« The glass had cut my sinew. They operated on me. Later on I had another operation on the same wound.

When I got out, the police officer who started all that, said to me: »If you promise me that you'll stay calm I'll take off your handcuffs and you may have a cigarette.« I really needed a cigarette. »I promise« I said. He gave me a cigarette, I lit it, had one puff and then he snatched it from my hand shouting: »Fuck you, are you out of your mind?«

I was thrown into the Black Maria in a state like that, without any pain killers. They took me to the police station and threw me into a cell. I thought that somebody would come in and kill me. Perhaps an hour or so went by before three police officers came in. One of them had several ranks, he was probably the station captain. I was glad because I thought that I could finally tell them that it was a misunderstanding and that somebody would realize my situation. None of them wanted to listen to me. They said they were going to take me away. »Where to?« »You'll see.« I told them

[28] A social worker from Altra community where R. N. lives at the moment.

that I was under psychiatric treatment and asked them for tranquilizers. His answer was: »We are not psychiatrists; we are the police.« Then they took me away.
They were taking me through a basement when we came to a door. They put on the light. It was the basement of the center for asylum seekers. The world under there was black-and-white. People slept on the floor. I was all covered in blood. I felt terrible, I had nowhere to go in Bosnia … I paced up and down the room like a specter. An Albanian from Kosovo comforted me. He had been there for one month. He offered me cigarettes and talked to me. Others also comforted me. One Bosnian told me that he had worked in Slovenia for 25 years in a company, had a daughter, and when he divorced he moved to the singles' rooming house. Apparently he forgot to extend his residence permit. The police could detect that through the computer and could chase them. In the morning they came and took away some of them.
In the morning a guard [an inspector] came to fetch me. He gave me my passport and said: »Here you are, Mister N., you are free.« »Oh, yes, I'm free. But who can I complain to about all that I went through?« »Why would you want to complain?« said he in surprise.
Later on I learned that a social worker from Altra called the interior ministry in the morning, the department for citizenship, told them what happened and then they sent my citizenship certificate to the asylum seekers' center by fax. Then they let me go. Later I filed a complaint with the Human Rights Ombudsman. They invited me for an interview. They asked me why I had applied for a residence permit. Who in fact told me to obtain a residence permit? I was very angry; it looked as if I were responsible for all that had happened. They told me that I became a citizen of Slovenia in 1992 because I had filed an application according to the valid rules and I had met all the conditions. The official answer I received from Bizjak [the then Minister of Justice] was, in short, that in the future nothing like this would ever happen again.
In the newspaper, the Delo's crime page, the event was cynically described under the title »Man doesn't want to go home.«
One day after the event I received my citizenship certificate and went to the psychiatric hospital. I was completely beside myself. I needed half a year to calm down« (a recorded interview, August 6, 2002).

The example above (as well as other testimonies about police violence against erased persons and expulsions from the country) points to the violence that is directed against the Other and defines that Other.[29] The Aliens Act functioned as a rationalization of and justification for police violence. The state, or rather, its legal incarnations, strived to normalize violence against cultural Others by secretly and *indirectly supporting police violence* in many different ways. First, through the erasure itself, then through the implemen-

[29] Our analysis of the role of police violence in the case of R. N. draws on Allen Feldman's article (1996) entitled »On Cultural Anaesthesia.« In this article he analyzes police violence against Rodney King, similarly based on racist motives. Another reference was Silke Bercht's article (2003) in which she dealt with the characteristics and effects of torture.

tation of the Aliens Act, which anticipated expulsion for the offense of illegal presence in the country, a situation which, in this example, was actually provoked by the state itself, and finally through the ineffectiveness of complaint procedures and long lasting negligence towards this problem. The police successfully camouflaged its responsibility for violence justifying it by legal procedure, state formalities and reference to laws.

The police »procedure« (aggression) constituted R. N. as a cultural Other, an animalistic body, a Balkan body that was primitive, bloody, irrational, aggressive, and uncivilized. The police officer's words to the doctor at the emergency ward, who was stitching R. N.'s torn sinew, were: »Take care, he might bite you.« Police violence was, as already explained, rationalized by a »serious offense« committed by R. N., as the police officer defined it and the police magistrate later confirmed.

A significant detail that marked the episode described above, from the moment the police first requested identification documents from R. N., through the events at the police magistrate office, the emergency ward and the police station, was the hostile attitude of one of the two police officers towards R. N. In this attitude, which is here understood as a typical example of the oppression of the cultural Other, the body of R. N. became the subject of total dominance. The distribution of power was unambiguous: the torturer had all the options, and the victim none (Bercht 2003). For Silke Bercht, this is precisely the essence of torture: calculated brutality committed with the intention of breaking down the basic trust and human will and causing lasting harm to the individuality of the victim. The essential goal of torture is not the extortion of confession, nor forced re-education, but destruction of individuality (ibid.). The purpose of torture is to destroy the victim's will and to establish or *preserve a certain order within the power relations* (ibid.) By using his »authorizations«, by behaving in a hostile manner, the police officer confirmed the *hidden purpose* of the erasure from the RPR: certain groups of people cannot integrate into Slovenian society, so they are not allowed to live in Slovenia.

As a person (presumably) without civil (citizenship) rights or rights arising from residence permit, R. N. was, in the eyes of the police, simply a racialized body, a body without voice, will or reason, one

that must be expelled. *Nobody heard him* when he tried to explain that he was a national of Slovenia and that it was not legal to remove him from the country. His statement was overheard by the two police officers who first asked him to identify himself, by the police magistrate, a high ranking police officer at the Ljubljana Center police station, the doctor at the emergency ward and the police officer (or inspector) who admitted him into the Center for Aliens. He was also overheard when he asked for pain killers and tranquilizers. Silke Bercht (2003) stresses that responsibility for the existence and perpetuation of torture does not lie only with those who torture, but also with all those who tolerate, ignore or conceal it. Torture is a means of preventing and destroying contrasts, oppositions, and diversity, in short, all freedoms related to democracy (Bercht 2003). R. N.'s total dehumanization was implemented through complete failure to take notice of his statements, as if he were not human or did not have human feelings and rights. »Man *is* before he *acts*,« is the philosophical essence of racism according to Bauman. Man's acts do not change his essence (Bauman 1999, 60).

Had R. N. truly been a person »without documents«, that is to say, had his application for citizenship been rejected, the police would have carried their task to completion and their archives would now include one more record of the *legal* expulsion of a foreigner who illegally remained within the territory of Slovenia. Perhaps he would not have been expelled after all, but released and allowed to go home, as were many other erased individuals to whom I spoke. But the symbolic meaning would persist: a certain group of people is redundant and obviously has no right to live in Slovenia.

The expulsions were invariably accompanied by a decision on the offense based on the Aliens Act and the General Offenses Act. The police magistrate who ordered the removal of a foreigner (R. N.) from the country for the period of six months, wanted his decision to have an educational, preventive and collective effect, in addition to being an individual punishment. In this particular case, the police magistrate, Franc Dobrovnik, thus explained his decision (September 9, 1999):

> Taking into account the fact that the number of such persons in the Republic of Slovenia has been increasing and that it is not possible to keep records of all these persons, the decision to take such a preventive measure is certainly correct.

This means that the punishment was not directed only at R. N. as an individual who committed an offense, but at a member of a specific group. On the symbolic level, this type of punishment can easily be interpreted as a demand for subordination and absolute obedience, and primarily as intimidation of a specific community.

The major mainstream daily, *Delo*, presented the conduct of the police as entirely rational and legal. Its edition of September 17, 1999 included the news item reproduced below, which appeared on the crime page:

> MAN DOESN'T WANT TO GO HOME. Ljubljana – On Wednesday at 3:30 p.m., a police officer from the Center police station requested an identification card from R. N., 33, a national of Bosnia and Herzegovina. After establishing that his temporary residence permit had expired at the end of December last year, they took him to the police magistrate. He fined R. N. 21,000 tolars and ordered expulsion from the country for the period of six months. On the way to the Center police station, R. N., who was escorted by the police officers, took a glass from a table at an outdoor cafe, broke it and banged it against his head while shouting. The police officers handcuffed him and put him into the van, where he continued to bang his head against the wall, so they had to put fetters on his legs, but he was so determined to hurt himself that he continued to bang his head against the floor. The police had to take him to the emergency ward, and after receiving medical treatment, he was taken to the center for the removal of aliens.

The conduct of R. N. was obviously presented as irrational and self-destructive, in contrast to that of the police officers, whose approach was depicted as rational and caring. The pains suffered by R. N. because of police violence are in this text transformed into a description of his self-destructive behavior not in any way related to the police; on the contrary, the police officers are described as those who alleviated his pains, took care of his physical safety and health, and ensured that he received medical treatment. This is a typical example of insensibility to the pain of the Other, a phenomenon we termed cultural anesthesia earlier in the text. The news item was titled »Man doesn't want to go home,« while it should have read »Man doesn't want to leave home«.

At the end of one of the most terrible night in the life of R. N., when the inspector at the Center for Aliens handed him his passport and told him that he was free to go, and when R. N. asked him to whom he could complain about the events, the inspector was mightily sur-

prised that R. N. wanted to complain at all (instead of being happy because he had been released; he was obviously expected to be glad that he had not been expelled). Even though by that time (September 16, 1999) it was clear that R. N. was a Slovenian national, the racist sub-text continued to operate. R. N. was born in Bosnia, and, although he had Slovenian citizenship, he had a Muslim name. So, why would he still want to complain? In addition, another element of surprise was probably involved as well. Why should anyone want to complain about a procedure that was absolutely ordinary and normal, given that aliens are arrested and removed on a daily basis? To tell the truth, apart from ensuring the basic human rights (provision of food, a place to stay, basic health insurance, and respectful treatment), that is the main task of the Center for Aliens.

Examples of expulsions from the country

It is possible and legal for the police as an executive branch of the government to acquire supremacy over a person only if that person has no residence permit, citizenship or other formal status. In the case of M. B., policemen came to his home, because they knew him. That was in 1997. Initially, they attempted to expel him to Hungary, but the Hungarian police did not want to take him because he had not documents on him (e.g. a Bosnian or Yugoslav passport or an invalidated ID card issued in Slovenia). M. B. described how, following the failed attempt at expulsion to Hungary, he was taken to the border with Croatia:

> I'm a Serb by nationality, and they were not allowed to expel me to Croatia. By doing it they violated all conventions on human rights. They changed the car on the Slovenian border; instead of a police car we were now in an ordinary white station-wagon. The Croatian border police did not want to take me, so the policemen had to drive me back. There are several kilometers of no-man's land between the Slovenian and Croatian border at the Gruškovje border-crossing. We stopped in the middle of it, between the two borders. They dragged me out of the car. The police officer pushed his submachine gun into my mouth and threatened me that next time he was going to pull the trigger if I ever came back. He then kicked me. They left me there, in that in-between belt, as if saying »go to Croatia on your own.« I didn't know what to do. I decided to go to the border to the Croatian police. They seemed to be more humane than the Slovenian police, because they refused to take me in (they didn't want to accept me because I am a Serb). I explained the situation to them. One of them made me a coffee. They told me that every day the Slovenian police brought

10 to 12 people. They took in Croats – they needed fighters – and sent them to the frontlines, but rejected Serbs.
We waited until dark and then they showed me where I could illegally cross the Slovenian border and go back home (a recorded interview, June 26, 2002).

Explaining the methodological basis, Foucault (1991) stressed that the mechanisms of power are best studied at the places where these produce their realistic effects: at the lowest levels, at the extreme points of implementation, that is to say, at the points where power is increasingly less legal. The extracts from our interviews reveal specific procedures of exclusion and tactics of domination.

Police violence and expulsion of the erased people were the two most radical techniques of total domination and intimidation. In fulfilling their tasks – implementing the law – certain policemen did not hold back even if they knew the person, and it was more than obvious that the implementation of the law was a violation of ethics and human rights.

T. D. was stopped by the police on several occasions because his documents were not in order. He was fined for this »offense« four times, and once expelled for the period of one year. While waiting at the police station for the police officers to take him to the state border, T. D. met a police officer whom he knew from the time when he was still working in security at the Ravne ironworks. He relaxed when he saw him, hoping that the officer would stop the expulsion.

Two days before Christmas, on December 23, 1997, I went to Austria about my own business. People on the border knew me so they took my Croatian passport and asked whether I had arranged the documents. I had to wait until the customs official ran a check … They called the police in Ravne. They came for me and took me to the police magistrate. I was again charged with the same offense, because I didn't have a residence permit, and I was fined 9,000 tolars (6,000 tolars for the fine and 3,000 tolars administrative charges). The police magistrate asked me whether I had money on me. Since I didn't have any, she ordered the police officer to take me home to fetch money. Before I left the office, she added: »Mister, that's not all. You are expelled from the country for the period of one year.« She handed me the decision. It said that the complaint did not stay execution. The decision was signed by the police magistrate Kristina Pregel.
I was expelled on that same day. The police officer first took me to my home. My wife was at home, since she was on maternity leave. She expected me back only later that night, to bring the lights and decorate the apartment. She was very surprised to see me escorted by the police. »I'll have to leave the country,« I said. She started to shout at the police officer, telling him that they were fascists and that they

were not normal. »That's not my fault,« answered the officer. My younger daughter, she was still a baby at that time, was crying. She wanted to be carried around. The officer left; he didn't want to see all that. The older daughter was still at school. The police officer told me to take the money and go. »I don't have the money,« I said. »Then don't take it. Let's go.« We went back to the magistrate. »Do you have the money?« she asked. »I don't.« She packed my documents that had remained with her in the meanwhile and gave them to the police officer. He took me back to the police station. I could see that they were serious. I kindly asked him to take me home once more to collect some warm clothes and some money. The police officer told me that he had just finished his shift and that I should ask the next one on duty. I waited at the police station.

I hoped to meet the police chief, he knew me; we had collaborated during the years I worked in security at the Ravne ironworks and at a singles' rooming house next to it. He would certainly prevent my expulsion … And I did indeed meet him. Do you know what he said? »How are you Mister D.? Shall we have a trip to the southern border?« I couldn't believe that he behaved like that, that he turned his back on me like that. After he said that, I couldn't ask him for help.

The police chief wrote out travel orders and told us to go. There was that funny police car in front of the station. The policeman opened the back door and I had to go in. It was completely dark inside. It was freezing, I was cold. There was no heating. We stopped some place and the policeman asked me if I was cold there in the back. I asked him why he kept me in the back; I hadn't killed anybody. He told me that I could sit in the front, but that he was going to handcuff me first. We came to the Slovenian border. He took another police officer into the car. He asked him if there were going to be problems on the Croatian border. The other said that there wouldn't be problems if he had my passport. They were saying that the Croatian police would have to take me. We came to the border. They gave my document to the Croatian customs officials and immediately turned back, even before anyone could say that there was a problem or that I would not be admitted into Croatia (a recorded interview, June 26, 2002).

That was how they expelled T. D., even though he had a baby at home, less than a year old. The police officer who took him to the border treated him like a criminal: he put him in the back of the van, the darkened compartment, and handcuffed him. Criminals have to be punished, and since to punish a criminal is fully legal and common, the police officer tried to view T. D. as a criminal. If not, it might be the police officer who appeared criminal, because innocent people (particularly those who have to take care of their underage children) must not be punished or taken to the border with a passport bearing the note: »The owner of this passport must leave the RS on December 23, 1997 and has no right to return until December 23, 1998.«

The right to family life

The family is a social unit and a legal institution. It is connected with personal life or rather, the right to privacy. The right to private and family life is part of important international conventions on human rights as well as the Slovenian Constitution. The state is obliged not only to respect the privacy and family life of the individual, but also to *create conditions that enable protection of the family*, fatherhood, motherhood, children and young people (Article 53, The Constitution of the Republic of Slovenia). The Constitution also prescribes that parents are obliged to take care of their children. The details of family relations and protection of the family, and the method of implementation, are regulated by laws. For example, Article 10 of the *International Covenant on Economic, Social and Cultural Rights* prescribes that »[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.« Similar stipulations are found in the *International Covenant on Civil and Political Rights* and the *Universal Declaration on Human Rights*. The Preamble to the UN *Convention on the Rights of the Child* stresses that in order to develop a full and harmonious personality, the child must be raised in a family environment, in an atmosphere of happiness, love and understanding. Article 7 of the same Convention specifies that the child has the right to be cared for by his or her parents. In short, legislation protects the family against the invasion of privacy on the part of the state, but also imposes on the state responsibility for the family and its development.

The right to family life was most brutally violated in cases where an erased person with underage children in Slovenia was expelled from the country. Moreover, the erasure itself, even if the person was not expelled, destroyed the integrity of the family viewed from the formal aspect, since the erased family member no longer had residence at the same address as his/her children and spouse.

E. O. was very distressed when she first learnt at the district office that she had been erased. She went to the office with her husband to obtain new ID cards and passports. That was in April of 1992. Her husband was allowed to submit the application, but she was referred

to the foreigners' department. The following is E. O.'s recollection of events.

> »The clerk told me that I first had to obtain a foreign passport, and only then could I apply for temporary residence. My husband, who was next to me, said: »But, madam, we've been married for 15 years.« Her answer was: »But, mister, that is now meaningless.« In other words, she told me to get lost from Slovenia, to divorce my husband and leave. … These words of her – that our marriage was null now – I'll never forget (a recorded interview, August 15, 2002).

When writing the decision on the expulsion of T. D., who lived in Koroška for more than twenty years, the magistrate Kristina Pregel added a note that the accused T. D. was the father of two children. She nevertheless fined him and ordered the »security measure of deportation of the alien from the territory of the Republic of Slovenia for the period of 1 (one) year.« She purposefully included erroneous i.e. misleading information in the decision. T. D. actually applied for citizenship in 1992, when he lost his job at the ironworks and thus learnt that he no longer had a residence permit. He received the final negative decision concerning his application for citizenship in 1996. After that he tried to obtain temporary and permanent residence permits but without success, which was to a great extent due to the hostile attitude of the clerk Pečnik at the local foreigners' office (i.e. erroneous information that he provided). T. D. attempted to protect himself from the payment of fines and expulsion by registering at the police station as a tourist, but he was expelled one day before Christmas Eve (December 23) in 1997. The following is the police magistrate's comment included with the decision.

> T. D. committed an offense specified in Article 80/I, item 1 of the Aliens Act because he resided in RS from 2.6.1997 to 23.12.1997, i.e. after the expiration of the three-month period following his entry into Slovenia on the basis of a valid passport and tourist registration, meaning that he stayed in the R. of Slovenia longer than allowed on the basis of a valid passport and tourist registration.

One can see from this paragraph that the police magistrate attempted to justify the expulsion of a man who had two underage children at home by giving misleading, that is to say, false data. T. D. was not a tourist but a person erased from the RPR.

M. S. lived in exile for six years (from 1993 to 1999). He was separated from his two children who had just come of age when he was expelled. M. S. recollected for me how painful this separation was and described how he went out of his way to provide them with emotional support, despite not being physically present, even more so because he was a single parent.

> I wrote to them twice a week, in order to protect them somehow. Every letter was soaked in tears. Anyone's heart would break at reading those letters. I took care that they remained honest, that they didn't give in to drugs and alcohol, even though their mother turned her back on them. The son lived with the mother, and the daughter lived alone in that apartment. I regularly phoned them, and if the lines were not working, then I phoned via Germany (a recorded interview, June 11, 2002).

M. A. was also expelled for the period of several years.

> My wife had a hip operation while I was in exile. She lay at home alone; the children were working. She had no one to look after her. I applied for a visa at the Slovenian Embassy, I wrote to important institutions in Slovenia, to let me come back so that I could take care of her. My wife too wrote to Drnovšek; I wrote to Pahor, a big fighter for democracy. At that time I was not given a Slovenian visa (a recorded interview, June 20, 2002).

Ž. N. lived in exile in Serbia for several years, just like the two interviewees above.

> I was not allowed to enter Slovenia from 1992 to 1998. I used to meet with my wife and child in Hungary and Italy. The bus starts from Belgrade at two in the afternoon and arrives in Trieste at six in the morning. … I phoned my wife and daughter every day, never mind whether it was Sunday or a holiday or if there were 100 people queuing in front of me. I did not mind queuing for three hours, or traveling by bus or train for 10 hours … just to see or hear them. It was difficult when the telephone lines were cut off. That's how we lived for seven and a half years. My wife and my daughter also suffered, not only I. Throughout these years my daughter was growing up without a father (a recorded interview, May 28, 2002).

M. B. was first granted citizenship and then had it revoked. He was expelled three times; the second expulsion occurred in 1997, when the police came to his home for him. They took him to the police station and then to the police magistrate where he was handed the decision on expulsion. He was not deported immediately, as was usual, but after 11 days. The most distressing part of his account, partly

reproduced below, is a statement by the district mayor that reveals hostility and absence of any ethical dilemma, indicating that she supported the violation of the right to family life.

> In the meanwhile my wife went to the district mayor, Mrs. Irma Pavlinič Krebs, to ask her how it was possible that they could have taken away my citizenship after 25 years, and how they could expel me when my complaint about the revocation of citizenship was still being processed by the court. She told her that I had an underage child, and asked her why they allowed such a treatment. The mayor, Irma Pavlinič Krebs, replied that there were many single mothers in Slovenia who managed somehow, so she should be able to do the same. She gave advice to my wife that it would be best for me if I left the country on my own; otherwise I'd be thrown out by the police. Today that lady is a deputy in the National Assembly [and the vice-president of the National Assembly, J. Z.] (a recorded interview, June 26, 2002).

For A. T. one of the most tragic moment in his life occurred soon after the birth of his daughter. He signed the birth certificate at her birth confirming that he was the father, but later, when the certificate was sent to their home, his name had been omitted: as if the father were unknown. It took him three years to obtain all the requested documents and certificates so that his name could be inserted into the birth certificate of his child. And even when his name was added, his address quoted in the certificate was different from the child's and mother's address (his address was one abroad), even though they had lived together ever since the child's birth and had been living together long before the child was born.

M. M.'s story is similar. He was born in Slovenia and in 1991 he applied for citizenship under Article 40, but he was not granted it because he had been sentenced to a prison term. The erasure caused him difficulties at the time of marriage. When his child was born, the address for the father on the child's birth certificate was a former address of his own father in Bosnia. M. M. was very distressed.

> I had difficulties when I wanted to marry. At that time I had the old ID card issued in Slovenia. They told me I was a Bosnian citizen. I went to the Bosnian embassy to get some document to be able to marry. They told me that I was not a Bosnian citizen but that they would issue some certificate anyway, and I could use it as a basis for marriage. This certificate included my address, but not one in Ljubljana, but the former address of my father in Bosnia. When the child was born I took that same paper to Mačkova street [the administrative office] to have myself registered as the father. I

> didn't expect that they would write down the address in Bosnia on my child's birth certificate. I never lived there, and it's not good for a child to have a father living at a different address than the mother. We always lived together.
> I should have received citizenship under Article 40, because in 1994, when I received a negative answer, I was no longer under criminal prosecution. I have a family here; I was born here. They would like me to leave Slovenia, but I have nowhere to go. I again applied for citizenship in 2000 with the assistance of HM. That application is still being processed. If I were single, I would definitely leave Slovenia, and would have obtained citizenship in Italy or some other country by now. I suffered millions of times because of all that, but one who has not experienced it cannot imagine what kind of situation it is and how I feel because of that. It is most painful because of the child. You know, I tried hard to make things easier for me and my family; I even changed my name with that goal in mind. At the border, for example, when they saw my family name they used to say 'oh, jugović' [a mildly derogatory term used for the people from other ex-Yugoslav republics]. Now they'd look and say, aha, that's a Slovenian family, and we wouldn't have problems. I don't want to stand out. I accept this culture and habits, I am not a savage, but nobody takes account of this. In the past Jews used to change their surnames in order to look like Germans and to be left alone. It is very sad that we still have to do the same today (a recorded interview, August 28, 2002).

The words of M. M. are very illustrative of several typical aspects of the ruling power operation: it is an interrelating of the question of who was not »worthy« of Slovenian citizenship, the question of the implications of the erasure for family life, and the question of how racism operates and affects people.

Exercising of the right to due process of law

The book entitled Nova ustavna ureditev Slovenije (New Constitutional Order in Slovenia), includes a comment by Ljubo Bavcon on human rights and fundamental freedoms:

> Respect for human rights and their protection is much more dependent on judicial, legal and other protection in the case of violation, than are the proclamations inscribed in the constitution. But what should be stressed first in this connection is the principle of the independence of judges, since if it is not ensured, than all solemn proclamations in the constitution are without value (Bavcon 1992, 47).

M. B. was granted citizenship in 1992 under Article 40 of the Aliens Act. One year later his citizenship was revoked, and then granted again in 2001 after several complaints and legal processes that lasted for years. During the period when he was without citizenship

(while his complaint was being processed), he was arrested three times and beaten several times. He was called a »četnik« [a Serbian nationalist]. In 1995 he was seriously beaten. The public prosecutor did not request the prosecution of the police officer who beat him, on the grounds that M. B. had resisted arrest. M. B. started a lawsuit, but the district court attributed the responsibility for police violence to M. B., as did the Supreme Court. The complaint has not yet been resolved; as of the time of this writing, it is being processed by the Constitutional Court. The following is M. B.'s recollection of the events.

> The police officers came to my home saying that I had to come with them to the police station because I had supposedly violated the public order. I didn't want to go. I resisted, but they put chains on my legs and took me away by force. At the police station they tied me to a pole and tortured me. They put the computer monitor cover over my head. I had my ribs broken and tendons strained. I had to have an operation on my balls because they kicked me so hard that my balls were bruised. One of them kicked me between my legs and said: »This is to stop you from conceiving bastards with Slovenian bitches.« I went to the doctor and he made a record of my injuries.
> I hired a lawyer to come with me to the crime-investigation department to file a lawsuit. The lawyer went with me as a safeguard, to make sure that I couldn't be beaten by investigators. I wrote the complaint on my own. The investigators handed the complaint to the public prosecutor, who established that I had resisted arrest. After that I filed suit with the court in Slovenj Gradec and then the Supreme Court. Both courts have ruled that I resisted the arrest and that my injuries resulted from resistance. The complaint is still being processed. The case is processed by the Constitutional Court at the moment (a recorded interview, June 26, 2002).

The violence against M. B. had racists motives behind it: he was beaten because he was a person of Serbian ethnic origin. The court protected the police, rationalized its violence and justified it by concluding that M. B. had resisted arrest. In this example, in which rights were already violated, the court did not render an independent decision but gave protection to the police, whose conduct was violent, disproportionate and in contravention of the principle of human rights protection. As we have already pointed out in connection with police violence against R. N., those who use or execute violence share responsibility with others who tolerate, ignore or conceal it (Bercht 2003). Accordingly, in this example, the courts are also responsible for police torture. The transformation of M. B. from an object of vio-

lence into a source of violence was made possible by racist transposition: the court, as well as the police, saw M. B. through the prism of racist stereotypes, since that alone could enable them to see him as a source of violence rather than the target.

M. S. filed eight lawsuits.[30] The following is his recapitulation of the experience of seeking legal protection.

> The judicial system in this country is in the filthiest mess. The police or the government can hate me, but the judicature … they leave traces in the documents they send to me. For example, my complaint about the seizure of my personal documentation has been waiting in court for ten years now. I don't even have any receipt confirming that my ID card was taken … I will hand over my documentation to someone who is willing to deal with this. I won't be around for much longer … 12 years of torture were enough…
> There was ethnic cleansing in Slovenia, everybody knows it, but nobody want to admit it. That is a crime, a shame. And courts did not manage to resolve anything during the 10 years (a recorded interview, June 11, 2002).

M. S. cited specific examples from which it was possible to discern that his right to due process of law was violated. He experienced many irregularities in the functioning of the judicial system, ranging from extortion and unreasonably long judicial procedures to the violation of the principle of judicial independence. M. S. is convinced that the courts were not willing to resolve his case and were an extension of those who were responsible for unlawful actions, and that their intention was to exhaust him psychically and financially in order to persuade him to drop the case. The following is his recollection of a visit to the Supreme Court in 1999.

> I lodged eight lawsuits altogether. I have everything sorted by subjects. These lawsuits were stuck at the Supreme Court for as long as five years. The representative of this court was Marija Ude Marinček. Once I managed to secure an appointment with her. She told me: »You have filed many lawsuits. Would you repeal these if we give you a residence permit?« »Do you think that I have two lives to earn that money. You destroyed my family, expelled me … I don't need your charity,« I replied. It was only when I came personally to her office that she handed me the negative decision which she had kept in her drawer for two and a half years, since 1997. She lied outright when she said that they had sent it to my address in Serbia and that I did not

[30] Eight lawsuits relate to: seizure of personal documentation, refusal to issue a permanent residence permit, violation of the right to judicial protection, denial of admittance into the country, incorrect certificate stating duration of permanent residence in Celje, erasure from the RPR and irregularities in the administrative procedure.

collect it. They would have a record of it if they had really sent it. »I don't know where it is,« was her answer to my question about the returned mail which could not be delivered to the addressee (a recorded interview, June 11, 2002).

M. S. turned to the Supreme Court and other state institutions (various ministries and the national Assembly) requesting a speedy and priority treatment. Their answers were invariably negative although M. S. lived in exile after he was expelled from Slovenia.

In other words, they were telling me: »You were expelled, you live in Serbia, but you have to wait on your turn.« The fact that I was denied entry at the border and that I had to live in someone else's house was not a reason for priority treatment for them. Indeed, why should I complain? I lived with a relative, not in my own house, I had to sleep in someone else's bed, to eat from someone else's plate with tears running down my cheeks … You can imagine how you feel when you are expelled and left without anything after 35 years of work.
Several years later (in 2001) the Supreme Court referred the case to a lower level court – to administrative court. They rejected all of my appeals. I appealed again to the higher level institution, so the case is again at the Supreme Court. There, my case once waited to be processed for five years, now it will take them another five years, and in the meanwhile I'll die or go mad … I am already sick. Their goal is not to resolve the case, they refer it from one court to another, formal requests are satisfied but in reality it is chicanery. I wrote to the president of the administrative court but he never replied (a recorded interview, June 11, 2002).

We have already mentioned a comment that the protection of human rights most critically depends on the principle of judicial independence. However, M. S. received by post clear proof of the dependence of the judges and their compliance with the requests of the Ministry of Internal Affairs i.e. the executive branch of the ruling power. The judge made a mistake and sent M. S. a letter in which the interior ministry advised the Supreme Court how to rule on the complaint by M. S. (M. S. gave me a copy of this letter). »This is proof that courts do not observe the law but ask various ministries how to resolve a case« said M. S.[31]

M. S. also described irregularities in the work of the Constitutional Court.

The judge of the Constitutional Court, Modrijan, made the decision on her own instead of referring the case to the Senate of the CC. One decision of the constitu-

[31] A letter from the Ministry of Internal Affairs, number 0001/7-1-SL.406/97, date 14. 4. 1997 (Received by the Supreme Court, Senate for Administrative Disputes, on April 16, 1997, number U 154/96-1); the plaintiff, M. S. received it by mistake on April 2, 2001.

> tional court, identical to mine (which is evident from the number) had already been resolved in favor of the complainant, but my complaint was not. The judge of the Constitutional Court made another mistake when she sent the decision on my complaint, that is to say a negative decision, to my representative in Ljubljana who was appointed to represent me, but there was no need to do that because at that time I lived in Celje [and not in exile in Serbia]. The judge certainly knew that because not long before that she wrote to me regarding some additions to the complaint: she sent the letter to my address in Celje and I responded. The representative sent the decision to Serbia, to the address of the people with whom I lived, and they sent it to Celje (a recorded interview, June 11, 2002).

Social threat: »When you think that just one simple piece of paper could help you get a job ... But no, they won't give it to you.«

All the people to whom we talked during our research study reported that their economic situation deteriorated; some of them even found themselves on the edge of survival. By erasing them the state prevented them from supporting themselves and their children and annulled their medical and social insurance. They had to pay with their own money for all prescription drugs and visits to the doctor. In addition, the legalization of their residence in Slovenia entailed the spending of relatively large sums of money which they had to pay for various fees, such as administrative and court fees, fees related to the application for citizenship, renewal of residence permits and the like. They also had to pay fines if they failed to register in Slovenia; travel and other expenses connected to the acquisition of citizenship from another country (one of the former Yugoslav republics), i.e. a country of birth or a country of the birth of their father; costs for the translation of documents issued by the countries that were formed after the dissolution of the former common state SFRY; costs of the exam in the Slovene language and fees for the lawyers (except Matevž Krivic, who provided legal assistance and defense free of charge, as did the Helsinki Monitor).

When speaking of their attempts to legalize residence in Slovenia, people frequently described it as a bureaucratic vicious circle. One of the conditions for acquiring citizenship (through regular naturalization) or temporary residence, which was a prerequisite for a permanent residence permit, was evidence that the person was socially secure in Slovenia. In other words, the state requested from them

proof that they had a means of survival. Many did not have a means of survival, precisely because they had been erased – through the erasure they lost their jobs or the right to a pension. They could not obtain another job because they were not Slovenian nationals nor foreigners with permanent residence and work permits. Another option was presentation of a contract proving that they were supported by their spouse. However, the salary of a spouse had to be sufficiently high to be deemed as ensuring social security for all family members.

In short, the erased people and their families whose material status was not very good (and it deteriorated precisely because of the erasure), did not fulfill conditions for the acquisition of residence permit or citizenship through regular naturalization. And, since they did not have residence permits, work permits or citizenship, they could not get a job, so the *vicious circle maintaining social exclusion was perpetuated.*

B. M. had his citizenship unconstitutionally revoked in 1993 and was consequently erased from the RPR. The following is his story describing an obvious deterioration in his family's economic situation.

> In 1988 I was one of the wealthier people in Koroška. I owned a rent-a-car company and dealt in other fields too… My family and I were pushed to the edge of social security. I had to sell everything I had. I had a good car, a boat… Now I have nothing. I am without a job and without property. Luckily, I was healthy so I had the option of moonlighting.
> I had the right to buy my apartment. I sold all my property in Bosnia. Since the war was near, I could sell it only for a very low price. My citizenship and permanent residence permit were revoked, so I lost the right to buy the apartment. I spent the money I got from the property in Bosnia to pay lawyers. I went from one lawyer to another and spent vast sums of money (a recorded interview, June 26, 2002).

T. D. was employed at the ironworks. He lost his job after erasure. His boss promised to take him back once he had all the documents (acquired citizenship or permanent residence permit). But so far T. D. has not managed to obtain documents: on one occasion, he failed to fulfill conditions because the obstacle was the exam in Slovene, and on another he could not prove that he had a source of material support. T. D. was disappointed and worried because the state prevented him from taking care of his family and himself.

> In fact I'm embarrassed in front of my neighbors. … They say »He is young, healthy, only … he doesn't want to work. Poor wife, she has to support him.« I've been explaning the problem for 7 years now, repeating it like a parrot. Many think that it is my fault. But the state literally turned you into a pauper. If I were a criminal, I'd do much better. I can't buy bread for my children. This seriously affects your nerves. I can't sleep.
> When you think that just one ordinary piece of paper could help you get a job. But, no, they won't give it to you (a recorded interview, June 26, 2002).

M. S. is a retired officer of the former Yugoslav People's Army (YPA). His right to a pension and the right to purchase his apartment were both cancelled.

> We used to be well-off. We had an apartment, a car, a garage, and a weekend cottage. There we grew fruits and vegetables. Lots of it, we even gave it to our neighbors. My co-workers turned to me when they had to borrow money. Every summer we went to the seaside with the children. Now I have nothing. From time to time I take a look at a dustbin to see if people have thrown away something useful (a recorded testimony, June 11, 2002).

At the moment it is still not known how many people could not exercise their right to a pension or to buy their issued apartments. The Helsinki Monitor, for example, has data only about the former employees of the military. In their public statement they mentioned information obtained from the Ministry of Defense, which in 1993 initiated the procedure to revoke the tenant's right to occupation and to evict 1,060 families of the former YPA officers. 445 families were evicted (at that point the prime minister stopped the evictions). The Helsinki Monitor further established that in 1991, 158 former military employees lost the right to pension. In 2002, 24 retired officers had not been receiving any pensions. Instead of enjoying an earned retirement, they became economically dependent on their family members or accepted hard and low-paid work on the black labor market. One of the interviewees told us that his colleagues, retired military officers, worked as night guards, delivery men, construction workers, and so on despite their age and health problems.

Conclusion: human dignity as a criterion for respect for human rights

Human dignity is a constitutional right and a common value foundation for all fundamental rights, as well as a criterion for the re-

spect for law (Pavčnik 1997; Arendt [1948] 1979). The argument of human dignity is frequently intertwined with the principle of the rule of law (equality before the law, trust in the law) and the welfare state (ensuring a life worthy of human beings) (Pavčnik 1997). The accounts of erased persons frequently revealed brutal violations of human dignity that led to ultimate desperation and feelings of isolation. Some could only cry in despair, for example a man whom I met in the Center for Foreigners and whose name I forgot.

> I came to Slovenia in 1967. That was before you were born, wasn't it? Yes, that's when I came. To work as a construction worker. I completed two years of agricultural school in Bosnia, then I trained to become a construction worker. I worked in the construction company Grosuplje. We built many facilities across Yugoslavia. I was always very honest.
> How lowly I ended! This is worse than a prison. When you are in prison you at least know why you were deprived of freedom … Sometimes at night I cry in my room … (a diary record made in the Center for Foreigners, February 27, 2002).

V. B. is another resident of the Center for Aliens. He expressed similar feelings of hopelessness, saying that his life was no longer worthy of a man. I talked to him and his friends in a corridor of the Center for Aliens.

> For thirty years we, Bosnians, were building various facilities across Slovenia, and now look where we ended up,« said he and pointed towards a small room with three bunk beds. »Some wanted to expel us earlier, when the country became independent, others tried later. They have now laid down such rules that they have succeeded. »We wasted the best years of our lives in Slovenia« said his colleague. »I worked my whole life and now I don't have anything. Everything stopped when I arrived in here« [the Center for Aliens]. Can you imagine what psychic pressure that is. All of a sudden everything crumbles around you.« »It seems that they think this is more profitable than if they gave us citizenship or residence permit. As citizens, we would have the right to social aid, pension, they would be obliged to help us resolve housing problems« (a diary record from the Center for Aliens, February 27, 2002).

On another occasion, when I wanted to help V. B. to deal with the distress caused by erasure, he replied:

> You can't do anything; you can't help me. The only thing you can do is cry with me. I simply cry sometimes (a diary record, March 1, 2002).

Owing to limited space, we certainly could not describe all *the ways in which human rights were violated* and administrative torture exe-

cuted. On the basis of the ethnographic material (semi-structured interviews, personal documentation of the erased, observation through participation at the Center for Aliens in Ljubljana, a visit to the Center for Aliens in Postojna and to the Dob prison), I compiled the following list of human rights violations, which is intended to indicate the extent of this problem and the totality of the experience called »to be erased from the RPR.«

- Prevention of legal employment or the loss of a job.
- Causing of material damage (termination of employment and employment record, payment of administrative and court fees, lawyer's fees etc.).
- Denial of the right to pension.
- Denial of the right to buy an issued apartment.
- Violation of the right to elementary education for adults.
- Fracturing of the family unit, violation of the child's right to live with its parents (separation of families as a consequence of expulsion from the country and administrative erasure of people as family members on official documents relating to households).
- Creation of Slovenian refugees (some people who were expelled went to other ex-Yugoslav republics as refugees, because for decades they had not maintained a home there; one informant told me that while in exile he lived in a refugee camp in Serbia).
- Violation of the right to choose the place of residence (people were forced to obtain a permanent residence address in a foreign country).
- Violation of the right of the family to form associations, or, to be more precise, to the formal recognition of fatherhood (the child's father was refused inscription on the child's birth certificate with the explanation that he was a foreigner).
- Erased people could not buy or sell property, found a company, open a bank account, subscribe to a mobile telephone service, register a car in their own name and so on).
- Prevention of free movement across the country border (some people could not attend funerals of their relatives in Bosnia, Serbia or another country).
- Prevention of legal car operation. Those people who had driver's licenses issued either in Slovenia when it still was a part of Yugoslavia, or in another part of Yugoslavia, had to obtain the Slove-

nian driver's license within half a year of residence in Slovenia, i.e. by a specific date. The problem was that they did not know that this was required. After that deadline, people were in breach of law simply because they drove a car with a driver's license issued in Croatia or Yugoslavia).

- Exclusion from political participation and prevention of public activity (no one wanted to »hear« them).
- Exposure to the arbitrariness of the police on a daily basis.
- Violation of the right to legal and judicial protection.
- Violation of the right to be informed – many did not obtain correct information in the district offices.
- Exposure to brutal treatment by clerks – the erased individuals were humiliated by the clerks; withdrawal of information prolonged the procedures of residence legalization.
- Neighbors' harassment over the phone and in letters and the lack of police sanctions for such conduct.
- Violation of the right to privacy of post.
- Violation of the right to apply for social aid.
- Violation of the rights of people serving a prison term (those who were designated for expulsion were not allowed occasional leaves).

All forms of violations mentioned above were a result of the erasure and its implementation, with the Aliens Act having been the basis for this measure. The act of erasure from the RPR itself was a serious violation of human rights and an unconstitutional move. Accordingly, all forms of violation that followed the erasure were not accidental or the result of negligence by some specific clerk, but a systematic violation of rights of a specific group of people.

The erasure from the RPR made these people into the subjects of human rights alone. Their experiences illustrate to what an extent the Slovenian state is capable of protecting human rights, since the Erased had no other rights besides human rights.

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CHRONOLOGY OF ERASURE

- 21 NOVEMBER, 1990: The Act Governing the Plebiscite on Sovereignty and Independence of the Republic of Slovenia is passed by the Assembly of the Republic of Slovenia.
- 6 DECEMBER, 1990: A plebiscite on sovereignty and independence of the Republic of Slovenia is called by the Assembly of the Republic of Slovenia. Parliamentary parties and deputy groups adopt an agreement promising both Italian and Hungarian ethnic minorities and members of other Yugoslav nations living in Slovenia that their political status would remain unchanged irrespective of the result of the referendum. Moreover, the Assembly of the Republic of Slovenia adopts a *Declaration of Good Intentions*, whereby the Slovenian nation, Italian and Hungarian ethnic minorities, and the remaining electorate of the Republic of Slovenia were invited to participate in the plebiscite and pronounce themselves in favour of an independent and sovereign Slovenia, which will be »a sovereign, democratic welfare state in which the rule of law prevails«. The Declaration of Good Intentions ends with the following words: »The plebiscite on sovereignty and independence of the state of Slovenia is thus committed to all the best traditions of humanity and civilisation and those of Slovenian and European history, and to a friendly future for Slovenes and other residents of the Republic of Slovenia.«
- 23 DECEMBER, 1990: A plebiscite on the sovereignty and independence of the Republic of Slovenia. A vast majority (88.5 per cent) of eligible voters are in favour of a sovereign and independent Slovenia.
- MAY 1991: An amendment to Article 81 of the Aliens Act is proposed by deputy Metka Mencin. Subject to the said Article, »a permanent residence permit in the Republic of Slovenia shall be issued to those citizens of the SFRY who are citizens of another republic and do not file an application for citizenship in the Republic of

Slovenia and who, as of the day of entering into force of this Act, either have registered permanent residence or are employed in the Republic of Slovenia«. The amendment, which is supported by the then *Demos* government, is rejected by *Demos's* parliamentary majority.

- 25 June, 1991: *The Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia* is adopted by the Parliament of the Republic of Slovenia (Article 3: »The Republic of Slovenia guarantees the protection of human rights and fundamental freedoms to all persons in the territory of the Republic of Slovenia irrespective of their national origin, without any discrimination whatsoever, in accordance with the Constitution of the Republic of Slovenia and the international treaties in force.«); *Declaration of Independence* (Article 5: »The Republic of Slovenia is a welfare state in which the rule of law prevails ... where respect for human rights and civil liberties, for special rights of native ethnic communities of Italians and Hungarians in the Republic of Slovenia, European achievements of industrial democracy, in particular socio-economic rights, will be paid ...«), and several acts asserting sovereignty (*Act Governing Citizenship in the Republic of Slovenia, Aliens Act,* etc.).
- 26 December, 1991: Expiry of a six-month period for filing an application to obtain citizenship in the Republic of Slovenia, laid down in Article 40 of the Act Governing Citizenship in the Republic of Slovenia.
- 26 February, 1992: The provisions of the Aliens Act (Article 81, second paragraph) commence to apply to those citizens of the SFRY who either are citizens of another republic and did not file an application for citizenship in the Republic of Slovenia subject to Article 40 of the Act Governing Citizenship in the Republic of Slovenia, or are those to whom a negative decision was issued and/or from the moment when such a final decision was issued to them. The Ministry of the Interior conducts *erasure* from the Permanent Population Register of the Republic of Slovenia *ex officio*, without notifying the persons concerned accordingly.
- 14 November, 1994: First constitutional initiative against the Aliens Act lodged.
- 28 April, 1995: Second constitutional initiative against the Aliens Act lodged.

- 1995–1998: The Constitutional Court in its former composition remains »silent« about the matter in question.
- 1998: An EU delegation visits the Ministry of the Interior and requests that Slovenia regulate the status of the citizens of other successor states of the former SFRY living in the Republic of Slovenia without their status being regulated.
- 4 February, 1999: The Constitutional Court (by way of Decision No. U-I-284/94) in its new composition rules that the *erasure* was unconstitutional and that it had no legal basis, obliging the legislator to eliminate non-compliance with the Constitution within six months.
- 8 July, 1999: The Act Regulating the Status of the Citizens of other Successor States of the Former SFRY in the Republic of Slovenia (ARSCSS) is adopted by the National Assembly, making it possible to obtain a permanent residence permit either for those citizens of other successor states of the former SFRY who, as of 23 December, 1990, had registered permanent residence in the territory of the Republic of Slovenia and who, since that date, have been living in the Republic of Slovenia for a continuous period, or for those foreign nationals who have been living in the Republic of Slovenia since 25 June, 1991.
- February 2002: Setting up of the Association of the *Erased* Residents of Slovenia.
- 10 June, 2002: Constitutional initiative against the ARSCSS lodged.
- 19 June, 2002: At a press conference, the number of those *erased* is officially presented for the first time by the Ministry of the Interior.
- 7 November, 2002: A session of the Internal Policy Committee of the National Assembly, discusses the Government's opinion on the constitutional initiative against the ARSCSS. At the said session, the Legislation and Legal Affairs Service of the National Assembly and the majority of deputies react dismissively to possible retroactive restitution of the status.
- 14 November, 2002: The Act Amending the Act on Citizenship in the Republic of Slovenia enters into force, subject to which it is possible to obtain the citizenship of the Republic of Slovenia for persons of full age who, as of 23 December, 1990 had registered permanent residence and who, since that date, have been living in the Republic of Slovenia for a continuous period, provided that they file an application within one year and meet the following conditions: that

they have a good command of the Slovene language, and have a record of no sentence of imprisonment of over one year both in the home country and in Slovenia; that their admission to citizenship in the Republic of Slovenia does not represent a threat to public order, security or defence of the country, and that they make a statement to the effect that they accept, by obtaining citizenship in the Republic of Slovenia, the legal system of the Republic of Slovenia.

- 24–28 February, 2003: Various activities within the framework of the »Week of the *erased*« (round table discussion in the Cankarjev dom congress centre with the title »*Erasure*: Error of Law or Ideology – Whose?«, round table discussion at the Faculty of Social Sciences, the Association's general meeting, demonstrations in front of the principal state institutions, lecture held for foreign representatives in the Republic of Slovenia).
- 6 March, 2003: TV broadcast »Trenja« focusing on the *erasure*.
- 2 April, 2003: Criminal proceedings against deputy Zmago Jelinčič Plemeniti and Mirko Bandelj, the Government's Secretary General, are initiated by the Association of the *Erased* Residents of Slovenia owing to a hate speech in the broadcast »Trenja«, directed at the *erased*.
- 3 April, 2003: By adopting Decision No. U-I-246/02, the Constitutional Court rules that the ARSCSS does not comply with the Constitution, as the citizens of other republics of the former SFRY who were *erased* from the Permanent Population Register on 26 February 1992 are not deemed to have permanent residence from the said date, obliging the legislator to eliminate the non-compliance with the Constitution within six months.

Compiled by: Jasminka Dedić

POST SCRIPTUM

MATEVŽ KRIVIC

As mentor or legal advisor to the studies by Jasminka Dedić and Jelka Zorn, I was asked to write some accompanying words. Both authors have not only done research into this – to use my own words already published several times – »major legal and civilisational scandal and shame of sovereign Slovenia«, but have, together with me, also been active as partners or »supporting« members of the Association of the Erased Residents of Slovenia. Through our activities, the three of us endeavour to somehow wipe out a shame from the image of sovereign Slovenia, which, in its Constitution, declared itself to be a social state based on the rule of law, but which (excluding the role of the Constitutional Court), in the practice and as regards the problem of the erased, has turned out to be just the opposite.

Both studies speak for themselves and need neither explanation nor praise – but fair criticism, just like any other research work. As regards criticism, I am not the right person, since I am too much involved in the problem of the erased, both professionally and emotionally. I feel, however, obliged to publicly expess my personal thanks to Jasminka Dedić and Jelka Zorn for all their expert and moral support as well as for the inspiration which I derived from their studies as a mentor. Despite my intense engagement with this issue in the past, in particular in 2002, several legal and generally human, existential and moral dimensions of this serious problem remained »hidden« or incomprehensible to me. It was these two studies that helped me reveal several of them, both through professional precision and human emotions. And I am sure that this does not apply to me alone. To both authors once again: thank you very much.

This publication of the studies as a book is in English, thus being intended for foreigners as well. After realising that the shortage of time would prevent me from contributing something originally new, and after consulting the publisher, I considered it most appropriate to

use a »report« on the problem of the erased as a preface to or additional commentary on the issue in question. I wrote this report as information for Mr Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe, who visited Slovenia in the period 11 to 13 May 2003, on behalf of the Association of the Erased at the beginning of May. The report was written with the intention of presenting this unusual and complex problem as briefly and as clearly as possible to foreigners who are not familiar with our specific situation – making direct use of my awkward command of English, which will, for the purpose of publication in this book, be appropriately edited. The significant are highlighted in the text so that it is possible to distinguish between the text of the original report and later changes.[1]

* * *

The problem of the »erased« ex-citizens of SFRY

In 1992, as many as 18,305 people were illegally erased from the register of residents of Slovenia (permanent domicile).

Immediately before declaring independence (25 June, 1991) – in order to avoid problems with some 200,000 »internal immigrants« from other republics of SFRY – Slovenia promised publicly to confer on them Slovenian citizenship. The conditions for obtaining citizenship were as follows: registered permanent residence in Slovenia as of 23 December, 1990 (the day of the referendum on independence); genuine residence in Slovenia (their domicile here had to be not a fictitious one), and the requirement that they apply for citizenship within six months (i.e. by 26 December, 1991). Slovenia kept its promise, and about 170,000 persons obtained citizenship on this ground. Of the other 30,000 persons, some 11,000 of these left Slovenia, but 18,305 persons did not apply for citizenship within the prescribed period (some of them owing to ignorance and confusion at the time of dissolution of SFR Yugoslavia, some owing to anti-Slovenian propaganda, some because they mixed up citizenship or nationality with ethnicity etc.). Nevertheless, they wished to continue their lives in Slovenia

[1] Marginal note: In this case, as always, I do realise how useful it is for us, locals, to be forced sometimes to explain our own problems to foreigners – it is only then that we fully and universally comprehend many dimensions of such problems.

where they had their homes, families (often with Slovenian wives or husbands), work or employment etc. Some hundreds of them (mainly officers of ex-Yugoslav army) did apply for citizenship, but their applications were rejected (*contra legem*, on illegal grounds).

These persons had their legal residence (permanent domicile) in Slovenia and, despite their loss of citizenship in a new state, they were entitled to continue their life in Slovenia – although from that time on as foreigners. However, on 26 February, 1992 (the day when the period for the acquisition of citizenship expired) the Ministry of the Interior deprived these persons of their legal status as persons with residence in Slovenia – without legal ground and without any administrative decision, even without any notification to them, simply by erasing them from the register of permanent residents of Slovenia. Only after months (or even years), when they needed something from the authorities, did they find out what had happened – being simply rejected as »non-residents« of Slovenia.

For a long time, it remained unclear whether this illegal act had been carried out because of professional incompetence and legal ignorance (with possible xenophobic tendencies in the background) – or if it was an intentional political act. It was only in November 2002 that the journalist B. Mekina (published in *Večer* on 26 November, 2002) discovered in the parliamentary archives evidence that it was an intentional political act.

With this silent, secret erasure, the mass of 18,000 persons (plus their families) lost the legal basis for their existence: they lost their jobs and could not seek for other legal employment; many of them lost their retirement pensions or became unable to apply for them. Furthermore, all their papers (identity cards, passports, driving licences etc.) were officially annulled by piercing or punching. In many cases this was effected through trickery: they were invited »to settle their papers«; as soon as they presented the requested papers, however, these were destroyed. To some of them no explanation was given – some received instructions to go to the office for foreigners »to regulate their status as foreigners«. For half of them, this was quite impossible because of the war in Croatia, Bosnia etc. (they could not get the requested documents from these places), and so they, already completely marginalized, »sank« into total illegality or semi-illegality. The other half gradually obtained the requested docu-

ments from their native ex-republics (now new states) with great difficulties and at great expense. Thus, their »illegality« in Slovenia lasted »only« two, three or more years (until 2002 for some of them). During this time, they were also deprived of all civil rights. However, significantly, they were not expelled from Slovenia (with rare, tragic exceptions) – a clear sign that the authorities knew that their »illegal« status had been illegally provoked by the authorities themselves. In all probability, they did not dare expel such a mass of persons, fearing that mass expulsions would trigger the condemnation of the international community.

The plausible »hidden« intention behind all this (at least in the right-wing and xenophobic circles of power and public influence) was an attempt to force between 5 to 10 thousand »južnjaki« (literally: southerners; colloquial name for people coming from other republics of SFRY – editor's note) to leave Slovenia – after 170,000 of these had received citizenship in Slovenia. This was a great shock for the right-wing parties. They were forced to keep the solemn promise given before independence (in order to make the achievement of independence easier); however, subsequently a strong political movement began with the avowed goal of retroactively nullifying all these 170,000 citizenships. There was even an official initiative for a referendum on this issue and only the Constitutional Court energetically put a stop to these attempts. Without knowledge of this political background, it is impossible to understand the scandalously illegal actions of the Ministry of the Interior against the »erased« persons.

Only ten years after this illegal erasure, some of the erased persons finally organized and established their association (not in the capital Ljubljana, but in the provincial town of Ptuj, and by persons living there). The authorities first tried to prevent registration of the new association, but with legal help from the undersigned legal adviser (a former judge of the Constitutional Court), these illegal attempts failed.

To make a long story short, after 11 years of illegal erasure, the Constitutional Court (CC) declared the erasure illegal (for the second time – the first time had been in 1999 through repeated decisions, all of which were basically ignored). For about half of the »erased« (in completely unambiguous cases) it ordered immediate

retroactive restitution of the status of which they were illegally deprived. For the other half, it ordered the legislature to prepare a new law within six months.

And it is here that Slovenia's wholly shameful story begins. In his first reaction, the Minister of the Interior, Dr Bohinc, declared his intention of following the decision of the CC, but from his statements at the press conference, it was clear that the Ministry would try once more to circumvent the real purpose of the CC decision. To take only one example: 18,305 persons were erased (the official figure, admitted by the Ministry, and cited in the CC decision) – but the Ministry intends to grant »immediate retroactive restitution of status« to only 7,310 persons and to prepare a new law for a further 4,205. But what about the remaining 7,000 persons?

But even this was too much for right-wing (opposition) parties. They launched a huge campaign, openly attacking the CC almost as a »traitor« to the national interest and so forth, and demanding openly that the government and parliament not follow the CC decision. One might say fine, this is evidence of poorly understood opposition role. But the real problem is much deeper: in the face of all these shameful attacks on CC decisions and on the principles of the *Rechtsstaat* (state based on the rule of law) – the government parties and all the authorities have remained silent and do not dare to say anything (fearing to lose xenophobic voters).

The culmination of this disgraceful campaign is only now taking place. One of the former Ministers of the Interior (having a natural concern for his personal responsibility), Mr Andrej Šter (now secretary at the Ministry of Foreign Affairs), gathered a group of mostly right-wing intellectuals (writers, artists, politicians etc.) and addressed a public appeal to the President of Republic, to the President of Parliament and to the Prime Minister, asking them to do everything possible to avoid the execution of the CC decision, saying, »Execute it only after the new law, not now.« This shows their clear intent to bypass the CC decision with another unconstitutional law (the first unconstitutional law was that from 1992, the second was that from 1999). And none of these three high representatives of the State being addressed replied or made any comment on such a scandalous appeal. Two days ago, the undersigned legal representative of the Association of the Erased wrote an open letter to the same

representatives of the State and to the media. To date, it has been totally ignored and has remained unpublished (except two phrases from the letter, containing 10,000 characters, in the above mentioned newspaper, *Večer*, from Maribor, a publication which is almost unknown in Ljubljana).

* * *

Several days after Mr Gil-Robles, Commissioner of the Council of Europe, left Ljubljana, I sent him certain other information, such as the following:

The political situation is very bad (the silence of the Government and of Mr Drnovšek continues). The situation in the media has improved somewhat, in particular as regards the newspapers *Večer* and *Dnevnik* (the latter published an editorial comment entitled »Minor Slovenian Fascism«), whilst the major newspaper *Delo* remains very cautious in general, but did publish a truly scandalous leading article, saying: »The principal message of the CC Decision is that the status of the people must be well regulated, as only in such circumstances will it be easier to discover those who are lying, or stealing, and those refusing to work!« ... Both television stations (national and commercial) show caution and confusion.

The most valuable support came from the former president of the Council for the Protection of Human Rights (1988–1994, predecessor of the ombudsman), Prof Dr Ljubo Bavcon. He wrote a letter (published only in *Dnevnik* on 10 May, 2003) in which he mentioned »hundreds of interventions of the Council owing to illegal, unreasonable, inhuman and consciously hostile acts of the ministry directed towards those who are termed non-Slovenes«. He described a discussion with Prime Minister Mr Drnovšek, held on 13 May, 1994, in which he had promised »that the Government would cease its pursuit of such a discriminatory and chauvinistic policy«. Since nothing had changed, Prof Bavcon went on to say: »I had enough reason to believe that these were not individual cases of violations of legal rules and human rights but the government's systematic policy of expulsion of unwanted non-Slovenes. The policy was implemented by ambitiously creating unbearable living conditions for them, problems and obstacles, by placing them into a 'vicious circle' from which

there was no escape, whilst claiming cynically that they (the government) were applying the law.«

* * *

In short, Mr Drnovšek had been familiar with this at least since the beginning of 1994, and in May 1994 he even promised to cease this practice – but the disgraceful and illegal practice has continued unabated up to now. As early as in 1994, the first initiative was brought by one of the erased before the Constitutional Court, but the then Constitutional Court had been postponing the matter for four years, i.e. by the end of its term of office in October 1998. This matter was correctly and finally settled by the new team of judges in only three months: on 4 February, 1999 the erasure in 1992 was declared fully illegal.

Until the decision of the Constitutional Court, all our courts were, of course, ruling as if everything had been correct. People like Šter, Debelak, etc. are currently referring to that practice, claiming that prior to 1999 nobody knew that anything had been wrong. But this is not true: Bavcon has now revealed that the above named and others, in particular Drnovšek, were fully familiar with the fact that everything was wrong, and nothing correct. But let us say that it was possible then and is possible today to hide behind this thesis: Bavcon is not a court, and the courts have conceded that we were right. Well, the quality of our courts in this respect is adequately illustrated by the fact that Bandelj, the Minister of the Interior, publicly stated in 1997 that the notorious »list of the unwanted 800«, on the basis of which much national evil happened, was absolutely illegal and legally intolerable. Nevertheless, even since then our worthy courts have been issuing decisions approving as legal those administrative decisions adopted on the basis of the said list.

It has already been clarified that even this year's repeated and stricter ruling of the CC has not made things better; politically they are even worse. Recently (in July) a report of the European Commission against Racism and Intolerance (ECRI) was received – a very critical report which, however, does not include the latest ruling of the CC and the reaction thereto. Let me quote only the main message of the conclusion, which is even stricter than our demands have been so far:

those persons who »lived in Slovenia a major part of their lives should not be treated as aliens or citizens of another state in which often they did not live at all«. To date, we have only demanded that the status of permanent residents of which they were illegally deprived be restituted – the ECRI is committed to something more, i.e. to conferral of citizenship. The latter is, undoubtedly, a matter for political decision – but the former is a matter of compliance with previously acquired rights, a matter of applying the law and court rulings. To date, this country has not even been capable of this – ever since the adoption of the first decision of the CC in February 1999.

Will the well received ECRI report at least be able to change anything? I am afraid that our politicians are not capable (even) of this. Why not? Because those belonging to the Opposition are, as regards the issue of discriminating against the »different«, incomparably worse, – and those »in power« think that they will therefore not be replaced in the elections (according to the principle of »the lesser evil«). This is a fundamental error; by so doing, they promote xenophobic, i.e. rightist tendencies in the population. Any majority won in such a way will lose its confidence sooner or later, even if they successfully curbed corruption (which is hard to believe). They might not be fully defeated in the first elections; they obviously do not care how much disgrace, due to their actions, will accrue to Slovenia in the eyes of democratic Europe.