Mirovni inštitut
Inštitut za sodobne družbene in politične študije
Peace Institute
Institute for Contemporary Social and Political Studies

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Ljubljana, 20 November 2015

Contribution of the Peace Institute ahead of the 88th session (23 November to 11 December 2015 – Slovenia)

I. Failure to remedy the violations of the rights in the case of erased

Slovenian authorities continuously failed to comply both in content and in due time with the relevant decisions of the Constitutional Court and European Court of Human Rights. Despite the gravity and wide scale of the initial arbitrary act of erasure, the state is continuously posing obstacles to the victims to remedy the violations which inevitably resulted in mass and long lasting profound deprivation of rights.

When Slovenia gained independence from SFRY Yugoslavia in 1991, citizens of the former Socialist Republic of Slovenia automatically became citizens of the new country, the Republic of Slovenia. Further, according to the Citizenship of the Republic of Slovenia Act, all citizens of other republics of the former SFRY with permanent residence in the Socialist Republic of Slovenia had the right to apply for Slovenian citizenship within six months from the date of independence. Those, who did not apply for citizenship (for various reasons, possibly because they did not know they do not have republican citizenship or they failed to apply in due time) or did not obtain citizenship (because because their application was refused or discarded or the procedure was terminated), were deprived of their permanent residence status by the act of "erasure". On 26 February 1992 25.671 (ex) Yugoslav citizens permanently residing in Slovenia and mainly originating from other Yugoslav republics were arbitrarily, without proper legal ground and without any administrative act (i.e. written decision), erased from the register of permanent residents, and as a consequence lost virtually all economic and social rights linked to this status. Many erased people were subsequently forced to leave the country and to reside outside the country for many years.

Erasure was declared unlawful by the two decisions of Constitutional Court (in 1999 and 2003)[1]. None of them was fully respected by the legislator. Respective legislation in 1999 (Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (hereinafter: Legal Status Act) enabled some of the erased to acquire new status of permanent residence (*ex nunc*). But it was declared insufficient and unconstitutional by the second Constitutional Court judgement in 2003 which *inter alia* required *restitutio in integrum* (return of the status *ex tunc*). After the judgement, a serious political deadlock on the issue prevented any reasonable solution to

[1] Judgments of the Constitutional court no U- I-284/94 as of 4. 2. 1999 and no. U-I-246/02 as of 3. 4. 2003

Mirovni inštitut
Inštitut za sodobne družbene in politične študije
Peace Institute
Institute for Contemporary Social and Political Studies

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

this problem. Respective amendment of Legal Status Act, required by the Constitutional Court decision in 2003 was adopted only in 2010, *but further failed to abide to the decision.* Due to very restrictive conditions for acquiring permanent residence permit under this law the majority of the erased who applied were not able to acquire the status and they are still unable to exercise their economic and social rights, including the rights to work, social security, health care and education.

This amendment of Legal Status Act introduced a list of unjustified conditions for regularisation of status of erased, including a proof that they continuously (actually) lived in Slovenia since the erasure onwards, which in practice prevents regularisation for all those persons who have been forced to reside outside the country for many years and could not return. This legislation imposed conditions retroactively, which means that today the erased persons cannot do anything to change the circumstances in the past, i.e. in 1992 and onwards, to meet the conditions required by the law. With 2010 amendments some exceptions have been added in cases of which a person is entitled to receive a permanent residence permit even if he or she was absent from Slovenia. However, these exceptions are limited, difficult to prove[2] and are thus further unjustifiably excluding a number of persons from status regularisation. The law also did not address the issue of family reunification for the family members of erased persons who started their families while living abroad, acquired residence permit but are now not able to return together with their families due to non-compliance with the inappropriate conditions for family reunification, applicable to aliens in general. Furthermore, the administrative fee for initiating the procedure for regularisation of their status (95 EUR/application) further discouraged the erased to apply for status. To illustrate the impact: out of 1899 applications for a permanent residence under the 2010 legislation, only 237 applicants were granted permanent residence; 1350 applications were denied; and 312 applications are still pending. The low number of applications also indicates that the information about the possibility to regularise was not widely available.

At the deadline for applications under the 2010 amended Legal Status Act on 24 July 2013, over 13.000 erased persons were still without any kind of status in Slovenia. With the expiration of the 2010 Legal Status Act they were thus left without any effective legal remedy to regularize their statuses, unable to return to Slovenia and/or denied an opportunity to reintegrate into Slovenian society.[3] During this time the problem was internationalised by the petitions to European Court of Human Rights, which confirmed the seriousness of the HR violations.

In order to implement the judgment of the European Court of Human Rights in the case Kurić and others v. Slovenia, the National Assembly only in november 2013 adopted the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population (hereinafter: Compensation Act). This law further discriminates between different groups of erased, depriving a large group of people from access to compensations for the violation of their rights.

[2] The 2010 amendments introduced an additional, unjustifiable condition stating that if a person managed to prove they fall within one of the exceptions, they justified only the first five years of their absence; to justify the next five years of their absence, they also have to prove that "during their absence they tried to return to Slovenia". This provision is unclear and effectively blocks status regularisation for all those who do not live in Slovenia, as it is impossible to prove that a person tried to return. In many cases they were inquiring about their options in Slovenian consulates abroad, and they have no prove of that.

[3] After the expiration of the deadline in July 2013, there were cases that indicate that there are still some erased persons residing in Slovenia without any kind of status for the past 23 years – without any kind of legal status and documents and without access to economic and social rights, including the rights to work, social security and health care. After July 2013 many of the erased residing abroad also sought help with Slovenian authorities and civil society organisations, expressing interest to regularize their status in Slovenia, which are now not able to do, since the deadline for filing applications under the 2010 Legal Status Act expired.

Mirovni inštitut
Inštitut za sodobne družbene in politične študije
Peace Institute
Institute for Contemporary Social and Political Studies

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

The Grand Chamber of the ECtHR issued the pilot judgment of 26 June 2012 in the case *Kurić and others vs. Slovenia*, in which it found that the Republic of Slovenia has violated the rights of the erased people. It found a violation of Article 8 (right to privacy and family life), Article 13 (right to an effective remedy) and Article 14 of the European Convention on Human Rights (prohibition of discrimination) - as the erased people, being citizens of former Yugoslavia, were treated less favourably than persons from other countries who had foreigners' status and resided in a comparable position in Slovenia at the time. The Court awarded each of the six winning applicants compensation for non-pecuniary damages in the amount of 20,000 EUR and recognized insufficiency of measures taken by the government to address structural problem of erased and ordered Slovenia to set up an ad hoc mechanism for recognition of compensations to the erased people, with the deadline of June 2013. The National Assembly adopted the Compensation Act in November 2013, which only came into effect in June 2014. The law was never consolidated with the erased and the civil society and their many concerns were not even addressed. Under the Compensation Act only those erased persons who have already obtained either a permanent residence permit in Slovenia or Slovenian citizenship are entitled to compensation. Another group of beneficiaries was included - the erased who applied for permanent residence permit or citizenship before the adoption of the 2010 Legal Status Act and their application was rejected, dismissed or the procedure was terminated. However, this group still has to prove the condition of actual living in Slovenia under similar provisions that proved to be too restrictive under the 2010 Legal Status Act.

Exclusion of certain erased persons from effects of this legislation has no legitimate aim and represents unjustified discriminatory treatment of different groups of erased. This position is supported even by the observations of the Legal and Legislation Service of the Slovenian National Assembly. The erased and civil society organisation also contested the delayed effect of the legislation, amount of compensation, its limitation without a proper justification, the time limits for payment of compensation (in case the amount exceeds 1000 EUR, the person shall be paid in up to 5 instalments) and the fact that the law does not include children of the erased as beneficiaries and does not allow the heirs of the deceased erased persons to claim compensation.

With the Legal Status Act expiring and the Compensation Act conditioning access to compensation with already acquired legal status, but not addressing the issue of status regularisation, approximately 12.000 erased persons will not have access neither to statuses nor to compensations. Furthermore from the most recent decision of ECtHR of 12 March 2014 the case Kurić and others vs. Slovenia, in which the Court awarded compensation for pecuniary damages to the six winning applicants, it is rather clear that the compensation amounts under the Compensation Act are too low. Furthermore, according to the decision the rights of the family members (i.e. spouses, children) that were not themselves erased, were also gravely violated, but the national legislation does not touch this issue at all.

II. **Roma minority and Roma Council Members**

There are approximately 10 – 12.000 Roma in Slovenia, some living in the country for "centuries" (so called autochthonous Roma), others for decades (so called non-autochthonous Roma, Roma

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

who mostly moved to Slovenia from other former Yugoslav Republics in 1980s and 1990s).[4] There are differences throughout the regions, but it is clear there is no nomad Roma. Officially, only 3.246 individuals declared as Roma on the last public poll in 2002, while 2.834 declared their mother tongue is Romani.

At the national level, Roma are currently represented by the State Council of Roma of the Republic of Slovenia.

On the local level, the 2002 Amendment of the Local Elections Act implemented the Council of Europe Congress of Local and Regional Authorities Resolution and established the Roma municipal councillors, which members of the so called autochthonous Roma communities vote among themselves. The law prescribes 20 Municipalities, in which a Roma representative must be included in the Municipal council. However, Municipalities with significant "non-autochthonous" Roma numbers are excluded from the list.

These Roma council members are key contacts with the Roma communities and have the potential to be a key instrument of Roma political participation.
The 2011 Amnesty International report on **the housing conditions of Roma** in the Slovenian Dolenjska (S-E) region Parallel Lives found severe (systematic) HR violations: In several Roma settlements there is no access to running water or sanitary facilities; Housing conditions are below minimal standards; The anti-discrimination framework is extremely flawed and needs to be amended to properly address discrimination, which is a daily reality for Roma.

Indeed, there are many pressing issues on the local level in which the Roma municipal councillors could play a crucial role towards solutions. To list just a few:

- Škocjan municipality is planning to build a waste-water cleaning facility and a business zone infrastructure in the area of the Roma settlement - financing from the European Commission, State and Municipality and the whole business zone project needs to be completed by November 2016. In the mean time they only relocated three families who lived directly in the way of the waste-water cleaning facility, while the future of the settlement as a whole remains unknown.
- In some municipalities families living in informal homes have no legal option to request and receive access to water (the precondition is legality of their houses under Slovenian law).
- Krško municipality presented a plan for an elite housing complex – in the site of the Roma Loke settlement. So far, no solution has been found.
- Krško municipality is currently in the process of selling the land where the Roma settlement Rimš is located. No solution yet.
- In spring of 2015 Roma councillor elections were held in Grosuplje, a municipality which refused to elect the Roma councillor for the third consecutive time now. After the State election committee stepped in and executed the election, the Municipal council confirmed the mandate for the first time (in 2009 and 2010, the elected candidate was denied and had to file an administrative law suit to receive his mandate officially).

[4] The distinction on autochthonous and non-autochthonous Roma is evident in Local Self-Government Act, which lists municipalities where Roma minority is autochthonous and has the right to at least one council member.

Mirovni inštitut
Inštitut za sodobne družbene in politične študije
Peace Institute
Institute for Contemporary Social and Political Studies

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

However, to fulfil this potential, Roma councillors need certain knowledge, skills and support, which the state does not provide.

Field visits the Peace Institute has conducted together with Amnesty International Slovenia in spring 2015 showed that most Roma councillors have a low level of education or have not even concluded primary school, they lack skills, experience and knowledge on civil and political rights, human rights, minority - Roma rights, etc. Observations from the field visits showed also that their powers as municipal councillors and mechanisms to exercise these powers are very limited. Roma councillors expressed the need for support regarding legal and other procedures, formal communication with Local and National Authorities, training on contact management, event organization, and self-organization skills. Technical and computer illiteracy also proved to be a significant challenge as most of them do not have computers at home or daily access to computers and printers – since they do not have offices or any working space within the municipal facilities.

Only systematic support of the Roma municipal councillors on the local level would equip them with a spectre of useful knowledge and skills to identify and address various situations/challenges, which would enable them to act as multipliers in their own local (Roma) communities and/or strengthen the protection of their human rights by actively participating in social and political life, reacting to human rights violations etc. By empowering Roma councillors, the entire Roma community would benefit.

III. Protection from discrimination

In accordance with the Act Implementing the Principle of Equal Treatment, the Advocate of the Principle of Equality started work in 2005 within the Government Office for Equal Opportunities. In 2012 the office was dissolved and the Advocate was moved to the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The mandate of the Advocate is to examine discrimination complaints on all protected grounds in all areas of social life, provide assistance to victims and issue recommendations. The procedure is informal and free of charge. The Advocate does not have investigative powers and cannot impose misdemeanour fines or other sanctions in the case of a violation. If the perpetrator does not comply with the Advocate's recommendations, the Advocate can only refer the case to the competent inspectorate. Although this institution was established to enable victims of discrimination affordable and fast legal remedy, complaints are not always decided quickly, which is mainly due to the fact that the tasks of the Advocate are carried out by a single civil servant.

The main issues with regard to the institution of the Advocate are that it functions within the Ministry of Labour, Family, Social Affairs and Equal Opportunities which raises doubts about whether the Advocate is able to examine impartially cases of alleged discrimination committed by the Government or its own ministry. Impartiality might also be hindered by the fact that the Advocate is nominated by the Government following a proposal from the Minister of Labour, Family, Social Affairs and Equal Opportunities. In addition, the Advocate has no support staff (it is a one-person body); it has insufficient investigative powers, no powers to conduct surveys and no sanctioning powers. Its funding depends on the Ministry. In 2009 and 2010 concerns about the possible lack of independence have been strengthened by the negative findings of two inspectorates concerning the nomination procedure of the Advocate, as well as by an unusual follow-up

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

nomination procedure for the new advocate. The Advocate's annual report for 2012 itself raised the issue of the lack of powers, staff and independence granted to the institution of the Advocate, as well as the inappropriateness of the general legal framework regulating the equality body in Slovenia.

Issues of concern:

- The national designated equality body (the Advocate of the Principle of Equality) is not independent as it functions within the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The Advocate is nominated by the Government following a proposal from the Minister. Furthermore, the budget for the Advocate's activities is determined by the Ministry. The Advocate is a civil servant (one person) and has no support staff, which does not provide for sufficient protection from discrimination.

- In spite of the fact that a number of legal remedies exist on paper, the most recent annual report of the Advocate of the Principle of Equality points out that the legal remedies available in Slovenia are not effective and that the system is in fact not working, which can be seen from the low number of cases resolved and sanctions issued. If the Advocate finds discrimination and submits the case to the competent inspectorate for a further procedure, which can result in a fine or other sanctions, the inspectorates often declare themselves not competent, as the misdemeanour of discrimination is not defined in the organic laws, the respect of which they are obliged to monitor. In other words, as in the key act – the Act Implementing the Principle of Equal Treatment – it is not specifically stipulated that a certain inspectorate is competent to examine cases of discrimination in its respective field of work, so the inspectorates consider themselves incompetent. These inconsistencies weaken protection from discrimination.

- There is no national action plan or strategy concerning discrimination. The situation of the Roma, for which the Government Office for National Minorities is competent, is often not dealt with as a discrimination issue. Similarly, disability issues are entirely left to the Office for People with Disabilities within the Ministry of Labour, Family and Social Affairs. No public body is responsible for conducting research on issues of discrimination. This means that the majority of research is done by other non-governmental institutions (project based). For issues concerning some personal grounds none of the State bodies is responsible, e.g. sexual orientation. Same-sex couples remain excluded from many rights accorded to opposite-sex couples (including in the field of employment).

IV. Discrimination of minorities from nations of former Yugoslavia

Minority protection in Slovenia is provided in a way to establish hierarchy between minority communities with the highest protection of minority rights being provided to Italian and Hungarian minority, with Roma having lower level of protection (in terms of range of rights, but also in terms o institutional framework and financial resources allocated for that purpose by the state), and with minorities from nations of former Yugoslavia – Bosniaks, Serbs, Croats, Macedonians, Montenegrins and Albanians (from Kosovo) – having almost no special minority protection. Such set-up follows the provisions in the Constitution of the Republic of Slovenia (1991) in which no

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

reference is made to the communities of nations from former Yugoslavia, and such legal framework is also reflected in number of laws. Several initiatives of the self-organised coordination body of minority communities from former Yugoslavia to regulate their status, including possible change of the Constitution, failed. The disparity in the range of minority protection is especially apparent when size of these communities are compared with communities of nations of former Yugoslavia (Bosniaks, Serbs, Croats, Macedonians, Montenegrins and Albanians) including altogether around 200,000 members, while Italian, Hungarian and Roma communities are much smaller, with total number of all three communities being around 20,000.

However, in 2011, the Parliament adopted Declaration on the Situation of National Communities of Members of Nations of Former Yugoslavia in Slovenia, a document proclaiming readiness to improve the situation of those communities. The declaration was followed by the establishment of a council within the structure of the Ministry of Culture to coordinate possible actions for improvement of the situation. No concrete policy measures have been initiated as a result of the work of that body, which had even been dismissed for certain period under the excuse of austerity measures in the public administration. Discrimination of minority communities from former Yugoslavia in Slovenia can be observed in various areas of public policy, including, for instance, the access to media, including public media and media established by the minority communities. Only in 2014, the 15-minute weekly broadcast on public service TV channel *TV Slovenija* was introduced to present situation and life of the six communities of nations of former Yugoslavia, while Italian and Hungarian minorities have a special radio and television minority program broadcasting daily in minority languages within the structure of public service broadcaster *RTV Slovenija*. Roma community has its weekly radio show at *Radio Slovenija* since 2007 and at TV Slovenija since 2008. Even further, the programs produced within *RTV Slovenija* for Italian and Hungarian minorities and weekly broadcasts produced for Roma community are entirely financed by the Office for National Minorities of the Government of the Republic of Slovenia in the amount of 1.58 million euro, while the TV broadcast introduced in 2014 by *RTV Slovenija* on its own to allow to minorities from former Yugoslavia access to public media is not financed by the Government at all. In total, the Government of Slovenia through various mechanisms provides financial support for media serving the information and language rights of Hungarian, Italian and Roma communities (including public service broadcaster, but also media established by minority communities) in the amount of 2.4 million euro on annual basis (in 2014), mostly directly financed by the Office for National Minorities to the public broadcaster or to minority media of these communities while six communities of nations from former Yugoslavia can apply to a call for projects of immigrant communities for small grants within the Public Fund for Cultural Activities aimed at non-professional, amateur culture, and through that source received in 2014 altogether 24,000 euro for media activities (mostly for newsletters, receiving individual grants around 800 euro for a media outlet per community on annual basis).

V. Exploitation of posted workers from ex-Yugoslav republics

After the outburst of the economic crisis in 2008–2009, circumventions of labour rights of migrant workers working in Slovenia disappeared from the Labour Inspectorate's annual reports. It is due to loss of many jobs in Slovenia, particularly in the construction sector, after the crisis. Time series

Mirovni inštitut
Inštitut za sodobne družbene in politične študije
Peace Institute
Institute for Contemporary Social and Political Studies

Metelkova 6, SI-1000 Ljubljana
Slovenija | Slovenia
Tel: +386 1 234 77 20
Fax: +386 1 234 77 22
E-pošta | E-mail: info@mirovni-institut.si
Spletna stran | Website: www.mirovni-institut.si

for A1 (former E101) forms issued in the period after the crisis show where all those migrant workers were gone: into a new industry named posting of workers. The Health Insurance Institute of Slovenia (ZZZS) issued 17,864 forms in 2008, 25.573 in 2010, 68.016 in 2012, and 103.370 in 2014. Numbers are spectacular, but it is important to note that A1 form can be issued several times a year for the same worker. Only a minor share of posted workers consists of Slovenian citizens (37 per cent), the majority are migrant workers: 54 per cent from ex-Yugoslav republics (38 per cent from Bosnia and Hercegovina). The rest are citizens of Bulgaria, Hungary, Romania, Slovakia etc. We may speak about a huge trafficking of human beings for labour exploitation in other EU countries (56 per cent work in Germany, 27 per cent in Austria, 4 per cent in Italy and Belgium, 2 per cent in The Netherlands). They are predominantly employed in construction, electro and metal industry, and elderly care. Migrant office at The Association of Free Trade Unions Slovenia and Labour Inspectorate alert against the growth of »letter-box enterprises« which supply workers to user undertakings under the pretence of service supply. There is probably no need to emphasize that posted workers are in many ways discriminated in comparison to home workers, particularly with respect to rules on working time, payment, social security, health and security at work. Prevention of human trafficking is blocked by the general deficiencies in enforcement and implementation of law: control over enterprises which may have huge delays of payments of salaries and social security contributions, and control over persistent offenders of labour rights who continue their mode of operation by liquidating old companies with accumulated debt and by establishing new companies. This raises the question of economic liberties which hasn’t been approached yet appropriately.