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### **Erasing residence rights in Slovenia**

On 26 February 1992, local administrative units, acting upon a decree issued by the Ministry of the Interior of the Republic of Slovenia, deprived citizens of other republics of former Yugoslavia permanently residing in Slovenia, of their status of permanent residents.\* This administrative action, later popularly dubbed “erasure” (since its victims were “erased” from the register of permanent residents), transformed the persons concerned into illegal aliens. Without notification and without the possibility to appeal, these persons were abruptly deprived of the legal foundations of their existence in Slovenia: their documents previously issued in Slovenia (e.g., passport, driving permit etc.) became invalid and they lost already obtained social rights. The measure hit more than 25.000 persons: however, since it was a covert act, its victims have long been unaware of each other, and the general public was ignorant of the issue.

Erasure in Slovenia, one of the worse recent violations of human rights in Europe, is tightly connected with historical events in the region: (1) transformation of constituent units of Socialist Federal Republic of Yugoslavia (its six republics and one of the two autonomous provinces) into independent states; (2) economic transition from socialist self-management to one variant of welfare capitalism, as well as transition from national to globalised economy. This broader context is relevant: not in the sense that the violence committed by Slovene state would appear any more acceptable for it; however, understanding of the regional context helps to grasp the more general global and European processes under the epiphenomenal political, legislative and administrative actions in this particular case.

#### **Adoption of a new citizenship law in independent Slovenia in 1991**

With the declaration of Slovenia’s independence, Yugoslav federal Citizenship Act and Aliens Act ceased to be valid and, accordingly, new laws had to be adopted. Yugoslav federation was composed of six republics and citizenship was regulated from the bottom up: a citizen of a republic was at the same time the citizen of Yugoslavia. A citizen of one

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republic, permanently living on the territory of any other republic, enjoyed the same citizenship rights and performed the same obligations (e.g., paying taxes) as all other republic's citizens. He or she was enrolled into the register of republic's permanent residents; his or her documents (passport, identity card etc.) were issued by the local administration at the place where he or she lived; there, he or she exercised all political rights as well. In everyday life, republican citizenship was not important and most people were not even aware of it. However, when former federal republics proclaimed independence, it became the basis of the new states' citizenship.

Between 190.000 and 200.000 citizens of other Yugoslav republics were permanent residents of Slovenia when Slovene legislative bodies decided that they were not automatically to become Slovene citizens. They were offered the opportunity to apply for an exceptional naturalisation within the period of six months (the date expired on 25 December 1991), under the condition that they had had permanent residence on 23 December 1990 and lived continuously in Slovenia since then.<sup>1</sup> Local administration usually required that they submit a birth certificate and/or a copy of other citizenship registration issued within the last three months, a problematic condition for those who had to acquire it from the regions that were already in war. The outcome was that 171.127 persons were able to obtain Slovene citizenship.

The status of those who would not ask for exceptional naturalisation or who would not be able to obtain it, was to be determined in the Aliens Act.<sup>2</sup> However, the law explicitly recognised the preservation of permanent resident's status to aliens who had obtained this status under the Yugoslav law (e.g. the citizens of countries like Italy, Austria, Hungary etc.), while it did not settle the question of the legal status of those citizens of other Yugoslav republics who would not have obtained Slovene citizenship.

### **Public administration as *milieu traducteur***

Some lawyers and most politicians have been claiming that the difficulties of the citizens of other Yugoslav republics were caused by the legislator's omission to determine their legal status. Past research<sup>3</sup> already raised doubts about this "legal vacuum" thesis. It

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<sup>1</sup> Article 40, Citizenship of the Republic of Slovenia Act, *Official Gazette RS*, No. 1/1991.

<sup>2</sup> Article 82, third paragraph, Aliens Act, *Official Gazette RS*, No. 1/1991.

<sup>3</sup> Jasminka Dedić, Vlasta Jalušič, Jelka Zorn, *The Erased: Organized innocence and the politics of exclusion*, Ljubljana, Mirovni inštitut, 2003; Jelka Zorn, Uršula Lipovec Čebtron, *Once upon an erasure*, Ljubljana, Študentska založba, 2008; Neža Kogovšek et al, *The scars of erasure*, Ljubljana, Mirovni inštitut, 2010.

is now certain that local administration committed illegitimate acts; later on state administration has been obstinately resisting remedying the obvious injustice. According to various documents,<sup>4</sup> the government took the position that after the expiration of transitional period (on 26 February 1992) during which citizens of other republics permanently residing in Slovenia had all citizens' rights, they would become aliens and should regulate their status as if they had come to Slovenia for the first time. The only legal-administrative trace of their living in Slovenia (often decades long; in average: 8 years<sup>5</sup>) was their enrolment into the register of permanent residents of Slovenia. The government decided to eliminate this trace of regulated residence in Slovenia and instructed local administrative units to erase these persons from the register of permanent residents after 26 February 1992.

Our examination of legal documents has confirmed the assessment that the act of erasure could not proceed from a correct interpretation of law. Our analysis shows that the erasure was an effect of conscious re-interpretation of law in the subordinate regulation conceived and implemented by the Minister of the Interior and high state officials. Administrators on local levels then executed without reservations the instructions proceeding from these interpretations.

At the time of erasure, the register of permanent residents was still regulated by the Yugoslav law to which some less significant amendments had been added. According to the law, the persons who had to be inscribed into the register were defined as "*občani*", *commoners*.<sup>6</sup> Since the Constitution of 1963, "commoner" was one of the basic categories by which socialist juridical-political system attempted to reach beyond the bourgeois dichotomy between the citizen (political subject) and the bourgeois (member of civil society). "Commoner" was the individual taken in her or his concrete social existence, member of the community where, together with other commoners, she or he provided for the basic necessities of life and exercised basic practices of solidarity. Consequently, "commoner" was the basic political agent, the elementary constituent in the construction of social self-management. One of the commoner's statuses was citizenship. However,

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<sup>4</sup> As, for example: the government proposition of Employment and Work of Aliens Act on 6 December 1991 (*Poročevalec*); the letter of the Minister of the Interior to the members of government where he proposes that the rights of the citizens of other Yugoslav republics should be disregarded (4 July 1992); various internal instructions to local administrative units issued by the Ministry of the Interior.

<sup>5</sup> For those who had obtained Slovene citizenship under the immediate post-independence provision. Cf. Alenka Mesojedec Pervinšek, *Predpisi o državljanih in tujcih* (Regulations about citizens and aliens), Ljubljana, ČZ Uradni list Republike Slovenije, 1997, pp. 32–34.

<sup>6</sup> Permanent Residence and Population Registry Act, *Official gazette of the Socialist Republic of Slovenia*, No. 6/1983; *Official gazette of the Republic of Slovenia*, No. 11/1991.

since it was the commoner who was the elementary subject of rights and obligations, individuals exercised their rights and fulfilled their obligations, participated to social benefits and paid taxes *not* as citizens (of Slovenia, Montenegro or Macedonia, etc.), but *as commoners at the place of their permanent residence*. During the transition from the system of socialist self-management to the system of liberal democracy, “commoner”, for some time, still hovered on in legal texts. In the new context, however, “commoner” could not mean much more than “permanent resident”. Therefore, when the then valid law on the register used the word “commoner”, inherited from Yugoslav legislation, it should have been understood that all citizens of former Yugoslav republics permanently residing in Slovenia were to be inscribed into the register of permanent residents. Inscription into the register would in fact testify that the persons concerned had the right to undisturbed continuation of living in Slovenia where they had their families, jobs and property, and where they had access to labour market and enjoyed social rights.

On the basis of Permanent Residence and Population Registry Act, the Minister of the Interior and the Director of the Office for Statistics issued two regulations on the implementation of the law in which they changed the expression *commoner*, figuring in the law, into “citizens of the Republic of Slovenia”.<sup>7</sup> This tiny change led to the erasure of the citizens of other Yugoslav republics, until that moment permanent residents, from the register of permanent residents. Erasure had dreadful effects for the people concerned: they lost the legal foundation of their living in Slovenia and the access to social rights. State officials later explained that the interpretative change of the law was necessary since the constitution of independent Slovenia changed the previous meaning of “commoner” into “citizen of the Republic of Slovenia”.<sup>8</sup> This is not true. Constitutional Law accompanying the declaration of independence uses both terms (*commoner* and *citizen*) and distinguishes between their meanings; therefore a subordinated legal act could not in sound juridical logic arbitrarily replace one term by the other.<sup>9</sup> Besides this thin “legal”

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<sup>7</sup> Pravilnik o obrazcu za prijavo oziroma odjavo stalnega prebivališča ... (Regulation on permanent residence report ...), signed by the minister Igor Bavčar and the director of the Office for Statistics Tomaž Banovec. *Official gazette RS*, No. 27/1992; Pravilnik o vodenju in vzdrževanju centralnega registra prebivalstva Republike Slovenije (Regulation on the management and maintenance of the register of permanent residents of RS), signed by deputy director of the Office for Statistics Irena Križnar and the minister Igor Bavčar. *Official gazette RS*, No. 50/1992.

<sup>8</sup> Irena Tršinar, Izbrisani (The Erased), *Okno uprave*, Ljubljana, Združenje strokovnih delavcev upravnih notranjih zadev, No. 9, 28 March 2003, pp. 3–11.

<sup>9</sup> The replacement has its own extra-judicial logic: replacing the term “commoner” that designates the subject of social self-management and belongs to the socialist political system, by the term “citizen”, agent within the bourgeois political sphere, this substitution is an integral part of the restoration of the capitalist

argument the government proposed an ideological argument according to which the “already acquired rights” of the erased people “should be disregarded”: the argument of loyalty.<sup>10</sup> In a letter to the government the Minister of the Interior explains that citizens of other republics permanently residing in Slovenia by not having applied for Slovene citizenship generously offered by the new state, “consciously renounced their rights”.

With the two regulations that were formally only enacting the law, the register of “commoners” with permanent residence has been transformed into the register of “citizens of Slovenia permanently residing in Slovenia”. The Minister and the Director of the Office for Statistics re-interpreted the law and, from the legal point of view, violated it. From the sociological point of view, this is a typical case of governmentality:<sup>11</sup> by introducing a new administrative *quadrillage*, the government officials performed the transfer of a particular group (the future erased persons) from one classification to another. State violence was performed in the form of a new administrative and statistical sorting of population.

Top officials in the Ministry of the Interior went even further to sever any ties of the erased persons with Slovenia. In an internal communication, inaccessible to the public, they instructed local administrative units to destroy the erased persons’ passports, ID cards, driving licences and any other documents issued in Slovenia, when the people concerned, unaware of their situation, came to the office on random errands.<sup>12</sup>

During the field work we interviewed a man who had wanted to renew his driving licence in March 1992; he gave us a typical description about how local administrators had run the procedure. After his request, said the interviewee, the administrator went away for five minutes, apparently asking for instructions. When she came back, she asked if he had any other documents. His passport was in the car, so she asked him to bring it as well. When he came back, the administrator perforated all his personal documents and informed him that he is not a permanent resident of Slovenia any more.

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system and of the abolition of the socialist system. It should be noted that this is an almost covert operation within a subordinate, in appearance marginal regulation; and that it victimised more than 25.000 people.

<sup>10</sup> The letter of the Minister of the Interior Igor Bavčar to Slovene government No. 0016/1-S-010/3-91, 4 June 1992.

<sup>11</sup> “Maybe what is really important for our modernity – that is, for our present – is not so much the *étatisation* of society, as the ‘governmentalization’ of the state.” Michel Foucault, “Governmentality”, in: *The Foucault Effect. Studies in Governmentality*, Graham Burchell, Colin Gordon and Peter Miller, editors, London etc.: Harvester-Wheatsheaf, 1991, p. 103. – « Ce qu’il y a d’important pour notre modernité, c’est-à-dire pour notre actualité, ce n’est donc pas l’étatisation de la société, c’est ce que j’appellerais plutôt la ‘gouvernementalisation’ de l’État. » Michel Foucault, *Sécurité, territoire, population. Cours au Collège de France, 1977 – 1978*, Paris : Hautes études – Gallimard – Seuil, 2004, p. 112.

<sup>12</sup> Ministry of the Interior RS, document No. 0016/9-S-26/3-92 (23 January 1992) and instruction No. 0016/4-14968 (27 February 1992).

Although the man applied for Slovene citizenship, his demand was not accepted due to the absence of the birth certificate from Bosnia where the war had already started. The official advised our interviewee to go to Bosnia to acquire new documents. How to travel to the war zone without any documents, was not, as she explained, her concern. At that moment the man had been living in Slovenia for thirty years, he had a house, two daughters with Slovene citizenship and his own business. After this event, police searched him several times at his home where he was hiding; under the threat of deportation, he ceased to work, but continued to pay bills regularly and tried to arrange documents through friends. He received Slovene citizenship after seven years, in 1999.<sup>13</sup>

Another interviewee managed to obtain Croatian passport in which Croatian authorities wrote a Slovene address where the man actually has been living for the last decade. Slovene local administrator requested that he change Slovenian address with a Croatian one. When he asked the administrator on what legal basis she made such a request, she could not answer and he was not asked again to fulfil this demand.<sup>14</sup> In another case, local administrator actually destroyed Croatian passport with Slovene address, as its holder was less well-acquainted with legal regulations.<sup>15</sup> Frontier police did not let Yugoslav citizens enter Slovenia if they had passports issued by a foreign country with Slovene permanent residence.<sup>16</sup>

### **Citizenship regulations of successor states in 1990s – a comparative perspective**

When defining its new citizenry, Slovenia has not opted for the simple option to grant Slovene citizenship to all federal citizens permanently living on its territory. This option has been, for example, chosen by the USSR successor states Ukraine and Belarus<sup>17</sup> and by the ex-Yugoslav republic Bosnia and Herzegovina.<sup>18</sup> These states granted citizenship

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<sup>13</sup> Interview no. 12, 27 March 2010. 26 of our interviewees regained permanent residence after seven years; 28 interviewees obtained Slovene citizenship after eight years. One person may obtain both statuses, for this reason the sum total is higher than the number of interviewees.

<sup>14</sup> Interview no. 24, 20 November 2010.

<sup>15</sup> Interview no. 15, 8 April 2010.

<sup>16</sup> According to the testimony of a bus driver, interview no. 6, 26 February 2010.

<sup>17</sup> Alexander E. Vashkevitch, »Citizenship of the republic of Belarus«, in: *Citizenship and state succession. Proceedings of the UniDem seminar*. Strassburg: Council of Europe publishing, 1998, pp. 181–194.

<sup>18</sup> Eldar Sarajlić, "A Citizenship Beyond the Nation-State: Dilemmas of the 'Europeanisation' of Bosnia and Herzegovina", EU research project: The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia (CITSEE), The University of Edinburgh, School of Law, 2009-2013, [http://www.law.ed.ac.uk/file\\_download/series/232\\_acitizenshipbeyondthenationstatedilemmasoftheuropeanisationofbosniaandherzegovina.pdf](http://www.law.ed.ac.uk/file_download/series/232_acitizenshipbeyondthenationstatedilemmasoftheuropeanisationofbosniaandherzegovina.pdf), p. 8 (22 June 2011).

*ex lege* to their own republic citizens as well as to other federal citizens permanently living on their territory. Slovenia, like Czech Republic, Slovakia, Croatia, Serbia and Montenegro, granted citizenship *ex lege* only to republic citizens, while permanent residents obtained the right to exceptional naturalisation under certain conditions. As a rule, this decision produced uncertain life conditions for “unwanted” populations and even created masses of stateless persons. Something similar as “erasure” happened to the Roma people in Czech Republic who could not fulfil the requirements for exceptional naturalisation (two years of permanent residence and clean criminal record).<sup>19</sup> In Croatia, besides republican citizens who became Croat citizens by law, ethnic Croatians, residents and non-residents, could also obtain citizenship if they provided the statement that they consider themselves as such; this provision excluded residents that had neither been citizens of the federal republic of Croatia nor were ethnic Croatians.<sup>20</sup> During the war, many members of the Serbian minority in Croatia fled from Croatia to Federal Republic of Yugoslavia where, until 2005, only approximately 50% obtained citizenship.<sup>21</sup> In Macedonia permanent residents had to fulfil the requirement of fifteen years of permanent residency and of sufficient means of subsistence to qualify for citizenship. As a consequence, a considerable number of Romas and Albanians were excluded.<sup>22</sup>

Among the USSR successor states, Latvia is a particular case; it re-established Latvian citizenship in accordance with the 1919 Law on Citizenship by which as much as 45 percent of residents were excluded from the citizenry, mostly people of Russian origin. Latvia recognised some of their rights which were not accorded to the erased persons in Slovenia: permanent residency, ban of deportation, diplomatic protection, and special passports. By giving the non-citizens “functional Latvian nationality” instead of full citizenship rights, Latvia introduced an unprecedented juridical category into international

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<sup>19</sup> Andrea Baršová, “Czech citizenship legislation between past and future”, in: Rainer Bauböck, Bernhard Perchinger, Wiebke Siever (eds.), *Citizenship Policies in the New Europe*, Amsterdam, Amsterdam University Press, 2007, p. 167.

<sup>20</sup> According to literature, this was mostly the case of the Serbs; cf. Viktor Koska, “The evolution of the Croatian citizenship regime: from independence to EU integration”, CITSEE research project, [http://www.law.ed.ac.uk/file\\_download/series/325\\_theevolutionofthecroatiancitizenshipregimefromindependencetoEUintegration.pdf](http://www.law.ed.ac.uk/file_download/series/325_theevolutionofthecroatiancitizenshipregimefromindependencetoEUintegration.pdf), pp. 8-12 (22 June 2011).

<sup>21</sup> Jelena Vasiljevic, “Citizenship and belonging in Serbia: in the crossfire of changing nationhood narratives”, CITSEE research project, [http://www.law.ed.ac.uk/file\\_download/series/327\\_citizenshipandbelonginginserbiainthecrossfireofchangingnationhoodnarratives.pdf](http://www.law.ed.ac.uk/file_download/series/327_citizenshipandbelonginginserbiainthecrossfireofchangingnationhoodnarratives.pdf), p. 12 (22 June 2011).

<sup>22</sup> Ljubica Spasovska, “Macedonia’s Nationals, Minorities and Refugees in the Post-Communist Labyrinth of Citizenship”, CITSEE research project, [http://www.law.ed.ac.uk/file\\_download/series/206\\_macedoniasnationalsminoritiesandrefugeesinthepostcommunistlabyrinthofcitizenship.pdf](http://www.law.ed.ac.uk/file_download/series/206_macedoniasnationalsminoritiesandrefugeesinthepostcommunistlabyrinthofcitizenship.pdf), pp. 8-15 (22 June 2011).

law. Kristīne Krūma estimates that despite the subsequent reintegration of these persons through standard naturalisation, some 130.000 persons will probably remain stateless for the rest of their lives (Krūma, 67).<sup>23</sup>

It would seem that, during great historical perturbations of modern statehood and citizenship, certain persons can easily become the target of social engineering. This feature emerges even in the case of the independence of Algeria in 1962 and the subsequent regulations of citizenship, especially with the respect of persons whose parents were born after 1962.<sup>24</sup>

Under the comparative perspective, an interesting common feature emerges: in all countries under consideration state administration has been invested with a great discretionary right within naturalisation procedures. In Slovenia and elsewhere, unreasonable increase of power which was given to administration, in particular with significant freedom at interpreting the laws, contributed to arbitrariness in the attribution of citizenship. Consequently, state administration has been transformed into a *milieu traducteur* with a considerable liberty at interpreting the laws and at applying their own interpretations to individual cases. As a consequence, it often happens that two almost identical applications for citizenship have opposite outcomes. For this reason, administration can, in Slovenia as, e.g., in France, “enforce their decisions without control”.<sup>25</sup>

### **State instruments of the human resources control**

During the field work, we collected interviews and documentation of 39 erased people. Most of them either thought that they were Slovene citizens and for this reason did not apply for citizenship; or they were not able to collect all the required documents (like the birth certificate) due to the outbreak of war in many zones of Yugoslavia. One third of them consciously decided to continue their living in Slovenia as alien permanent residents and were convinced that, although they would lose political and some civil rights, they would retain their social rights. Their disillusion confirms the unequal nature of Marshall's

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<sup>23</sup> Kristīne Krūma, “Checks and balances in Latvian nationality policy: National agendas and international frameworks”, *Citizenship Policies in the New Europe*, op. cit., pp. 63-88.

<sup>24</sup> Rogers Brubaker, *Citizenship and Nationhood in France and Germany*, 1992, Harvard University Press, pp. 81-82; Patrick Weil, *La France et ses étrangers*, Paris, Gallimard, 2004. An interesting case, relevant to our discussion is described by Marie-Thérèse Têtu-Delage, *Clandestins au pays des papiers. Expériences et parcours des sans-papiers algériens*, Paris, La Découverte/Ciemi, 2009.

<sup>25</sup> Emmanuel Terray, “Saint-Bernard, un bilan: dix ans après ...”, *Migrations Société*, vol. 18, no. 104, 2006, pp. 91-102.



civil and political rights, on one side, and social rights, on the other.<sup>26</sup> The first two can be available in standardised and formalised protocols, so they can, to some extent, provide the same *liberties* to everyone.<sup>27</sup> Social rights are, to the contrary, designed from case to case by improvised practices, so they are precarious and vulnerable by nature.<sup>28</sup>

The first most important redesign of social rights concerning citizens of other post-Yugoslav republics took place already in 1992 and concerned their rights with respect to the labour market.<sup>29</sup> Only those who worked in Slovenia for more than ten years on the basis of permanent working contract, were eligible to apply for permanent employment permit within the period of three months, the rest were able to receive employment permit for one year only. To some of our interviewees who worked less than ten years in Slovenia, employers changed their permanent working contract into a working contract for one year; when the one year period expired, these workers were fired. For a short period they received unemployment support, afterwards they remained without any revenue and without real possibilities to find a new job on the basis of which they could apply for at least temporary residence permit in Slovenia. As illegal residents or temporary workers they could neither ask for any kind of social assistance.

This labour regulation completed the effect of erasure and raised the most important barrier against re-establishing tolerable life conditions in Slovenia after the erasure. From the viewpoint of the “national interest” this measure defended the general security of the citizens at the expense of increasing social risks for non-citizens.<sup>30</sup> The erased people were the first who got unemployed in the period of great economical instability when the rate of unemployment broke through any at that time imaginable limit as we can see on the graph below.

Graph 1: The rate of unemployment in Slovenia in the period 1985 – 2005 (data from the Office for Statistics RS)

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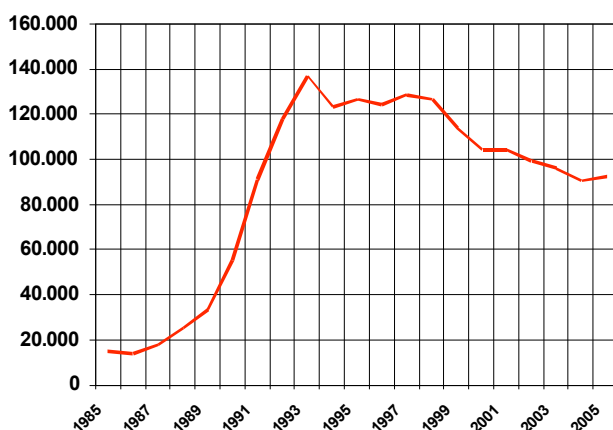
<sup>26</sup> Thomas H. Marshall, *Citizenship and Social Class*, London, Pluto Press, 1992 [1950].

<sup>27</sup> But they do not provide also the *equality*, as for example the freedom to trade and freedom to free press, if we mention only the most controversial.

<sup>28</sup> Danilo Zolo, La strategia della cittadinanza, in: Danilo Zolo (ed.), *La Cittadinanza*, Rome, Laterza, 1994, pp. 29-35.

<sup>29</sup> Employment and Work of Aliens Act, Article 23, *Official Gazette RS*, No. 33.

<sup>30</sup> By the so called *civic exclusion* after David Lockwood (“Civic integration and class formation”, *British Journal of Sociology*, 47, (3), September 1996, p. 537).



Labour regulation brought, at that time, some relief from heavy financial burden to employers and to the state: employers did not need to pay compensation for the dismissal to workers whose labour contracts expired by law, and the state had no obligation to lend social assistance to these persons. According to the statistics of the Ministry of the Interior, the erased were mostly unskilled industrial workers and in a large part unemployed: therefore, cancellation of their social rights considerably alleviated financial burden of the state in the time of rapid deindustrialization.<sup>31</sup> Moreover, we may estimate, according to the Employment Agency data showing the difference between the employment permits issued in 1992 and 1993, that some 5.000 persons lost their jobs because of these provisions.

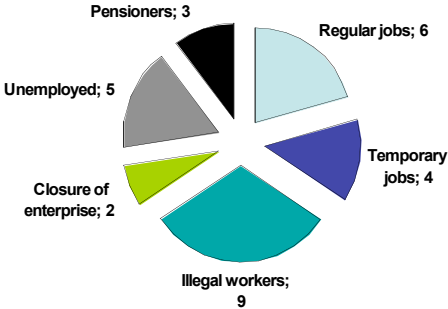
Among 29 adult interviewees (24 were employed and 5 were unemployed) only 6 persons kept, or were able to find, a regular job after the erasure. Four managed to find temporary jobs, while the rest was forced to look for a job on the black labour market, including pensioners as their revenues were too small to meet their basic needs. Our interviewees needed approximately ten years to find a regular job or gain a sufficient pension, most of them not before they succeeded to obtain Slovene citizenship. Meantime they had to keep away from public places under the threat of deportation<sup>32</sup> and had to search illegal jobs to get at least some income. They were exposed to over-exploitation and, in some cases, even to servitude; since they were cut off from all social ties and could rely on very confident friends only, they could not search any social protection from anybody besides some exceptional supporters, like the tough fighter for

<sup>31</sup> Alenka Mesojedec Pervinšek, *op. cit.*, pp. 32–34.

<sup>32</sup> Three interviewees were expelled from Slovenia; two avoided the deportation because they have acquaintances at the police; two were taken to the court, but the judge only fined them; many were refused at the border when they tried to return to Slovenia.

their rights, the lawyer Matevž Krivic. Some of them still continue to work illegally and many who are unable to work live in poverty.

Graph 2: Employment status of the interviewed erased persons according to their own definition



On the black labour market, the erased people could only find low paid heavy jobs with extended working hours in construction, sawmills, and agriculture. One of the “unemployed” in the graph is a man who moved to the hills where he found a job in a sawmill. He lived in an abandoned cottage nearby, paid rent by working on the owner’s farm and collected wood in the forest for heating. Altogether he lived there fifteen years. When he needed medical assistance, especially after having a number of accidents at work, he had to pay the treatment himself. After a time the sawmill was closed down and the farmer ceased to cultivate the land, so he lost his only revenue and the farmer threw him out of the cottage where he was staying. After that, he depended on neighbours who were giving him food for occasional work. After fifteen years, a friendly couple helped him to find a little room for which they still often pay rent, and the Association of the Erased Residents of Slovenia helped him to regain the status of permanent resident as well as a minimum social support. Today he needs constant medical care and lives in great poverty.<sup>33</sup>

A couple from Bosnia whose documents the administration annulled, was unable to find a regular job, couldn’t enrol their two children in primary school and, as presumably illegal residents, could not assert their tenants’ rights, so they decided to move to Bosnia at a time when the war was still ravaging there. Family members reported themselves to

<sup>33</sup> Interview no. 13, 27 March 2010.

Bosnian authorities as refugees from Slovenia. Their unfinished house in Bosnia was destroyed during military operations, so they had to search refuge in various parts of Bosnia and acquired food by collecting what remained in the fields after the harvest. The couple now lives in Slovenia where their legal status has not been recognised yet after almost twenty years; they have financial difficulties since they can obtain only badly paid temporary jobs.<sup>34</sup>

More commonly, the erased persons, unskilled workers and highly educated people alike, were doing hard work in construction. A well educated man worked at construction site as illegal worker under constant threat of inspections and eventual deportation. He succeeded to gain a first temporary employment permit for three months by deception with the kind assistance of his boss after two years of illegality.<sup>35</sup> Another man worked one season 300 hours per month without payment for extra hours.<sup>36</sup> Yet another regularly worked twelve years at construction sites, including works for police officers, in a small provincial town. Good recommendation from the part of police station, he presumes, once spared him from eventual deportation. He has permanent health problems and depends on a minimum social support, while his wife and son are unemployed.<sup>37</sup>

An interviewee agreed to work night shifts twelve hours long for a staffing agency, because they promised to obtain a permanent residence permit for him and his family. Deceived he left the low paid job after having a car accident while returning home from the night shift, and luckily found another job at a joinery where he still works.<sup>38</sup>

### **Reshaping the citizenry**

During its modern history, the territory of Slovenia has often been a region of emigration. Important emigration waves were due to the agrarian crisis in the late 19<sup>th</sup> century and the economic crisis between the two World Wars; emigration immediately after the 2<sup>nd</sup> World War was political. From the 1960s on, Slovenia was both a country of emigration towards Western and Northern Europe, and a country of immigration of mostly unskilled industrial workers from other republics of SFRY.<sup>39</sup> The new citizenship

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<sup>34</sup> Interview no. 19, 19 June 2010.

<sup>35</sup> Interview no. 2, 19 January 2010.

<sup>36</sup> Interview no. 19, 19 June 2010.

<sup>37</sup> Interview no. 25, 20 November 2010.

<sup>38</sup> Interview no. 11, 8 March 2010.

<sup>39</sup> Miran Komac and Mojca Medvešek (eds.), *Percepcija slovenske integracijske politike* (Perception of Slovene integration policy), raziskovalno poročilo, Ljubljana, Inštitut za narodnostno vprašanje, 2005, [http://www.inv.si/DocDir/Publikacije-PDF/2005/Percepcije\\_2005\\_2ponatis.pdf](http://www.inv.si/DocDir/Publikacije-PDF/2005/Percepcije_2005_2ponatis.pdf).

regulation in the 1990s was an opportunity to reshape these trends using legal and administrative instruments. We have just seen how they worked with respect to the erased persons. This particular policy against immigrant population from ex-Yugoslavia has its counterpart in the new citizenship policy towards Slovene emigration and their descendants. Andre Leibich analysed the new citizenship policies in the post-socialist countries and draw a general conclusion which is pertinent for Slovenia as well: »Interestingly, what might be considered the more enlightened variant of citizenship, civic citizenship (or, at least, a prototype of civic citizenship), as well as the more progressive principle of membership, *ius soli*, belong to these countries' past rather to their present«.<sup>40</sup>

The first citizenship law in independent Slovenia offered an exceptional naturalisation to the citizens of other Yugoslav republics with permanent residence in Slovenia as well as to Slovene political emigrants and their descendants, “members of military formations who served occupational forces” during the 2<sup>nd</sup> World War and left the country after the war, with the intention to compensate for a “historical injustice”.<sup>41</sup> Moreover, Slovene emigrants and their descendants could apply for facilitated naturalisation: while citizens of other Yugoslav republics had to prove ten years of continuous regulated living in Slovenia to fulfil the requirements for regular naturalisation, Slovene emigrants up to the third generation could apply for citizenship after one year.<sup>42</sup> This facilitated condition was extended to the fourth generation in 2006.<sup>43</sup> According to a rough estimate, in 2005 some 60.000 Slovene citizens were living abroad<sup>44</sup>; among them, 17.635 had “usual residence” in Slovenia according to the census of population in 2002.<sup>45</sup> The rest can exercise political rights without having any ties whatsoever with the country. Ethnic affinity is also a dominant ground of national interest for exceptional naturalisation without any conditions to be fulfilled from the part of the applicant. Since 2006 positive discrimination was

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<sup>40</sup> Andre Leibich, “Introduction: *Altneuländer* or the vicissitudes of citizenship in the new EU states”, in : Rainer Bauböck, Bernhard Perchining, Wiebke Siever (eds.), *Citizenship Policies in the New Europe*, Amsterdam, Amsterdam University Press, 2007, p. 21.

<sup>41</sup> The decree of Constitutional Court U-I-69/92-30, *Official Gazette RS*, No. 61/1992, 24 December 1992.

<sup>42</sup> Article 12, Citizenship of the Republic of Slovenia Act, *Official Gazette RS*, No. 1/1991.

<sup>43</sup> A person who was born abroad and whose one parent has or had Slovene citizenship can assert his citizenship right on the basis of declaration up to the age of 36 years at Slovene embassy without the obligation to settle in Slovenia. Article 6, *Official Gazette RS*, No. 127/2006.

<sup>44</sup> Felicita Medved, “Slovenia: From Civic to Ethnic Community”, in: Rainer Bauböck, Bernhard Perchining, Wiebke Siever (eds.), *Citizenship Policies in the New Europe*, Amsterdam, Amsterdam University Press, 2007, p. 226.

<sup>45</sup> *Statistične informacije. Popis 2002* (Rapid Reports. Census of Population 2002), Ljubljana, SURS, No. 92, 16 April 2003, <http://www.stat.si/popis2002/gradivo/si-92.pdf>.

extended to “Slovenes without Slovene citizenship” who can have a range of advantages from special scholarships to privileges on the labour market.

However, the effects of citizenship regulation were disappointing for policy makers: on one hand, they expected that only 80.000 citizens of other republics would apply for exceptional naturalisation offered in 1991, while the number of applicants was much higher and finally 171.127 persons obtained Slovene citizenship due to the immediate post-independence provision.<sup>46</sup> On the other hand, policy makers expected that a much higher number of Slovene emigrants would decide to live in Slovenia after its independence; however, it is estimated that only 5.000 Slovene citizens living abroad finally moved to Slovenia.<sup>47</sup> Nevertheless, we don't know how many Slovene emigrants abroad obtained Slovene citizenship due to other regulations mentioned above. In order to have a more exact number, we would need to add up those to whom the citizenship was recognised during the process of “denationalisation”, the restitution of confiscated property (as part of the agrarian reform, nationalisation etc.) after the 2<sup>nd</sup> World War.<sup>48</sup> Only persons who had the citizenship status at the time of nationalisation are rightful claimants for denationalisation. To some claimants, like those to whom the citizenship was taken away in Yugoslavia, because they were, for example, members of military formations serving occupational forces during the 2<sup>nd</sup> World War, the citizenship was restored by law. Only to those claimants, who were German nationals, lived abroad on 28<sup>th</sup> August 1945 and were members of *Kulturbund* or *Heimatbund*, their citizenship status was not restored; but even in these cases spouse or children could assert their rights as rightful claimants if any of them fulfilled requirements. Quite interestingly, citizens of other republics of ex-Yugoslavia are not rightful claimants until the reciprocity among the two states is established – the condition unfulfilled until now.

### **Civic exclusion and inclusion as the basis of new property relations**

An important effect of the new citizenship regulation was the creation of principles on the basis of which reallocation of property rights took place. Nationalistic ideology had an important role in the restoration of capitalism; it comprised an “anti-colonial” turn that

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<sup>46</sup> Alenka Mesojedec Pervinšek, *op. cit.*, p. 32-34.

<sup>47</sup> Jure Mlekuž, »Odnos Republike Slovenije do vračanja izseljencev in njihovih potomcev« (Relation of the Republic of Slovenia towards Slovene emigrants and their descendants). in: Miran Komac and Mojca Medvešek (eds.), *Percepcija slovenske integracijske politike* (Perception of Slovene integration policy), *op. cit.*, pp. 694-5.

<sup>48</sup> Denationalization Act, *Official Gazette RS*, No. 27/1991, No. 31/1993, No. 74/1995, No. 49/1997, No. 87/1997, No. 56/1998, No. 66/2000.

excluded presumed “occupiers” from the reallocation of wealth and, in certain cases, from the new body of citizens. Within this ideology socialist past (with its internationalism) is presented as a discontinuity in the historic flow of national liberation struggle, and as a generator of “historical injustices”. National ideology thus establishes a positive connection between national liberation fight and capitalism, and attributes a positive role to Slovene collaborationism during the 2<sup>nd</sup> World War.

The first government of independent Slovenia nationalised socialist common property (“social property”) and progressively transferred it into the private property regime. As compensation, the state distributed to all the citizens “certificates”, a kind of general stocks that citizens could invest into business companies or investment funds. This measure, as it turned out soon, was nothing but a beginning of “casino capitalism” in which many lost almost the whole value of their stocks and a few accumulated a considerable capital. As non-citizens, the erased persons were excluded from this reallocation of wealth. They were also excluded from the privatization of apartments by which holders of tenants’ rights could become proprietors of apartments in common property for an almost symbolic sum.<sup>49</sup> Under this provision 160.405 apartments have been privatised and the state received 1,126 billion euro.<sup>50</sup> At the same time, the erased persons suffered heavy losses. Only 4 persons among 39 interviewees owned an apartment before the erasure or managed to acquire it afterwards without difficulties. Nine persons bought the apartments for which, before the erasure, they had tenants’ rights, after long and costly litigations which lasted between 4 and 11 years. Others lost their apartments or remained subtenants;<sup>51</sup> growing rents make their subsistence even more difficult. The following example indicates the general distrust and fear of official institutions the erased persons and their families have been living in. The wife of an erased person told us that a kind lady working for the housing administration once called her and invited her to sign, as she said on the phone, an insignificant annex to the lease contract. The lady asked our interviewee to come to her office on this matter the same

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<sup>49</sup> Article 117, Housing Act, *Official Gazette RS*, No. 18/1991.

<sup>50</sup> Data from the Housing Fund of the Republic of Slovenia, <http://www.stanovanjskisklad-rs.si/si/588/aktualno/odgovori-na-vpra%C5%A1anja.html?o=c096928b757f8684cce89696d0d2b9a5b690a3ab98bec6a58890e06b798754556a6684ab64559c9f6b7878466379> (6.5.2011).

<sup>51</sup> Seven persons lost their apartments because they were deported, 12 persons are still subtenants, 4 are living with their parents or relatives and 1 person lost a house after divorce as a consequence of erasure.

day. The wife nevertheless first went to the lawyer who discovered that her family would lose tenants' right if she had signed this annex.<sup>52</sup>

The erased persons were often forced to spend family savings for visas, charges of administration, lawyers and litigations to regain the legal status, the pension, the tenant's right and so forth. Before regaining their legal status, they were deprived of social rights (like social support, supplement for children, scholarships, and many others) and of health security. Since for a certain period, they did not have medical assistance some are now in poor health. Younger interviewees often expressed fear of old age because of the minimal pensions they are going to receive due to inability to find regular jobs during the erasure and to pay contributions for pension funds. All these consequences of the erasure were, on purpose or not, a way to alienate the wealth from the erased persons.

Reallocation in another direction was accomplished by Denationalization Act, the restitution of property confiscated after the 2<sup>nd</sup> World War. Citizens and Slovene emigrants alike, but not citizens of other republics, could become rightful claimants under conditions described above. We have no data about how many claimants belong to one or the other group, but we can say with a considerable certainty that Slovene emigrants significantly participated to the redistribution of wealth. A particular case is the Catholic Church, an extra-territorial sovereignty, that was restored the biggest share of denationalised property. The last accessible report on the implementation of Denationalisation Act dates from the year 2001 when applications representing 60 percent of the value of all reclaimed nationalised property (estimated at 1,179 billion euro), were already processed (one fifth was rejected).<sup>53</sup> If the process of denationalisation goes on in the same proportions, the whole value of denationalised property would be approximately 2 billion euro (including a fifth of cultivable land, thirteen percent of forests, about 8.000 apartments, offices, companies and factories in the value of 250 million euro, building sites and other real estate). However, official figures may well underestimate the real value. The value of a square metre of an apartment was estimated at 677 DEM (German marks), while in 2001 the real price was two or three times higher, so the real value of denationalised property may reach a much higher value, 4 or even 6 billion euro. The state agency Slovenian Compensation Company pays reimbursement

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<sup>52</sup> Interview no. 2, 19 January 2010.

<sup>53</sup> Ministry of Justice, *16. poročilo o uresničevanju zakona o denacionalizaciji za obdobje od 30.06.2000 do 30.6.2001 (16<sup>th</sup> report on the implementation of Denationalisation Act in the period 30.6.2000-30.6.2001)*, Ljubljana, July 2001; [http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/porocila/poroc\\_zden\\_16.pdf](http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/porocila/poroc_zden_16.pdf).



for properties that could not be given back “in kind” in state stocks (978 million euro altogether) for which the agency regularly pays principals and interest.<sup>54</sup> Since the agency has not yet paid out all claims, we do not know the final costs of denationalisation. However, denationalisation results in the reallocation of financial sources from tax payers to claimants. It creates a public debt and exerts financial pressure upon the country and its people.<sup>55</sup>

### **De-territorialised national citizenship**

Two tendencies seem to prevail in the post-independence processes in citizenship regulation: the first one is a restrictive treatment of the persons living on the state’s territory. These restrictions certainly hit some 55.000 citizens of other republics (the erased and temporary workers alike) to whom the legal foundation of their living in Slovenia was abolished. Only some 12.000 erased people were able to win the battle with the state administration, regain their legal status or obtain Slovene citizenship and continue their living in Slovenia; others were most probably forced to leave the country. These people were mostly qualified and unqualified industrial workers who became redundant in the economic crisis of 1990s.

The second tendency in citizenship regulation is the extension of citizenship rights, social rights and property rights to a population outside the territory of Slovenia, predominantly on the ground of “national belonging” and, in a much smaller scale, on the ground of economic or cultural national interest. It is not possible statistically to reconstruct the exact number of this population. Whatever the exact number is, substantial wealth along with the access to social rights was transferred to this group by the means of citizenship regulation. Civic de-qualification of the citizens of other republics and positive discrimination of the persons of “Slovene origin” was an important step towards the establishment of the new property relations and the restoration of capitalism.

One could call this type of citizenship regulation “*de-territorialised national citizenship*” in two senses: firstly, it deprives of the citizenship rights certain groups of people living on the state’s territory (it actually uproots them and then establishes a hierarchy of “uprootedness”); secondly, it extends citizenship rights to people living outside the state’s territory. Or if we look at national citizenship regulation from the outside, from the

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<sup>54</sup> Slovenian Compensation Company, *Letno poročilo za leto 2010* (Yearly Report 2010), <http://www.sodruzba.si/files/1304074525letnoporocilo2010.pdf>, str. 26-27.

<sup>55</sup> Michel Husson, *Un pur capitalisme*, Lausanne, Éditions Page Deux, 2008.

viewpoint of the aliens in a certain country: people bring their citizenship like a family name to the territory of a particular state. The difference between a Croatian and a Bosnian temporary worker in Slovenia, for instance, originates in their citizenship status: Croatian worker receives compensation for unemployment in Slovenia, Bosnian worker in Bosnia. If Bosnian worker loses a job, he has to return to Bosnia where he gets compensation for unemployment. Such kind of provision has proved to serve Slovene employers as an opportune back-up to their abuse of migrant workers.<sup>56</sup>

Rainer Bauböck gives us a similar observation about the development of citizenship policies that results in the “inevitable emergence of multiple citizenship and of statelessness” at the same time.<sup>57</sup> These two principles weaken the political community and social solidarity among people. Although people live under the same national jurisdiction, different rules apply to various groups. In the 1990s Patrick Weil’s comparison of 25 countries (some EU member states and other countries like USA, Australia, South Africa, Mexico ...) revealed that all the 25 analysed countries use the principle of *ius sanguinis* and only a half of them also the principle of *ius soli*.<sup>58</sup> Marc Morjé Howard proposes a useful comparative tool he calls Citizenship Policy Index (CPI) and concludes that the citizenship policy has recently been liberalised in 15 EU member states.<sup>59</sup> However, if we compare his three indicators one by one, we can see that only the indicator “dual citizenship” has significantly advanced, while the indicator “naturalisation” has even receded.

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<sup>56</sup> In these discriminatory conditions migrant workers try to balance an unequal world distribution of wealth; their labour itself has become an important factor in international exchange of goods. In 1970 migrant workers sent 0,1 billion dollars to their families in underdeveloped countries, while this sum increased to 80 billion dollars in 2002 and was two times higher than the complete aid of the developed world to the underdeveloped countries. Migrant work therefore became a necessity on a world scale as a counterweight to certain type of globalisation. Eric Toussaint, *La finance contre les peuples. La bourse ou la vie*, Paris, Syllepse, 2004, p. 237.

<sup>57</sup> Reiner Bauböck, “Citizenship and National Identities in the European Union”, in: Eugen Antalovsky and Josef Melchior (eds.), *Integration durch Demokratie: neue Impulse für die Europäische Union*, Marburg: Metropolis, 1997. See also <http://centers.law.nyu.edu/jeanmonnet/papers/97/97-04-.html> (2.1.2011), p. 10.

<sup>58</sup> Patrick Weil, »Access to citizenship: A comparison to twenty five nationality laws«, in: Alexander T. Aleinikoff, Douglas Klusmeyer (eds.), *Citizenship Today: Global Perspectives and Practices*, Washington, Carnegie Endowment for International Peace, 2001, pp. 17-35.

<sup>59</sup> Marc Morjé Howard, *The Politics of Citizenship in Europe*, Cambridge, Cambridge University Press, 2009.

Table 1: Marc Morjé Howard's Citizenship Policy Index (recalculations by the authors)

	ius soli	naturalisation	dual citizenship
1980	9,5	14,36	8,75
2000	14,75	12,55	19,25
diference	+ 5,25	– 1,81	+ 10,5

Recalculation of Howard's data indicates that we must be cautious with respect to the argument about the democratisation of European citizenship policies and that Bauböck's thesis may still be worth to be taken into consideration.

### **New role of the state in a globalised society**

The case of the erased is indicative of the new role of the state in globalised society. It shows how the role of the state, public administration and political elite has been changed.<sup>60</sup> State apparatuses have ceased to administrate the well-being of the people inhabiting a country's territory. Now, their primary concern relates to the increase of "competitiveness" of the country under their jurisdiction: as a consequence, they treat people as "human resources". They reduce and extend people's rights in order to achieve the goal of "competitiveness", while the instruments how to achieve it are designed within the frame of negotiations between local dominant classes and international organisations. If public administration is determined enough, as it was in the case of the erased, it is capable to use illegitimate measures (easily at hand as administration "interprets" the law by function) and abuse its instruments of governmentality (like internal correspondence hidden from the public). After almost twenty years of erasure, responsible persons have not been brought to account for their acts and they still have the power to obstruct the attempts for the restitution of their victims' rights as well as for the compensation of the damage. For this reason, the erasure still presents a threat to all people who can be at any occasion the target of similar treatment. A proper compensation for injustices inflicted by erasure could not be achieved without a profound reform of public administration and the reaffirmation of the political collective, whatever its borders are.

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<sup>60</sup> Rastko Močnik, *Svetovno gospodarstvo in revolucionarna politika* (World economy and revolutionary politics), Ljubljana, Založba \*cf., p. 54 and the following pages.