



LEGAL CENTER FOR THE PROTECTION
OF HUMAN RIGHTS AND THE ENVIRONMENT



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PIC – Legal Center for the Protection of Human Rights and the Peace Institute

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Introduction

PIC and the Peace Institute joint submission focusses on various issues relating to the ‘erased’, refugees and stateless persons.

PIC – Legal Center for the Protection of Human Rights and the Environment¹ is a Slovenian non-profit NGO based in Ljubljana focusing on asylum and migration, environment, rule of law and the protection of vulnerable groups. The mission of PIC is to help individuals and vulnerable groups in the protection of their fundamental rights through legal assistance, advocacy and legal analysis. In the field of asylum and migration PIC provides free legal help and representation.

The Peace Institute² - Institute for Contemporary Social and Political Studies – is a private, independent, non-profit research institution founded in 1991 by individuals who believed in peaceful conflict resolution, equality and respect for human rights standards. The Institute uses scientific research and advocacy activities aimed at creating and preserving an open society capable of critical thought and based on the principles of equality, responsibility, solidarity, human rights and the rule of law.

Access to territory

¹ More information on PIC: <https://pic.si/>.

² For more information about The Peace Institute, see: <http://www.mirovni-institut.si/en/>.

Regarding paragraph 7 (e) of the List of issues prior to submission of the fourth periodic report of Slovenia, adopted by the Committee at its fiftieth session (6–31 May 2013), the co-submitting organizations wish to present additional information on refoulement and expulsion.

In early 2017, Slovenia adopted Art. 10a and 10b of the Foreigners Act which allowed the National Assembly to vote on suspending the right to asylum in case migration posed “a threat to public order and internal safety of the Republic of Slovenia”. If the articles would be activated, the Police could reject all intentions to apply for international protection as inadmissible as long as the persons, wishing to apply, entered Slovenia from a neighbouring Member State in which there were no systemic deficiencies regarding the asylum procedure or reception conditions which could lead to torture, inhuman or degrading treatment. The Police could then deport the person back to this neighboring country. An appeal against the police order would not have a suspensive effect. The adopted amendments were reviewed by the Constitutional Court³ which ruled that Art. 10b was in violation of the prohibition of torture enshrined in Art. 18. of the Constitution of the Republic of Slovenia. Nonetheless, similar provisions were adopted in 2019 allowing the National Assembly to close the border for 6 months in case of a ‘complex migration crisis’.⁴

In May 2018, media reported allegations of illegal police practices during return procedures, of individuals who expressed the intention to apply for international protection, from Slovenia to Croatia, and their subsequent return to Bosnia and Herzegovina. At the time of the reports of such practices, the co-submitting organizations observed a sharp decline in the number of newly lodged asylum applications. The change of practice in the processing of individuals in return procedures was also indicated by the statistical data obtained by the authorities. In June 2018, 885 illegal border crossings were recorded,⁵ while 652 persons were forcibly returned. According to official statistics, 267 asylum applications were lodged in June.⁶ However it has to be noted that on the 1 of June 2018, 92 persons who had arrived in May were waiting to lodge their asylum application in the reception center. Therefore, access to the asylum procedure in June was allowed to 175 individuals. Statistical data showed a four- to fivefold increase in the number of forced returns in June compared to May, when 1,158 illegal crossings were recorded,⁷ and 148 individuals were forcibly returned. There were 365 asylum applications lodged in May. In June 2018, PIC conducted a

³ Constitutional Court decision, U - I 59/17 from 18. 9. 2019, available at: <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-59-17-z-dne-18-9-2019/>.

⁴ Article 10a and 10b Foreigners Act.

⁵ Police, Irregular migration statistics, June 2018, available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Januar-junij_2018.pdf.

⁶ Ministry of the Interior, Statistics, available at: <https://www.gov.si/podrocja/drzava-in-druzba/priseljevanje-v-slovenijo/>.

⁷ Police, Irregular migration statistics, January-June 2018, available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Januar-junij_2018.pdf.

field visit to Velika Kladuša and Bihać in Bosnia and Herzegovina with the aim of verifying the reports of illegal police practices during return procedures of individuals who expressed the intention for international protection, and published a report of the field visit.⁸ On the basis of the interviews conducted with returned people, a thorough examination of the documentation presented to us by the interviewees and on the basis of statistical and other data we received from the police and international and non-governmental organizations, we believe that during the informal return procedures based on the bilateral agreement between Slovenia and Croatia, Slovenia has restricted effective access to the asylum procedure to foreigners that entered Slovenia and hindered their right to asylum:

- Foreigners have not been adequately informed of their rights, obligations and the course of the procedure: they received misleading information from the police, to the effect that they would be processed in the asylum procedure, and were later returned to Croatia without any option to apply for international protection.
- Persons were also issued a fine for illegal entry onto the state's territory.
- Despite the provisions of the Foreigners Act that expressly state that unaccompanied children can only be returned in a formal procedure and therefore exclude the return of foreign children on the basis of the bilateral agreement,⁹ children were returned to Croatia following an informal procedure based on the bilateral agreement. Such returns were illegal and special procedural guarantees for unaccompanied children in the procedure were not respected. Social services were not informed about the return procedure and children were handed over to the Croatian national authorities without any guarantees being given regarding appropriate care in line with the obligations provided in the Foreigners Act.¹⁰

The practice continued throughout 2018. During the year the police recorded 9,149 irregular entries. 4,784 persons were returned in informal procedures to neighboring countries based on the readmission agreements out of which 4,653 were returned to Croatia.¹¹ During the year only 2,875 applications for international protection were lodged.¹²

An independent investigation into the alleged unlawful police actions in readmission procedures concerning foreigners who illegally crossed the Slovenian border was also conducted by the Slovenian Ombudsman. In August 2018, the Ombudsman issued an interim report, highlighting the lack of thorough assessment of personal circumstances of

⁸ PIC, Report on findings and observations on the implementation of return procedures in accordance with the principle of non-refoulement, July 2018 available at: <https://www.sloga-platform.org/wp-content/uploads/2018/07/Poroc%CC%8Cilo-o-izvajanju-postopkov-frac%CC%8Canja-PIC.pdf>.

⁹ Article 82 Foreigners Act.

¹⁰ PIC, Report on findings and observations on the implementation of return procedures in accordance with the principle of non-refoulement, July 2018 available at: <https://www.sloga-platform.org/wp-content/uploads/2018/07/Poroc%CC%8Cilo-o-izvajanju-postopkov-frac%CC%8Canja-PIC.pdf>.

¹¹ Police, Irregular migration statistics, January-December 2018, available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IllegalneMigracije/2018/Januar-december_2018.pdf.

¹² Ministry of the Interior, Statistics, available at: <https://www.gov.si/podrocja/drzava-in-druzba/priseljevanje-v-slovenijo/>.

each individual during the procedure that could remove all doubt as to whether the person detained by the police had the intention to apply for international protection or had expressed the intention for international protection but was possibly not heard.¹³

In addition, from 2015 onwards Slovenia started to put a barb wire at the border with Croatia. In 2022 the government made a commitment to remove the whole border fence including the barbed wire; however the works stopped shortly after the beginning.

Erased people

Regarding paragraph 9 (a) of the List of issues prior to submission of the fourth periodic report of Slovenia, adopted by the Committee at its fiftieth session (6–31 May 2013), the co-submitting organizations wish to present additional information on the measures for restoring the permanent resident status of the erased persons who were returned to other States in Former Socialist Federal Republic of Yugoslavia.

Slovenia's Erased People are the 25,671 individuals who were on 26 February 1992 removed or erased from Slovenia's registry of permanent residents. This illegal measure was carried out due to the legal vacuum created by the legislation adopted after Slovenia declared independence from former SFRY in 1991. Citizens of the former Socialist Republic of Slovenia automatically became citizens of the new country, the Republic of Slovenia. According to the Citizenship of the Republic of Slovenia Act, all citizens of other republics of the former SFRY with permanent addresses in the Socialist Republic of Slovenia had the right to apply for Slovenian citizenship within six months of the date of independence. Those who failed to apply, whose application was refused, or where the procedure was terminated, lost their permanent residence status. This erasure of permanent residents did not have any basis in law. It was an arbitrary measure, carried out by local authorities in accordance with instructions from the Ministry of the Interior. With the loss of status, they also lost all economic and social rights tied to permanent resident status, and their right to remain in Slovenia.¹⁴

The 2010 amended Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was to implement the 2003 Constitutional Court decision¹⁵ and, among other, restore the permanent resident status of the erased persons who were forced to leave the Republic of Slovenia.

¹³ Ombudsman, Vmesno (s)poročilo o aktivnostih in ugotovitvah Varuha o očitkih policistom, da zavračajo možnosti podajanja prošelj za mednarodno zaščito, 22 August 2018, available at: <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-v-dobrem-mesecu-obravnaval-vec-kot-300-zadev-povezanih-s-covid-19/>.

¹⁴ For more information, see: <http://www.mirovni-institut.si/izbrisani/en/>.

¹⁵ Constitutional Court decision No. [U-I-246/02-28](#) of 3 April 2003.

However, there were several serious issues with the 2010 amendment, which prevented large numbers of erased people who still do not have regulated legal status in Slovenia from obtaining a permanent residence permit. The main issue was that the 2010 amendment (as well as the Act as was first adopted in 1999) required that the erased who wished to obtain the permanent residence permit continuously lived in Slovenia from the erasure onwards. This condition posed a significant barrier for all those erased who have been deported or left Slovenia but could not return. Although the 2010 amendment prescribed a list of exceptions to the requirement of continuous actual life in Slovenia, it also required that in the case of such justified absence from the country, an erased person has to prove that he or she tried to return to Slovenia if the absence lasted longer than five years. However, such proof of attempts to return only justified additional five years of absence (ten years of absence altogether). At the time of the adoption of the 2010 amendment, almost 20 years had passed since the erasure and the majority of the beneficiaries were forced to leave Slovenia in the first years after the erasure, therefore for them, the 2010 amendment was ineffective. Furthermore, in practice it was impossible to prove that a person tried to return. In many cases, they were inquiring about their options in Slovenian consulates abroad, of which they had no proof.

Additional issue was the deadline for the submission of the applications for permanent residence: applications could be submitted within three years from the enactment of the Act, or until a child reached the age of 21, whichever period was longer. The three-year deadline expired on July 24, 2013. As almost 20 years have passed since the erasure, the three-year period was too short for the beneficiaries who mostly resided abroad. Slovenia has not made any effort to inform beneficiaries and only CSOs and a few interested media outlets strived to spread the information.

At the time of the adoption of the 2010 amendment, more than half of the 25,671 erased individuals remained without regulated status in Slovenia. Due to the described barriers, only 1,770 erased persons applied for status within the legal deadline. Out of those, only 241 erased individuals received permanent residence permits.^[16]

Since 24 July 2013, the erased persons have had no legal remedy for regulating their status. Since then, the CSOs, including the co-submitting organizations, have identified several erased persons who have lived in Slovenia without any legal status since the erasure. They were marginalized, cut off from information, fearful and distrustful of official authorities. Because the deadline had expired, there was no effective legal channel to regulate their permanent residence.

Regarding paragraph 9 (b) of the List of issues prior to submission of the fourth periodic report of Slovenia, adopted by the Committee at its fiftieth session (6–31 May 2013) and

¹⁶ MMC, [Izbrisani: Opravičilo države, mizerne odškodnine, številni še vedno brez urejenega statusa](#), 25 February 2022.

any steps taken to facilitate the full integration of the “erased” persons, the co-submitting organizations wish to point to the shortcomings of the 2014 Act Regulating the Compensation for Damage Sustained as a Result of Erasure from the Register of Permanent Residents. The law was adopted to implement the ECtHR judgment in the case of *Kurić and Others v. Slovenia*.

The law excluded from its beneficiaries all erased persons who have not regulated their status. As explained above, this means that more than half of the 25,671 erased persons were not entitled to compensation or any other measure of redress. Furthermore, under this law, children and other heirs of the erased who had passed away were not entitled to compensation, despite the obvious and detrimental effects that the erasure had on their families.

According to the Act, erased individuals were entitled to receive a lump-sum amount of 50 euros in monetary compensation for each completed month of erasure from the register of permanent residents. This compensation was granted through an administrative procedure. To demonstrate, many erased persons who were entitled to compensation were left without any status for seven years. Such a person would therefore be entitled to compensation in the amount of 4.200,00 euros that would, in accordance with the Act be paid to them in five annual installments. It is unclear based on what criteria such a low compensation was determined, as it did not even reach the value of social welfare benefits, which could be considered as minimum income the erased would be entitled to as permanent residents if Slovenia had not erased them. Only 5.777 erased persons received the lump-sum compensation, which is about half of the beneficiaries – the erased who regulated their permanent residence permit after the erasure.¹⁷

The law directed the individuals who believe that this compensation is insufficient to file a lawsuit, where the rules of contract law apply. In practice, this has proven to be a challenge since, in most cases, it is impossible to prove damage that occurred 20 or 30 years ago. Documents have been lost, witnesses are no longer available, and much has been forgotten. Although the majority of the erased individuals suffered much greater losses than what the lump sum compensation covered, most of them did not dare to pursue lawsuits because they lacked the means for legal representation, and they also lacked the necessary evidence after so many years. Many of those who did file lawsuits not only lost but ended up in debt due to legal costs.

The deadline for submitting the compensation claims was three years from the enactment of the Act, which expired on 18 June 2017.

¹⁷ MMC, [Izbrisani: Opravičilo države, mizerne odškodnine, številni še vedno brez urejenega statusa](#), 25 February 2022.

In addition to the right to financial compensation, the Act prescribed the right to other forms of just satisfaction, such as payment of contributions for compulsory health insurance, inclusion and priority consideration in social assistance programmes, relief in the exercise of rights to public funds, state scholarships, equal treatment to that afforded to Slovenian citizens in resolving housing problems, access to the education system, and participation and priority treatment in integration programmes. However, these rights were not properly integrated in the existing - general mechanisms in the relevant areas of social life and were as a result often ineffective. For example, while the erased were afforded equal treatment compared to Slovenian citizens in resolving housing problems, they were not entitled to priority treatment. Which means that in practice, when they applied for social housing, they were not successful as the social apartments were afforded to the priority groups.

Regarding paragraph 9 (b) of the List of issues prior to submission of the fourth periodic report of Slovenia, adopted by the Committee at its fiftieth session (6–31 May 2013) and any steps taken to guarantee the erased with fair procedures for application for citizenship, the co-submitting organizations wish to highlight that Slovenia never adopted any measures to facilitate the acquisition of Slovenian citizenship by the erased, denying any responsibility towards the erased that remained stateless.¹⁸

Among the above-mentioned erased persons who have been residing in Slovenia without any status since the erasure, the CSOs have identified a few stateless persons, however they do not have any legal pathway to Slovenian citizenship.

The co-submitting organizations wish to emphasize that while Slovenia is a party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention), Slovenia did not accede to the 1961 Convention on the Reduction of Statelessness.

Slovenia does not have a dedicated statelessness determination procedure (SDP). There are other administrative procedures through which statelessness can be identified (for example an application for residence, international protection or naturalisation). However, there is no dedicated stateless protection status and no obligation in law to consider a claim of statelessness, nor clear instructions, guidance or training for officials conducting the assessment. Further, in these other procedures, the burden of proof is on the applicant, the standard of proof is very high and legal aid is only available for judicial review. Research also shows that people claiming to be stateless will face the presumption of having another citizenship or being able to apply for one in another country and the public official will refer them to embassies of other countries rather than considering their statelessness as a

¹⁸ It is important to note that the erasure itself did not cause statelessness. The erasure was a deprivation of permanent residence status in Slovenia and the erased people in most cases had the nationality of another successor state of the former Yugoslavia. Nevertheless, a smaller group within this population was left stateless due to the inconsistent nationality policies within the former Yugoslavia and of the successor states. The erasure significantly then deteriorated the situation of these stateless individuals as they also lost their ties to the country in which they have lived (some of them for decades).

relevant circumstance. Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.¹⁹

There are also significant gaps in existing safeguards that should protect children from statelessness. The safeguard in nationality law to prevent statelessness among children born in Slovenia relies on the status of the parents rather than the child.²⁰ The parents of a stateless child born on the territory must also be stateless (or unknown) for the child to acquire Slovenian nationality.

The shortcomings in Slovenia's protection against statelessness and the lack of will to properly identify stateless persons also affect other vulnerable groups. In practice, individuals in the asylum procedure are rarely registered as stateless. Often statelessness is not recognized and people are attributed a citizenship based on personal circumstances (place of birth, nationality.) Therefore, accurate statistical data regarding stateless persons in Slovenia is not gathered. Similarly foreigners in other procedures are also not recognized as stateless. The gap in the definition identified above, together with the lack of a statelessness determination procedure, prevents stateless persons from being recognised as such in Slovenia, and from the protection and rights this entails, such as the right to a travel document and legal residence.

Recommendations

In line with the observation PIC makes the following recommendations to Slovenia:

1. Remove Art. 10a and 10b from the Foreigners Act.
2. Remove the border fence, especially the barbed wire.
3. The country should enact a law that allows all those who were erased to regularize their status. Such a law should not impose any restrictive conditions and must have an open deadline. The country should also adopt additional measures of fair redress, such as healthcare measures, social welfare measures, and pension measures.
4. Start registering asylum seekers as stateless.
5. Take concrete steps to improve the recording of statelessness.
6. Establish a dedicated statelessness determination procedure.

¹⁹ ENS (2017) Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf

²⁰ Article 9, Citizenship Act: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO13>.