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Revija ***Dve domovini • Two Homelands*** je namenjena objavi znanstvenih in strokovnih člankov, poročil, razmišljanj in knjižnih ocen s področja humanističnih in družboslovnih disciplin, ki obravnavajo različne vidike migracij in z njimi povezane pojave. Revija, ki izhaja od leta 1990, je večdisciplinarna in večjezična. Revija izhaja dvakrat letno. Članki so recenzirani.

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T E M A T S K I   S K L O P

T H E M A T I C   S E C T I O N

KRIMIGRACIJA /  
CRIMMIGRATION



# CRIMMIGRATION IN SLOVENIA

Veronika BAJT<sup>I</sup>, Mojca FRELIH<sup>II</sup>

COBISS 1.01

## ABSTRACT

### Crimmigration in Slovenia

The article discusses "crimmigration" (i.e. the criminalization of migration) in Slovenia. It evaluates elements of crimmigration in the legal framework, institutions and policies. The analysis of the framing of the topic at the normative level of institutions is accompanied by an examination of the implementation of specific procedures in practice. An exploration of policies and expert opinions is combined with an analysis of the effects that crimmigration has on migrants. Corroborated with the migrants' experience with crimmigration measures, the article concludes that migration policy in Slovenia is becoming stricter and progressively headed in the direction of increased criminalization of migration.

KEY WORDS: crimmigration, Slovenia, migration, asylum

## IZVLEČEK

### Krimigracije v Sloveniji

Avtorici v članku obravnavata »krimigracijo« (tj. kriminalizacijo migracij) v Sloveniji. Raziskujeta elemente kriminalizacije migracij v pravnem okviru, institucijah in politikah. Uokvirjanje tematike na normativni ravni institucij analizirata skupaj s pregledom izvajanja konkretnih postopkov v praksi, analizo političnih in strokovnih mnenj pa združujeta z analizo učinkov, ki jih imajo krimigracije na migrant(k)e. Ugotavljata, da izkušnje oseb, ki migrirajo, s krimigracijskimi ukrepi potrjujejo, da migracijska politika v Sloveniji, tudi kot posledica izvajanja smernic EU, postaja strožja in vedno bolj usmerjena v povečevanje kriminalizacije migracij.

KLJUČNE BESEDE: krimigracije, Slovenija, migracije, azil

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## INTRODUCTION

Around the world and especially within the European Union, governments of various stripes have become increasingly quick to deploy criminal justice measures to address the “immigration problem”. Existing practices of migration control “disrupt traditional frames of understanding within criminal law and criminology” (Franko Aas 2016: 21), as many national jurisdictions have adopted increasingly restrictive immigration control systems. State borders are subject to increased militarization, progressive securitization and ever-more high-tech surveillance. The convergence of immigration and criminal law has therefore been identified as the most important contemporary development in immigration law (Stumpf 2006). While immigration policies are increasingly based on exclusion and denial of rights with the purpose of control over migrants, migration law is taking on elements of criminal law, which researchers have termed the criminalization of migration or “cimmigration”.

Both criminal and immigration law are, at their core, systems of inclusion and exclusion. They are similarly designed to determine whether and how to include individuals as members of society or exclude them from it. Both create insiders and outsiders. Both are designed to create distinct categories of people – innocent versus guilty, admitted versus excluded or, as some say, “legal” versus “illegal”. (ibid.: 380)

It may seem that current cimmigration trends are a novelty in migration policy, with a rising number of people, most notably politicians, media personalities and even academics claiming that we are witnessing a global migration crisis. Indeed, in recent years the debate about managing migration has shifted to the top of political agenda, yet immigration control has been an important issue in Britain since the late 1950s and in the rest of Western Europe since the mid-1970s (Castels 2010). While it is possible to observe a series of “migration crises” across the world, speaking of a global crisis is a vocabulary used by immigration sceptics and opponents, who reduce the discourse on the migration phenomenon to terminology such as burden, threat, security, risk, and control. In this way, migrations are increasingly considered solely in terms of “management” of people on the move, who in consequence have become de-personalized as “flows” in need of being at least properly channelled, if not stopped entirely. As a consequence, countries that have developed

generally rights-sensitive standards and procedures for assessing protection claims of asylum seekers within their jurisdictions have simultaneously established barriers that prevent migrants, including asylum seekers, from setting foot on their territories or otherwise triggering protection obligations. Consequently, those who would otherwise have been able to avail themselves of asylum procedures, social support, and decent reception conditions are often relegated to countries of first arrival or

transit that have comparatively less capacity to ensure protection of human rights in accordance with international standards. (Frelick et al. 2016: 190–191)

At the same time, the more nation-states and various supra-national bodies such as the EU attempt to control migration, the more the gap seems to be growing between the aims and actual results of national migration policies. “Undocumented migration, entry of asylum seekers and the formation of new ethnic communities all seem to be driven by forces which governments cannot control” (Castels 2010: 205).

A rise in hate speech against migrants, and in particular Muslims, has been apparent. This is especially the case when taking into consideration the 2015 “refugee crisis” in the EU, although the situation has been deteriorating for people seeking asylum since the 1980s (Peters 2007). Decision-makers justify their actions that exclude a growing number of individuals from society through scapegoating tactics of nationalist and racist prejudice, which instill fear of immigration, even though the research shows hardly any evidence of an immigration-crime nexus. “Migration and asylum seeking are increasingly perceived as phenomena that cause security concerns, and therefore have to be addressed by way of control and punishment” (Kogovšek Šalamon 2017: 251). Using immigration and criminal law as a means of exclusion, an ever-expanding group of outsiders is being denied the basic privileges that are only bestowed upon citizens (Stumpf 2006). Operating in the intersection between criminal and immigration law, migrants are increasingly constructed as “symbolic assailants” (Jiang, Erez 2018) with threatening consequences for their fundamental rights. Detention, expulsion and deterrence have become a predominant policy response to migration (Kogovšek Šalamon 2017: 252), reported to increasingly result in the inability to even claim asylum in the EU. Since the latter has also become a burning issue in Slovenia recently, with pushbacks reported in the Western Balkans that are leading to an increasing number of human rights violations (Regvar 2018), it is necessary to examine this issue more closely.

Studies problematizing asylum and deportation policies (Kogovšek Šalamon 2011; Zorn 2014), integration, social and labour market policies (Pajnik, Bajt 2011), attest to the constriction and discriminatory effects of migration policies in Slovenia. However, there are no analyses that systematically study migration policies in Slovenia from the perspective of crimmigration, let alone employ a critical comparative perspective with the country’s international law commitments. There is a lack of analysis of procedures related to crimmigration, such as border control and deportations. Highlighting the continuity in the way in which the outsiders have been framed as Others and governed throughout the centuries, we focus on Slovenia as a case study.<sup>1</sup> No crimmigration research exists in Slovenia, thus the paper

1 Weber and Bowling (2008), for instance, describe the 18<sup>th</sup> century laws in the UK that restricted the mobility of “masterless men”, paupers and beggars, while history is full of examples of excluding the Other, most notably Jews and Roma.

serves as an initial comprehensive overview of the current situation. Our approach to the criminalization of migration is sociological and focuses on “discursive crimmigration” (Parkin 2013). We are not interested in scholarship that examines the issue of “migrant criminality”, as our concern is with the societal trend of constructing migrants as symbolic assailants, particularly in view of their constructed Otherness. Rather than merely providing an account of existing laws, policies and procedures, we therefore seek to understand the consequences of increased deployment of criminal justice measures to address the “immigration problem” as they manifest in socio-economic exclusion and the denial of migrants’ human rights.

## METHOD AND OUTLINE

The paper draws on interviews conducted with the main actors involved in crimmigration procedures: key stakeholders such as state representatives, non-governmental organizations and migrants.<sup>2</sup> The situations and experiences of migrants are very different; some entered Slovenia legally, some irregularly. In this way, we are able to associate policy measures as envisioned by state actors with their immediate effects both in the form of implementation by public employees in charge of enforcing the law (e.g. the police) and in the form of crimmigration consequences as experienced by the target of its measures – the migrants themselves. We employ desk analysis of policies and the interview analysis method. Empirically, the paper draws on 12 detailed semi-structured interviews conducted between November 2017 and April 2018 with main actors involved in crimmigration procedures (see Tables 1 and 2).

Table 1: Migrants

Pseudonym	Gender	Age	Year of arrival in Slovenia	Country of birth	Status
Samar	female	23	2016	Syria	Refugee
Amine	male	23	2015	Algeria	Asylum seeker
Peter	male	47	2010	Jamaica	Permanent residence
Aisha	female	33	2016	Morocco	Temporary residence
Esek	male	22	2017	Eritrea	Refugee
Zahim	male	29	2014	Afghanistan	Asylum seeker

2 For the purpose of greater clarity we adopt official terminology where needed but use the general term “migrant” to signify the mobility of people as free agents beyond their ascribed status.

Table 2: Stakeholders

	<b>Sector</b>	<b>Date of interview</b>
INT1	Ministry of the Interior	28. 03. 2018
INT2	Ministry of the Interior	16. 04. 2018
INT3	Ministry of the Interior	16. 02. 2018
INT4	Police	21. 02. 2018
INT5	Police	26. 01. 2018
INT6	Civil society	23. 11. 2017

The first section provides an overview of discursive crimmigration, followed by elucidating Slovenia's priorities in terms of migration management and control in the second section. The third section summarizes the main consequences of crimmigration in Slovenia, concluding that the wider EU framework is essential for understanding the current state of affairs, as well as the best predictor of future trends in this regard.

## DISCOURSIVE CRIMMIGRATION

The criminalization of migrants (and ethnic minorities) includes "all the discourses, facts and practices made by the police, judicial authorities, but also local governments, media, and a part of the population that hold immigrants/aliens responsible for a large share of criminal offences" (Palidda 2011: 23). Considering the overrepresentation of non-nationals and ethnic minorities in the criminal justice systems of European member states on the one hand and public perceptions increasingly linking migrants to crime on the other, there is a conspicuous "lack of any concrete empirical evidence substantiating a correlation between immigration figures and crime rates" (Parkin 2013: 2). Research (Palidda 2011) found no links between the intensification of criminalisation trends in specific national contexts and increasing crime rates or immigration, meaning no "correlation in the criminalisation of aliens and rises in crime" could be confirmed, yet interestingly "periods of economic difficulty often see the fiercest proliferation of criminalisation discourses and surges of xenophobia" (Parkin 2013: 3). In Slovenia, a rise in xenophobia and anti-immigration hate speech has been linked to the socio-economic effects of the 2008/2009 financial crisis (Pajnik, Bajt 2010). Moreover, research confirms that most immigrants integrate, yet factors such as proliferation of immigration-related criminal offences and discriminatory treatment by police (e.g. ethnic profiling) artificially amplify the statistical representation of migrants and minorities in criminal activities (Parkin

2013: 2). Analysing the discursive aspect of criminalisation thus facilitates an understanding of the complex social and political conditions that allow the construction of migrants as symbolic assailants.

Moreover, the ways in which the media portray migrants, combined with a political rhetoric of fear, lead to actual crimmigration policies. The discursive dimension of the criminalization of migration therefore exceeds the field of criminal law, referring to the way in which the rhetoric on immigration and security constructs the idea of fear/threat which is automatically associated with migrants as deviant and immigration as a security risk (Maneri 2011). Consequently, migrants are constructed as threatening the social order, "our" jobs and wellbeing, which therefore warrants strict(er) immigration control regimes (Provine, Doty 2011). The role of the mass media perpetuates crimmigration in society and negatively affects public opinion and the legal certainty of migrants. In particular, social media platforms enable an unprecedented fast spreading of fake news, using prejudice in order to disperse the politics of fear and creating a constant state of anxiety through media panic that reduces public space for a competent and critical assessment of migration policies. At the same time, "media logic" follows political agendas, as the media favour dominant sources, in particular the political and economic elites, who thence obtain a platform for the dissemination of dogmatic, populist and nationalist statements (Pajnik 2017). While the media in Slovenia was paying full attention to refugee arrivals during the first two months of the 2015 "refugee crisis", for example, migration started disappearing from the news as well as from public discourse, only to reappear in time for the parliamentary electoral campaign in the spring of 2018. The media spectacle of the first few weeks of the 2015 mass migration was exceptionally similar to any other crisis reporting and helped instil fear and intolerance among the Slovenian public. Without the media coverage, most residents of Slovenia would have no idea refugees were even in the country, since their contact with the local population was restricted to a bare minimum (Kogovšek Šalamon, Bajt 2015).

Space limitations here preclude an analysis of the role of the media in strengthening crimmigration, but ample research confirms the immense importance of analysing the mediatization of migration (Maneri 2011; Pajnik 2017), i.e. how the media report on migration, how they select sources, who speaks in the media and why, what is the editing policy concerning the issue of migration and what is the impact of the media on public opinion and consequently on the drafting of legal provisions. Suffice it here to note that the mass media play an important role in crimmigration, creating media panic through hegemonic discourse that is problematically focused on national security in case of the arrival of migrants, thus creating and consequently exercising public pressure that pushes for stricter legal regulation, strengthening of border control and lack of readiness to assist people in need.

## MANAGING MIGRATION

When researching migration management priorities, one must take into account that “migration processes are of a long-term nature, while the policy-cycle is essentially short-term and often determined by the length of electoral periods” (Castels 2010: 223). In addition,

the declared objectives of states are often quite misleading. They are driven both by the need to maintain legitimacy and the unwillingness to face up to past policy failures. Policies that claim to exclude undocumented workers may often really be about allowing them in through side doors and back doors, so that they can be more readily exploited. (ibid.)

Refugees started arriving in Slovenia in increased numbers in September 2015, and when Hungary’s borders were finally closed, they could enter Austria only from Slovenia. Using this “corridor”, according to the official police statistics, 396,240 migrants entered Slovenia between 17 September 2015 and 7 January 2016. Since only a handful of them applied for asylum and almost none were successfully returned by the police, almost the same number of people left Slovenia heading for Austria and other western and northern European countries. The total number of applicants for international protection in Slovenia in 2018 was 1,430 (1,304 men and 126 women), but only 53 persons received international protection status.

According to data from the Government Office for the Support and Integration of Migrants, on 29 October 2018 there were 641 people with recognised internationally protected status in Slovenia, 278 asylum seekers (most of whom were housed at the Asylum centre), and 97 persons were waiting to file an application (UOIM 2018). The police statistical data shows that there were 1,930 irregular migrants apprehended in the territory of the Republic of Slovenia in 2017, and the number increased from 1 January to 30 September 2018 to 6,667 “unauthorised border crossings” (Policija 2018: 1). In regard to crimmigration processes, the police identified

693 violations committed by foreigners who had illegally entered Slovenia on its internal border without possessing a proper travel document or permit (e.g. residence permit or visa). The corresponding figure last year was 739. This represents a 6.2 per cent decrease in comparison with the same period last year” (ibid.: 2).

These numbers indicate the primary criminal charges related solely to migration. The combination of migration and criminal law thus leads to increased representation of migrants in prisons and in public discourse, which serves as additional evidence of higher criminality of immigrants (Učakar 2017: 60).

It is impossible to analyse Slovenia's crimmigration policies and practices without first highlighting its role as an EU member state that borders Italy, Austria, Hungary and Croatia. The border with Croatia is a Schengen border that Slovenia is bound to uphold and protect. Examining the elements of criminalization of migration as they appear in the legal framework, institutions and policies in Slovenia, is therefore entwined with their accord (or lack thereof) with EU and international norms. The Aliens Act and its amendments (last changed in 2017) refers to removal of an alien, seizure of an alien's travel document, irregular border crossing, assistance in irregular border crossing, irregular retention in the country and identification. Irregular border crossing and assistance with irregular border crossing are also covered by the State Border Control Act and some aggravated forms also in the Penal Code and its amendments, where the severity of the punishments for these criminal offenses was increased in the most recent changes that were made in 2017. According to the Minister of the Interior, some of the most recent changes were made in response to the European Commission's initiative that Slovenia would become a new hotspot (MMC 2017). Hotspot means that all the responsible EU agencies (e.g. Frontex, Europol, Eurojust) work on the ground with the authorities of frontline member states facing disproportionate migratory pressures along the EU's external borders. The idea is to help them fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming migrants. Faced with this prospect, Slovenia's authorities described the situation from 2015 onward as a "full red alert" (ibid.), and adopted legal measures that would safeguard Slovenia from ever again becoming a hotspot. Mirroring measures adopted over the past three years by neighbouring Hungary and Austria, in January 2017 Slovenia approved a bill that allows police to seal the border with Croatia. Under the new legislation, Slovenian authorities can reject asylum seekers directly at the frontier with non-Schengen member Croatia in case of a new influx of migrants which could "threaten public order and internal security." The Prime Minister and Minister of the Interior stated at the time that it was an "extreme measure" that the government had to draft in case it would ever be needed again (ibid.). Such fear-inducing tactics were augmented a month later at the EU Malta summit, where the head of Slovenian government warned that a new migration route had opened across the Adriatic Sea towards Istria, even though the data of the Slovenian and Croatian police did not confirm this (Gaubé 2017).

Migration policy in Slovenia is centralized, since most of the measures are implemented at the level of the Ministry of the Interior, which is responsible for asylum and migration.<sup>3</sup> A number of other ministries are also involved, each in the implementation of individual procedures related to its departmental jurisdiction. Local

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3 In July 2017, a special Government Office for the Support and Integration of Migrants (sl.: Urad vlade za oskrbo in integracijo migrantov – UOIM) was established, taking over part of responsibilities that were previously under the authority of the ministry. Devising policies and administrative procedures for obtaining the status of international protection remain under the jurisdiction of the Ministry of the Interior.

communities do not have formal power to implement asylum and migration measures, though integration is in actuality conducted at the local community level and sustained by various non-governmental sector programmes. Slovenia as an EU member state actively participates in EU migration policymaking and in the implementation of EU legislation. The migration management system comprises criminalization, including sanctions for irregular border crossing, (joint) expulsions, and restriction of movement as primary criminal charges. Below, we identify three key points regarding Slovenia's migration policy as they relate to the theme of crimmigration.

### Migration Policy Priorities

According to the analysis of the policy and the analysis of the interviews that we conducted, Slovenia tries not to stand out in terms of the European average, and mainly follows the lead of other countries. The interviewees note that no specific policy goals or priorities exist and that positions shift and priorities are created *ad hoc*. While migration policy, if one can be said to have existed prior to the events of 2015/16, was stagnant and no major problems were identified on the part of state officials, the "refugee crisis" changed all that:

First we saw something like a humanitarian approach, but then we went into state protection, so the fence was a priority [...] Nobody is setting any special priorities in this broader sense, it is actually just a response to the current situation [...] There is no migration policy in Slovenia at all. With this wave of 2015/16, when many migrants came, it seems to me that some positive movements occurred due to the fact that individual institutions began to realize "ah, we have refugees in Slovenia" – although refugees have been in Slovenia since 1995. This may have been a positive shift that at least one started to think differently, to look for some systemic or at least temporary solutions, improvements. On the other hand, there was the negative shift of polarization of Slovenia, the criminalization of this population. (INT2)

In terms of legal immigration, economic migration can be recognized as Slovenia's priority in respect of the need for a migrant workforce in certain sectors due to labour demand, most notably in construction. The number of new work and residence permits issued is high every year, especially among citizens of the former Yugoslav republics. However, a proactive migration policy that would address the shrinking numbers of the working-age population is not a priority, despite listing integration as a keyword. "Integration is definitely a priority which has been repeatedly expressed [...] As far as illegal immigration is concerned, the Western Balkans is a priority by building the capacities of the countries on the natural pathway of illegal immigration through Slovenia." (INT1)

The Slovenian police are actively involved in Frontex operations and implement wider EU immigration control policies, but the state's emphasis is primarily on the regional neighbourhood, especially since the 2015 events that brought the Balkan route into focus:

The European Union was really very inefficient with its measures. The fact is that legislation was simply not adapted to the situation that we were faced with. At that moment we really saw the importance of regional cooperation. Of course, in our case regional cooperation doesn't only mean cooperation with EU member states but regional cooperation for us is chiefly cooperation with Balkan countries. (INT1)

## The EU and Schengen

Based on the European Union treaties, migration legislation and policy are in the domain of the European Union. After the Treaty of Lisbon, both the EU Council and the European Parliament act as decision-makers, while the European Commission is the body that proposes measures at the European Union level. In 2016, the European Commission presented a reform legislation package, i.e. a set of changes to the Common European Asylum System. The proposed statutes underwent various negotiation stages, where the recasting of Dublin Regulation is the most important, suggesting a potential new crisis management mechanism for situations where one or more EU member states are facing "challenging circumstances" or "severe crisis". From this perspective, a (re)new(ed) legislative framework is being developed in the EU.

The decision-making process in Brussels has changed a lot since the 2016 migration crisis. The European Commission used to have greater weight with its proposals which it ultimately implemented. But during the crisis this role was taken over by the European Council. And the actual decisions were very political. And here's a twist from before when it was the technocracy who knew the legislative framework, who were preparing things. But now, this political takeover through legal mechanisms, it greatly influences the way things operate in Brussels. So, in my opinion, unfortunately, we do not get anywhere with certain ideas because they simply cannot be accepted politically. (INT1)

Due to Slovenia's geographic position, its southern border with Croatia is now a Schengen border, and this fact governs its foreign policy in terms of asylum and overall migration management.

In all documents, Slovenia stands for the protection of the external borders of the European Union. And no distinctions are made between the external Schengen border and the EU's external border. Slovenia always emphasizes the need to protect

the borders on the external boundary of the EU. It is clear which borders this refers to. (INT1)

Formally, Slovenia claims to be in favour of mutual solidarity among member states, as demonstrated by its participation in the relocation mechanism which was established as a consequence of the “migration crisis”. It has recently joined the resettlement programme, and data show that out of its legal commitment to host 567 people, 253 persons were relocated to Slovenia by July 2018 (81 from Italy and 172 from Greece). One of our interviewees, a 23-year-old woman, started in Syria together with her family. Her story reveals a typical Balkan migratory route: first they went to Turkey and continued to Greece by boat. Eventually they travelled to Macedonia, and were finally transferred to Slovenia based on the EU quota system:

It was really, really bad where we lived. We lived in Aleppo, where there was a lot of bombing. We left everything [...] we wanted to go to Germany because in Syria we heard that Germany had opened the borders for refugees. We didn't know any other country. We had never heard of Slovenia before [...] We came to Turkey, after that we went to Greece by boat [...] It was very difficult and really bad. When we came, my baby was 14 days old. He was crying a lot, very scared and it was really dangerous [...] We stayed in Greece for 9 months. We stayed in a tent at the border for 3 months and they didn't open the border [...] The government in Greece said that all refugees will go to other countries when they open the border [...] In Macedonia it was really, really bad [...] [The officials] would just ask “when and why did you come” [...] They wrote my name, my children's names and they took pictures. After two months they called and said “you will go to Slovenia”. (Samar)

With regard to the European Commission's plans to redistribute refugees throughout the EU, which caused a major rift inside the union, Slovenia shifted its stance from voluntary to mandatory acceptance of the refugee quota among member states.

### **Political Climate and Pushbacks**

Developments at the EU level run in parallel with national events. Especially the pre-election periods in member states show there is a lot of emphasis on migration policy and refugees, as well as debates on integration and a tendency to delimit people who need protection and those who allegedly do not and are seen as cheats (i.e. “economic migrants”). The shift of the debate on migration is visible and has been observed in all our neighbouring countries that have already had elections, i.e. Austria, Italy and Hungary. Migrations were also one of the central pre-election themes in Slovenia during the spring and summer of 2018, and the role of politics in migration policy creation is clear.

The amendment to the International Protection Act was primarily the result of adapting to the European *acquis* and was not conditioned or encouraged by national policies, though “certain solutions” that were introduced at the time it was amended “may be the result of a political environment of the time” (INT1). An analysis of the existing policies shows that in theory an individual has the right to access the asylum procedure and claim protection in EU member states. However, the definition of a refugee has become too narrow for all the groups that seek refuge from threatening circumstances or wish to escape from economic exploitation and despair. The 2015 “refugee crisis” is a reflection of the inability of the state and international law to provide protection for all those in need. All EU member states have ratified the Geneva Convention and are bound by EU asylum and migration law, which sets forth basic guarantees for people seeking protection. However, in practice, access to asylum is difficult and most people are forced to attempt to access the EU territory by means of irregular entry. This is to say that legal access to the territory has become practically impossible.

With the mass migration of autumn 2015, Slovenia had found itself in a completely new situation in which the normative framework in place in the field of migration could no longer function. The government’s insistence on the strict implementation of the legal rules that were generally in place for such situations was completely inappropriate for the increased arrivals of people who desperately wanted to move on, crossing Slovenia on their way from Turkey/Greece/Western Balkans towards Germany. Eventually, the government had no other recourse but to implement a practice that already existed in Macedonia, Serbia and Croatia – a humanitarian “corridor”. In this way, the state allowed people to enter Slovenia and receive basic reception conditions but continue their travels towards Austria, even if they were without documents (for a detailed analysis see Kogovšek Šalamon 2017). At the same time, the governmental discourse turned into one of the “security” of local people and their property and the “protection” of national interests. The humanitarian aspect of the “refugee crisis”, to which the government discourse was at least still paying lip service in August 2015, was gone within a month and has not returned since, being progressively and steadily replaced by crimmigration measures and anti-migration rhetoric that is stronger than ever in 2018. Moreover, viewing migrants as symbolic assailants has become a pervasive stance among public servants whose work puts them in close proximity of crimmigration practices as part of their job. A border police officer thus reflects:

If you permit free circulation across [borders], in a year, two, three, there’d be chaos in Europe, in Slovenia. Europe can help, but it can’t help in a way that the whole of Asia, Middle East, Africa move here and live on social transfers. It’s impossible. It’s simple: each country can help a portion of people when in real need, but not the whole continent, no.

While aware that it is not the police prerogative to resolve asylum applications, having been in contact with many migrants, our interviewee feels he knows the actual situation:

After so many years we see who is justified and who isn't entitled. So, there's abuse, exploitation, asylum is being exploited. The problem is that then it's those who need it the most who must either wait too long or don't even get it because of others who are basically exploiting it. And they are all, almost everyone is exploiting it now. (INT5)

It is in fact not uncommon for public servants to speak of "asylum shopping", which testifies to the official stance towards migrants as devious. Even more problematic, for migrants who have the right to international protection from persecution and serious human rights violations, so-called pushbacks stand in the way of seeking protection and enjoying their right to an individual assessment of their claims. Pushbacks are happening in various ways, but brutality, intimidation and devious tactics by authorities have been widely documented to engender a climate of fear and mistrust amongst people on the move. In 2018, reports about pushbacks in Slovenia also appeared (Amnesty International 2018; Regvar 2018; Videmšek 2018). The Ombudsman's office also found cases where the personal circumstances of migrants who might be able to apply for asylum were ignored or not seriously considered by the police in the process of apprehending irregular border crossers (MMC 2018).

Amnesty International and PIC both reported that in June 2018 the Slovenian authorities restricted access to asylum and forced the return of several migrants. Data was obtained in Velika Kladuša and Bihać in Bosnia from witnesses who, although they wanted to claim asylum in Slovenia, were returned to the Croatian authorities. Unlike the Slovenian police, the Croatian authorities do not enact a formal return to Bosnia but simply drive the migrants to the vicinity of the border and leave them there; reports indicate that they are forced to cross the border. Official police statistics confirm a change in practice in June 2018: despite the fact that the number of people who crossed the border in an illicit manner decreased, returns to Croatia increased markedly. At the same time, the number of people who were recorded by the police as having expressed the intention to apply for asylum fell drastically. Since the situation for refugees in Bosnia is worrisome, the NGO watchdogs conclude that Slovenia is in breach of the *non-refoulement* principle (Regvar 2018).

## CONSEQUENCES OF CRIMMIGRATION

Research shows that border control intensifies at times of structural change when institutions capable of preserving the emerging economic and social order are largely absent (Weber and Bowling 2008). In a globally mobile society, "suspect citizens"

(ibid.) and outsiders, such as migrants, are the most likely to be earmarked for exclusion. "This designation links historical conceptions of 'the other' with the tropes of race, class and foreignness to underpin contemporary xeno-racism" (ibid.: 355).

The previous section noted that understanding the wider EU framework is essential for understanding the current state of affairs regarding crimmigration trends in Slovenia: "All of a sudden they started to cut some rights and [Slovenia] blindly followed: "yes, we also need to do something" and they unnecessarily abolished the one-time monetary assistance [to refugees], which was the key to starting integration, that someone could make this transition. And this was a purely political decision" (INT2).

Even though state authorities describe current migration policy trends as increasing the rights of asylum seekers and other migrants in terms of more emphasis placed on integration measures, members of civil society, migration researchers and public servants with actual field experience oppose this view by elucidating many areas of tightened control and clamping down on migrant rights. Officially, at least 12 people have died so far attempting to cross the border (Videmšek 2018). Many interview respondents believe that general migration and refugee policy is becoming more stringent. "Generally I could say yes, yes, it's getting stricter and ... of course politicians always use it for their own purposes" (INT2). Crossing the border into Slovenia, both physically and in terms of stricter control, has clearly become more difficult. "Ever since the migrant crisis it has been getting more difficult, the very act of crossing the border is harder; with the closing of the borders and with actions of other states" (INT5). At the same time, states have improved cross-border cooperation with the aim of better border policing and adhering to the Dublin convention.

Asylum is getting harder to get. There are many more checks. In Slovenia it's getting worse. Maybe they don't say this on TV, but it's getting harder. They first put up a fence. Now they made this centre in Brežice, the EU gave the money. In this centre we now have a police officer who has 4 monitors, and the 4 monitors are divided into 4 images, 16 cameras. (INT5)

On the other hand, the official stance is that migration and asylum policy are not becoming stricter:

I think it's hard to talk about becoming stricter. Certain measures within migration policy show that the EU, and so also Slovenia, began to realize that it's better for everyone, including those arriving legally, to have regulated immigration and, on the other hand, a reduction of illegal immigration. Because we cannot stop it, we'll never be able to stop it ... The set of rights, protection, legal remedies in certain procedures, these are only increasing. The policies are not becoming stricter, so this is forcing some countries that are most affected to adopt certain actions or measures that are intended to suppress or restrict [migration]. But this remains at the national level, there are definitely no policies of aggravation at the EU level. (INT1)

State officials like to say that “things are also changing for the benefit of foreigners and refugees” (INT3). And watchdog organizations and several migration researchers would agree that legal framework in Slovenia is “good in many respects” (INT6). However, while matters seem fine on paper and some procedures also run smoothly in practice, there are still many shortcomings that make the system problematic. Lengthy procedures in processing asylum applications are one such example, as are inconsistencies in judicial decisions that make decisions on asylum applications “a lottery” (ibid.), which makes counselling a difficult task, since outcomes are extremely unpredictable: “One really big problem is asylum backlogs, which have come to the fore due to the increased number of applications. But the problem of slow decision making already existed before” (ibid.).

The bureaucratic obstacles experienced by migrants have been widely documented (Pajnik and Bajt 2010), and are also confirmed by our interviewees. Aisha from Morocco reported having trouble extending her documents. Even though she had a Schengen visa, she faced various obstacles in arranging her residency after getting married in Slovenia. She notes there was a period she had to live in Slovenia illegally. Peter from Jamaica also shared his experiences with official procedures: “I realised that it’s a very difficult place to live if you are a foreigner. This society is very discriminative.” Conversely, Esek started his migration from Eritrea, passing Ethiopia, Sudan, Libya, Turkey, Greece, Macedonia, Serbia, Croatia, Slovenia and Austria. In comparison, his first impression of Slovenia and its procedures was good: “I can say it’s really good and people friendlier than in other countries.” He was imprisoned in Austria and his assessment of restriction of movement succinctly sums up what crimmigration is all about – criminalizing people for the mere act of migrating: “It was in Austria because I escaped to countries without documents. This is the system, a really very bad system in Europe ... Immigrants, they don’t do anything, you know. Like me, I did nothing, I don’t sell drugs, I don’t do anything [wrong]. They just put me in prison, you know, because of a very bad system in Europe (Esek).

One interviewee presented himself primarily as a person, a human being, regardless of his current status or birth country. He entered Slovenia irregularly (by train) after attempting to reach Italy for the fourth time. He notes having very good experiences with the border police, despite being captured, and sums up his human existence, formally bound by crimmigration measures, perfectly: “My life is actually outside these walls” (Amine).

## CONCLUSION

The paper is an attempt to fill a gap in crimmigration research in Slovenia, serving as a first comprehensive overview of the current situation. Rather than researching “migrant criminality”, our approach to the criminalization of migration was sociological and our focus was on the societal trends of constructing migrants as symbolic

assailants. Analysing the consequences of increased deployment of criminal justice measures to address the “immigration problem”, the paper emphasizes how they reproduce socio-economic exclusion and the denial of migrants’ human rights. We examine whether migration policy in Slovenia is becoming stricter in the direction of increased criminalization of migration and to what extent these trends may be a consequence of the implementation of wider EU policies, arguing that understanding the wider EU framework is essential for understanding the current state of affairs, as well as the best predictor of future trends. We show how the political leadership and competent institutions in Slovenia reproduce crimmigration on the basis of ideologemes of national security, the protection of the “local” population, and the incompatibility of migrants as different, as outsiders. In doing so, the paper concludes that the implementation of crimmigration policies such as border control and push-backs have discriminatory effects that augment the rightlessness of migrants. In the context of the role of Slovenia as an EU member state managing the EU border, our findings resonate with a broader issue of crimmigration in Europe and beyond.

Empirically, the paper draws on interviews conducted with the main actors involved in crimmigration procedures: state representatives, non-governmental organizations and migrants. The main part of the paper thus offers an analysis of the position and viewpoint of the key stakeholders on crimmigration policies – their perspectives of the migration management system, institutions and procedures, how they assess this experience and what their policy proposals are. We were thus able to associate the policy measures as envisioned by state actors with their immediate effects both in the form of implementation by public employees in charge of enforcing the law, as well as in the form of crimmigration consequences as experienced by the targets of its measures – the migrants themselves.

The criminalization of migrants is “currently written into a neoliberal/neoconservative political framework based on the asymmetry of power and wealth between actors that are all-powerful, and weak ones who have no rights” (Palidda 2011: 2). In conclusion, we wish to reiterate that much of contemporary migration, especially the so-called migration crisis, represents an integral aspect of North-South relations, and any

policy in this area is doomed to failure unless it addresses the causes of both economic and forced migration in current patterns of global inequality [...] The vast disparities of wealth and power in the emerging global order mean that not all citizens are equal and that some passports are better than others. Such hierarchies may be the basis of a new system of global economic stratification, in which migration – in all its guises – is a key element. In this context, migration control is really about regulating North-South relationships and maintaining inequality. (Castels 2010: 223)

In these processes Slovenia is part of a wider geographical and political framework, which means that using law and policy in Slovenia as a case study can provide a

better understanding of the wider EU context. Nevertheless, we could offer only a limited overview of crimmigration processes, and further research is needed that would employ a critical comparative perspective with Slovenia's international legal commitments. There is also a lack of analyses that would study the responses of political elites and competent institutions in relation to specific migration topics, as well as analyses of certain procedures related to crimmigration in Slovenia, such as the further examination of border control, ethnic profiling, pushbacks and deportations.

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## POVZETEK

### KRIMIGRACIJE V SLOVENIJI

Veronika BAJT, Mojca FRELIH

Avtorici v članku obravnavata »krimigracijo« (tj. kriminalizacijo migracij) v Sloveniji. Raziskujeta elemente kriminalizacije migracij v pravnem okviru, institucijah in politikah. Uokvirjanje tematike na normativni ravni, tj. na ravni institucij, analizirata skupaj s pregledom izvajanja konkretnih postopkov v praksi. Analizo političnih in strokovnih mnenj tako združujeta z analizo učinkov, ki jih imajo krimigracije na migrante in migrantke. Empirični del članka temelji na dvanajstih poglobljenih polstrukturiranih intervjujih. Izkušnje oseb, ki migrirajo, s krimigracijskimi ukrepi namreč dodatno potrjujejo, da migracijska politika v Sloveniji, tudi kot posledica izvajanja smernic EU, postaja strožja in vedno bolj usmerjena v povečevanje kriminalizacije migracij.

Prispevek je prvi celoviti pregled stanja in zapolnjuje vrzel v raziskavah kriminalizacije migracij v Sloveniji. Pristop h kriminalizaciji migracij je sociološki, poudarek pa na aktualnem trendu konstrukcije migrantov kot »simboličnih napadalcev« oziroma kršiteljev zakona. Z analizo posledic povečane uporabe ukrepov kazenskega pregona za obravnavo »problematike migracij« članek ponazarja socialnoekonomsko izključenost in zanikanje človekovih pravic migrantk in migrantov. Avtorici raziskujeta, ali migracijska politika v Sloveniji postaja strožja in gre v smeri povečane kriminalizacije migracij, v kolikšni meri gre za posledico izvajanja širših politik EU oziroma koliko je širši okvir EU bistven tako za razumevanje sedanjega stanja kot tudi za napovedovanje prihodnjih trendov. Izvajanje krimigracijskih politik, kot sta npr. povečan nadzor meja in prisilno vračanje, povzroča diskriminacijske učinke in nespoštovanje pravic migrantov. V kontekstu vloge Slovenije kot države članice EU, ki upravlja zunanjo šengensko mejo, so ugotovitve avtoric odsev širših vprašanj krimigracijskih procesov v Evropi in drugod.



# PUNISHING THE ALIEN: THE SENTENCING OF FOREIGN OFFENDERS IN SLOVENIA

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## ABSTRACT

### **Punishing the Alien: The Sentencing of Foreign Offenders in Slovenia**

The authors examine the question of foreignness, which appears in many shades; citizenship is thus just one of the many aspects contributing to society's stance on 'foreignness'. After sketching the current prison situation in Europe, the authors analyse the situation of foreigners in the Slovenian criminal justice system. On the one hand, we can perceive a general turn towards harsher treatment of foreign offenders – there have been more convictions and more foreigners in prison recently. However, a more detailed analysis shows that with regard to cases of homicide, foreigners may even be receiving more lenient sentences compared to Slovenian citizens.

KEY WORDS: foreigners, prison, criminal justice, court, sentencing

## IZVLEČEK

### **Kaznovanje tujcev: Kaznovanje tujih storilcev kaznivih dejanj v Sloveniji**

Avtorja se uvodoma ukvarjata z vprašanjem »tujosti«, ki se pojavlja v več intenzitetah: državljanstvo posameznika je le eden od dejavnikov, ki vplivajo na njegovo družbeno sprejemanje ali zavračanje. Po pregledu stanja v evropskih zaporih avtorja v osrednjem delu analizirata položaj tujcev v slovenskem kazenskoprnem sistemu, kjer je mogoče zaznati zaostrovanje pri obravnavi tujcev – več obsodb in več tujcev v zaporih v zadnjih letih. Temu nasprotne rezultate pa pokaže podrobnejši pregled kaznivega dejanja umora (in uboja), v katerem avtorja ugotavljata, da je kaznovanje tujcev celo manj punitivno kot kaznovanje domačih državljanov in za to ponudita nekaj morebitnih razlag.

KLJUČNE BESEDE: tujci, zapor, kazenskopravni sistem, sodišče, kaznovanje

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## INTRODUCTION

Crimmigration has become an increasingly important field in recent years, both in real life and in academic research. However, different authors mean different things when using the term, with one unifying aspect being the phenomenon of the merging of criminal and migration laws (e.g. Hernandez 2014; Stumpf 2006).

Even though migration has been an essential feature of human society since its beginnings, its presence in the public discourse has fluctuated, with highs and lows regarding the popularity of the topic. It seems we are currently at one of the highs, with a pronounced focus on migration and its many aspects (Melossi 2003).

One of the associations most commonly assumed in contemporary public discourse and often acted upon very quickly is that with crime – the idea of the “deviant migrant” is a strong and persistent one (Franko 2007). In order to better analyse it and often disprove some “common sense” assumptions, increasingly detailed and thoughtful literature on various issues and in different global settings has emerged (Bosworth, Hasselberg, Turnbull 2016; Franko 2014; Franko, Bosworth 2013; Hernandez 2014, 2015; Kogovšek Šalamon 2017; Stumpf 2006). This paper will address just one of the many facets of crimmigration, and that is the more traditional one: we will look at how foreign offenders are treated within national criminal justice systems as a consequence of committing an offence (Delgrande, Aebi 2009; Melossi 2003; Ugelvik 2014). While acknowledging this is just one feature of a multifaceted issue, and just one aspect of where the notion of penalty crosses with the notion of being an immigrant, we believe it is an important one. Moreover, it is one on which the literature is rather scarce and would warrant more research (Ugelvik 2014).

In the paper, we will first deal with the concept of “foreignness” and define what we will refer to when using it throughout the text. We will then focus on the situation in Europe and look at how foreign nationals are treated by European countries, as well as seek explanations for their practices. The case of Slovenia will be discussed in more detail.

## DEGREES OF FOREIGNNESS

The term foreign offender may not always mean the same thing to different people and in different contexts (Delgrande, Aebi 2009). When using it in this article, we refer to foreign nationals, i.e. people who do not have citizenship in the country in whose criminal justice system they are prosecuted (see also Ugelvik 2014). Other terms may be used to describe this: “non-citizen” could, for example, be a more precise option, but we feel the notion of “foreignness” is better encapsulated in the term foreign offender. Alien, the term used in the title of this article, is also occasionally used in crimmigration discourse, perhaps to emphasize how distant and detached discussions on foreigners may become and illuminate explicit shades of alienation in the

managing of migration (Franko 2007; Hudson 2006). Incidentally, legislation perhaps anachronistically often uses the term as well: the Slovenian statute regulating the status of foreigners in Slovenia was until recently officially translated into English as the Aliens Act,<sup>1</sup> like those in Sweden, Finland and Ireland, or the famous British Aliens Act of 1905 (Vincenzi 1985). The term has strong political connotations and has been repeatedly used in the USA by the Trump administration in recent discussions on immigrants, often coupled with the adjective 'criminal' to coin the collocation 'criminal alien' (Caldwell 2016), accidentally evoking Lombroso's classical notion of criminality.

A second concern is whether it is reasonable to discuss foreignness in the sense of 'non-citizenship'. Foreignness may easily be reconciled with the concept of 'otherness' (Bauman 1997; Franko 2007; Melossi 2003) and tied to contemporary ideas of the 'criminology of the other' (Franko 2007; Garland 2001). These have been explored in the general context of contemporary society, before the topic of crimmigration burst to the forefront of criminological inquiry, however, they can account for many of the present developments in this area (Franko 2007; Welch, Schuster 2005). One of the main features of the criminology of the other and the way it ties into the culture of control is the manner in which it transcends classical notions of correcting and (re) integrating criminals into the non-deviant majority, and instead offers the ideology of social control and (permanent?) exclusion. It allows society to relinquish its 'duty' to (re)include and grants it a right to exclude in its stead, using safety and community as excuses (Garland 2001).

Not only do foreigners fit into this framework rather nicely, as indicated by other authors (Franko 2007; Hudson 2003; Welch, Schuster 2005), but some suggest they are taking the place of other traditional groups of "others" – such as the socially disadvantaged (Bourdieu 1999 in Franko 2007). Moreover, Wacquant (1999) suggests foreigners in the European context may be taking up the outcast role carried by black people in the US.

Finally, while having or not having citizenship is a precise and unambiguous matter, foreignness is not. "The 'foreignness' of foreign nationals is not a simple 'yes or no' question: there may be degrees of 'foreignness' that results in different experiences for different groups of foreign national prisoners" (Ugelvik 2014: 114). In discussing this notion Ugelvik gives the example of Scandinavian yet foreign-national prisoners who 'look' Norwegian and are treated accordingly in the Norwegian criminal justice system, contrasted to Norwegian citizens who are seen as racially and culturally different, and are often subjected to harsher treatment despite their citizenship.

We can offer an additional, perhaps slightly more complicated example from Slovenia. As the northernmost and most developed of the ex-Yugoslav republics, it received a steady influx of then-nationals from other Yugoslav republics throughout the existence of the federal state. This resulted in sizable Serbian, Croatian and

1 Aliens Act – consolidated text, Official Gazette of the Republic of Slovenia, No 64/09, 1999. A new law has since been passed and its English translation is the Foreigners Act, Official Gazette of the Republic of Slovenia, No 1/18, 2011.

Bosnian minorities, composed of people who decided to remain in Slovenia. These same countries continued to make up the large majority of countries of origin of immigrants coming to Slovenia post-independence (after 1991). This has two important consequences for our discussion. Firstly, the vast majority of contemporary immigrants are therefore culturally and ethnically identical to their predecessors, who have now become citizens. While their citizenship is now not disputed (although for some of them there was a long period after independence when it was, see Kogovšek Šalomon, 2016), their 'foreignness', on the other hand, is not quite as clear and by no means a 'yes or no' issue (cf. Bučar Ručman 2015).

Secondly, regardless of how we understand and differentiate between the two groups of Balkan immigrants (citizens and non-citizens), the two are distinctly different from the contemporary idea of the dangerous migrant present in the public discourse, which would typically entail a young Muslim brown or black male.

The idea is so pervasive as to counter and even consume the idea of the hardened violent male criminal (another 'other' commonly feared and imagined), as witnessed by contemporary media reports. At the time of writing, for example, one of the right-leaning Slovenian tabloids published a controversial cover depicting a white woman being groped by multiple black hands and claiming migrants are bringing "a culture of rape" to the country. The instance serves as a good example of how foreignness (depicted here by blackness) is conflated with deviance and criminality (e.g. through the use of the notion of rape) (Franko 2007; Melossi 2003; see also Vezovnik 2017). Any instance where such fears are materialized, and a migrant is actually found guilty of a crime, serves as reinforcement and confirmation of these assumptions. As Melossi (2003: 391) succinctly puts it: "[t]he stranger will be found doubly guilty, for his strangeness and for his deviance, already implicit and wholly predictable in his being a stranger".<sup>2</sup>

The majority of migrants in Slovenia, however, do not fit into this narrative, and although they are understood as culturally and ethnically different, when compared to these new narratives on migrants they seem much more similar to the Slovenian "us", a characteristic reinforced by our shared history and traditional ties with the southern countries. It is interesting to note that the contemporary public discourse rarely includes these migrants when discussing "foreigners" and "foreignness".

## PUNISHING FOREIGNERS

Putting these nuances aside for a moment, we wish to briefly address how the question of 'being foreign' in its narrow citizenship sense may be important with regard to punishment as a response to a criminal offence. We have discussed the broader

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2 The same type of double deviance is attributed to female criminals, as noted by Lombroso and Ferrero (2004) in their study on female criminality.

questions of the idea of 'otherness' that come into play in punishment in the previous section, so we would like to be more specific here and look at the relationship between 'foreignness' and sentencing.

Many theories have attempted to explain differences in sentencing outcomes with regard to various personal circumstances of the offender, most often focusing on race and gender (Engen, Steen, Bridges 2002; Everett, Wojtkiewicz 2002; Holmberg, Kyvsgaard 2003; Mitchell 2005; Mustard 2001; Spohn 2013; Welch, Spohn, Gruhl 1985). These theoretical perspectives have not often included the offender's citizenship and its effect on the sentencing process. We acknowledge that citizenship might have a lesser effect on decision-making than race or ethnicity. As Ugelvik's (2014) abovementioned example clearly shows, being a Norwegian citizen is not the same as being a Norwegian. However, we believe that some important parallels do exist and are worth exploring.

Nearly all recent scholarly inquiries into sentencing practices in Europe and in North America have interpreted their results in light of the focal concerns perspective (Hartley, Armendariz 2011; Johnson, Van Wingerden, Nieuwbeerta 2010; Light, Massoglia, King 2014; Wermink, Johnson, Nieuwbeerta, de Keijser 2015; Wingerden 2014; Wolfe, Pyrooz, Spohn 2011; Wu, D'Angelo 2014). Developed by Steffensmeier, Kramer, and Streifel (1993) and Steffensmeier, Ulmer, and Kramer (1998), the theory posits that in reaching a sentencing decision, judges are influenced by three focal concerns. First, judges consider the offender's blameworthiness, which includes the offender's role in the offence, his potential criminal history, and prior victimisation by third parties. Second, they seek to protect the community from the risk of reoffending and recidivism. Third, judges consider organisational and individual practical constraints and consequences, such as prison crowding, courtroom agenda, or the health and family ties of the offender.

Steffensmeier et al. (1998), as well as most other authors who rely on focal concerns, complement and provide depth to this perspective with the views of attribution theorists (Fontaine, Emily 1978; Hawkins 1981; Shaver 1975), who maintain that judges make determinations about the three focal concerns on the basis of insufficient and imperfect information. To fill this data gap, judges will resort to their pre-existing mental schemes and stereotypes. They complete their understanding of the case by attributing them to individual offenders based on characteristics such as race, ethnicity, gender, or citizenship (Albonetti 1991, 1997; Everett, Wojtkiewicz 2002; Hartley, Armendariz 2011; Johnson et al. 2010; Steffensmeier et al. 1998; Wingerden 2014; Wolfe et al. 2011).

Focal concerns and attribution theories aim to explain a sentencing decision of any given judge in an individual case. However, academics have also sought to make sense of disparities in sentencing outcomes in the aggregate and explain why entire groups of people are treated differently, often less favourably, both at trial and in the criminal justice system more generally. Conflict theory, arguing that criminal justice is likely to treat marginalized groups and those far removed from power more severely,

has been used to suggest that minority racial and ethnic groups are likely to be treated more harshly (Bridges et al. 1987; Everett, Wojtkiewicz 2002; Quinney 1973). This same conclusion can also be reached through social identity theory, which posits that we split society into the 'in-group' (us) and the 'out-group' (them); this distinction forms the basis for discrimination against the out-group and positive behaviour towards the in-group (Fishman et al. 2006; Tajfel, Turner 1979). Somewhat similarly, group threat theory argues that as the size of the minority group increases, the dominant majority feels economically, politically, and culturally threatened. As a result, it will intensify its efforts to regain and entrench social control and eliminate the threat it perceives from the growing minority (Blalock 1967; Light et al. 2014; Wu, D'Angelo 2014).

However, when looking at the empirical evidence, the picture is less clear than expected. In the USA, only a handful of studies have unequivocally showed that being a non-citizen resulted in a more severe sentencing outcome. Light et al. (2014), for instance, found that there was a 'citizenship sentencing penalty' in federal criminal cases which is significantly larger than the infamous 'black' or 'Hispanic' penalty. They discovered that non-citizens, both documented and undocumented, were more than four times more likely to be sentenced to prison and received longer sentences than US citizen offenders. Similarly, Mustard (2001) found that citizens in federal cases are more likely to receive no sentence, and if sentenced they receive sentences that are about 1.7 months shorter, are more likely to receive downward departures, and receive more substantial downward departures than non-citizens. The US Sentencing Commission (2010) also found that most multivariate regression models showed that in most parts of the period of observation, non-citizens were punished more severely than US citizens in federal cases.

Other studies have provided more ambiguous and mixed results. Albonetti (1997) found that in federal drug cases in 1991–1992, having foreign citizenship significantly increased sentence severity for black and Hispanic defendants, but not for white offenders. Also in federal drug cases, but covering the period from 1996–1999, Demuth (2002) discovered that while the difference in sentence length between US citizens and non-citizens is insignificant, non-citizen offenders who are documented aliens are 30% more likely to be imprisoned, and undocumented aliens are 44% more likely to be imprisoned. A similar conclusion was reached by Wolfe et al. (2011), who showed that documented and undocumented non-citizens were 37% and 9.5 times, respectively, more likely to be sentenced to prison in federal criminal cases. However, citizenship had no effect on sentence length for documented non-citizens but resulted in 5% shorter prison sentences for undocumented non-citizens compared to US citizens.

A study conducted by Hartley and Armendariz (2011) focusing on sentences in federal narcotics cases in five southern border districts of the USA in 2008 is indicative and symbolic of the inconclusiveness of sentencing research and citizenship. Their results suggest that the effect of offenders' citizenship on sentencing outcomes varied significantly and substantially from district to district, and from narcotic to

narcotic. Wu and D'Angelo (2014) found that the effect citizenship has on sentencing in federal cases also depends on the type of offence. Their results indicate that non-citizens receive significantly shorter sentences for firearms offences, significantly longer sentences for immigration offences, and found no significant difference in sentence length between citizens and non-citizens for drug, violent, property, and other offences. Finally, in U.S. District Courts for Minnesota, Nebraska, and Southern Iowa, Wu and Spohn (2010) found no significant effect of citizenship of the offender on the length of the sentence.

In Europe, most of the work on sentencing has been conducted in the Netherlands. Johnson et al. (2010), for instance, found that European and non-European non-citizens who target Dutch victims receive significantly longer sentences than Dutch offenders in similar situations. Similar results were also obtained by Wermink et al. (2015). However, Wingerden (2014) found that when accounting for the personal circumstances of the offender, such as housing, education, employment, relationships, and attitudes, the effects of citizenship become statistically insignificant.

Some of the discrepancies between the results of these studies might be due to their differing in many important methodological aspects, be it the dataset (including the period covered and the offences and/or types of courts considered), the variables they account for, or the multivariate regression models that are employed. However, it is also possible that they give a realistic account of the different pictures that exist in the various systems that were analysed.

## THE EUROPEAN PICTURE

There is a significant lack of research on the issue of foreigners in European correctional institutions. Recent contributions by Ugelvik (2014), and Delgrande and Aebi (2009) are exceptions to this rule. However, data on foreign offenders may be found in various well-known datasets, such as the World Prison Brief and the Council of Europe's Space I and II.

The picture painted by this data and these accounts is not always a coherent or easily understandable one, as the following attempt shows. Table 1 presents various data on prisoners and foreigners in European countries. The first two columns thus tell a rudimentary story about the countries' level of punitiveness in 2016 – the first is the prison population rate (number of prisoners per 100,000 inhabitants) and the second is the absolute number of prisoners in a given country and offers a more realistic understanding of the actual size of the prison population. The third column shows the percentage of foreigners in prisons, a percentage that might be interesting to compare to the percentage of foreigners in the total population for 2017 in the fourth column. In the last two columns, the term "foreign" includes all persons whose citizenship is different from the country in which they are residing, whether they are there legally or not.

Table 1: Data on foreigners in prison in European countries

Title	Prison population rate	Prison population total	Foreign Prisoners (%)	Foreign population (%)
Monaco	83.8	32	<b>93.8</b>	64.2*
Liechtenstein†	27	10	<b>87.5</b>	33.1*
Andorra	60.1	47	<b>78.7</b>	56.9*
Luxembourg	122.3	705	<b>73.9</b>	48.2
Switzerland	83.0	6912	<b>72.0</b>	23.9
Austria	101.5	8824	<b>53.9</b>	15.4
Greece	89.3	9621	<b>55.2</b>	4.8 (2016)
Malta	128.0	556	<b>41.7</b>	8.0*
Belgium	102.7	11615	<b>40.7</b>	12.0
Cyprus	78.7	668	<b>41.5</b>	18.2*
Norway	73.9	3851	<b>33.9</b>	10.5
Estonia	202.9	2670	<b>38.4</b>	16.2
Italy	89.3	54195	<b>33.8</b>	8.5
Germany	78.4	64397	<b>35.6</b>	12.2
Spain	130.7	60687	<b>28.5</b>	9.5
Denmark	59.7	3408	<b>28.0</b>	8.5
France	102.6	68514	<b>21.5</b>	7.1 (2016)
Sweden	58.5	5762	<b>21.3</b>	8.6
Iceland	37.3	124	<b>21.0</b>	9.0
Montenegro	173.7	1 081	<b>18.8</b>	8.2
Netherlands	51.4	8726	<b>18.2</b>	5.7
Finland	56.7	3110	<b>17.5</b>	4.4
Portugal	133.2	13779	<b>16.7</b>	3.9
Ireland	78.1	3688	<b>12.7</b>	12.9 (2015)
UK: England & Wales	146.4	85134	<b>11.6</b>	9.3 (UK)
UK: Northern Ireland	80.7	1500	<b>9.1</b>	9.3 (UK)
Slovenia	63.4	1308	<b>9.0</b>	7.3

Czech Republic	213	22481	<b>8.0</b>	4.6
Croatia	74.2	3108	<b>6.1</b>	17.6
FYR Macedonia	161.7	3349	<b>5.4</b>	6.6
Hungary	212.6	18171	<b>5.0</b>	1.6
Russian Federation‡	408	590 635	<b>4.3</b>	0.8 (2016)
UK: Scotland	142.4	7657	<b>3.9</b>	9.3 (UK)
Latvia	212.6	4186	<b>3.9</b>	14.3*
Serbia	150.7	10672	<b>3.4</b>	5.6*
Bulgaria	116.7	8347	<b>3.2</b>	1.2*
Bosnia and Herzegovina‡	73	1 722	<b>2.6</b>	0.6*
Turkey	244.6	192627	<b>2.2</b>	5.8*
Slovakia	187.6	10181	<b>2.2</b>	1.3
BiH: Republika Srpska	74.6	863	<b>2.0</b>	N/A
Ukraine‡	157	56 638	<b>1.7</b>	11.4*
Lithuania	244.1	7051	<b>1.5</b>	4.9*
Albania	204.8	5910	<b>1.5</b>	3.1*
Romania	140.5	27765	<b>1.1</b>	0.9*
Poland	188.4	71528	<b>0.9</b>	0.9*

The main source for the table is the Council of Europe's Space I dataset for the year 2016 (Aebi, Tia-go, Berger Kolopp, Burkhardt 2017). Data on countries marked by ‡ is taken from the World Prison Brief dataset (Institute for Criminal Policy Research 2018). Data on the percentage of foreigners (last column) is taken from the OECD's Report on international migration (OECD 2018), except for data marked by \*, which is taken from the UN's Trends in International Migrant Stock, 2015 revision (UN Department of Economic and Social Affairs 2016).

While the first group of countries – i.e. Monaco, Liechtenstein, Andorra and Luxembourg – may be disregarded as statistically insignificant due to the low absolute numbers (Delgrande, Aebi 2009), at least there the high proportion of foreign prisoners somewhat correlates with the high proportion of the foreign population.

In a similar study, Ugelvik (2014) noticed a divide between west and east, which can be observed here as well. Focusing only on EU members, Ugelvik notes that the 'old west' averages over 26 percent of foreign prisoners in their prison populations, while in eastern Europe this percentage is as low as 3 percent on average. The phenomenon is also noted by Delgrande and Aebi (2009), who remind us that the

divide is coterminous with the former Iron Curtain. Including more non-EU countries accentuates this division, as the Balkan countries, for example, fall well below the eastern EU average.

This picture coincides with the general notion of western countries having to deal with eastern criminals, a rhetoric continually employed in contemporary debates (e.g. Brexit). However, the proportion of people in prison has relatively little connection to crime rates in general and to foreign prisoners as well. Ugelvik (2014) illustrates this nicely using the example of Estonia, where the unexpectedly high proportion of foreign prisoners is due not to a huge influx of migrants but rather to a very restrictive citizenship granting policy.

The fact that Greece is among the top countries in Table 1 also does not fit into this generalised rhetoric, nor does the fact that the UK members feature towards the bottom half. Other explanations are needed to understand these phenomena – in the case of UK, a look at institutions housing migrants that are nominally not prisons, but essentially are not different from prisons (cf. Bosworth et al. 2016), might be a good way to search for such explanations.

## PUNISHING FOREIGNERS IN SLOVENIA

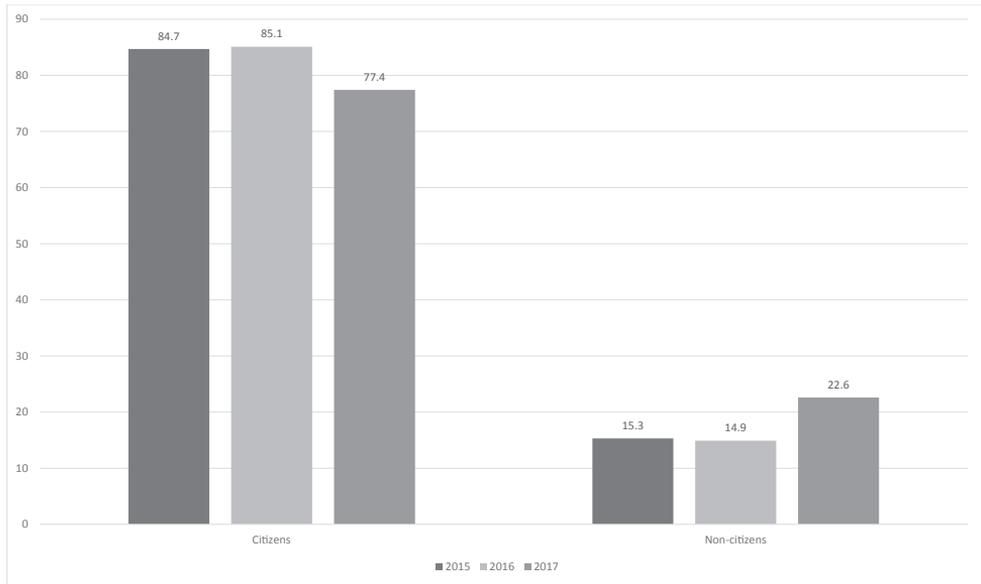
With regard to sentencing and penalty in general, Slovenia is somewhat of an outlier among its neighbours and has been termed “exceptional” in the Scandinavian sense (Dünkel 2013, 2017; Šelih, Završnik 2012). Its lenient sentencing policies have been present since before its independence in 1991 and have only started to recede in recent decades (Flander, Meško 2016; Plesničar 2013).

### Sentencing Foreign Offenders in General

When analysing the punishing of foreigners, Ugelvik (2014: 117) notes that Slovenia is the “most ‘western’ of the eastern European countries”, which puts it at the same level as the UK in terms of punishing foreigners. However, in the time since Ugelvik’s assessment, some changes have occurred in Slovenia which may make it even more ‘western’ than some ‘western European countries’.

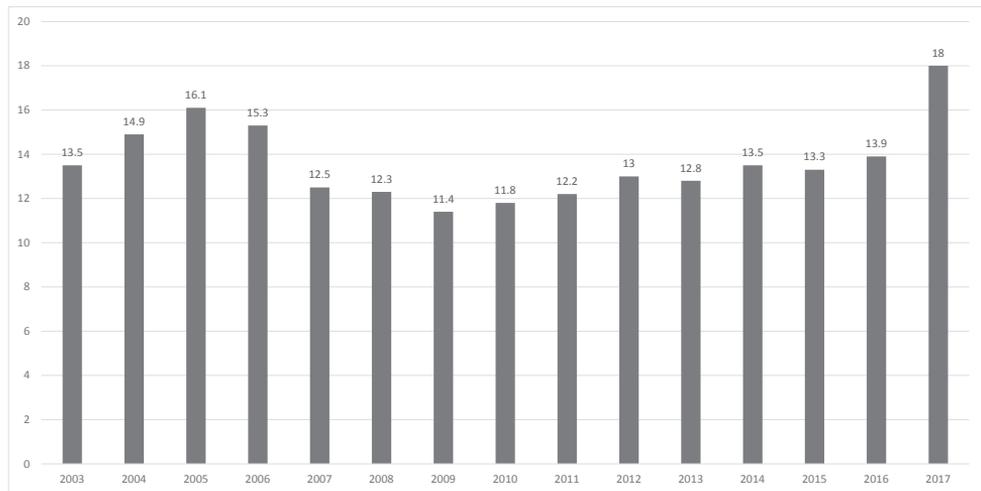
Figure 1 shows that a relatively stable proportion of convicted foreigners has seen a steep rise in just one year, bringing it up to 22.6 percent of all convicted persons. This has also changed the makeup of Slovenian prisons, where about 18 percent of all prisoners are now foreigners (as in non-citizens), as shown in Figure 2.

Figure 1: Citizens and non-citizens convicted by Slovenian courts in %



Source: Statistical Office of the Republic of Slovenia 2018

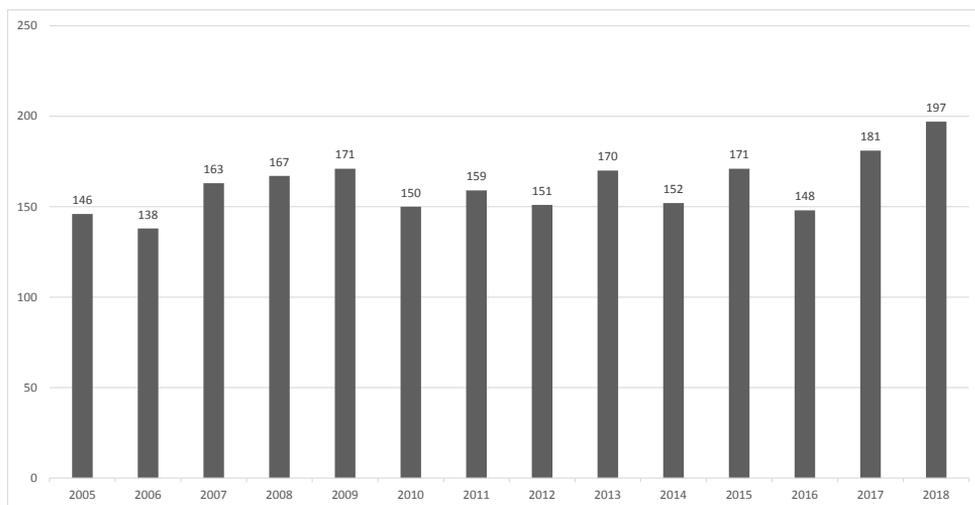
Figure 2: Proportion of non-citizens in Slovenian prisons in %



Source: Prison Administration of the Republic of Slovenia 2003–2018

However, the sudden rise cannot be attributed (only) to a changed attitude towards foreigners, but rather to a decrease in the incarceration of Slovenian citizens. As seen in Figure 3, the absolute number of foreigners has risen, but not to the extent that would explain the difference in the proportion of citizens vs foreign prisoners.

Figure 3: Number of non-citizens in Slovenian prisons



Source: Prison Administration of the Republic of Slovenia 2003–2018

In order to explain this occurrence, we would need much more data, which, however, turns out to be harder to obtain than expected. Data on convictions aggregated by citizenship has only been added to the Statistical Office's public dataset recently and is only available due to a change in methodology. Unfortunately, this means that such data is not available for prior years. Moreover, in order to understand the trend and its characteristics, it would be necessary to compare the number of convictions with the number of arrests and the number of charges brought against foreigners, which would again only be available for the last three years. Sadly, this data is also not yet publicly available, and the Statistical Office was not able to provide it before publication. These missing data would perhaps explain at what stage of the criminal proceedings the upward trend begins, as well as when exactly it began.

Data on convictions reflects changes in the last year, but due to the length of criminal proceedings in Slovenia, it is safe to assume that the criminal offences in question occurred two to three years ago. This would coincide with the rhetoric offered by the right-wing political factions, claiming that the spikes in migration in 2015 (Kogovšek Šalamon 2017) caused a rise in crime rates. However, such a proposition is easily refuted just by looking at the data on convicted foreigners and their countries of origin (Table 2).

Table 2: Countries of origin of convicted non-citizens

	<b>2015</b>	<b>2016</b>	<b>2017</b>
Bosnia and Herzegovina	301	289	531
Kosovo	92	83	186
Croatia	130	91	175
FYR Macedonia	108	130	145
Serbia	175	129	124
Bulgaria	44	49	69
Albania	54	12	18
Italy	35	35	18
Hungary	72	12	18
Romania	97	24	16
Slovakia	11	9	16
Ukraine	18	18	14
Montenegro	20	26	13
Germany	2	7	12
China	3	15	3
USA	2	18	0
Other countries	53	51	56

Source: Statistical Office of the Republic of Slovenia 2018

As Table 2 shows, the vast majority in the absolute numbers, as well as the largest increase, resulted from the convicting of foreign citizens of countries of the former Yugoslavia. The proportion between them and other countries has not changed, and the stereotypical 'illegal alien' as the personification of otherness and danger as discussed above does not feature among the top 15 countries of origin at all. In fact, the last category, 'Other countries', features countries from all over the world, but none of them exceeds ten offenders in any given year.

We could also try to explain the rise in the proportion of convicted and imprisoned persons with any of the theories mentioned above when discussing the differential treatment of offenders. However, it is unlikely that any of them would cause such a dramatic upturn, as they focus on patterns and trends in decision-making that are deeply ingrained and less prone to sudden changes.

Moreover, the possibility of a more lenient treatment of citizens when compared to foreigners (Delgrande, Aebi 2009) is also a dubious hypothesis. Firstly, the sudden change makes such an explanation less likely, but more importantly there is an oddity about it that requires explanation. As mentioned, there has been a drop in the absolute numbers and in the proportion of convicted and imprisoned Slovenian

citizens. What makes it even more curious, however, is the fact that the drop only features in the male prison population, while the number and proportion of women in Slovenian prisons is on the rise (Plesničar 2018).

On the other hand, we might try to invoke procedural changes, mainly the introduction of plea bargaining in 2012, as a potential cause for the trend in punishing foreigners, but a definitive answer would require a thorough and detailed analysis of how this affects citizens vs non-citizens.

What is certain, however, is that Slovenia's treatment of foreigners has undergone a significant change, but it is perhaps too early to try to explain it. It will be interesting to observe how the trend develops in the future and to combine that with additional data that will perhaps become available in the meantime.

## Sentencing Homicide Offenders

Faced with so much missing data on general convictions, we turned to an existing dataset, in which we analysed court judgments in cases of homicide and attempted homicide. The analysis is based on a database of about 500 homicide cases from the period 1991–2016, which represent all available cases taken from all Slovenian District Courts. We felt that an analysis of homicide with regard to foreigners would fit well into current public debates on the 'violent foreigner'. Moreover, homicides typically do not go unreported and the clearance rate (i.e., the rate at which the police successfully solve crimes) in these criminal offences is very high (100% in the last few years according to police data), which enables us to analyse the bulk of all cases and to escape the pitfalls of the dark spectre of criminality.

Homicide in Slovenia is typically a very personal matter. Almost half of all homicide cases involve the defendant's family members and intimate partners as victims; the rest are committed against neighbours, friends, acquaintances, and less than ten percent against strangers (Plesničar, Hafner 2015).

We analysed both questions of citizenship and ethnicity in this dataset in order to shed some light on the previously discussed issue of varying degrees of foreignness. This is typically extremely difficult to analyse, as Slovenia does not systematically collect data on ethnicity in relation to criminal justice. However, court judgments were fertile ground for research, as it is standard procedure for courts to state the defendant's ethnicity in the "general part", i.e. introductory section, of the judgment. There are no formal requirements or definitions of how this data is to be collected, but in the majority of cases, judges rely on the information given by the defendant. Given that systematically collecting such data would be frowned upon as potentially unconstitutional, it is interesting that judges still follow the tradition in their judgments.

Figure 4: Citizenship of defendants in homicide cases in %

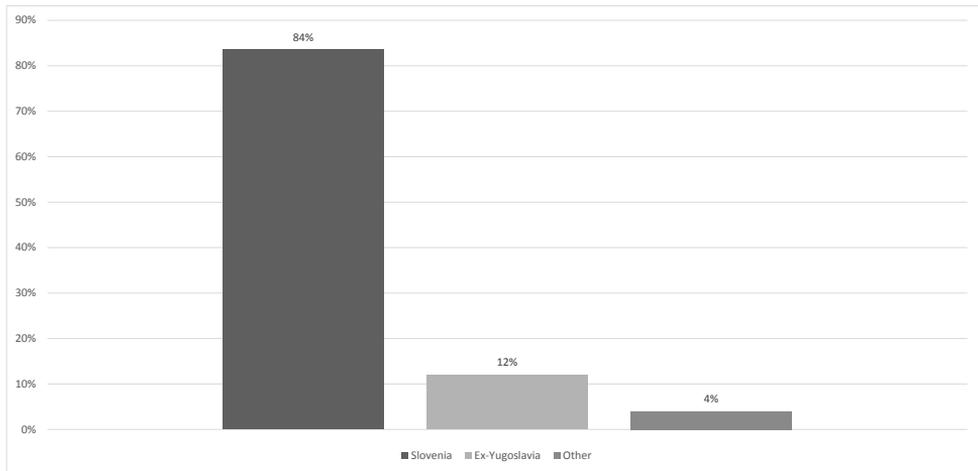
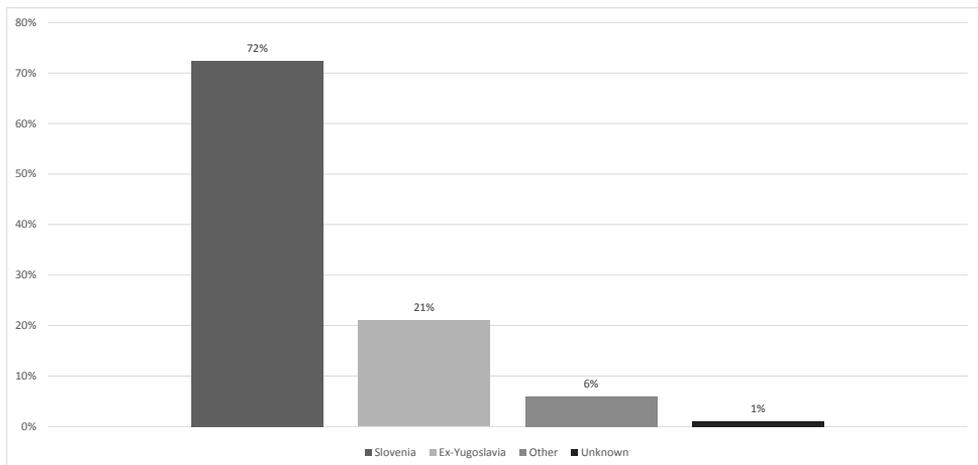


Figure 5: Ethnicity of defendants in homicide cases in %



What we can see from figures 4 and 5 is that the proportion of foreign nationals is significantly larger than the proportion of foreign citizens. Of the 510 cases analysed, 84 involved a defendant with foreign citizenship, while 139 defendants were of foreign ethnicity (with or without Slovenian citizenship). Moreover, when trying to assess their immigration status, we discovered that 17% of foreign national defendants were first-generation immigrants (defined as born abroad), while 4% were second-generation immigrants (born in Slovenia to foreign national parents).

When looking at sentences that defendants received for the offences, the picture becomes even fuzzier. A preliminary data analysis suggests that the differences in sentences between citizens and non-citizens are contrary to expectations. It appears

that in general, foreign offenders have received lower prison sentences than Slovenian citizens. When the category of foreigners is further dissected, it appears that citizens of Ex-Yugoslavian countries on average receive shorter sentences than other foreign citizens and Slovenian citizens (Figure 6). The pattern seems to be repeated with regard to ethnicity as well (Figure 7).

Figure 6: Average prison sentence for homicide offenders in years according to citizenship (preliminary data)

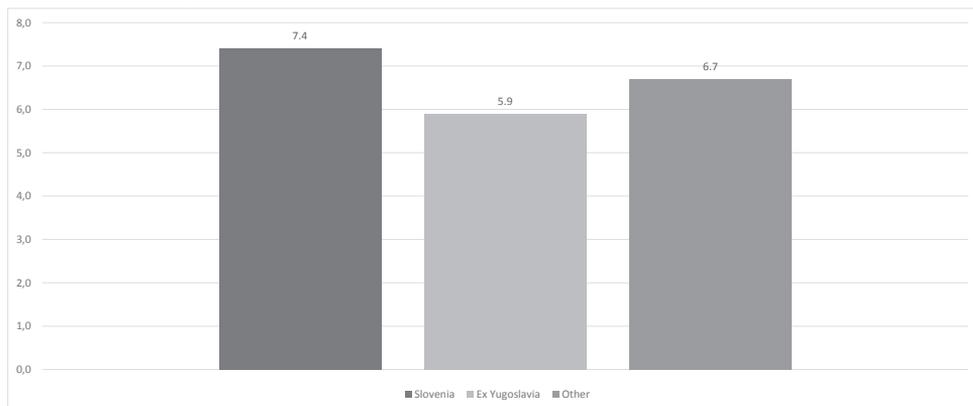
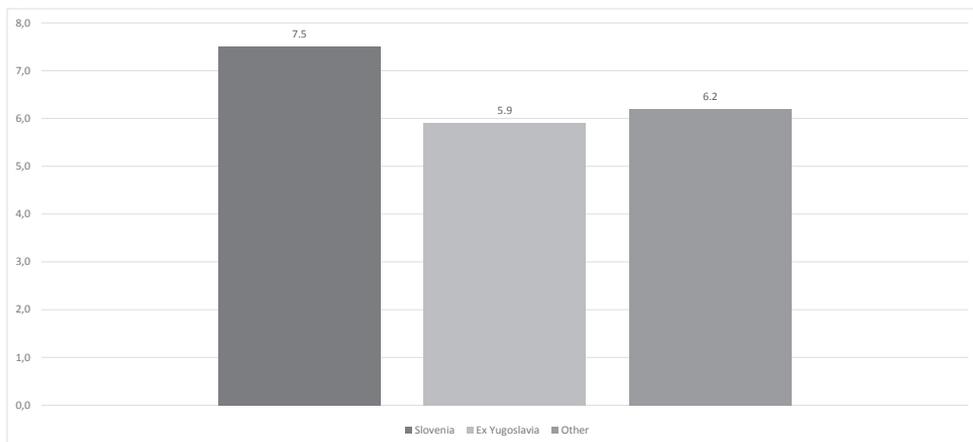


Figure 7: Average prison sentence for homicide offenders in years according to ethnicity (preliminary data)



This preliminary data is curious and requires further attention and scrupulous analysis. One potential caveat might be that the total number of cases is relatively low, which is even more true for the number of cases with foreign offenders. Moreover, homicide is a specific crime that in many ways differs significantly from other, more

common criminal offences, and unexpected results might be more indicative of these differences than of general trends.

In trying to look for the rationale for these data, we have identified several potential explanations. Firstly, Slovenia has had the option of deportation either as a criminal sanction in addition to imprisonment or as a potential legal consequence of imprisonment. It would be plausible to think courts might choose this option to relieve the system of foreign offenders. However, it has rarely been used (even) in cases of homicide: in the entire period, only 13 deportation orders were mandated.

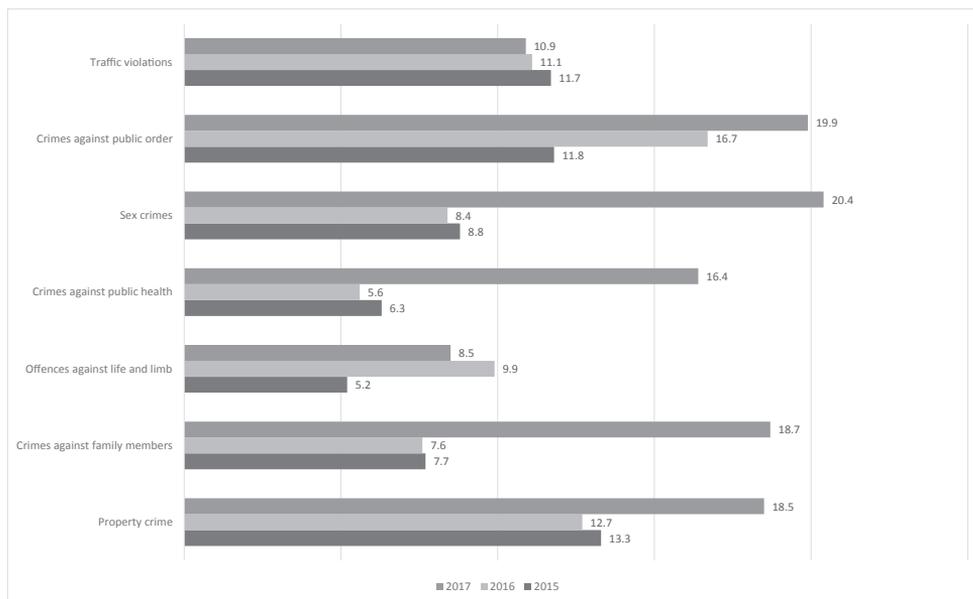
Next, there is the question of the victims. As stated earlier, the majority of homicides in Slovenia occur among family members, friends and acquaintances. This is also true for homicides committed by foreign offenders. Courts are not as meticulous about determining the victim's citizenship and ethnicity as they are with defendants, therefore the data we gathered was sometimes based on a circumstantial assessment of citizenship or ethnicity. However, what seems apparent is that when foreign offenders have committed homicide, their victims were somewhat less likely to be Slovenian or, at least, it was harder to determine their citizenship or ethnicity. This could lead to a less engaged judiciary, who might be less likely to empathize with victims. However, when discussing homicide this might be a slippery argument and would need further analysis to be proven.

Furthermore, Slovenian courts are lenient when compared to their counterparts in many other systems, which is true even though their leniency is less pronounced every year (Flander, Meško 2016). Moreover, they are relatively loosely restrained by statutory sentencing guidelines and free to decide on mitigating and aggravating circumstances in each individual case (Plesničar 2013). In some instances, the reasons given by the courts for individual sentences contained rationalizations in terms of socio-cultural differences. These were used to absolve the defendant's behaviour, which could potentially account for a proportion of the differences in sentences we see in the data. However, a thorough textual analysis would be needed to put forward this theory with serious plausibility.

Lastly, it seems very likely that Wingerden's finding in the Dutch context would be applicable in Slovenia as well. Wingerden (2014) found that when Dutch offenders' characteristics such as housing, education, employment, relationships and attitudes are considered, the effects of citizenship become statistically insignificant. A thorough analysis of all relevant data for Slovenia might likely prove little effect of citizenship on the sentencing decision.

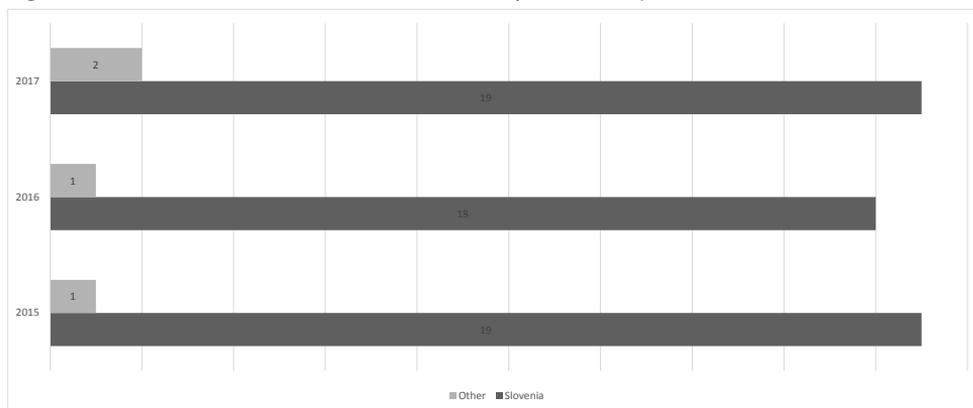
In conclusion, it is important to point out that the analysis included cases ending in 2015/2016 and hence did not cover the latest upturn in foreign convictions and imprisonments discussed earlier. Nevertheless, even though the data show an increase in the proportion of convicted foreign offenders in almost all types of criminal offences, including violent crime (Figure 8), homicide seems to be an exception. Of the 60 homicide cases that resulted in a conviction in the past three years, only four were committed by foreigners (Figure 9).

Figure 8: Non-citizens convicted by Slovenian courts for offences chapters in %



Source: Statistical Office of the Republic of Slovenia 2018

Figure 9: Defendants convicted of homicide by citizenship



Source: Statistical Office of the Republic of Slovenia 2018

## CONCLUSION

It has become clear throughout the drafting of this paper that we know too little about the intersection of criminal justice and foreignness. While we have theoretical presentations of concepts and ideas, and we have some empirical accounts of what happens in practice, the two are not necessarily aligned and coherent.

The analysis of foreign offenders in the Slovenian context is a good example of this conundrum. While the general trend fits with accounts of demonizing the foreigner (Melossi 2003; Wacquant 1999), and even more so in the contemporary crim-migration context, a detailed look offers a fuzzier picture. Questions of who is and who is not a foreigner are not merely theoretical exercises, but practical issues with tangible consequences. Slovenia's entanglement with the Ex-Yugoslav countries and the many people who have left them for life in Slovenia means that the criteria as to what being foreign means are less clear and not merely a question of citizenship. It soon becomes clear, however, that foreignness is not a uniform question, but rather a continuum with non-foreignness on one side and complete foreignness on the other, and a plethora of possible interpretations in between.

Moreover, a more detailed look into just one aspect of sentencing foreigners, for the offence of homicide, has revealed a whole set of dilemmas and contradictions. The results that point towards a more lenient punishment of foreigners are rather surprising, and while we have offered some possible explanations, we claim no definitive answer. More research is needed to see whether homicide is an anomaly or whether such a trend is overarching. Regardless of the answer, the fact that we have to pose the question shows that some assumptions made on the general level may be questionable or outright wrong when dealing with the details. This is, after all, where the proverbial devil is to be found. We are, however, very unlikely to find it unless we actively search for it, which means that there is an abundance of research to be made in the field of criminal justice as it intersects with foreignness.

In terms of future research, seeking different notions of what 'foreignness' means in different countries and societies would improve our knowledge and enrich theoretical accounts of "otherness" in relation to criminology. This would call for not merely quantitative, but rather qualitative analyses, preferably in various settings and with a comparable value. Moreover, degrees of 'foreignness' might be a better measure of differences and disparities in the criminal justice treatment and outcomes than currently researched notions of citizenship, ethnicity and perhaps even race. This suggestion would need to be tested, and we believe more empirical data on the punishment of foreigners in different countries would take us some way towards that end.

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## POVZETEK

### KAZNOVANJE TUJCEV: KAZNOVANJE TUJIH STORILCEV KAZNIVIH DEJANJ V SLOVENIJI

Mojca M. PLESNIČAR, Jaka KUKAVICA

Prispevek se ukvarja z obravnavo tujcev v kazenskopравnih sistemih, ki so je deležni kot storilci kaznivih dejanj, in ne v sodobnem kontekstu kriminalizacije migracij. Uvodoma avtorja odstirata nianse »tujosti«, koncepta, ki zajema veliko več kot le vprašanje državljanstva. V sodobnih družbah tako obstajajo različne oblike tujosti, glede njih pa je mogoče vleči vsebinske vzporednice s sodobnimi razpravami o »drugem« v kriminološkem kontekstu. Strah pred drugimi je v veliki meri tako mogoče primerjati s strahom pred tujci – ki se bodisi rasno, etnično, versko ali drugače razlikujejo od večine. V kazenskopравnem sistemu se tovrstni »drugi« pojavljajo pogosteje, kot bi bilo glede na njihovo zastopanost v širši družbi mogoče pričakovati, pri čemer je temeljna raziskovalna dilema predvsem vprašanje, od kod te razlike izhajajo: so sad kriminalitete ali diskriminacije? Zdi se, da empirične študije iz različnih okolij potrjujejo predvsem slednje.

Tudi v evropskem prostoru je tako v zaporih mogoče zaznati pomemben delež tujcev, pri čemer je mogoče razlikovati med različnimi skupinami držav. V glavnem je opazna ločnica med t. i. zahodom in vzhodom: prvi je predvsem deležen imigracij in se sooča z visokim deležem tujcev v zaporih, drugi pa je predvsem deležen emigracij in zaznava nižji delež tujcev v zaporih. Vendar slika ni enoznačna in izjeme od te splošne porazdelitve lahko postavijo na glavo delitev samo.

Slovenija se v tem kontekstu umešča med bolj »zahodne« med »vzhodnimi« državami, predvsem pa je zanjo značilen nepojasnjeno velik porast deleža tujcev med zaprtimi osebami. Podrobnejši pogled pokaže, da gre v državi v resnici za pomemben padec deleža moških državljanov, medtem ko je trend zviševanja opazen pri tujcih in ženskah.

Podrobnejša analiza kaznivih dejanj umora in uboja v Sloveniji pa pokaže, da so tujci pri teh kaznivih dejanjih v splošnem deležni celo nekoliko manj strogih sankcij kot slovenski državljanji, kar še zlasti velja za tujce, ki izhajajo iz držav nekdanje Jugoslavije. Ugotovitev je mogoče pojasnjevati na več načinov, gotovo pa bo potrebna še natančnejša analiza.

# THE EUROPEAN DIGITAL FORTRESS AND LARGE BIOMETRIC EU IT SYSTEMS: BORDER CRIMINOLOGY, TECHNOLOGY, AND HUMAN RIGHTS

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COBISS 1.01

## ABSTRACT

**The European Digital Fortress and Large Biometric EU IT Systems: Border Criminology, Technology, and Human Rights**

Today, at a time when we are witnessing the “multiplication of borders”, borders are occupying new domains. The article focuses on the erection of digital borders by means of biometric technology, which is creating new knowledge through the compilation of large biometric databases in the EU. By “tattooing” borders onto immigrant bodies, disciplinary power is being superseded by the post-disciplinary power of “instant surveillance”. The article continues by analysing re-bordering practices by means of seemingly apolitical information technology, and concludes by delving into the new harms caused by re-bordering, including violations of human rights and the emergence of multi-layered criminal law.

**KEY WORDS:** biometric data, human rights, information technology, border criminology, large IT database

## IZVLEČEK

**Evropska digitalna trdnjava in veliki biometrični EU IT sistemi: Kriminologija meje, tehnologija in človekove pravice**

Danes, ko smo priča »multiplikaciji meja«, meje zasedajo nova področja. Članek se osredotoča na digitalne meje, ki v EU vznikajo z uporabo biometrične tehnologije, kar z oblikovanjem velikih biometričnih podatkovnih zbirk ustvarja novo vednost. Avtor v članku pokaže, kako s »tetoviranjem meja« na imigrantska telesa disciplinsko oblast nadomešča »hipna oblast«, nato pa odstre dileme, povezane s premikanjem meja, kar omogoča domnevno apolitična informacijska tehnologija. V zadnjem delu predstavi nove oblike škode, vključno s kršitvami človekovih pravic, in nastajajoče večplastno kazensko pravo, ukrojeno glede na »hierarhije državljanstva«.

**KLJUČNE BESEDE:** biometrični podatki, človekove pravice, informacijska tehnologija, kriminologija meje, velika podatkovna zbirka

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## INTRODUCTION

European criminologists have been concerned with migration policies since the late 1980s and have described how criminal law measures have merged with the administration of migration. This interest in the convergence of migration and criminal justice has been termed the “criminology of mobility” (Franko Aas, Bosworth 2013) or “border criminologies” (Bosworth, Turnbull 2014) and analysed as the emergence of “crim-migration law”, i.e. the convergence of criminal law and procedure and migration law and procedure (Hernández 2017). In this process of convergence of the two fields, cutting-edge information technology plays a significant role. Migration policy does not consist solely of laws, but also of high-tech “solutions”, which are changing the borders of Europe into an “e-Border” (Dijstelbloem, Meijer, Besters 2011) and an “electronic fortress” (Unmüßig, Keller 2012). Biometric technology in particular has become “the prime technology for tracing the new globality in both its abject and privileged forms” (Franko Aas 2011). The fascination with such technologies in regulating migration grew exponentially in the aftermath of 9/11, following the USA’s power to export its security agenda and impose biometric passports on the rest of the world (Franko Aas, Bosworth 2013: 31). Biometry is now used as a way of “tattooing” borders onto migrant bodies. Despite its inefficiencies, e.g. false positives and separate treatment of migrants by producing ‘disqualified bodies’ (Adey 2004), biometric technology is spreading and may even employ innovations such as facial expression recognition (Boffey 2018) and language accent detection (Lin 2018) in the near future.

Biometric technologies must be regarded as an immanent part of other political processes. In analysing Frontex, for instance, Wilson showed how the vast technocratic and informational infrastructures reinforce the existing political agendas: “[r]isk analysis endeavours to anticipate and pre-empt border futures through calculation and projection [...]. Such imagined futures are then drawn back into the present through the conception of the ‘near real-time’ border” (Wilson 2018: 46). The employment of these technologies is fostering existing trends such as “securitisation” – the perception that ascertaining the correct identity of an individual, and in particular a foreigner, is accepted as a security issue. At the same time, border technologies are a product of the existing perception that migration must be “managed” and responded to with technology. “Technology, however, is not just the ‘means’ that allows political and administrative aims to be carried out; technology creates its own possibilities and limitations, which implies that any targets that are thus achieved are always ‘mediated’” (Dijstelbloem et al. 2011). The engagement of the vast IT apparatus for migrant purposes in the EU serves to centralise the power of the EU institutions and paves the way towards the Schengen area, which is regarded as “one of the major achievements of integration” (European Commission 2016: 2). EUROSUR, the European external border surveillance system, for instance, has been a catalyst for new social relations among disparate sectors, creating areas for collaboration and competition, compliance and conflict (Andersson 2016). It is not so much a tool for detection

at the borders and beyond, but rather for how border policing is socially organised (ibid.: 35). Moreover, Frontex is also tasked with contributing to technological development (Wilson 2018). It is mandated with purchasing technical equipment on its own behalf (Lemberg Pedersen 2013). By interlinking business entities with the political migration agendas, Frontex thus operates as a chamber of commerce despite its attractive rhetoric of “saving the lives of migrants”.

Arendt (2013: 7–8) claims that violence needs tools. The technological revolution has thus always been most notable in the military domain, and the contemporary “militarisation of the border” employs IT on a large scale. Military logic thus underpins the IT tools employed in border control, such as carbon dioxide sensors at border checks, infrared sensors, unmanned aerial vehicles, and the large biometric databases compiling data on retina scans, fingerprints, and DNA. As these tools are of military origin, their deployment in the management of migration reframes migration in security terms. These tools dictate a specific framing of the social challenges, and military tools are in addition attuned to the binary logic of “us” and “them”, of exclusion and inclusion, and of the extermination of the “other”. From such a perspective, unwanted migration is not a product of “Western” European policies and failures in tackling the roots of the problem, such as the rising tide of global inequalities, but a security management issue which must be addressed with technology. The specific “political and technological framing places migrants as a source of insecurity (and as potential criminals), rather than people who are exposed to considerable dangers on their migratory journeys, and therefore deserving of protection and assistance” (Pickering et al. 2014).

This article focuses on the following two questions: How do the new technologies of mobility control, especially biometric technologies, intensify surveillance by redefining borders? And: What are the dangers and human rights implications of the data-driven IT tools employed for the surveillance of the EU borderlands?

In the second section, the article documents the existing research on the criminalisation of mobility and shows how this is reshaping criminal justice institutions, prisons, and policing, or, more broadly, how mobility is bringing new challenges to understanding criminalisation, crime, and punishment (Franko Aas 2013). In the third section, the article tackles the meaning of what a border actually is. What does the notion of “multiplication of borders” (Balibar 2015; Bendixsen 2017) mean and how do borders move and occupy new terrain and domains, including the digital domain? Here, the article starts from the insight that the EU’s borders are in constant flux due to its inability to effectively address the reasons for migration. They are theorised as being neither solid nor liquid, but “gaseous” (Bigo 2014), or, in the context of the 2015 “migrant crisis” in the Balkans, even as “cloudy” (i.e. cloud-based) (Milivojević 2018). Amongst the many technologies of mobility already installed for EU border “security”, this article then focuses on biometric technology. It shows how the large EU IT systems in the areas of borders, visas, and asylum, and digitisation megaprojects such as EUROSUR and the Smart Borders Package in the EU, are all

part of the rising transnational governance of the European borderlands. With the electronic upgrading of border controls – externally through EUROSUR and internally through the Smart Borders Package complementing SIS II,<sup>1</sup> EURODAC,<sup>2</sup> and VIS<sup>3</sup> – the EU has been creating one of the world's largest biometric databases. Through the interoperability efforts, i.e. the legislative proposals on interoperability between EU information technology systems presented in December 2017, and the constant monitoring of European borderlands with EUROSUR, i.e. a “system of all systems”, Europe is re-defining the concept of border and is designing a post-panoptical type of “instant surveillance”.

New technologies provide a constant gaze that obviates the need to discipline crimmigrant bodies. Biometric technology inscribes the border in the body as a form of “political tattoo” that obviates the necessity for disciplinary surveillance. The large biometric EU IT systems play both a reactive and productive role in surveillance – towards a post-panoptical type of “instant surveillance”. Because the new IT tools have profound implications for human rights, the fourth section then maps the harms caused by digital borders and discusses several implications of digital borders for human rights. The article then focuses on the functioning of large EU IT systems in the areas of borders, visas and asylum in Slovenia. It points out several human rights concerns and paints a broader picture of harms that the personal data protection law cannot sufficiently address. The article concludes with some views on the relationship between the cutting-edge technologies and the specific social-cultural milieu: these technologies are placed into specific socio-cultural situations and in turn deepen migration control practices in a militarised, securitised and externalised manner.

## THE EXISTING RESEARCH ON CRIMMIGRATION

### Features of Crimmigration

Current criminological scholarship has identified several features of crimmigration. The increasing interlinking of policy areas such as travel and border management with counter-terrorism, smuggling, and human trafficking has mixed the regulatory boundaries both institutionally and functionally. The blurring of boundaries between the police and border patrol, i.e. the tendency for the police to assume border patrol duties and for the border control to become more police-like, has been observed in several countries (e.g. in Canada in Stumpf 2013). Similarly, in the EU the military regularly provides equipment and personnel to patrol the Mediterranean. The hybridisation of prisons and detention centres (Bosworth 2013) has made them

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1 SIS II – The second-generation Schengen Information System.

2 EURODAC – European Dactyloscopy System.

3 VIS – The Visa Information System.

indistinct as places depriving individuals of free movement, but with the important difference that migration centres often lack any rehabilitation programmes. The measure of confinement (besides deportation) has become identified as the predominant tool of “bordered” penalty. Penal systems with a “double-vision” (one for citizens and one for migrants) or a multi-layered system based on “hierarchies of citizenship” (Franko Aas 2013), in accordance with which resources are distributed, now enables the tailored distribution of welfare benefits. The EU Smart Borders Package, which includes the Entry/Exit System (EES), is a clear example of “double penalty”. The system will be interconnected with the Visa Information System (VIS) database and will supposedly only allow law enforcement authorities to access the database for criminal identification and intelligence in order to prevent serious crime and terrorism. However, it exclusively targets non-EU nationals with significant data collection (see critique in Roson 2018).

Border control is increasingly associated with the language and hardware of warfare. For instance, Frontex’s pre-packaged rhetoric is full of military jargon and adjectives that emphasise the illegitimate, threatening and thus ‘criminal’ character of irregular migration (Campesi 2014). Similarly, EUROSUR can utilise unmanned air vehicles, which resonates “uncomfortably with the US government’s use of unmanned ‘drones’ in the Afghanistan conflict” (Singh Bhui 2013). The so-called “situational awareness” of EUROSUR has its origins in aerial combat dating back to the First World War (Wilson 2018). The language of business enterprises coexists with the deployment of military jargon, with the external border described as the “operational theatre” (Andersson 2014: 76).

## **Strengthening Criminalisation and Changing Penalty**

Criminologists have so far tackled the following two broad questions related to migration: What are the novel types of crime/perceived dangers? And: How do agencies, e.g. the police, public prosecutors, courts, etc. change their response when crimes are committed by individuals without formal membership?

The first question concerns the strengthening of states’ ability to deport, apprehend and detain migrants and to extend the state’s punitive practices to the realm of border control. This in itself is a disruption of the traditional distinction between criminal and migration law. Another aspect of this question relates to extending power in the border domain in a different, often harsher, manner (e.g. for the evolution of a two-sided penal culture see Barker 2013; Lacey 2008; Ugelvik 2013). Some even suggest that this is in fact a multi-layered penal culture (Franko Aas 2013).

Strengthening criminalisation includes changes in both substantive and procedural criminal law. In terms of the substantive part, scholars’ concerns have focused on the establishment of offences for human smuggling, as well as for irregular entry, transit, and stays (Mitsilegas 2017). As regards procedural law, several innovations

are undermining the due process of law, denying migrants the effective assistance of counsel, privacy rights, and the rights to asylum and protection (Greene, Carson, Black 2016; Kogovšek Šalamon 2017).

The second question relates to changes in penalty. Scholars have shown how the goals of penal intervention have changed from the reintegration of offenders into society towards deportation; called also “bordered penalty” (Franko Aas 2014). However, the role of technologies in redefining the border has not attracted much-needed attention in criminological studies.

## WHAT AND WHERE IS THE BORDER?

There are now more physical barriers at European borders than at any time during the Cold War (Bremmer 2018). Since the fall of the Berlin Wall, more than forty countries around the world have built fences against more than sixty of their neighbours (*The Economist* 2016). These physical borders are leaving countries such as Turkey and Greece to house large numbers of migrants. As these bottleneck countries cannot absorb them all, wealthier countries are investing heavily in new technologies.

### What is the Digital Border?

The conventional thinking according to which borders are understood as territorial demarcations that separate (and thus constitute) sovereign nation states has been broadly criticised (Bigo 2014; Balibar 2015). Borders should be understood as physical devices as well as structures of the imagination – giving a sense of belonging. In the latter sense, the notion of an “inner border” (*innere Grenze* as per Fichte, in Pajnik 2017: 236) encapsulates the insight that we all perpetuate borders between “us” and “them” as we live in “imagined communities” (Anderson 1998). For criminologists, the differential treatment in prisons between citizens and foreigners ultimately serves as a constant re-enactment of the border and a reminder that they do not belong (Franko Aas, Bosworth 2013). But what about the digital border? What is a digital border and how does it function?

At a meeting coordinated by Frontex, along with eu-LISA<sup>4</sup> and the European Asylum Support Office (EASO) on the island of Lesbos in 2016, EU officials asked tech companies to pitch ways to track and control people trying to reach the continent before they get here, and several tech companies showcased their latest ideas (Taylor, Graham Harrison 2016). Unisys, for instance, had devised a “refugee management suite” for enabling the pre-registration of asylum seekers. Its proposals included

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4 eu-LISA – The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

controlling refugees before they reach Europe using phone apps and biometric data gathering; tracking people once they are inside Europe using new identity cards; a system of red flags; and data analytics to highlight those with backgrounds that merit investigation. This “refugee management suite” merely offers a new form of surveillance. “The use of behaviour analytics which treat past conduct as currency for food and shelter marks a new descent into the moral abyss,” claimed civil liberty groups (ibid.). The vignette shows that with digital surveillance, borders can be “everywhere”. They have changed as a concept as they are digitised and inscribed in the body.

The multiplication of borders in digital realms shows how the notion of the border is in constant flux. The new borders are not “liquid” or “solid” but “gaseous”, claims Bigo (2014). Milivojević (2018) suggests that we should speak of “cloud-based” borders: borders are “deployed and defended in the digital sphere”. But what and where is the border when large EU IT systems, such as SIS II, VIS, and EURODAC, are employed in border control? Large biometric IT systems clearly draw new borders following from novel demarcations. Here it is necessary to turn to Balibar’s (2015) insight into the multiplication of borders in Europe. He observes how the perception of being “truly” a European country changes over time and space. Some European countries are tentatively perceived by others as not being fully European, or as merely belonging to “buffer zones”, and this ascription is relative rather than absolute. Such labelling follows a north-south “gradient” in the sense that the controller of a state’s border is its southernmost (or rather south-easternmost) neighbour (Balibar 2015). The “external borders” of Europe, he concludes, actually cut right through it and fragment Europe into several superimposed slices.

His argument has to be extended in order to encapsulate digital borders, due to the fact that another type of multiplication is taking place. By relying on the new knowledge created by the large databases, the EU countries are inscribing borders in the body – the “body becomes a password or passport” (Franko Aas 2011). By employing biometric technology and stockpiling biometric data for “real-time” (or “near real-time”) background checks, borders are directly inscribed, or “tattooed”, in the body. The border is inscribed into individuals’ retinas, voices, or DNA. The new border is mobile and migrates with the unwanted body. “Border checks are changing their location” (Dijstelbloem et al. 2011) as the border has become portable (ID cards) and virtual (databases) (Lyon 2005).

This new feature of connecting identity and citizenship with the body offers the allure of objectivity and infallibility. The body becomes an unambiguous token of truth (Franko Aas 2006). As Franko Aas (2011) puts it, “the body does not lie” – documents can be counterfeited and lost, while fingerprints, DNA, iris scans, etc., cannot be forged by the extensive illicit migration industry. It can no longer be avoided or escaped. By means of large biometric databases, the EU is imposing its own regimes of truth. The need for trust vanishes in the materiality of the body – and biometric technology fills the void. By establishing biometric databases regarding third country

nationals, the EU does not have to rely on documents issued by third countries to their own populations, thus enabling it to decide who deserves and who does not deserve to cross its borders and remain on its soil.

This new type of surveillance is in essence post-disciplinary. One way of theorising this shift was offered by Bigo, who claims the new surveillance is “ban-optic”. Its goal is “banning” and expelling people instead of integrating them into the EU (Bigo 2006). While this explains one part of the change, it is not clear how the compliance of docile bodies is achieved. It is not achieved through the “training of the soul” or self-discipline, but instead by power directed into the body through sensors, based on biometric data. The new type of post-panopticon does not need a presumed watcher in the tower (cf. Andrejevic 2016; Bučar Ručman 2016) as the gaze becomes ever-present. Docile bodies may literally be constantly tracked. The migrant subjectivity no longer needs to be disciplined and is no longer at the centre stage of surveillance – in the exercise of power, the body replaces the soul and becomes the focal point of the post-disciplinary “constant surveillance”.

Migrant bodies with the right “tattooing” may move freely, while others cannot. Technology ascribes risk based on big data analytics directly in the body. Some bodies are perceived as being riskier than others simply due to algorithmically inferred high-risk scores. In practice this means that IT tools are changing the regime governing the flow of people. Bodies with the right “political tattoo” can enter the EU and be granted fundamental rights according to refugee and asylum law, while others are left in the borderlands. At one extreme, as Balibar (2015) graphically demonstrates, are those who “practically ‘live’ in planes, airports, shopping centres, conference halls,” while at the other end of the mobility spectrum are groups “who travel by foot or on trucks on the roads of exile, carrying a child in their arms and a backpack on their shoulders – the only things that they still own.” When the algorithms recognise someone as a security risk, in-depth security checks are triggered; the calculations are made based on a variety of techniques using big data and algorithmic inference of risk, based e.g. on voice analysis (Boffey 2018) or travel patterns (Kahn 2014). While resistance to earlier types of biometric technologies such as fingerprints led migrants to burning or disfiguring their fingertips (Franko Aas 2011) in order to disable the “tattooing” of borders, more advanced technologies such as voice analysis (“voiceprint”) attach legal regimes directly to the bodies, rendering resistance futile. These are the new “violent borders” (Jones 2017), which span and multiply not only over geographical areas. They are compressed into digital language and thus also span over the digital space.

## Instruments of Digital Bordering

Reliance on the “political tattooing” of unwanted bodies evolved in the aftermath of the Arab Spring in late 2010 in Tunisia, when the heads of the EU Member States

adopted the conclusions of the EU Council resulting in new border policies “protecting” the Union against immigration (Unmüßig, Keller 2012). Basically, the decision was made to reinforce the external borders using state-of-the-art surveillance technology, “thus turning the EU into an electronic fortress” (ibid.).

In their critical review of the earlier proposal of the European Commission’s Smart Borders Package, i.e. the Entry/Exit System (EES) and Registered Traveller Programme (RTP), Guild et al. (2008) claimed that the enhanced use of new technologies in European security policies is merely a “step closer to a ‘cyber-fortress Europe’”. The travelling public will find itself increasingly the object of state suspicion, with no concrete reason or grounds (ibid.). Disproportionate measures will very likely be ineffective e.g. in facilitating the entry of bona fide travellers, and the large databases will breach data protection laws. Back then several layers of security were already in place for checking third-country nationals, and additional databases were not a necessary means to combat illegal stays. A decade later all of the proposed systems are operational, i.e. the SIS II, VIS, and EURODAC databases are fully operative and have even been expanded to include more types of data (SIS II). The Smart Borders Package was signed on 30 November 2017, and the EES is scheduled to become fully operative by 2020. Moreover, new agencies have been established, such as eu-LISA, the EU Agency for the operational management of large-scale IT systems, which is mandated to manage and further develop large IT systems. Multi-layered technical development, such as the EUROSUR multi-layered surveillance, is being reinforced (Hayes, Vermeulen 2012: 23). The further digitisation of border surveillance is expected with the proposed European Travel Information and Authorisation System, i.e. ETIAS, a visa waiver system planned to be operative in 2021. Automatic application processing envisages checks against SIS II, VIS, EUROPOL, Interpol (SLTD<sup>5</sup> & TDAWN<sup>6</sup>), and EURODAC data. All of the data will be cross-checked against these databases to determine if a person is a security risk. Moreover, the formerly separate VIS, SIS II, and EURODAC databases will be integrated and interlinked. Reliance on the knowledge created by large biometric databases puts digital borderlands at the centre stage of human rights concerns.

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5 SLTD – Stolen and Lost Travel Documents.

6 TDAWN – Travel Documents Associated with Notices.

## THE HARMS CAUSED BY DIGITAL BORDERS

### The Human Rights Implications of Digital Borders

The new digital borders, erected alongside the physical fences, may have the same devastating effects as razor-wire fences – their immateriality hides their effect. Fences are purportedly intended to scare off migrants, rather than to actually prevent them from crossing. In terms of physical strength, fences are weak and cannot be placed along the entire border between states. An army would be needed to guard them, as migrants can destroy, fly over, or dig under such fences. In contrast, migrant management tools, e.g. databases, algorithmic decision-making tools, risk assessment instruments, and predictive analytics to screen migrants, are building impenetrable mobile digital walls. These borders are indiscriminately forced upon migrants. Like all “weapons of math-destruction” (O’Neil 2016), i.e. automated-decision making tools based on algorithms and databases, their features are opacity, scale and harm. In terms of opacity, their inner operations and capacities are mostly unknown, and their impacts are hardly analysed, but are rather black-boxed. They are rarely challenged in practice (see the Slovenian example below). In terms of scale, they subject entire populations to their control. And in terms of harm, they often do not work properly and deliver false results, e.g. by refusing entrance to those that should be allowed to enter.

The EU migration regime contains several dichotomies that undermine the right to freedom of movement and the rights to asylum and protection, and put migrants at risk of increased surveillance. First, human rights concerns with regard to people who have entered the EU are relatively high compared to those left at the outskirts of the EU. The social inclusion of migrants and their descendants is closely monitored (see the European Union Agency for Fundamental Rights – FRA 2017). In response to the 2015 asylum emergency, the FRA has been assessing the long-term impact on fundamental rights and examining what has happened to those people who sought asylum in the EU. The FRA is especially concerned with “vulnerable populations”, but these are defined very narrowly, encompassing mainly children, which is short-sighted given the stressful situation of all migrants – are not migrants as a whole a vulnerable population?

However, there is no real regard for the human rights of those left at the outskirts of the EU. The technological solutions are complementary to the EU’s long-standing collaboration with countries of origin and transit in the form of migration compacts, readmission agreements, and Memoranda of Understanding. These two factors – technology and agreements – are both pushing the border into third countries. Among the recent agreements is the EU-Turkey Statement of 2016 (European Commission 2016), which exemplifies the “external governance” of the EU in an attempt to extend its policies into non-member states (Wunderlich 2012), according to which an EU Member State (most often Greece) can reject the asylum applications

of people who pass through Turkey as being inadmissible and shift the responsibility to assess their merits to Turkey. However, it is highly doubtful whether Turkey can offer effective protection and be considered a “safe third country”. As the EU has not put into place any effective mechanism for monitoring the situation of individuals readmitted to Turkey, the EU is, through the provisions of the Statement, preventing refugees from accessing asylum procedures and denying them their right to protection against *refoulement* (Alpes et al. 2017).

Second, the FRA has extensively analysed the human rights implications of the new electronically fortified border regime in the EU (European Union Agency for Fundamental Rights 2018a). However, its reports do not question whether the technologically enhanced border controls by means of EUROSUR and the employment of biometric technologies in the Smart Borders Package are creating a “Digital Fortress Europe”. There is an unquestioned reliance on technological fixes with regard to immigration. The human rights concerns identified by the FRA (2018a) relate solely to the quality of the data in SIS II, VIS and EURODAC informing data subjects about data processing, and the lack of adequate safeguards with regard to controlling data access. The FRA warns that the data may be hacked and abused, e.g. by oppressive regimes, or used unfairly, e.g. infractions committed as juveniles may carry over into adulthood. But from a critical perspective, it is doubtful whether these personal data protection rights are sufficient. The right to information (e.g. about collected or accessed data, or the means to correct or delete inaccurate data, etc.) alone cannot prevent the “net-widening” effect of one of the largest biometric databases in the world. The total surveillance of the Mediterranean and the electronic upgrading of border controls bring all ordinary travellers into the focus of border guards. “The EU is building a data juggernaut” (Unmüßig, Keller 2012). The plan to make all biometric databases interoperable may lead to inconceivable consequences, e.g. concerning the security and abuse of data (see critique in European Union Agency for Fundamental Rights 2018b).

Moreover, EUROSUR is being promoted as a tool to provide the right to life, i.e. to rescue refugees. But the system cannot deliver such a promise. As Hayes & Vermeulen (2012) show, maritime rescue services are not even part of EUROSUR, and border guards do not share information with them. Moreover, there are no procedures in place for the treatment or settlement of the “rescued” (Hayes, Vermeulen 2012). Technology – in this case EUROSUR – is employed to whitewash the political process of the externalisation of the border. Human rights discourse is merely a façade for securitisation (Campesi 2014).

Another forthcoming technological solution, the EES, which will collect biometric data such as fingerprints and face scans from all third-country nationals entering the Schengen area, is similarly vague in its objectives. The European Commission’s impact assessments do not demonstrate compelling reasons or a pressing need for such a large database, and the alleged goal of the EES to increase the detection and return of “illegal immigrants” is unfounded (Hayes, Vermeulen 2012).

Moreover, there is significant reason for scepticism regarding the need for the large EU biometric databases arising from the vaguely defined and high costs. Andersson argues that the “fight against irregular migration”, rather than curtailing movement, has led to more distress and drama at the borders, which in turn has fuelled a self-reinforcing industry of controls (Andersson 2014). It appears that the only real beneficiaries of these systems are defence contractors. While the European Commission estimates the cost of the Smart Borders Package to be on the order of €400 million, plus annual operating costs of €190 million, researchers have shown that the price may well be on the order of €2 billion (Hayes, Vermeulen 2012). For comparison, the cost of upgrading SIS to SIS II was also five times higher than the initial estimates.

### **The Massive EU Biometric Databases in Slovenia**

Analysis of the fundamental rights implications of the large EU IT systems in the areas of borders, visas, and asylum in Slovenia shows another dichotomy: the systems operate well; in fact, in 2015, the Slovenian EURODAC controller received an award from the Information Commissioner for best practices in personal data protection. There is no imminent danger as regards human rights, but these remain hidden. The persons affected by EURODAC are vulnerable, with little or no understanding of foreign legal system, with no knowledge of the foreign language, and with little interest in antagonising the system they seek to become a part of.

Another database, SIS II, is highly targeted, focusing on just those individuals involved in criminal law proceedings, police surveillance, or banned from entry into EU territory. A study of the legislative, institutional, and practical aspects of SIS II shows that it poses no specific human rights issues. However, the targeted populace is very unlikely to challenge this IT system. As mentioned above concerning EURODAC, these are either vulnerable populations (e.g. foreigners, missing persons) or individuals escaping justice systems (e.g. persons wanted for arrest, extradition, or for discreet or specific checks). A study of the fundamental rights implications of biometric data stored in large-scale IT systems in the above areas in Slovenia furthermore shows that data subjects have low awareness of the power of these large EU IT systems, even though the police and the Information Commissioner offer detailed instructions to individuals regarding the exercise of their rights. Nevertheless, there have been no complaints and very little case law regarding the matter. The low awareness is even more important if connected to another fact – that the authorities rely on the SIS database to a considerable degree. A hit in a database offers powerful semiotics as to what the “truth” is in a particular case.

## CONCLUSION

The turn to “the surface”, from narrative to new regimes of truth in the form of biometric databases (Franko Aas 2004) and algorithmic decision-making systems is not specific to the “criminology of mobility.” It is rather a part of the increasing reliance on the capacity of IT to tackle social problems. Digital technologies, ranging from big data analytics and real-time intelligence to algorithmic predictions and pre-emptive action, are supposed to solve social problems ranging from crime to migration. This is the mythology of technology (Boyd, Crawford 2011) – IT is supposedly more objective, unbiased, and precise. From such perspective, Frontex, EUROSUR and the large EU biometric IT systems in the areas of borders and asylum are part of a global trend towards the allure of the technological fixes to all kinds of social problems. Technology is conceived as the “ultra-solution” (Bigo, Carrera 2004). Technologies employed for tracking migrants, mobile phone applications for migrants, large biometric IT databases, “lie detectors” at borders (Boffey 2018) etc. are technological fixes that do not address the deeply-rooted causes of migration.

This article shows how mobility control technologies intensify surveillance by redefining the border. Increasing reliance on the capacity of supposedly objective, value-free and apolitical technology is producing a “Digital Fortress Europe”. Digital walls are being created to complement the physical walls. In terms of the scale, opacity and harm of these systems, digital walls re-conceptualise the border in a new and often harsher way. Escape from the EU digital wall embodied in the large IT databases – EURODAC, SIS II, VIS, and, in addition, the four new IT systems planned, i.e. EES, RTF, ETIAS, and ECRIS-TCN,<sup>7</sup> and the new framework for their interoperability with a Common Identity Repository, is made impossible through the use of biometric technologies that inscribe a political identity in the body. The currently used and planned biometric data comprise fingerprints, palm prints, face scans and DNA profiles, with fingerprints predominating in all the above-mentioned databases (except ETIAS). However, new “lie-detectors” scrutinising “crimmigrant” bodies are on the brink of being employed (Boffey 2018).

Moreover, by “tattooing” borders onto migrant bodies, disciplinary power gives way to the post-disciplinary power of “instant surveillance”. The crimmigrant body can be checked at anytime and anywhere within the EU. Borders are “tattooed” in the body. The border is inscribed into individuals’ retinas, voices, or DNA. The new border is mobile and migrates with the unwanted body. The border thus becomes portable and digital.

The article shows how digital borders are expensive and mostly ineffective, and produce substantial collateral social harm: they reproduce inequality, increase incarceration, violate human rights, cause unnecessary deaths, and break up families (Jones 2017; Vitale 2017). Due to the numerous extreme forms of harm, borders should

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7 ECRIS-TCN – the European Criminal Records Information System for Third-Country Nationals.

be de-policed, de-militarised, and, as this article shows, not augmented by means of technologies. The decision to employ technology to solve fundamentally non-technological issues eliminates the possibility of thinking of other solutions. Digital bordering is thus part of a larger managerial mentality and approach to tackling social problems. The current framing of migration follows the logic of “solutionism” – the view that for every social problem there must be a corresponding technological solution (Morozov 2013). IT is viewed as an infrastructure that will ensure unity in the EU Schengen border regime. However, IT fosters the colossal power of both the digital technology industry and military contractors, which are the only real beneficiaries of the digital borderlands. The construction of “Digital Fortress Europe” thus further perpetuates the cycle of global inequalities and triggers even more “irregular” migration.

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## POVZETEK

### EVROPSKA DIGITALNA TRDNJAVA IN VELIKI BIOMETRIČNI EU IT SISTEMI: KRIMINOLOGIJA MEJE, TEHNOLOGIJA IN ČLOVEKOVE PRAVICE

Aleš ZAVRŠNIK

Evropski kriminologi migracijske politike proučujejo od poznih osemdesetih let, ko so začeli prepoznavati trend zблиževanje kazenskoprnih ukrepov z upravljanjem migracij. Ta raziskovalni interes so imenovali »kriminologija mobilnosti« (Franko Aas, Bosworth 2013), »kriminologija meje« (Bosworth, Turnbull 2014), zблиževanje pravnih panog pa kot »krimigracijsko pravo« (Hernández 2017). Avtor v prvem delu članka prikaže obstoječe raziskave o kriminalizaciji mobilnosti in preoblikovanju kazenskoprnih institucij, zaporov in policijskega dela. Nato se osredotoči na digitalno področje, kjer z gradnjo velikih zbirk biometričnih podatkov vznikajo novi digitalni zidovi. To so SIS II (Šengenski informacijski sistem), VIS (Vizumski informacijski sistem) in EURADAC (Evropski sistem za primerjavo prstnih odtisov prosilcev za azil) ter predvideni štiri novi sistemi, paket Pametne meje (Sistem vstopa/izstopa in Program za registrirane potnike), ETIAS (Evropski sistem za potovalne informacije in odobritve) in ECRIS-TCN (Evropski informacijski sistem kazenskih evidenc), hkrati s pripravo interoperabilnosti med omenjenimi podatkovnimi zbirkami. Osrednja teza članka je, da s temi zbirkami EU »vpisuje« meje na telo migrantov in ustvarja novo vednost, ki disciplinsko oblast spreminja v »hipno oblast«.

Biometrične tehnologije so v uporabi po terorističnih napadih 11. septembra 2001 v ZDA. Te so uspele izvoziti idejo, da je migracija prvenstveno varnostni problem, ki ga je mogoče rešiti z vrhunskimi informacijskimi tehnologijami (IT). Evropska unija se je temu pridružila in gradi »digitalni zid«. Članek pokaže, kako ta odločitev opušča druge načine reševanja težav, kako je IT »politika z drugimi sredstvi«, in to kljub vtisu, da gre za apolitično in objektivno sredstvo, namenjeno »reševanju življenj«. V nadaljevanju avtor analizira pojem meje. V nasprotju s konvencionalnim prepričanjem prikaže, da se meje »multiplicirajo« in vznikajo na digitalnem področju. Pri tem se opre na obstoječe razmisleke Bigoja (2014) in Balibarja (2015). Digitalni zidovi so komplementarni fizičnim mejam, nove meje so »vpisane« neposredno v telo, so bolj učinkovite, premikajo se skupaj z »neželenimi« telesi. Takšno »tetoviranje« meja na imigrantska telesa kaže na vznik nove postdisciplinske »hipne oblasti«, ki se ne opira več na discipliniranje duše. V zadnjem delu članek prikaže škodljivost novih digitalnih zidov, kršitve človekovih pravic in večplastnost kaznovanja, ukrojenega glede na mesto človeka v »hierarhiji pripadnosti«.



# THE ROLE OF THE CONDITIONALITY OF EU MEMBERSHIP IN MIGRANT CRIMINALIZATION IN THE WESTERN BALKANS

Neža KOGOVŠEK ŠALAMON<sup>1</sup>

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## ABSTRACT

### The Role of the Conditionality of EU Membership in Migrant Criminalization in the Western Balkans

The EU's responses to migration challenges exceed the territory of its member states. Through externalization of border control they spill over into the countries of the Western Balkans (WB), which is crossed by one of the most important migration routes from the Middle East and Africa to the EU. While the WB countries show indifference towards migrants and consider them an "EU problem", the latter conditions European integration with the establishment of migration management structures similar to those in the EU. The transposition of the EU *acquis* also increases the criminalization of migrants, which highlights the problematic role of the EU and national legislators in WB in relation to the fundamental rights of migrants.

**KEY WORDS:** migration, detention, migrant criminalization, European Union, Western Balkans

## IZVLEČEK

### Pomen pogojevanja za članstvo v EU na področju kriminalizacije migracij v državah Zahodnega Balkana

Odzivanje Evropske unije (EU) na migracijske izzive presega ozemlje njenih držav članic. Prek pozunanjenja mejnega nadzora se preliva na ozemlje Zahodnega Balkana (ZB), ki ga preči ena najpomembnejših migracijskih poti s Srednjega vzhoda in Afrike proti Evropski uniji. Medtem ko države ZB ne kažejo interesa za migrante in jih štejejo za problem EU, ta evropsko integracijo pogojuje z vzpostavitvijo struktur upravljanja z migracijami, podobnimi tistim v EU. Prenos prava EU pa povečuje tudi stopnjo kriminalizacije migracij, kar kaže na problematično vlogo EU in nacionalnih zakonodajalcev na ZB v razmerju do temeljnih pravic migrantov.

**KLJUČNE BESEDE:** migracije, pridržanje, kriminalizacija migracij, Evropska unija, Zahodni Balkan

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## THE CREATION OF THE MIGRATION MANAGEMENT SYSTEM AND THE IMPACT OF THE EU

In the past, the institutional development of migration management in the Western Balkan (WB)<sup>1</sup> countries was driven by the countries' own internal needs when they received refugees fleeing the wars of the 1990s. In the last decade, however, this development has mostly been driven by external factors such as prospective European Union (EU) membership. The international actors which are most intensively involved in the development of asylum institutions and procedures in the region are UNHCR (Feijen 2008: 413), which played a crucial role in setting up the basic asylum mechanisms at the beginning of the new millennium, and the EU, which is seeking to "promote its model of border management as a first step in the process of integrating these countries into the EU" (Celador, Juncos 2012: 202). EU incentives to create migration management mechanisms have led to the creation of a WB "buffer zone" (Wolff 2008), serving to minimize irregular migration to the EU (Celador, Juncos 2012: 202; Trauner 2007; Luli 2015). At the same time, incentives to increase the migration management capacity of WB functions as the externalization of the EU's border control (Marin, 2011; Spijkerboer, 2017; de Vries, Guild, 2018). This paper focuses on whether and how the conditions for EU membership, the EU's support for institutional development in asylum and migration management and hence the externalization of migration control to the Western Balkans is causing migrant criminalization in this region.

### METHODOLOGY

In order to determine the extent of migrant criminalization in the Western Balkans, the research focused on several aspects of migration management structures. The first focus was on the legislation and how it has changed in the last ten years – have new definitions of offences related to migration and border crossing been added to the law? Have the sanctions foreseen for these offences changed? Is irregular crossing of state borders a crime or a misdemeanour? The second focus was on detention – who funded the construction of new incarceration facilities? What is the law and practice of detaining asylum seekers? The third focus was on return – what kind of return is taking place, on what grounds and where to? Is there evidence of push-backs, i.e. informal forced returns?

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1 The term Western Balkans is both geographic and political. It was initially used by US and European policymakers to describe the part of the Balkan Peninsula that remained outside of NATO and the European Union since the early 1990s. It includes all seven states that were formed after the dissolution of Yugoslavia (Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia, and Slovenia) together with Albania, which has been emerging from international isolation (Oxford Bibliographies 2017). This paper and the research on which it is based covers all of the countries in question except for Slovenia and Croatia, now EU members, and Albania, which was not a part of the former Yugoslavia.

The analysis focused on five countries in the WB region – Bosnia and Herzegovina, Kosovo, FYR Macedonia, Montenegro and Serbia. The research was done on the basis of a literature survey, the conducting of seven skype interviews with representatives of national or international organizations working in these countries in the field of migration, and interviews with five legal consultants who are experts in the field of migration, one for each country. The selection of respondents and experts who participated in data collection was based on their expertise. The anonymity of the interview respondents and experts is intentional. The collection of data took place between December 2017 and May 2018. The data is kept in protected electronic format.

## **FROM “LAISSER-FAIRE” TO SYSTEMATIC DETENTION AND PUSHBACKS**

The countries of the WB region, complex and diverse in itself, are responding differently to incentives offered by the EU. But what they all have in common is that reforms are visible mostly in relation to formal building of structures, procedures and institutions (Wolff 2008). As Grabbe points out, the EU agenda for the new member states is not so much about strengthening shared values as it is about building the countries' capacities to participate in the common market and implement similar policies (2014: 42). The fact that the WB countries have not become a safe haven for migrants and asylum seekers can be seen from our fieldwork results. The outcomes show that some countries take a relaxed approach, register a relatively low number of people and maintain limited accommodation capacities, while others take the political pressure seriously but also use relatively harsh methods which are questionable from the perspective of basic procedural and human rights standards.

Overall, the level of criminalization strongly depends on the exposure of an individual country to migration on one hand, and on the political and public attitudes towards migration on the other. It is therefore not possible to draw the simple conclusion that those countries that are most exposed have also resorted to the most restrictive responses or more repression. There are numerous examples of countries that have been highly exposed to migration but have not resorted to intensive criminalization (e.g. Serbia), as well as countries that in the past have not been exposed at all, but have showed a very strict approach which functioned as a political statement aimed at suppressing migration (e.g. BiH). The countries' policies have also been fluid, swinging between tolerant attitudes towards transit migration in one period and restrictions and border closures in another.

Serbia, for instance, was strongly affected by the refugee crisis from the very beginning when the number of arrivals began to rise in 2014. About 800,000 migrants and refugees from the Middle East and North Africa crossed the country in 2015. Responding to EU demands to safeguard its borders and consequently to reduce the arrivals of refugees, in the early stages of the mass migration movements the Serbian government introduced a registration system for people entering the country.

The registration system began as a loose arrangement and the authorities gradually introduced stricter and more precise controls in response to criticisms expressed by several EU member states (EI5; EI6; EI7). Since migrants perceive Serbia as a transit country (Lukić 2016), as on average they spent less than two days on its territory during the crisis, the authorities mostly avoided any kind of intervention which would cause or even incentivize the prolongation of their stay (EI5; EI6; EI7).

Until September 2015, there was no legal framework for differentiating people in need of international protection but not willing to stay in Serbia from those who were willing to stay. However, in September 2015 the Serbian government issued a decree introducing the issuance of “transit certificates” to people who expressed the intention to seek asylum. These certificates, issued from December 2015 to February 2016, gave the holder the right to remain in the country legally for 72 hours (Article 22(1) of the Asylum Act, Official Gazette of the Republic of Serbia, No. 109/2007; Decision on Issuing a Certificate of Having Entered the Territory of Serbia for Migrants Coming from Countries Where Their Lives are in Danger, Official Gazette, No. 81/2015). In order to properly initiate the asylum procedure, holders had to report to the accommodation centre indicated on the document within 15 days to officially submit the asylum request and benefit from the reception conditions (EI5; EI6; EI7). After Hungary completed the border fence and the EU-Turkey agreement on stricter controls on migratory movement from Turkey was signed, Serbia’s approach changed as well. The Serbian government started focusing on border security, which also meant that people entering the country were no longer able to leave as easily. The EU’s plans to externalize border control (cf. Badalić 2018) and at the same time use border security as a condition for EU membership were thus clearly manifested in Serbia (ibid.).

The approach of the Macedonian government was a mixture of even more extreme securitization aspects on one hand and more lenient de-securitization measures on the other. In harmonizing its migration management policy with the EU *acquis*, the government opted for further restrictions. However, in 2015 when the authorities on the Balkan route decided not to stop migrants and refugees<sup>2</sup> who were on their way north-west, the Macedonian government followed the Serbian example and provided short-term transit certificates to those who entered irregularly. For this purpose, amendments to the Law on Asylum and Temporary Protection entered into force in June 2015 that allowed asylum-seekers to declare their intention to claim asylum to any police officer (EI3, EI4). These amendments provided for more flexibility in claiming international protection by removing the restrictive previous requirement, according to which applications for asylum had to be made at the border when entering the country or at the nearest police station. Instead of being held in police custody in order to be transferred to the reception centre, the migrants’ and refugees’ stay in Macedonia was regularized for a period of 72 hours,

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2 This refers to the 2015/16 period, when Germany decided not to impose the Dublin rules for Syrian refugees. For more on this subject see Kogovšek 2017.

with full freedom of movement, and they were allowed to formally submit their asylum application within the prescribed time limit. However, most of the people who received such 72-hour certificates left the country. Out of the one million people who transited Macedonia during the “refugee crisis”, only 100 applied for asylum (EQ3). Later, when the EU started to pressure the Western Balkan countries to close the route, the Macedonian government resorted to different kinds of measures – detention and pushbacks.

While one could observe sharp policy changes in the countries on the main migration route, such as Macedonia and Serbia, the countries off the main migration route have been slowly but steadily sharpening their responses. Montenegro and Kosovo, for instance, have seen a slight increase of new arrivals as the conditions on the main migration route have tightened, and have consequently adjusted their policies to the new situation.

Migrant criminalization can take several forms and shapes. In our research we have identified some of these forms in the Western Balkan countries, including but not limited to: new definitions of felonies and misdemeanours being added to the law, irregular border crossing being transformed from a misdemeanour to a felony, increased numbers of migrant detainees, increased capacities of detention centres, informal collective expulsions (pushbacks), imposition of penalties for misdemeanours on potential asylum seekers, criminalizing the provision of services to migrants and imposing new obligations on non-immigration authorities to report migrants to law enforcement.

## Expansion of Definitions of Misdemeanours

All Western Balkan countries covered by our research now have a longer list of felonies and misdemeanours related to migration. This is a direct result of the harmonization of the countries’ migration legislation with the EU *acquis*. In BiH, for instance, the number of definitions of minor offences in the field of migration has slightly increased in the last decade (ES1) and in 2015 new types of misdemeanours appeared in the law as a result of the adoption of the former Aliens Act (BiH Official Gazette No. 88/2015, 17. 11. 2015). In Kosovo, a number of new misdemeanours have been added to the legislation on foreigners, and out of 34 definitions of offences identified, 24 are very recent, all originating in the law of 2012 (ES2). In Macedonia, 30 offences related to migration were identified in the law, some having been added recently (ES3). In Montenegro, in total 61 definitions of offences have been identified in relation to migration and border crossing, of which 11 were added in 2011, 2013 and 2014 (ES4; also Foreigners Law, Official Gazette of Montenegro, No. 56/14 and Criminal Code of Montenegro, Official Gazette of Montenegro, No. 40/2013 and 56/2013). Similarly in Serbia, several changes have taken place in the recent years as new definitions of offences were added by the legislator to the list of offences related to migration

and border crossing, while the sanctions for existing offences became stricter (ES5). These developments show a very clear trend of increased legislative criminalization.

Macedonian law in the field of migrant criminalization contains a unique feature in that the Macedonian Foreigners Law includes both misdemeanours and felonies, which is rare in the WB region. In the legal tradition of the WB region, felonies were always covered by a single law – the penal code. Felonies, unlike misdemeanours, were never introduced in other pieces of legislation. The Macedonian example showcases a situation where both criminal and administrative sanctions related to migration are grouped in one document, which is in itself an explicit manifestation of crimmigration (Stumpf 2006), i.e. the phenomenon of the merging of administrative and criminal law elements.

### **Irregular Border Crossing – Felony or Misdemeanour?**

The question of whether irregular border crossing is considered a felony or a misdemeanour is considered to be a litmus test for determining the level of migrant criminalization in an individual country. Among the researched countries only Kosovo defines irregular border crossing as a felony. While this conduct is not considered a felony but “only” a misdemeanour in the rest of the region, for which only a fine is foreseen, Kosovo’s penal legislation foresees a fine *or* imprisonment of up to six months for unauthorized border crossing (Criminal Code of the Republic of Kosovo, Code No. 04/L-082, 2. 4. 2012). A closer look reveals that that Kosovo’s legislation is a copy of American law. In contrast, only four EU member states define irregular border crossing as a felony. Hence in the Western Balkan region Kosovo stands out in the sense that it is not only the EU that has a strong influence on how migration and asylum policy is developing, but also the United States. In other countries in the region where irregular border crossing remains a misdemeanour, only aggravated forms of this offence are considered a felony. In Montenegro, for instance, irregular border crossing is prosecuted as a felony if the non-citizen crossing is armed or crosses by force (EQ4). In Macedonia, providing assistance to irregular border crossers is considered a felony (Foreigners Law, Official Gazette of the Republic of Macedonia, No. 35/2006 as amended).

### **Detention of Migrants and Asylum Seekers**

Detention is one of the key restrictive policy measures used for migration control and deterrence. All of the countries analysed have operating detention centres and are resorting to detention of both irregular migrants and (in most cases) also of asylum seekers. There are, however, specific features in how detention is used in each of the countries. BiH, e.g., is characterized by systematic detention of all irregular non-nationals. A measure formally called “placement under surveillance” is prescribed with

an aim of the expulsion of people irregularly present in BiH (Art. 118(1) Aliens Act). Even though the authorities are not allowed to detain asylum seekers, half of all asylum seekers were not identified as such at their first contact with the authorities. Instead, they were treated as irregular migrants, placed in detention and could only apply for asylum from the immigration detention centre, as provided by Article 33 of the Asylum Act (BiH Official Gazette No. 11/2016, 19. 2. 2016). The fact that they are claiming asylum does not lead to their release. Instead, the people remain detained until the expiration of the “surveillance measure” (EQ1).

Even though the European Court of Human Rights in *Saadi v UK* (2008) endorsed the administrative detention of asylum seekers, specifically ruling out the requirement of necessity, the detention of asylum seekers, especially if it is systematic, is subject to criticism (O’Nions 2008). Critics of this policy claim that it is in breach of Article 31 of the 1951 Geneva Convention which prohibits the penalization of refugees entering or staying irregularly. They emphasize that restrictions on movement should not be applied to refugees in general but only in exceptional cases (EI1, EI2).

The following statistics show the number of non-nationals detained in the detention centre per year and reflect the increase in the number of those apprehended on BiH territory. In 2017, a total of 860 non-nationals were placed under surveillance in the centre, which represents an increase of 166.53% (*ibid.*: 41) and constitutes the highest number of detentions per year in the last decade.

Table 1: Detention statistics in BiH (2008–2016)

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Detainees</b>	198	191	312	218	453	236	218	193	311	860

Source: EQ1

My previous research from 2014 showed that the aim of such restrictive detention policy was to deter new arrivals. At the same time, systematic detention was only possible because the numbers were low and hence manageable (Kogovšek Šalamon 2015). This finding has been recently confirmed. After the release of EU-Turkey statement on 18 March 2016 (European Council 2016), the closure of the border between Hungary and Serbia (2015/16) and stricter border controls between Croatia and Serbia, the main migration route moved south-west, to Albania, Montenegro, BiH and Croatia. Consequently, in 2018 BiH saw a considerable increase in the numbers of transiting migrants and refugees.<sup>3</sup> Thousands of irregularly present migrants and refugees are now stranded on the territory of BiH, near the city of Velika Kladuša, without access to asylum procedure and basic care (Kramberger, 2018; Videmšek,

<sup>3</sup> In this paper I do not make a clear distinction between migrants and refugees. As Jalušič points out, the legal division between them is unsubstantiated and artificial (2017: 531).

2018).<sup>4</sup> They experience difficulties with moving onwards as first the Slovenian, and then also Croatian authorities have been carrying out pushbacks to BiH territory (Amnesty International 2018). They are not provided housing or assistance by the authorities, but they are also not detained as there is no space for them.

A policy of systematic detention was also pursued by Macedonia while it was still possible given the new realities of increased migration flows. In 2015, when the numbers of arrivals to Macedonia started to rise, the approach of the Macedonian authorities towards migration which included systematic detention became unsustainable. The Gazi Baba detention centre located in the Macedonian capital Skopje was heavily overcrowded. Return was not possible due to the lack of cooperation with Greece, with which Macedonia was in a dispute over its name.<sup>5</sup> At the same time the only interest of the transiting migrants was to leave the country as soon as possible and continue their way north-west. As the data shows, more than one million people arrived in the European Union irregularly from the Middle East and North Africa in 2015/16 (European Commission 2017), a large majority of whom travelled through Macedonia. The table below shows the drop in the number of people held at the detention centre.

Table 3: Detention of irregular migrants in Macedonia per year

Year	2014	2015	2016	2017
<b>Detainees</b>	896	1,346	389	100*

\*The official statistics for 2017 were not available at the time of the information was being collected. According to expert estimations there were approximately 100 detainees in 2017.

Source: EQ3

Even though it is less crowded than it used to be, the detention facility in Gazi Baba is still in operation. In 2015, due to its overcrowding, many international and domestic human rights watchdogs pressured the Macedonian Government to close it down (AIS, 2015a and 2015b) and, as a result, all the detainees were released and allowed to seek asylum (EQ3).

This de-securitization trend soon changed. The majority of irregular migrants are now once again being detained and are not given access to asylum procedure

4 In August 2018, the European Commission provided support of EUR 6 million to Bosnia and Herzegovina to improve its capacity for identification, registration and referral of third-country nationals crossing the border, provide accommodation and basic services for refugees, asylum seekers and migrants and strengthen the capacity for border control and surveillance, hence also contributing to the prevention of and fight against the trafficking of human beings (European Commission 2018b).

5 Greece did not allow Macedonia to use the name of Republic of Macedonia because of the northern Greek region also named Macedonia. Hence Macedonia the country was forced to use the acronym FYROM (Former Yugoslav Republic of Macedonia) after its declaration of independence in 1991. In 2018 Macedonia and Greece reached an agreement on the name (Northern Macedonia instead of FYROM).

prior to release. The majority of asylum seekers (56 % in 2016 and 58 % in 2017) were allowed to apply for asylum only after release from immigration detention (ibid.).

In contrast, Serbia never resorted to the systematic detention of migrants despite being faced with mass transit migration. Like all other WB countries, Serbia also has just one detention centre, but according to common opinion, detention is not the normal way of treating migrants in Serbia, as the policy of tolerance and openness declared by the authorities was widely promoted by national media (ibid.). As is also evident from the statistics below, there is a decreasing trend in detaining migrants and a very small percentage of new arrivals are detained.

Table 6: Detention of asylum seekers in Serbia per year compared to the number of people who expressed the intent to apply for asylum

Year	2015	2016	2017
No. of detainees who expressed intention to apply for asylum	474	43	29
<b>Total number of expressions of intent</b>	487,124	12,821	6,199

Source: EQ5

Montenegro also did not embark on a systematic detention approach. Until 2017 no asylum seekers were detained in Montenegro as this was not allowed by law. While the Asylum Law guaranteed full freedom of movement for asylum seekers, in the past there was a problem of the *de facto* limitation of the movement of minor asylum seekers. Before opening of the asylum centre in 2014, minor migrants and asylum seekers were being placed in the Ljubovic migrant detention centre even in cases where the legal conditions for detention were not met. The Montenegrin government claimed that there are no other more appropriate reception facilities available for unaccompanied minors. This issue was later resolved and for a few years Montenegro has stood out in the region for its non-incarceration asylum policy. However, this did not last long: in 2018 legal provisions were introduced which now allow the detention of asylum seekers (ibid.). With this development Montenegro is joining all the other countries in the region that already provide for restriction of freedom of movement for asylum seekers under legally defined conditions.

While asylum seekers may only be detained as of 2018, the detention of irregular migrants who did not apply for asylum was already possible in Montenegro. Until 2013 Montenegro did not have a migrant detention centre. The placement of irregular migrants who were apprehended in the territory of Montenegro was solved variously, on a case-by-case basis, by placing them in facilities such as NGO shelters and hotels, or by renting private residential facilities with security provided by the police. The number of detainees remained steady as there had been no increase in the legal grounds for detention of irregular migrants in the recent years.

Table 4: Detention of irregular migrants in Montenegro per year

Year	2012	2013	2014	2015	2016	2017
<b>Detainees</b>	219	75	42	112	132	234

Source: EQ4

Kosovo is also not among countries that practise the mass incarceration of migrants. The seemingly harsh legislative picture with irregular border crossing being defined as a felony, which might give an indication that Kosovo is tough on migrants and refugees, is not reflected in this area, as detaining asylum seekers is not practised at all in Kosovo (EQ2; also Law No. 04/L-219 on Foreigners, Official Gazette of the Republic of Kosovo, No. 35, 5. 9. 2013). The only detention centre for foreigners in the country started functioning in June 2015. It is not used for asylum seekers, but for irregular migrants for the purpose of the deportation procedure. As evident from the statistics below, even the number of migrants detained remains relatively low.

Table 2: Detention of irregular migrants in Kosovo per year

Year	2013	2014	2015*	2016	2017	2018**
<b>Detainees</b>	0	0	47	78	42	26

\*From June 2015 when the Detention centre for foreigners was fully operational until the end of the year the number of irregular migrants detained was 47.

\*\*Up to 12 June 2018.

Source: EQ2

In the recent years, the detention capacity has mostly increased in all of the states. The states have either opened new detention centres (e.g. Montenegro, Kosovo), or have increased the number of beds at the existing centres. In BiH in 2008 the detention centre's capacity was increased from 40 to the current 120 beds (BiH 2018). In Serbia the current capacity of the detention centre in Padinska Skela of 66 beds will be increased to 100 beds (EQ5).

Based on these findings, no single trend in migrant incarceration in the Western Balkans can be identified. There are a number of different practices and approaches, indicating that the policy approach depends on various factors such as EU pressure (which correlates with the scope of transit migration), the country's detention capacities, the level of repression that otherwise exists in the country, and the trust of the authorities in detention being an effective tool of prevention and deterrence of irregular migration.

## **Funding for Detention Centres**

Another issue in the region that should be highlighted in the context of the conditioning of EU accession is the provision of funding for the construction or renovation of detention centres. The BiH detention centre began operating in 2008, when the former Law on Foreigners, which allowed foreigners to be placed under surveillance, came into effect (BiH 2009). Its construction was funded by the EU fund “Instrument for Pre-accession Assistance” – IPA (EQ1). As in the case of BiH, the construction of the detention centre in Montenegro, used for incarceration of irregular migrants, was financed by an IPA 2008 project titled “Support to Migration Management in Montenegro” which provided for 50% co-financing from the European Union (EQ4). The reconstruction of the centre in Kosovo was similarly supported by EU funds (EQ2). Here it should be added that despite the low numbers of detainees in Kosovo, the issue of detention and the fact that the detention facility was renovated with EU funds are of particular importance. Namely, there are very few returns taking place from Kosovo, as the country has signed very few useful readmission agreements that would enable returns. This is relevant as the only allowed purpose of detention under the EU Directive 2008/115/EC is the prospect of return. If the possibility to return is absent, detention is not legally justifiable and does not make sense. Hence I argue that the use of EU funds for detention that serves no legally acceptable purpose is highly illegitimate.

Unlike in most of the other WB countries, the renovation of the detention centre in Serbia will not be funded by the EU, but by the Swiss Embassy in Belgrade and the International Organization for Migration (IOM) (EQ5). There are plans to increase the detention capacity, not by building a new detention centre but by increasing the number of beds and creating a separate section for women. While on one hand the provision of funding may improve the living conditions and procedures within the existing centres, it may also provide an incentive to build and operate a centre in the first place. Thus it needs to be taken into account that by funding the construction of detention centres the EU is contributing to migrant criminalization. Since systematic detention in BiH is particularly problematic from the fundamental rights point of view, that fact that the EU is funding such a detention centre should be of particular concern.

## **Pushbacks**

Even though they are highly problematic from the aspect of human rights and constitutional guarantees, pushbacks are becoming a more and more frequent phenomenon in Southeast Europe (HRW 2016; ECRE 2018). Pushbacks have already been reported in the region, in particular from Macedonia and Serbia. From 19 November 2015 until 31 May 2017, according to monitoring organizations, the Macedonian authorities pushed back 10,377 refugees and migrants to Greece.

Following the final closure of the Balkan route on 18 March 2016, pushbacks increased significantly and continued throughout 2017 (EQ3). Pushback practices have also been confirmed by the Macedonian authorities (*ibid.*). Serbia has joined the group of the countries that carry out informal pushbacks to its neighbours (EI5; EI6; EI7). There are reports of such pushbacks to Macedonia and Bulgaria from 2016 and 2017. At the same time, it is experiencing pushbacks to its own territory from Hungary and Croatia (EQ5).

Pushbacks, for which there is no universally accepted definition, are generally characterized as informal collective expulsions (*Hirsi Jamaa and Others v. Italy*) of people who irregularly enter a country back to the country they entered from, through the application of procedures that take place outside legally defined rules in protocols or agreements signed by the neighbouring countries. In pushbacks, access to seeking asylum is usually restricted, and police violence is often used to execute them. Pushbacks are often informal, including in the sense that even the authorities of the neighbouring (“receiving”) country are not informed about them. Pushbacks are problematic for a variety of reasons, e.g. there is no democratic or judicial control over these processes (as there is no decision to appeal against); there is no differentiation between people who are in need of protection and those who are not; they enable returns to jurisdictions with the risk of torture, inhumane and degrading treatment and punishment; and there is a lack of documentation of the procedures. If pushbacks are accompanied by police violence, the lack of documentation and evidence that pushbacks took place and that individuals were in contact with the police render the recourse to legal remedies and redress for the people affected nearly impossible.

## Sanctioning Migrants for Misdemeanours

While the legislative situation resembles those in the rest of the WB region, a specific widespread practice of sanctioning migrants for misdemeanours was reported in Serbia. During 2015 when the numbers of mass arrivals were at their peak, the Serbian Ministry of the Interior was initiating misdemeanour proceedings for irregular entry or stay against people who could be *prima facie* refugees, as most of the sanctioned individuals came from Syria, Afghanistan and Iraq, and the sanctions were being imposed by the misdemeanour courts. People were sanctioned according to the Law on Foreigners (Official Gazette of the Republic of Serbia, No. 97/2008), State Border Protection Law (Official Gazette of the Republic of Serbia, No. 24/2018) and Misdemeanour Law (Official Gazette of the Republic of Serbia, No. 65/2013, 13/2016 and 98/2016 – Constitutional Court Decision). In the recent years the statistics show that this practice has decreased.

Table 5: No. of sanctions issued by misdemeanour courts in Serbia against potential refugees per year

<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>No. of sanctions</b>	9,134	2,221	920

Source: EQ5

The recognition that the practice of sanctioning people for irregular entry is problematic if used against people who are seeking protection has been highlighted by the National Preventive Mechanism (NPM) in Serbia, a state mechanism mandated to supervise the treatment of people in detention in line with the Optional Protocol to the Convention against Torture, Inhuman and Degrading Treatment or Punishment. The Serbian NPM issued recommendations to the police and misdemeanour courts to terminate this practice and training was carried out to equip the state officials involved with knowledge about the Geneva Convention standards on non-penalization of refugees (EQ5).

## THE EFFECTS OF EU CONDITIONALITY ON MIGRANT CRIMINALIZATION

Based on our research outcomes we can conclude that not all severe forms of migrant criminalization are overwhelmingly present in the Western Balkans region. For instance, assistance to migrants is not criminalized. In only one out of the five countries analysed (Kosovo, which is heavily influenced by the US) is the crossing of borders considered to be a crime punishable with imprisonment (i.e. a felony), while in all others this is still considered a misdemeanour, which is also the most common situation among the EU member states. Also, being a migrant is not an aggravating circumstance in sentencing for crimes unrelated to migration.

However, many other indicators of migrant criminalization are present in the region, and they are on the rise. In many of the countries analysed, EU funds are used for the construction or renovation of detention centres, which not only increases the minimum standards in these buildings but also the number of people who can be detained. The EU is exercising pressure on countries to conclude readmission agreements which facilitate return. Non-immigration authorities (health or schools) in general are not obliged to report immigrants to the police. There are a few exceptions, e.g. in Kosovo, public or private healthcare institutions that admit foreigners for treatment are obliged to inform the nearest police station within twenty-four hours that they have treated an irregular migrant. Further, specific crimmigration problems have been identified in each country analysed: BiH with its systematic detention, Kosovo with defining irregular border crossing as a felony, Macedonia with the pushbacks and large-scale incarceration practices, and Serbia with sanctioning of prima facie refugees for minor offences and pushbacks.

While increased border policing prevents mass border crossings, it also allows for pushbacks, which are prohibited by international law. The visa liberalization that promoted change in the Western Balkans (Ferreiro Turrión 2015: 18) and eased the life of nationals of the WB countries on one hand, increased the criminalization of people arriving in and transiting these countries on the other. It is crucial to ensure that future liberalization processes place more emphasis on the non-security related aspects of these societal and political changes, including those that concern other vulnerable groups such as people from conflict torn areas seeking protection. As EU accession, security, border control, institution-building and introduction of technologies for purposes of border surveillance are top priorities for the candidate and potential candidate countries, universal human rights has become a secondary concern. It is questionable whether this is acceptable in the process in which countries are striving to become members in a club which praises itself for being an area of “freedom, security and justice”. It is also questionable what kind of message this is sending to the candidate and potential candidate states – does this club care how migrants and refugees are treated? This is particularly problematic since the EU is already losing the status of a guarantor of stability and democratic institutions (BiEPAG 2016). It is also questionable whether this is the right way of preparing the EU candidate countries for membership – are they going to be able to abide by high human rights standards expected from them when they become EU members? And more importantly, are they going to participate in the solidarity and burden-sharing mechanisms in the field of migration and asylum, as is expected today across the EU?

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## POVZETEK

### THE ROLE OF THE EU MEMBERSHIP CONDITIONALITY AT MIGRANT CRIMINALISATION IN THE WESTERN BALKAN COUNTRIES

Neža KOGOVSŠEK ŠALAMON

Odzivanje Evropske unije (EU) na migracijske izzive presega ozemlje njenih držav članic, saj se prek pozunanjenja mejnega nadzora ta preliva tudi in predvsem na ozemlje držav Zahodnega Balkana (ZB); tam teče ena najpomembnejših migracijskih poti s Srednjega vzhoda in Afrike proti EU. Medtem ko države Zahodnega Balkana ne kažejo interesa za migrante in jih smatrajo za problem EU, ta evropsko integracijo teh držav pogojuje prek vzpostavljanja institucij in postopkov za obravnavo migrantov, podobnim tistim v EU. Prenos prava in ukrepov EU pa povečuje tudi stopnjo kriminalizacije migracij, saj nove norme vsebujejo tudi sankcije, ki jih njihovi pravni sistemi prej niso predvidevali.

Izsledki raziskave na Zahodnem Balkanu niso pokazali vseh najhujših oblik kriminalizacije migracij. Nudjenje pomoči migrantom, npr., ni kriminalizirana. Le v eni od analiziranih držav (na Kosovu, kjer pripravo politik močno navdihujejo Združene države Amerike) je nedokumentiran prehod državne meje kaznivo dejanje, ki se kaznuje s kaznijo zapora. V drugih državah regije, kot je to najpogosteje tudi v državah članicah Evropske unije, pa je to le prekršek. Prav tako dejstvo, da je storilec nekega z migracijami nepovezanega kaznivega dejanja migrant, pri določanju višine sankcije ni oteževalna okoliščina. Kljub temu pa nekateri drugi dejavniki – ti so v porastu – kažejo na kriminalizacijo migracij.

V številnih analiziranih državah so centre za pridržanje zgradili ali obnovili s pomočjo sredstev EU, kar pa ne izboljšuje samo bivanjskih razmer, temveč vpliva tudi na povečanje števila pridržanih. EU države spodbuja k sklepanju sporazumov o vračanju, te pa omogočajo deportacije. Uradi, ki v regiji niso pristojni za migracije, na splošno nedokumentiranih migrantov, razen nekaterih izjem, niso dolžni prijavljati policiji. Na Kosovu, npr., morajo zdravstveni zavodi, kjer nedokumentirani migranti poiščejo pomoč, po zakonu te prijaviti policiji. Po posameznih državah so bili identificirani še drugi specifični pojavi krimigracije: v Bosni in Hercegovini sistematično pridržanje vseh neregularnih migrantov, tudi če ti želijo zaprositi za azil, v Srbiji in Makedoniji nezakonita množična prisilna vračanja ter v Srbiji množično sankcioniranje *prima facie* beguncev zaradi nezakonitega prehoda državne meje. Ti pojavi, ki so v veliki meri posledica pogojevanja za vstop med članstvo EU, kažejo tako na problematično vlogo EU kot tudi nacionalnih zakonodajalcev na Zahodnem Balkanu v razmerju do temeljnih pravic migrantov.

# REJECTED SYRIANS: VIOLATIONS OF THE PRINCIPLE OF “NON-REFOULEMENT” IN TURKEY, JORDAN AND LEBANON

Vasja BADALIČ<sup>1</sup>

COBISS 1.01

## ABSTRACT

### Rejected Syrians: Violations of the Principle of “Non-Refoulement” in Turkey, Jordan and Lebanon

The article analyses the practices used by Turkey, Jordan and Lebanon to prevent Syrians from exercising their right to seek and enjoy asylum. The article consists of two sections. The first section examines how all three host countries violated the principle of *non-refoulement* by employing a range of unlawful practices (e.g. border closures and “push-backs”, arbitrary detentions and deportations etc.). The second section examines how Lebanon resorted to practices that created circumstances for constructive *refoulement* of Syrian asylum seekers and refugees (e.g. shutting down the authority responsible for processing asylum claims, stripping Syrian refugees of their protected status etc.).

**KEY WORDS:** Syrian refugees, Turkey, Jordan, Lebanon, principle of *non-refoulement*, constructive *refoulement*

## IZVLEČEK

### Zavrjnjeni Sirci: Kršitve načela nevračanja v Turčiji, Libanonu in Jordaniji

Članek analizira prakse, ki so jih Turčija, Jordanija in Libanon uporabili z namenom, da sirskim državljanom preprečijo uveljavljanje pravice do iskanja in uživanja pribežališča pred preganjanjem. Članek je sestavljen iz dveh delov. Prvi del analizira, kako so vse tri države gostiteljice z uporabo nezakonitih praks kršile načelo nevračanja (npr. zapiranje meja in preprečevanje prehoda, samovoljno zapiranje in deportiranje itd.). Drugi del članka analizira, kako je Libanon uporabil prakse, ki so ustvarile pogoje za posredno prisilno vračanje sirskih iskalcev azila in beguncev (npr. zaprtje edine institucije, pristojne za obravnavanje prošelj za azil, odvzem statusa nekaterim sirskim beguncem itd.). **KLJUČNE BESEDE:** sirski begunci, Turčija, Jordanija, Libanon, načelo nevračanja, posredno prisilno vračanje

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## INTRODUCTION

Since the start of the Syrian conflict in 2011, the vast majority of Syrian refugees have found shelter in Syria's neighbouring countries – Turkey, Lebanon, and Jordan (UNHCR 2017a). The three host countries adopted two approaches to address the challenges represented by the massive number of Syrians seeking safe refuge. The first approach, used in the first two years of the conflict, was to maintain an open door policy for Syrian asylum seekers and grant them limited protected status and access to the most basic services (Akram et al. 2014; Al 2014a; NRC 2014). The second approach, gradually implemented when the number of Syrians seeking shelter reached unsustainable levels, shifted to a closed door policy. In October 2014, for example, the Lebanese authorities approved a new policy on Syrian refugees with the objective of reducing the number of Syrians in Lebanon by limiting cross-border movements from Syria and by “encouraging” Syrian refugees in Lebanon to return to their homeland (Janmyr 2016: 61–62). Although Turkey and Jordan did not announce the end of their open door policy, it was evident, based on the measures they adopted to prevent Syrians from crossing the borders, that both countries took a similar path as Lebanon.<sup>1</sup>

While it is true that all three host countries should be commended for providing aid to such a large number of Syrian refugees, it is also important to examine how these countries tried to control the influx of Syrians by relying on practices in direct contravention of international law. This article focuses on the implementation of the closed door policy in order to examine how Turkey, Jordan and Lebanon tried to stop, or at least limit, the continuing mass influx of Syrian asylum seekers. The central part of the article consists of two sections. The first section examines how all three host countries systemically violated the principle of *non-refoulement* by employing a range of unlawful practices that aimed at stopping Syrian asylum seekers in their attempts to cross the borders and gain access to the authorities responsible for making protection status determinations. Those unlawful practices included border closures and push-backs of Syrian asylum seekers trying to cross the borders, the introduction of discriminatory criteria for determining which groups of Syrian asylum seekers were not allowed to cross the borders, as well as arbitrary detentions and deportations of Syrian asylum seekers. The second section of the article examines how one of the host countries – Lebanon – resorted to practices that created circumstances for constructive *refoulement* of Syrian asylum seekers and refugees. Those practices included shutting down the sole authority responsible for processing asylum claims, de-registering Syrians with protected status, and preventing Syrian refugees from obtaining/retaining residency permits.

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1 The European Union (EU) made a similar, albeit much more rapid, shift from an open door to a closed door policy. In late 2015, the so-called humanitarian corridor temporarily allowed large numbers of refugees, including Syrian refugees, to reach the EU through the Western Balkans (Kogovšek Šalamon 2017). In early 2016, however, the corridor was closed and the EU returned to its closed door policy (Oxfam 2017).

## VIOLETIONS OF THE PRINCIPLE OF “NON-REFOULEMENT”

The principle of *non-refoulement* prohibits the return, in any manner whatsoever, of individuals to another territory, or to the frontiers of another territory, where there are substantial grounds for believing that they would be subjected to torture or degrading treatment, or where they would be subjected to other serious deprivations of human rights (UN General Assembly 1951; Feller 2006: 523). Considered part of international customary law and recognized, as some authors argued, as a *jus cogens* norm, the norm prohibiting *refoulement* binds all states, regardless of whether or not they are a party to the 1951 Refugee Convention, to refrain from expelling people to territories where their lives and freedoms may be threatened (Allain 2001: 538–542; Farmer 2008: 23–28). Although Jordan and Lebanon are not signatories to the 1951 Refugee Convention, while Turkey maintains a “geographical limitation” to the Convention in order to avoid applying it to non-European refugees (Akram et al. 2014: 34, 59, 101), all three countries are bound to respect the obligation not to return individuals, either formally recognized refugees or non-recognized refugees, to territories where their lives may be in danger. Hence, all three countries have to observe the principle of *non-refoulement* both at their borders and within their territories (UNHCR 1977).

Over the past decades, human rights law scholars have developed the idea that there should be no exceptions to the prohibition of *refoulement*. That trend, which treated the right of *non-refoulement* as a non-derogable right, embraced the stance that people should never be, under any circumstances, deported to a territory where they may face the risk of persecution (Lauterpacht, Bethlehem 2001: 131–132; UNHCR 1980; UNHCR, OAU 1980). UNHCR, for example, supported the position that even in cases of large-scale influx “the fundamental principle of *non-refoulement* – including non-rejection at the frontier – must be scrupulously observed” (UNHCR 1981). There is, however, still a strong recognition among states that in some circumstances it is possible to lawfully expel refugees and asylum seekers to territories where their lives and freedoms would be in danger. That position primarily relies on the 1951 Refugee Convention, which states in Article 33(2) that it is permissible to lawfully expel individuals who represent a danger to the national security of the host country, and individuals who are recognized, after being convicted of a serious crime by a court of law, as a danger to the community of the host country (UN General Assembly 1951).

The application of exceptions to the principle of *non-refoulement* is therefore permissible but must be subjected to two limitations. Firstly, exceptions to *non-refoulement* are permissible only when individuals pose a real threat to national security or a danger to the community of the country of refuge. Threats to national security may include espionage, attacks on military installations and terrorist activities in the host country (Grahl Madsen 1997: 235–236), while dangers to the community may include serious crimes such as murder, rape, or arson (Lauterpacht, Bethlehem 2001: 139). Secondly, exceptions can be applied only in compliance with due process

of law. When, for example, host countries want to return individuals due to concerns about public safety, they are allowed to do so only if those individuals had been convicted of a serious criminal offence by a court of law operating in compliance with minimum international standards (ibid.: 138–140). All such cases of *refoulement* require individual assessment and must be supported by evidence (ibid.).

This section aims at examining whether Turkey, Jordan and Lebanon applied these exceptions, and respected the limitations that restrict the scope of the exceptions, when they carried out mass rejections of Syrian asylum seekers. The examination will focus on three practices used by Turkey, Jordan and Lebanon to carry out rejections of Syrians in order to determine whether the three countries observed the limitations restricting the exceptions to *non-refoulement*. The three practices are as follows.

### Border Closures and Push-Backs

The first practice, which targeted Syrian asylum seekers who did not yet enter the three host countries, was to sporadically close borders, especially during escalations of violence in Syria, and carry out “push-backs” of people trying to flee Syria.<sup>2</sup>

In Turkey, security forces have sporadically used border closures and push-backs against Syrians since at least 2012 (Dinçer et al. 2013: 5; Koca 2015: 216–217; HRW 2013b). When carrying out push-backs, Turkish border guards resorted to unlawful use of force that included shooting at and beating Syrians trying to cross the border. In a few cases, the use of abusive force resulted in Syrians being killed or injured (AI 2014a: 9–10; HRW 2015; Rifai 2015; HRW 2016a). In addition, the Turkish authorities regularly closed official border crossings, particularly in the south-east of the country where they wanted to prevent access for Syrians fleeing from areas with a predominantly Kurdish population (AI 2014: 9–10). When the fighting across Syria intensified and the number of Syrian asylum seekers continued to increase, the Turkish authorities opted to close the entire border. From early 2015 to mid-2016, the Turkish-Syrian border remained virtually closed, which led to an estimated 165,000 Syrian asylum seekers being stranded on the Syrian side of the border (DRC 2016: 4).

A similar tactic was adopted by Jordan. From mid-2014 to mid-2016, the Jordanian authorities closed the border to temporarily prevent the entry of about 70,000 Syrian asylum seekers. The Jordanian security forces trapped the Syrians in a desert area just a few hundred metres south of the Jordanian-Syrian border (HRW 2016b).

In Lebanon, they permanently closed the border to almost all Syrian asylum seekers in early 2015. In that period of time, the Lebanese government introduced new regulations that allowed the entry into Lebanon only of Syrians with valid travel documents who fit into one of the seven approved entry categories (e.g. tourism

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2 According to the European Center for Constitutional and Human Rights (ECCHR 2018), push-backs are state measures that aim at forcing refugees and migrants back over a border – usually immediately after they cross it – without providing them the opportunity to apply for asylum.

and business, education, transiting to a third country, medical treatment, displacement in the country of origin, etc.) (Janmyr 2016: 66–67). After the introduction of the new entry regime, the Lebanese government announced strict rules for determining which groups of displaced Syrians would be admitted into the country. According to the new rules, only the following groups of displaced Syrians were allowed to enter Lebanon: unaccompanied and/or separated Syrian children with a parent already registered as a refugee in Lebanon; Syrians with disabilities and a relative already registered in Lebanon; Syrians with urgent medical needs for whom treatment in Syria was unavailable, and Syrians who had already arranged a resettlement to a third country (ICL 2015). By implementing these entry requirements, I contend, the Lebanese government effectively closed the border to the vast majority of Syrian asylum seekers.

By relying on practices that physically prevented asylum seekers from crossing the borders and reaching the authorities responsible for status determination procedures, all three host countries systemically violated the principle of *non-refoulement*. Mass rejections of potential asylum seekers at the frontiers are a clear violation of the norm prohibiting *refoulement* (Lauterpacht, Bethlehem 2001: 118–119). Even if we take into account the exceptions to the principle of *non-refoulement*, we see that none of the three countries was able to justify the mass rejections by presenting them as lawful exceptions. First, none of the host countries provided compelling evidence indicating that the returns were carried out because those who were rejected represented a real threat to the national security and/or public safety of the host countries. Second, none of the host countries examined the facts of each individual case of those who were rejected. The host countries were unable to claim that the rejected individuals represented a threat to public safety because they did not check at the border crossings whether those individuals had been convicted of any crime by a court of law operating in compliance with minimum international standards.

## Discriminatory Criteria

The second practice targeted Syrians, and non-Syrians living in Syria, who had not yet managed to enter the host countries. This practice relied on the use of selective criteria for determining which groups of asylum seekers were not allowed to cross from Syria into the host countries. In parallel with sporadic border closures and push-backs, the governments of all three host countries implemented discriminatory policies that prevented specific categories of Syrians and non-Syrians from seeking protected status.

The first category consisted of people of specific national origins – i.e. Palestinian refugees and Iraqi refugees living in Syria. In Jordan, for example, the authorities started to deny entry to all Palestinians from Syria in April 2012 (ARDD 2015; UNHCR 2017b: 2). Jordanian government officials justified their decision by claiming that a

large number of Palestinians in Jordan would alter the demographic balance of the country and, consequently, create a security threat (HRW 2014: 12–13; AI 2013: 10). In addition, the Jordanian authorities also denied entry to Iraqi refugees who had previously found shelter in Syria. That decision was justified with the argument that Iraqis had to return to their country of origin, which was deemed safe by the Jordanian government (AI 2013: 10).

In Lebanon, the local authorities closed the border to the vast majority of Palestinians from Syria. Although Lebanese officials insisted that the open door policy for Syrian refugees, including Palestinians, remained in place, the strict entry requirements gradually introduced for Palestinians made it almost impossible for most of them to enter Lebanon (UNHCR 2016: 12–13).

In mid-2013, the Lebanese authorities made the first changes in the entry requirements for Palestinians from Syria. Entry into Lebanon was allowed only to Palestinians who had one of the following: a visa that had to be obtained through an application made by a guarantor in Lebanon; a visa and a ticket to a third country in order to prove they were only transiting through Lebanon; evidence indicating they had a scheduled medical or embassy appointment in Lebanon; or evidence indicating they had family members already legally residing in Lebanon (AI 2014b: 11). In mid-2014, the Lebanese authorities introduced new changes in the regulations to further restrict the entry of Palestinians from Syria. The new rules stipulated that Palestinian asylum seekers would be admitted into Lebanon only if they met one of the following requirements: an entry permit approved by the General Directorate of General Security, the Lebanese intelligence agency; a one-year or three-year residence permit; an exit and return permit; or a ticket and visa to a third country (AI 2014b: 14; UNHCR 2017b, 1–2). By creating such strict requirements for the entry of Palestinians, the Lebanese authorities virtually closed the border to the vast majority of Palestinians seeking asylum.

The second category of Syrians who were not allowed to enter Jordan consisted of Syrian asylum seekers of a specific gender and marital status. In 2013, the Jordanian authorities decided to close the border to single men from Syria (HRW 2013a). Although Jordanian officials did not explain the reason behind their decision, it seems they believed that single military-aged men represented a potential security threat for the country.

The third category consisted of Syrians who lacked proper travel documentation. During the Syrian conflict, all three host countries decided that Syrians without valid documentation would not be allowed to cross the borders. In 2013, for example, the Jordanian security forces routinely prevented undocumented Syrians, most of them asylum seekers, from entering Jordan (HRW 2013a). In 2014, the Turkish authorities started denying entry to Syrians without passports at official border crossings. The temporary measure impacted a large number of Syrians seeking protection, as most of them did not have valid travel documents (AI 2014a: 9). At the beginning of 2015, the Turkish government made that measure permanent by

announcing new regulations that required all Syrian asylum seekers entering Turkey to present a valid travel document (HRW 2015). Lebanon made a similar decision at that time. In early 2015, when the Lebanese government introduced a new visa regime for Syrians, only Syrian citizens with valid travel documents and visas were allowed to enter Lebanon (Janmyr 2016: 66–67).

The fourth category, a category of Syrians who were prohibited from entering Lebanon in 2014, consisted of Syrian asylum seekers fleeing from specific locations within their war-torn country. On the one hand, the Lebanese authorities claimed that some areas within Syria remained safe, and, consequently, prohibited individuals fleeing from those areas from entering Lebanon (HRF 2014). On the other hand, the Lebanese authorities also decided to allow only Syrian asylum seekers living in areas near the Syrian-Lebanese border to enter Lebanon, and, as a result, prevented the entry of individuals who fled from Syrian villages and cities located far from the Syrian-Lebanese border (*ibid.*).

The result of all of the abovementioned entry requirements is that many Syrians, and non-Syrians living in Syria, were not able to reach safe places and seek protection in Turkey, Jordan, and Lebanon. By introducing discriminatory restrictions based on nationality, gender, marital status, possession of travel documents and geographical location, the authorities in Turkey, Jordan and Lebanon again breached the principle of *non-refoulement*. The three host countries were again unable to justify the mass rejections at the borders by presenting them as lawful exceptions to the norm prohibiting *refoulement*. First, all three countries failed to provide evidence indicating that the returns were necessary in order to protect the national security and/or public safety of the host countries. The Jordanian authorities merely speculated that large numbers of Palestinian refugees may pose a threat to national security in the future. The rejections of Palestinians were therefore unlawful because they were grounded on the assumption that a threat may materialize in the future and not on actual criminal acts committed by Palestinian refugees (e.g. terrorist attacks, espionage, etc.). Second, the three host countries failed to provide individual assessments of those who were returned. The rejections targeted specific groups of Syrian asylum seekers without examining the facts of each individual case.

## Detentions and Deportations

The third practice, used sporadically by Turkey and Jordan, was to detain and deport Syrian asylum seekers and refugees who were already in the countries.

In Turkey, in September 2015 the local security forces started detaining and deporting registered Syrian refugees and asylum seekers who attempted to cross irregularly to Greece (AI 2015: 1). The detentions were arbitrary: the Turkish authorities did not inform the detainees why they were being deprived of their liberty, although they later claimed, without providing references to the law, that the detainees may

be held in detention on grounds of security or because they were involved in criminal acts (AI 2015: 3–6). While holding refugees in detention, usually for a period of up to two months, the security forces refused to allow them to contact their family members and lawyers (ibid.). In early 2016, after sealing the border with Syria, the Turkish security forces were detaining and deporting Syrian refugees found without their registration documents and asylum seekers who were attempting to register in the border province of Hatay (AI 2016). The detentions were arbitrary: the Turkish authorities did not inform the detainees, at the time of their arrests, of the reasons for the arrests and of any charges against them, and they did not bring the detainees before a judge or any other official authorized to exercise judicial power in accordance with procedures established by law (ibid.). In that period, the Turkish authorities carried out operations on a nearly daily basis in which they arrested and deported groups of up to 100 Syrian citizens seeking protection (ibid.). In 2018, Turkey detained and deported Syrians who tried to flee Idlib province in north-western Syria (Carrié, Al Omar 2018).

In Jordan, the security forces carried out detentions and deportations of asylum seekers who were prohibited from entering Jordan – i.e. Palestinian refugees from Syria. After the Jordanian government stopped allowing Palestinians from Syria to cross into Jordan, the Jordanian police and intelligence agency started detaining and deporting Palestinians who entered the country irregularly (HRW 2014: 18–22). It was unclear whether the security forces carried out the detentions and deportations arbitrarily or on the basis of a law criminalizing irregular migration. As a result of the non-admission policy, all Palestinian asylum seekers, including women and children, who entered Jordan irregularly were deemed to have committed an immigration crime and were, consequently, subjected to penalties provided by the law. Article 31 of the *Law on Residence and Foreigners' Affairs* (1973) stipulates that any person who enters Jordan without valid travel documents and visas through unofficial border crossings shall be liable to a term of imprisonment of between one and six months, or to a fine of between 10 and 50 Jordanian Dinars, or both. In addition to fines and/or imprisonment, the law also provides for the expulsion of foreigners who enter the country irregularly (GDP 2015: 7–10). The Palestinian asylum seekers arrested by the Jordanian security forces were usually held in detention for several days before being deported to areas in Syria under the control of Syrian anti-government forces (HRW 2014: 18–22; Akram et al. 2014: 64).

Like the first two practices examined above, the detentions and deportations carried out in Turkey and Jordan constituted a violation of the principle of *non-refoulement*. Both countries carried out the expulsions of refugees and asylum seekers without justifying them as exceptions to the norm prohibiting *non-refoulement*. First, neither Turkey nor Jordan provided compelling evidence to prove that those who were deported to their country of origin represented a threat to the national security and/or public safety of the host countries. Second, Turkey, which resorted to arbitrary detentions of asylum seekers and registered refugees, did not carry out

the detentions and deportations in compliance with due process of law. The Turkish authorities did not prove that the rejected individuals represented a threat to public safety because none of the individuals concerned was convicted of any crime by a court of law.

## CREATING CIRCUMSTANCES FOR CONSTRUCTIVE “REFOULEMENT”

The definition of the principle of *non-refoulement* broadly states that host countries shall not return refugees *in any manner whatsoever* to territories where their lives could be threatened (UN General Assembly 1951). Drawing on the broad wording employed to prohibit any act of removal, many authors argued that the concept of *refoulement* includes constructive *refoulement*, a form of *refoulement* that occurs when host countries deliberately deny refugees and asylum seekers their economic, social and cultural rights in order to leave them with no choice but to return to their unsafe country of origin (Edwards 2005: 322–323; Bhattacharjee 2013: 48–49; Ramsden, Marsh 2014: 275; Hathaway 2005: 464; Nessel 2015: 339–340). Constructive *refoulement* is, therefore, a form of *refoulement* that is not committed directly (e.g. through border closures and push-backs) but indirectly (e.g. through policies and practices that compromise the legal, material, and physical safety of asylum seekers and refugees) (Schneebaum 2010: 8–9). Some of the practices used by host countries to put pressure on asylum seekers and refugees in order to indirectly force them to return to their country of origin are as follows: denying asylum seekers access to fair and effective protection status determination procedures; limiting or completely denying refugees access to the formal labour market or opportunities for self-employment; denying asylum seekers and refugees access to basic services; and subjecting asylum seekers and refugees to human rights abuses (Kneebone 2006: 698–699; Bhattacharjee 2013: 48–49; Schneebaum 2010: 8–9).

While examining the practices used by Lebanon to create circumstances for constructive *refoulement*, we could focus on an array of measures that undermined the physical, material and legal safety of Syrians who found refuge within the country. This article, however, primarily focuses on the legal safety, or the lack thereof, of Syrian asylum seekers and refugees. The objective is to examine how various practices employed by the Lebanese authorities left many Syrians without legal status and thus put them under pressure to repatriate. The five practices that Lebanon used to create circumstances for constructive *refoulement* can be divided in two categories: first, practices that targeted Syrian asylum seekers to deny them access to protection status determination procedures in order to prevent them from exercising their right to seek asylum, and, second, practices that stripped Syrian refugees of protected status and prevented them from obtaining/retaining residence permits that would allow them to legally reside in the host country.

## Denial of Access to Protection Status Determination Procedures

The failure to provide fair and effective status determination procedures may result in constructive *refoulement* (Legomsky 2003: 73; Kneebone 2006: 698–699). If host countries fail to establish protection status determination procedures, they leave asylum seekers without a legal status and, consequently, without any rights and benefits (e.g. access to health services, employment, education etc.). When asylum seekers find themselves in such a precarious position, they may be indirectly forced to return to their country of origin.

The Lebanese authorities failed to provide fair and effective protection status determination procedures for Syrian asylum seekers by either limiting or completely preventing access to such procedures. First, following its decision to seal the border to the vast majority of Syrian asylum seekers, in May 2015 the Lebanese government ordered the UNHCR, the sole authority responsible for making protection status determinations in Lebanon, to suspend procedures for the registration of Syrians who were already in Lebanon and those who would arrive in the future (Janmyr 2016: 63–64). After the closure of the Lebanese-Syrian border, the vast majority of new asylum seekers from Syria were treated by the Lebanese authorities as irregular migrants who had no access to asylum. Although the Lebanese authorities justified their decision to prevent the UNHCR from registering new arrivals by promising that new status determination procedures would soon be established, no new procedures had been put in place by early 2017 (Janmyr 2016: 64; HRW 2017).

Second, even when Lebanon allowed UNHCR to process asylum claims, many Syrians remained without access to the UNHCR registration centres and thus unable to lodge asylum claims. The Lebanese security forces limited access to registration centres by regularly harassing and intimidating Syrian asylum seekers, in particular young men who entered the country irregularly (IRC 2016; HRW 2016c: 15–18). Many unregistered Syrian single men who were detained and subjected to ill-treatment while in detention decided to restrict their movements in order to avoid being detained again (IRC 2016). The constant experience of threat to their personal safety that came mainly from the Lebanese security forces and to a lesser extent from the local population forced many unregistered Syrian men to limit their movements to areas they knew (i.e. refugee camps or urban areas with a predominantly Syrian refugee population) (*ibid.*). Such “self-imposed” restrictions on the freedom of movement prevented many Syrian men from reaching UNHCR registration centres and seek protection (LHIF 2014: 11; IRC 2016).<sup>3</sup>

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3 It was not possible to determine exactly how many Syrian men were unable to reach the UNHCR due to restrictions on the freedom of movement. The IRC (2016), which conducted interviews with 468 Syrian men in 2015, reported that 19 percent of them said they were unable to access UNHCR registration centres due to restrictions on the freedom of movement.

## Denying Refugees Protected Status and Residency Permits

The second category of practices that created conditions for constructive *refoulement* targeted registered Syrian refugees in order to deny them the right to enjoy asylum. These practices pursued two objectives: first, to strip Syrian refugees of their protected status, and, second, to prevent refugees from obtaining/retaining residence permits.

First, the Lebanese authorities introduced measures to strip Syrian refugees of their protected status. One of the measures was to de-register Syrian refugees who briefly returned to their country of origin (HRF 2014). Many Syrian refugees who found shelter in Lebanon temporarily returned to Syria in order to carry out activities they considered important (e.g. to help their family members flee from Syria, to sell the land they owned in Syria, to collect their salaries, etc.) (*ibid.*). Despite having legitimate reasons for briefly returning to their unsafe home country, those Syrians were stripped of their protected status and not allowed to re-enter Lebanon (*ibid.*).<sup>4</sup> Another measure was to de-register Syrian refugees who entered Lebanon after the introduction of the border closure in early January 2015. In April 2015, the Lebanese government ordered UNHCR to de-register more than 1,400 Syrian refugees who had arrived in Lebanon, and had received protected status, after 5 January 2015 (ICL 2015). The Lebanese authorities refused to admit new refugees following the introduction of the border closure, and, therefore, they demanded that UNHCR remove the protected status of Syrians who had been granted limited protected status after the introduction of the border closure (*ibid.*).

Second, the Lebanese authorities introduced measures to prevent large numbers of registered Syrian refugees from obtaining/retaining residence permits. One measure, which was partially abandoned in early 2017, was to introduce fees that Syrian refugees registered with UNHCR had to pay in order to obtain the legal right to stay in Lebanon. The Lebanese government created a system in which registration with UNHCR did not automatically provide Syrian refugees with a right to stay in the country. If registered Syrian refugees wanted to legally reside in Lebanon, they had to apply for residence permits that were issued by the Lebanese authorities (LHIF 2014: 9). In addition to the right to stay in Lebanon, residence permits also granted

4 Article 1A(2) of the 1951 Refugee Convention stipulates that the term refugee shall apply to a person that is outside the country of his nationality. Therefore, the refugee status of an individual can be terminated upon his re-establishment in his country of nationality because he no longer meets the criterion in Article 1A(2) (Grahl Madsen 1966: 370–371; Fitzpatrick, Bonoan 2003: 528). The Refugee Convention also states – in Article 1C(4) – that the Convention shall cease to apply to any person who “voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution.” However, automatic termination of protected status as a punishment for any return to the country of origin is inappropriate (Fitzpatrick, Bonoan 2003: 528–529). The revoking of protected status is inappropriate when a refugee makes only a brief visit to his country of origin (e.g. visit for family, political, or economic reasons) and his primary residence remains in the country of asylum (*ibid.*). This paper argues that the brief returns by Syrians to their country of origin were not a valid reason for terminating their protected status.

other important rights and benefits such as access to healthcare at government facilities, the right to register births and marriages, and the right for students to take official exams at Lebanese schools (AI 2014b: 15).

The process for granting residence permits distinguished between Syrians who entered Lebanon through official border crossings and those who entered irregularly through unofficial border points (LHIF 2014: 9–10). Syrian refugees who entered Lebanon through official border crossings were initially granted, free of charge, residence permits for a period of six months. When the permits expired, Syrians could renew them, free of charge, for a new six-month period. After one year, all adult Syrian refugees (aged 15 years and above) again had to renew their residence permits, but at a cost of US \$200 per person/per year (NRC, IRC 2015: 13; LHIF 2014: 9). This fee proved to be an insurmountable obstacle for many destitute Syrian refugees. Many Syrians whose permits expired during their stay in Lebanon cited the prohibitive cost of renewal as the main reason that prevented them from renewing the permits (NRC 2014: 13; NRC, IRC 2015: 21). It was even worse for Syrian refugees who entered Lebanon through unofficial border crossings. Even if they somehow managed to register with UNHCR, it was very expensive for them to obtain residence permits from the Lebanese authorities. In order to legitimize their stay in Lebanon, they were expected to pay a fine for entering the country irregularly and fees for the period of time they lived illegitimately in Lebanon (LHIF 2014: 9). In some cases, the total cost for legitimizing a stay exceeded US \$600 per person (*ibid.*). As a result, many Syrian families who could not afford to pay such a large sum had no choice but to live illegitimately without residence permits.<sup>5</sup>

Another measure, which targeted Palestinian refugees from Syria, was to stop granting and renewing residence permits. After introducing the non-admission policy for Palestinian refugees from Syria, the Lebanese authorities started to refuse to renew residence permits for some of the Palestinian refugees who were already in Lebanon (AI 2014b: 15). In May 2014, for example, the Lebanese authorities called on Palestinian refugees from Syria to settle their status by applying for residence permits (*ibid.*). Some Palestinian refugees who went to the General Security office to legitimize their status were denied residence permits and given deportation orders with time periods ranging from 24 hours to one week (*ibid.*).

By demanding fees and fines from Syrian refugees, and by deciding to stop granting residence permits for Palestinian refugees from Syria, the Lebanese authorities ensured that many registered refugees remained without a residence permit, and, as a result, without the right to legally reside in Lebanon. By re-categorizing many Syrian refugees as irregular migrants (Oxfam 2015: 17), the Lebanese authorities undermined the legal safety of those refugees.

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5 In 2015, the NRC and IRC (2015: 17–21) conducted interviews with 395 Syrian refugees in Lebanon. Out of the 395 refugees, 343 had a residence permit that expired during their stay in Lebanon. About half – 54 percent – of those 343 refugees said they were not able to renew their residence permits for a variety of reasons. The majority – 68 percent – of those unable to renew their residence permits said that the main reason was the cost of renewal.

## CONCLUSION

The right to seek and enjoy asylum is a fundamental human right originally enshrined in the Universal Declaration of Human Rights and reaffirmed in numerous UN General Assembly Resolutions (UN General Assembly 1948; IMBR 2013). Although Turkey, Jordan and Lebanon opened their borders to millions of Syrian asylum seekers, the various anti-refugee practices introduced by all three countries indicate that many Syrians were prevented from exercising their right to seek and enjoy asylum. The first three practices examined above aimed at denying the right to seek and enjoy asylum by physically preventing Syrians from lodging asylum claims at UNHCR or any other authority responsible for protection status determination. The governments of all three host countries resorted to border closures and rejections of specific groups of Syrians in order to prevent new Syrian asylum seekers from crossing the borders and reaching the authorities responsible for protection status determination. In addition, two of the host countries – Turkey and Jordan – used arbitrary detentions and deportations to target Syrians who were already in their territories in order to prevent them from seeking and enjoying asylum.

The other practices used by Lebanon aimed at stripping registered Syrian refugees of their legal status in order to prevent them from enjoying asylum and thus to indirectly force them to return home. By shutting down the sole authority responsible for status determination procedures, by de-registering some Syrian refugees, and by not allowing Syrian refugees to obtain/retain residence permits, Lebanon compromised the legal safety of Syrians, stripped them of their rights and benefits, and thus put pressure on them to return to their unsafe country of origin. The pressure primarily emanated from the fact that Syrians who were not allowed to obtain/retain protected status and residence permits were de facto re-categorized as irregular migrants, and, therefore, put at risk of being detained and deported. On the basis of a law criminalizing irregular migration in Lebanon, Syrians without protected status and residence permits were continually in danger of being imprisoned and deported. Article 323 of the *Law Regulating the Entry and Exit of Foreigners in Lebanon and their Exit from the Country* (1962) provides criminal charges and penalties – i.e. imprisonment of one to three months, payment of a fine, and expulsion from Lebanon – for individuals, including asylum seekers, convicted of entering and staying in Lebanon without valid travel documentation and visas.

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## POVZETEK

### ZAVRNJENI SIRCI: KRŠITVE NAČELA NEVRAČANJA V TURČIJI, LIBANONU IN JORDANIJI

Vasja BADALIČ

Pravica iskati in uživati pribežališče pred preganjanjem je temeljna človekova pravica. Čeprav so Turčija, Jordanija in Libanon skupno sprejeli približno pet milijonov sirskih beguncev, številni protibegunski ukrepi, ki so jih uvedle vse tri države, nakažujejo, da mnogi sirski državljani niso imeli možnosti uveljaviti pravice do iskanja in uživanja pribežališča pred preganjanjem. Protibegunske ukrepe, ki so jih uporabile države gostiteljice, lahko razdelimo v dve kategoriji.

Prva kategorija je vsebovala nezakonite ukrepe, s katerimi so vse tri države gostiteljice kršile načelo nevratanja. Ti ukrepi so merili predvsem na to, da sirskim državljanom preprečijo prečkanje meje in vložitev prošnje za azil. Prvi ukrep, ki so ga uporabile vse tri države gostiteljice, je bila zapora meje in preprečevanje prehoda sirskim državljanom, ki so bežali pred vojno. Drugi ukrep je bil uporaba selektivnih kriterijev za določanje skupin Sircev, ki jim ni bil dovoljen prehod meje (npr. palestinski in iraški begunci, ki so živeli v Siriji; mladi, neporočeni moški; sirski državljani brez veljavnih dokumentov; sirski državljani, ki so prihajali z območij, oddaljenih od libanonsko-sirske meje, ali z območij, za katere so libanonske oblasti trdile, da so varne). Tretji ukrep, ki sta ga uporabili Turčija in Jordanija, je bil samovoljno zapiranje in deportiranje sirskih iskalcev azila in beguncev.

Druga kategorija protibegunskih ukrepov je vsebovala ukrepe, s katerimi je ena med državami gostiteljicami – Libanon – ustvarila pogoje za posredno prisilno vratanje tako sirskih iskalcev azila kot tudi že registriranih sirskih beguncev, ki so že bili v Libanonu. Prvi ukrep je bil zaprtje pisarne UNHCR v Libanonu, edine institucije, ki je bila pristojna za obravnavanje prošenj za azil. Drugi ukrep je bil odvzem statusa nekaterim sirskim beguncem (npr. beguncem, ki so se začasno vrnili v Sirijo; beguncem, ki so bili registrirani po zaprtju meje na začetku leta 2015). Tretji ukrep je meril na to, da sirskim beguncem prepreči pridobitev dovoljenja za bivanje (npr. z uvedbo visokih pristojbin, ki jih begunci niso mogli plačati; s prenehanjem izdajanja dovoljenj za bivanje palestinskim beguncem).

# CRIMINALIZING “PRO-IMMIGRANT” INITIATIVES: REDUCING THE SPACE OF HUMAN ACTION

Vlasta JALUŠIČ<sup>1</sup>

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## ABSTRACT

### **Criminalizing “Pro-Immigrant” Initiatives: Reducing the Space of Human Action**

The article addresses the problem of the surveillance, disciplining and criminalization of practices of non-governmental initiatives which offer help to irregular migrants, asylum seekers and refugees in Slovenia and four neighbouring countries. Based on original empirical work – interviews with members of NGOs – it analyses the dynamic of these processes through several stages of the “continuum of criminalization”. Five types of crimmigration policies and practices of authorities and other actors were identified which produce cumulative effects and reduce space for both political and human action as well as spontaneity.

**KEY WORDS:** crimmigration, humanitarianism, solidarity, irregular migrants, non-governmental actors

## IZVLEČEK

### **Kriminalizacija »proimigrantskih« iniciativ: Reduciranje prostora človeškega delovanja**

Članek naslavlja probleme nadzorovanja, discipliniranja in kriminaliziranja nevladnih akterjev, ki v Sloveniji in štirih sosednjih državah pomagajo nedokumentiranim migrantom, prosilcem za azil ali azilantom. Na podlagi izvirnega empiričnega raziskovanja – intervjujev s člani NVO – analizira dinamiko krimigracijskih procesov. Ugotavlja, da kriminalizacija akterjev civilne družbe, ki solidarizirajo z nedobrodošlimi migranti, poteka kot kontinuum petih tipov politik in praks oblasti ter drugih akterjev, ki povzročijo kumulativni učinek in reducirajo prostor tako za politično delovanje kot tudi za človeško spontanost.

**KLJUČNE BESEDE:** krimigracije, humanitarizem, solidarnost, nedokumentirani migranti, nevladni akterji

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## INTRODUCTION

The year 2015, when the so-called refugee crisis took place in the EU and the Balkans, brought about the breakdown of European refugee policy (Žagar, Kogovšek Šalamon, Lukšič Hacin 2018), after which increasingly restrictive, militaristic and anti-humanitarian measures were adopted. However, in parallel with the wave of refugees in the “long summer of migration”, a wave of solidarity also emerged. Some citizens did not miss the chance to act in genuine human solidarity and to show the potential to counter the “main stream” of crimmigration (Kogovšek Šalamon 2017: 261). Multiple actors were present in solidarity actions and campaigns with refugees, which varied from more traditional humanitarian to ad hoc campaigns, and from local solidarity groups to transnational endeavours (Della Porta 2018: 25; Fekete 2017). While these activities have mostly been “filling the gap” where the states have failed, due to a systematic policy of neglect, they soon became the object of intense “state harassment” (Fekete 2017: 66) and criminalization (Webber 2017).

The criminalization of aid to refugees is not a new phenomenon (Fekete 2017: 2). It was a regular practice in all regimes which were proto- or entirely totalitarian. Luckily, to date, there have always been people who have continued to practice human solidarity, even in dark times and at the price of their own freedom or life. As I have argued elsewhere, one of the main characteristics of proto-totalitarian governments is that they increasingly produce the phenomenon of “double superfluousness” (Jalušič 2017). Not only do they make superfluous those people who are seen as radically unequal and are as such exposed to inhuman treatment (refugees, foreigners, migrants), they also produce the dehumanization and superfluousness of their own citizenry by attempting to destroy their capacities and framework for agency, and hence their spontaneity and politics. In the circumstances of a “normal”, democratic political order, humanitarian action is usually not political, as Arendt would claim. Being an expression of compassion, it can easily be perverted into pity (Arendt 1982: 88–90). Nevertheless, such action can become political in extreme conditions when politics as human activity and the space for human action are endangered or on the way to being destroyed.

This thought has led me to rethinking the contemporary criminalization of human solidarity and advocacy work for unwanted, irregular migrants. Of particular interest is the question of why the criminalization of solidarity with migrants, such as advocacy, and even the criminalization of “pure” humanitarian aid, is taking place right now. The article draws upon original empirical research in four countries of “central and south-eastern” Europe conducted in 2017–2018. It adopts the framework of crimmigration studies, which is outlined in the first two sections. The central part of the article presents findings and some conclusions of the analysis of interviews with representatives of ten non-governmental initiatives.

The empirical research was carried out as a part of the project Crimmigration between Human Rights and Surveillance (Peace Institute 2018) which also addressed

the impact of crimmigration processes on the principles of equality and rights, on human conduct, and on changes to the political and civic culture. We analysed the increasing trends of criminalizing humanitarian aid, while attention was given to practices of assistance and humanitarian interventions for migrants both within and outside of institutions, both formal and informal, in the EU, Slovenia and some countries of the Western Balkans. The main research question was not only what effect does the criminalization of migration have on the equality and rights of individual migrants, but also on general legal principles and on the role of the contemporary state and citizenship rights.

## THE CRIMMIGRATION FRAMEWORK

Crimmigration is most generally understood as the merging of criminal and immigration procedures and the corresponding policies, and the creating of special border regimes and a parallel legal system for the groups of undesirable migrants. The area of criminal law is conflated with that of migration management to the point where they have become "indistinct" (Stumpf 2006; Provera 2015). Provera defines the criminalization of migration as follows:

Criminalisation includes detention, discourse and criminal law measures directed towards irregular migrants as well as identifying penalties which may be grounded in civil law. Criminalisation of migration means the adoption of criminal law characteristics in immigration enforcement and the adoption of immigration consequences for criminal law infractions. (Provera 2015: i)

Four main steps in the process of criminalization of migration can be identified from the crimmigration literature. The first step is discursive creation of migrants as *prima facie* criminal suspects (Parkin 2016; Guild 2010). The second is the legal definition of those who entered the state without a special permission (visas or even without documents) as "non-persons" or "illegals", who are then subject to consequences of such "criminalization" in secondary law. This happens even if there is no legal basis for criminalization of persons who arrive on the territory without permission in the first place (Provera 2015). In spite of the lack of nexus between increases of the crime rate and intensification of migration, in the third step migrants as a whole are criminalized due to this *prima facie* predisposition, and the so-called "criminal migrant" (Parkin 2016: 6) is thus constructed. Data show that even when the number of actual migrant crimes decreases, the number of migrants arrested increases (Parkin 2013). Finally, these policies gradually introduce control over the entire population, while at the same time criminalizing and penalizing not only acts of human "smuggling," which is in fact always already a consequence of the definition of "crimes of arrival" (Webber 1996, 2008), but also acts of solidarity, such as basic assistance to migrants,

housing etc. (Provera 2015). Criminalization of migration clearly separates “foreigners from citizens through an elision of administrative and criminal law language” and it subjects “the foreigner to measures which cannot be applied to citizens, such as detention without charge, trial or conviction”. Additionally, the criminalization of persons [...] who engage with foreigners takes place. Individual human contact with foreigners “can be risky as it may result in criminal charges” (Guild 2010: 39).

In addition to severe human rights violations and phenomena of harmful social exclusion, the criminalization of persons who are seeking international protection, racial profiling, border violence, and mass deaths of migrants on the move (see Guild 2010; European Union Agency for Fundamental Rights 2014), there are also other grim consequences of these “trends”. State authorities sometimes act contrary to the law – contrary to both international human rights law and also the EU’s secondary legislation, such as the European Charter on Human Rights (Provera 2015: 29), whereas the law itself changes its very character (Spena 2013). While initially the development of crimmigration law could have been seen as an “exceptional circumstance”, it has become increasingly normalized, and an increasingly acceptable “rule” among the majority of the countries’ populations. Exceptions to this include solidarity activities like those emerging along the humanitarian corridor on the Balkan refugee route in 2015 and elsewhere (Fekete 2017; Della Porta 2018), including anti-crimmigration exceptions on the part of the authorities (Kogovšek 2017). But support, protests against crimmigration and assistance to migrants based on the principle of solidarity which established coalitions and succeeded with some demands (Provera 2015; Cantat 2015; Della Porta 2018) soon started becoming contentious and increasingly criminalized (Fekete 2009; Provera 2015; Della Porta 2018; Fekete 2017, Carrera et al. 2018).

In the long term, therefore, criminalization processes affect not only migrants and those who assist them, but also have implications for the present and future framework for action and the rights of the citizens of the states in question. Their “dynamics” change the existing system of government, which is considered to be democratic and respecting of equality, the rule of law, the separation of powers, and universal human rights.

## CRIMINALIZATION OF ASSISTANCE TO IRREGULAR MIGRANTS

Most of the EU literature examining the legal framework of the criminalization of pro-migrant acts of solidarity proceeds from the “Facilitators’ Package”, which is regarded as the European-wide origin of the criminalization of humanitarian assistance. It consisted of the EU Facilitation Directive, which enables and instructs the Member States to criminalize people who provide various kinds of assistance (transport, food and other necessities such as emergency shelter, etc.) to irregular migrants even without obtaining financial benefit, and does nothing to prohibit the criminalization of such people (see Parkin 2013; Provera 2015; Carrera et al. 2018;

Fekete 2009, 2017). While the directive allows the possibility of exempting humanitarian assistance from sanction, it leaves the final decision to the Member States (Webber 2017; Carrera et al. 2018: 5). The later Framework Decision demanded the strengthening of penal sanctions by the member states, yet it included a reference to the 1951 Refugee Convention, which excludes punishment for the facilitation of entry for humanitarian assistance (FRA 2014: 9). The result was that in the one half of the EU member states, facilitation of entry is defined as a criminal offence which is punishable by either a prison sentence or a fine, whereas in the other half of the EU this is so even when the "smuggler" does not obtain any financial benefit (see Weber 2017; Carrera et al. 2018: 6).

The implications of criminalizing the facilitation of entry and residence of irregular immigrants, without excepting humanitarian assistance, are grave. This became particularly clear when an open clash emerged between these policies and groups who provide humanitarian assistance, particularly in the cases of the actions of civil society groups carrying out search and rescue operations on the Mediterranean Sea, or in the cases of people who were providing social services and/or legal advice, for example in "hotspots" etc. The search and rescue missions were first directly accused of assisting the smuggler networks and of becoming a "pull factor" for irregular migration, while they refused to cooperate with Frontex to report smuggling and sign the obligatory code of conduct (Carrera et al. 2018: 2–3, 14–18). A study produced for the European Parliament in 2016 clearly problematized the effects of the directive and the "failure to legislate for a clear exemption for humanitarian assistance", which has resulted in a "high degree of legislative ambiguity and legal uncertainty" (Carrera, Guild, Aliverti et al. 2016: 62). Fear, intimidation and harassment by authorities were reported by civil society organizations, in addition to prosecutions and criminal convictions of individuals in some cases. There were court proceedings against people who had helped their family members enter the EU for personal and other altruistic reasons (ibid.: 63) and those who were "just providing food, water and shelter ([...] sleeping bags) became a criminal problem" (Fekete 2017: 2). The criminalization of assistance therefore brought about a general "climate of fear and insecurity regarding irregular immigration". Furthermore, "the 'citizen's right to assist' those in need of humanitarian aid as a key function of democracy" became jeopardized (Carrera, Guild, Aliverti et al. 2016: 63 ff).

A recent study on the criminalization of humanitarian assistance in Europe presents more than 45 cases of prosecution of individuals. All of them were doing pure humanitarian work and were just "filling the gap" in state provision (Fekete, Webber, Edmond Petit 2017). Yet within the framework of criminalization they were "targeted and harassed by the police". Their activities were deemed "anti-social, a 'pull factor' encouraging migration and the nomadic existence at places like Calais and Ventimiglia." Individual humanitarian workers were said to be "enablers of irregular migration" (Fekete 2017: 2). In September 2018, the former Slovenian minister of the interior suggested that a Slovenian legal NGO was facilitating the influx of migrants from

Croatia and Bosnia and Herzegovina to Slovenia while they were providing migrants with information on their rights and helping them to enter the border procedures that are available to them according to law (Hočevar 2018; Bervar Sternad 2018).

In the context of crimmigration, individuals and organizations that perform acts of humanitarianism became a disturbing problem for the governments, which for years have used a “humanitarian approach” and “humanitarian reason” (Fassin 2012) to govern global crises, wars, genocides, and lately also for border policing (Aas Franko, Gundhus 2015; Garelli, Tazzioli 2018). Backed by facilitation legislation, national governments such as Hungary and recently also Italy have clearly paved the path towards criminalizing humanitarian actions as well by defining a new type of new crime, “crimes of solidarity” (Fekete 2017: 1). Through such legislation the state authorities create hostile environments not only for migrants but also for individuals and organizations that work to counter the securitization of migration, fight for migrants’ rights and do not allow themselves to be coordinated into the racist framework (Edmond-Petit 2017; Fekete 2018: 68, 82).

Policies of criminalizing assistance to irregular immigrants “extend beyond cases where civil society actors have faced actual prosecutions and criminal convictions” (Carrera et al. 2018: 1). One of the worrying aspects is the “shrinking political space” for debate and action (Fekete 2017: 2), the narrowing of the legal framework for the agency of non-governmental actors and individuals, as the events in Poland and Hungary have shown (Szuleka 2018).

The concept of “policing the mobility society” was introduced by the latest research on criminalization of solidarity in the EU (Carrera et al. 2018, 2018a) to explain the effects of the punitive dynamics on the civil society actors who are aiding migrants, especially on those who are not providing “pure” humanitarian support like the big humanitarian organizations, and are transcending this framework through critical monitoring and/or political mobilization (Fekete 2017: 2). “Policing the mobility society” describes a “wider set of practices, mechanisms and tools driven by the logic of policing” and affecting both those on the move and those who mobilize and act “on behalf of immigrants and asylum seekers” (Carrera et al. 2018: 3). The term “mobility society” embraces not only traditional NGOs which “play a crucial role in service provision through EU and nationally funded programs and projects”, but also informal and loosely organized groups and individual activists (ibid.).

“Policing” stands for more than just traditional surveillance and prevention by police officers or border authorities. It embodies various actions of authorities and of several EU or national institutions that impact (directly or indirectly) the activities of civil society players. Three “faces” or stages of the “policing” actions are described as suspicion/intimidation, disciplining, and criminalization, while inaction and ignorance on the side of authorities was also described as “negative policing” (Carrera et al.: 3–4). The results of the entire study, which are forthcoming (Carrera et al. 2019), reveal broader processes of policing of three sets of civil society actors: search and rescue missions in the Mediterranean, those assisting irregular immigrants and asylum

seekers in accessing fundamental rights (shelter and food) and those advocating for their rights.

The conceptual framework of "policing" with three faces/phases is in many ways similar to what we have outlined in our project as several phases in the "continuum of criminalization", although our findings pointed to more than just three instances/types of criminalization. Besides, "policing" can also be carried out by other non-governmental actors, especially the far right.

## METHODOLOGY

In addition to an analysis of previous research and data on the criminalization of humanitarian assistance, we prepared a semi-structured qualitative questionnaire for representatives of NGOs offering humanitarian or other assistance to migrants that are active in Slovenia and neighbouring countries. The aim was to find out which organizations are being targeted by the criminalization trends, what kind of surveillance and punishment is used by authorities and other actors and how does this affect NGOs and citizens. The questionnaire consisted of five sets of questions, including those about the type of work and organization and whether they offer humanitarian and/or other kinds of assistance. Questions were asked to assess trends in migration policies in their countries and the EU and to describe the observed criminalization or other problematic practices of authorities toward irregular migrants and refugees.

Ten anonymous qualitative interviews were carried out from November 2017 to May 2018 with members, employees and volunteers of various civil society associations (NGOs) or more loosely organized groups from Slovenia (5) and four neighbouring countries: Croatia (1) Austria (1), Hungary (2) and Italy (1). All or part of their work is dedicated to refugees, asylum seekers and irregular migrants, and can be considered as solidarity work (either humanitarian or broader).<sup>1</sup> The main objective was to obtain a deeper insight (through the lens of the actors) into some of the most typical practices of policing and criminalization of both migrants and those who provide them with different types of assistance.

In the last part of the interviews the respondents were invited to talk about their organizations' relationships with the authorities and about any cases of harassment, "policing" and criminalization of their or others' work: had they ever been discredited, publicly criticized or defamed, had their work been obstructed, ignored, or indirectly or directly criminalized, and how did that happen, had they

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1 Provera defines solidarity in a narrower sense as "providing, or assisting migrants to access, basic rights such as health care, accommodation, education, transport as well as necessities such as food and clothing" and ethically as "behaviour which might be considered humanitarian – that is, the individual or entity might consider their act to be 'good' yet is otherwise subject to sanction" (Provera 2015: 5).

been prosecuted, interrogated or otherwise charged, and had any of their or other actors' activities or forms of assistance been prohibited by law or criminalized. The rest of the article focuses on the results and analysis of the last set of questions.

## FINDINGS

All of the respondents had an intense experience with the so called "long summer of migration" in 2015–2016 and with the subsequent developments both in their countries and in the EU. During the crisis they engaged in border monitoring, providing information, and also humanitarian aid, including collecting and donating clothing, cooking and providing refugees with fresh food. Only two of the respondents see their organizations as mainly "humanitarian" and this should be understood in a broader sense as they also provide information, conduct monitoring, and provide advocacy, legal advice, basic rights counselling, etc. Others describe their work strictly as advocacy and legal representation, free legal help, monitoring, information provision, informing clients about procedures, representing them, etc. All of the organizations generate knowledge, and produce studies, monitoring and research reports.

### Migration Policies in the EU and in Member States

The respondents are highly critical of the EU's policies and their governments' measures, and assess them as "very, very restrictive", "unwelcoming" (Slovenia), "aggravating and rigid", resembling a "Fortress Europe" approach (Croatia), and "really bad" (Hungary). Hungary in particular is identified as the leader in enforcing restrictive policies, by preventing arrivals and criminalizing and punishing irregular migrants, including asylum seekers. Moreover, it increasingly criminalizes organizations helping migrants:

I don't know if it can get lower than it already went. For several years, migration has been one of the main topics misused by the politicians to gain power, [and] the media report selectively, [and it] also produces disinformation. Non-governmental organizations are under serious pressure. If the Stop Soros laws<sup>2</sup> are adopted we won't be able to operate any more. (Interview 7; 4. 5. 2018)

2015/2016 marked a total breakdown of the EU's migration policy, which could be interpreted as a "temporary win, [i.e.] success of migration". After that, "the backlash of the EU border regime" took place and "the empire struck back" (Interview 6; 15. 3. 2018). There is a close interrelation between restrictive Member State policies and

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2 Regarding the Stop Soros laws see Kingsley 2018.

the direction received from the EU. The Hungarian "solution", the respondents said, is widely tolerated only because the EU migration policy collapsed, and it is on this basis that the Hungarian government can afford "to do what they are doing" ("building fences, pushing people back, torturing them, beating them" (ibid.). Not only do "many countries in fact support Orbán's policy of banning migrants from the Balkans" (Interview 7; 4. 5. 2018), it is also "in the EU's interest to keep the corridor closed, and the Hungarian fence is an important element" of that (Interview 6; 15. 3. 2018).

This became more obvious when tackling the specific problematic practices affecting migrants, and the unconstitutional conduct of the responsible authorities, which violate the European Convention on Human Rights and international law documents, or as one respondent said, they violate "everything" (Interview 7; 4. 5. 2018). The "trend" which is moving further towards violence was unambiguously described as follows:

[...] Croatian and Hungarian police forces in particular are not only pushing people back to Serbia on a regular basis [...] with mass violence, regularly crossing the line of torture. All of this is well documented. But at the moment [...] nobody really cares. [...] I haven't heard any criticism from Brussels regarding the mass violence that is happening. [...] These stories [...] are very systematic [...], so anybody who looks into it more clearly knows what's going on nowadays. It's violently protecting the border. It all just shows that the fence is not enough. It was the same with the Berlin Wall. Think about the Berlin Wall without people to shoot. It would be absolutely useless [...] I mean now we have a situation of immediate push-backs and this is connected to mass violence, so what else are they going to do? The next logical step is really to order them to shoot. (Interview 6; 15. 3. 2018)

Some respondents, not only Hungarian ones, whose organizations cooperate with authorities, noticed the deterioration of this relationship after 2015/2016. This process went hand in hand with increased public attacks on them and with the attempts of the EU and Member states to limit the autonomous work of NGOs and individuals offering assistance. While it seemed that the most extreme of such developments took place in Hungary, other countries are no longer exceptions.

### **Types of Restrictions, Obstruction and Criminalization**

We identified five types of practices and approaches aimed at obstructing or precluding the work and activities of non-governmental organizations, and thus narrowing their space of agency.

a) Criticism and public attacks, discrediting of the work of NGOs in the media, disinformation, and harassment by right-wing politicians and their allies. "It was said that

we are importing migrants to Slovenia, work for them and take care for the migrants' better lives instead of Slovenians', and that we should take these migrants into our homes" (Interview 1; 4. 12. 2017). While these intimidations are not new, respondents were criticized and exposed to harassment mostly by right-wing actors, and not mainly by the authorities, except in the Hungarian and Croatian cases. Direct attacks on NGOs, in Slovenia for example, were carried out by newspapers and one news portal connected to a right-wing party which is openly aligned with the Hungarian prime minister Orbán. Organizations and individuals received threats via social media. Both in Slovenia and Croatia these attacks were aimed not solely at activities of solidarity with migrants but also at their work and civil society in general. There were numerous intersections between gender and migration. One Croatian NGO was publicly criticized by the authorities in a patronizing manner, even being accused of being anti-Croatian.

The attacks discredit the work of NGOs as incompetent, useless, dangerous and anti-state, and comment on the financial resources of these allegedly "rich" and corrupt organizations, while the reports are not fact-based. A clear ideological pattern exists behind such accusations, in which they match a "suitable" enemy (Fekete 2009) with a conspiracy theory. The Austrian respondent stated that many volunteers dealt with intimidation and hate speech, yet these did not come from officials.

Hungary faced the most powerful propaganda, where coordinated attacks by the media, right wing parties and the government stoked sentiments against NGOs that deal with migration or are financed by George Soros. Most media continually portrayed them as acting in opposition to the state interest, and dangerous to society; Soros's agents and soldiers, who are jeopardizing Christian values and the safety of Hungarian citizens, want to fill Hungary with Muslims, and are connected to terrorists. The government even carried out open defamation of the NGOs under the cover of a quasi-deliberative democracy while sending citizens surveys with questions like "do you support organizations like the Hungarian Helsinki Committee and Amnesty International which are assisting terrorists".

Respondents whose organizations were rarely or not criticized (2) thought that this was due to the nature of their work. They are "in a more favourable position" because their work is "primarily humanitarian and not advocacy-oriented" (Interview 2; 7. 12. 2017). Or they are not at the centre of the pressure because the knowledge/information their small organization collects is intended largely for NGOs and professionals (Interview 6; 15. 3. 2018).

Slovenian and Croatian NGOs were targeted by demands that the governments cease all state funding of the NGOs, particularly those organizations which were or are financed by OSIFE. In Hungary, the government proposed taxing these organizations up to 25%.

b) Bureaucratic tightening of the space for civic action: restricting access, obstructing of work and surveillance. The NGOs needed to be quite disciplined in their relationship

with the officials in order to get access to information or to be allowed to work at the border with migrants or in detention centres or transit zones. Respondents recall many instances where the authorities restricted or banned access to borders or detention centres for activists, volunteers and various NGOs. They were often ignored, directly obstructed or punished for their endeavours, especially when they for example entered the border area.

Obligatory registration with the large humanitarian organizations such as the Red Cross, Caritas or UNHCR, and restriction of access for those who assisted refugees were the first steps of disciplining the work of NGOs in 2015/2016, at the time of the European refugee "crisis". A Slovenian NGO faced restrictions from the Ministry of the Interior to access the parts of the refugee centres where the registration took place after they publicly criticized the observed violations of the Convention. The justification suggested that the NGOs were "not constructive enough". The Ministry of the Interior apparently had very good information about which organizations had been critical.

I think that the authorities succeeded very quickly [...] in pushing out all of the informal groups from the refugee centres with the argument that they only create chaos, but they basically wanted total surveillance of all forms of humanitarian aid. And that was how humanitarian work was performed later: in an automatic manner, very technical. So, if you are distributing food or clothes or you carry a box then that was humanitarian work, yet talking to the people, providing them with information, that was not humanitarian work anymore. And talking to people, and providing them with information, was the most unwelcome. (Interview 1; 4. 12. 2017)

However, it was not only about what kind of assistance was given (information and advocacy were not welcome) but also about who was offering it:

[...] the volunteer kitchen was kicked out as well, and the argument was that the military kitchen would provide people with hot food, which in the end didn't happen [...]. It was just [...] to get the volunteer kitchen out. Our spaces for volunteers were continuously being reduced, and [...] there was a certain scheme behind this. [...] there was one scheme stopping the flow of people and another scheme stopping the access of volunteers. (Interview 5; 9. 3. 2018)

All "unauthorized" aid was considered increasingly problematic. The authorities would not necessarily obstruct the NGOs' work directly, but by not providing information, "or they put additional demands on us to provide non-essential information when it came to advocacy for asylum, for example. That way they made it harder for us to reach any constructive solutions" (Interview 2; 12. 12. 2018).

c) Banning access and prohibiting monitoring. In Hungary, the most important human rights NGO had their 15-year-old contract with the immigration office and the police cancelled, including a tripartite agreement on border monitoring with UNHCR. For years, they had direct access to any centre in which asylum seekers were located.

All of this ceased in 2017, in the spring, without any explanation or with very illogical reasons: for example, that such monitoring was not needed as there is an ombudsman and a 'national preventive monitoring mechanism', and they are going to these places [...]. Every three years they go to a certain centre, [...], so it's a completely different way of monitoring. The cancellation was purely political. (Interview 7; 5. 5. 2018)

The authorities also attempted to prevent their lawyers from accessing the transit zones, which luckily failed after a petition by the Hungarian Bar Association.

The arguments were nonsensical. The migration office wrote that in 15 years we missed the deadline to send the report on these monitoring visits three times by couple of days, I think, [and] then that our lawyer behaved badly in court in one case [...]. It was a clear decision by the government to ban us from access. (Interview 7; 5. 5. 2018)

There were only few organizations left that were granted access to the transit zones by the state, all of them strictly humanitarian, and most of them religious organizations, i.e. the so-called Charity Council (consisting of Caritas, the Maltese Order, Interchurch Aid, the Red Cross, Reformed Church, Baptist Aid). "There is no exact information about what activities each of these organizations perform there. If they have access, they do not have the permission to report anything about the situation in the transit zones to the public [...], everything is actually secret" (Interview 7; 5. 5. 2018).

d) Deterrence and marking of "dangerous" organizations and persons. Before the elections in 2018, the Hungarian government informed the public that they had a list of about 200 people who are closely connected with George Soros and his network and therefore act contrary to the state's interests. After the elections, the magazine *Figyelo Review*, which is majority-owned by the state, published a list of "suspicious" people in an article that ran under a pseudonym:

They copied names from the various websites of the organizations that were considered a threat to the country, as well as the names of many CEU professors, many CEU associates and many civil society organizations – entire lists of people working in NGOs; about 200 names were published. (Interview 7; 4. 5. 2018)

While the lists of "corrupt" and "traitorous NGOs" or "murderous abortionist lobbies" are also constantly republished by certain media in Slovenia, the Croatian respondent

indicated that they suspect that they are under surveillance by various intelligence organizations, and that there is a political agenda of several institutions in Croatia to discredit their work. "That's why there aren't many people who would publicly expose themselves as working with migrants, since this has become a certain stigma, stretching from treason to Islamization and beyond" (Interview 4; 2. 2. 2018).

Yet most of the respondents did not mention particular situations in which their work was directly criminalized, although they had heard of or witnessed problems in the relationships between the official bodies and the organizations whose work and efforts were directly or indirectly accused of being criminal, or denounced by the institutions, for example in Sicily (Interview 9; 5. 2. 2018).

In Slovenia in 2015, informal volunteer organizations which did not register with the big humanitarian organizations like the Red Cross or Caritas etc. were often punished for their actions, for example in the space between borders, in no man's land:

It was said that no one is allowed to offer aid there and at the beginning some people who were purely self-organized received fines for misdemeanours. So this was criminalized and after that no one in the public supported such actions any more. This was how activism was marked as an ugly rebellion against the system and made suspect. (Interview 1; 4. 12. 2017)

There is a belief that the work of the NGOs will be further interrogated and discredited by the authorities. The Croatian respondent expects the Hungarian scenario to spread:

During our practice of escorting refugees to the police stations [...], some of the police officers expressed anger and even made threats (such as accusing us of smuggling people and that we could potentially expect to be charged). Innumerable times [...] our colleagues would be exposed to denigration and assaults by high state officials in closed rooms. [...] The Ministry of the Interior would organize the meeting with us and the NGOs providing humanitarian assistance where they would brag about their successes and the humanitarian face of their work. (Interview 8; 12. 3. 2018)

e) Direct criminalization of assistance. During the fieldwork early in 2018, the respondents often referred to the draft Hungarian anti-immigration law which would directly criminalize the provision of any kind of assistance to migrants, including basic help for migrants and asylum seekers:

The law requires licenses and if an organization performed activities without a licence, it would be a violation of the law, your tax number would be frozen, [...] the organization would be banned. In the third part of the law there is a prohibition against people coming within eight kilometres of the border between Hungary and Serbia. (Interview 7; May 2018)

The targeted organizations were those that are very active in supporting asylum seekers or refugees, in particular human rights defenders: “The law is really made in order to get rid of us [...] as we are the strongest organization which criticizes the acts of the state in the field of human rights” (Interview 7; 4. 5. 2018).

## DISCUSSION AND CONCLUSIONS: THE CRIMMIGRATION CONTINUUM AND THE SHRINKING SPACE OF POLITICS

The five main types of “policing” that we came across in the interviews can be described as a continuum<sup>3</sup> of the criminalization of the organized and independent provision of assistance to (“irregular”) migrants. The continuum begins with discursive criminalization, involving intimidation and suspicion, as described by Carrera et al. (2018). The process is accompanied by public incrimination of non-governmental activities through political and media discourses and “semantic drifts” which link them to criminals and smugglers, and accuse them of being “pull factors” and “national traitors” (Fekete 2018: 67). This includes disinformation, non-factual incrimination of allegedly rich and corrupt NGOs, and accusations of being traitors and allies of terrorists who are becoming a part of the bigger picture of the enemy (Fekete 2009), which fits well into the simple explanations of conspiracy theories. Our respondents have confirmed that alt-right topics are feeding this “news” (see Fekete 2017a: 33). The harassment can also go beyond disturbance (Fekete 2017a: 33, Carrera et al. 2018: 27), though our respondents luckily did not have experiences with physical attacks.

The second type of policing is characterized by the bureaucratic tightening of the space for civic action. Organizations and volunteers are required to register, to cooperate, and accept the practices of “knowledge extraction”, such as sharing information and duty to report (Garelli, Tazzioli 2018: 679) that are carried out by participants in the “military-humanitarian war against migrant smugglers” (ibid.). If they fail to do so, their activities might be restricted. Suspicion is directed at those who are not ready to “go with the flow”, especially more informal organizations which do more than just ensuring survival. A difference emerges between two kinds of “humanitarianism”: a less formal, more spontaneous and direct type, allowing contact and communication between people, and the strictly organized routine of big organizations which provide for basic needs only. Informal, spontaneous groups are pushed out of the game. The only participants that are welcomed are those that do not engage in advocacy and will not talk much to the people, and will not monitor or report the authority’s actions or misconduct.

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3 “Continuum of crimmigration” refers to the concept of “continuum of (sexual) violence” (Kelly 1987) which is suggesting that women experience a whole series of violations of their sexual integrity which were not contained within legal parameters that defined sexual offences before they experience brutal sexual violence.

The next step is banning access and the possibility of monitoring. The Hungarian case has shown that only selected humanitarian organizations get access to migrants. This confirms Fassin's argument, in his critique of humanitarian reason (Fassin 2011), about the governing of the unwanted. The radical inequality which forms the core of the humanitarian aid discourse is always already implicated in the system of governance, which first silences the language of rights and injustices and then resorts to pity instead of genuine human solidarity. As confirmed in practice, finally even pity, which would give scant alms, is abolished.

While the fifth stage involves the introduction of substantial restrictions, both administrative and penal, and attempts to justify the whole process of penalization and surveillance by legal means, the fourth stage is even more problematic. Lists of suspects create the living targets of governmental and nongovernmental attacks. Direct criminalization through legislation is mainly a consequence of previous steps which prepare the ground for it.

The notion of the "shrinking space of civil society" (Szuleka 2018) points to the developments in the last few decades, in which the governments have been continuously placing increased restrictions on non-governmental actors through policies or legal amendments which primarily affect those who are critical of the state's policies (ibid.: 11). While the authorities create an unwelcoming political culture and try to prevent all elements of spontaneous migration (see Weber in Fekete 2018: 67), there is also clear evidence not only of shrinking political space but of attempts at destroying any spontaneity, one of the most important elements of human action. Aid not only gets regulated, those initiatives which are contrary to the "humanitarian missions" of those who are fighting smugglers and quasi-defending the social rights standard and sovereignty of the "West" are by definition suspect.

In late August 2018, reports were coming from Hungary that the authorities had cut off the distribution of food to some rejected asylum seekers in the transit zones. The parliament adopted legislation which is supposed to justify such measures, and criminalizes humanitarian activities for migrants, making them punishable by up to a year in prison. In Italy as well, a hostile environment is created to prevent both spontaneous migrations and any spontaneous initiative to offer aid or solidarize. News comes in from the Mediterranean on a daily basis about search and rescue ships that are not allowed to enter the ports for weeks.<sup>4</sup> "Policing humanitarian borderlands" (Aas Franko, Gundhus 2015) has become increasingly anti-human. Yet, as indicated at the beginning, this policing is anti-human in a double way, as it not only affects

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4 On 20 November 2018 the Mediterranean rescue ship *Aquarius* was seized by the Italian authorities, and Doctors Without Borders (MSF), one of the two humanitarian organizations operating on board the ship, was accused of "improperly disposing of the waste accumulated during its activities at sea". MSF rejected the accusations of illegal practices and said that the seizure represented "another strike in the series of attacks criminalizing humanitarian aid at sea" (*Aquarius Rescue Ship Seized* 2018).

the lives and therefore the agency potential of migrants, but increasingly also the space and political potentials of the “peoples of Europe”.

The criminalizing of practices of solidarity across the whole of Europe indicates that the authorities are trying to limit the autonomous work of organizations by taking over the majority of activities connected with migrants, trying to discredit their work by publicly demonizing them and potentially criminalizing them. Such demonization of people working with migrants is, as our respondent said, “much more effective than direct criminalization, since it leads people to giving up or hiding their activities”. And this is the ultimate path to dehumanization.

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## POVZETEK

### KRIMINALIZACIJA "PRO-IMIGRANTSKIH" INICIATIV: REDUCIRANJE PROSTORA ČLOVEŠKEGA DELOVANJA

Vlasta JALUŠIČ

Članek naslavlja probleme nadzorovanja, discipliniranja in kriminaliziranja nevladnih akterjev, ki v Sloveniji in štirih sosednjih državah, Avstriji, Madžarski, Hrvaški in Italiji, pomagajo nedokumentiran migrantom, prosilcem za azil ali azilantom. Izhaja iz konceptualnega okvira krimigracij, ki analizira učinke povezovanja in zlitja kazenskega prava in upravljanja migracij. Posledice niso samo kršitve človekovih pravic in izključevanje, kriminalizacija prosilcev za mednarodno zaščito, rasno profiliranje, nasilje na mejah ter množično umiranje migrantov na poti, ampak tudi nadzor in kriminalizacija tistih, ki z njimi solidarizirajo in jim nudijo osnovno humanitarno pomoč, kar kaže na proces »dvojne dehumanizacije«.

EU od leta 2002 zapoveduje penalizacijo pomoči nedokumentiranim migrantom, ne da bi eksplicitno izključevala humanitarno pomoč. V številnih državah EU se je – še zlasti po letu 2015 – močno povečalo kazensko sankcioniranje tistih, ki ne nudijo samo zagovorništva in informacij, ampak tudi humanitarno pomoč v najelementarnejšem pomenu. Nevladne iniciative so, ker naj bi spodbujale nezakonite migracije, obdolžene spodbujanja interesov in varnosti evropskih držav. Nekatere desne vlade ožijo tudi zakonite podlage za delovanje civilne družbe.

Z namenom globljega vpogleda v dinamiko in posledice krimigracijskih procesov na področju pomoči migrantom je avtorica skupaj s študentko Ariano Radić med novembrom 2017 in majem 2018 izvedla deset kvalitativnih intervjujev s člani različnih nevladnih organizacij ali bolj neformalno organiziranih iniciativ. Ugotovila je, da nadzorovanje in kaznovanje akterjev nevladnih iniciativ, ki poteka kot »krimigracijski kontinuum«, obsega pet tipov praks in politik: diskurzivno kriminalizacijo, birokratsko ožetje prostora za državljansko delovanje, prepoved dostopa in možnosti za monitoring, zastraševanje in označevanje »nevarnih« organizacij in oseb ter neposredne spremembe administrativnih in kazenskih predpisov. Kumulativni učinki omenjenih politik in praks reducirajo prostor političnega, človeškega in humanitarnega delovanja ter spontanosti.



# AUTONOMY OF MIGRATION AND THE GOVERNMENTALITY OF PLASTIC BORDERS

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## ABSTRACT

### *Autonomy of Migration and the Governmentality of Plastic Borders*

Inspired by the autonomy of migration approach, we analyse borders as sites of control and violence but also as migrant praxis, as strategies of escape and rupture. We explore the idea of “bodily borders”, emphasizing that borders shape subjects on the move and are themselves shaped by the embodied experiences of border-crossers. Drawing on Foucault’s concept of governmentality and Malabou’s analysis of the concept of plasticity, we argue that migrations are governed through “plastic borders” that are formed as direct responses to migrant mobilities, using the empirical example of the externalization of borders as an EU policy of migration management. KEY WORDS: autonomy of migration, borders, governmentality, plasticity, externalization of borders, Balkan migratory route

## IZVLEČEK

### *Avtonomija migracij in vladnost plastičnih meja*

Avtorica na podlagi avtonomije migracij meje analizira kot mesta nadzora in nasilja ter hkrati kot migrantski *praxis*, kot strategije bega in ruptur. Pojasnjuje idejo o »utelešenih mejah«, da bi pokazala, kako meje na poti oblikujejo ljudi in so obenem same oblikovane prek utelešenih izkušenj tistih, ki meje prestopajo. Z uporabo Foucaultovega koncepta 'vladnosti' (*gouvernementalité*) in koncepta 'plastičnosti' (*plasticity*), kot ga analizira Malabou, postavi tezo, da današnje upravljanje migracij uporablja mehanizem »plastičnih meja«, ki so oblikovane kot neposredni odziv na mobilnost migrantov, kar pokaže tudi na empiričnem primeru eksternalizacije meje kot evropske politike upravljanja z migracijami.

KLJUČNE BESEDE: avtonomija migracij, meje, vladnost, plastičnost, eksternalizacija meja, Balkanska migracijska pot

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## INTRODUCTION

Borders are about the exertion of control, but they are also about the active subjectivity of those crossing them. Fixating solely on the power of control and domination risks, as emphasized by theorists of the autonomy of migration (AoM), “reinforc[es] the spectacle of the border” (Mezzadra, Nielson 2013: 267) and diminishes the relevance of migrant movement. In this article we analyse contemporary practices of bordering in the European and the larger global context by adopting the autonomy of migration approach, viewing borders as contested sites of struggle where the nation-state attempts to maintain its sovereignty and fictive “homogenous ethnicity”. We recognize borders as sites of social relations that are constituted by and through borders (*ibid.*: 279). Instead of viewing borders only as sites of violence – while admitting that they indeed appear as such – we explore the governmentality of what we suggest are “plastic borders”, stressing their changeability.

We start by providing an overview of the relevant literature on autonomy of migration, foregrounding autonomy as migrant praxis. Next, we approach the analysis of borders through the juxtaposition of control and its subversion by migrant itineraries, analysing how borders are about violence but also how they appear as sites of escaping control. Following the AoM approach, we pursue the idea of “bodily borders”, arguing that borders shape subjects and their bodies, and are themselves shaped by the embodied experiences of border-crossers.

The central question this article explores is what kind of governmentality rationalizes contemporary bordering? To explore this, we use Foucault’s accounts on governmentality and argue that nowadays migrations are governed through “plastic borders” that are shaped as direct responses to the tactics of migrants. Rather than having a coherent policy, the EU and its nation-states respond to migration by adopting mechanisms as a direct response to migrant mobilities. Thus, migrants push institutional changes rather than the other way around.

Emphasizing bodily experiences in theorizing borders allows us to argue that institutions respond to contemporary mobilities through a specific regime governed by the “plasticity of borders”. In the absence of coherent migration policy, what becomes its primary driver is plasticity – the bending and stretching of borders in attempts to control migration has developed into the central strategy of migration management. We show this by reference to examples of border externalization as a “plastic modality of bordering”. The examples include an analysis of the EU Global Approach to Migration and Mobility and the governmentality of the Balkan migration route.

## DEFINING AUTONOMY OF MIGRATION: MIGRATION CAME BEFORE CONTROL

The autonomy of migration approach generally refers to a shift in migration studies from researching the structural causes of migration and migration management and control to looking at migration practices and seeking instances of independence from institutionalized constraints. Moulrier Boutang (see Moulrier Boutang, Garson 1984), writing on mobility in the 1980s and 1990s, was among the first authors to express criticism of the widespread approaches to migration and mobility research that relate migration too one-dimensionally to legal and state frameworks and the economic determinism of the labour market. Only by reversing the focus from the relationship between mobility and state apparatuses to mobility strategies per se, it was argued, are we able to recognize the dynamics of migration and the diversity of mobility. Consequently, autonomist theories of migration go beyond administrative regulation, and start by looking at the “subjective diversity of migrant mobilities” (Casas Cortes et al. 2015: 896). Relating migration to autonomy and independence allows the researcher to view these phenomena as a multiplicity of practices and behaviours, tactics and interventions. Thus, the AoM approach has provided a framework for promoting perspectives that foreground the subjectivity of migrant mobilities and recognize migration as movement. Consequently, AoM looks at how processes of “subjectification” become multiplied through mobility itself, and through the related political mobilization and organization. In this context, AoM wants to go beyond the recognition of agency, referring to subjectification as the political deeds of people, regardless of their legal status, within “complexes of practices that always exceed the ability of migration policies and state authorities to fix and control them” (ibid.: 896–897).

Since Moulrier Boutang’s work, AoM approaches have taken different paths, leaning directly or indirectly into debates on autonomy, *operaismo*, Marxism, post-colonial, queer and anti-racism studies (Casas Cortes et al. 2015). AoM recognizes the autonomy of migration regardless of control – instead of treating borders as fixities, AoM focuses on migrants’ capacity to change borders and render them porous. To name a few notable examples, in *Escape Routes*, Papadopoulous et al. (2008) thematize mobility and migration as productive power beyond the logic of rights and representation, to explore the autonomist idea of resistance as the central dynamic, permeating all politicality of existence. The authors approach escape not in the reactive sense of “escape from”, but rather as a practice that generates new modes of being in the world. In *Border as Method*, Mezzadra and Nielsen (2013) use AoM to develop epistemologies and methodologies for looking at borders as multi-scalar processes in current capitalist figurations, while de Genova and Peutz (2016) in *The Borders of “Europe”*, by providing a de-centred look at control, show how borders and migration management fall short because of their neglect of the diversity and subjectivity of migration.

As argued by Casas Cortes et al. (2015: 898), by considering migrant movements and actions as powers with which institutions interact, AoM inverts, theoretically and strategically, the traditional approach to migration management as the control and violent curbing of migration, expressed for example in theories regarding Fortress Europe. These theories do not address the tricks used by migrants to slip through borders, and the Fortress Europe approach assumes that migrants are doomed to fail (Bojadžijev, Karakayalı 2010). Autonomist perspectives on migration thus put the emphasis on activities that develop beyond the regimes of subordination, approaching mobility in terms of rupture, escape or flight (Mezzadra 2001; Papadopoulos, Stephenson, Tsianos 2008).

Re-signifying migration away from functionalist analysis, conceptualizing it as creative powers or changing “turbulences” (Papastergiadis 2000), AoM shows how mobility is re-making spaces and territories, leading to changes in the governmentality of migration. Only by placing the power and politicality of migration at the centre of the analysis are we able to see the true nature of bordering. This has moved beyond the general aim of preventing mobility. Inspired by AoM, we argue that the governmentality of bordering has been developed in its “plasticity” – it has been stretched and bent, in respect of migrant tactics, with the purpose of framing new strategies of control. Adopting AoM enables us to analyse migration policies while acknowledging that they are shaped as responses to the migrants’ own mobility tactics, which we capture through the notion of plasticity. We do not think that new bordering falls short because it neglects migrant tactics (Genova, Peutz 2016); on the contrary, it works (by preventing mobility and increasing surveillance) because it adapts, plastically, to migrant mobility.

From the AoM perspective, in the analysis of contemporary borders it is necessary to overcome the push-pull models of interpreting migration as driven by labour market demands, or victimization and humanitarian approaches that too often depict migrants as powerless victims in grips of the omnipotent western sovereign, and recognize migration as powers that push shifts in institutional responses. In our approach to the analysis of borders we acknowledge that migration management seeks to control, limit and prevent migration, and that practicing “violent borders” (Jones 2016) negatively affects both migrants and societies at large. Along with AoM, however, we also try to approach the border as a space and practice of contestation. De-centring the logic of the border and control enables us to view migration and border policies not only as violent, thoughtless and mechanistic tools of surveillance but also as tools that are reframed again and again by the power of migration and migrant tactics. As noted by De Genova (2017: 6; 2010), first there is mobility as a basic human condition and then there is bordering. Mobility precedes borders. Borders do not define mobility, but rather the other way around: new forms of constantly reimagined mobility define strategies of bordering. “The movement of people around the world, and hence across border zones, came first. The multifarious attempts to manage or control autonomous mobility have always come as a response” (De Genova 2017: 6).

## “BODILY BORDERS” BETWEEN VIOLENCE AND ESCAPE

In his essays *What is a Border?* and *Borderland Europe*, Balibar emphasizes the polysemy and heterogeneity of borders (Balibar 2012, 2015).<sup>1</sup> Borders multiply, change, and are set anew (for example the Balkan route in 2015–2016). If the EU is formed as a “borderless space” for capital and (certain) people, it can also be closed to people, one example being the reintroduction of borders for people from Eastern Europe migrating to Western Europe, or the reintroduction of border controls between EU member states, e.g. at the border between Slovenia and Austria as a reaction to the so called “refugee crisis” in 2015–2016.

The mutability of borders however does not change the fact that borders have appeared historically as institutional means of exclusion. Physical borders, i.e. national demarcations, have remained until the present mechanisms for the reproduction of the exclusion and sorting of people. Nevertheless, we can say that unidimensional definitions of borders (borders only as violence) do not tackle their contradictory nature. Belonging to groups of people means facing borders *eo ipso*, including in the sense of connectivity – for example, every day we are faced with what Fichte has called our inner borders. Belonging to “imagined communities” (Anderson 1983) is always constructed around heterogeneous parameters including being born in a defined country, conforming to cultural, religious, sexual norms etc. Our placement in an environment that includes reflection in relation to fellow humans, which we can understand as a legitimate form of finding one’s place in this world, is interpretation of the world through borders. Borders can be relevant in what Said (1979: 54) calls “imaginative geography”, the mental organization of space-shaping identities. Walls and borders can thus appear as “potent organizers of human psychic landscapes” (Brown 2010: 86).

Mezzadra and Nielson (2013) argue that borders need to be analysed together with the multiplication of labour in contemporary (post)capitalist societies that are formed under the dictate of the capital, at the crossroads of “mutations of capital and sovereignty” (ibid.: 12). To be able to understand these transformations, language that only associates borders with walls and exclusion does not suffice – the authors suggest a more complex, dynamic language that would embrace the dialectics of hardening and softening of borders (ibid.: 279). As emphasized in the AoM approach, borders can not only be understood following the difference between violence and non-violence – the best proof are the works of Franz Fanon (1963) who pointed to the “productivity of violence”, or to the role of violence in emancipation – borders are also formed as spaces of (migrant) (non)violent struggle.

Therefore, migrants are not only victims of violent borders (Mezzadra 2011; Papadopoulos, Tsianos 2013), but are also subjects who rupture the status quo and

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1 The next three paragraphs are revised versions of those that first appeared in the foreword that I wrote to the Slovenian translation of the book *Violent Borders* by Reece Jones (Pajnik 2017).

question the established world order. "Exiles cross borders, break barriers of thought and experience" (Said 1984/2000: 185). Borders manifest the violence of institutions, but they are also counterfactual, embodying possibilities for alternatives; they are spaces and methods that shape alternatives to the institutional blocking of individual subjectivities and preventing the free movement of people.

Management of migration is violent in restricting movement, deporting people and incarcerating them in camps, while the camps and borders are spaces simultaneously demarcated by despair and hope; they are marked by the prevention of both mobility and escape. The contradiction of the dialectics of detention (banning mobility) and escape (re-instituting mobility) is shown in numerous practices of border politicization. For example, Jones writes about young people hoping that scanning by an X-ray machine would not reveal them hiding in a bus's undercarriage, squeezed into the wheel wells or the engine compartment trying to cross the Strait of Gibraltar from Tangier, Morocco to Algeciras, Spain. Then there are migrants who try to cross the "deadly border" in the Spanish towns of Melilla and Ceuta, resembling a fortified garrison with a high wall and fences; or the thousands of migrants who flee by boat from the Libyan shores, to name only a few examples of border politicization (Jones 2016: 2–3, 12–13). Since control by means of violent borders aims at annihilating politics, we thus also need to emphasize the "life of borders", their politicization by migrant movements (ibid.: 178).

Borders are symbols of the criminalization of migration (crimmigration), and a possibility, a praxis, "a mobile commons" (Papadopoulos, Tsianos 2013) that is manifested differently through various tactics. "Mobile commons" as defined by Papadopoulos and Tsianos (2013: 188) comprises knowledge of mobility – migrants exchange knowledge about border crossings and routes, and escape surveillance – cf. the analysis by Lipovec Čebren and Zorn (2016) who discuss the autonomous practices of migrants related to avoidance of deportation in the buffer zones in Slovenia and Serbia. Migrants and asylum seekers have resorted to avoiding fingerprinting by deliberately cutting or burning their fingerprints in order to prevent their enrolment in EURODAC. Also, migrants practice connectivity: they use media and word-of-mouth strategies, embodying the notion of the "connected migrant". They practice informal economies, and engage in communities of justice, such as developing alliances with NGOs. All these can be viewed as transnationalist tactics, as acts for sustaining life (Papadopoulos, Tsianos 2013) at and beyond the border.

Along these lines, in introducing the notion of "appropriation" (rather than resistance) to theorize migrants' capacity to subvert border control, Schell (2017) analyses how the "manipulation of documents", clandestine border crossing, and "visa shopping" (a strategy where visa applicants lodge simultaneous applications in several EU member states) are used to break down the institutionalized distrust and increase the slim chances of obtaining a visa. Analysing how migrants appropriate mobility to Europe via the Schengen Visa regime, adopting the AoM approach, Schell (2017) stresses "uncontrollability" as a key moment of autonomy.

## Embodied Borders

As the AoM approach has also been a target of criticism, its application in the analysis of borders requires us to address the danger of over-romanticizing migration. For example, in defining the border as method, Mezzadra and Nielson (2013: 17) dispute allegations claiming that the association of border with method is no more than the (romantic) “performativity of method”; it is about politics, the kinds of social worlds and subjectivities that can intervene in the production of borders. Most of the criticism has argued that there is too much emphasis on self-determination in AoM and that the efficiency of border control has not really been acknowledged. Furthermore, AoM needs to deal with the criticism that it glorifies migrants as heroes of clandestine border crossing, diminishing the effects of border control. Schell (2013) has argued against this, which he thinks is a misreading of autonomy, emphasizing that the approach centres around migrants’ appropriation, through which the limits of bordering have been transgressed, e.g. the previously mentioned refusal to comply with visa requirements. De Genova et al. (2018: 245) have recently analysed the “autonomy of asylum” as an example of the spatial disobedience of refugees who are refused recognition as refugees according to legal standards. Following the AoM approach, the “autonomy of asylum” lies in claiming the right to receive protection and insisting on the right to choose where to receive protection, expressed by people beyond the ascribed legal statuses and beyond the restrictions instituted by the Dublin Regulation.

Perhaps the most visible specificity of AoM that responds best to criticism is the insistence that autonomy needs to be studied in embodied encounters, moments of uncontrollability, in the conflict between migration and means to suppress it (Schell 2013). Migration always features particular bodies in which people appropriate mobility and are also targeted for surveillance, and AoM specifically highlights the dialogical and contested nature of mobility and bodily border encounters. Furthermore, AoM is not about autonomy that is abstract or absolute but one “that is necessarily limited, compromised, contradictory, and tactical” (De Genova et al. 2018: 243).

The lived experiences of migrants are very diverse and dependent on various individual circumstances, and borders indeed imply differential treatment of migrants in terms of class, gender, ethnicity, and age. Zavrtnik Zimic and Cukut-Krilić (2018), employing intersectional analysis, emphasized that border management in the example of the Balkan route has specifically affected women and children, perpetuating their vulnerability. We have shown in our own work (Pajnik, Bajt 2012) how women migrants actively practice transnationalism, by way of managing their own private trajectories, from family to work, escaping the ascribed role of victims, while recently, Milharčić Hladnik (2016) has emphasized the need to study migrant women’s resistance and their avoidance of control when they use migration for their own benefit. AoM allows us to acknowledge the fact that mobility is embodied. Borders are relational to the body – borders can play out violence upon the body, and

they can reconfigure the body, through entrapment, imprisonment, and even death. Furthermore, borders are shaped by the subjectivities of border crossers, they are defined by migrants' bodies, their crossings, separations, protests, eating and singing, building neighbourhoods etc. – bodies both “shore up and tear down borders” (Smith et al. 2016: 259).

## CONTROLLING MIGRATION WITH PLASTIC BORDERS

We argue that “bodily borders” inspire a specific kind of governmentality, rationalizing contemporary bordering by inducing plastic borders. In the analysis of the governmentality of contemporary migration management we rely on Foucault (1978/2007, 1978/2003, 1979/1991), who uses governmentality in several ways, of which we are most interested in using the concept to point to the exercise of power in the early modern period in Western European societies, since the launch of the population as a new object. Foucauldian governmentality broadens our understanding of power not only in terms of the hierarchical top-down power of the state but also the power to include forms of social control and knowledge that guide the behaviour of the populations. Governmentality, according to Foucault, is related to bringing biological life into the modalities of state power (as control); it marks the division of sovereign power into two modalities, i.e. disciplinary power, based on the surveillance of the individual body, and biopower, which regulates the population through its optimization (Foucault 1978/2007). Hence, governmentality signals the promotion of the population against the enemies, which include various categories of people who are deemed to pose a threat to the population – such as migrants. Adopting a Foucauldian approach, Zaviršek (2017: 54–55) concludes that if imprisonment in madhouses in the past served the construction of the idea of what constitutes the normal (and the abnormal), today refugee camps serve similar goals, perpetuating the structure of exclusion by reproducing the abnormal other.

What Foucault defines as state racism also applies to the understanding of the population in racial terms, introducing a break between life that counts and “abnormal life” which threatens the population as a whole (the “normal” population) (Foucault 1978/2007). Migrants are classified among the latter; “abnormal irregulars” are deemed to be enemies that threaten the wellbeing of the “normal population”. The more unknown and uncontrollable the mobile populations to be governed, the more “plastic” and adaptable to specific situations technologies and practices of bordering must be. Passports, visas, invitation letters, health certificates, bordering by fingerprinting, and x-raying are employed as governmentality strategies in contemporary migration management.

Our thesis on the governmentality of plastic borders is also inspired by Malabou's (2004) analysis in *The Future of Hegel*, where she approaches plasticity as the modality that demonstrates the Hegelian “to see (what) is coming”: To see (what) is

coming is plastic. Plasticity that “works on and within the body” (ibid.: 18), enabling the transformation from one form to another; by allowing us to move from one individuality to another, plasticity enables the embodiment of newer and improved forms of subjectivity. The governmentality of plastic borders can thus be viewed as a strategy of migration management that is shaped as a response to this changing subjectivity, active at and beyond the borders. Plasticity encapsulates borders that are both fluid but also resistant, and so are mobile subjectivities. We argue that governing through plastic borders develops temporal responses to migrant mobility as a best fit to follow this mobility, in the attempt to control it.

Speaking from the perspective of AoM, we do not make the case that plasticity accounts for migrants’ subjectivities “in order to strive for inclusion into the host society” or to adapt to the interests and needs of the EU and national migration policy (Konsta, Lazaridis 2010: 370, 380). Being inspired by AoM, what is at stake for us are not plastic individuals who adapt to border control but the other way around – borders are best governed as plastic borders in order to respond to migrant movement. Migrants’ tactics, from escape to “sabotage”, are the “fears” that are then governed by plastic borders. From this perspective, as emphasized by Bojadžijev and Karakayali (2010), many of the social conflicts initiated by migrants “are not about becoming citizens, but about insisting that they are citizens already”. And plastic bordering has become a predominant strategy in trying to control and eventually eradicate migrant citizenship.

### **Externalization as a Plastic Modality of Contemporary Borders**

One notable example of governmentality by way of plastic borders, we argue, is the European Commission’s Global Approach to Migration and Mobility (GAMM), which since its adoption in 2011 has constituted the main policy framework in the field of border security and migration management (for previous analyses see Vaughan Williams 2014; Casas Cortes et al. 2015). To begin with, the approach was launched as a direct response to migrant mobility: it was adopted as a consequence of a perceived threat of “irregular migration” following political unrest in North Africa since 2011. At the time, the EU was communicating a “threat” of thousands of “irregulars” illegally obtaining access to the EU, exposing Mediterranean countries that apparently needed help in returning migrants to their countries of origin (GAMM 2011: 2).

Practices of control of the mobility of “irregulars” are projected by GAMM outside of the EU. The common strategy governing borders has become border externalization, i.e. the containment of illegalized migration at the EU borders, a practice well described as “the off-shoring and out-sourcing of EU borders” (Vaughan Williams 2014: 2). In line with the securitization approach, irregular migrants are framed as a threat by GAMM, that – strategically – combines securitization with a more humanitarian face (humanitarianism aligning with the moral principle of preserving

life), claiming that, in addition to securing the borders, EU policies should also recognize that migrants are people, thus putting into effect the “twinned emphasis on border security and saving lives” (Vaughan Williams 2015: 3). Framing bordering as humanitarian intervention serves to disguise the actual practices that Vaughan Williams has bluntly termed the “animalization of migrants” (ibid.). The author argues that European border management has reproduced animalized subjectivities that are chained in dehumanized spaces, the “zoopolitical spaces of Europe” that attempt to make “irregular” populations governable (ibid.: 5).

Foucauldian biopolitics is revealed in the very pairing of the strengthening of smart bordering and surveillance with a humanitarian focus, recognizing that “in essence, migration governance is not about ‘flows’, ‘stocks’ and ‘routes’, it is about people” (GAMM 2011: 6). New knowledge of technological and biometric bordering is used by GAMM (i.e. plasticity), and a humanitarian face is applied to it – with the purpose to discipline migrants and control their mobility.

Extra-territorial projections of borders are pursued by GAMM’s main objective, i.e. border externalization, through the strengthening of the EU’s external migration policy based on so-called mobility partnerships with non-EU countries (GAMM 2011: 2). Via bilateral agreements, for example with Libya or Morocco, we see that the outsourcing of practices of bordering brings the transfer of EU governance to the states in North Africa. An analysis of GAMM shows that the EU, from the position of the rule-maker, colonizes the East and the South, as the rule-taker, by adopting agreements to stop mobility before it reaches their Western borders. It needs to be stressed that governmentality by way of border externalization, applied through international “agreements and partnerships”, actually relies on the acknowledgement of the power of migrants’ itineraries (Casas Cortes 2015 et al.: 905). GAMM was driven by a need for bordering that responds to migrant movement which brought plasticity in the shape of bordering development that focuses on tracing migrant itineraries, “scripting these itineraries as ‘routes’, and intercepting the migrants wherever they originate or travel” (ibid.). Partnership agreements, as mechanisms of plastic borders, as manifestations of the “spatial and institutional stretching of border policy” (ibid.) have been adopted in the wish to trace the details of the complex routes along which migrants move. Such tracing can, indeed, most efficiently be done through route management, which requires international cooperation, i.e. the broadened geographical scope of bordering. GAMM shows that the EU has recognized the limits of the Fortress Europe approach, and has pushed the governmentality strategies in the direction of the construction of bordering as an immediate, temporally and spatially plastic response to migrant movement.

Bigo has analysed governmentality via smart surveillance after 11 September 2001 as “a new way of producing irregular people”, not only through obstruction, but through programmes designed to speed mobility and free passage. The European border surveillance system (EUROSUR), Visa Information System (VIS), biometric deployment of passports, the EU Maritime Policy, and the design of Frontex

have all been framed as forms of “freedom” and protection of “our population”. The governing of mobility through freedom, or policing in the name of freedom, Bigo argues, is about securing channels for specific people (money and information), which coincides with obstructing mobility for “others” (Bigo 2011: 40). With reference to Foucault (2007), freedom here is correlated with security apparatuses. It serves the “security dispositif” that is concerned with mechanisms to enhance the exercise of power, the governing of populations, controlling, sorting the good from the bad; it is concerned with anticipating and minimising potentially harmful behaviours (of the “irregulars”), increasingly not only in the EU but also in migrants’ countries of origin.

### **Chasing Migrant Crossings: the Example of the Balkan Route**

GAMM has set the framework for responses to the autonomy of migration, pursuing control and mobility prevention. The events in Calais, France in 2015, when migrants charged the Eurotunnel barriers in an effort to board vehicles heading to Britain, causing traffic delays, is one such example that led to the deployment of riot police by French authorities and the construction of a new razor-wire fence by the British. The violent attacks in Paris and the sexual assaults in Köln in 2016 reinstated Eurocentrism and the racialization of Muslims and Arabs, represented as culturally different and incompatible with “European values” (De Genova 2017: 10–11). Reintroducing temporary border controls across several European states since 2015, building fences in Hungary, Slovenia, Bulgaria etc., and adopting new laws on foreigners that curb migration are some of the measures that show how bordering and migration management have been dedicated to the processing of specific mobilities (ibid.: 9–11, 14–15).

We have argued above that practices of governmentality of plastic borders as a driver of contemporary migration management are not formed as a coherent policy plan or a political vision. Rather, these practices develop sporadically, as temporary reactions to tactics of autonomous migration. One recent example is the so-called Balkan migration route, re-opened since 2015 (the route has a long history of crossings) by migrants’ new mobility strategies. The Balkan route has shown, on the one hand, how autonomous migration can result in the transformation of policies, and, on the other, how plastic bordering fits the purpose of the Leviathan’s attempt to curb migration. Furthermore, the Balkan route has revitalized stereotypical constructs of “the Balkans” as European periphery (Zaviršek 2017: 51).

Persistent migration spurred by the march of migrants encamped at Budapest’s Keleti railway station towards Austria and Germany resulted in an opening of a “formalized humanitarian corridor”, officially recognized after Germany temporarily suspended the Dublin Regulation for Syrian refugees in September 2015. The corridor brought a temporarily recognized state of emergency, leading the countries along the route, after Hungary’s closure of its borders with Serbia and Croatia, i.e. Greece,

Macedonia, Serbia, Croatia, Slovenia, Austria and Germany, to facilitate movement through the provision of transportation and basic humanitarian aid (Ladić, Vučko 2016: 17; Beznec et al. 2016).

The corridor, which was analysed from the perspective of AoM as a “victory of the migrant liberation movement” (Lunaček, Meh 2016: 41) brought the unprecedented possibility of a border crossing that has not been illegalized. Still, migrants were compelled to resist border policing, e.g. migrants’ movements acting in concert with transnational activist movements at the border between Slovenia and Croatia in Rigonce/Harmice and Obrežje/Bregana (Kurnik 2015: 234–235), as well as other actions along the corridor. Even if the corridor allowed migration, “its aim was not to produce sustainable solutions and alternative long-term migration policies, but rather to ensure a swift transport of people which would transfer the responsibility for them to the next state as quick as possible” (Beznec et al. 2016: 61–62).

While the borders along the corridor were plastic enough, the movement was nevertheless closely surveilled revealing the Foucauldian “security dispositif” in the forms of army and police control. The dialectic of plasticity, i.e. the simultaneous softening and hardening of the borders was apparently at stake: the crossing was accompanied by constant surveillance, documentation, numbering, classification of people, including fingerprinting (Lunaček, Meh 2016: 33). The management of the corridor reveals governmentality of plastic borders that are in line with GAMM in their coupling of security and humanitarian measures. This confirms Bigo’s (2011) analysis of the strengthening of securitization in the name of protection and “freedom”; humanitarianism, just like securitization, are both strategies pushing the plasticity of bordering that are hard and violent even when soft and porous. Officially aimed at protecting free, open, lawful societies from exploitation, through such strategies, borders are actually built of “suspended law, producing a collective ethos that is defensive, nationalistic and militarized” (Brown 2010: 52).

The further development of the corridor shows the opportunism of governmentality through plastic borders. The exceptional transit soon united the states along the corridor in their voracious attempt to re-establish border control and eventually close the corridor (Beznec et al. 2016: 62). After the relative porousness of the borders in autumn of 2015, a hardening phase began in January 2016, when mobility was obstructed overnight. Based on NGO reports, Kogovšek Šalomon (2017: 260) analyses the “reinstitution of the crimmigrant approach” that first brought unfavourable treatment of non-SIA (Syria, Iraq, Afghanistan) nationals and later also of SIA nationals without appropriate papers, who were at some point prevented from continuing their journey.

Similarly, the author analyses how the EU-Turkey agreement, since March 2016, has reinstated crimmigrant rules governing migration management, when “deterrence and expulsion as the main goals of crimmigration policies prevailed once again” (ibid.). Crimmigration was introduced in all of the countries along the route in a domino effect, bringing the militarisation of border control, restriction of entry,

confinement of migrants in detention centres and restriction of access to asylum procedures. As one example, in January 2017 Slovenia introduced amendments to the Aliens Act which allow the state to close the border to asylum seekers, thus limiting access to international protection (Kogovšek Šalamon, Zagorc 2017), and similar changes were adopted in neighbouring Austria and Hungary. The VIS system and biometric passports have shrunk the possibilities for “visa appropriation”, as the system now recognizes (using fingerprints) if a person has already applied for asylum or has been rejected.

Governing by plastic borders as a direct response to migrant movement along the Balkan route led to both the opening and the closing of the corridor. While the corridor has remained closed, the route, historically marked by autonomous mobility, cannot be. What it can be and probably will be, however, is a site of application of new governmentality strategies in response to migrant mobility.

## CONCLUSIONS

Theorizing borders at the crossroads of violence and escape, we have shown in this article that borders are sites where people are active, and that suppression at the borders does not halt migrant activities. Applying the autonomy of migration approach to border analysis, we have shown how AoM presents itself best, as put by De Genova (2010), “as a manifestation of the elemental exercise or the ontological condition of human life, the human freedom of movement”.

Focusing on migrant subjectivities, borders were revealed as “bodily borders” – we have argued that bodies are the subjects on which control is applied and also that bodies remain the basic topos to escape and counteract control. These bodies, as it was shown, fit neither the picture of the victim nor the picture of violent individuals given by the media. Rather, borders are about migrants’ struggles, they are about specific practices through which migrants address the controllability of borders, trying to negotiate them through their own bodies. Border struggles always involve specific subjective positions, opening spaces and logics of citizenship (Mezzadra, Nielson 2013: 13–14).

Furthermore, we have shown how the governmentality of migration through “plastic borders” responds to migrant mobility in order to control it – “acknowledging the power of migrants’ itineraries”, institutional policies of mistrust are shaped as responses to migration movements and migrants’ acts of citizenship (Casas Cortes et al. 2015: 905). The distinctiveness of our contribution to the AoM approach and border studies lies in pursuing the thesis of the governmentality of current migration management through the introduction of plastic borders by the EU and its “walled states”, signalling “waning sovereignty and walled democracy” (Brown 2010).

The plasticity of borders as a process of governmentalization is inspired by migrants’ embodied mobilities – which, we have argued, are what is driving plastic

borders. The plasticity of bordering was analysed in line with the EU objective to manage migrants' escape strategies, which is evident in the EU's main policy framework, i.e. the Global Approach to Migration and Mobility (GAMM), in place since 2011. GAMM has enthroned border externalization as the main modality of plasticity, which was pursued in the hope of tracing migrant itineraries. The management of the Balkan route through the method of the corridor, exposing plasticity in the simultaneous hardening and softening of borders, i.e. introducing the crimmigration approach together with the softer humanitarian temporary allowance of passage, followed the governmentality approach as set out in GAMM. Such governmentality is a far cry from the possibility of understanding and approaching the movement of people as a basic human condition. Instead of understanding migrants' politicality at the borders and safeguarding it as expressions of active citizenship, plastic borders work to suppress human mobility.

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## POVZETEK

### AVTONOMIJA MIGRACIJ IN VLADNOST PLASTIČNIH MEJA

Mojca PAJNIK

Avtorica v članku analizira avtonomijo migracij, ki v preučevanju migracij in mobilnosti avtonomijo poudarja kot migrantski *praxis*. To ji omogoča misliti meje kot mehanizem nadzora, strateškega upravljanja in tudi nasilja ter hkrati kot migracijske strategije bega, ruptur, upora, politična dejanja, in to ne glede na pripisani migracijski status in ne glede na strategije nadzora. Avtorica meje analizira kot »utelešene meje«; te oblikuje telesnost ljudi, ki migrirajo ter redefiniirajo prostor in politike nje-govega upravljanja. Z uporabo Foucaultovega koncepta 'vladnosti' (*gouvernementalité*) in koncepta 'plastičnosti' (*plasticity*), kot ga analizira Malabou, poudari tezo, da upravljanje migracij danes uporablja mehanizem »plastičnih meja«, ki so oblikovane kot neposredni odziv na mobilnost migrantov. Plastičnost upravljanja migracij z namenom nadzora prinaša nenehno začasnost politik kot odgovore na aktualne prakse mobilnosti. Uporabi primer eksternalizacije meje, kot ga Evropska unija opredeljuje v dokumentu Globalni pristop k migracijam in mobilnosti, in ga izvede na primeru upravljanja balkanske migracijske poti, da bi pokazala, kako plastičnost, upogibanje in raztezanje meja z namenom nadzora nad migracijami deluje v praksi.

Bilateralni sporazumi in sistemi nadzora (EUROSUR, Frontex idr.) kot primeri eksternalizacije meja, ki jih legitimizirajo kot mehanizme zaščite domačega prebivalstva, se izvajajo za slednje in za obvladovanje migracijskih poti ter so neposredni odgovor na mobilnost. Podobno humanitarni koridor na balkanski begunski poti ni bil primarno vzpostavljen kot mehanizem zaščite ljudi, pač pa je pospešil transport, da bi ljudje za azil zaprosili v državah zunaj balkanske poti. Plastičnost humanitarizma in sočasne sekuritizacije meja je v upravljanju balkanske migracijske poti delovala v funkciji ustvarjanja in posledično obvladovanja strahu, ki da ga predstavljajo migranti.



T E M A T S K I S K L O P

T H E M A T I C S E C T I O N

MIGRACIJE IN NADZOR /  
MIGRATION AND CONTROL



# THE OTHER SIDE OF THE “ISTRIAN EXODUS”: IMMIGRATION AND SOCIAL RESTORATION IN SLOVENIAN COASTAL TOWNS IN THE 1950s

Aleksej KALC<sup>1</sup>

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## ABSTRACT

**The Other Side of the “Istrian Exodus”: Immigration and Social Restoration in Slovenian Coastal Towns in the 1950s**

The article addresses the migration processes in the fifteen years after WWII in what is today's Slovenian coastal region. The main emphasis is on the immigration following the annexation of this area to socialist Yugoslavia in 1954. The replacement of the population, the radical change of the ethnic structure and the geography of the immigration inflow are outlined. Some questions that affected the immigration and repopulation process are discussed and some possibilities for further research are presented, i.e. the policy and management of the migration processes, the inclusion patterns of the newcomers and the relationships among the indigenous and immigrant components.

**KEY WORDS:** Slovenian coastal region, Istrian exodus, immigration, population replacement, ethnic change

## IZVLEČEK

**Druga plat »istrskega eksodusa«: Priseljevanje in družbena obnova v slovenskih obalnih mestih v petdesetih letih 20. stoletja**

Prispevek obravnava migracijske procese na slovenskem obalnem območju v obdobju petnajstih let po drugi svetovni vojni. Poudarek je na priseljevanju, ki je sledilo priključitvi območja socialistični Jugoslaviji leta 1954. Prikazane so zamenjave prebivalstva, etnične spremembe in geografski izvor priseljenskih tokov. Nakazani so tudi nekateri problemi, ki so vplivali na priseljevanje in nastajanje nove družbene stvarnosti. Med vprašanji, vrednimi raziskovanja, avtor poudarja politiko in upravljanje priseljenskega procesa, oblike vključevanja prišlekov v novo okolje ter odnose med priseljenci in lokalnim prebivalstvom.

**KLJUČNE BESEDE:** slovenska obala, istrski eksodus, priseljevanje, zamenjava prebivalstva, etnične spremembe

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## THE ISSUE

In the fifteen years after the Second World War, the towns of Koper, Izola and Piran on what is now the Slovenian coast underwent the replacement of the majority of their populations. This led to radical changes in their social, ethno-linguistic and cultural fabrics. The ethnic structure of the entire coastal area was also transformed, with the presence of the ethnic Italian component being greatly reduced. The change was related to the post-war border issue between Italy and Yugoslavia, and the incorporation of Istria into the Federal People's Republic of Yugoslavia. It triggered the mass emigration of the Italian population from Istria and all those who objected to Yugoslav sovereignty in the territory, those who did not see a future in the new socialist social order, and those whose traditional and vital economic connections with Trieste had become compromised.

As elsewhere in Istria, this emigration process from Koper, Izola and Piran, which entered the Italian historical memory as the "exodus", took place from the end of the war onward, when these towns were first part of the Julian March (Venezia Giulia / Julijska krajina) and then from 1947 part of the Free Territory of Trieste (FTT), more precisely its Zone B, which was administered by the Yugoslav army. However, it reached its climax with the abolition of the FTT as an independent state under the Anglo-American and the Yugoslav military administrations and the partition of Zones A and B between Italy and Yugoslavia in accordance with the 1954 London Memorandum. The emigration from the former Zone B of the FTT was the last stage of the "exodus" from Istria and the territories that had formed part of Italy during the period between the two wars. The population that emigrated from Zone B was approximately 70% Italian, while the remaining emigrants were mostly Slovene.<sup>1</sup> Since the Italian population in Istria was concentrated in the urban areas, this process was particularly disruptive for Koper, Izola and Piran, as well as other coastal towns. This resulted in a demographic gap and social change that was reflected in the economy, in the occupational structure of the population, and in the general functioning and further development of the traditional role of the towns in this region.

But most importantly, the emigration process interrupted the historical continuity in this inhabited area, which lost the product of centuries of ethnic, anthropological, cultural and everyday life. These spaces became available to new arrivals who were

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1 The application of national or ethnic categories in multiethnic areas is of course questionable and often misleading, since the ethnic or national identity of people in many cases cannot be clearly defined. This is especially true for Istria, considering its multiethnic and multilingual social fabric, as well as not only the cohabitation but also the mixing of ethnicities and cultures. On the other hand, the nation-building processes and the various related interests and conflicts had a major influence on people when declaring their national identity, and on the authorities when classifying or labelling people arbitrarily according to national categories. This has to be borne in mind with regard to references to the national/ethnic categories in this paper. For a first approach to the question of identities as a basic and controversial issue in historical research in Istria see for example Panjek (2006: 9–14), D'Alessio (2006) and Ballinger (2006).

already coming from Slovenia and the whole of Yugoslavia to settle there in search of opportunities for a new life. It was not just a matter of replacing the former population in the sense of taking over job vacancies and occupying the empty homes and properties left behind by the emigrants. What occurred was in fact the repopulation of the area and the construction of a new social reality. On the one hand, this reality became integrated into the existing urban settlements which continued to exist, in changed circumstances, in their ancient living environments, historical heritage and the remnants of the former social community. On the other hand, the newly-formed social reality created by immigrants from regions near and far reshaped and in all respects gave new meaning to the old inhabited area, and led to the development of new suburbs with their own linguistic and ethnic, social, economic and cultural-anthropological features.

All of this took place as part of the systematic implementation of the socialist order and its institutional structures. A less explicit ideological version of this system had already been established by the Yugoslav military administration at the time of the Free Territory of Trieste. It became fully operational after 1954, when the region was fully integrated into the Yugoslav state. This phase also coincided with the Slovenian republican government's comprehensive policy of reorganization and development of the economic structure of the coastal area. This was intended not only to support the development of the area itself, but also because of the strategic importance it gained for the republic's interests as Slovenia's sovereign access to the sea.

The issue of population changes in the Slovenian coastal area and in Istria as a whole has been at the centre of attention in international historiography for decades. However, the focus has almost exclusively been on only part of this complex process – the emigration and the history of the Istrian diaspora in Italy and elsewhere. The "Istrian exodus" has received attention as a traumatic example of exile and ideologically induced migration. As a product of the Second World War and the dispute regarding the national borders in the northeastern Adriatic, in which the world's superpowers were involved, the exodus has been explored from numerous points of view. The extensive bibliography referring to this topic includes studies on its quantitative dimensions and demographic characteristics (e.g. Colella 1958; Colummi et al. 1980; Fornasin, Zacchigna 2007; Gombač 2005a, b), the causes, motives and political implications of the process (Ballinger 2002; Pupo 2005), the refugees' lives and the impact on the resettlement areas in Italy and other receiving countries (e.g. Pupo 2005; Volk 2004), the reorganization patterns and identity maintenance of Istrian emigrants' communities, and last but not least, on Istrians of Italian descent who decided to remain and are still living in Istria as part of the officially recognised national minority (e.g. Nemeč 1998, 2012).

The great impact of the emigration overshadowed the process of the demographic and social restoration of the area affected by the exodus, rendering it a less conspicuous phenomenon. Despite the fact that the restoration and remodelling of the society was a fundamental historical aspect and a factor in the post-war

development of the Slovenian coastal region, it was almost completely ignored in historiographic and other research. In the 1990s, the same historians in Slovenia, after decades of tabooization, focused their research on the exodus (Gombač 2000, 2001, 2005a, 2005b; Volk 1999, 2004; Troha 2000a, 2000b). This was due to the increasing international academic debate on the population displacements in 20th century Europe, and especially the central place that the forced or politically induced migrations in the North Adriatic area had in the confrontation between Italian and Slovenian historiographers, whose governments had demanded that they shed light on the history of Italian-Slovenian interstate relations and contribute to their normalisation (Slovensko-italijanski 2001).

Some authors only touched upon the issue of the social restoration in Istria in a handful of studies or references in the field of demography (Titl 1961; Pletikosić 2000, 2001; Josipović 2006). In the historiographic debate about the region and its post-war history, it is merely referred to as a less important topic in the framework of the history of institutions, political and economic events and culture. It is also omitted from the most recent syntheses that offer a comprehensive overview of migration movements and their resulting changes in the ethnic composition of the population in the area spanning 20<sup>th</sup> century Slovenia, Italy and Croatia (Purini 2010; Catalan et al. 2007). It has never been formulated as a separate historical issue worthy of its own specific conceptualisation, complete with an analysis and interpretation of its systemic and other aspects. However, there has been an increase in the number of sociological and anthropological studies on the relationships between the indigenous and immigrant populations which contribute to the linguistic structure as well as the social differentiation and identification of the space (Sedmak 2002, 2004; Hrobat Virloget et al. 2015, Virloget 2015).

The topics of immigration and the social restoration of Slovenian coastal towns are issues that are closely intertwined with other events that changed the structure of the Slovenian coastal region in the decades after the Second World War. They must be approached from different points of view – from demographic, economic and political to sociological, anthropological and cultural. They must be read through a complex explanatory analysis and through consideration of the issue in its multifaceted forms at a local level and as a matter involving central Slovenian and Yugoslav interests and political plans. In view of the current state of the research, this article of course cannot aspire to develop such an ambitious discussion. It intends to address only some aspects of the issue and offer an insight into the demographic process, with a focus on its dimensions, dynamics and geographical extensions. The outline is based on censuses, data taken from the few studies referring to the topic, and data deriving from migration statistics kept by the administrative units in the context of registering the population and supplying data to the central Statistical Office of the Republic of Slovenia (Titl 1961; Pletikosić 2000, 2001). Some organizational aspects and specific circumstances regarding the process of immigration and the inclusion of the new population in the local social context are also outlined.

## A Look at the Numbers: The "Exodus"

The area of observation is the territory of the former Zone B of the Free Territory of Trieste, which was transitioned into the state framework of Yugoslavia in 1954 and annexed to the People's Republic of Slovenia. In 1945 this area had a total of 46,350 inhabitants, 18,500 of whom lived in the towns of Izola, Koper and Piran, and the rest in villages in the rural hinterland. Over the next few years, the population saw a slight increase, but then started to decline in 1949 and dropped to 42,000 in 1956. The population then started to rise rapidly and the 1961 census for the area shows nearly 50,000 inhabitants. This fluctuation reflected the wave of mass emigration of the population into Zone A of the Free Territory of Trieste and then into Italy, and of the immigration of a new population coming from the Slovenian and the wider Yugoslav area.

The year 1956 marked a turning point in the demographic development of the area due to the fact that the exodus had for the most part finished, and the population reached its lowest point since the 1880s. At that point, the area was given an entirely new identity. This is most strongly reflected in the fact that, compared to 1945, the presence of the Italians had declined by 92%, and that the average age of the remaining Italian national community had increased significantly (Titl 1961: 19). Since the Italian population was concentrated in cities with a traditionally Roman character, and since the rural areas were characterised by the Slovenian element, the demographic developments are most clearly reflected in the towns of Izola, Koper and Piran. As shown in Table 1, the populations of all three towns were on the rise after 1945 and then fell on average by almost a quarter from 1948 to 1956. Even more illustrative is the ethnic metamorphosis of the old urban settlements (Table 2). While Italians accounted for over 91% of the population in 1945, by 1956 their share had dropped to just over 10%. Koper and Izola were most affected by this change, but the percentage of the Italian community in Piran was only slightly higher. A similarly drastic decline in the Italian component was also recorded in rural areas where Italians had also been present, and in certain places had accounted for the majority of the population.

Table 1: Populations of the towns of Izola, Koper and Piran from 1945 to 1956

		1945	1948	1956	% of 1945 pop.
Izola		7,272	7,941	6,008	75.7
Koper		6,138	6,859	6,066	88.4
Piran		5,035	5,350	3,574	66.8
<b>Total</b>		18,445	20,150	15,648	77.7

Table 2: Italian population of the towns of Izola, Koper and Piran (%)

		1945		1956
Izola		95.0		9.0
Koper		87.4		8.3
Piran		91.3		15.8
Total		91.5		10.3

Sources: Cadastre national (1945); Prijava prebivalstva (1951); Stalno prebivalstvo (1956)

The emigration of Italians as well as other ethnic groups began immediately after the war; however, many politically exposed persons had already left the area during the war, before the Yugoslav military forces took control of the region in May 1945. The reasons and motivations for this emigration, which was directed mainly to Trieste, were of a political and national, but also a social and economic nature. The phenomenon was also contributed to by the establishment of a “people’s government” and by the gradual introduction of the socialist social order, as well as, of course, the policy of the Yugoslav authorities against “enemies of the people” and “class enemies”, to which the Italian population was particularly vulnerable since most of its members belonged to the bourgeois class. In addition to arrests, epuration trials, deportations and initially also liquidations, the push factors also included “property enforcement measures” (confiscation of property) and various forms of dispossession. One such measure was the elimination of the *colonato* leasing system and the allocation of land and the associated inventory to the farmers who cultivated it, which led to the departure of major rural landowners (Bonin 2004; Rogoznica 2011).

Other objective and subjective motivations affecting this emigration included the area’s traditional ties and economic attachment to Trieste, which had always represented both a source of labour and an agricultural market. Trieste remained the centre of gravity and employment and was even further strengthened in this role during the time of the Free Territory of Trieste. Many people had jobs in and close family or other ties to Trieste, and thus decided to move out of the Yugoslav military administered Zone B and into the Anglo-American administered Zone A. The process was accelerated in the early 1950s when it became clear that the days of the FTT were numbered and that the Trieste issue would be resolved by dividing its territory between Yugoslavia and Italy (Colummi 1980). The civil authorities under the Yugoslav military administration in Zone B who were charged with managing the economy also began to adapt more rapidly to the social and political system in accordance with the principles of communist ideology and society during this time (Rogoznica 2011). According to registry offices, over 14,000 people (Titl 1961: 17; 1965: 126) emigrated from the Slovenian coastal region in the period from the end of the war to the concluding of the London Memorandum in October 1954, which led to the elimination of the FTT and the demarcation of the border between

Italy and Yugoslavia. A large share of the departures in the period from 1945 to 1950 were of an illegal nature (Gombač 2005a). This population outflow acquired the dimensions of a mass emigration after the issuing of the bilateral note of October 1953, through which the administration of Zone A of the Free Territory of Trieste was allocated to the Italian civil authorities (just before this, in September, Tito had announced the annexation of Zone B to Yugoslavia as soon as Italy entered the territory of Zone A).

The emigration reached its peak a year and a half after the annexation of Zone B to Yugoslavia. The London Memorandum enabled the people of both zones of the FTT to opt for either Yugoslav or Italian citizenship and emigrate accordingly (Gombač 2005a; Lavrenčič 2012). As a result, in 1955 more than 8,000 people opting for Italian nationality left the Slovenian coastal region and a further 2,200 left during the following year and up to the end of February 1957, when the time limit for emigration expired (Lavrenčič 2012). From the end of the war and until the beginning of 1957, nearly 24,400 people emigrated from the Slovenian coastal region in the exodus, accounting for almost 53 percent of the population of the territory recorded by the 1945 census (Titl 1961).

In addition to the aforementioned pressures and in many cases a hostile environment, this phenomenon was contributed to by the political propaganda of the Italian side, warning against the alleged danger to ethnic Italians under the Yugoslav regime, and their subsequent invitation to people to leave the area and come into the embrace of their Italian homeland. This emigration wave had settled by May 1956. Of those opting for the Italian side, about 29 percent were Slovenes and a slightly lower proportion were Croats (Gombač 2005a). Unlike the Italians, who had been emigrating over the entire period, the majority of Slovenes left between November 1955 and April 1956, which coincides with the authorities' attempts to discourage the emigration of Slovenes and Croats (Gombač 2001).

### **A Look at the Numbers: Immigration**

The process of immigration, on the other hand, also started immediately after the war – in the spring of 1945 – and took place in stages coinciding with and trailing the fluctuations of the "exodus". Up until 1948, when emigration had not yet begun, immigration contributed to a slight population growth that would compensate for the population decline in the coming years. Numerically it was fairly limited, as by 1954 the population registry offices had recorded only 2,600 cases of permanent internal immigration to the area of the Slovenian coastal region. However, significant migratory movements were also taking place within the region itself during this period, with people moving from rural areas of the hinterland to the coast and to the outskirts of towns. Due to these movements (and not only due to emigration to Trieste, which was at this stage restricted mainly to family members of farming

families, and had not affected small peasant landowners), the majority of the villages in the hinterland began losing their population, while the population was increasing in certain coastal and suburban areas. For example, the villages of Korte and Pomjan lost one quarter and one fifth of their inhabitants respectively from 1946 to 1954.

On the other hand, the population increased by 20% in the immediate vicinity of Piran, by 33% in Semedela (a suburban area of Koper) and by 15% in the territory surrounding the town of Izola. The population also increased in the area of Portorož and in the hilly area along the border with Zone A of the FTT. The migration to this border zone was related to employment opportunities in Trieste and in particular those in the maritime and industrial town of Milje (Muggia) on the south coast of the Gulf of Trieste. Milje (in Zone A) was the gravitational centre of this border part of Zone B, and up to 1945 had also been part of the same local administrative unit (Titl 1961: 20–21).

In its early years, the influx of immigration into the Slovenian coastal region was connected mainly with the establishment of the new socialist governmental and administrative structures, as well as with employment in public and military administration, and political and social institutions. Two examples of this are the Slovenian education and cultural sectors, which were newly established after the war, after twenty years of prohibition under fascism in the context of programmes aimed at assimilating the Slovenian and Croatian populations and during the period of the Italianisation of the eastern province of Julian March acquired after WWI. The opening of Slovenian primary and secondary schools (which also offered teacher training programmes), two grammar schools, a technical school, a commercial-maritime school, a music school and a school of viticulture and fruit growing attracted numerous teaching staff to the coastal region.

These professionals had previously not been present in this area. For this reason, schools and departments had been shrunk and combined, and teaching had been left to teaching staff who had not yet completed their studies (Peterle Grahonja 2004; Beltram 1989: 113–114). Similarly, there was also an influx of personnel to be employed at cultural institutions such as administrative units, theatres, sports facilities, libraries and other institutions, e.g., banks, public health services (these were newly established on the basis of compulsory health insurance, while earlier the population had relied on the health services of the Trieste hospital for care (Rogoznica 2004; Stergar, Rupel 1998). Immigration also comprised managerial and technical staff who worked in start-up companies and other skilled personnel with specialized training as engineers, architects and several kinds of technicians. This was all the more evident from the early 1950s onward, which saw the beginning of the mass emigration of the Italian educated classes. Immigration was particularly apparent in the field of economics and in technical occupations and managerial positions at production facilities and firms established within the framework of programmes intended to revive the economy and reduce the region's dependence on Trieste.

The waves of mass departures in 1953 and especially between 1954 and 1956 accelerated the migration movements from the hinterland into the towns and between the municipalities of the Slovenian coastal region. What was particularly evident was an increased influx of the population coming in from external regions. The registration offices recorded a total of almost 12,500 new residents in the years of 1955 and 1956, when the exodus reached its peak and then tailed off. Immigration thus exceeded the number of departures by 21 percent. In the following three years, another 7,000 people immigrated to this region at a fading pace – 3,449 in 1957; 2,306 in 1958; and 1,522 in 1959. From 1955 onward, the area acquired nearly 20,000 new residents. Immigration and the positive rate of natural increase contributed to turn the demographics in a positive direction for the first time since the First World War.

Table 3: Emigration in the context of the "exodus" and immigration to the Slovenian coastal region from 1945 to 1960

Period	Emigration		Immigration	
	N	%	N	%
1945–1954	14,115	57.9	2,594	11.6
1955–1956	10,274	42.1	12,421	55.7
1957–1959			7,277	32.6
<b>Total</b>	24,389	100	22,292	100

Source: Data taken from Titl (1961)

The case of the town of Piran, investigated by Ivica Pletikosić, offers a closer look into the dynamics of the events. There was a phase of a positive migration movement in the early post-war years. In 1950, a negative trend begins with an intense emigration into Zone A of the Free Territory of Trieste. During this period and until 1952 there is then a slight decrease in the influx of new population, after which it begins to rise gradually corresponding to each major emigration wave, namely the one in the winter of 1953, the one from the spring to the autumn of 1954, and the last one from the spring to the autumn of 1955. The influx of immigrants rises significantly from October 1954 onwards and remains stable until the end of 1957, after which it slightly fades over the next three years. Despite its strength, this influx fails to compensate for the losses caused by the exodus with its large scale and fast pace until the end of 1955. This leads to a reduction in the population of Piran to around 3,000 in January of 1956. From then on, the population begins to rise again to reach a total of 3,574 inhabitants in the census of April 1956 and as many as 5,474 inhabitants in 1961. The inclusion of the area into the Yugoslav state framework in 1954 thus marked a turning point in the course of immigration and in the replacement of the population.

Immediately after and also during the mass emigration from the town, others were immigrating into the town and managed to fill the demographic gap in only a few years. A similar trend was occurring throughout the territory of the municipality of Piran (Table 4), while the same dynamics can also be observed in the municipalities of Koper and Izola (Pletikosić 2000; 2001).

Table 4: Immigrant population of the municipality of Piran by year of immigration in the 1961 census

Year	No. of immigrants	%
1946–1947	97	1.3
1948–1952	683	8.9
1953–1955	2,494	32.5
1956–1957	2,048	26.7
1958–1959	1,348	17.6
1960–1961*	1,006	13.1
Total	7,676	100

\*up to 31 March 1961

Source: Pletikosić (2000, 2001)

The effects of population replacement, which in such a short time changed the face of the Slovenian coastal region and in particular its towns, were as follows: in 1948, 85% of the population was born in this region, while the rest were immigrants from the Federal People's Republic of Yugoslavia (6.7%), Trieste and the Croatian part of Zone B of the Free Territory of Trieste (6.2%) and other countries (Prijava prebivalstva 1951). In April 1960, according to the registry offices, the number of natives fell to 49%; in the rural areas this percentage decreased to 65% and to 33% in urban areas. Immigrants from the FPR Yugoslavia accounted for 46% of the population, while the percentage of immigrants from Trieste declined to 2.8%, with the rest coming in from other countries (Titl 1961). Thus, over this short period of time a profound ethnic change in terms of "Yugoslavization", and especially "Slovenization", occurred in this territory.

### Where Were They From?

Where were the immigration flows directed from and how did the phase transitions affect their geographical origin? As noted above, the migrations during the time of the FTT predominantly took place within the Slovenian coastal region, with immigrants coming in from Zone A and from Yugoslavia. These immigrations were largely associated with employment in the military and civil administration, and also in the

newly established social and economic structures. Many immigrants were political refugees from Trieste and pre-war Venezia Giulia who emigrated to Yugoslavia in the 1920s and 1930s fleeing fascist persecution. After the war, many returned and found employment in various pro-Yugoslav organizations and political and economic structures in Zone A of the FTT under the direction of the parallel Slovene "people's" government. As there was a shortage of all kinds of Slovenian personnel in Zone B, many people moved there. Some also immigrated from Zone A for political or ideological reasons or due to issues with the American military administration. These kinds of people were particularly valuable in both zones (but highly undesirable in anti-Yugoslav circles and to the Anglo-American military government in Zone A) as they were highly motivated and committed to the ideals of the National Liberation Movement and the new Yugoslavia. Above all, they possessed detailed knowledge of the situation and the specifics of the entire territory of the FTT.

After the integration of Zone B into the Yugoslav framework, the geographic nature of immigration flows changed. After the immigration from the former Zone A of the FTT of those who had opted for the Yugoslav side, this flow declined considerably. On the other hand, the source pool of immigration expanded to include Slovenia and part of Croatia. In the context of Slovenia, two western regions stood out. One is the immediate coastal hinterland: the municipalities of Hrpelje, Sežana, Ilirska Bistrica and Postojna. In 1960, 7.2% of the inhabitants of the Slovenian coastal region were born in this belt. The second region was Gorizia, which was the region of origin for 8% of the population (Titl 1961: 31). These two regions shared a historical affinity with the Slovenian Littoral, having belonged to a common administrative framework which dated back to Austrian times and later joined the province of the Julian March under Fascist Italy. With the peace treaty and demarcation between Italy and Yugoslavia in 1947, the Gorizia region was cut off from its historical regional centre of Gorica, which had been annexed by Italy. This led, on the Slovenian side, to the building of the entirely new urban settlement of Nova Gorica, which became the administrative and economic centre of the region. It was home to the population of the Gorizia region and other Slovenian areas. After 1954, a large percentage of the population of Gorizia region began seeking opportunities in the newly acquired Slovenian coastal towns.

The influx of a new population to the Slovenian coastal region was drawn from the entire territory of the People's Republic of Slovenia (19.5%). The largest flows originated in the administrative areas of Ljubljana, Maribor and Celje (in north-western Slovenia), Novo Mesto (southern Slovenia) and Murska Sobota (on the border with Hungary) (ibid.: 32). As for the rest of the Yugoslav territory, the Slovenian coast became particularly attractive to migrants from neighbouring Croatia, into which the natural hinterland of northern Istrian coastal towns reaches. In 1945, fewer than 100 inhabitants of Croatian ethnicity lived in the Slovenian coastal region, while at the end of 1956, a total of 2,800 inhabitants originated from Croatia; in 1960 their number was over 5,000, i.e. 11.7% of the population. Many came in from the neighbouring

district of Buzet, the wider Istrian peninsula and the Croatian coastal belt. Many of these immigrants would form specific occupational segments which replaced the emigrated population, particularly in fisheries and food processing, while many also found employment in shipping, and others settled in the rural areas (ibid.: 31).

The accelerated immigration following the London Memorandum coincided with the policy of the planned development and comprehensive integration of the region into the context of the Slovenian Republic, which had now passed into the hands of the Slovenian central government (during the time of the FTT, it had been under the auspices of local political actors). Although international law in the FTT did not allow for Yugoslav interference, the Communist Party surreptitiously introduced the socialist economic and social concept into Zone B. It also strove to raise the region's economic prospects and to reduce the economic dependence of Zone B on Trieste. After the annexation of the region, the development policy was put into full effect and the area began to develop in line with the new regional urban and economic plans (Kralj Pavlovec 1997). The Slovenian territory of the region gained a new economic position and prospects. The priorities of the socio-economic development plan included the promotion of industrialisation, the maritime industry and tourism.

Plans of national importance began to be implemented, such as the construction of the Port of Koper, industrial plants such as the moped manufacturer Tomos, Delamaris, a food processing corporation which merged former producers of tinned fish, Splošna Plovba International Shipping and Chartering, and several other food, metal and other factories. Construction and trade companies were established, the existing tourism facilities were renovated and several new ones were built. Considerable effort went into the development of agriculture, fishing and salt panning (Rogoznica 2011). The main area of economic development and a functional role of the region was spatial planning and organising new urban layouts (Čebren Lipovec 2012, 2018). The influx of the population and the emergence of a new social fabric was an integral part of these processes, which called for a labour force of all types and qualifications and which created opportunities for the integration of the new population into the region.

The process of immigration into the individual parts of the coastal region proceeded at different paces, which were conditioned by employment and settlement opportunities. The exodus had caused a general labour deficit and depleted the occupational structure (Gombač 2006). All of a sudden, several occupational sectors vanished, for example the crafts sector, as craftsmen retreated across the borders en masse due to the collectivisation process. Izola's tinned fish producers lost 90% of their workforce (Gombač 2006: 283; Kramar 2003: 196). Several villages lost a vast majority of their inhabitants (Kramar 2003: 196). This all left a mark on production rates, which dropped to the lowest levels in all economic sectors in 1956. Immigration gradually and unevenly filled the demographic gap and workforce needs.

Immigration also faced many obstacles, and it was barely able to keep up with the demand for human resources. Issues occurred especially in the mobilisation of highly-educated experts, as there was a deficit in all sectors. One of the reasons behind this was housing. The Municipality of Koper had a quarter of its work posts vacant at the end of 1955 because of housing. The medical centre had only one full-time doctor, who lived in a hotel in Koper. The centre could not find or keep additional full-time staff due to the poor housing situation, as doctors tended to leave after a short time. For the same reasons, crafts and trade companies could not find management and accounting personnel. In schools, 60% of the positions were filled by new teachers with no experience who lived in rural areas in especially poor conditions. Housing issues affected work flow and led to the turnover of specialist staff at large industrial plants. The housing commission therefore favoured immigrants when allocating flats, which was a cause of tension.

New blocks of flats were only beginning to be built, and a large percentage of flats that belonged to optants were in need of renovation. Optants often left their houses to relatives or other trusted administrators, so the housing commission could not freely dispose of them and assign them to applicants. Many newcomers didn't like these flats due to the low standards (including a lack of sewage and sanitation), and many were not happy to live in them (*Zapisniki sej skupščine občine Koper 1955–1957*). In the early years, the old town centres became merely transition points for many migrants. An ever-changing stream of people passed through them before their population stabilized. Unlike the exodus, this immigration was not unidirectional. Many newcomers only came temporarily and then left, mainly moving around the territory before settling down. These few examples give the idea of the circumstances in which the inflow of newcomers was taking place as well as of the issues the political and administrative bodies had to face in managing the economic revitalization and social renewal of the area.

## **SUGGESTIONS FOR FURTHER RESEARCH**

The repopulation and social renewal process of the Slovenian coastal area affords numerous possibilities and issues for further research. I will present just a few. The first is the political authorities' attitude towards the issues and towards organisation and process management. To what extent was the process left to its own devices, and to what extent was it regulated? What political, management and economic factors affected in it and in what ways? What were the criteria for the mobilisation of human resources for the needs of the coastal region? A second series of questions relates to immigration strategies deployed by immigrant newcomers and their adaptation to the new living environment. The third level of issues concerns the integration of migrants into the new social environment from the point of view of interpersonal relationships among the immigrants themselves and between them

and the locals, and their involvement in the shaping of a newly emerging social and cultural amalgam. In this regard, a specific issue is raised by the relationship between the new population and the Italian community as the repository of the Venetian and Italian historical and cultural heritage.

The issue of the cohabitation of the “old” people and the “new” people coming in from Slovenia was even broader and quite controversial. It emerged at the political level with conflicts between the local and central political authorities. The central communist leadership considered the locals still rooted in the mentality of the Free Territory of Trieste and conditioned by that political experience. As a consequence, the region would have difficulty implementing the socialist order in conformity with the official political programmes. Divergences in character and views emerging in everyday social relationships were for example the sentiment of opposition towards the so-called “Carniolans” – managerial staff from central Slovenia in the administrative and economic sectors and other organizations. The years considered in this paper constituted only the first and most intensive phase of the remodelling of the area’s social fabric. The process continued throughout the 1960s and 1970s, with an increase in immigration in the form of labourers from Southern Yugoslav republics, which met the rising demand for labour. This influx brought about a further redefinition of the social and ethnic structure, with implications in cultural relations and in daily life.

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## POVZETEK

### DRUGA PLAT »ISTRskega EKSODUSA«: PRISELJEVANJE IN DRUŽBENA OBNOVA V SLOVENSkih OBALNIH MESTIH V PETDESETIH LETIH 20. STOLETJA

Aleksej KALC

Avtor v članku obravnava migracijske procese na območju slovenskih obalnih mest v petnajstih letih po drugi svetovni vojni, s poudarkom na priseljevanju, ki je sledilo t. i. eksodusu italijanskega in delno slovenskega prebivalstva s tega območja. Proces priseljevanja in družbene prenove sta v primerjavi z izseljevanjem do danes pritegnila le malo pozornosti zgodovinopisja in tudi drugih disciplin. Avtor oba procesa konceptualno in vsebinsko opredeli ter prikaže temeljne dinamične in strukturne poteze izseljevanja in priseljevanja, ki sta spremenila etnično in tudi družbeno podobo območja. Priseljevanje se je začelo že takoj po vojni, povečalo pa se je po zadnji fazi eksodusa sredi petdesetih let, ko je nastala prava demografska vrzel in je število prebivalstva padlo na najnižjo raven po letu 1880. Vse to, predvsem pa nove možnosti zaposlovanja, ki ga je omogočal industrijski, pristaniški in vsestranski razvoj regije, so v slovenskem republiškem in širšem jugoslovanskem državnem kontekstu pritegnile številne nove naseljence.

V obdobju Tržaškega svobodnega ozemlja so priseljenci prihajali predvsem iz notranjosti obalnega območja, delno s Tržaškega (Cona A STO) in iz Jugoslavije. Po priključitvi k Jugoslaviji se je izvorna geografija priseljevanja razširila predvsem na zahodni, a tudi preostali slovenski prostor, od Ljubljane in Celja do Maribora in Murske Sobote. Z jugoslovanskega območja je v tej fazi največ priseljencev prišlo iz hrvaške Istre. Obsežno priseljevanje in ponovna demografska rast sta sovpadala z izvajanjem regionalnih razvojnih planov v kontekstu socialističnega družbenogospodarskega reda. Proces priseljevanja in družbene obnove območja nista potekala linearno in neovirano. V regiji je po eni strani primanjkovalo delovne sile in vseh vrst poklicnih profilov, predvsem strokovnih in višje izobraženih kadrov, po drugi pa so na dotok priseljencev in njihovo stalno naseljevanje vplivala neskladja v razvoju infrastrukture (stanovanjska stiska) ter nekatere druge okoliščine in organizacijske težave. Avtor na koncu prispevka poudari nekatera vprašanja, ki bi bila vredna nadaljnega preučevanja, in sicer vprašanja politike in upravljanja priseljevanja, načinov priseljevanja in adaptacije priseljencev v novem okolju ter odnosov med avtohtonim prebivalstvom ter prišleki, ki so soustvarjali novo etnično, družbeno in kulturno podobo regije.

# THE “ISTRIAN EXODUS” AND THE ISTRIAN SOCIETY THAT FOLLOWED IT

Katja HROBAT VIRLOGET<sup>1</sup>

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## ABSTRACT

The “Istrian Exodus” and the Istrian Society that Followed It

This ethnologic study focuses on the aftermath of the “Istrian exodus”, including the conflicting national discourses concerning it and the related silenced memories. Various migration processes are highlighted on the basis of memories. Analysing the social processes that took place in Istrian society after the exodus, the paper examines the concepts of the “other” and of “home”, and the establishment of symbolic boundaries.

KEY WORDS: exodus, aftermath, Istrian society, migrations, symbolic boundaries

## IZVLEČEK

»Istrski eksodus« in istrska družba po njem

Avtorica v etnološki raziskavi, ki se osredotoča na posledice »istrskega eksodusa«, obravnava tudi konfliktne nacionalne diskurze v zvezi z njim in z njim povezane utišane spomine. Na primeru spominov osvetli različne procese migracij. Med družbenimi procesi v istrski družbi po »eksodusu« pokaže na koncept »drugega«, »doma« in na vzpostavitev simbolnih meja.

KLJUČNE BESEDE: »eksodus«, posledice, istrska družba, migracije, simbolne meje

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## INTRODUCTION: THE “ISTRIAN EXODUS” AND ITS AFTERMATH

Due to the wounds it has inflicted upon society, the so-called Istrian exodus has been the subject of a fairly substantial amount of research (to list only monographs: Cataruzza, Dogo, Pupo 2000; Ballinger 2003; Volk 2003; Gombač 2005; Dota 2010; Panjek 2011; Hrobat Virloget, Gousseff, Corni 2015; etc., see Kalc 2019). However, almost no studies (Titl 1961) have been devoted to the question of what happened after the exodus, although it resulted in a dramatic change to the ethnic, social and cultural fabric of Istria (Gombač 2005: 11; Kalc 2019). The topic of the present paper will therefore be the social processes that took place in the Istrian society after the exodus.

During and after WWII, in the time of the Free Territory of Trieste (FTT) (1947–1954) which was created as an attempt to deal with the conflicting Italian and Yugoslavian claims to the contested area in the northern Adriatic, and after the ethnically mixed Istria was annexed to Yugoslavia, 90% of the predominantly Italian-speaking population emigrated, mostly from urban areas. In total, between 200,000 and 300,000 people left Istria (Ballinger 2003: 1, 275, n. 1), 27,810 of whom emigrated from our study area, northern Istria, which is now under Slovenian administration. They were mostly Italians (70%), but also included Slovenes and Croats (Cunja 2004: 89; Troha 1997: 59; Kalc 2019). In 1960, a few years after the final phase of the exodus, the proportion of native residents in the Slovenian part of Istria dropped to 49%, according to registry offices, reaching 65% in rural areas and 33% in urban. The difference is accounted for by the fact that the Italian population was concentrated in urban areas, while the adjacent rural population was largely Slovene (Titl 1961; Kalc 2019).

This paper employs an ethnological/anthropological approach to the analysis of individual memories of present-day inhabitants of Istria, i.e. the memories of those who remained and those who arrived after the “Istrian exodus”. My aim is to reach beyond a mono-national point of view by relating various memories of this overlooked part of contested history, shared by natives and immigrants, Slovenes and Italians, as well as people from other republics of Yugoslavia. The analysis is based on more than forty transcribed interviews, many other informal conversations, research performed with students, participant observations and four books on the life histories of people from Piran/Pirano and Koper/Capodistria (Pahor 2007, 2011, 2014; Menih 2011). As an ethnologist working with memories, which reflect personal sentiments rather than historical data, my aim is not to reconstruct the historical framework, but is rather an attempt to understand the social issues present in a society which was formed anew after mass migrations.

## THE STRUCTURE OF THE IMMIGRANT POPULATION AND MIGRATION PROCESSES

The few existing studies on the structure of the immigrant population show that during the time of the FTT most immigrants came from within the Slovenian coastal region, moving from the rural hinterlands to urban areas, with other immigrants coming from Zone A of the FTT (the area around Trieste, annexed to Italy in 1954) and from Yugoslavia. The latter groups are not analysed any further except for (Slovenian) political immigrants from the pre-war Italian region of Venezia-Giulia who emigrated to Yugoslavia to flee fascist persecution, and who returned to the Primorska region after WW II. After the annexation of Istria to Yugoslavia, an influx of immigrants arrived from the coastal hinterland and Gorizia (15.2% in 1960), regions that share a historical affinity with Istria stemming from having belonged to a common administrative framework under both Austria and fascist Italy (Primorska region). The other immigrants came from the rest of Slovenia (19.5%) and from Croatia (11.7%), mostly from the Istrian peninsula and the coastal belt. They would replace the emigrant population in fisheries, the food processing industry and shipping (as sailors and officers), and many also settled in rural areas (Titl 1961: 31; Kalc 2019).

In the early period the immigration of ethnic Italians occurred as well, some of them originating from the Croatian part of Istria, while others came from Italy due to ideological reasons. Among them were thousands of communist workers from the shipyards in Monfalcone who moved to Yugoslavia after the Peace Treaty, particularly to the Croatian city of Rijeka/Fiume, however, most of them returned to Italy after the Cominform conflict (Puppo 2015: 33). The last substantial influx of immigrants has not yet received any research attention, and is usually mentioned only briefly. This immigration wave consists of immigrants from the former republics of Yugoslavia other than Slovenia, who migrated to the coast en masse during the 1960s and 1970s to answer the local demand for workforce in the newly established industrial plants (Kalc 2019). Large housing projects were built to provide "a roof over the heads" of these masses of workers, who found work at large companies including Tomos and the Port of Koper (Mlinar 1998: 70). The research data indicate that the immigrants originated from all of the republics of former Yugoslavia, while the interviews were conducted with people from Croatia, Serbia and Bosnia.

According to the individual memories and archival data, various emigration and immigration processes can be distinguished. The exodus reached its peak in northern Istria a year and a half after the annexation of Zone B to Yugoslavia, i.e. between 1955 and the beginning of 1957. The simultaneous immigration that ran in parallel exceeded the number of departures by 21%, with immigration in 1955–1956 representing 55.7% of all immigration that took place between 1945 and 1959 (Kalc 2019). The urban legend of a bunch of keys received by immigrants on their arrival is associated with this very time period: "[On the population structure upon their arrival in Izola in 1954] Mostly Slovenes. When I arrived, some 20% of the families in our street

were Italian. [...] My father went to ask, when he got the pastry-shop, he went to the municipality to ask for an apartment. They told him: 'These are the keys for Koprška street ...', a bunch of keys, 'Go and choose something.' That is, it was all empty."

We can date the drastic change of the population in northern Istrian towns to this short two to three-year period. As a former military officer who emigrated to Koper in 1954 stated in response to my question of who had sent him to Koper: "From Ljubljana, most employees, I will not say all ... Everybody that was able to write at least a little came here, because the district people's committees, a new authority, were established, on banks and so forth."

Memories describing the mass emigration that left empty streets behind date to this period. A Slovenian Istrian illustrated the total emigration of Italians from Piran/Pirano with an example from his school days:

Three parallel classes at the Italian school. [...] Next year! The next year, I had three pupils in one single class, and I was the fourth, we played basketball two against two as we had no one else. [...] In a single year this was ... 53, 54.<sup>1</sup> Such fluctuation! Such change! [...] Streets empty! There was no one! There were trucks! Day by day, night by night, one great rush! [...] Everything Italian was gone. Terrible! A terrible exchange!

This image seems to present a contrast with the long period preceding the exodus, when, according to the historical (Pupo 2015; Kalc 2019) and ethnographic data, migrations were sporadic. Especially the first immigrants, who used to play with Italian children on the streets, remember that friends would disappear out of the blue, during the night. An immigrant who arrived from Trieste in 1946 remembers: "[On the morning after playing with an Italian friend] I went to search for the toy [which had been forgotten], came to their door and it was broken. Two boards were nailed diagonally over the broken doors and I never saw either Valter or his grandmother again."

## DISCOURSES AND SILENCE ABOUT THE "EXODUS"

A number of scholars have discussed Istrian migrations in the broader framework of the mass population transfers in Central and Eastern Europe resulting from the Allies' policies in the post-WW II period when the ethnic homogenisation of nation states was considered to be the only way to prevent violence and assure peace and stability (e.g. Ther 2001; Hrobat, Gousseff, Corni 2015). Recently, Pamela Ballinger (2015) has offered an alternative approach reaching outside the classical scope of population transfers, by interpreting the Istrian exodus as a (post-) imperial process

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1 Memory, however, does not particularly care for historical time frames. Time can be referred to not by dates, but rather by the speaker's personal experiences, like referring to the time of living somewhere, going to school etc. (Halbwachs 2001; Brumen 2000).

accompanying the defeat of fascism and the loss of Italy's newly acquired territories in the Balkans and Africa.

However, the exodus has been a source of conflict in political discourses between Italy on one side and Slovenia and Croatia on the other for more than six decades. Both sides have long cultivated parallel official memories which attribute the migrations to different reasons; they have also come up with different numbers of migrants and differing appellations, for instance "exodus" for Italians or "opting" or "post-war migrations" for Slovenes (Ballinger 2003: 42–45; Gombač 2005; Hrobat Virloget 2015a: 159–162, 2017b; Verginella 2000; Pupo 2015). Italian migrants see themselves as victims of violence inflicted by the "barbaric" Slavs and the communist rule, but prefer to "forget" the period of fascist violence against the Slavs after 1919 and its victims. On the other hand, Slovenes emphasise their status as victims of fascist violence during the 20 years of Italian imperialist rule and during WW II. This victimhood together with heroic resistance and ethnic emancipation during WW II forms the cornerstone of the Slovene identity (Ballinger 2003: 129–167, 207–244; Baskar 2010: 110–118; Fikfak 2009: 358–359; Hrobat Virloget 2015a, 2015b, 2017b).

In the individual memories the main problem in researching the exodus is silence, especially among Italians. On one side this silence can be seen as a result of the incompatibility between the dominant collective (Slovenian) and individual memories (Hrobat Virloget 2017a). As Maurice Halbwachs noted, individual memories can be rejected and stigmatized if they do not correspond to the dominant image of the past (Halbwachs 2001). The memories of Italians who remained in Istria as a national minority are not compatible with either the dominant perception of the exodus as a voluntary migration or with the official Italian discourse. In contrast with the latter they are aware of the causal links between the exodus and fascist violence in Istria. As an Italian interlocutor put it in an interview, "Shifting things now [about the "exodus"] is like planting a mine and not knowing when it will explode", while another Italian answered, in a whisper, "Better be quiet. There are ears everywhere." During the decades following the "exodus", speaking about it was taboo in Istria even among Italians (Hrobat Virloget 2017a: 90; Hrobat Virloget 2017b: 40).

The silence can also be seen as a consequence of trauma, in the sense that avoiding remembrance protects one from re-experiencing the pain (Hrobat Virloget 2017). An Italian interlocutor, for example, who read her memories during our interview as they were written down, and to which she added some "objective" facts concerning the exodus, broke down in tears at the end of the reading, explaining: "My family was split in two [because of the exodus] and it never united again. This is a wound that never healed." We have to bear in mind that after the exodus, Italians in Istria became foreigners in their own homes due to the change in the social/political circumstances and the total loss of their social networks, including in some cases even the closest members of their families (Hrobat 2015a: 164–168; Hrobat Virloget 2017a, 2019; Ballinger 2003: 207–244). After the exodus and the introduction of the new national/political system they also experienced a change in their social status,

from the dominant self-perception as the representatives of *civiltá* (the civilized) as opposed to the “barbaric” Slavs, especially under fascism, to the marginalized in the new Yugoslavian context, and were held collectively responsible for decades of fascist oppression and war crimes (Baskar 2010: 110–118; Hrobat Virloget 2015b, 2017b; Hrobat Virloget, Čebtron Lipovec 2017). The memories of many of my interlocutors can be understood as childhood trauma buried in the subconscious. As Primo Levi says, “[a] person who has been wounded tends to block out the memory so as not to renew the pain” (Levi 2003: 18; Jurić Pahor 2004: 52). Similarly, Andrea Smith (2006: 147–159) noticed that the *pieds-noirs* would censor, repress and consciously avoid their memories of the Franco-Algerian war, or if they had to speak about it, they would structure their memories in a rational, impersonal way. She interprets these tactics as an attempt to control the emotionally burdensome memories which were not compatible with the French collective memory of the war (not recognized for many years) and which recalled their own personal participation in that war.

Historians also explain silence as a consequence of tense social relations that emerge in rebellious movements and which, upon the reversal of the social system and hierarchies, conceal social conflicts, shifts in power relations and civil war in a time when violence occurs among members of the same nation, community and even family (Portelli 1997; Van Boeschoten 2005).

On the other hand, there is the silence of “the invisible”. By this I mean the descendants of the economically deprived immigrants from the former republics of Yugoslavia other than Slovenia, among whom only some of the first to arrive would experience the exodus, while most arrived after it had taken place and were therefore not aware of the local contested past. Upon Slovenia’s declaration of independence in the early 1990s, the immigrants from the rest of Yugoslavia became transformed into the new “others” and experienced a profound social marginalization, becoming second-class citizens with no minority rights, and some of whom were literally “erased” from the Registry of Permanent Residence (Hrobat et al. 2016: 80, 85; Zorn, Lipovec Čebtron 2008). Although they comprise the majority of the population in Istria’s historic town centres, their memories remain unnoticed, mute (Hrobat Virloget et al. 2016; Hrobat Virloget 2017b). They never take part in public debates or demonstrations concerning Istrian culture and history, where Slovenian and Italian intellectuals dominate (ex. Čebtron Lipovec 2015). Although my research has not focused on them to date, they do seem much more difficult to get in touch with. The case of an immigrant from Serbia is telling in this respect: he refused to speak with Slovenian students because of his poor mastery of Slovene. This clearly illustrates the uncomfortable feelings of the immigrants, whose places of origin are considered inferior in their new environment (see Smith 2006: 138).

Few Slovenes are aware of the drastic change in the population structure of Istria after the exodus. Silence about it extends over school curricula as well: with the exception of Italian minority schools in Slovenia, the topic is only mentioned very briefly in primary and secondary schools. A similar memory gap characterises the

Czech recollection of the expulsion of the Sudeten Germans, who were frowned upon during communist times (and also today) due to their alleged association with capitalist exploitation, international aggression, fascism and oppression, and also just for being German. The collective national guilt for their expulsion is countered by arguments that this was merely a reaction to the horrors that they had inflicted during the war. Thus the nation remains morally unscathed by claiming the status of victim (Spalová 2016: 16–22). All European nations recall their suffering in order to avoid being reminded of their guilt. As a result, national memory constructs are not in fact falsified, but selective, as they only maintain a "strategic selection of expedient recollections" (Assman 2007: 17).

## THE PERCEPTION OF HOME, "US" AND "OTHERS" AFTER THE EXODUS

For the reasons mentioned above, what currently looks like a multicultural society in Istria at first glance is in fact a society divided by strong symbolic boundaries (Hrobat Virloget 2015a: 175–178, 2015b: 544–547, 2017b, 2019). Within the scope of the Orientalizing discourse, a symbolic boundary has emerged between the so-called Istrians, i.e. Italians and Slovenes, and the "non-Istrians" of Balkan origin. The discourse of Istrian hybridity, which seems to be progressive when confronting the nationalistic view of the Italian *esuli* as the only real Istrians, also exhibits a narrowness based on the exclusion of the "other" by only including Slovenes/Croats and Italians (Ballinger 2003: 245–265). A Slovene whose family escaped from Trieste during the period of violent fascism, for instance, shared this comment on the arrival of the workforce from the former republics of Yugoslavia other than Slovenia in the 1960s and 1970s:

A different culture breaks in ... There were fewer differences, many fewer, between us [Slovenes] and Italians, who actually lived in the same territory [...]. But then a completely different culture strikes. They were picking people there, in villages, you know, they were herdsmen ... They were carrying bags and such. [...] You brought people, shepherds more or less, and you put them in a highly developed urban environment.

The rhetoric is based not only on ethnic/national differences, but also on the distinction between the urban vs. rural population. Similar social boundaries were observed during the time of fascism in Istria, when the urban Italian population held a superior attitude towards the Slavic-speaking population of the hinterlands (Brumen 2000: 124–133; Hrobat Virloget 2015a: 163). The dominant discourse of "brotherhood and unity" among Yugoslavian nations was difficult to reconcile with the reality of being the "other". As an Albanian immigrant from former Yugoslavia recalls:

That the locals accepted us grudgingly ... It would be unfair [to say], they stood next to us at most. On the other hand, our first duty was to accept people, be the same as

they were. You have all that other stuff in your family. So, our church rituals, we held them at home. [...] It's clear that you are not one of them. But again, not so much as to hate you or anything [...]. The opposite direction was more important. In fact, we were more orderly, when we stepped out the door, than everyone else. Precisely to avoid any such complaint.

However, as observed in other cases of so-called co-ethnic migrations, a symbolic line was drawn between the newcomers and native inhabitants despite sharing the same nationality (Čapo Žmegač 2010: 189–192; Čapo 2015; Hirschon 1989: 30–35). In a local Istrian joke two boundaries can be discerned: “Two women from Štajerska [a region in eastern Slovenia] were chatting on Čevljarska street [in Koper] when they overheard two old women talking in Italian. So one lady from Štajerska said to the other ‘We still have foreigners here!’ So Slovenes from Maribor, therefore aliens, considered themselves to be the locals!!! [laughter].” The joke shows how the local Istrian Slovenes perceived the immigrants from continental Slovenia as foreigners and, on the other hand, how the immigrant Slovenes perceived the local Italian Istrians as a foreign element, while to the local Slovenian Istrians the Italians represented part of “us”.

The research indicates that the “pre-exodus” divide along the Slavic-Italian line, which coincided with the urban-rural division, was reformulated in the “post-exodus” socialist time; the ethnic element was omitted and replaced with claims to sociological “oldness”, i.e. seniority in the area along regional lines or, as Norbert Elias and John Scotson observe, the regularities in migrations. They argue that with the arrival of the immigrants the previous “old” independent groups become interdependent as neighbours. The “old” inhabitants would form a community that fought against the newcomers, the “established” against the “outsiders”. Seniority of habitation in the area is the decisive factor in the formation of a gap between the old and new inhabitants. By keeping the newly arrived inhabitants at a distance, by rejecting them and ascribing them a lower status, the old inhabitants could preserve their status and position of power (Elias, Scotson 1965: 149, after Čapo Žmegač 2007: 153).

After the exodus, the Slovenes and Italians from the region realigned themselves against the newcomers. The Italians arriving from the Croatian part of Istria were perceived as “others” as well, which shows that ethnicity was not always a decisive factor. As an Italian informant, a newcomer from Croatia, commented, in the eyes of Italians from the Slovenian part of Istria she will always remain just an “immigrant”. Related research shows a dislike for immigrants, perceived as privileged in competition for basic needs such as housing and jobs (Tanc 2001; Čapo Žmegač 2007; Fakin, Jerman 2004). As a local Istrian commented: “Immigrants got housing for free, entire farms! They simply made them owners immediately. They worked in collectives. Those who were not worth a thing went into collectives. They went to the field with an accordion and a flag!”

Although today many descendants of immigrants oppose this perception, stating that their immigrant parents or grandparents received no privileges, some individual memories confirm that certain craftsmen who were in demand were lured to Istria by being awarded certain privileges, apartments for example. An Istrian director of a construction company ventured to the neighbouring Karst in search of missing craftsmen, offering jobs and housing in Istria:

I did not have masons here [Piran]. And where did I go? I went to the Karst. [...] I knew that there are masons in Renče, I knew that there are carpenters in Dutovlje ... And I came up, we had a meeting, I said: "Listen. We need masons down there. Are you willing? You get a house, an apartment." [...] I went to Dutovlje. "I need carpenters, cabinet-makers too, if you come." [...] And I got masons from one place, carpenters from another. [...] And I went to the housing office, to the municipality. "I need some houses for the people I will bring." And the director gave me a cardboard box, a shoe box, full of keys!!! There was a label, a street name and a house number on each. "Here you go," he said, "Choose. Wherever you want!"

With the exodus, craftsmen and other professionals disappeared, which created a need for a skilled workforce (Kalc 2019). The same was reported by my interlocutors: "Everybody was missing, because they had gone away [...], engineers, doctors too, teachers ..." Despite the need for workforce, especially the highly educated, the inflow was limited due to housing problems (Kalc 2019).

The concept of home as perceived by immigrants can help to further clarify the social boundaries present in contemporary Istria and to answer the question "who besides the 'natives' is Istrian today?" Many immigrants from inland Slovenia and former Yugoslavia did not identify with Mediterranean environment and Venetian heritage of the Istrian towns. One interviewee, who came to Koper with his family after WW II as a refugee escaping the fascist oppression of the Slovenian minority in the area of Trieste, acknowledged that the new settlers lack trans-generational memories linked to their new home environment and are not very attached to the place. Departure has broken the primary ties to the place of the population who left their homes: "That's what we miss here where we settled ... the connections, the stories, knowing what happened here in this house, for example, who lived here ... These ties were broken when the majority left. That's why we don't have any attitude, let's say, towards certain buildings. If it was about our own ancestors, it'd be different" (Hrobat Virloget 2015a: 174, 2019). This seems to be true especially for the settlers who did not find any resemblance to their previous homes in their new environment, some of them having seen the sea for the first time.

The published life stories (Pahor 2007, 2011, 2014; Menih 2011) and interviews indicate that some of the immigrants originating from totally different environments have adapted to the Mediterranean way of life, while others maintain a nostalgic attachment to their place of birth. One interviewee, an immigrant from the

former Yugoslav republic of Serbia, explains that his life and the lives of his immigrant friends took place around factories, on football pitches and around housing blocks, all of which are places that lie outside the old town centre. In contrast to Italian Istrians, who identify with Venetian heritage (Hrobat Virloget 2019), this heritage does not seem to hold any value for him. His affections, memories and roots remain with his place of origin, to which he is still considering returning and building a house (*ibid.*). As migration researchers contend, the return home as the “natural” outcome of the migration process derives from a strong tie between a person and her/his land of origin (homeland). These immigrants do not experience their new social and physical environment as “their own” (cf. Čapo Žmegač 2013, 2015: 184–189).

However, looking from the Slovenian national perspective, at least the emigrants from inland Slovenia refer to Istria as “ours”, Slovene: As noted above, in their eyes Italians are frequently perceived as foreigners who settled in Istria only recently (during the time of fascism). As a teacher who immigrated from Ljubljana commented, “there were still locals, but they emigrated back to Italy from here. Masses!” The phrase “back to” clearly expresses her perception of who is native to Istria.

Under the influence of Yugoslav collective memory, immigrants do not seem to have known a lot about the local contested past, at least those who came later, when Italians remained only as a minority. The lack of awareness concerning life in a bilingual society is evident in their responses, and many of them never learned Italian (although their children did). On the other hand, a feeling of being overlooked by these immigrants can be discerned among the remaining Italians:

This first Slovenian wave [of immigrants] is the one who respected us the most. [...] We understood each other. They came and they cannot say, ‘you were not there’ because they found us here. They were the ones who came from elsewhere while we were already here. [...] Then another round of people, all from Bosnia, came after the war. [...] They brought their traditions, their world. They brought little respect for this place [...].

The narratives indicate the importance of “oldness” in the place in the construction of Italian identity and the feelings of being invaded by “others” who lack respect for “their” heritage. Italian memories are anchored in the pre-war material environment of the Istrian towns and they are hurt by many post-war changes to the historical built environment or simply by observing its decay (Hrobat Virloget 2019). As one Italian interlocutor remarked:

The palace ... It has been undergoing reconstruction for so long ... But it’s always closed, abandoned, they don’t take any care of it ... The same goes for many things in Capodistria, more respect should be paid to the environment ... From the trees which are so easily cut down ... /.../ They don’t have this sentiment, they say we are Mediterranean ... Us? /.../ I never felt Mediterranean /.../ This is the Adriatic. We

were born on the sea. We love the light /.../. Those who came, well, embrace this light! No! Let's cover everything! Heavy jutting roofs, everything covered! One does this in a different climate, not here. So they have no sensibility for the local and they bring things from other environments ... But this here is a different type of environment also in terms of culture, climate and all these aspects ...

Besides Italian Istrians, a strong perception of "home" in relation to Istria can also be perceived among the immigrants who came from the wider Primorska region. According to historians (Kalc 2019; Titl 1961) and my interviewees, they were mostly part of the first influx. When describing the towns on their arrival, they emphasize the peaceful cohabitation with Italians in their new home environment. Here they experienced a way of life that was familiar from their original homes, a kind of Mediterranean lifestyle, an "open" way of life which includes speaking Italian and the regional Slovene dialect with Italian words characteristic of the Primorska region (see Todorović 2016), chatting on the streets, shopping in Trieste, enjoying Mediterranean food etc. Whether arriving from the Slovenian minority in the Trieste area and emigrating due to fascist oppression, or coming from the wider Primorska region and being accustomed to everyday business in Trieste, they spoke Italian upon their arrival and were already used to living with Italians. Therefore they had a different attitude towards the remaining Italian Istrians. In a way they simply continued their habitual everyday communication in their new environment. One interesting case is that of an immigrant, the daughter of a partisan fighter, originally from Brkini (in Primorska), who came to Izola/Isola in 1954 after spending a few years living in the house of an expelled German family in the Kočevje region, where she was waiting to "return home" while the border with Italy was being determined. Describing her childhood in Izola and her school days in Koper, she described the rapid changes in the structure of the population:

Italian was very much present then. These things changed very quickly. [...] These empty homes and new blocks were built ... They were filled with people from Štajerska, many immigrants from Maribor and from Gorenjska, Jesenice. This was not a coincidence. Maribor had a lot of industrial engineers. Jesenice as well, probably because of the ironworks. These people, this cadre, were extremely welcome because in Koper, later in Izola too, mechanization began with the Tomos factory. The spaces filled up quickly. In the second part of elementary school [...] I already had classmates from all over Slovenia. So, upon my arrival, I was alone [among speakers of the Istrian dialect – a mix of Slovene and Italian]. Young families poured in from all over. [...] Very, very quickly this area was filled with Slovenes. Those who came after did not have as much contact with Italian culture as I did.

Later on she explains that these children had to learn Italian from scratch, and observes that “this wave of immigrants that came after we did, they did not feel this kind of attachment [to this region]”.

From this this kind of narrative we can conclude that the “others” are not composed only of “working class” people from the republics of Yugoslavia other than Slovenia who had arrived during the last mass influx, but also of immigrants from inland Slovenia who arrived during the previous influx that coincided with the mass “exodus”. The research confirms the regularities observed by Norbert Elias and John Scotson (1965; Čapo Žmegač 2007: 153), i.e. that “the established” redefine themselves in relation to the later immigrants, “the outsiders”, regardless of ethnic origin and according to the question of who was there first.

Although it has been observed in the rural hinterland of Istria that after the formation of the independent states of Slovenia and Croatia the previous common identity of Istrians split into two separate regional-national identities, the Croatian Istrian and Slovenian “Šavrin” (Brumen 2001), this boundary is not clear in the present study. What is strong is the perception of the latest influx of immigrants from former republics of Yugoslavia other than Slovenia as “others”, however, this was already present before the declaration of Slovenian independence in 1991.

It is also interesting to note the boundary between the “established”, “native” Istrians and those who came from the neighbouring parts of the wider Primorska region and shared historical similarities such as living under Italian rule and with Italians. Although both groups feel “at home” in Istria, the native Istrians still perceive the latter group as “others”, but less so than immigrants arriving from inland Slovenia and Yugoslavia.

## **CONCLUSION: ON THE ISTRIAN EXODUS IN MEMORIES AND SHIFTING BOUNDARIES IN THE NEW ISTRIAN SOCIETY**

This study attempts to address the taboo question of the Istrian exodus and its aftermath, which has been subjected to collective amnesia and misinterpretations for many years. It deals with memories and sentiments, some visible but most of them marginalized and silenced. The article highlights various Italian and Slovene national discourses on the exodus, which also include silences. These silences can be interpreted as the consequences of incompatible individual and collective memories, but also as the results of traumas, power struggles and the reshuffling of the community’s social hierarchy. The ethnographic data have augmented the findings of historians concerning the two main processes of the exodus in northern Istria: the sporadic migrations and mass migrations after the annexation of Zone B of the FTT to Yugoslavia (from 1955 to the beginning of 1957).

The diverse structure of the immigrant population was presented to enable the understanding of the ethnological analysis of the shifting social boundaries in

Istrian society after the exodus. In the pre-exodus period the main symbolic divide separated the ethnic categories of Italian vs. Slavic, which coincided with urban vs. rural categories, the latter in a pejorative sense. With regard to the strong emphasis on ethnicity in the social hierarchy, fascist ideology must have played an important role, with its strong ethnic segregation linked to ideas of superiority and "civiltà". The present research confirms the observations made by Norbert Elias and John Scotson (1965; Čapo Žmegač 2007) concerning the redefinition of social boundaries in a society composed largely of immigrants. The members of the post-exodus society realigned themselves according to the claims of "oldness" in the area along territorial lines, while ethnicity no longer played an important role.

The first settlers to arrive, who came mostly from Istria, Zone A of the FTT (the area around Trieste) and the wider Primorska region, would align themselves with the Italian Istrians against "the others", composed of immigrants from outside the wider region who did not speak Italian. The boundary dividing the community was made regardless of ethnic affiliation; it did not matter whether the settlers had arrived from inland Slovenia or elsewhere in Yugoslavia. An even more pronounced status of "other" seems to have been given to immigrants who arrived during the most recent mass influx, who came from republics of Yugoslavia other than Slovenia, and are perceived as the "working class" or "rural" in the pejorative sense. It is interesting to note that "rural" in pre-exodus times denoted the Slavs as opposed to the "urban", "civilized" Italians, while in post-exodus times "rural" has come to represent the opposite of "urban", "Istrian", Slovene and Italian. It remains unclear, however, whether this last boundary is linked only to "oldness" within the territory or also to ethnicity. In any case it seems that the "ethnic other" was already present during the time of Yugoslavia and probably became more pronounced after Slovenia's declaration of independence.

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## POVZETEK

### ISTRSKI »EKSODUS« IN ISTRSKA DRUŽBA PO NJEM

Katja HROBAT VIRLOGET

Namen članka je analizirati socialne procese v istrski družbi po »eksodusu«, ki je v dosedanjih raziskavah zapostavljena tema. Avtorica v uvodu najprej predstavi kompleksnost teme t. i. »istrskega eksodusa«, ki še po desetletjih buri duhove tako v Italiji kot Sloveniji. Tudi individualni spomini, v katerih se avtorica srečuje z molkom, so pod vplivom konfliktov, nastalih kot posledica različnih interpretacij »eksodusa«. Molk interpretira kot posledico neskladnosti med individualnimi in dominantnimi spomini, boja za družbeno moč, čustvenih travm in spremenjenih družbenih vlog. Zgodovinska spoznanja o različnih migracijah avtorica dopolni z etnografsko raziskavo, v kateri se pokaže, da so sporadične migracije po priključitvi obravnavanega ozemlja Jugoslaviji zamenjale masovne migracije. V analizi simbolnih meja in odnosa priseljencev in domačinov do »doma« avtorica potrди predhodne sociološke hipoteze, da se v skupnosti migrantov meje lahko preoblikujejo glede na to, koliko časa nekdo živi v regiji.

Raziskava je pokazala, da so se simbolne meje iz obdobja pred »exodusom«, ki so temeljile na etničnem razlikovanju, tj. na slovansko *versus* italijansko, urbano (civilizirano) *versus* ruralno, preoblikovale na temelju regionalnega ključa oziroma časa bivanja v regiji, medtem ko etničnost ni več igrala pomembne vloge. Meja se je namreč vzpostavila med t. i. domačini, ki so lahko ali slovenski ali italijanski Istrani ali tudi prvi prišleki iz širšega primorskega prostora, vajeni sobivanja z Italijani, in »drugimi«, torej vsemi poznejšimi priseljenci, ki so v Istro prihajali z masovnimi migracijami. Tudi tu etnični element ni igral bistvene vloge, domačini so se kot skupnost vzpostavili proti vsem poznejšim prišlekom. Se pa v pripovedih zazna tudi »etničnega drugega«. Predstavljajo ga ljudje iz nekdanjih jugoslovanskih republik, ki so kot delovna sila v Istro prišli v najpoznejših masovnih migracijah v šestdesetih in sedemdesetih letih 20. stoletja.

# ILLEGAL MIGRATION FROM THE CROATIAN PART OF ISTRIA FROM 1945 TO 1968

Igor JOVANOVIĆ<sup>1</sup>

COBISS 1.03

## ABSTRACT

### Illegal Migration from the Croatian Part of Istria from 1945 to 1968

The author analyses illegal emigration from the Croatian part of Istria from the end of World War II to the late 1960s. The migrations mentioned in the article came to light through oral histories and a small number of archives. Immediately after 1945 the illegal migrations were the result of the political and economic situation, but later the reasons were primarily economic. The author notes that the exodus and the illegal immigration are two processes which were taking place independently of each other. He also points out that there is very little written or oral material about illegal immigration before the beginning of the 21st century. There is also no literature on this topic and the archives remain unexplored.

KEY WORDS: illegal migration, Istria, phases of illegal migration, oral history

## IZVLEČEK

### Ilegalne migracije iz hrvaškega dela Istre med letoma 1945 in 1968

Avtor v članku obravnava ilegalno izseljevanje iz hrvaškega dela Istre od konca druge svetovne vojne do konca šestdesetih let 20. stoletja. Migracije, ki jih v članku obravnava s pomočjo metode ustne zgodovine in jih dopolnjuje z maloštevilnim arhivskim gradivom, so bile po letu 1945 posledica političnega in ekonomskega stanja, pozneje pa so prevladovali predvsem ekonomski motivi. Opozarja, da je treba razlikovati med eksodusom in ilegalnim izseljevanjem, dvema procesoma, ki sta se odvijala neodvisno eden od drugega. Poudari, da se je o ilegalnem izseljevanju vse do začetka 21. stoletja zelo malo govorilo in pisalo, prav tako o tej temi ni literature, neraziskano pa je tudi arhivsko gradivo.

KLJUČNE BESEDE: ilegalne migracije, Istra, faze ilegalnih migracij, ustna zgodovina

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## INTRODUCTION

At the end of World War II, the Iron Curtain divided Europe into two separate parts, the Eastern and the Western Bloc. In those times, if one wanted to leave Yugoslavia one had to escape. Illegal migrations from Istria and Yugoslavia occurred from the end of World War II and became increasingly frequent until the late nineteen sixties. They continued after this period as well, but on a much smaller scale (Radić 1999; Šarić 2005; Karakaš Obradov 2013).

The written material on illegal migration is very sporadic. Apart from being a focus of demographers (Laušić 1990; Žerjavić 1993; Crnković 1994; Nejašmić 2003) and ethnologists (Nikolić 2010), illegal migration from Istria is also mentioned in several literary and documentary texts and memoirs. The problem of the illegal emigration of the Italian, Croatian and Slovene population from Istria in the period from 1945 to 1968<sup>1</sup> has not been given serious treatment by Croatian historiographers. The escapes of Istrian residents are mentioned in the works of historians Darko Dukovski (2001), Marino Manin (2010) and Marica Karakaš Obradov (2013), but the topic of the illegal departures was more fully dealt with only by Tanja Šarić (2005), who specified the causes and methods of fleeing Croatia after World War II. Approximately twenty stories about illegal departures were also compiled by Ivan Pauletta (2005) in *Bjegunci*.

Slovenian historian Jernej Vidmar (2015) worked on the subject of illegal departures from the Tolmin and Nova Gorica region in Slovenia, touching upon the Slovenian part of Istria as well, and also relied on various oral testimonies. Urška Strle (2014) also described the illegal migration from the Soča valley through oral history. Several oral testimonies about illegal migrations were also published by Gloria Nemeč (2012). Illegal migrations in Italian historiography are mentioned in the context of the exodus, especially during the so-called "black exodus", towards the end and just after the conclusion of World War II (Pupo 2005, 2015; Ferrara, Piancola 2012), while the subject of illegal departures after the 1950s is mentioned by Raul Pupo (2007: 187) and Orietta Moscarda Oblak (2016: 370–372).

It's also worth mentioning an article written by the historian Radmila Radić (1999), in which she analysed the migrations of national minorities in Yugoslavia in the 1950s and classified the emigrants by time categories, illegal emigration being the fourth category called post-war emigration, however she does not distinguish it from legal emigration, although she does take it into consideration. In conclusion, the scientifically based, reliable and, if it's even plausible, total number of defections, whether from Istria, Croatia or Yugoslavia, has not been established to this day. The data differs from author to author, while archival documents, still largely unexplored, do not offer complete statistics.

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1 Sporazum između Socijalističke Federativne Republike Jugoslavije i Savezne Republike Njemačke o socijalnom obezbeđenju, <https://www.minrzs.gov.rs/files/doc/PIO/sporazumi/Nemacka.pdf> (3. 1. 2018).

The main goal of this article is to use the oral history method to try to reconstruct the methods of illegal departures from the Istrian region and to analyse the motives of these defections in the time frame from 1945 to 1968 in the context of the political and economic circumstances which serve as the main factors for the observed phenomenon.

The respondents, in their personal stories taken with a time delay of fifty years, are very subjective. In their stories, they are bound to a space and time in which it is difficult to discern the political, economic and other motives for escaping. The reasons for escaping are supplemented with the personal experiences of the respondents.

Illegal emigration from Istria from the end of World War II to the late sixties is oftentimes mislabelled with the term exodus, i.e. the departure of the Italian population from Istria, as well as Rijeka, Zadar and other parts of Dalmatia. However, these are two parallel processes that overlap in the period in question. In this paper I will not be addressing the exodus of Istrian inhabitants nor the other mass migrations in the legal spectrum, but will focus exclusively on illegal migrations of the Istrian population from the end of World War II until the end of the 1960s.

The term illegal migration primarily corresponds to illegal (irregular) entry into a foreign country by bypassing border control. This term also applies to people who entered a foreign country legally but afterwards remained there without appropriate permits and documents (Mesić 2002). This article will not focus on the latter method (legal entry and then remaining in the country) but on situations when people crossed the state border illegally (bypassing border control) and thus escaped from their country of origin.

In the article I mention encounters with various categories of respondents<sup>2</sup> who were directly or indirectly associated with the escape process. We can also divide the fugitives into several categories:

- Fugitives who lived in Istria;
- Fugitives who moved to Istria because of work and later fled;
- Fugitives who came to Istria in order to escape more easily.

The very differences between the viewpoints of these escaping eyewitnesses will serve to prove or reject the hypothesis that illegal migration from Istria included groups of people of different national and political views, while the economic factor of seeking a better life could represent a common motive for leaving Istria.

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2 We can classify them into the following groups: a) Directly associated with the escape process: People who succeeded in their first (or later) attempt to escape, people who were caught fleeing and no longer attempted to do so, people who gave up at the very attempt of fleeing, people whose family member(s) managed to escape, people who transferred others over the border for their own material or other gains, people who denounced fugitives, people serving the state (army and police) whose job was to prevent cross border escapes. Italian fishermen who aided the fugitives lost at sea and b) Indirectly associated with the escape process: Residents of border areas who were witnesses of successful and unsuccessful escapes, and contemporaries of the above mentioned people.

Subsequently, it's quite plausible that illegal migration as a complex phenomenon cannot be observed unilaterally. The reliability of the information obtained in the field was examined methodologically through multiple interviews through the presence of a third person, and through individual and collective memory.

## PHASES OF ILLEGAL EMIGRATION

Because of the complexity of the phenomenon I have divided the illegal migration from Istria into four phases. I based this classification on an analysis of previous academic insights gained using archival material, but above all I based it on the conclusions gained through the analysis of oral history.

The first phase of illegal migration refers to the period from the end of World War II in May 1945 to the election of the Federal Assembly of Yugoslavia in March 1950. There were two important factors that played a crucial role in illegal emigration. The first is the emergence of opportunities to emigrate (optate) through options and the second is the political consequences of the Cominform<sup>3</sup> Resolution i.e. conflicts with Cominform supporters. With regard to people's motives for escape, the first phase of illegal migration can be divided into two parts:

- a) Immediately after the end of World War II in May 1945 until the signing of the Cominform Resolution in June 1948.
- b) From the Cominform Resolution in June 1948 until the district elections in March 1950. It's interesting to see that these emigrations through options gave strong momentum to illegal emigration (Dukovski 2001).

The second phase of illegal emigration follows from 1950 until the end of 1954 i.e. until the signing of the London Memorandum<sup>4</sup> and the abolition of the Free Territory of Trieste. This phase is characterized by a legal exodus of the Italian and Slavic population, with the emigration through options coming to a halt, although it continued through the release of Yugoslav citizenship (ibid.). The second phase of illegal migration can also be divided into two parts:

- a) After the elections of 1950 until the Anglo-American announcement in October 1953. (Sluga 2001).
- b) From October 1953 to October 1954 when the Free Territory of Trieste was abolished.

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3 *Informbiro*, <http://proleksis.lzmk.hr/27991/> (3. 1. 2018).

4 *London Memorandum*, <http://www.istrapedia.hr/hrv/98/londonski-memorandum/istra-a-z/> (2. 1. 2018).

The third and, perhaps, most dynamic phase of illegal emigration begins in 1955, when the international border between Yugoslavia and Italy is established and the strict control of the border starts loosening. This phase ends with the signing of the Udine Treaty in October 1962 (Cecotti 2005).

The fourth phase refers to the period between 1963 and the application of the Udine Treaty until October 1968, when the Federal Republic of Germany and the SFRY signed an economic agreement on the exchange of workers. Illegal emigration does not come to an end here, however it is much less pronounced than in the previous decades, and the historical circumstances are rather different than before as well.

## **POST WAR PERIOD – THE FIRST PHASE OF ILLEGAL EMIGRATION**

Towards the end of World War II, the Yugoslav Army commenced military operations in order to liberate the country, as well as the occupation of the territory of the Kingdom of Italy, which was annexed through the Treaty of Rapallo (Dukovski 2005) after World War I, even though the Italian population in that territory was a minority. At the beginning of May 1945 military units of the Yugoslav Army entered all Istrian towns and, by finally entering Trieste, reached the ultimate goal of capturing the territory which was later to be the subject of negotiations about the change of borders at the expense of Italy.

With the signing of the Devin Agreement on July 10<sup>th</sup> 1945 the Julian March (which geographically refers to the territory of the Italian provinces along with the provincial seats of Gorica, Trieste, Rijeka and Pula) was divided into zones A and B which were separated by the so-called Morgan line, named after the British general who led the negotiations with the Yugoslav army about demarcation. Zone A was made up of the areas west of the Soča, and Trieste and Pula with its surroundings, and the area was governed by the Allied Military Administration. Zone B, i.e. the rest of Istria and the Slovenian hinterland, was governed by the Yugoslav Army (VUJA).

According to the Treaty of Peace with Italy between the FNRJ and the Republic of Italy signed in Paris on 10<sup>th</sup> February 1947, a major part of the Julian March came under Yugoslav rule, while a smaller part (Gorica and lower Posočje) was transferred to Italy, and the remaining territories were incorporated into a new independent state called the Free Territory of Trieste, which contained 736 km<sup>2</sup> and was divided into two areas: Zone A (Trieste and its surroundings from Devin to Milj, 220 km<sup>2</sup>) and Zone B (Buje and Koper districts, 516 km<sup>2</sup>). Zone A was governed by the Anglo-American Military Administration, and Zone B by the Yugoslav Army (VUJA). Civilian authorities were acting under its administration (Dukovski 2003: 175).

In 1948 there was a clash between the Communist Party of Yugoslavia and its leadership and the Communist Party of the USSR, with which the other European communist parties were aligned. Many people got hurt that conflict, mostly just

ordinary people who were members of the Communist Party and couldn't just give up on what they, as communists, had strongly believed in their whole lives (Simić Trifunović 1990; Bobinac 2017; Giuricin 2017).

Apart from the intricate political situation, it was necessary to rebuild destroyed houses, renew industrial capacities, and to restore the economy in general. Supplying the population with the most basic foodstuffs also turned out to be a major problem. Illegal migrations began immediately after World War II and blended with the exodus of the Italian population from Pula before the Anglo-American Administration was replaced by the Yugoslav administration. In the first phase of illegal migration, the reasons for fleeing were diverse, from both the political and economic perspectives (Dukovski 2001: 222). According to the memories of M. P., several of whose family members fled from their homeland, there were no real reasons for escaping:

Vinko didn't have to escape ... I don't know why he left. During the war, he sometimes worked as a truck driver for the Germans (for the Todt Organization author's note), and then he got scared, I guess he feared he'd be killed or sent to jail. One day he just disappeared. He was gone for a month and then he just called from Italy. Said he'd left for Argentina. That was in 1946. In those times it was quite awful. (Dukovski 2001)

The fear of "liberators" and threats sent to her father and uncle (her father and uncle were on two occasions taken to interrogations where they were threatened – author's note) were reason enough for Anamarija Crasti – back then a little girl and later an Italian reporter – to flee with her mother Benedetta in 1946, rowing from Vrsar harbour towards Italy. Her father Giovanni had left for Trieste with his brother a few days earlier. At the border crossing in Škofije he gave the police officer his entire monthly salary as a pledge to return from Trieste. A few days later he contacted his wife who then decided to flee (Crasti 2017).

Giordano P., a resident of Pula as a convinced communist from his early youth and a participant in the antifascist struggle, could not accept the situation that arose after the split with the USSR and decided to flee the country. On 4 August 1948, along with six other colleagues, he fled from Pula in a 8 meters long boat with a one-cylinder engine. Soon, they were caught up in a strong storm. It wasn't just a temporary squall – they were drenched to their bones and constantly had to bail the water out of the boat. They tried to keep the boat pointed into the waves. On the afternoon of the second day, they came across an Italian fishing vessel which towed them to Cesenatico where they arrived in the evening (Pauletta 2005: 11–19).

In the minutes of the meeting of the bureau of the District Committee of the Communist Party of Croatia for Buzet held on 23 February 1950 additional motives for fleeing can be found (poverty, the severing of the natural connection with Trieste):

The People living near Črnica are very poor. Not nearly enough was done to help them. They need to be motivated to work and given help. These parts of Slovenia belonging to this district used to go to Trieste before, and now that it has been made impossible and the traffic connections are in terrible shape, all of it has to be facilitated through cooperatives. (HR DAPA 385 KK KPH Buzet, box 2)

## **FROM THE ELECTION IN 1950 UNTIL THE END OF 1954 – THE SECOND PHASE OF ILLEGAL EMIGRATION**

In the early 1950s Yugoslavia entered a period of alleviating the strictness of the administrative and party apparatus, as well as allowing more forms of freedom to the population. Despite all this, a part of the population remained displeased with the country's political and economic climate. The majority of the population favoured the living conditions in such a state and social order, but there were still those who could not or would not agree to life under such circumstances. The sixth congress of the Communist Party of Yugoslavia in 1952 approved the new policy of socialist self-management and de-etatisation, with radicalizing criticism of Stalinism and the Soviet regime and affirmation of the new course of Yugoslav politics. After that, Yugoslavia started opening up to the West, with passports being issued in larger numbers, and restrictions were also loosened on trips abroad for certain groups of people (athletes, writers, students) (Šarić 2015: 211).

By analysing the motives for escapes across the border we can conclude that the first and second phase of illegal emigrations overlap especially in escapes conditioned by the political circumstances and the Cominform Resolution. Istria experienced a very tense atmosphere, and the official authorities did not tolerate any criticism of the system:

I stayed there until I fled. In 1951 I always thought I'd go out somewhere in the big world, but I'd tell anyone why not, I'd go here and there. I wasn't content. And then one day an officer comes for me, he found out, and takes me to the barracks, where the headquarters were, tells me I rambled about this and that, but we'd fought for our freedom, hadn't we? One must think for himself and see if he wishes to go somewhere else. He wanted to take me to Raša. Many people were forced to dig coal there as a punishment. I told him: "I didn't do anything." The I asked him to let me go home, so I can tell my mother and father and take some clothes to have with me, and he let me do that. The next day, I was gone.

He escaped on 21 April 1951:

It was the 21<sup>st</sup> of April. We had a small boat which we had once found on the pier. My two friends Tilio Lorencin and Pere Čupiċ Kovaċ came along. All three of us boarded

that boat. The northern wind was blowing. We rowed towards Finera. We arrived at Finera, and I wanted to go a bit away from the coast so we don't get caught, right. As we arrived there, I hear a rumbling sound ... a motor. The police were there, waiting for us. But they didn't see us. Although the moonlight made it clear as day. Perhaps they were asleep ... Why they couldn't see us, I cannot figure out. We rowed the whole night. It started getting dark, we saw lights in Italy. And the strong wind was blowing right into us, we were exhausted already. Luckily, this one ship came towards us, Italian fishermen helped us up, they fed us and let us sleep in their beds. It was morning when we arrived in Italy. The captain of the ship invited us to his home. They called the police but we spoke Italian, since we were under Italian rule previously. (Lazarić 2008)

Potential reasons for escaping can be found in "enemy propaganda" but also in the lack of concern for the Istrian people who decided to optate:

Here in the field the attitude towards American imperialism isn't all that tense. We're receiving letters and packages from America in which they're badmouthing us, and the Committee does nothing about it. That's reason enough for optation. Neither have we done enough in our power to approach the optants. Most of them wish to go to America. We're the ones who must explain to them what America is like. We haven't explained to the masses the attitudes of democratic powers and their might led by the USSR. I believe that Draguč, Livade and Šterna are subject to Vidali's policy and the ideas of fugitives from that area who can be found in Trieste. On the other hand, when we look at how they were prevented from escaping across the border, we have to recognize they've started using a different tactic, and that tactic is not to flee but to work more on our territory. (HR DAPA 385 KK KPH Buzet, box 2)

Dramatic examples of escapes as well as the fugitive's occupational profiles were presented by comrade Luka Božanić at the meeting of the bureau of the District Committee of Communist Party of Croatia held on 2February 1950:

Comrade Božanić Luka presents the case of student Vizentin Milan from Oprtalj, who was in Ljubljana, then in time of the resolution came back home and tried to flee across the border but was captured and sentenced. Then there's also the case of an electrician, born in Zagreb and working in Buzet, who had relations with a girl who opted to Italy, after which he too attempted to escape, thinking the border crossings weren't guarded enough. He was also arrested and punished. (HR DAPA 385 KK SKH Buzet 1. 3. 3., 1950)

## FROM THE ABOLISHMENT OF THE FREE TERRITORY OF TRIESTE UNTIL THE SIGNING OF THE UDINE TREATY – THE THIRD PHASE OF ILLEGAL EMIGRATION

The London Memorandum of 1954 abolished the Allied military administration in the Free Territory of Trieste, which meant that civilian management in Zone A was assumed by Italy, and in Zone B by Yugoslavia. The London Memorandum concluded a dispute over Trieste, bringing to an end the nine-year military administration over the area. Its definitiveness was confirmed by the Treaty of Osimo, which had determined the border to be exactly as it was drawn in 1954. However, from a legal and political point of view, a part of the Yugoslav-Italian border had remained undefined. During the period of twenty years (between the London Memorandum and the Treaty of Osimo), the two countries had concluded about 180 bilateral treaties, protocols and other agreements, mostly of an economic nature. The Italian side avoided general-interest agreements or those which would mention or apply to the Yugoslav part of the former Free Territory of Trieste. Thus, a sort of duality persisted in Italian politics regarding Yugoslavia.

Through the second agreement on options (the first one being in 1948) for Italian citizenships, which was accepted by the Yugoslav government in 1951, most applications for options were resolved by late 1953 when they ceased, and after that emigration through the release of Yugoslav citizenship gained momentum. This form of (legal) emigration was at its peak through 1956 and 1957, and after 1969 it ceased completely. With the discontinuation of optating and the restriction of emigration through the release of Yugoslav citizenship, through 1954 and 1955 the period of illegal emigration (fleeing across the border) intensified greatly. After the resolution of the Trieste issue, border control also grew weaker (Dukovski 2003). In those years, many people from Istria decided to flee for a variety of reasons.

Due to the requirement of military service, three young men from Premantura also decided to flee across the sea. Two young workers at the Uljanik shipyard in Pula (Rakić, Marinović) were together at the 1956 military recruitment in Pula:

When we had this military ... that was in ... somewhere in '56. Maybe July, August ... I don't even know which month anymore. I was at the front, and this ... colonel, or whatever he was, some important officer, asks me: "Do you have a brother?" and I say: "I do." "Older or younger?" I answer: "Older." "Was he in the military?" "Yes." "Which unit?" "Infantry." "Two years?" "Yes." Then he stared at me and said: "Hmmm ... 3 years of navy service." The worst part of it was that I had friends who were in the army before me and they ... they returned home because they got sick. They said: "They would only give you some water and cabbage, if you were lucky you got some rare meat." That's what they told me. And I lost all will to be in the army. (Rakić 2007)

Upon being recruited, the men from Premantura decide to flee:

But we had been planning to do it only come January next year, is what we agreed on. That's the time for us to leave, and one day we packed, bought some brandy, some bread, some salami, we had 5 litres of water, all that and we arrived at Runke. We were so fired up, adrenaline was pumping. Whoo, let's go, we're leaving. We got into that boat and left! We sailed, and sailed, and sailed on, and only in the morning, around 8–9 o'clock, when the sun started rising, we ... we already saw before, where the lights shine, you know, a roof being lit up. And so we went towards those lights. We sailed, and as we arrived we saw those were fishermen. They saw us and yelled: "Volete aiuto?" (Ita. "Do you need help?") "Si, si ...". We all knew how to speak Italian. They helped us on board and we fished with them the whole day, the same evening they put us on the mother ship and took us to Chioggia. (Rakić 2007).

In 1956 out of the total number of men called to military service from the territory of Zone B, namely 476, almost one fifth of them, more precisely 97, tried to escape, and many succeeded (Radić 1999: 149).

Some tried to escape by land as well. Miloš Jakac from Veli Mlun near Buzet, a farmer and participant in the antifascist struggle, graduated from the military school in Sarajevo and decided to flee:

First off, because of what I was looking for there, when I came back from the military, that year before I got married, I was trying to find a job but it was impossible. Because I refused, I refused to be an "aktivac" (member of a political party), is what they told me. "You could've gotten a job there!" Under the condition of joining the party. But I'd have to be a member of the communists. And I didn't want that. I could not find a job in Buzet, my girlfriend was working in Koper, in Slovenia, and that territory was under the authority of Zone B of the Free Territory of Trieste. She had a job in a hospital there and usually came home, so to speak, on weekends, but only for 24 hours. Enough. And so we made a decision, me and my late wife, to leave after our wedding. And then we took a bus from Koper to the real Yugoslav-Italian border crossing in Škofije. So we decided to go there. To get across. We took a bus from Koper to the border. And then we a bit further away from the border and prepared; there was a big restaurant in the area, it's in the same place still to this day. And I said, let's go in, she didn't know where to ... Where do we go, we might get hurt. But I knew all the military tactics. And I told her: "Just hold onto me." And then I saw it; here was the border, and then a little stream flowed along, not too deep, water probably about 10 centimetres deep, and then it went uphill, and right there was an office of sorts. A police one, and then the military behind it. We waited and waited. We spent at least an hour in that restaurant. Maybe even two hours. And then we saw when the guards were switching places, I saw how the military started going out of their barracks, they came all the way here and had to cross this road, in a formation, one after

another, about 12–15 of them. They went uphill. They reach the first guard, switch, the previous one leaves and they move on to the next one, repeating the process. All the way to the top where they had switched all of the guards. And then they came back. When I saw they left, the guards came here, the first guard that was here didn't come with them but ... what was it, maybe 50 meters away from the barracks. He went straight into the barracks, and the others went uphill. And when I saw that happen, that they went uphill again, in that moment I was dead certain there was nobody else there. I took my wife's hand, "Amelija," I said, "Amelija, let's go! Right now! On the other side, there were the Italians." (Jakac 2007)

## **FROM THE UDINE TREATY UNTIL 1968 AND THE AGREEMENT WITH THE FEDERAL REPUBLIC OF GERMANY – THE FOURTH PHASE OF ILLEGAL EMIGRATION**

From 1961, the level of personal liberty of the population in the sense of freedom of movement gradually started increasing, and the issuance of passports, especially after 1962, was liberalized – excluding certain groups, they were issued in larger numbers to a wider cross section of the public, and the problem of illegal escapes began to lose its importance (Šarić 2005). The Udine Treaty enabled cross-border traffic and thus reduced the problem of illegal escapes. Nevertheless, in the 1960's the Italian-Yugoslav border was made easier to cross. The number of Yugoslav citizens' border crossings increased, either for shopping or working in Italy. On the other hand, Italy's economy started developing rapidly and the need for workforce increased. Improved state relations, after a period of tension, led to the establishment of an integrated labour market at the border between Italy and Yugoslavia, which was, naturally, in the interest of both countries (Barcella, Colluci 2016).

In the second half of the 1960s, Yugoslavia signed bilateral employment agreements with France in 1965, followed by Austria, Sweden and the Federal Republic of Germany in 1968, which allowed hundreds of thousands of Yugoslav citizens to seek employment abroad and reduced the need for escape. However, in the period from 1963 to 1968, the escapes continued, albeit in fewer numbers than the previous years (Dukovski 2001: 219; Moscarda Oblak 2016: 269–272).

Zvonimir Radolović, a student from Marčana near Pula, decided to escape with two of his friends:

A lot of people escaped before us, so naturally we too started coming up with a plan ... how to get across. So we did. First time we went in '66, there was three of us, one of them is here, this Đani Buić was in Australija later, and then Korba Berto, he's in Sweden today. But I was sent back since I was underage. But by the time I returned home I had already turned 18! And so I got 20 days of jail time, I was sentenced in Koper by this ... how should I say ... judge. They eventually managed to escape across

the land: "Yes, we took a bus from Pula to Koper, and then in Koper we went on foot, waited for night to fall, otherwise you'd get stopped in Koper already, and so when night fell we walked across meadows and through woods, there wasn't so many of them but ... Across those meadows, and a small river, it must've been the Rižana, we took off our shoes and walked across, the water wasn't even up to our knees you know, and by the time we came through we must've been in Italy already, but we didn't realize that yet, we were still trying to hide, until we saw a bus passing on one of the roads, I looked at it and saw it had Italian licence plates. And that's when it dawned on us ... we were in Trieste." (Radolović 2007)

A former World War II prisoner, a participant in the antifascist struggle and a policeman by profession, Antonio Ottochian planned his escape while he was still working in the National Militia. By the order of the commander he received a transfer from Istria to the island of Ilovik:

Antonio, you're going to Ilovik. There are three idiots on that island and people run from them (two of the policemen were from Ogulin, author's note). They're very strict, even their cook ran away. If you don't discipline them ... and he added: "You're going because you know Italian."

I had met a girl there, but some trouble happened, I wanted to go all up in my uniform, without changing, to escape, but the boat broke down, it was an accident. I couldn't tell even tell her, but I was this close to killing her father since he started beating and harassing her, so I broke in and already had my gun cocked; I had a Beretta gun. And she said: "Ante, please, don't." And then he went and reported me. He said: "Do that again, and you'll never set foot in this house again, you'll be transferred."

The reasons for escaping could be of a completely private nature, as well: I got married, and it was just not working out, no matter what I did ... In 1963 I went to Italy, where my sister was. I somehow managed to get a passport through a personal connection and then in early '64, I had a friend working at Cinema Zagreb and I, well, confided in her. But, she had a friend working for the State Security Administration. So she accidentally let that information slip. And then, in December, I took my passport and went to the border, to go through. When I arrived, I was told: "You can't." And when he said that, I was in the middle of the border doing this (showing obscene gestures). The Italians were laughing like crazy. "Did you punch him, or what?" "No, no! He was gone for a second, and in that moment I managed to slip through. To the middle of the border. I knew they wouldn't shoot after that point. And now, I have to go ..." (Ottochian 2008, oral history)

## CONCLUSION

Using verbal testimonies that I personally collected and two other oral histories from the literature, I have mentioned twenty-two people (nineteen men and three women) who illegally fled the country. In addition to these testimonies I have also listed three archival documents mentioning the escapes of two more men and the possible reasons for fleeing the country.

Four of them were underage (three schoolboys and a young girl), three were just about to start their military service, while the rest were mostly young people ranging from their early twenties to the late thirties. Their occupations are as follows: a housewife, a driver, shipyard workers, factory workers, hospital personnel, military personnel, police officer, schoolchildren and a university student. One of them is a convinced communist, and three are members of the anti-fascist movement.

Their reasons for fleeing were diverse: fear of revenge and the new ruling power, political disagreements because of the conflicts with the Cominform, a lack of political freedom, avoiding military service, unemployment, poverty, a desire for a better life, "enemy" propaganda, establishment of the border towards Trieste, personal reasons.

One's nationality also played a big role in the process of escaping. In the paper, I presented the testimonies of Anamaria Crasti and her mother who felt strong affiliation with the Italian nation and therefore fled. National affiliation as a main escape motive is also described in about a dozen testimonies in the work of Ivan Pauletta (2005).

Although a large number of respondents who still need to be interviewed will, upon further examination of the archival materials, give a clearer insight into the motivation of the fugitives, the results of the existing research show that there was no single motive or reason that was crucial for making the decision to illegally flee the country.

The different perspectives presented in the stories show the complexity of the illegal migrations caused by the sociopolitical situation in Istria after World War II. The individual memories cited in the text are divided into two discourses: the act of escaping itself and the reason for it. It is noticeable that in the first two phases of illegal migration the reasons for the escapes were conditioned by both political and economic circumstances in Istria, while in the next two phases of illegal migration different motives prevail, mainly since the structure of refugees from Yugoslavia changed in the mid-fifties.

In using the oral history method I wanted to describe part of the social atmosphere that prevailed in Istria during the time period in question – an atmosphere that urged Istrian people to escape. To confirm the knowledge I had gained in my field work I also used archival material, which complemented and reaffirmed these discoveries associated with escape motives, especially in the first stage of illegal migration.

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## POVZETEK

### ILEGALNE MIGRACIJE IZ HRVAŠKEGA DELA ISTRE MED LETOMA 1945 IN 1968

Igor JOVANOVIĆ

Ilegalno izseljevanje iz Istre je pojav, o katerem se je v hrvaškem zgodovinoписju druge polovice 20. stoletja zelo malo pisalo ali govorilo, se pa temi veliko več pozornosti posveča na začetku 21. stoletja. Prav tako je zelo malo literature, neraziskano pa je tudi arhivsko gradivo. Ilegalno izseljevanje se je pogosto označevalo kot eksodus ali pa kot njegov del. Vendar sta ilegalno izseljevanje in eksodus dva paralelna procesa, ki sta se odvijala neodvisno eden od drugega. Čeprav so se posamezne faze eksodusa in ilegalnega izseljevanja med seboj prepletale, sta oba obdržala svoje značilnosti.

Avtorjev glavni metodološki pristop za razumevanje in pojasnjevanje modalnosti in načinov ilegalnih pobegov iz Istre od konca druge svetovne vojne do konca šestdesetih letih 20. stoletja je bilo ustno izročilo. Z njegovo pomočje je opisal del takratnega družbenega vzdušja v Istri, ki je Istrane nagnalo k prebegu. Pri preverjanju spoznanj, do katerih je prišel s terenskim delom, je uporabljal tudi arhivsko gradivo, ki je dopolnilo in potrdilo pridobljena spoznanja.

V petdesetih letih, po resoluciji informbiroja, še zlasti pa v šestdesetih letih 20. stoletja, se je stanje spremenilo. Takrat je Jugoslavija izšla iz obdobja totalitarizma in se postopoma liberalizirala in demokratizirala. Zaradi postopnega odpiranja meja in liberalizacije potnih listin je bilo ponovno mogoče prečkati meje. Dejanskega števila ilegalnih prebežnikov, tako iz Istre kot iz Hrvaške ali Jugoslavije, nimamo; arhivsko gradivo je namreč nepopolno, pa tudi informacije so odvisne od posameznih avtorjev.

Avtor opaža, da so bili vzroki prvih dveh faz ilegalnih izseljevanj odvisni od političnih in ekonomskih razmer v Istri. Ker se je v drugi polovici petdesetih let struktura beguncev iz Jugoslavije spremenila, so v naslednjih dveh fazah izseljevanj prevladovali različni motivi. Ti begunci niso več okarakterizirani kot politični begunci, večina med njimi namreč ni bila povezana s politiko. Pri večini so glavni razlog za beg ekonomski motivi.

H kompleksnosti čezmejnega prebega prispeva približno deset kategorij istrskih prebivalcev, posredno ali neposredno povezanih z ilegalnimi izseljevanji. Avtor tudi te begunce deli v tri kategorije.



## POST-WAR URBANISM ALONG THE CONTESTED BORDER: SOME OBSERVATIONS ON KOPER/CAPODISTRIA AND TRIESTE/TRST

Neža ČEBRON LIPOVEC<sup>1</sup>

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### ABSTRACT

**Post-War Urbanism along the Contested Border: Some Observations on Koper/Capodistria and Trieste/Trst**

The article presents observations from recent architectural historical research on the post-war construction of Slovene coastal towns. The urban planning concepts that formed the "Slovenian Coast" and followed the migration processes are explored. The solutions for the Slovenian Coast are compared with contemporary urban plans for Trieste, set in a larger historical framework. Certain interventions in "ethnically pure" locations (new settlements called 'borghi' on the Karst boundary surrounding Trieste; new construction in the Venetian core of Capodistria) are highlighted, and approaches in the design of new urban areas and two symbolic spaces of representations on both sides of the border are compared.

**KEY WORDS:** post-war urbanism, symbolic marking of space, Koper/Capodistria, Trieste/Trst, border

### IZVLEČEK

**Povojni urbanizem ob sporni meji: Nekaj opažanj o Kopru/Capodistria in Trstu/Trieste**

Prispevek predstavlja opažanja iz nedavne arhitekturnozgodovinske raziskave o povojni izgradnji slovenskih obmorskih mest. Osredotoča se na urbanistične koncepte, s katerimi je bila oblikovana »slovenska obala« in ki so spremljali proces migracij. Rešitve na slovenski strani so z ozirom na širši zgodovinski okvir primerjane s sodasnimi urbanističnimi načrti za Trst. Poudarjeni so izbrani posegi v »etnično čiste« lokacije (ezulski *borghi* na tržaškem kraškem robu; pozidava beneškega Kopra), hkrati pa primerjani pristopi v oblikovanju novih mestnih predelov ter dveh simbolnih prostorov reprezentacij na obeh straneh meje.

**KLJUČNE BESEDE:** povojni urbanizem, simbolno označevanje prostora, Koper/Capodistria Trst/Trieste, meja

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## INTRODUCTION

Urban planning and architecture, as the spatial representation of power, can also be read as the Althusserian ideological apparatus of the state (Rotar 1980). Both construction activities and demolition play an equally communicative role. Aside from the pragmatic effect of improving the living standard, they have the symbolic role of marking the space (Veschambre 2008). This issue is especially delicate in ethnically contested territories (ibid.; Hepburn 2004), and even more so when major ethnic restructuring occurs through population transfers.

Post-war periods, as moments of major redrawing of borders and restructuring, are a specific context of this issue – as is the case in the Istria region of the northern Adriatic, on the border between “democratic” Italy and socialist Yugoslavia. The post-WWII period was a time of slow yet radical transformation of this region, inhabited by Italian, Slovene and Croatian-speaking inhabitants. This “ethnic metamorphosis” (Purini 2010) is clearly discernible in the built environment. Visible changes can still be seen in the urban areas of present-day Slovenian Istria, especially in the city of Koper/Capodistria, at the same time a similar process was taking place just across the new border – in Trieste/Trst/Triest.

The present paper derives from recent doctoral research in architectural history on the post-war construction of Slovene Istrian towns, specifically that of Koper (Čebrown Lipovec 2018). It presents an overview of the urban planning approaches on both sides of the border, with a focus on the urban development of Koper, while that of Trieste is used for comparison. The planning approaches are placed in a broader socio-political context. The “marking of space” through demolition/preservation, as proposed by Veschambre (2008), is used as the main interpretative tool. The data for Koper are taken from archival documents on urban planning (Koper Regional Archive), while the data on planning in Trieste are taken from a selection of existing studies (Klabjan 2017; Marin 2012; Volk 2003; Pozzetto 1997).

## FIRST POST-WAR URBAN PLANS IN A DIVIDED REGION

In the period after World War II, during the creation of new nation states, population transfers were a general approach in enabling this process, and at the same time, at least formally, preserving peace (Corni 2015). As an ethnically mixed border area between the emerging Yugoslav socialist state and the capitalist West, Istria presented a specific challenge in drawing the new border between Italy and Yugoslavia. The Free Territory of Trieste (FTT) (1947–1954) was the first mechanism used to address the issue. The contested area was organised as a temporary, multinational buffer state, with its own Statute, and divided in two zones: Zone A in the western part around Trieste was governed by the Allied Military Government, while the eastern part, extending from Koper to the Mirna River, was governed by the Yugoslav

military administration. As Pirjevec (2008) explores in detail, in the decade between 1945 and 1954, several scenarios were drawn up by the international political forces in charge. Supporting the Italian ambitions, the American and English politicians promoted the annexation of the entire FTT to Italy; conversely, the Russian scenario aimed at integrating it into Yugoslavia, with options to keep Trieste as an autonomous zone. The negotiations also led to the proposing of a mosaic division of the land according to ethnic affiliation, which implied that the southern outskirts of Trieste, in the area between Noghere/Oreh and Žavlje/Zaule, would become Slovenian (Yugoslav), and function as a corridor to the sea, while the small medieval cities of Koper/Capodistria and Izola/Isola would be annexed to Italy, so only the urban outskirts would be granted to Slovenia (Rogoznica 2011: 291; Pirjevec 2008: 460–461; Beltram 1986: 39), somewhat similarly to the Gaza Strip. The dilemma was resolved by the London Agreement in 1954, through which Zone A was annexed to Italy and Zone B to Yugoslavia.

Simultaneously with the key events in northern Istria, other contested spaces around the world were undergoing radical transformations: the 1948 establishing of the State of Israel on Palestine territory; and Chandigarh, the new capital of Eastern Punjab region in India, which was built after the split with Pakistan. Major destroyed cities and capitals of Europe were undergoing reconstruction, and new cities and quarters were built, imbued with symbolic meaning. The best-known is the Karl-Marxalle, later Stalinalle, in Berlin. For Slovenia, the “new Gorica”, Nova Gorica, built on the upper Slovenian-Italian border, was significant, since the old Gorica had been “aggressively torn out [of Slovene hands] by the western imperialists”, in the words of Slovene press (Ramšak 2015: 75), and it remained part of Italy. This representative urban planning project was started in 1947: the new town was supposed to “shine” across the border (Ukmar 1993: 22). The plan was designed by Edvard Ravnikar, the leading new Slovenian modernist architect, and a pupil of Le Corbusier. Yet, while Nova Gorica was built from scratch, on Slovene national and ethnic territory, the context of the Istrian cities, lying on the maritime part of the same border, was drastically different. The “new Koper” grew atop a very rich historical and multi-ethnic environment.

### **First Regional Plan for Zone B of the Free Territory of Trieste**

In 1948, while working on Nova Gorica, Ravnikar was also involved in the drafting of the first conceptual regional plan for Zone B of the FTT, exhibited in 1950 at the economic exhibition in Koper (Krečič et al. 1996: 14).

The plan is an expression of the desire to strengthen the links between the coastal towns and their eastern hinterland, envisaging the Slovenian and Yugoslav objective to annex the area. As opposed to later plans, the focus of development was not the city of Koper, but Izola, a town with a strong industrial infrastructure, and

Sečovlje, an area with a charcoal pit. The plan followed the communist principle that new towns should develop next to major industrial sites.

At the time, no urban plan yet existed for Koper, except for some housing in the outskirts (Semedela/Semedella). There were plans to expand the city, but the uncertain fate of the FTT hindered any action. The potential scenarios for the division of the territory influenced the locations of new housing: the possibility of having to cede the cities of Koper and Isola to Italy dictated the decision to build new housing around Koper on the *terraferma*, i.e. in Semedela, Škocjan and Bertoki (Beltram 1986: 39; Rogoznica 2011: 291). Thus, large-scale planning was begun only after the London Agreement.

### Post-War Planning of Trieste

Simultaneously, in 1949, a new urban plan was also designed for Trieste. It was conceived after the first free local elections won by the democratic Christian engineer Gianni Bartoli, a defender of the city's Italian identity (Cardin 2004: 22), and was based on the decision, adopted by the Allied administration in 1947, that the focus of development in Trieste consist in expanding the industrial zone on the eastern outskirts, around the village of Žavlje (Di Biagi 2004: 14). This area, historically the site of salt pans, had been foreseen as the main industrial zone even in earlier plans, especially those of the architect Grassi in 1934 (Marchigiani 2004: 87; Marin 2012: 617–618). Bartoli's plan was thus developed on these bases but had more dimensions. In pragmatic terms it aimed at the organic growth and management of the city, but it was also a symbol of Bartoli's vision of the "*grande Trieste*" (Basso 2004: 37). A prominent role in this planning process was taken over by the renowned architect and urban planner Max Fabiani.<sup>1</sup> In 1953, Fabiani got in touch with Bartoli and exhorted him to demand "the right and the responsibility to make it clear what [the city of Trieste] needs to ensure its existence" (Pozzetto 1997: 377). He pursued the idea of a free and modern, market- and industry-oriented development of Trieste, for which a large radius of at least 40 km was needed. In this plan, Koper would become (or remain) "merely a suburb of Trieste" (in Di Biagi 2004: 15). In his vision, the city and its hinterland with the Istrian towns needed to be integrated into the same state, or at least under the same administration.

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1 Architect and urban planner Max Fabiani (1865–1962), originally from Kobdilj (Štanjel) on the Slovenian Karst, was one of the most influential architects and urban planners of the Austro-Hungarian empire, a collaborator of key Austrian theoretician of urban planning Otto Wagner, and professor at the Technical University of Vienna. Aside from his architectural and urbanistic oeuvre, which spans from Vienna to Ljubljana and Trieste, he also produced reconstruction plans for towns in the Friuli region that had been damaged during World War I (Pozzetto 1997).

Fig. 1: Plan for the development of the Trieste metropolitan area, architect Max Fabiani, 1954



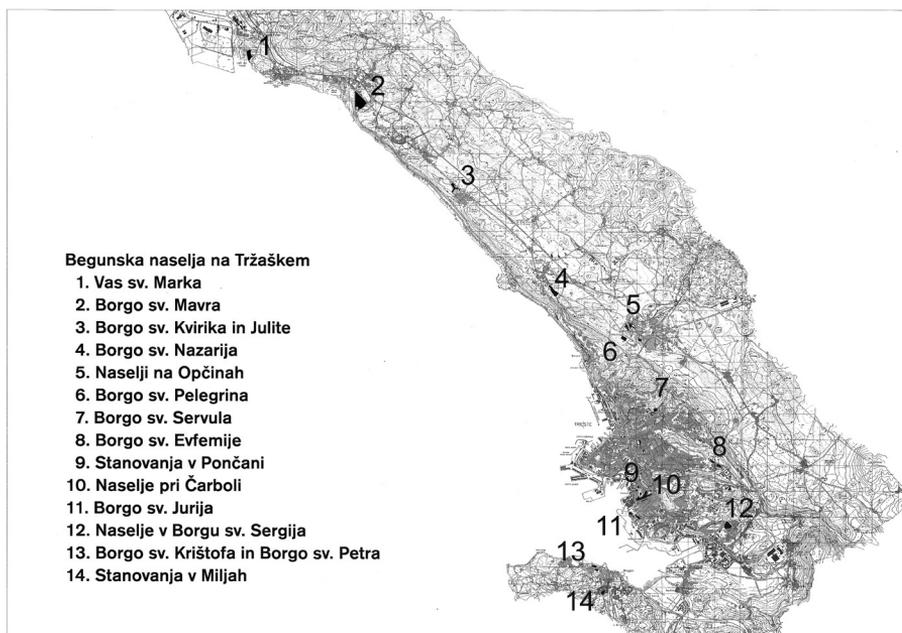
Source: Pozzetto 1997; kept in the Archive of Mayors' Secretariat of Trieste

Designed in 1954, the plan conceived Trieste as a *città territorio*, a metropolitan area for 600,000 inhabitants, extending over a 50-60 km strip between the mouth of the Soča River on the west and the city of Piran on the east. The transport network was a central issue: Fabiani foresaw a hierarchical backbone of a metropolitan railway running to Koper, but also planned funiculars that would connect the city transversally with the hinterland on the Karst boundary (Pozzetto 1997: 378–379; Basso 2004:

38–39). This broad vision of development was part of a larger conceptual plan that Fabiani had been developing for the northern Adriatic region since the early 1900s (Pozzetto 1997: 369–371). Fabiani's plan for Trieste was never realised, except for certain aspects of the transport network (ibid.: 378–379).

However, the idea to link the city and the Karst boundary was realised differently. Even before Fabiani's plan, the Julian and Dalmatian refugees' assistance board (*Opera per l'assistenza ai profughi giuliani e dalmati*, OAPDG) was created in 1952, with the task to provide housing for those refugees, built mainly on the outskirts of Trieste, on Slovene ethnic territory in the Karst villages, and in neighbourhoods that had strong Slovene populations.<sup>2</sup> The first part to be settled by refugees, and the most transformed ethnically, was the north-western part of the Karst boundary (Volk 2003: 296; 2004: 316–317), namely Villaggio del Pescatore (1952) in the municipality of Devin-Nabrežina/Duino-Aurisina, next to the town Štivan/San Giovanni al Timavo, and Borgo San Mauro next to the nearby town of Sesljan/Sistiana. Others followed: the settlement of Campo Romano in Opčine/Opicina (1953); the settlement of SS. Quirico e Giulitta in Križ/St. Croce (1953), and the settlement of Borgo San Nazario on the outskirts of Prosek/Prosecco (1955); a total of 14 new settlements or neighbourhoods were built (Volk 2003: 302–307).

Fig. 2: Map of new settlements (*borghi*) for Istrian and Dalmatian refugees in the area of Trieste



Source: Volk 2003

<sup>2</sup> Fundamental research on the settlement of Istrian and Dalmatian refugees in the area of Trieste and the ethnic bonification of the Trieste area was conducted by Sandi Volk (1997, 2003, 2004).

The post-war expansion of Trieste with new settlements for refugees turns out to have been a clear case of the “national bonification”, or Italianisation, of the larger Trieste area (Volk 1997, 2003, 2004). The rural periphery and suburban quarters of Trieste, with a majority Slovene and/or proletarian population, was reputed by the Italian authorities to be an area of “leftist Slovene communities”, derogatively termed “*slavokomunisti*” or “anti-Italian forces” (Volk 2004: 316–317). The strongest bonification process occurred in the municipality of Devin-Nabrežina/Duino-Aurisina, so as to ensure the military-strategic control of the transport corridor, since here the distance between Yugoslavia and the sea was barely 3 km as the crow flies (*ibid.*). Some of the *borghi* operated as physical and social barriers between historically Slovene villages, which became parts of the city: these included the new settlement of Chiarbola/Čarbola, built between the quarter of Sv. Jakob/San Giacomo and Škedenj/Servola. These spatial planning interventions signified long-term social changes: upon the settlement of the new inhabitants a new pro-Italian electoral body was formed, and new Italian schools were created (*ibid.*). The identity of the area of the Karst boundary began to change.

## URBAN PLANNING AFTER 1954: A NEW REGIONAL CAPITAL

According to the new border drawn by the London Agreement, the Slovenes lost the long-awaited Trieste, while the Italians lost the Istrian towns, and as a result numerous metamorphoses took place on both sides of the border.

### The Metamorphosis of the Northern Istrian Towns

During the period of the FTT, the prevailing ideal of the leading local political party, the SIAU-UAIS (*Slovensko-italijanska antifašistična unija – Unione antifascista italiano-slovena*), was that of *fratellanza*, brotherhood between the Italian and Slovene nation in Istria. Hence, a certain level of coexistence between the two ethnicities was sought; considering the temporary role of the FTT, the economic transformation from private enterprise to public was not fully realised, and small merchants, mainly of Italian origin, were still allowed to trade (Rogoznica 2011). This attitude was perceived by the central Slovenian political authorities, namely the League of Slovene Communists (LSC), as ideological incomppliance. Just before the annexation of Zone B to Yugoslavia, in July 1954, Boris Kraigher, president of the Executive Committee of the Slovenian National Assembly, expressed a clear critique of the attitude of the party leaders in Zone B about the national issue: “We still haven’t carried out the revolution that we should have in 1945, that this is a Slovenian territory. I still have the impression that this is a territory under occupation!” (quoted in Rogoznica 2011: 301–302).

After the annexation, this “failed revolution” was gradually realised. The local political functionaries and professional staff in Istria were removed: the internationalist-leaning leaders open to collaboration with the pre-war population were replaced by politically more suitable new representatives<sup>3</sup> of the “new hard line”<sup>4</sup> of opponents of *fratellanza* (Hrobat Virloget 2015: 541). A similar ideological shift from the internationalism of the FTT to the social patriotism of Yugoslavia occurred in Rijeka/Fiume in the early post-war years (Abram 2017: 5–8), where the “commitment to the promotion of national identity could overshadow the wider process of building the socialist society” (ibid.: 9). The shift in ideological system as well as the process of creating a mono-national state provoked a progressive yet tectonic shift in the population of the Istrian coastal urban areas (Titl 1961; Kalc 2015; Hrobat Virloget 2015). The pre-war inhabitants of the area, whose mother tongue was mainly Italian or the Istro-venetian dialect, started to emigrate from the region, and new inhabitants from inland Slovenia started to immigrate – first from nearby areas (Trieste, Brkini, northern Primorska), and later also from central Slovenia and Štajerska, and finally, from the 1960s on, mostly from other Yugoslav republics (Kalc 2015). By 1956, the moment of “normalisation” (Titl 1961: 22), more than 90% of the pre-war population of the three northern Istrian towns had left the area, and new inhabitants had resettled it. As a non-south-Slavic minority, the remaining Italians, despite their status as an official minority, became marginalised in the public sphere.

The new borderline split the land “inorganically” into two parts and separated Trieste from its natural hinterland. The new political and geographical reality of northern Istria required a new vision of economic development. Immediately in late 1954, the Slovene authorities introduced large-scale industry (the Tomos motorcycle factory), and in 1957, even more significantly, established the Port of Koper (Terčon 2015). Another salient economic field was tourism, developed strategically as a key source of foreign currency (Šuligoj 2015: 22; Križman 2005: 121).

In 1955, arriving in step with the “political hard line”, the architect Edo Mihevc<sup>5</sup> was given the most influential role in urbanism as president of the new Urban Planning Council in the District of Koper. In a short time and in large proportion, the

3 The secretary of the local committee of the Communist party during the period of Zone B, Julij Beltram, was replaced in 1955 by Albert Jakopič – Kajtimir, and the new president of the District of Koper, Albin Dujc, took office along with him (Čebtron Lipovec 2018).

4 At the same time, Emil Smole, the first Slovene director of the museum in Koper, who had been in charge of the protection of monuments, was sent away and replaced by an ideologically more appropriate new director (Plesničar Gec 2002: 106).

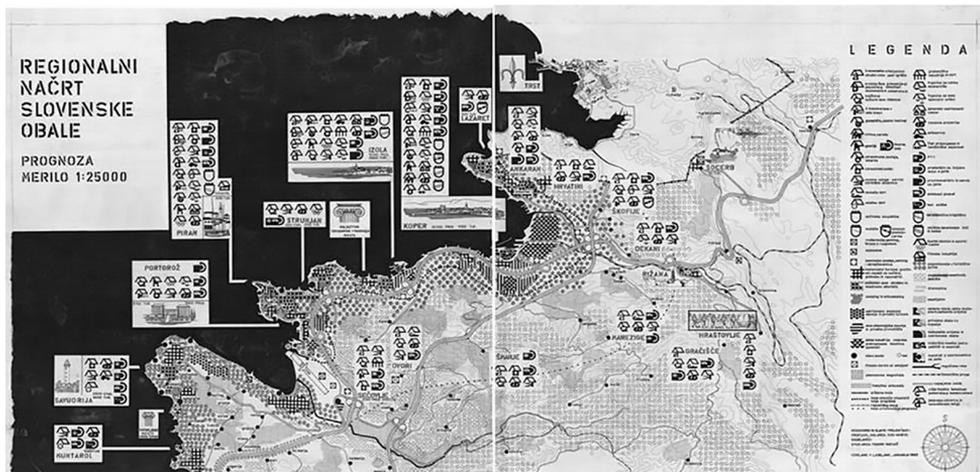
5 Edo Mihevc (1911–1985) was one of the leading figures of post-war modernist architecture in Slovenia, as he was not only a professor at the School of Architecture in Ljubljana but also an influential figure within the Slovene Communist elite. He is known for having introduced some representative modernist building types in the Slovenian context (the Metalka skyscraper in Ljubljana; ‘Kozolec’ housing as a version of Le Corbusier’s *unité d’habitation*, also in Ljubljana; the new Cultural Centre of Slovenes and Slavs in Trst/Trieste), but especially as the architect of the “Slovene Coast”, as he designed the new comprehensive urban plan and introduced tailor-made regionalist architecture in the coastal region.

northern Istrian urban areas acquired a completely new look. According to Mihevc, the newly built environment was conceived so as to preserve the visual coherence and continuity in the settlement of the region while allowing its modernisation (Mihevc 1963: 42; Mihevc 1964: 9). Nevertheless, especially in the case of Koper, not continuity but rather a radical reconstruction was pursued.

## The New Regional Capital

Having lost Trieste, the coastal region needed a new capital. The choice of the capital was linked to the location of the new port – the “Slovenian window to the sea”. After discussions among politicians and planners, in 1955–1956, the final location for the port was chosen in Koper, so the comprehensive development of the “Slovene Coast” was started, beginning in 1956. The key planning document, “Regional Plan of the Slovenian Coast”, was developed by Edo Mihevc in 1959–1963. Tourism was the main economic field for the region, while each town was assigned its own role: Koper as the administrative and industrial centre; Izola as industrial and fishing centre; and Piran and Portorož as tourism centres.

Fig. 3: Regional Plan for the Slovenian Coast, Edo Mihevc, 1963



Source: SI PAK KP 865

Mihevc, as the president of the Urban Planning Council, had the political power to propose a comprehensive plan for the entire region that matched the new socialist economic and social ideals. In addition to the central task to define the functions of the towns, his major input consisted in two key aspects: he provided a comprehensive plan for developing the traffic network along the coast, and more importantly he created a common image for the Slovene Coast, devising the idiosyncratic



Fig. 5: View of the streets in the new neighbourhood of Semedela on the outskirts of Koper, architect Edo Mihevc, 1960s



Photo: Neža Čebtron Lipovec 2018

While the port was being constructed in Koper, industrial plants were being built in the eastern suburb of Trieste, in Žavlje (Marchigiani 2004b: 89). Along with them, a new workers' (and refugees') settlement, called Borgo San Sergio, was growing. The task was given to Ernesto Nathan Rogers,<sup>6</sup> one of the most important Italian architects of the time and an influential theoretician within the context of CIAM (Mumford 2000), also originally from Trieste. Between 1955–1956, Rogers, collaborating with local architects,<sup>7</sup> proposed an organically developed, three-zone settlement with diversified, regionalist building types.

6 Not only a key theoretician of CIAM, Rogers also was the chief editor of one of the most influential international architectural reviews, *Casabella-continuità*, where he published several articles and editorials promoting his theories on linking the existing built environment with new construction. Mihevc was a reader of the review, and he published his regional plan for the Slovenian Coast in it in 1963 (Mihevc 1963).

7 The co-author of the project was the municipal engineer Aldo Badalotti (Marchigiani 2002: 328–329).

Fig. 6: View of the streets in the Borgo San Sergio, built according to the plan by Ernesto Nathan Rogers and Aldo Badalotti, 1956–1960



Photo: Neža Čebrov Lipovec 2018

The plan had only been partially executed by the early 1960s, yet it encapsulated much of the spirit of the time – the architectural neorealist trends of the INA-casa national project (Di Biagi 2001) and the more novel architectural concepts of humanised space. Similarly to Mihevc's plans for the Smedela neighbourhood in Koper, this new settlement was designed organically, with alternating blocks of flats and row-houses with pitched roofs, pinkish facades, a main square with a community centre, all immersed in greenery. It seems that the two architects on both sides of the border were aiming at similar objectives – to create a humanised modern environment that related to the *genius loci*.

The building activities in Trieste mainly concerned new settlements on empty lots – but on Slovene ethnic territory. Conversely, especially in Koper, a large part of the new urban structure was placed on top of the existing historical fabric, following Mihevc's plan. Again, the comparison with the prior Bežek's plan (1954, upgraded in 1957) regarding the historic core is apposite: Mihevc foresaw a radical demolition and reconstruction of the historic core, surrounding it with a new city wall of ten-storey skyscrapers. This plan was only partially realised. With regard to the historical framework, we note that Bežek's plan had been prepared during the time of the internationalist local political leaders, whereas Mihevc enters the scene from 1956 on, together with the hard-line Communists promoting socialist patriotism. Bežek's minimalist approach towards the historic centre – the *topos* of the collective memory of the former

inhabitants – hints at the architect’s sensitivity to and respect for history, and thus to the multicultural nature of the historic town. Conversely, Mihevc’s approach shows an absence of such respect, and it can be read as an intentional act of destruction: in practical terms it concerned the renewal of areas with “unhealthy” buildings, but in symbolic terms it eliminated the symbolic markers of the city’s Venetian and Romance past.

## LANDMARKS OF “ETHNIC BONIFICATIONS”

While the Karst around Trieste was undergoing strong ethnic bonification, an inverse process was happening on the Slovenian side of the border – the population, content and image of the historic Istrian towns were changing. New, modern suburbs were rising next to the historic Venetian towns. Where before the war the Capodistriian urban farmers called *paolani* had been cultivating vineyards, in 1954 new industrial plants such as the Tomos factory in Olmo arose rapidly. So, while the Italian national identity and the capitalist-bourgeois ideal was gaining strength in multicultural Trieste, a new Slovene and Yugoslav socialist society was being established in the Slovenian coastal towns.

## Demolitions as Symbolic Negations

The internationalist and multi-ethnically oriented ideal of “*fratellanza*”, typical of the FTT period and documented by memorial plaques and monuments to the antifascist struggle in both Italian and Slovene,<sup>8</sup> was replaced after 1954 by a discourse of socialist patriotism, stressing Slovenian sovereignty and the presence of socialist society, as if in response to Kraigher’s call in 1954 to complete the revolution.

Koper became the central representational space in the contested area of northern Istria. As a result, the city underwent numerous radical interventions, among which the most pronounced was a ten-storey high-rise known as the “Tomos skyscraper” in the Belveder neighbourhood in the historic core of Koper, built to house workers at the Tomos factory. Coloured red, with white and blue window-frames, it recalled the colours of the national flags – as if to comply with the Stalinian motto to build architecture “national in style, socialist in content”. This most visible modernist

8 During the Zone B period, memorial plaques (still visible on Tartini Square in Piran, and in the city centre and outskirts of Izola) and monuments were erected in commemoration of the joint Slovenian-Italian antifascist struggle. The most explicit of all is the still-standing bust of Pier Paolo Vergerio il Giovane, the Protestant Bishop of Koper in 16th century and a friend of the Slovene Protestant Primož Trubar, which was promoted as precursor and symbol of the *fratellanza* ideal. However, these monuments were relatively few in number; after 1954 two more plaques were erected in Koper, and one sculptural monument in Bertoki/Bertocchi in the mid-1970s, in the period of the Osimo Agreement (Hrobat Virloget, Čebren Lipovec 2017).

landmark of Koper was built between 1957 and 1960, despite professional criticism. It was set on the northern edge of the medieval core and became the visual accent of the new Belveder neighbourhood and Koper's skyline. A vast portion of the historical fabric had to be demolished, including the abandoned former Gregorite convent, a symbol of Slavic presence in the city due to their liturgy in Slavic languages (Žitko 2012). As a symbol of the powers in the past, despite its national importance, it was replaced by a symbol of the new socialist Slovene society. The Tomos building was integrated into the later plan for Koper in which the entire perimeter of the historic town was to be demolished and surrounded by a "necklace" of high-rises as a modern city wall. Had the plan been realised in its entirety, most of the historical fabric, namely the vernacular housing, would have been destroyed, and only four main streets would have been preserved as representative sites.

Such a destructive approach can be attributed to the modernising spirit of functionalist architecture that promoted removing "unhealthy" old buildings and replacing them with modern free-standing buildings with better ventilation, sunlight, and greenery (Mumford 2002). But considering the contested character of post-war Istria, these demolitions can also be read as symbolic actions. Following Halbwachs' theory (2001 [1950]) on collective memory, the built environment is the material reference into which collective memory is inscribed. Since the former inhabitants of Koper had departed and the buildings from the pre-1945 era were being demolished, the collective memory and presence of its former inhabitants was also being erased, so the demolitions can be read as "symbolic negations" of the place's identity (Veschambre 2008: 94). After 1955, with the new local hard-line political leaders who promoted Slovenian national discourse against that of *fratellanza*, Kraigher's "unfinished revolution" was in fact being carried out. By late 1956 the emigration of the pre-war local population had ended, and the three towns remained largely empty for Slovene and Yugoslav newcomers to resettle them. On the urban planning level, this was achieved through Mihevc's plans. His approach was dismissed in 1967 after a public tribunal organised by Slovenian specialists in conservation, that untangled the "revolutionary" stamp of Mihevc's approach in the historic core of Koper: "I think this is not a renewal of the city, but rather a revolution of the city. We have de facto inherited the materiality of the town, we have changed its population, its meaning and its programme" (architect Savin Sever, quoted in Bernik 1967: 82).

The large demolitions in the historic town of Koper carried out after 1957 can thus be interpreted as the erasure of the former (Venetian, Italian) identity of the newly acquired Slovenian town, and thus as a tool of the "(national) revolution" or "Slovenisation", or "Yugoslavisation" of the area. A similar process of "intense Croatisation" has also been identified in the post-war period in the city of Rijeka/Fiume (Abram 2017: 6), while similar spatial metamorphoses are known from the Südeten area on the Czech-German border (Elman Zarecor 2014: 69; Wingfield 2000: 254–256), the Polish-German border area, and from Kaliningrad/Königsberg (Sezneva 2003).

In terms of changing the city's cultural and ethnic identity, the interventions in the historic core of Trieste in the 1930s hint at a similar approach. Major symbolic landmarks (Victory Lighthouse; Oberdan Square; Casa del Fascio and the restoration of the Roman amphitheatre and the University building) were realised as intentional markers of space (Klabjan 2017), but entire historic vernacular quarters of Trieste were also planned to be or were in fact demolished and replaced by monumental modern *Stile Littorio* buildings (as in the designs of Camillo Jona) so as to conceal the typical image of the Habsburg emporium (Marin 2012: 619) and "Italianise" the city (Purini 2010: 101–107), but also to "fascistise" it (Klabjan 2017). The same "reconstructive", de facto "fascistising" approach in the historical urban core was also used during the Fascist period in South Tyrol, in the city of Bozen/Bolzano (Steinacher 2013). Nevertheless, in Trieste the process seems to have started already in the Habsburg period, before WWI, with public statues and street-names marking the Italian element, and was perpetuated in the post-war and post-Fascist period (Klabjan 2017).

### Organised Creation of Identity through Symbolic Landmarks

Along with the demolitions and new construction, the renaming of streets and squares also took place according to the new mono-national memory discourse: in Trieste in 1920s-1930s, and in Koper gradually from the Zone B period onwards. The three elements (demolition, new construction, new street names) functioned as a form of organised social forgetting, in parallel with organised social remembering and the creating of a new memory (Wingfield 2000).

As the overview of the development of urban and regional planning showed, the processes on both sides of the Slovenian-Italian border were relatively parallel. The choice of developmental focal points on both sides can be identified as a strategy of material but especially symbolic appropriation through the visual marking of the space (Veschambre 2008). From this point of view, the urban planning strategies on both sides of the border can be read as a symbolic competition in the marking of space between the two ethnic groups: Italians on Slovene ethnic territory, now officially in Italy, and Slovenes on Italian ethnic territory, now officially in Yugoslavia. Decoding the official national discourses, we can see in the urban planning on both sides of the border that each of the ruling groups occupied the territory of the other, silenced the members of the other group (the Italian minority in Slovenia and Slovenian minority in Italy)<sup>9</sup> and at the same time symbolically inscribed its own hegemonic position into the built environment. On the Italian side of the border, this

9 Nevertheless, in the Slovene villages on the Karst boundary, monuments to the antifascist struggle were being erected in phases, starting in the first post-war years and leading into the 1960s and 1970s, and both promoted the antifascist struggle but at the same time, through the inscriptions in the Slovene language, marked the Slovenian ethnic territory (for an in-depth analysis see Klabjan 2016).

process was a continuation of the Fascist approach, symbolised by the Sacrario di Redipuglia (Dato 2013; Klabjan 2017: 14). Yet, the post-war period built its symbolic landmarks as well, and hence the symbolic duel of landmarks is best discernible in two spatial dominants.

Fig. 7: Landmark – Tomos skyscraper, built in the historic core of Koper/Capodistria, architect Edo Mihevc, 1957–1960



Photo: Neža Čebtron Lipovec 2007

As can be seen, sitting on the peak of the former island of the Venetian medieval town Koper/Capodistria, the red skyscraper of workers' flats has dominated the cityscape since 1960, "announcing the Slovene presence on the Adriatic" (Kresal 2016: 85). On the other side of the Gulf of Trieste, on the Karst boundary, next to the Slovene village of Prosek/Prosecco, the Sanctuary of St. Mary (*Svetišče na Vejni / Santuario mariano di Monte Grisa*) was built in 1963–1967.

Fig. 8: Landmark – Sanctuary of St. Mary (*Svetišče na Vejni / Santuario mariano di Monte Grisa*) next to the Slovene village of Prosek/Prosecco, architect Agostino Guacci, built 1963–1967



Photo: Neža Čebrov Lipovec 2018

The idea was conceived by the former Bishop of Koper/Capodistria and Bishop of Trieste, Antonio Santin (Walcher 1989: 7–10). Officially, the edifice was related to consecration of the Italian nation to the immaculate heart of the Virgin. However, the idea had been conceived as early as 1945, when Bishop Santin took a vote to build it to honour the Virgin Mary for saving Trieste from the threat of destruction that was menacing the city at the end of the war (ibid.: 7), namely the arrival of Communism. The Church played a key role in constructing the Italian identity of the new settlements, since the priests that had fled from Istria to Trieste were the "keepers of the

historic memory of the *esuli*"; the figures of Bishop Santin, an Istrian, and Radossi, the former Bishop of Pula/Pola, were the identity references for the Italian refugee community (Volk 1997: 243–244).

A collection of religious artworks on Istrian and Dalmatian culture was installed inside the sanctuary, exposing its role as the monument of the *esuli*. Placed next to the Slovene villages, known for their partisan and communist affiliation, the church represents a symbol of the Italian appropriation of the territory. Its position as a "lighthouse" turned towards the "lost Istria" also seems to (re)appropriate the land it is facing. Conversely, the Tomos skyscraper in Koper, placed on the highest peak of the former island, faces northwest, towards the "lost Trieste". This symbolic confrontation is thus not only ethnic, but clearly ideological: the Christian monument versus the Communist landmark.

## CONCLUSION

Having given an overview of the main planning phases of the two "capitals" on both sides of the new post-war Slovenian-Italian border – Koper and Trieste – we can endorse the notion that a parallel process was taking place between the late 1940s and late 1960s. The urban planning on both sides of the border accompanied the ethnic bonification of the contested spaces (Volk 2003: 295): the Italianising of the hinterland of Trieste and many of its urban, mostly Slovene neighbourhoods starting in the early 1950s, and the "Slovenising" of the historic cores of the northern Istrian towns, especially of Koper/Capodistria, starting in the late 1950s, according to plans by Edo Mihevc. Urban planning thus functioned as a dispositive for promoting national and political ideologies and fixing the new identities of the split territory. Monumental architecture, as Veschambre (2008) suggests, played a crucial role in the symbolic marking of the space, with new landmarks that still today showcase this historic duel.

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## POVZETEK

### POVOJNI URBANIZEM OB SPORNI MEJI: NEKAJ OPAŽANJ O KOPRU/CAPODISTRIA IN TRSTU/TRIESTE

Neža ČEBRON LIPOVEC

V arhitekturnozgodovinskem prispevku avtorica obravnava urbanistične posege po drugi svetovni vojni, ko je imelo v kontekstu vzpostavljanja dveh političnih blokov (demokratsko-kapitalistični Zahod in socialistični Vzhod) ter vzpostavljanja novih nacionalnih držav vprašanje razdelitve ozemlja med Italijo in Jugoslavijo mednarodne razsežnosti. Hkrati avtorica opazuje urbanistične prijeme na obeh straneh meje (predvsem v Kopru in Trstu) in jih, v povezavi s premiki prebivalstva, interpretira s konceptom »simbolnega označevanja prostora« (Veschambre 2008). V prvem povojnem obdobju, ko je zaživel začasno Svobodno tržaško ozemlje (1947–1954) s conama A in B, so že začeli nastajati prvi načrti. Na jugoslovanski strani je arhitekt Edvard Ravnikar v obdobju 1948–1949, ko je bila gradbena dejavnost v coni B še zmerna, oblikoval idejni načrt njenega razvoja. V coni A pa se je intenzivna gradbena dejavnost začela s pozidavo novih naselij (*borghi*) za istrske begunce na slovenskem etničnem območju v ruralnem zaledju Trsta (Vovk 2003). Že leta 1953 je začel nastajati velikopotezni načrt uveljavljenega arhitekta Maksa Fabianija za razvoj Trsta kot širšega urbanega območja (od izliva Soče do Pirana); načrt je snoval z novoizvoljenim proitalijanskim tržaškim županom Giannijem Bartolijem.

Raznolike politične vizije razdelitve prostora so vplivale tudi na posege v prostor, tako je bil na območju Kopra v času STO razvoj predviden predvsem na *terrafermi*, torej proč od zgodovinskega jedra. Dokončna razdelitev ozemlja po Londonskem memorandumu (1954) je sprožila velike prostorske spremembe, ki so spremljale globoke etnične metamorfoze (Purini 2010). Po zadnjem eksodusu nekdanjih prebivalcev istrskih mest (1956) in ob intenzivnem priseljevanju Slovencev iz drugih pokrajin se je začel veliki razvoj »slovenske obale« s Koprom na čelu. Arhitekt Edo Mihevc, avtor prvega celovitega regionalnega načrta (1959/1961/1963), usmerjenega v turizem, je zasnoval povsem novo regionalno modernistično arhitekturo, ki pa je zahtevala množične rušitve historičnega tkiva. Skoraj hkrati je tik ob meji, v Žavljah, moderno, regionalno uglašeno novo naselje Borgo San Sergio načrtoval tudi vodilni italijanski arhitekt Ernesto Nathan Rogers. Poteze nacionalnega in ideološkega označevanja prostora, izvedene na obeh straneh meje, danes simbolizirata Tomosova stolpnica v starem Kopru in svetišče na Vejni pri Proseku.

# THE SURVEILLANCE AND PERSECUTION OF SLOVENE ANTIFASCISTS IN ARGENTINA: HOW THE AUTHORITIES CONSPIRED IN COMBATING “UNDESIRE” IMMIGRATION

Miha ZOBEC<sup>1</sup>

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## ABSTRACT

**The Surveillance and Persecution of Slovene Antifascists in Argentina: How the Authorities Conspired in Combating “Undesired” Immigration**

Opposition to the fascist policy in the Julian March, as well as to fascism in general, led to close surveillance of Slovene emigrants from this area by Fascist Italy. The author first provides an outline of the Italian surveillance of the activities promoted by emigrant associations, then analyses the pressure exerted by the Argentine authorities on leftist emigrants and the sharing of their criminal records with Italy, and finally focuses on antifascist activities promoted by female immigrants. He argues that the Italian extraterritorial surveillance depended on the type of emigrant transnational political engagement, which was motivated by increased suppression of the minorities in the Julian March.

**KEY WORDS:** fascist surveillance, emigrants from the Julian March, antifascism, emigrant political engagement, extraterritorial control of emigrants

## IZVLEČEK

**Nadzor in preganjanje slovenskih antifašistov v Argentini: Zarotniško delovanje oblasti pri spopadanju z »nezaželenimi« priseljenci**

Zaradi nasprotovanja fašistični politiki v Julijski krajini, pa tudi fašizmu nasploh, je fašistična Italija skrbno nadzorovala slovenske izseljence iz Julijske krajine v tujini. Avtor v prispevku najprej prikaže italijanski nadzor nad dejavnostmi emigrantskih društev v Argentini, sledi analiza argentinskega pritiska nad levičarskimi izseljenci in izročanje njihovih dosjejev Italiji, na koncu pa pozornost posveti antifašistični dejavnosti izseljenk. Avtor ugotavlja, da je bil italijanski zunajteritorialni nadzor odvisen od transnacionalnega angažmaja izseljencev, ki se je povečal v času intenzivnega zatiranja manjšine v Julijski krajini.

**KLJUČNE BESEDE:** fašistični nadzor, izseljenci iz Julijske krajine, antifašizem, angažirani izseljenci, zunajteritorialni nadzor nad izseljenci

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## INTRODUCTION

Just a couple of months after settling in Argentina, Viktor Bogatec took part in a demonstration celebrating 1 May in Buenos Aires. The grandeur of the event was so impressive that he felt as if he were in paradise. Only eight days after his arrival he had joined the ranks of the communists.<sup>1</sup> At that time, Franc Štoka, a fellow countryman from a neighbouring village and an ardent communist, had been waiting for him to disembark at the port in Buenos Aires. Štoka, known among his comrades as a brilliant orator, came to Argentina as a stowaway from the port of Antwerp. His zealous support of communist ideas made his life in the fascist Julian March<sup>2</sup> difficult. In order to avoid the fascist justice system, he tried to escape prosecution by fleeing first to Yugoslavia and then to Germany. In Hamburg, he wanted to make a transoceanic voyage, but the Italian consulate rejected his request for the documents needed to cross the Atlantic. Nevertheless, he was not dissuaded from his plan and embarked on a ship in Antwerp without the necessary papers. Upon arriving in Argentina he quickly joined the communist party and soon became one of the most strident members of its Yugoslav section. As a persuasive speaker, he posed a considerable threat to the established political order. After the coup that established a military dictatorship in 1930 he was constantly harassed by the authorities until he was finally expelled from the country in 1933.

The Italian authorities were familiar with Štoka's revolutionary activities even before his repatriation and ensuing confinement on the island of Ponza. In fact, the endeavours of the Argentine police to suppress the leftist immigrants from the Julian March appeared to be closely monitored by the Italian diplomatic service. The fascist system of the surveillance of "subversives", conducted by the staff of the Casellario Politico Centrale (Central Political Repository, hereinafter CPC) was not entirely new. Initially a list of subversives drawn up before the end of nineteenth century to quell labour unrest, in 1926 the CPC became an autonomous office, reporting directly to the Division for Public Safety of the Ministry of the Interior. Suppression of the anti-fascist movement became the primary goal of this division and the list of people who were under observation was greatly expanded (Cresciani 2004: 8; Tosatti 1992: 134; Serio 1985: 75). Although the fascist system of surveillance appeared to be a continuation of the one used in Liberal Italy, the fascist pursuit of controlling all the spheres of society was in fact unprecedented (Dunnage 2008: 246). The reorganization of the police undertaken by the new police chief in 1926 along with the adoption of the

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1 Department of History and Ethnography at the Slovene National and Study Library in Trieste (OZE NŠKT), Emigration Collection, Interview by Aleksej Kalc with Viktor Bogatec, 21 March 1988; Štoka's story is based on the documents in his personal file from the Archivio Centrale dello Stato (ACS), Casellario Politico Centrale (CPC), box (b.) 4958, file (f.) 012685.

2 The 'Julian March' is the English translation of the Slavic designation (Julijska krajina) for the Venezia Giulia region, which was annexed to Italy in November 1920. It referred to the territory including Trieste, Gorizia, Istria and parts of the Dalmatian coast (Hametz 2005: 87).

*leggi fascistissime* (thoroughly fascist laws) in the same year institutionalized surveillance and introduced unparalleled levels of social control. The system, founded on the act of gathering data on the regime's opponents, turned Italy into a "dossier society" where police files were kept on anybody posing a threat to the regime (Fonio 2011: 81). The lack of archival research on the subject, however, makes it difficult to identify any differences that might have appeared in the system between the centre and the peripheries. However, it could be said that the main distinction was that the fascist regime treated the Slavic minorities of the Julian March as racially inferior and subjugated them by the use of the stick without the carrot (Kacin Wohinz 2008: 72; Verginella 2016: 715). In contrast, consent in central Italy was achieved through a combination of coercion and seduction (Ghirardo 1996: 365). These facts indicate that the surveillance conducted by the *fascismo di confine* (border fascists) in the Julian March was more pervasive than that in central Italy from the very beginning.<sup>3</sup>

Fascist policy regarded emigration as a vehicle for expanding Italian hegemony. In order to accomplish this, the fascists worked to transform the Italian emigrants into colonies within the fascist empire (Gabaccia 2000: 130). Moreover, fascist diplomatic policy equated fascism with Italian identity, and considered any opposition to the regime to be anti-Italian (Pretelli 2010: 60–61). Not only were antifascists closely monitored, anybody who did not adhere to the fascist propaganda abroad raised considerable suspicion (Franzini 1999: 170). The associations of emigrants from the Julian March which exposed the discrimination against the minorities in that region were by definition anti-Italian, and the fascist diplomatic service did not hesitate to monitor their activities. I will use documents from the Italian embassy in Argentina to demonstrate how Italy increased its extraterritorial control over the emigrants from the Julian March at the time when the antifascist resistance in the Julian March was at its peak. While the files of the CPC enable us to analyse the state's surveillance system, they also allow us to take a closer look at the individuals who were under observation (Dilemmi 2010: 1–2). Consequently, in the following section I examine the surveillance of the politically active emigrants involved in the Argentine labour movement and show how the Argentine authorities suppressed them and reported their activities to Italy. In order to present their personal backgrounds, I supplement the materials from the Italian authorities with interviews and memoirs. My next objective is to show that the level of surveillance did not necessarily depend on the level of personal engagement. I will demonstrate that certain individuals who were not committed to political ideals were nevertheless under observation. Conversely, many fervent activists were given files only when police pressure in Argentina increased. Finally, I examine the activity of women.

The relentless surveillance of emigrants from the Julian March was an extension of the fascist policy of national expulsion at home. The Italian nationalizing migration

3 Fonio divides the fascist surveillance into two phases. In the first phase the antifascists were under surveillance, while the second (which coincided with the anti-Semitic turn in the second half of the 1930s) included all ranks of society (Fonio 2011).

policy exacerbated interwar European trends aimed at purifying the nation by encouraging the departure of ethnic minorities, while restricting the exit of people belonging to the dominant ethnic group (Zahra 2016: 109–110; Brunnbauer 2012: 605). Thus the migration of Slovenes and Croats from the Julian March is not surprising. It reached its peak after the strategy of prohibition of emigration of ethnic Italians was adopted in 1927. This new demographic policy coincided with increased discrimination against the Slavic population from the Julian March and served as a pretext for encouraging their departure (Kalc 1996: 25–27; Kacin-Wohinz 1990: 24–27). The atmosphere of intimidation and fear, so ubiquitous in fascist Italy, was further aggravated in the Julian March by policies of forced assimilation directed against the “allogenic” population (the official fascist policy declared Slovenes and Croats to be foreigners on their own soil) (Ebner 2011: 14). Although individual motivations for migration varied from political exile to economic deprivation, it was the general feeling of precariousness that led people to emigrate (Kalc 1996: 25).

The country which received the greatest share of immigrants was neighbouring Yugoslavia, regarded by many Slovenes and Croats as their home. Associational activities, dismantled by the fascist rule in the Julian March, could in many ways continue functioning unhampered there. Argentina, on the other hand, accepted around 22,000 Slovene immigrants and became the most important overseas destination (Sjekloča 2004: 79). It also welcomed communists, who were being persecuted in Yugoslavia. The pull factor attracting immigrants to Argentina was significant and coincided with the major push factor driving the “allogenic” population out of Italy. Furthermore, the natural growth of the Argentine population was not high enough to meet the needs of its expanding economy. Therefore, immigration was an obvious solution to facilitate further industrial growth. Many Slovene emigrants found jobs in the flourishing urban construction sector (Lewis 1992: 187–189; Mislej 1996: 95).

However, after the putsch by General Uriburu in 1930 and the ensuing undemocratic government, associations of emigrants from the Julian March were subject to police raids, and many dedicated members, particularly those active in the Argentine labour movement, were imprisoned. The Argentine repression was supported by diplomatic representatives from Italy and Yugoslavia, as well as by denunciation at the hands of Slovene emigrants themselves.<sup>4</sup> Although emigrants from the Julian March were not legally bound to Yugoslavia, its authorities advanced jurisdictional claims over them due to the image of the Yugoslav state as representing the emigrants’ true national homeland (Kurinčič 1981: 175; Rahten 2009: 82).<sup>5</sup> The Yugoslav aspect would certainly be worth examining, especially in the light of the rapprochement between Yugoslavia and Italy in the second half of the 1930s. However, in this paper I will focus

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4 The Slovene communists were complaining that members of the national-liberal group were denouncing them to the police. Cf. »Slovenski fašisti na delu«, *Borba*, April 1931, p. 3.

5 The editor of the nationalist group’s newspaper was also a victim of Yugoslav denunciations (see Kacin 1937).

on the Italian concerns over antifascist activism and the Italian cooperation with the Argentine authorities, starting with the surveillance of associations.

## SURVEILLANCE OF IMMIGRANT ASSOCIATIONS

The association activities of the emigrants from the Julian March in Argentina drew on the system that had been dismantled by the fascist authorities at home. Antifascism united the emigrants (Kalc 2016), although the way in which the antifascist struggle was perceived varied significantly. While emigrants with a Liberal Catholic political background viewed the fascist pillage in the Julian March through a nationalist perspective, bemoaning the enslavement of their “brothers” at home,<sup>6</sup> the communists believed that fascism was the product of global capitalist domination which had to be opposed through an international proletarian revolt.

Political divisions were the source of infinite disputes among emigrants, and they markedly influenced the way associations were subjected to surveillance. Although the fascist diplomatic corps considered both groups to be a threat to Italian power, the Argentine authorities were only concerned about the communists, whose activities were subsequently denounced to Italy. It should be noted that the Italian extraterritorial control over the emigrant activities was spurred by emigrant transnational political engagement in the form of long-distance nationalism (nationalism crossing borders, or in this case, continents) (Skrbiš 1999: 6), which was, in turn, motivated by the repression of the minorities in the Julian March (cf. Brunnbauer 2009). Local institutions such as the prefectures in the emigrants’ places of origin played a crucial role in the fascist extraterritorial control. Information concerning suspicious emigrants was passed from both the consular officials to the CPC and then to the prefectures, as well as the other way around. However, it appears that the prefectures were asking the embassy in Buenos Aires to provide information regarding the emigrants’ political engagement during the time of intense antifascist activism in the Julian March<sup>7</sup> (cf. Franzina 1983: 826).

In contrast to the control exercised over the liberal group, the surveillance of the communists seemed to be constant and relatively independent of the situation in the Julian March. The most fervent leftist activists had already been under surveillance even before emigrating overseas, while others were given files later due to their engagement in the Argentine labour movement. In fact, those who already had a file before departing were continuously monitored after settling in Argentina. Consular officials could penetrate emigrant communities thanks to the support of the OVRA (Organization for Vigilance and Suppression of Anti-Fascism), the fascist

6 »Obletnica suženjstva našega Primorja« [Anniversary of the Enslavement of our Primorje Region], *Slovenski tednik*, 9 November 1929, p. 1.

7 Archive of Slovenia (AS), 1829/362, technical unit (t. u.) 15, Message of Italian embassy in Argentina to Prefecture of Gorizia and CPC, 10 Aug 1931.

secret service. The OVRA agent was undoubtedly familiar with the emigrants' backgrounds as he had spent three years in Ljubljana before coming to the Argentine capital (Franzlinelli 1999: 172).

The embassy labelled the emigrants' challenge to Italian rule over the Julian March as anti-Italian and showed particular interest in the money that the emigrants were sending home.<sup>8</sup> Fundraising and other forms of transnational engagement of emigrants in helping those oppressed in the Julian March intensified after the fascists managed to subdue the antifascist resistance in the region. By 1931, when the Italian embassy was answering the messages coming "daily from local administrative bodies and the CPC", surveillance seemed to be well underway. We can assume that Italian control over Slovene emigrants was spurred by the protests against the Italian show trials in the Julian March. The first of these trials was staged in Pula, where a special fascist tribunal for the defence of the state was formed in order to condemn the antifascist activism of the "allogenes" in Istria. Two other trials following a similar pattern were subsequently held in Trieste, the first in 1930 and the second in 1941. Vladimir Gortan, a member of the underground antifascist organisation TIGR, who allegedly shot one of the voters during the fascist elections in Pula, was tried and executed for "assassinating the fascist regime and the order of the Italian state" (Kacin Wohinz 2008: 128). The death sentence carried out in Pula in 1929 led to large public demonstrations organized by emigrants from the Julian March. The members of the Slovene liberal group *Prosveta* wrote a letter of protest together with Croats and Serbs, demanding democracy and the end of fascist terror in the Julian March. This letter, later sent to the League of Nations, was read out at a large public meeting proclaiming Gortan a "national martyr".<sup>9</sup>

A separate meeting crossing national boundaries was held by people with a labour background. Giuseppe Tuntar, who delivered a speech at this meeting, was known among emigrants from the Julian March as a communist deputy who had vigorously denounced the fascist discrimination of minorities in the Julian March in the Italian parliament (Patat 1989). His arrival in Argentina in 1924 strengthened both the Italian and Yugoslav sections of the communist party. He was constantly under the surveillance of Italian officials, who portrayed him as one of the most "hot-headed communists living in Buenos Aires" who made "venomous speeches against Italy" at "various antifascist public meetings"<sup>10</sup> (Luiàn Leiva 1983: 559–560). A protest in condemnation of Gortan's execution was organised by the Slovene socialist association

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8 AS 1829/362, t. u. 15.

9 »Poročilo iz nedeljskega protestnega shoda proti fašizmu radi ustrelitve Vladimirja Gortana in obsodbe njegovih tovarišev«, *Slovenski tednik*, 2 November 1929, p. 1.

10 ACS, CPC, b. 5240, f. 026121, Giuseppe Tuntar.

*Ljudski oder*<sup>11</sup> and the Italian antifascist emigrant society *Circolo Venezia Giulia*, which had been co-founded by Tuntar. The Italian political police, which monitored the meeting, expressed concerns about the “violent” antifascist speeches delivered by Tuntar and the president of *Ljudski oder*, Franc Štekar.<sup>12</sup>

Subsequently, the members of *Ljudski oder* participated in a protest organized by Italian antifascists in condemnation of the show trial held in Trieste<sup>13</sup> (Mislej 1996: 98). The trial, which involved the sentencing of those involved in a bomb attack on the fascist newspaper *Il popolo di Trieste* in the Julian March, coincided with Uriburu’s putsch on 6 September 1930 and was the subject of intense interest among emigrants from the Julian March around the world (Kalc, Milharčič Hladnik 2015). Unfortunately, not much is known about the reaction of emigrants in Argentina, since Uriburu introduced fascist-like rule characterized by the violent suppression and torture of political opponents (Finchelstein 2010: 74–75). The previously cited report, which the embassy issued in 1931, indicates that Italy was highly preoccupied with the intense antifascist activism of emigrants from the Julian March undertaken in response to the Trieste trial. Furthermore, the cooperation between the liberal emigrant group and the *Zveza jugoslovenskih izseljencev iz Julijske krajine* (The Union of Yugoslav emigrants from the Julian March), based in the Kingdom of Yugoslavia, with the aim of achieving eventual annexation of the contested region to Yugoslavia in the beginning of thirties, probably triggered additional surveillance of the liberal group (Kalc 2016). However, Italian control over these activities requires further analysis.

## SURVEILLANCE OF POLITICALLY ENGAGED COMMUNISTS

Franc Štoka, a leader of the branch of *Ljudski oder* in the village of Kontovel/Contovello near Trieste, escaped from Italy after the issue of an arrest warrant in 1926. His name was added not only to the files of the CPC, but also to *Bolletino delle ricerche*, the fascist regime’s list of most wanted persons<sup>14</sup> (Serio 1985: 75). According to the CPC files, people under surveillance were classified into several categories, including communists, which was where Štoka was classified. These categories make the CPC files a useful tool for statistical analyses of antifascism. Of course, distortions are inevitable, since the information was inserted at the end of penal procedures. Štoka, for instance, figures as someone who was active in Italy, although he had been

11 First a labour cultural organisation established in 1905 in Trieste, *Ljudski oder* [The People’s Stage] embraced communism in 1921. After the First World War, the organization suffered a fascist backlash until it was finally outlawed in 1923. Just two years after the organization was banned in Italy, emigrants with a labour background established its successor in Argentina (Ščurk, Štoka 1973: 198–199).

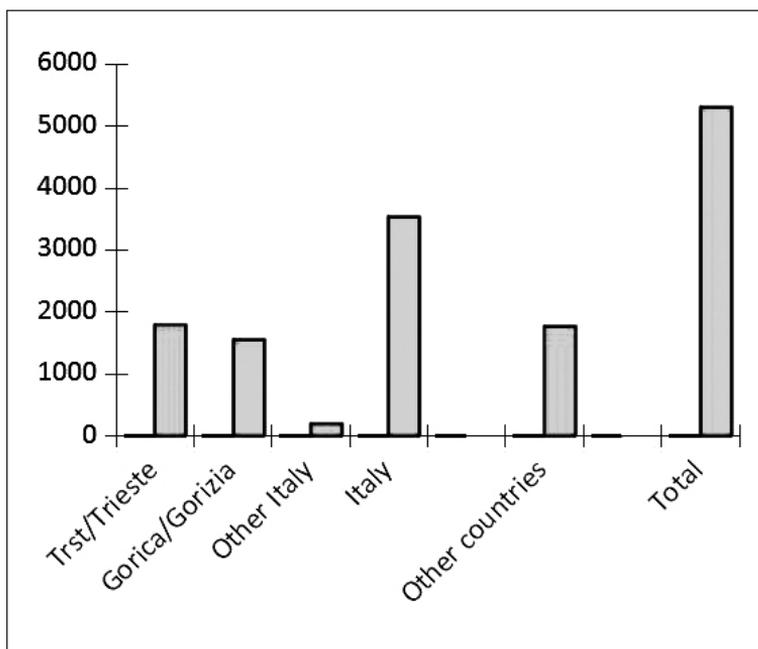
12 ACS, CPC, b. 5240, f. 026121, Giuseppe Tuntar.

13 AS 1696, Franc Štoka, »Ob 37-letnici Ljudskega odra«.

14 ACS, CPC, b. 4958, f. 012685, Francesco Stoka.

involved in activities in Argentina, and he only served prison sentences in Italy (cf. Dilemni 2010: 3; Kalc).

Graph 1: Division of insurrectionaries from provinces of Trieste and Gorizia by place of residence



Sources: Statistic based on the CPC records by Aleksej Kalc

The Trieste trial also affected Štoka personally, since his brother Vladimir was sentenced to twenty years in prison for his alleged attack on the aforementioned fascist newspaper. The Italian authorities concluded that Štoka had a considerable influence on the Argentine proletariat (he also held important positions in *Alleanza antifascista*), so perhaps it is not surprising that an article condemning the fascist verdict appeared even in the labour newspaper *El trabajo* in Mar del Plata, the coastal town to which Štoka had moved probably in order to avoid persecution in the capital.<sup>15</sup>

Štoka's arrival in Argentina in 1928 coincided with the massive influx of immigrants from the Julian March. Together with Leopold Caharija, who followed Štoka a year later, Albin Kralj (registered as Albino Carli by the Italian authorities) and a handful of other dedicated communists, he took over the leadership of *Ljudski oder*.<sup>16</sup> Upon arriving in Buenos Aires they tied *Ljudski oder* to the Argentine communist party, particularly to its Yugoslav section. They preferred to form alliances based on

<sup>15</sup> Ibid.

<sup>16</sup> OZE NŠKT, Izseljenstvo, Interviews by Kalc with Caharija and Sonja Kralj (Albin Kralj's daughter).

class rather than nationality, and they initially saw the group of national-liberal Slovene immigrants as bourgeois fascist sympathizers.<sup>17</sup>

Although Slovene immigrants experienced economic prosperity upon their arrival in Argentina, labour rights were not guaranteed, and the trade unions depended on *obrerismo*, as Yrigoyen's<sup>18</sup> paternalistic policy of informal cooperation with trade union leaders was called. Moreover, in the late 1920s, Argentina experienced significant labour unrest, with strikes eventually paralysing the whole country (Korzeniewicz 1993: 25–31; Horowitz 2008: 185–195). The Slovene immigrants were affected by intense labour confrontations, and the members of *Ljudski oder* considered participation in strikes in order to improve the life of immigrant workers to be just as important as the legal support offered by the mutual aid associations. Since the authorities did not approve of *Ljudski oder's* participation in the labour movement, the organization became the target of police persecution<sup>19</sup> (Genorio 1987: 191).

Pressures by the political police were exacerbated after the putsch by General Uriburu and the subsequent *Decada Infame*, the "infamous decade" of electoral fraud and abuse of political power. The authoritarian governments incarcerated Štoka because of his agitation during strikes at the docks and dissemination of propaganda material for the celebrations of 1 May in the early 1930s.<sup>20</sup> Štoka often worked at the port in Buenos Aires, the place which also witnessed the largest labour strikes. He was a longshoreman, although he dedicated his life to the communist cause and never had a stable job.<sup>21</sup> Leopold Caharija, a carpenter equally devoted to communism, was imprisoned because he fired a weapon at the chief of the Argentine police at a meeting organized to legalize the communist party and in protest against Uriburu's military dictatorship.<sup>22</sup> Oddly enough, even though Caharija spent almost a year in prison, his case was not reported to the Italian authorities. Although he had been active in the Julian March, it appears he was operating underground, and this is probably why the fascists could neither spot him nor add him to the CPC records. Nevertheless, the majority of the twenty members of *Ljudski oder* who were ardent communists did not have a police record before coming to Argentina. Moreover, even though *Ljudski oder* had been raided by the police and the association had been closed during the military dictatorship, the members' individual criminal records were not sent to Italy.

It was not until the restructuring of the police forces undertaken by president Justo that the criminal records of the Slovene leftists were forwarded to the Italian authorities. Instead of cutting back on the practice of political policing, the fraudulently

17 »Ust. obč. zbor nepolit. društva Prosveta«, *Delavski list*, July 1929, p. 3.

18 Hipolito Yrigoyen was the Argentine president between 1916–1922 and 1928–1930.

19 AS 1696, »Ob 37-letnici ...«

20 ACS, CPC, b. 4958, f. 012685, Francesco Stoka.

21 In the file of the CPC, his employment is described as "pescatore-muratore-stivatore" (fisherman, bricklayer, longshoreman) (ibid.).

22 OZE NŠKT, Izseljenstvo, »Dogodek iz leta 1930« – Leopold Caharija.

elected Justo, who succeeded Uriburu in 1932, entrenched it even more deeply in the bureaucracy. Immigrants from the Julian March were persecuted by a special police unit in charge of combating communism, which managed to penetrate immigrant associations thanks to its team of translators from immigrant communities. Pre-emptive surveillance was increased during Justo's rule, and as soon as the special police unit noticed any suspicious activity they immediately informed the diplomatic representatives from the immigrants' countries of origin (Kalmanowiecki 2000: 42–46). Due to the intensification of political policing, along with the persistent economic crisis and the absence of new immigrants, *Ljudski oder's* labour engagement was curtailed. Even though the premises of the association reopened after the end of the military dictatorship, its activities were hampered by frequent police raids. The association came to an abrupt end in 1933 when the police raided a meeting of the association's general assembly and arrested many of its members. Most of the nearly fifty detainees were released after two weeks of imprisonment. Nevertheless, the Argentine police sent a list of prisoners to the Italian Ministry of the Interior and the latter subsequently reported them to the prefectures of Trieste/Trst, Pola/Pula, Fiume/Rijeka and Gorizia/Gorica. Furthermore, the ministry asked the local authorities to provide additional information on the arrested subjects.<sup>23</sup>

Many of those arrested were given CPC files, which meant that they were placed under constant surveillance and their files had to be updated regularly. Furthermore, their family members and relatives in Italy were put under the watchful eye of the Carabinieri or of the fascist paramilitary (Cresciani 2004: 11). The local authorities did not fail to obey the orders of the ministry concerning the Julian March communists who had been arrested in Argentina. Their families in the Julian March were subject to thorough inquiries. For instance, the family of Mirko Ličen, who was elected president of *Ljudski oder* at a prison assembly, was labelled as "apathetic and indifferent towards the regime". Even though, according to the Italian authorities, Ličen had shown only "Slavic feelings" prior to his departure, his brief imprisonment was enough for him to be closely monitored and an arrest warrant was issued by the chief of the local police in Gorizia.<sup>24</sup> Štoka, on the other hand, faced a more severe punishment. During the *Decada Infame*, the Argentine authorities took advantage of a law that enabled arbitrary deportation in order to get rid of undesired immigrants.<sup>25</sup> Štoka was among those who were deported and extradited to their countries of origin. He was followed a year later by Albin Kralj, while Leopold Caharija left Argentina voluntarily to fight in the Spanish Civil War.

23 AS 1696, Franc Štoka, »Občni zbor v zaporu«; AS 1829/362, t. u. 15.

24 ACS, CPC, b. 2784, Federico Licen.

25 The Argentine Congress passed a law called "Ley de residencia" (Law of residence) in 1902 in order to efficiently and quickly deal with the undesired activism of the growing labour movement. The law was derogated only in 1958 by president Frondizi (see Oved 1976).

## SURVEILLANCE AND IMMIGRANTS' DIVERGENT LIFE-PATHS

Ardent communists like Franc Štoka were not the only persons subjected to surveillance by the Italian authorities. Even individuals who were not engaged in an open antifascist struggle were often persecuted by the fascist system.

The control exercised by the fascist totalitarian regime was practically limitless. Even the ethnically Italian antifascist emigrants living in such a distant and for Italian diplomacy uninteresting country as Australia were subject to it (Cresciani 2002: 22). It is therefore not surprising that the surveillance of those who emigrated from the borderland region of the Julian March, which Italy strived to portray as a well-integrated part of its national territory, was so relentless and affected so many unengaged individuals.

By the examining files of those who were not fearless antifascists it is possible both to understand the extensive and deeply personal nature of the fascist repression and to analyse the emigrants' multifaceted biographies (cf. Ebner 2006: 215). An insight into the latter can highlight the contrasts between the fervent engagement of Štoka's comrades and the apathy shown by many members of *Ljudski oder*.<sup>26</sup> There were many who distanced themselves from immigrant associations and eventually joined them again. Leopold Ličen from Gorica/Gorizia (not a relative of Mirko Ličen) was arrested one year after his arrival in Argentina in 1930. Italian officials found out that he was a member of the *Alleanza* and registered him as *comunista da segnalare* (a communist whose activities had to be reported). Subsequently, his activism seemed to subside and in 1937 he was noted as a member of the *Tabor* association, a Slovene organization that supported the Yugoslav regime and was therefore in conflict with *Ljudski oder*. In 1940, he appeared again as a member of *Ljudski oder*, although his activities were supposedly negligible at that time.<sup>27</sup>

Certain individuals found themselves under surveillance only because they were friends with wanted communists. Viktor Bogatec, one of Štoka's companions, was arrested in February 1933 because he had been seen at the headquarters of various communist organizations. Even though his stable income as a tailor discouraged him from becoming as engaged as his comrades, his arrest and his friendship with Štoka sufficed to place him under surveillance by the CPC. By the time he returned to Trieste (due to his wife's homesickness they decided to repatriate), the Italian local police were well informed about his activities in Argentina and kept him under surveillance until the beginning of the Second World War.<sup>28</sup> The cases of Ličen and Bogatec go to show that surveillance did not necessarily correspond to the level of political engagement of "subversive" individuals. Furthermore, the materials belonging to the CPC should be further analysed in order to examine both the nuances within

26 See the article »Iz društvenega življenja« criticizing the indifference to the association. In: *Spominu Ivana Cankarja: ob 25. letnici smrti, 1918–1943*, p. 41.

27 ACS, CPC, b. 2784, Licen Leopoldo Corrado.

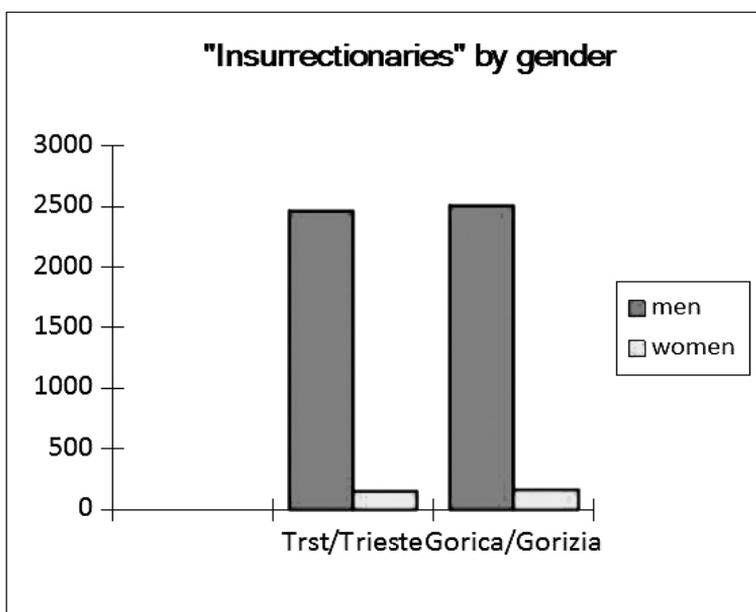
28 ACS, CPC, b. 692, Vittorio Bogatez.

the seemingly monolithic immigrant groups and the scope of the fascist system of extraterritorial control.

## SURVEILLANCE OF WOMEN'S ANTIFASCIST ACTIVITIES IN ARGENTINA

Women's names only seldom appeared in the CPC files. Even among the immigrants from the Julian March, the number of antifascist men greatly exceeded the number of their female counterparts (Graph 2).

Graph 2: Division of insurrectionaries from the Trieste and Gorizia provinces by gender



Sources: Statistic based on the CPC records by Aleksej Kalc

This fact, however, should not suggest that the role of women among Slovene antifascists from the Julian March was of secondary importance. On the contrary, the absence might imply that the engagement of women was tacit and unseen. Thus, in order to understand women's activism, the term antifascism should be broadened to include the existential aspect of opposing the imposed rule rather than just being a political category ascribed to those who openly engaged in fighting the regime (De Luna 1995: 11–12).

Although the majority of Slovene female immigrants were never given a CPC file, a handful of them were. Even though they had been given files before heading for Argentina, their activities abroad were closely monitored. Their case is particularly illustrative of the breadth of the fascist surveillance system. Josipina and Pavla Špacapan,

apparently cousins from the villages of Ozeljan and Šempas respectively, were given files because they were found in a group of people singing songs celebrating Slavic power in Črniče, close to Ajdovščina. Although the Italian authorities labelled the songs as “anti-national” and categorized Josipina and Pavla as “Slavic irredentists”, the two women were obviously not combating the regime by means of armed resistance. Nevertheless, the fascist authorities were determined to treat Josipina and Pavla as politically hostile. In the Julian March, where an especially harsh policy was imposed on ethnic minorities, the line between engaged antifascism and tacit opposition seemed to be particularly fragile, and even singing could be interpreted as a challenge to the fascist rule. Consequently, Italian diplomatic representatives monitored Josipina’s and Pavla’s activities in Argentina; they knew their home and workplace addresses and monitored their attendance at meetings of the *Primorje* association, whose members had been labelled “allogenic irredentists”. They were placed under surveillance because they had broken the law at home, and although no request to report on their activities was issued, several reports regarding their life in Argentina were forwarded to the CPC up to 1941.<sup>29</sup>

## CONCLUSION

The extraterritorial control carried out by the Italian authorities was very often linked with the situation which the minority faced in the Julian March, as well as with the emigrants’ transnational political engagement. The increased suppression of the minority triggered emigrant activism in the form of long-distance nationalism, which in turn paved the way to the escalation of extraterritorial surveillance. Italy was concerned with the emigrants’ attempt to raise awareness of the repression of national minorities in the Julian March because the state propagated the belief that the “allogenic” population there had long since been assimilated (cf. Vinci 2011: 168).

Fascist extraterritorial control over the communists, on the other hand, appeared to be relatively constant and independent of what was happening in the Julian March. Nevertheless, the relentless surveillance of their political engagement demonstrates how Italy cooperated with the authorities of the host nation in subduing the emigrant activities. Argentina with its military dictatorship and the ensuing undemocratic governments was more than willing to crush the political activities of immigrants labelled as undesired and denounce them to Italy. Moreover, examining the files of the leftist activists allows us to understand both their transnational networks (they had significant connections with Slovene radical emigrants in France) and their alliances with leftist antifascists of other national origins in Argentina (cf. Iacovetta, Ventresca 1996: 208). Considering the scarcity of the sources left by the emigrants themselves, a thorough scrutiny of material related to the CPC

29 ACS, CPC, b. 4902, f. 030243 Spazapan Giuseppina; f. 030191, Spazapan Paola.

and the diplomatic service would be especially welcome. Careful research of those files would also facilitate better understanding of the emigrants' complex life-paths.

Štoka was probably right in stating that both the Italian and the Yugoslavian diplomatic representatives felt obliged to protect the emigrants from the Julian March. Nevertheless, they both "took care" of them by reporting them to the Argentine police and by handing the authorities the lists of the most active members of *Ljudski oder*.<sup>30</sup> The Yugoslav authorities thought that the state represented the emigrants' homeland and subjected anybody who dared to oppose the royal regime to tight surveillance. Including the Yugoslav aspect in the research would benefit our understanding of the emigrant community. It would also allow us to obtain a comparative insight into the functioning of extraterritorial surveillance pursued by two neighbours whose regimes were not dissimilar. Moreover, placing the case of the surveillance of emigrants from the Julian March in a broader Central European interpretive framework would allow us to examine extraterritorial control in a region where little congruence between ethno-national and politico-territorial boundaries often resulted in violent assimilationist policies carried out by nationalizing states (cf. Brubaker 1996: 113). However, ascribing the qualities of the Central European area to this particular context might preclude other understandings. An intra-Italian comparison might be more fruitful.<sup>31</sup> Firstly, a comparison with the surveillance of emigrants of the German minority from South Tyrol could provide a better insight into the general contours of the Fascist surveillance of emigrants belonging to national minorities. Secondly, a diachronic, *longue durée* analysis of extraterritorial control over members of minorities would allow us to tackle the continuities and discontinuities of this system of control (cf. Fonio, Agnoletto 2013). Considering the fact that the surveillance strategies introduced by the fascist regime did not subside with the eclipse of the regime (the Italian democracy did not abolish the CPC until 1968), it would be insightful to examine this diachronic aspect as well. However, the new migratory contexts appearing in the postwar period would make such an analysis an intricate endeavour.

By showing the potentials of the comparative approach I have tried to suggest directions for a subtler understanding of the link between migrations and nation-building in a period when nationalizing states were exercising unprecedented control over the emigrant communities. Nevertheless, by addressing the fascist extraterritorial surveillance of the minorities from the Julian March and the collaboration of the Italian and Argentine authorities, I hope I have made a preliminary contribution to the examination of the fascist attitude towards minorities living abroad, an issue which still remains insufficiently researched.

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30 AS 1696, Franc Štoka, »Ob 37-letnici društva Ljudski oder«.

31 For dilemmas concerning the comparative approach in studying population transfers in Istria see Ballinger 2016; for a comparison between Italian policies undertaken in the annexed territories with the ones in its colonies see Pergher 2018.

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## POVZETEK

### NADZOR IN PREGANJANJE SLOVENSКИH ANTIFAŠISTOV V ARGENTINI: ZAROTNIŠKO DELOVANJE OBLASTI PRI SPOPADANJU Z »NEZAŽELENIMI« PRISELJENCI

Miha ZOBEC

Italijanska strategija nacionalne bonifikacije oz. čiščenja slovenskega in hrvaškega prebivalstva ter njegove nadomestitve z italijanskim je v Julijski krajini povzročila množično emigracijo »drugorodnega« prebivalstva. Izseljence iz te dežele je, ne glede na politično usmerjenost, povezoval antifašistični boj. Zaradi javnega obsojanja fašistične politike v Julijski krajini so italijanske oblasti budno spremljale njihova gibanja celo v oddaljeni Argentini, ki je zanje postala glavna čezoceanska država priselitve. Medtem ko je Italija nadzorovala kakršnokoli nasprotovanje politiki fašističnega režima, je Argentino zlasti skrbela dejavnost levičarskih izseljencev, ki so se vključevali v argentinsko delavsko gibanje in v tamkajšnjo komunistično stranko. Preganjanje levičarskih aktivistov se je še zlasti zaostriло po puču generala Uriburuja, ki je v Argentini uvedel vojaško diktaturo. Tudi po koncu vojaškega režima se policijsko preganjanje ni prenehalo, temveč se je še poglobilo. Argentinske oblasti so fašistični Italiji v tem času posredovale kartoteke zaprtih aktivistov, te pa so sprožile postopke za nadaljnje preiskave političnih prestopnikov. Dosjeji, ki jih je zbral fašistični režim, kažejo, da so bili med tistimi, ki so jih nadzorovali, tudi taki, ki niso bili posebej angažirani. Avtor v članku poudarja, da se je zunajteritorialni nadzor Italije nad izseljenci okrepil v času, ko je bila represija nad manjšino v Julijski krajini najbolj ostra.

# NAVODILA AVTORJEM ZA PRIPRAVO PRISPEVKOV ZA »DVE DOMOVINI« / »TWO HOMELANDS«

## 1. Usmeritev revije

Revija *Dve domovini / Two Homelands* je namenjena objavi znanstvenih in strokovnih člankov, poročil, razmišljanj in knjižnih ocen s področja humanističnih in družboslovnih disciplin, ki obravnavajo različne vidike migracij in z njimi povezane pojave. Revija, ki izhaja od leta 1990, je večdisciplinarna in večjezična. Dve številki letno v tiskani in elektronski obliki izideta na svetovnem spletu (<http://twohomelands.zrc-sazu.si/>).

Prispevke, urejene po spodnjih navodilih, pošljite uredništvu v elektronski obliki na naslov [hladnik@zrc-sazu.si](mailto:hladnik@zrc-sazu.si). Članki so recenzirani. Avtorji naj poskrbijo za primerno jezikovno raven in slogovno dovršenost. Prispevki morajo biti oblikovani v skladu z Navodili avtorjem za pripravo prispevkov za *Dve domovini / Two Homelands*. Rokopisov, ki jih uredništvo revije *Dve domovini / Two Homelands* sprejme v objavo, avtorji ne smejo hkrati poslati drugi reviji. V skladu z Zakonom o avtorskih pravicah in 10. členom Poslovnika o delu uredništva revije *Dve domovini / Two Homelands* se avtorji z objavo v reviji *Dve domovini / Two Homelands* strinjajo z objavo prispevka tudi v elektronski obliki na svetovnem spletu.

## 2. Sestavine prispevkov

Članki morajo imeti sestavine, ki si sledijo po naslednjem vrstnem redu:

- glavni naslov članka (z velikimi tiskanimi črkami, okrepjeno);
- ime in priimek avtorja (priimku naj sledi opomba pod črto, v kateri so navedeni: 1. avtorjeva izobrazba in naziv (na primer: dr. zgodovine, znanstveni sodelavec); 2. ime in naslov avtorjeve institucije (na primer Inštitut za slovensko izseljenstvo in migracije ZRC SAZU, Novi trg 2, SI-1000 Ljubljana); 3. avtorjev elektronski naslov);
- predlog vrste prispevka (izvirni, pregledni ali kratki znanstveni članek/prispevek, strokovni članek);
- izvleček (slovenski naslov članka in slovenski izvleček, skupaj s presledki do 700 znakov);
- ključne besede (do 5 besed);
- abstract (angleški prevod naslova članka in slovenskega izvlečka);
- key words (angleški prevod ključnih besed);
- članek (1. skupaj s presledki naj ne presega 45.000 znakov; 2. celotno besedilo naj bo označeno z »Normal« – torej brez oblikovanja, določanja slogov in drugega; 3. pisava Times New Roman, velikost 12, obojestranska poravnava, presledek 1,5; 4. odstavki naj bodo brez vmesnih vrstic; prazna vrstica naj bo pred in za vsakim naslovom in predvidenim mestom za tabelo ali sliko; 5. odstavki so brez zamikov; 6. naslove označite ročno, podnaslove prvega reda z okrepljenimi malimi tiskanimi črkami, podnaslove drugega reda z okrepljenimi poševnimi malimi tiskanimi črkami; 7. (pod)poglavij ne številčimo;
- summary (angleški povzetek članka, največ 3000 znakov s presledki).

V besedilih se izogibajte podčrtovanju besed, okrepljenemu in poševnemu tisku; s poševnim tiskom označite le navedene naslove knjig in časopisov. V slovenskih prispevkih uporabljajte naslednje okrajšave in narekovaje: prav tam, idr., ur., »abc«; v angleških: *ibid.*, et al., ed./eds., "migration". Izpust znotraj citata označite z oglatim oklepajem [...].

**Poročila in ocene** morajo imeti sestavine, ki si sledijo po naslednjem vrstnem redu:

- poročila s konferenc in z drugih dogodkov, razmišljanja: naslov dogodka, datum poteka, ime in priimek avtorja, besedilo naj obsega med 5.000 in 15.000 znaki skupaj s presledki;
- knjižne ocene: ime in priimek avtorja ali urednika knjige, ki je predmet ocene, *naslov knjige*, založba, kraj, leto izida, število strani, besedilo naj obsega med 5.000 in 15.000 znaki skupaj s presledki, na koncu sledita ime in priimek avtorja ocene.

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Avtorji naj pri citiranju med besedilom upoštevajo naslednja navodila:

- Citati, dolgi štiri ali več vrstic, morajo biti ročno oblikovani v ločenih enotah, levo zamaknjeni, brez narekovajev.
- Citati, krajši od štirih vrstic, naj bodo med drugim besedilom v narekovajih in pokončno (ne poševno).
- Navajanje avtorja v oklepaju: (Anderson 2003: 91–99); več navedb naj bo ločenih s podpičjem in razvrščenih po letnicah (Milharčič Hladnik 2009: 15; Vah Jevšnik, Lukšič Hacin 2011: 251–253).
- Seznam literature in virov je na koncu besedila; v seznamu literature na koncu se navajajo samo navedbe literature iz besedila; enote naj bodo razvrščene po abecednem redu priimkov avtorjev, enote istega avtorja pa razvrščene po letnicah; če imamo več del istega avtorja, ki so izšla istega leta, jih ločimo z malimi črkami (Anderson 2003a; 2003b).
  - a) Knjiga:  
Anderson, Benedict (2003). *Zamišljene skupnosti: O izvoru in širjenju nacionalizma*. Ljubljana: Studia Humanitatis.
  - b) Članek v zborniku:  
Milharčič Hladnik, Mirjam (2009). Naša varuška. *Krila migracij: Po meri življenjskih zgodb* (ur. Mirjam Milharčič Hladnik, Jernej Mlekuž). Ljubljana: Založba ZRC, ZRC SAZU, 15–20.
  - c) Članek v reviji:  
Vah Jevšnik, Mojca, Lukšič Hacin, Marina (2001). Theorising Immigrant/Ethnic Entrepreneurship in the Context of Welfare States. *Migracijske i etničke teme* 27/2, 249–261. Polnopomenski elementi v angleških naslovih knjig in člankov (razen veznikov in predlogov) se pišejo z veliko začetnico.
  - d) Spletna stran:
    - Becker, Howard (2003). *New Directions in the Sociology of Art*, <http://home.earthlink.net/~hsbecker/newdirections.htm> (1. 2. 2008).
    - *Interaction: Some Ideas*, <http://home.earthlink.net/interaction.htm> (1. 2. 2008).

### 4. Grafične in slikovne priloge

- Fotografije, slike zemljevidi idr. – z izjemo tabel, narejenih v urejevalniku Word, ki pa morajo biti oblikovane za stran velikosti 16,5 x 23,5 cm – naj ne bodo vključeni v Wordov dokument. Vse slikovno gradivo oddajte oštevilčeno v posebni mapi s svojima priimkom in imenom. Opombe v podnapisih ali tabelah morajo biti ločene od tekočega teksta. Fotografije naj bodo v formatu jpg.
- Lokacijo slikovnega gradiva v tekstu označite na naslednji način:  
Fotografija 1: Kuharica Liza v New Yorku leta 1905 (avtor: Janez Novak, vir: Arhiv Slovenije, 1415, 313/14) ali Preglednica 1: Število prebivalcev Ljubljane po popisu leta 2002 (vir: Statistični urad RS, Statistične informacije, 14).
- Za grafične in slikovne priloge, za katere nimate avtorskih pravic, morate dobiti dovoljenje za objavo.

# INSTRUCTIONS TO AUTHORS PREPARING ARTICLES FOR PUBLICATION IN “DVE DOMOVINI / TWO HOMELANDS”

## 1. Editorial content

*Dve domovini / Two Homelands* welcomes the submission of scientific and professional articles, reports, discussions and book reviews from the humanities and social sciences focusing on migration and related phenomena. The journal, published since 1990, is multidisciplinary and multilingual. Two volumes are published per year in print and electronic form on the internet (<http://twohomelands.zrc-sazu.si/>).

Articles should be prepared according to the instructions stated below and sent in electronic form to the editorial board at the following address: [hladnik@zrc-sazu.si](mailto:hladnik@zrc-sazu.si). All articles undergo a review procedure. Manuscripts that are accepted for publishing by the editorial board should not be sent for consideration and publishing to any other journal. Authors are responsible for language and style proficiency. Authors agree that articles published in *Dve domovini / Two Homelands* may also be published in electronic form on the internet.

## 2. Elements

**Articles** should contain the following elements in the order given:

- Title (in capital letters, bold);
- Name and surname of the author (after the surname a footnote should be inserted stating the author's: 1. education and title (e.g. PhD, MA in History, Research Fellow etc.); 2. full postal address (e.g. Slovenian Migration Institute, Novi Trg 2, SI-1000 Ljubljana); 3. e-mail address;
- Type of contribution (original, review or short scientific article; professional article);
- Abstract (title of the article and abstract, up to 700 characters with spaces);
- Key words (up to 5 words);
- Article (1. should not exceed 45,000 characters with spaces; 2. the style of the entire text should be “Normal”; 3. font: Times New Roman 12; 4. paragraphs should not be separated by an empty line, empty lines should be used before and after every title and space intended for a chart or figure; 5 paragraphs following titles should not be indented, bullets and numbering of lines and paragraphs should be done manually; 6. titles should be marked manually, subtitles Heading 1 in bold lower-case letters with initial capital, Heading 2 in bold lower-case italics with initial capital; 7. (sub)sections of articles (Heading 1 and Heading 2) should not be numbered);
- Summary (Povzetek) in Slovene, 3000 characters with spaces).

Avoid underlining and using bold in all texts. Italics should be used when emphasising a word or a phrase. Italics should also be used when citing titles of books and newspapers. In articles in English, the following abbreviations should be used: *ibid.*, *et al.*, *ed./eds.* When using inverted commas/quotation marks, use double quotation marks; single quotation marks should be used only when embedding quotations or concepts within quotations. Omitted parts of quotations should be indicated by square brackets with ellipsis [...].

**Reports and reviews** should contain the following elements in the order given:

- Reports from conferences and other events, discussions: title of the event, date of the event, name and surname of the author, 5,000 to 15,000 characters with spaces;
- Book reviews: name and surname of the author or editor of the book, *title of the book*, name of publisher, place of publication, date of publication, number of pages, 5,000 to 15,000 characters with spaces, with the name and surname of the reviewer at the end.

### 3. Quotations in articles

- Long quotations (four lines or more) should be typed as an indented paragraph (using the "tab" key), without quotation marks, the first line of the paragraph after the quotation should not be indented; quotations shorter than four lines should be included in the main text and separated with quotation marks, in normal font (not italic).
- When citing an author in brackets use the following form: (Anderson 2003: 91–99); when citing several authors separate their names with a semicolon and cite them according to the year of publication in ascending order (Milharčič Hladnik 2009: 15; Vah Jevšnik, Lukšič Hacin 2011: 251–253).
- A list of references should be placed at the end of the text and arranged in alphabetical order according to the author's surname. The list of references should include only cited sources and literature. Multiple references by one author should be arranged according to the year of publication. Multiple references by one author published in the same year should be separated with lower-case letters (e.g. Ford 1999a; 1999b).
  - a) Books:

Anderson, Benedict (1995). *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London, New York: Verso.
  - b) Articles in a series:

Milharčič Hladnik, Mirjam (2009). Naša varuška. *Krila migracij: Po meri življenjskih zgodb* (eds. Mirjam Milharčič Hladnik, Jernej Mlekuž). Ljubljana: Založba ZRC, ZRC SAZU, 15–20.
  - c) Articles in journals:

Vah Jevšnik, Mojca, Lukšič Hacin, Marina (2001). Theorising Immigrant/Ethnic Entrepreneurship in the Context of Welfare States. *Migracijske i etničke teme* 27/2, 249–261. All major elements of English book and article titles should be capitalized (except conjunctions and prepositions shorter than five letters).
  - d) Internet sources:
    - Becker, Howard (2003). *New Directions in the Sociology of Art*, <http://home.earthlink.net/~hsbecker/newdirections.htm> (1 Feb. 2008).
    - *Interaction: Some Ideas*, <http://home.earthlink.net/interaction.htm> (1 Feb. 2008).

### 4. Graphics and illustrations

- Photographs, illustrations, maps etc. – with the exception of charts produced in Microsoft Word, which have to be adjusted to page size 16.5 x 23.5 cm (6.5" x 9.25") – should not be included in the Word document. All illustrative material needs to be numbered and submitted separately in separate folder with the author's name and surname. Please submit visual material in jpg. form.
- Locations of figures in the text should be marked as follows: Figure 1: Lisa Cook in New York in 1905 (Photo: Janez Novak, source: Archives of Slovenia, 1415, 313/14) or Chart 1: Population of Ljubljana after the 2002 Census (source: Statistical Office of the Republic of Slovenia, Statistics, p. 14).
- Permission to publish must be obtained for uncopyrighted graphic and illustrative material.

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