EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 273 (2012)
26.06.2012

Slovenian authorities failed to fully regulate the issue of "erased" people

In today's Grand Chamber judgment in the case of **Kurić and Others v. Slovenia** (application no. 26828/06), which is final[1], the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and/or family life) of the European Convention on Human Rights;

a violation of Article 13 (right to an effective remedy) in combination with Article 8 of the Convention, and;

a violation of Article 14 (prohibition of discrimination) in combination with Article 8.

The applicants belong to a group of persons known as the "erased", who on 26 February 1992 lost their status as permanent residents following Slovenia's declaration of independence in 1991, and faced almost 20 years of extreme hardship. The number of "erased" people in 1991 amounted to 25,671.

The Court held in particular that, despite the efforts made since 1999, the Slovenian authorities had failed to remedy comprehensively and with the requisite promptness the grave consequences for the applicants of the erasure of their names from the Slovenian Register of Permanent Residents.

The Court also decided to **apply the pilot-judgment procedure**[2], holding that the Government should, within one year, set up a compensation scheme for the "erased" in Slovenia. It decided it would adjourn examination of all similar applications in the meantime.

Principal facts

There are eight applicants: Mustafa Kurić and Velimir Dabetić, both stateless persons; Ana Mezga, a Croatian national; Tripun Ristanović, a citizen of Bosnia and Herzegovina; Ljubenka Ristanović, Ali Berisha and Zoran Minić, all Serbian nationals according to the Slovenian Government; and Ilfan Sadik Ademi, now a citizen of the "former Yugoslav Republic of Macedonia".

Before 25 June 1991, the date on which Slovenia gained independence, the applicants were nationals of both the Socialist Federal Republic of Yugoslavia ("the SFRY") and of one of its constituent republics other than Slovenia. As nationals of the SFRY they had acquired the status of permanent residents in Slovenia, which they retained until 26 February 1992. On that date their names were erased from the Slovenian Register of Permanent Residents because they had not applied for Slovenian citizenship before the deadline of 25 December 1991. Of the 200,000 Slovenian residents who were former citizens of the SFRY, 171,132 applied for and were granted citizenship of the new Slovenian State.

People who did not apply for Slovenian citizenship, or whose requests were not granted, became aliens or stateless persons illegally residing in Slovenia. According to the Slovenian

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

2 This procedure has been used by the Court in recent years to deal with large groups of identical cases arising out of the same structural problem. See Factsheet on Pilot judgments.

Government, they were informed of their change of status. The applicants denied ever receiving notification, claiming that they had learned by chance that they had become aliens when, for example, they tried to renew their identity papers. They contended that their "erasure" had had serious and enduring consequences. Their papers were taken away from them; and some were evicted from their apartments, could not work or travel, lost their personal possessions, and lived for years in poor conditions with serious consequences for their health. Others were expelled from Slovenia.

In 1999 the Constitutional Court found unconstitutional the provisions of the Aliens Act passed on 25 June 1991 because it did not regulate the situation of the "erased". It noted in particular that nationals of the former SFRY were in a less favourable legal position than other aliens living in Slovenia. Following that decision, on 8 July 1999, the Legal Status Act was passed in order to regulate the situation of the "erased". However, in 2003, the Constitutional Court held that the Legal Status Act was partially unconstitutional, in particular since it failed to grant the "erased" retroactive permanent residence permits, to define the meaning of "actually residing in Slovenia" and to regulate the situation of the persons who had been deported. The amended Legal Status Act, designed to regulate the incompatibilities between the Legal Status Act and the Constitution, entered into force on 24 July 2010.

The number of former SFRY citizens who had lost their permanent residence status in 1991 amounted to 25,671. Some of the "erased" voluntarily left Slovenia and others were granted residence permits following the above-mentioned Constitutional Court decisions; some were deported. In addition, 7,899 acquired Slovenian citizenship. In 2009, 13,426 of the "erased" still did not have a regulated status in Slovenia and their current place of residence was unknown. In total, by June 2010, out of the 13,600 requests for permanent residence lodged, 12,345 had been granted. In the course of the proceedings before the Grand Chamber of the European Court of Human Rights, six applicants were granted permanent resident permits. The deadline for filing requests for permanent residence permits expires on 24 July 2013.

In July 2011 the Government submitted to the Court some 30 final judgments delivered in compensation proceedings brought by the "erased". All the compensation claims had been dismissed, mostly for failure to comply with the prescribed time-limits.

Complaints, procedure and composition of the Court

The applicants complained in particular that they had been arbitrarily deprived of their legal status as permanent residents. They relied in particular on Article 8 (right to respect for private and/or family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

The application was lodged with the European Court of Human Rights on 4 July 2006. In its Chamber judgment of 13 July 2010, the Court found that the Slovenian authorities had failed to comply with the Constitutional Court decisions concerning the "erased" people. It held, unanimously, that there had been a violation of Articles 8 and 13 of the Convention.

On 13 October 2010 the Government requested that the case be referred to the Grand Chamber[3] and on 21 February 2011 a panel of the Grand Chamber accepted that request.

A Grand Chamber hearing was held in Strasbourg on 6 July 2011.

[3] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The Serbian Government, the Equal Rights Trust, the Peace Institute and the Legal Information Centre for Non-Governmental Organisations, the Open Society Justice Initiative and the UNHCR (Office of the United Nations High Commissioner for Refugees) were authorised to intervene as third parties (under Article 36 §§ 1 and 2 of the Convention).

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Jean-Paul **Costa** (France),
Françoise **Tulkens** (Belgium),
Nina **Vajić** (Croatia),
Dean **Spielmann** (Luxembourg),
Boštjan M. **Zupančič** (Slovenia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Isabelle **Berro-Lefèvre** (Monaco),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro),
Guido **Raimondi** (Italy),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany),

and also Vincent **Berger**, *Jurisconsult.*

Decision of the Court

Preliminary issues

The applicants had requested the Grand Chamber to examine the complaints raised by Mr Petreš and Mr Jovanović. As the Chamber, in its judgment of 13 July 2010, had already declared those complaints inadmissible, the Grand Chamber no longer had jurisdiction to examine them.

The Slovenian Government had requested the Court (preliminary objections) to reject the applicants' complaints on the following grounds: the Convention did not protect a right to citizenship or a right to permanent residence; the events in question had taken place before the date of entry into force of the Convention in respect of Slovenia (28 June 1994); the six applicants who had been granted residence permits had lost their victim status; and the applicants had not exhausted the remedies available to them in Slovenia.

Regarding the issue of citizenship, the Grand Chamber observed that the Chamber had declared inadmissible the applicants' complaints concerning their inability to obtain Slovenian citizenship in 1991. On the second point, the Grand Chamber upheld the Chamber's findings, taking the view that the adverse effects of the "erasure" in terms of the loss of residence status constituted a "continuous" situation. As to the third point, the Grand Chamber considered that the authorities' acknowledgment of the human rights violations and the issuance of permanent residence permits to Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić did not constitute "appropriate" and "sufficient" redress at the national level. Accordingly, those applicants could still claim to be "victims" of the alleged violations.

Lastly, with regard to the exhaustion of domestic remedies, the Grand Chamber first declared inadmissible the complaints raised by Mr Dabetić and Mrs Ristanović, as they had never manifested a wish to reside in Slovenia, having omitted to take any proper legal steps in order to regularise their residence status. As to the other six applicants, the Court dismissed the Government's preliminary objection. It considered, firstly – limiting its assessment to the particular circumstances of the present case – that the applicants had been dispensed from

having to lodge individual constitutional appeals in view of the overall duration of the administrative proceedings they had brought and their feelings of frustration caused by the authorities' prolonged inaction. Secondly, they had not been required to lodge a petition for an abstract review of the constitutionality of the impugned legislation, since the Constitutional Court had already delivered leading decisions in that regard in 1999 and 2003. Lastly, with regard to the amended Legal Status Act, the latter had entered into force after the applicants' complaints had been declared admissible by the Court.

Article 8

The Grand Chamber reaffirmed that Article 8 was applicable to the applicants' situation, since the "erasure" and its repercussions had amounted – a fact not contested by the Government – to interference with the private or family life, or both, they had had in Slovenia at the relevant time, having built up social, cultural and economic ties in the country.

The Court first considered the issue of the legal basis for the interference. The latter had been based on the Citizenship Act and the Aliens Act, legal instruments which had been accessible to any interested persons. Nevertheless, although the applicants could have foreseen that they would be treated as aliens if they failed to apply for Slovenian nationality, they could not reasonably have expected that they would become unlawfully resident on Slovenian territory and would be subjected to such an extreme measure as their "erasure". The absence of any notification could have led them to believe that their status as residents had remained unchanged. Furthermore, the Court attached weight to the findings of the Constitutional Court in 1999, according to which the applicants had found themselves in a legal vacuum since the Aliens Act was not applicable to them. At least until 2010, the Slovenian legal system had failed to regulate clearly the situation of the "erased" and their residence status. It had taken more than seven years – until the entry into force of the Legal Status Act on 24 July 2010 – for the 2003 decision of the Constitutional Court ordering general measures to be complied with. Accordingly, the interference with the applicants' private or family life, or both, had not had sufficient legal basis.

However, given the widespread repercussions of the "erasure", the Court considered it necessary to examine also whether the measure in question had pursued a legitimate aim. On this point, it took the view that the desire to create a "corpus of Slovenian citizens", allowing citizens of the former SFRY resident in Slovenia only a short period of time in which to acquire Slovenian citizenship, had been in the interests of national security and had therefore constituted a legitimate aim.

The Court went on to examine whether the interference in question had been "necessary in a democratic society", that is, whether it had responded to a pressing social need and had been proportionate to the aim pursued. It reiterated that the Convention did not guarantee the right of an alien to enter or to reside in a particular country, but that measures restricting the right to reside in a country might, in certain cases, entail a violation of Article 8 if they created disproportionate repercussions on private or family life or both. It noted that the applicants had been deprived of the legal status that had previously given them access to a wide range of rights – including entitlement to health insurance and pension rights – and opportunities, for instance in the sphere of employment. The Court considered that the Slovenian State should have regularised the residence status of former SFRY citizens in order to ensure that failure to obtain Slovenian citizenship did not disproportionately affect the Article 8 rights of the "erased". The State had not done so, as demonstrated by the persistent problems encountered by the applicants in obtaining valid residence permits. The interference in question had therefore not been "necessary in a democratic society".

In conclusion, despite the efforts made after the Constitutional Court's decisions of 1999 and 2003 and the passing of the amended Legal Status Act, the Slovenian authorities had failed to remedy comprehensively and with the requisite promptness the blanket nature of the "erasure" and its grave consequences for the applicants.

Furthermore, in its observations submitted in its capacity as a third-party intervener, with which the other third-party interveners broadly agreed, the organisation Open Society Justice

Initiative stated that at the end of 2009, according to data supplied by the UNHCR, 4,090 former SFRY citizens had been made stateless following the "erasure" of their names, and many continued to be stateless. The situation had disproportionately affected vulnerable groups such as minorities and Roma people.

Article 13

Referring to its findings regarding the exhaustion of domestic remedies (under the heading "preliminary issues"), the Court found that the applicants had not had "adequate" and "effective" remedies by which to obtain redress, at the relevant time, for the alleged infringement of their right to respect for their private and family lives. It therefore held that there had been a violation of Article 13 in conjunction with Article 8.

Article 14

Regard being had to the importance of the discrimination issue in the present case, the Grand Chamber considered, unlike the Chamber, that the applicants' complaint under Article 14 should be examined.

The Court found that Article 14 was applicable as there had been a difference in treatment after independence between two groups – as former SFRY citizens were treated differently from other foreigners – which were in a similar situation in respect of residence-related matters. Citizens of the former SFRY who were residing in Slovenia had found themselves in a legal vacuum, whereas "real" aliens living in the country had been able to keep their residence permits under the Aliens Act. That difference in treatment, which the Constitutional Court had pointed out in its decision of 4 February 1999, had been based on national origin and had not pursued a legitimate aim (the Court did not accept the Government's argument concerning the right to vote in the context of the 1992 parliamentary elections[4]). The Court therefore held that there had been a violation of Article 14 in conjunction with Article 8.

Article 46

While it was for the respondent State, subject to the supervision of the Committee of Ministers[5], to choose the means by which it would discharge its obligation under Article 46 (execution of judgments), the Court could, in exceptional cases, indicate the type of measure that might be taken in order to put an end to a situation it had found to exist.

It would be premature, in the absence of any settled domestic practice, to rule on the effectiveness of the legislative measures taken by Slovenia in recent years regarding the residence status of the "erased". Nevertheless, as the applicants had obtained no compensation and currently had little prospect of obtaining any, a shortcoming existed within the Slovenian legal order as a consequence of which the "erased" continued to be denied compensation for the infringement of their fundamental rights.

The present case was therefore suitable for the adoption of the pilot-judgment procedure[6], given that the situation affected a large number of persons. Although only a few similar applications were currently pending before it, the Court was mindful of the potential inflow of future cases. It therefore indicated to the Government that it should, within one year, set up a compensation scheme for the "erased" people in Slovenia. It would adjourn examination of all similar applications in the meantime.

---

[4] See § 393 of the Judgment.

[5] All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

[6] This procedure has been used by the Court in recent years to deal with large groups of identical cases arising out of the same structural problem. See the factsheet on the subject.

Just satisfaction (Article 41)

The Court held that Slovenia was to pay 20,000 euros (EUR) each in respect of non-pecuniary damage to Mustafa Kurić, Ana Mezga, Tripun Ristanović, Ali Berisha, Ilfan Sadik Ademi and Zoran Minić, and EUR 30,000 to the applicants jointly in respect of costs and expenses. It reserved the question of pecuniary damage for decision at a later date.

Separate opinions

Judge Zupančič expressed a concurring opinion. Judge Vučinić expressed a partly concurring and partly dissenting opinion. Judges Bratza, Tulkens, Spielmann, Kovler, Kalaydjieva, Vučinić and Raimondi expressed a joint partly dissenting opinion. Judge Costa expressed a partly dissenting opinion, and Judges Kovler and Kalaydjieva expressed a joint partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)