CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 26828/06
by Milan MAKUC and Others
against Slovenia

The European Court of Human Rights (Third Section), sitting on 31 May 2007 as a Chamber composed of:

Mr C. BÎRSAN, *President,*
Mr B.M. ZUPANČIČ,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges,*

and Mr S. QUESADA, *Section Registrar,*

Having regard to the above application lodged with the European Commission of Human Rights on 4 July 2006,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court and to inform the Contracting Party urgently of the application under Rule 40 of the Rules of Court.

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Mr Milan Makuc, is a Croatian citizen. He was born in 1947 and lives in Portorož. The second applicant, Mr Ljubomir Petreš, was born in 1940 and lives in Šentjan. The third applicant,

Mr Mustafa Kurić, was born in 1935 and lives in Koper. The fourth applicant, Jovan Jovanović, was born in 1959 and lives in Ljubljana. The fifth applicant, Mr Velimir Dabetić, was born in 1969 and lives in Italy. The sixth applicant, Mrs Ana Mezga, is a Croatian citizen. She was born in 1965 and lives in Portorož. The seventh applicant, Mrs Ljubenka Ristanović, is a Serbian citizen. She was born in 1968 and lives in Serbia. The eighth applicant, Mr Tripun Ristanović, the son of the seventh applicant, was born in 1988 and lives in Serbia. He is a citizen of Bosnia and Herzegovina. The ninth applicant, Mr Ali Berisha, was born in 1969 and lives in Slovenia. The tenth applicant, Mr Ilfan Sadik Ademi, was born in 1952. He lives in Germany. The eleventh applicant, Mr Zoran Minić, was born in 1972. He lives in Serbia.

2. They are represented before the Court by Mr Anton Giulio Lana and Mr Andrea Saccucci, lawyers practising in Rome, and Mrs Alessandra Ballerinni and Mr Marco Vano, lawyers practising in Genoa (Italy).

3. Before 25 June 1991, the day Slovenia declared independence, the applicants were citizens of the Socialist Federal Republic of Yugoslavia ("the SFRY") and one of its constituent republics other than Slovenia. They acquired permanent resident status in Slovenia which they retained until 26 February 1992, the day their names were deleted from the Register of Permanent Residents (*Register stalnega prebivalstva*, "the Register") and they became subject to the 1991 Aliens Act (*Zakon o tujcih*) (see paragraph 10 below).

A. The circumstances of the case

4. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. General background and context

5. Until 25 June 1991 the SFRY was composed of six republics: Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro and Macedonia. Nationals of the SFRY had "dual citizenship" for internal purposes, that is to say they were citizens both of the Federation and of one of the six republics. They had freedom of movement within the federal State and could acquire permanent residence wherever they settled on its territory. Registered permanent residence was the key to full enjoyment of various economic, social and even political rights. Foreign citizens could also acquire permanent residence in the SRFY.

6. As a result of the plebiscite held on 23 December 1990, Slovenia declared independence on 25 June 1991. In the six months preceding the declaration of independence, the Slovenian legislator passed a series of laws as part of the "independence legislation" (*osamosvojitvena zakonodaja*), in order to set the legal framework of the new sovereign State.

7. This legislation included the Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije*, "the Citizenship Act") and the 1991 Aliens Act, which came into force following their publication in the Official Gazette on 25 June 1991. They concerned the composition of the population of the new State. At that time, approximately 200,000 Slovenian residents or 10% of the Slovenian population, including the applicants, were citizens of the former SFRY republics other than Slovenia.

8. Section 40 of the Citizenship Act provided that citizens of the former SFRY republics who were not citizens of Slovenia ("citizens of the former SFRY republics") could acquire Slovenian citizenship if they met three requirements: they had acquired permanent resident status in Slovenia by 23 December 1990, were actually residing in Slovenia and applied for citizenship within six months after the Citizenship Act entered into force. Under section 81 of the 1991 Aliens Act, citizens of the former SFRY republics who failed to apply for Slovenian citizenship within the prescribed time-limit were considered aliens and were subject to the provisions of that Act.

9. In the Instructions on the implementation of the 1991 Aliens Act, document no. 0016/04-14968, which the Ministry of Internal Affairs (*Ministrstvo za notranje zadeve*, "the Ministry") sent to the municipal authorities on 27 February 1992, the Ministry explained that it would be necessary to regulate the legal status of the persons affected by the Act after the expiry of the time-limits set out therein. It drew attention to the fact that problems were expected to arise with regard to persons who would become foreigners on 28 February 1992 and had not lodged an application for citizenship. In addition, it pointed out that the papers of such persons, even if issued by the Slovenian authorities and formally valid, would in fact be invalid owing to the person's change in status. Some of those concerned would be required to leave Slovenia in accordance with sections 23 and 28 of the 1991 Aliens Act. Although the police had requested the administrative authorities to issue a decision formally requiring people in this category to leave, no such decision was actually needed for their forcible removal from the State.

10. By 26 February 1992 approximately 170,000 citizens of the former SFRY republics had applied for and been granted citizenship of the new State and an additional 11,000 had left Slovenia. A considerable number of citizens of the former SFRY, who had not applied for Slovenian citizenship or whose applications had been dismissed or declared inadmissible, became subject to the provisions of the 1991 Aliens Act. According to official data from the Ministry the number of persons affected amounted to 18,305 (approximately 2,400 of whom had been refused citizenship). Their names were erased, *ex lege*, from the Register on or shortly after 26 February 1992 and entered in the register of foreigners without a residence

permit. They became known as "the erased" (*izbrisani*). The applicants fell into this category.

11. Some of those whose names were erased from the Register had failed to file an application because they had been unable to produce the documents required owing to the outbreak of war in their country of origin, i.e. in one of the former Federal republics, sickness or their absence from Slovenia at the material time. Others were without high levels of education and did not understand the material that was published on the subject in the media or receive any information from the administrative authorities. Some had miscalculated the speed with which the former SFRY had been disintegrating. Yet another group included people who had confused the concept of citizenship with that of ethnic origin and had not identified themselves as Slovenians, but rather as Roma, Hungarians or Bosnians. Lastly, some individuals, who had been born in Slovenia, believed that they had acquired Slovenian citizenship automatically.

12. With their erasure from the Register these people, many of whom had been living in Slovenia for decades, became foreigners and were deprived of all the social and economic rights which permanent residence conferred. Some of those concerned became stateless. Persons whose names were removed from the Register received no notification from the authorities and only became aware that they had become foreigners later on when, for example, they attempted to renew their personal documents or sought medical assistance.

13. As a result, many were obliged to emigrate or to apply for asylum in Slovenia. Others remained and were forced to lead a clandestine life in which they were liable to periodic detention in police stations or detention centres for illegal immigrants. In general, they were deprived of their jobs, driving licences and retirement pensions and were unable to take advantage of the privatisation process to buy the apartments they occupied under specially protected tenancy contracts. Nor were they able to leave the country, because they could not re-enter without valid documents. Many families became divided, with some of their members in Slovenia and others in one of the other successor States to the former SFRY. There were also cases of parents being unable to form legal bonds with their biological children. Many of "the erased" were detained in detention centres for illegal immigrants and deported or lost their property in Slovenia and were expelled.

14. On 28 June 1994 the Convention took effect with respect to Slovenia.

15. In the following years, several non-governmental organisations, including Amnesty International and Helsinki Monitor, and the Slovenian Human Rights Ombudsman issued reports drawing the Slovenian authorities' attention to the situation of "the erased", which however remained unaddressed.

2. Events following the challenge to the constitutionality of the 1991 Aliens Act

16. On 24 June 1998 the Constitutional Court (*Ustavno sodišče*) declared admissible a challenge to the constitutionality of sections 16(1) and 81 of the 1991 Aliens Act lodged by two individuals in 1994 whose names had been removed from the Register in 1992 (see paragraphs 118 to 124 below). On 4 February 1999 the Constitutional Court held that section 81 of the 1991 Aliens Act was unconstitutional. However, no such problems arose with section 16(1). It ordered the legislator to regulate, within six months, the special legal status of citizens of the former SFRY republics who had acquired permanent residence in Slovenia before its independence and actually lived in Slovenia, but either had not applied for Slovenian citizenship or had had their applications dismissed.

17. As a consequence, the Act on Regularisation of the Legal Status of Citizens of Other Successor States to the Former SFRY in Slovenia (*Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji*, "the Legal Status Act") was passed to regulate the legal status of "the erased" (see paragraphs 115 and 116 below). Under this Act, the residence permits were granted *ex nunc*.

18. According to information published by the Ministry, 12,937 applications for permanent residence were lodged pursuant to that Act. By early 2003, 10,713 permanent residence permits had been issued, effective from the date of issue. 288 applications had been dismissed and 97 declared inadmissible. In 949 cases the procedure had ended because the applicants had either been granted Slovenian citizenship or withdrawn their applications. The remaining 890 applications were undecided at that time.

19. Although certain applications had originally been lodged under the 1991 Aliens Act, an additional 1,033 permanent residence permits were issued under the Legal Status Act because its provisions were more favourable to the applicants. Accordingly, the status of 13,970 out of the 18,305 people whose names had been removed from the Register was dealt with under the Legal Status Act. It would appear that the remaining approximately 4,300 may not in fact have lodged an application for permanent residence.

20. On 18 May 2000 the Constitutional Court set aside some of the provisions of the Legal Status Act because it found that the requirements for the acquisition of permanent residence set forth in these provisions were stricter than the grounds for revoking a permanent residence permit under the 1991 Aliens Act (see paragraphs 128 and 129 below).

The Constitutional Court's decision of 3 April 2003 and subsequent developments

21. Further to a challenge to the constitutionality, on 3 April 2003 the Constitutional Court (decision no. U-I-246/02) again found the Legal Status

Act unconstitutional because, firstly, it did not afford permanent residence retroactively as from the date the name of the person concerned was removed from the Register. Secondly, it failed to regulate the acquisition of permanent residence for citizens of former SFRY republics who had been forcibly removed from Slovenia; and, thirdly, it did not define the meaning of the words "actually residing" in its section 1. It also struck down the three-month time-limit for lodging an application for permanent residence. It ordered the legislator to rectify the unconstitutional provisions within six months.

22. In point no. 8 of the operative part of the decision, the Constitutional Court expressly ordered the Ministry to issue, *ex proprio motu*, to those who already had (non-retroactive) permits, supplementary decisions establishing permanent residence in Slovenia with effect from 26 February 1992, the date on which their names had been deleted from the Register (see paragraphs 130 to 134 below).

23. Following the Constitutional Court's decision of 3 April 2003, the Government prepared two Acts in order to comply with the decision.

24. On 25 November 2003, the Parliament passed the Act on the Application of Point No. 8 of the Constitutional Court's Decision no. U-I-246/02-28 (*Zakon o izvršitvi 8. točke odločbe Ustavnega sodišča Republike Slovenije št. U-I-246/02-28*), also know as the "Technical Act" (see paragraph 22 above).

25. This Act laid down the procedure for issuing permanent residence permits to citizens of the former SFRY republics who were registered as permanent residents in Slovenia on both 23 December 1990 and 25 February 1992 and had already acquired a permanent residence permit under the Legal Status Act, the 1991 Aliens Act or the 1999 Aliens Act.

26. However, those parliamentarians who voted against the Technical Act sought a referendum on the question whether or not it should be implemented. The referendum was held on 4 April 2004. The turnout was 31,54 %, of which 94,59 % voted against its implementation.

27. In addition to the "Technical Act", an Act "on Permanent Residence in Slovenia of Foreigners Having Citizenship of the Other Successor States to the SFRY who were Registered as Permanent Residents in Slovenia on 23 December 1990 and 25 February 1992" – a so-called systemic Act - was drafted. While this Act was pending before the Parliament, it was replaced by a new Act which has not yet been approved.

28. In the meantime and up to July 2004, the Ministry issued supplementary decisions on permanent residence as the Constitutional Court had ordered in its decision of 3 April 2003. There is uncertainty over the number of people who in fact received decisions recognising their permanent residence with retrospective effect. According to information given by the Ministry to the press, either 3,327 or 4,372 supplementary

decisions were issued. No other measures were taken to comply with the Constitutional Court's decision of 3 April 2003.

29. A general law regulating the status of "the erased" is currently in the parliamentary procedure in the form of a constitutional law. The adoption of such a law includes *inter alia* the need for a qualified majority in the Parliament.

3. The individual circumstances of the applicants

(a) Mr Milan Makuc

30. Mr Makuc was born in 1947 in Raša, Croatia, to Slovenian parents. The family moved to Slovenia when he was seven years old. He was registered as a resident of Slovenia from 1 January 1955 to 26 February 1992 and considered himself Slovenian. He worked in Slovenia for twenty-one years and paid contributions to the national health insurance and pension schemes.

31. A certificate (*domovnica*) issued on 20 July 2005 by the local authority of Pula (Croatia) states that the applicant is a Croatian citizen.

32. During the ten-day war which followed the declaration of independence in 1991, Mr Makuc joined the Slovenian defence forces to defend the homeland. After this he believed that he would be granted Slovenian citizenship but he did not receive any communication on the subject.

33. As a result of the deletion of his name from the Register, he lost his job and the benefit of twenty-one years of pension contributions. Left without an income, he could not afford to pay the rent for the apartment owned by his former employer, International Shipping and Chartering Ltd. (*Splošna plovba*), a state-owned company, or to buy the apartment in the privatisation process. He was evicted from the apartment in 1994 or 1995, and lost all his personal possessions, including his documents. He has been living in shelters and municipal parks ever since and is dependent on the goodwill and generosity of others. His health has seriously deteriorated as a result but he no longer has access to medical care.

34. Mr Makuc visited the Piran Administrative Authority (*Upravna enota v Piranu*) several times in an attempt to regularise his status, but was repeatedly sent away. On 1 March 2006, however, he lodged an application for permanent residence under the provisions of the Legal Status Act.

35. On 15 May 2006 the Piran Social Work Centre (*Center za socialno delo Piran*) sent a letter to the Ministry asking them to expedite the examination of his application; however, the proceedings are still pending.

(b) Mr Ljubomir Petreš

36. Mr Petreš was born in 1940 in Jeružani (Bosnia and Herzegovina) and moved to Slovenia at the age of eighteen in search of work. Initially he

moved around the country but in 1963 he settled in Piran (Slovenia) and was registered as a permanent resident there until his name was erased from the Register in 1992. From 1971 until 1992 he occasionally worked in Germany and Italy. Since 1970 he has been registered as unemployed in Slovenia.

37. In 1991 he enquired of the Municipality of Piran (*Občina Piran*) whether he had to apply for Slovenian citizenship in order to obtain it. He was allegedly told that since he had been registered as a permanent resident of the municipality since 1963 no application was required.

38. In early 1992 he was alerted to the possibility that there might be a problem when he did not receive an invitation to vote in the local elections. Subsequently, when he sought to renew his identity card in March 1992, holes were punched in it, making it invalid. He immediately retained a lawyer and lodged an application for Slovenian citizenship. On 29 November 1996 the Ministry informed Mr Petreš that his application was incomplete and gave him two months to provide the missing documents proving that he had accommodation, a permanent source of sufficient income, that he had no convictions and that no criminal proceedings were pending against him, that he had paid all his taxes, and that he had a sufficient command of the Slovenian language. The deadline for furnishing the missing documents was extended a number of times, on one occasion at Mr Petreš's request, until 19 June 2000, when he was given a final three months.

39. In 2002 Mr Petreš sought, through his sister and a friend, to obtain citizenship of Bosnia and Herzegovina in the Laktaši Municipality where he was born. The application was dismissed, because he did not have permanent residence in Bosnia and Herzegovina.

40. On 29 December 2003 Mr Petreš lodged a request for permanent residence under the Legal Status Act with the Piran Administrative Authority, but he does not appear to have received any response.

41. After his name was removed from the Register in 1992, Mr Petreš lost the right to remain in the centre where he resided and has been homeless ever since, living in a shelter made of wood and cardboard on a piece of land owned by the Municipality and leased to a private individual who forced the applicant to work for him for free, taking advantage of the fact that he lived in constant fear of being expelled from Slovenia.

42. As he had no valid documents he was unable to travel outside Slovenia and could not seek work in Italy or visit his parents in Bosnia and Herzegovina. Although the local police knew him and left him alone, he risked expulsion if he travelled around the country.

43. In addition, he had been experiencing serious breathing problems which may have resulted from a bout of tuberculosis he had suffered in 1970. When he sought medical assistance at Sežana Hospital in October and November 2001, he was asked to pay the costs, because he had no health

insurance. Ultimately, however, the invoices were cancelled at the request of one of the hospital doctors. Owing to his condition, he had been in grave need of medical assistance, but since he was unemployed and had no medical insurance he could not have afforded to pay for it.

44. He had a similar experience in 2003 when he sought medical attention after being hit by a car. Following the accident, proceedings were instituted against him in the court for minor offences, but he could not make a counterclaim because he did not have any papers. A few days afterwards police broke into the applicant's shelter while he was asleep and demanded 7,000 tolars (approximately 30 euros) in respect of the fine that was imposed in those proceedings.

(c) Mr Mustafa Kurić

45. Mr Kurić was born in 1935 in Šipovo (Bosnia and Herzegovina). He moved to Slovenia at the age of twenty and settled in Koper around 1965. Since he was a trained shoemaker, he rented a small workshop from the Koper Municipality (*Občina Koper*) and established a private business there in 1976.

46. In 1991, during the six-month period for lodging an application for Slovenian citizenship, he fell seriously ill and was hospitalised for three months.

47. In 1993 his home caught fire and he lost most of his papers. When he applied for replacement papers from the Koper Administrative Authority (*Upravna enota v Kopru*), he was informed that he could not be given any since his name had been erased from the Register.

48. Mr Kurić resumed his business without the necessary papers and continued to pay rent to the municipality. In the late 1990s he started experiencing financial difficulties and was unable to continue paying the rent. He had no work and feared that the Municipality would cause him problems because of the rent arrears.

49. After his name was removed from the Register in 1992, he lost the right to remain in the home he rented from the Municipality, because he could no longer afford to pay the rent. Since he had no papers, he was at risk of being expelled if he travelled outside the local community where the police tolerated his presence. However, once he travelled to the neighbouring town of Izola and was threatened by the police that if he failed to produce his papers he would be put on the first plane for Sarajevo.

50. Owing to his legal status he had no income and was unable to seek free medical assistance when needed because he was afraid he would have to pay for it. At an undetermined time, for example, he declined medical services after having broken a clavicle bone in a car accident.

51. Mr Kurić tried to regularise his status with the Koper Administrative Authority, but did not receive a reply.

52. On 7 May 2005 he wrote a letter to the Ministry seeking Slovenian citizenship. The procedure is still pending.

(d) Mr Jovan Jovanović

53. Mr Jovanović was born in 1959 in Peljave (Bosnia and Herzegovina). He moved to Slovenia in 1976 in search of work and settled in Ljubljana. He worked in a local brewery until 31 March 1992 when he decided to set up a private company. Owing to his status as an "erased" person, his plans to pursue a private career fell through. He also lost the apartment he had rented from his former employer, but acquired a new residence with his female partner, L.N., who was also of Bosnian origin but had acquired Slovenian citizenship. They have a son, S.J., who has Slovenian citizenship.

54. Mr Jovanović did not apply for Slovenian citizenship in 1991 because he could not obtain the required documents from Bosnia and Herzegovina and could not leave Slovenia at the time. In any event, he did not believe Slovenia would actually obtain independence. One of his sisters and other more distant relatives had acquired Slovenian citizenship without difficulty.

55. One day he was stopped by the police in a routine check and his passport and identity card were confiscated. Subsequently, he was repeatedly fined by the police, because he could not produce any identification. Since 1992 Mr Jovanović has not left Slovenia, not even to attend his brother's and sister's funerals, because without papers he would be unable to re-enter the country.

56. On 31 March 2004 Mr Jovanović lodged an application for Slovenian citizenship under the amended Citizenship Act and an application for a permanent residence permit.

57. On 14 April 2004 the Ministry informed him that his application for citizenship was incomplete and informed him of the requirements he must satisfy in order to acquire the status sought. They required him to amend his application within one month or to explain why he could not do so. He was specifically requested to produce, *inter alia*, proof that he had sufficient income, no outstanding tax debts, and legal status as a foreigner.

58. On 18 January 2006 the Ministry informed Mr Jovanović that he had not lodged the application for a permanent residence permit with the competent administrative authority on the prescribed application form. As a consequence, he was requested to pay administration fees within fifteen days, which he did.

The proceedings are still pending.

(e) Mr Velimir Dabetić

59. Mr Dabetić was born in 1969 in Koper (Slovenia), where he also attended primary and secondary school. His parents and two brothers were

born in Montenegro and they, like the applicant, were removed from the Register in 1992. Mr Dabetić's mother was granted Slovenian citizenship in 1997 and his father in 2004.

60. In 1991 Mr Dabetić moved to Italy, but remained registered as a permanent resident in Koper (Slovenia) until the events of 1992. He worked in Italy until 2002, when his old SFRY passport expired and the Italian authorities refused to extend his residence permit. He remained in Italy illegally, even though on 20 April 2006 he was ordered to leave the country within five days. Eventually, he was given leave to remain in Italy since, on 2 March 2006, he had applied for recognition of his stateless person status and the proceedings were still pending.

61. On 25 November 2003 Mr Dabetić requested the Slovenian Ministry to issue a decision regulating his status in accordance with the Constitutional Court's decision of 3 April 2003 (see paragraphs 130 to 134 below). He argued that his status should have been regularised within one month after the Constitutional Court's decision was delivered.

62. On 9 February 2004 Mr Dabetić lodged an administrative action in the Administrative Court (*Upravno sodišče*) in the absence of any response from the Ministry and sought a decision regularising his status, as required by the Constitutional Court's decision. The proceedings are still pending.

63. In 2004 Mr Dabetić applied for Slovenian citizenship. The Ministry dismissed his application on 14 November 2005 because he had failed to prove that he had actually resided in Slovenia for ten years and had lived there constantly for the last five years. The Ministry relied on the statement made by the applicant's father that the applicant and his brothers had left Slovenia in 1993 and lived abroad since. That evidence was not contested by the applicant.

(f) Ms Ana Mezga

64. Ms Mezga was born in 1965 in Čakovac (Croatia). In 1979 she went to live with her sister in Ljubljana (Slovenia), where she later found work and acquired permanent residence.

65. In 1992, after the birth of her second child, she became aware of the fact that her name had been erased from the Register. Her employer shortened her maternity leave to six months instead of the expected fifteen and made her redundant. As a result, she lost her medical insurance.

66. In March 1993 she was stopped by the police during a routine control. Since she had no papers she was detained at the police station and subsequently in a transit centre for foreigners (*prehodni dom za tujce*), but was released after paying a substantial fine.

67. Following these events, she moved to Piran, where she met H.Š., a Slovenian citizen with whom she lived afterwards and had two children, who are both Slovenian citizens. Her first two children had lived with their grandmother in Croatia until the latter's death and were then placed in foster

care. Both for their sake and her own sake Ms Mezga acquired Croatian citizenship.

68. In 1999 Ms Mezga lodged an application for a permanent residence permit with the Ministry in accordance with the Legal Status Act. The Ministry asked her five times, the most recent occasion being on 25 October 2004, to amend her application, as it was incomplete. It explained that the evidence she had produced – including the oral testimony of four witnesses, one of whom was her partner – was not sufficient to prove that she had resided in Slovenia both before and after she lodged her application. The Ministry also informed her that she could have sought a permanent residence permit under the provisions for family reunification, since she was the mother of two children with Slovenian citizenship.

69. Since Ms Mezga did not reply to the letter from the Ministry, the proceedings were suspended on 6 December 2004.

70. In the meantime she had also applied for Slovenian citizenship under the amended Citizenship Act. On 18 November 2005 the Ministry informed her that her application was incomplete and gave her two months to furnish evidence that, among other things, she had not been convicted and sentenced to more than a year's imprisonment and that she had actually been residing in Slovenia since 23 December 1990.

(g) Mrs Ljubenka Ristanović and Mr Tripun Ristanović

71. Mrs Ristanović was born in 1968 in Zavidivić (Bosnia and Herzegovina) and moved to Ljubljana (Slovenia) in 1986 in search of work. There she married a certain R.R., who was not a citizen of Slovenia but was registered there as a temporary resident. In 1988 their son, Tripun Ristanović, was born.

72. Both applicants were registered as permanent residents in Ljubljana before the events of 1992. Mrs Ristanović believed that for this reason she would be awarded Slovenian citizenship automatically. However, in 1994 they were both deported to Serbia. R.R. remained in Slovenia and was issued with a permanent residence permit.

73. In 2004 Mrs Ristanović acquired a Serbian identity card and in 2005 a Serbian passport. In 2004, Mr Tripun Ristanović was issued with an identity card and passport by Bosnia and Herzegovina. Since he has no Serbian documents he has been living in constant fear of being deported.

(h) Mr Ali Berisha

74. Mr Berisha was born in 1969 in Peć (Kosovo) in a Roma ethnic community. He moved to Slovenia in 1985.

75. In 1991 he spent some time in Kosovo with his sick mother. This appears to have been the reason he did not apply for Slovenian citizenship at the time.

76. In 1993 he was detained by the border police as he re-entered the country after visiting relatives in Germany. His Yugoslav passport was taken from him and never returned. He was kept in a transit centre for foreigners for ten days and on 3 July 1993 deported to Tirana (Albania) without obtaining any decision on his residence status. The Albanian police returned the applicant to Slovenia on the same plane because he had no passport. Upon his return, he was again put in the transit centre for foreigners. He escaped overnight, after being threatened with deportation to the Czech Republic.

77. Mr Berisha fled to Germany, where he received a temporary residence permit for humanitarian reasons, owing to the unstable situation in Kosovo at the time.

78. On 9 August 1996 he married M.M., born in Kosovo, also a member of a Roma ethnic group. Four children were born between 1997 and 2003 while the family lived in Germany and received welfare benefits there.

79. In 2005 the German authorities dismissed Mr Berisha's request for another extension of his residence permit because the overall situation on Kosovo was stable enough for him to return there. He was ordered to leave Germany with his family by 30 September 2005.

80. In July 2005 Mr Berisha lodged an application for temporary residence in Slovenia. On 22 July 2005 he also lodged an application for permanent residence under the Legal Status Act.

81. The family returned to Slovenia where they sought asylum with the aid of a legal adviser. Mr Berisha also sought refugee status. On 26 October 2005 the Ministry declared itself incompetent to decide on his request, in accordance with the Dublin Convention on asylum seekers, since he had already lodged an application for asylum in Germany and those proceedings were still pending at the time. Since the family was bound to be deported to Germany, Mr Berisha withdrew his application for asylum in Slovenia. This resulted in the termination of the deportation proceedings on 19 October 2005. The case also received considerable attention from the local and international community owing to the efforts of Amnesty International.

82. On 27 February 2006 the family again applied for asylum in Slovenia. They were living in an asylum centre (*azilni dom*) at the time.

83. On 28 July 2006 the couple's fifth child was born in Slovenia.

84. On 30 October 2006 the Ministry again declined to examine the applications, applying the Dublin Convention. It had received fresh evidence that Mr Berisha and his family were asylum seekers in Germany, where they had received financial aid for that purpose. In addition, on 11 October 2005 and 19 July 2006 the Ministry was informed by the German authorities that Germany had jurisdiction for examining the applications for asylum of the persons concerned.

85. On 5 November 2006 the family instituted proceedings in the Administrative Court, contesting the decision of 30 October 2006. On the same day they also requested that the impugned decision not be enforced and withdrew their application for asylum. The proceedings ended on 28 December 2006 when the Supreme Court decided that under the Dublin Convention Germany had jurisdiction to decide the applicant's request for asylum.

86. On 1 February 2007 the applicant and his family were deported to Germany.

(i) Mr Ilfan Sadik Ademi

87. Mr Ademi was born in 1952 in Skopje (Former Yugoslav Republic of Macedonia) in a Roma ethnic community. In 1977 he moved to Slovenia, where he worked until 1992, when his name was removed from the Register.

88. On 23 November 1992 his lawyer lodged an application for Slovenian citizenship on his behalf. In 1997 the Ministry started examining the application, but could not proceed because Mr Ademi had failed to inform the Slovenian authorities of his change of address.

89. In 1993 Mr Ademi was stopped by the police in the course of a routine control. Since he had no valid papers, he and his family were expelled to Hungary. Shortly afterwards they moved to Croatia, from where they re-entered Slovenia illegally. On an unspecified date, they were again expelled to Hungary.

90. Mr Ademi later moved to Germany where he declared himself a stateless person and obtained a temporary residence permit and a passport for foreigners.

91. On 9 February 1999 he requested the Embassy of the Former Yugoslav Republic of Macedonia to issue him with a supplementary passport, but received a negative reply since he was not a citizen of that country.

92. On 16 February 2005 he lodged an application for permanent residence with the Ministry under the Legal Status Act.

93. On 20 April 2005 the Ministry informed him that his application was incomplete and requested him to submit evidence of citizenship.

94. On 26 May 2005 the application was rejected, on the ground that Mr Ademi was a stateless person. The Ministry explained that the Legal Status Act applied only to citizens of the former SFRY republics.

95. On 11 July 2005 the Ministry replied to Mr Ademi's letter seeking further examination of his 1992 application for Slovenian citizenship. It informed him that, since he did not appear to have lived in Slovenia for the preceding ten years, he did not meet the requirements for Slovenian citizenship under the amended Citizenship Act.

96. The applicant now lives in Germany.

(j) Mr Zoran Minić

97. Mr Minić was born in 1952 in Podujevo (Kosovo) and moved to Slovenia with his family in 1977.

98. After the declaration of independence of Slovenia and pursuant to the Citizenship Act, the applicant and his family lodged applications for Slovenian citizenship. However, they were one month late in lodging the application, as the war in Kosovo had made collecting the necessary documents difficult. Mr Minić's mother was awarded citizenship in 2000 and his siblings in 2003.

99. In 2002 Mr Minić was arrested by the police because he was working without a permit. He was prosecuted, ordered to pay a fine and expelled to Hungary, in spite of the Constitutional Court's decision of 4 February 1999 (see paragraphs 118 to 124 below), without any formal decision. Ultimately, he moved to Serbia, where he married a Serbian citizen with whom he has four children.

100. In 2002 he lodged an application for Slovenian citizenship with the Ministry.

101. Between 26 April and 9 October 2004 the Ministry informed him five times that his application was incomplete and gave him additional time to furnish evidence to prove, among other things, that he had been living in Slovenia without interruption since 23 December 1990. When he failed to produce the requested evidence, he was summoned for a hearing at the Ministry.

102. At the hearing on 17 December 2004 he confirmed the information stated in his employment record, namely that he had worked in Podujevo (Kosovo) from 8 January 1992 to 6 April 1999 and had thus not been living in Slovenia since 23 December 1990. His application was accordingly dismissed on 21 February 2006. That decision was served on Mr Minić between 28 June and 2 July 2006 on a trip to Slovenia. He says that earlier in the year he was denied a visa to enter Slovenia by the Slovenian Embassy in Belgrade (Serbia).

B. Relevant domestic law and practice

1. Relevant domestic law

103. On 6 December 1990, in the course of the preparations for the plebiscite on the independence of Slovenia, the Assembly of the Republic of Slovenia (*Skupščina Republike Slovenije*) adopted the so-called Statement of Good Intentions (*Izjava o dobrih namenih*), which was published in the Official Gazette no. 44/90-I. Its purpose was to express the State's commitment to certain values in pursuit of its independence. The relevant provision of this document provides as follows:

"...The Slovenian state ... shall guarantee ... the right to obtain Slovenian citizenship to all those who have their permanent residence in Slovenia, if they so wish..."

104. The relevant provisions of the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (*Temeljna ustavna listina o samostojnosti in neodvisnosti Republike Slovenije*), Official Gazette no. 1/91 of 25 June 1991, provide as follows:

Section III

"The Republic of Slovenia guarantees the protection of human rights and fundamental freedoms to all persons on the territory of the Republic of Slovenia, regardless of their national origin and without any discrimination, in accordance with the Constitution of the Republic of Slovenia and binding international agreements.

The Italian and Hungarian national minority in the Republic of Slovenia and their members are guaranteed all the rights enshrined in the Constitution of the Republic of Slovenia and binding international agreements."

105. The relevant provisions of the Constitutional Act relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (*Ustavni zakon za izvedbo temelje ustavne listine o samostojnosti in neodvisnosti Republike Slovenije*), Official Gazette no. 1/91 of 25 June 1991, provide as follows:

Section 13

"Citizens of the other republics [of the former SFRY] who on 23 December 1990, the day the plebiscite on the independence of the Republic of Slovenia was held, were registered as permanent residents in the Republic of Slovenia and in fact live here shall until they acquire citizenship of Slovenia under section 40 of the Citizenship of the Republic of Slovenia Act or until the expiry of the time-limit set forth in section 81 of the 1991 Aliens Act, have equal rights and duties as the citizens of the Republic of Slovenia..."

106. The relevant provisions of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), Official Gazette no. 33/91 of 28 December 1991, provide as follows:

Article 8

"Statutes and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly."

Article 14

"In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance.

All are equal before the law."

Article 18

"No one shall be subject to torture or inhuman or degrading treatment or punishment..."

Article 90

"The National Assembly may call a referendum on any issue which is the subject of regulation by law. The National Assembly is bound by the result of such referendum.

The National Assembly may call a referendum from the preceding paragraph on its own initiative, however it must call such referendum if so required by at least one third of the deputies, by the National Council or by forty thousand voters.

The right to vote in a referendum is held by all citizens who are eligible to vote in elections.

A proposal is passed in a referendum if a majority of those voting have cast votes in favour of the same.

Referendums are regulated by a law passed in the National Assembly by a two-thirds majority vote of deputies present."

107. The relevant provision of the Constitutional Court Act, Official Gazette no. 15/94, provide as follows:

Section 1

"1. The Constitutional Court is the highest body of judicial authority for the protection of constitutionality, legality, human rights and basic freedoms.
2. In relation to other state bodies, the Constitutional Court is an autonomous and independent state body.
3. Decisions of the Constitutional Court are legally binding."

108. In preparing for the declaration of independence, the Assembly of the Republic of Slovenia passed various laws that were published in the Official Gazette no. 1/91 on 25 June 1991. Among them were the 1991 Aliens Act and the Citizenship of the Republic of Slovenia Act. The relevant provisions of the latter Act provide:

Section 39

"Persons who have acquired citizenship of the Republic of Slovenia and the Socialist Federative Republic of Yugoslavia under valid legislation, shall be considered citizens of Slovenia under the present Act."

Section 40

"Citizens of another republic [of the former SFRY] who on 23 December 1990, the day the plebiscite on the independence of the Republic of Slovenia was held, were registered as permanent residents in the Republic of Slovenia and in fact live here shall acquire citizenship of the Republic of Slovenia if they lodge, within six months after the present Act enters into force, an application with the internal affairs authority of the municipality where they live..."

109. The Citizenship of the Republic of Slovenia (Amendment) Act (*Zakon o dopolnitvi zakona o državljanstvu Republike Slovenije*), Official Gazette no. 30/91 of 14 December 1991, added the following two paragraphs to the above-mentioned section 40:

> "Even if the applicant meets the requirements set forth in the preceding paragraph his or her application will be dismissed, if he or she committed, after 26 June 1991, a crime ..... against the Republic of Slovenia or other values protected by the criminal legislation in accordance with section 4 of the Constitutional Act relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, regardless of where the crime was committed. If criminal proceedings are pending, the procedure concerning nationality shall be suspended until the decision in the aforementioned proceedings becomes final.
>
> Even if the applicant for citizenship meets the requirements set forth in the first paragraph, his or her application may be dismissed [if granting citizenship would be liable to undermine public order, security or defence of the State]."

110. In its decision U-I-89/99 of 10 June 1999 the Constitutional Court declared unconstitutional the provision in the latter paragraph that cited "public order" as a reason for denying citizenship.

111. In 2002 the Citizenship of the Republic of Slovenia Act was further amended. The relevant provision of the Citizenship of the Republic of Slovenia (Amendment) Act (*Zakon o dopolnitvi zakona o državljanstvu Republike Slovenije*), Official Gazette no. 96/2002 of 14 November 2002, provides:

Section 19

> "An adult who on 23 December 1990 was registered as a permanent resident on the territory of the Republic of Slovenia and has lived there continuously since that date, may apply for citizenship of the Republic of Slovenia within one year after the present Act enters into force if he or she meets the requirements set forth in points 5, 6, 8, and 10 of section 10 (1) of this Act.
>
> When deciding under the preceding paragraph whether the applicant meets the requirements set forth in points 6 and 8 of section 10 (1) of this Act, the competent authority may take into consideration the length of the applicants' stay in the State, his or her personal, family, business, social and other ties with the Republic of Slovenia and the consequences a refusal of citizenship would have for the applicant.
>
> ..."

112. The relevant provisions of the 1991 Aliens Act provide as follows:

Section 13

> "...
>
> Foreigners wishing to remain on the territory of the Republic of Slovenia ... for reasons of education, specialisation, employment, medical treatment, professional experience, or because they have married a citizen of the Republic of Slovenia, have immovable property on the territory of the Republic of Slovenia, or enjoy the rights afforded by employment in the State or for any other valid reason requiring their residence in the State exist, must apply ... for a temporary residence permit.

..."

Section 14

"A residence permit may be issued as

(i) a temporary permit; or

(ii) a permanent residence permit."

Section 15

"A temporary residence permit shall be valid for one year ...

A temporary residence permit may be extended..."

Section 16

"A permanent residence permit may be issued to a foreigner who has been living on the territory of the Republic of Slovenia continuously for at least three years on the basis of a temporary residence permit and meets the requirements set forth in section 13 of this Act for permanent residence on the territory of the Republic of Slovenia..."

Section 23

"A foreigner residing on the territory of the Republic of Slovenia on the basis of a foreign passport, a visa or an entrance permit, or an international agreement ... or who has been issued with a temporary residence permit ... may be refused leave to remain:

(i) if reasons of public order, security or defence of the State so demand;

(ii) if he or she refuses to abide by a decision of the State authorities;

(iii) if he or she repeatedly breaches public order, national border security or the provisions of this Act;

(iv) if he or she is convicted by a foreign or national court of a crime punishable by at least three months' imprisonment;

(v) if he or she no longer has sufficient means of subsistence and his or her subsistence is not otherwise secured;

(vi) for the protection of public health."

Section 28

"An authorised officer of the internal affairs authority may take a foreigner who fails to leave the territory of the Republic of Slovenia voluntarily when required to do so by the competent authority or administrative body in charge of internal affairs, or who resides on the territory of the Republic of Slovenia beyond the period provided for in section 13 (1) of this Act or beyond the period allowed in the decision granting temporary residence, to the State border or diplomatic-consular representation of the State of which he or she is a citizen, and direct such person to cross the border or hand him or her over to the representative of a foreign country.

The internal affairs authority concerned shall order any foreigner who does not leave the territory of the Republic of Slovenia in accordance with the above paragraph and cannot be removed immediately for any reason, to reside in a transit centre for foreigners for a period not exceeding thirty days if there exists a suspicion that he or she will seek to evade this measure.

An internal affairs authority may designate a foreigner who is unable to leave the territory of the Republic of Slovenia immediately but has sufficient means for subsistence a different place of residence."

Section 64

"When applying for permanent or temporary residence, registering or cancelling permanent or temporary residence or registering a change of address the foreigner shall lodge with the competent authority or the authority of the Republic of Slovenia abroad competent to conduct consular affairs, the following information:

...

9. his or her last permanent or temporary residence abroad or in the Republic of Slovenia...

10. his or her present temporary or permanent residence in Slovenia ...;

11. the date of arrival on the territory of the Republic of Slovenia;

12. the reasons for living in the Republic of Slovenia ...;

13. the details of how the means of subsistence will be secured;

14. the number and type of travel document..."

Section 81

"Until the decision issued in the administrative proceedings concerning the request for citizenship becomes final, the provisions of this Act shall not apply to citizens of the SFRY who are citizens of other republics and who apply for Slovenian citizenship in accordance with section 40 of the Citizenship of the Republic of Slovenia Act within six months after it enters into force.

As regards citizens of the SFRY who are citizens of other republics but either do not apply for citizenship of the Republic of Slovenia within the time-limit set out in the previous paragraph or are refused citizenship, the provisions of this Act shall apply two months after the expiry of the time-limit within which they could have applied for citizenship or after the decision made in respect of their application became final."

Section 82

"...Permanent residence permits issued in accordance with the Movement and Residence of Foreigners Act ... shall remain valid if the foreign holder of such a permit had permanent residence on the territory of the Republic of Slovenia when this Act came into force."

113. In 1997 section 16 was amended so as to require eight years' continuous residence on the basis of a temporary residence permit for a foreigner to qualify for permanent residence.

114. In 1999 this Act was replaced by the 1999 Aliens Act (*Zakon o tujcih*), Official Gazette no. 61/99 of 30 July 1999. Amendments were made to the latter Act in 2002, 2005 and 2006. The relevant provision of the amended 1999 Aliens Act provides:

Section 36

"A foreigner registered as a permanent resident in Slovenia and a foreigner who has been living in Slovenia for one year as a temporary resident and has acquired a temporary residence permit valid for at least one year shall have, under the terms set forth in this Act, a right to preservation of family and a right to family reunification...

An application for a residence permit shall be lodged with a diplomatic-consular representation of Slovenia abroad or with a competent authority in Slovenia.

For the purposes of this Act, the members of the foreigner's immediate family are:

(i) a spouse;

(ii) minor unmarried children of the foreigner;

(iii) minor unmarried children of the spouse;

(iv) parents of the minor foreigner;

(v) foreigner's or spouse's unmarried of-age children and parents which the foreigner or the spouse are obliged to support in accordance with the legislation of the state of his or her citizenship.

..."

115. In order to address the situation of citizens of the former SFRY republics living in Slovenia, the Parliament of the Republic of Slovenia passed the Legal Status Act, which was published in Official Gazette no. 61/99 on 30 July 1999. The relevant provisions of this Act, which entered into force on 30 September 1999, provide:

Section 1

"Citizens of another successor state to the former SFRY (hereinafter "a foreigner") who were registered as permanent residents on the territory of the Republic of Slovenia on 23 December 1999 and are actually residing in the Republic of Slovenia, and foreigners who were resident in the Republic of Slovenia on 25 June 1991 and have been living there continuously ever since shall be issued with a permanent residence permit, regardless of the provisions of the 1991 Aliens Act ..., if they meet the requirements set forth in this Act."

Section 2

"An application for permanent residence shall be filed within three months after this Act enters into force ...

A foreigner who has lodged an application for permanent residence pursuant to section 40 of the Citizenship of the Republic of Slovenia Act ... but has received a decision not granting his application, may file an application under the preceding paragraph within three months after this Act enters into force or the decision became final, if such decision is issued after this Act entered into force..."

Section 3

"Permanent residence permit shall not be issued if the applicant has:

(i) disturbed the peace or breached public order by the use of violence since 25 June 1991; or

(ii) been convicted and sentenced to more than one year's imprisonment since 25 June 1991; or

(iii) been convicted and sentenced, in total, to more than three years' imprisonment since 25 June 1991; or

..."

116. The 2001 amendments to this Act were made as a result of the decision of the Constitutional Court of 18 May 2000 (see paragraphs 128 and 129 below) and replaced the original section 3 with a new section which provides as follows:

"The Ministry [of Internal Affairs] may refuse a permanent residence permit to a foreigner who, in a final judgment:

(i) has been convicted of a criminal offence and sentenced to at least three years' imprisonment;

(ii) has been convicted and sentenced to a total of more than five years' imprisonment;

...

When taking a decision on the basis of the preceding paragraph, the Ministry shall take into consideration the length of the applicant's stay in the State, his personal, family, business, social and other ties with the Republic of Slovenia and the consequences a refusal of a permanent residence permit would have for the applicant."

117. On 29 September 2005 Slovenia ratified the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities – Dublin Convention. The relevant provisions of this Convention, which took effect with respect to Slovenia on 26 October 2005 and with respect to Germany on 1 September 1997, provide:

Article 3

"1. Member States undertake to examine the application of any alien who applies at the border or in their territory to any one of them for asylum.

...

6. The process of determining the Member State responsible for examining the application for asylum under this Convention shall start as soon as an application for asylum is first lodged with a Member State.

..."

Article 8

"Where no Member State responsible for examining the application for asylum can be designated on the basis of the other criteria listed in this Convention, the first Member State with which the application for asylum is lodged shall be responsible for examining it."

2. Case-law of the Constitutional Court of the Republic of Slovenia

(a) Decision of 4 February 1999 (U-I-284/94)

118. In a decision of 4 February 1999 (U-I-284/94) the Constitutional Court declared that section 81 of the 1991 Aliens Act was unconstitutional. It noted that the authorities had deleted the names of citizens of the former SFRY republics who had not applied for Slovenian citizenship from the Register and entered them in the register of foreigners, without informing them. It further found that there was no legal basis for this measure.

119. The Constitutional Court noted that the provisions of the 1991 Aliens Act were, in general, designed to regulate the status of foreigners who came to Slovenia after independence, not of those who were already living there. While section 82 of the 1991 Aliens Act did regulate the legal status of foreigners originating from outside the former SFRY republics, no similar provision existed in respect of people from the former SFRY. As a consequence, the latter were in a less favourable legal position than foreigners who had lived in Slovenia since before independence. Failing to regulate the legal status of these people was contrary to Article 14 § 2 of the Constitution.

120. Furthermore, the provisions of the 1991 Aliens Act regulating the acquisition of permanent and temporary residence could not be used to remedy the status of citizens of the former SFRY republics because permanent residence and the fact of actual residence in Slovenia were particular circumstances requiring special consideration. Citizens of the former SFRY republics had a reasonable expectation that the new conditions for retaining permanent residence in Slovenia would not be stricter than those set forth in section 13 of the Constitutional Act relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia and section 40 of the Citizenship Act and that their status would be determined in accordance with international law.

121. Section 81 was therefore declared unconstitutional as it did not prescribe the conditions under which persons subject to this section who did not apply for or were denied Slovenian citizenship could apply for permanent residence.

122. The Constitutional Court further found that section 16(1) of the 1991 Aliens Act was not unconstitutional, because it applied only to foreigners entering Slovenia after independence.

123. The legislator was given six months in which to rectify the unconstitutional provisions. In the meantime, the Constitutional Court ruled that no citizen of the former SFRY who was registered as a permanent resident in Slovenia on 23 December 1990, the day the plebiscite on independence was held, and was living in Slovenia when the Constitutional

Court's judgment was issued, could be forcibly removed from Slovenia pursuant to section 28 of 1991 Aliens Act.

124. The Constitutional Court also pointed out that the unregulated situation of citizens of the former SFRY republics could lead to a violation of the right to respect of family life, as protected by Article 8 of the Convention.

(b) Decision of 1 July 1999 (Up-333/96)

125. In a decision of 1 July 1999 (Up-333/96) the Constitutional Court referred to its findings in the decision of 4 February 1999 and reiterated that citizens of the former SFRY republics were in a less favourable position than other foreign citizens who were living in Slovenia on independence. It noted that following its decision of 4 February 1999 a Bill - the Legal Status Act - had been drafted, but had not yet been adopted, to address the issue raised by that judgment.

126. In the case before it, the claimant, whose name had been deleted from the Register in 1992, had been refused the renewal of his driving licence, because he was considered a foreigner without lawful residence in Slovenia. The Constitutional Court ordered that, until the Legal Status Act entered into force, he should enjoy the status he would have had under section 13 of the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia before the expiry of the time-limit set forth in section 81 of the 1991 act. The authorities were ordered to register the claimant as a permanent resident at the address where he was living before his name was illegally deleted from the Register. They were also ordered to renew his driving licence.

(c) Decision of 15 July 1999 (Up-60/97)

127. In a decision of 15 July 1999 (Up-60/97), the claimants, who were members of the same family and citizens of one of the former SFRY republics, were denied permanent residence under section 16 of the 1991 Aliens Act, because the father had lost his job. The Constitutional Court, for reasons similar to those in case no. Up-333/96, held that until the Legal Status Act entered into force, the authorities should register them as permanent residents at the address where they were living before their names were illegally deleted from the Register.

(d) Decision of 18 May 2000 (U-I-295/99)

128. In a decision of 18 May 2000 (U-I-295/99) the Constitutional Court set aside the first, second and third sub-paragraphs of section 3 of the Legal Status Act. It found that the requirements for the acquisition of permanent residence set forth in these provisions were stricter than the grounds for revoking a permanent residence permit under the 1991 Aliens Act.

129. It went on to hold that the legal status of citizens of the former SFRY republics should be regulated on the basis of the position the individuals concerned would have had, but did not have, because of the legislator's failure to regulate it. It reiterated that the legal status of citizens of the former SFRY republics should not be essentially different from that enjoyed by foreign citizens who had acquired permanent resident status in the Republic of Slovenia before independence.

(e) Decision of 3 April 2003 (U-I-246/02)

130. In case no. U-I-246/02 the Constitutional Court reiterated its ruling in its decision of 4 February 1999. It found the Legal Status Act unconstitutional because, firstly, it did not grant retrospective permanent residence from the date of the erasure of the names of those concerned from the Register; secondly, it failed to regulate the acquisition of permanent residence for citizens of former SFRY republics who had been forcibly removed from Slovenia pursuant to section 28 of the 1991 Aliens Act; and, thirdly, it did not define the meaning of the words "actually residing" in section 1. The Constitutional Court also struck down the three-month time-limit for submitting applications for permanent residence because it was unreasonably short. It ordered the legislator to rectify the unconstitutional provisions of the impugned act within six months.

131. In point no. 8 of the operative part of the decision, it held that permanent residence permits already issued to citizens of the former SFRY republics in accordance with the Legal Status Act, the 1991 Aliens Act or the 1999 Aliens Act would be effective from 26 February 1992, if their names had been erased from the Register on that date. It also ordered the Ministry to issue, *ex proprio motu*, supplementary decisions establishing the permanent residence of those concerned retrospectively, since that date. Once this was done, those who had had permanent residential status until 26 February 1992 but had not been able to enjoy certain rights after that date owing to their unregulated legal status, would be able to invoke their rights in accordance with the relevant legislation.

132. In addition, special provisions were needed to address the situation of those who had been forcibly removed from Slovenia, although the Constitutional Court suspected that the numbers of individuals affected would probably be low, since the unregulated status of these people had generally been tolerated.

133. Moreover, the Constitutional Court said that, when determining a new time-limit for applications for permanent residence, assuming such a time-limit should be provided, the legislator should take into consideration personal and other circumstances that might have impeded the persons concerned from lodging their application in time. Until such a time-limit was set, those concerned could continue to lodge applications for permanent residence.

134. Lastly, the Constitutional Court observed that by 10 February 2003 11,746 citizens of the former SFRY republics had been granted permanent residence status on the basis of the Legal Status Act, that 385 applications had been dismissed or rejected, 980 applications were pending and that approximately 4,300 citizens of former SRFY republics had not applied for permanent residence. The decisions concerning the first group of persons concerned were of a constitutive nature and thus only had *ex nunc* effect. The Constitutional Court further observed that permanent residence was important in securing certain rights and benefits. A lack of permanent residence status resulted in citizens of the former SFRY republics being deprived of certain rights enjoyed by foreigners with permanent residence status, for example, the right to a military pension, and to certain retirement benefits and the right to renew a driving licence.

C. Relevant documents produced by international organisations

135. The situation of "the erased" was brought to the attention of several international organisations and appeals were regularly made to the Slovenian authorities to resolve the problem.

1. The Council of Europe documents

136. The principal Council of Europe document concerning citizenship is the European Convention on Nationality, which was adopted on 6 November 1997. Slovenia has neither ratified nor signed this convention.

137. On 19 May 2006 the Council of Europe adopted the Convention on the avoidance of statelessness in relation to State succession. This convention has not yet entered into force.

138. On 1 December 2005 the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted a report concerning Slovenia. The relevant part of this report states as follows:

> "Legal status of persons deleted from the list of permanent residents
>
> *Findings of the first cycle*
>
> 54. In its first Opinion on Slovenia, the Advisory Committee noted with concern the problematic situation of a number of former citizens of other republics of former Yugoslavia (SFRY), who found themselves foreigners in the territory they were living in and without confirmed legal status, following their removal from the register of permanent residents, in 1992.
>
> *Present situation*
>
> a) Positive developments
>
> 55. The Advisory Committee notes that a number of positive developments have taken place in this area. For instance, the Constitutional Court has taken a stand on these issues by clearly stating the need to restore, without further delay and retrospectively, the rights of non-Slovenian former Yugoslav citizens who were,

according to the Court, illegally removed from the register of permanent residents. The Advisory Committee also notes that efforts have been made at the legislative level to regularise the legal status of these persons, and that most of them have been granted permanent resident status in recent years on the basis of individual decisions issued by the Ministry of Internal Affairs.

b) Outstanding issues

56. The Advisory Committee notes with concern that, despite the relevant Constitutional Court decisions, several thousand persons whose names were deleted from the registers of permanent residents on 26 February 1992, and automatically transferred to the registers of foreigners, are still, more than ten years on, awaiting clarification of their legal status. This concerns citizens of other former Yugoslav republics, including a number of Roma, who were legally resident in Slovenia and, for various reasons, did not wish – or were unable – to obtain Slovenian citizenship within the short time-limit allowed by the authorities after the country's independence.

57. In many cases, the lack of citizenship or of a residence permit has had a particularly negative impact on these persons' situation. It has, in particular, paved the way for violations of their economic and social rights, with some of them having lost their homes, employment or retirement pension entitlements, and has seriously hindered the exercise of their rights to family life and freedom of movement.

58. The Advisory Committee notes that more recent government initiatives have sought, in accordance with the relevant decisions of the Constitutional Court, to restore these persons' rights retrospectively. It finds it disturbing that these initiatives have been stalled for over a year, and that the social climate in Slovenia has not been conducive to a speedier resolution of these matters. In the referendum held in April 2004 on the Act on the Implementation of Item n° 8 of Constitutional Court Decision n° U-I-246/02 (the so-called "Technical Act on Erased Persons"), 94.7% of participants (representing 31.45% of voters) expressed their opposition to this Act (see also comments under Article 6 below).

59. The Advisory Committee notes that the authorities are in the process of drafting, at the governmental level, a new normative text expected to provide solutions to the problems mentioned above. Insofar as this new initiative is not yet in the public domain, it is difficult to ascertain, at this stage, whether the measures envisaged – legislative or other – will be likely to resolve the situation in a comprehensive manner once and for all.

Recommendations

60. Without further delay, the authorities should find solutions to the problems faced by non-Slovenians from former Yugoslavia (SFRY) who have been deleted from the register of permanent residents, in connection with the regularisation of their legal status, including access to citizenship and social and economic rights.

61. At the same time, they should assist these persons in their efforts to overcome the difficulties arising from this situation, and facilitate their effective participation and integration in the Slovene society by means of targeted measures."

139. On 29 March 2006 a Follow-up Report on Slovenia (2003-2005) was published, assessing the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights. In the relevant part it states as follows:

"46. The issue of erased persons continues to be a divisive and politically charged issue in Slovenia and is the subject of heated debate. Regrettably, the issue has been frequently used by some political factions as a campaign tool. Especially during the period leading to the October 2004 general elections, many politicians made xenophobic statements when referring to the issue of the erased persons and to others considered non-Slovene or otherwise different.

47. In a ruling of April 2003, the Constitutional Court declared the 1999 law aimed at remedying the situation of the erased persons to be unconstitutional. The Court ordered that those who had already acquired permanent residency on the basis of the law, be granted permanent residence permits retroactively for the period from 26 February 1992 to the date of its formal acquisition. It also ordered the legislator to amend the law within six months to determine a new time limit for possible new applications for permanent residence permits.

48. The Constitutional Court's decision imposed a duty on the Ministry of Internal Affairs to issue supplementary decisions giving retroactive effect to the residence permits to all those citizens of other former Yugoslav Republics, who were, on 26 February 1992, removed from the register of permanent residents, but who had since acquired a permit for permanent residence. The Constitutional Court's position was made clear in a further decision issued in December 2003 stating that the decision of April 2003 could be considered as sufficient legal basis for issuing decisions on permanent residence with retroactive effect, without there being any need for specific legislation. Following the Constitutional Court's decisions, the Ministry of Internal Affairs, after some delay, started issuing permanent residence decrees with retroactive validity. Approximately 4,100 such decrees have since been issued, but at the time of the follow-up visit, it appeared that the issuance of decisions was suspended.

49. According to the information received from the Association of Erased, out of the 18,305 erased persons, some 12,000 have over time either obtained citizenship or received a permanent residence permit. All of these 12,000 persons, according to the 2003 decision of the Constitutional Court, should have had their permanent residence status recognised with retroactive effect.

50. Regarding the enactment of the law required to regulate the status of those erased persons who had been expelled from or had left Slovenia, the issue is still unresolved. There has been an ongoing and heated discussion regarding this issue, which – quite apart from what the criteria for legitimate absence from Slovenia and the situation of the expelled should be – has focused also on whether the law should be enacted in the normal legislative process or adopted as a constitutional act.

Conclusions

51. The Commissioner urges the Ministry of Internal Affairs to immediately continue and finalise the issuance of supplementary decisions giving retroactive effect to the permanent residence permit of all those persons, who are entitled to it.

52. As regards the enactment of the law regulating and reinstating the status of the remaining erased persons, the Commissioner urges the Slovenian government to definitely resolve the issue in good faith and in accordance with the decisions of the Constitutional Court. Whatever the appropriate legislative solution may be, the current impasse reflects poorly on the respect for the rule of law and the Constitutional Court's judgements in Slovenia.

53. The Commissioner is extremely concerned about the continuous public manifestations of hate speech and intolerance by some politicians. The Commissioner calls for greater responsibility of politicians and media in this regard and for the full

respect of the rights and values laid down in European Convention on Human Rights and other international instruments."

140. On 13 February 2007 the European Commission against Racism and Intolerance published its third report on Slovenia, which was adopted on 30 June 2006. This report described the situation of "the erased" as follows:

"109. In its second report, ECRI dealt at length with the situation of those citizens of other ex-Yugoslav countries who were removed *ex officio* from the register of permanent residents of Slovenia in 1992 and who since then, are often referred to as the "erased". As explained in that report, following the armed conflict in Slovenia in 1991 and the ensuing independence of the country, over 170 000 of the approximately 200 000 permanent residents of Slovenia from other ex-Yugoslav countries obtained Slovenian citizenship on the basis of the 1991 citizenship law. This law allowed for a six-month window to apply for citizenship. Of the remaining 30 000 persons, approximately 11 000 left Slovenia around that time. However, for a number of reasons, including the war between other successor States of the former Yugoslavia, the uncertain situation prevailing in other such States, and the destruction, loss or inaccessibility of personal documents, 18 305 permanent residents did not or could not apply for Slovenian citizenship or applied and were rejected. As mentioned, these persons were struck off the register of permanent residents on 26 February 1992. Many of these persons – for the most part reportedly persons without good levels of education – had been living in Slovenia for a long time and some of them were even born in the country. However, as a result of the erasure from the registers, they became foreigners without legal status in Slovenia from one day to the next, in many cases without being aware of it. Loss of legal status meant for them loss of access to fundamental rights attached to residence, including the right to work and access to healthcare and other social rights, along with the annulation of personal documents and exposure to a risk of deportation.

110. In its second report, ECRI noted that a law had been passed in 1999 to open the possibility for the "erased" to apply for permanent residencehttp://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/slovenia/slovenia_cbc_3.asp - P487_84943. It also noted however, that the time-limit of three months to do so and the requirement that applicants prove that they had lived in Slovenia since 1991 without interruptions of longer than three months seriously limited the effectiveness of this law. ECRI notes that approximately 12 000 people have obtained permanent residence permits on the basis of that law. However, such residence permits were not granted with effect from the date of erasure (26 February 1992), but from the date of formal acquisition of these permits, i.e. in a majority of cases, 1999.

111. ECRI notes that in April 2003, the Constitutional Court declared the 1999 law unconstitutional, *inter alia* because: it did not give retroactive effect to residence permits; it did not regulate the obtaining of residence permits for those "erased" who had been forcibly deported from Slovenia; it did not prescribe criteria for the fulfilment of the requirement of continuous residence in Slovenia. The Constitutional Court therefore established that the Ministry of Interior must issue supplementary administrative decisions whereby residence permits already granted were given retroactive effect from 26 February 1992 to the date of formal acquisition. It also established that the 1999 law must be amended within six months to determine a new time limit for possible new applications.

112. Concerning the first point, ECRI notes that following initial delays, the Ministry of Interior under the former Government started to issue supplementary administrative decisions giving residence permits retroactive effect at the end of 2004. ECRI notes however, that only approximately 4 100 such decisions have been issued. The representatives of the Ministry of Interior under the current Government have stated that they consider that these supplementary decisions do not rest on a sufficiently strong legal basis, and that a general law establishing conditions and criteria for issuing of residence permits should be passed first. ECRI notes however, that in December 2003 the Constitutional Court made it clear that its decision of April 2003 constituted a sufficient legal basis for issuing such decisions and that, in fact, the 4 100 administrative decisions already issued were issued on such a basis. ECRI expresses serious concern at the fact that approximately two-thirds of the "erased" who, since 26 February 1992, have secured citizenship or permanent residence of Slovenia are still not in a position to see their rights linked to permanent residence restored with effect from the date of erasure.

113. The situation as concerns the implementation of the other parts of the decision of the Constitutional Court appears very unclear and uncertain at the time of writing and is a cause for serious concern to ECRI. The issue essentially relates to the enactment of a law to regulate the status of approximately 6 000 "erased" who have not yet secured Slovenian citizenship or permanent residence permits and whose current position varies from holders of temporary permits (an estimated 2 500 persons) and persons still living in Slovenia without legal status to persons who have left Slovenia or have been deported. The Slovenian authorities have reported to ECRI their decision to adopt such a law in the form of a constitutional law. ECRI notes that this decision has been widely criticised both within the Parliament and in civil society for effectively and deliberately leading to non-implementation of the Constitutional Court's decision, inter alia as it entails the use of constitutional means and relative procedures (including the need for a qualified majority in Parliament) in order to deal with matters that should be regulated through primary legislation. ECRI is not aware of the exact content of the law, which is reportedly in the drafting process, nor has it been possible to clarify the envisaged timetable for adoption. In any event, ECRI deplores the fact that, as a result of the non-implementation by the Slovenian authorities of the decision of the Constitutional Court, it is still not possible for approximately 6 000 people to regain the rights of which they were unlawfully stripped over fifteen years ago.

114. More generally, ECRI is deeply concerned at the tone prevailing in Slovenian public and political debate concerning the "erased" since its last report. It regrets that this part of the Slovenian population has in many occasions fallen hostage to merely political considerations, including the exploitation of their situation as a vote gainer, and that the debate around the position of these persons has steadily moved away from human rights considerations. It is particularly regrettable that racism and xenophobia have been encouraged and fostered as part of this process, including through generalisations and misrepresentations concerning the loyalty of these persons to the Slovenian State or the economic burden that restoration of their rights would entail.

Recommendations

115. ECRI urges the Slovenian authorities to restore the rights of persons erased from the registers of permanent residents on 26 February 1992. To this end, it strongly recommends that the Slovenian authorities implement the April 2003 decision of the Constitutional Court in good faith and without further delay. This includes the immediate resumption and finalisation of the process of issuing supplementary decisions granting retroactive permanent residence rights, and the adoption of a legal

framework enabling those "erased" persons who have not yet secured permanent residence or Slovenian citizenship to have their rights reinstated in a manner that is as fair and generous as possible.

116. ECRI urges the Slovenian authorities to take the lead in placing public debate on the situation of the "erased" securely in the realm of human rights and to refrain from generalisations and misrepresentations concerning these persons which foster racism and xenophobia."

2. Documents of other international bodies

141. On 2 June 2003 the United Nations Committee on the Elimination of Racial Discrimination issued concluding observations under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination stating, *inter alia*:

"13. The Committee is encouraged by the steps taken by the State party to address the long-standing issue of persons living in Slovenia who have not been able to obtain citizenship. It is nevertheless concerned that many of the persons who have not acquired Slovene citizenship may still experience administrative difficulties in complying with the specific requirements contained in the law. The Committee recommends that the State party give priority to addressing this issue and, taking into account the difficulties which have arisen, ensure that the new citizenship legislation is implemented in a non-discriminatory manner.

14. The Committee is concerned that a significant number of persons who have been living in Slovenia since independence without Slovene citizenship may have been deprived under certain circumstances of their pensions, of apartments they were occupying, and of health care and other rights. The Committee takes note of the efforts undertaken by the State party to address these issues and requests the State party to provide, in its next periodic report, specific information on these issues and on any remedies provided."

142. On 30 January 2004 the United Nations Committee on the Rights of the Child issued concluding observations made under Article 44 of the Convention on the Rights of the Child which, in the relevant part, state as follows:

"26. The Committee notes the rulings of the Constitutional Court (U-I-284/94 of 4 February 1999 and U-I-246/02 of 2 April 2003) that the erasure of about 18,300 people originating from other parts of the former Socialist Federal Republic of Yugoslavia from the Register of Permanent Residence in 1992 had no legal basis and that the permanent residence status should be restored to the affected persons retroactively. The Committee is concerned that many children were negatively affected by this erasure, as they and their families lost their right to health care, social assistance and family benefits as a consequence of losing permanent residence status and children born in Slovenia after 1992 became stateless.

27. The Committee recommends that the State party proceed with the full and prompt implementation of the decisions of the Constitutional Court, compensate the children affected by the negative consequence of the erasure and ensure that they enjoy all rights under the Convention in the same way as other children in the State party."

143. On 25 July 2005 the United Nations Human Rights Committee issued concluding observations to the second periodic report made under Article 40 of the International Covenant on Civil and Political Rights which, in the relevant part, state as follows:

> "10. While acknowledging the efforts made by the State party to grant permanent resident status in Slovenia or Slovenian nationality to citizens of other republics of the former Socialist Federal Republic of Yugoslavia living in Slovenia, the Committee remains concerned about the situation of those persons who have not yet been able to regularize their situation in the State party (arts. 12 and 13).
>
> The State party should seek to resolve the legal status of all the citizens of the successor States that formed part of the former Socialist Federal Republic of Yugoslavia who are presently living in Slovenia, and should facilitate the acquisition of Slovene citizenship by all such persons who wish to become citizens of the Republic of Slovenia."

144. On 25 January 2006 the United Nations Committee on Economic, Social and Cultural Rights issued concluding observations under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights stating, *inter alia*:

> "16. The Committee is concerned that nationals of the former Yugoslavia have been 'erased' as their names were removed from the population registers in 1992. As a result of this, they have lost their Slovene nationality and their right to reside in the State party. The Committee observes that this situation entails violations of these persons' economic and social rights, including the rights to work, social security, health care and education. Moreover, the Committee regrets the lack of information on the actual situation with regard to the enjoyment by those individuals of the rights set out in the Covenant.
>
> ...
>
> 32. The Committee urges the State party to take the necessary legislative and other measures to remedy the situation of nationals of the States of former Yugoslavia who have been 'erased' as their names were removed from the population registers in 1992. While noting that bilateral agreements were concluded in this regard, the Committee strongly recommends that the State party should restore the status of permanent resident to all the individuals concerned, in accordance with the relevant decisions of the Constitutional Court. These measures should allow these individuals to reclaim their rights and regain access to health services, social security, education and employment. The Committee requests the State party to report to it, in its next periodic report, on progress in this regard."

COMPLAINTS

145. Relying on Article 8 of the Convention, the applicants alleged that they had been arbitrarily deprived of the possibility of acquiring citizenship of the newly-established Slovenian state and/or of preserving their status as permanent residents because they had been unable to satisfy the requirements set forth by the law within the prescribed time-limit. As a

result, their names had unlawfully been erased from the Register and they had become, *de facto*, stateless persons. Subsequently, they had not been in a position to seek either Slovenian citizenship or that of any other successor State of the former SRFY or to apply for permanent residence in Slovenia. The repercussions resulting from these events had been severe for the applicants' private and family life and in breach of Article 8 of the Convention. Their applications for citizenship or permanent residence submitted after 1992 had remained undecided or the applicants had been requested to furnish documents they were unable to procure. The situation had remained unchanged even after the Constitutional Court's decision of 3 April 2003 declaring certain provisions of the Legal Status Act unconstitutional and allowing "the erased" in possession of permits to apply for retroactive recognition of their permanent residence status.

146. In addition, the applicants Mr Milan Makuc and Mr Ljubomir Petreš relied on Article 8 of the Convention and complained about the lack of adequate housing. They had been deprived of their homes following the erasure of their names from the Register in 1992 and had continually been prevented from renting other housing in Slovenia.

147. Relying on Articles 2 and 8 of the Convention, the applicants Mr Milan Makuc, Mr Ljubomir Petreš, Mr Mustafa Kurić and Mrs Ana Mezga further claimed that they had been deprived of free urgent medical assistance as a result of the erasure of their names from the Register in 1992.

148. Finally, the applicants Mrs Ljubljenka and Mr Tripun Ristanović alleged that their deportation to Serbia in the absence of any formal decision had violated Article 8 of the Convention. Similarly, the applicant Mr Zoran Minić claimed that his deportation to Kosovo and refusal of leave to re-enter Slovenia in order to rejoin his family violated Article 8 of the Convention. Likewise, the applicant Mr Velimir Debetić complained under the same provision about the refusal of leave to re-enter Slovenia and the applicant Mrs Ana Mezga of a violation of her right to be reunited in Slovenia with her first two daughters, who lived in Croatia.

149. Invoking Article 6 of the Convention, the applicants argued that the Slovenian legislator and administrative authorities had interfered with the administration of justice at the highest level and had refused to enforce the Constitutional Court's decision of 3 April 2003. This was contrary to the very essence of the right to a fair trial and had preserved the situation of illegitimacy in which the applicants found themselves and the breakdown of constitutional order. In addition, the applicants had no access to a court to seek execution of the decision and this constituted a separate breach of Article 6. Because of the failure to comply with that decision, they had been deprived of many other rights which they would have otherwise been entitled to enjoy retroactively.

150. The applicants further asserted that they had no effective remedy within the meaning of Article 13 of the Convention in order to secure compliance with the Constitutional Court's decision of 3 April 2003. They also complained about the failure of the legislator to adopt a systemic law, which was indispensable to the full reintegration of the applicants, as required by that decision. Besides, in the absence of any document concerning their erasure from the Register, the applicants had not been in a position to meet the requirements set forth in the Slovenian legislation for the acquisition of citizenship and/or a permanent residence permit.

151. The applicants Mr Milan Makuc, Mr Ljubomir Petreš, Mr Mustafa Kurić and Mr Jovan Jovanović complained under Article 1 of Protocol No. 1 that they had been deprived of property as a result of the illegal erasure of 1992 and the failure to comply with the Constitutional Court decision of 3 April 2003. They claimed that they could not enjoy the rights to which they were entitled as a result of their contributions to a pension fund over various periods of time. Relying on that same provision, these applicants and the applicants Mrs Ana Mezga and Mrs Ljubenka Ristanović alleged that they had lost the right to buy their apartments under the favourable conditions available in the privatisation process. Mrs Ana Mezga also claimed that she had been denied maternity leave to which she was entitled.

152. The applicants alleged that they had been subjected to deliberate unlawful treatment which seriously compromised their human dignity and confined them to a life on the margins of society. The lengthy uncertainty over their legal status had produced in the applicants an intense feeling of profound frustration and extreme moral and physical suffering. They claimed that the persistent refusal of the national authorities to regulate their legal status in accordance with the Constitutional Court's decision of 3 April 2003 and the situation of extreme vulnerability, insecurity and material and moral degradation in which they found themselves violated Article 3 of the Convention.

153. The applicant Mr Ljubomir Petreš complained under Article 4 of the Convention that the tenant of a plot of land where he had resided had forced him to work without pay and that the Piran local authorities, who owned the land, allowed the situation to continue.

154. Because the applicants had been unable to acquire Slovenian citizenship, they argued that they had been arbitrarily deprived of their active and passive electoral rights contrary to Article 3 of Protocol No. 1. Since they had lived on Slovenian territory for a considerable period of time or had even been born there and had paid contributions to their local communities, they had had a legitimate expectation that their right to participate in the functioning of the democratic governmental institutions and political life in the newly-established State after the dissolution of SFRY would be preserved.

155. Under Article 2 of Protocol No. 4 the applicants claimed that since they had been deprived of permits allowing them to remain in Slovenia, they were unable to move freely on Slovenian territory, because outside their local communities, they would not be tolerated by the police. In addition, they could not leave Slovenia, because they would be denied the right to re-enter the country. The applicants alleged that the Slovenian authorities had confiscated or destroyed their personal documents and had deported the seventh, eight, ninth, tenth and eleventh applicants, without any formal decision being made in this regard.

156. Lastly, the applicants relied on Article 14 of the Convention, read in conjunction with Articles 6 and 8 of the Convention, Article 3 of Protocol No. 1, and Article 2 of Protocol No. 4, and claimed that they had been discriminated against in enjoying their rights in comparison to other foreign citizens whose names were on the Register when Slovenia proclaimed its independence and who continued to live there on the basis of temporary or permanent residence permits. In particular, they claimed that they had been treated less favourably than three groups of people: those who had not been subject to the erasure of 1992 because they had acquired Slovenian citizenship, those who had only temporary residence in Slovenia before independence but had retained their status afterwards, and those who had been subject to the erasure but had subsequently been granted either permanent residence under the Legal Status Act or Slovenian citizenship pursuant to the amended Citizenship Act.

THE LAW

A. Complaints under Articles 8 and 2 of the Convention

1. Complaints concerning the acquisition of citizenship and the preservation of resident status following the independence of Slovenia and the erasure of the applicants' names from the Register

157. Under Article 8 of the Convention the applicants first complained that they had been arbitrarily deprived of the possibility of acquiring Slovenian citizenship and/or of preserving their status as permanent residents after Slovenia declared independence in 1991, because they were not in the position to submit a formal request for citizenship in the unusually short period set forth in the domestic legislation.

158. The applicants further alleged that in 1992 their names were unlawfully erased from the Register and they became stateless persons, which put their right to private and family life in peril, contrary to the requirements of Article 8, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

159. The Court recalls at the outset that under Article 34 of the Convention, only the alleged violation of one of the rights and freedoms set forth in the Convention can be the subject of an application presented before the Court.

160. The Court further recalls that no right to acquire or retain a particular nationality is as such included among the rights and freedoms guaranteed by the Convention or its Protocols. Nevertheless, the Court does not exclude that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see *X. v. Austria*, no. 5212/71, Commission decision of 5 October 1972, Decisions and Reports (DR) 43, p. 69; and *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II).

161. The Court also recalls its constant case-law according to which there is no right of an alien to enter, reside or remain in a particular country, as such, guaranteed by the Convention (see, among many other authorities, *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-...; *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1853, § 73). In addition, where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to authorise family reunion in its territory (see *Haydarie v. the Netherlands* (dec.), no. 8876/04, 20 October 2005) nor does this provision guarantee to a non-national the right to choose the most suitable place to develop family life (see *Ahmut v. the Netherlands*, judgment of 28 November 1996 *Reports of Judgments and Decisions* 1996-VI, p. 2033, § 71).

162. However, the Court recalls that it has jurisdiction to examine the facts of the present case for their compatibility with the Convention only in so far as they occurred after 28 June 1994, which is the date of the entry into force of the Convention with regard to Slovenia (see *Kovačić and Others v. Slovenia* (dec.), nos. 44574/98, 45133/98 and 48316/99, 9 October 2003). It may, nevertheless, have regard to facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, ECHR 2002-X).

163. It is noted that Slovenia declared its independence on 25 June 1991 and that under the Citizenship Act the citizens of the former SFRY republics had six months from that date in which to lodge requests for citizenship of the new State. The names of the applicants and others who failed to make such a request were deleted from the Register on 26 February 1992.

164. The Court notes that the Constitutional Court found the impugned erasure illegal. However, it observes that the Convention took effect with respect to Slovenia only after this measure had been carried out. It is therefore precluded from examining the applicants' complaints concerning the facts that occurred before 28 June 1994.

165. These complaints must therefore be declared incompatible *ratione temporis* with the provisions of the Convention and rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicants' overall situation and the lack of compliance with the Constitutional Court's decision of 3 April 2003

166. The applicants further submitted that the repercussions resulting from the erasure of their names from the Register had been severe for their private and family life and in breach of Article 8 of the Convention. They are facing a continuous situation of insecurity and instability.

167. They complained in particular that the refusal of the domestic authorities to comply with the Constitutional Court's decision of 3 April 2003 and to grant them permanent residence status retroactively violated their right to respect for private and family life as protected by Article 8 of the Convention.

168. The Court considers that the overall situation affecting the applicants may give rise to an issue under Article 8. It notes, in particular, that this situation still obtains more than 15 years after the erasure of the applicants' names from the Register and four years after the Constitutional Court's decision of 3 April 2003.

169. The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. Complaints of a lack of adequate housing

170. The first and second applicants, Mr Milan Makuc and Mr Ljubomir Petreš, alleged that the respondent State failed to provide them with adequate housing. They relied on Article 8.

171. In so far as the applicants complain that they do not have a home owing to a failure of the national authorities to provide them one, the Court recalls that although the essential object of Article 8 is to protect against

arbitrary interference by public authorities, there may in addition be positive obligations inherent in an effective "respect" for family life (see, *mutatis mutandis*, *Burton v. The United Kingdom*, no. 31600/96, Commission decision of 10 September 1996, unpublished). However, the Court recalls that Article 8 does not in terms recognise a right to be provided with a home. Nor does any of the case-law of the Court acknowledge such a right. While it is clearly desirable that every human being have a place where he or she can live in dignity and which he or she can call home, there are unfortunately in the Contracting States many persons who have no home (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, ECHR 2001-I).

172. It follows that the complaint of the first and second applicants that they were not provided with adequate lodging is incompatible *ratione materiae* with the provisions of the Convention. Therefore, this part of the application must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

4. Complaints concerning access to free medical service

173. The first three applicants and the sixth applicant, Mr Milan Makuc, Mr Ljubomir Petreš, Mr Mustafa Kurić, and Mrs Ana Mezga, complained that the respondent State had not discharged its positive obligations under Articles 2 and 8 of the Convention in that it had not provided them with access to free basic medical services. The relevant part of Article 2 provides as follows:

"1. Everyone's right to life shall be protected by law..."

174. Under the terms of Article 35 § 1 of the Convention, the Court may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months from the date of the "final" domestic decision. Only adequate remedies have to be exhausted for this purpose (see, for example, *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002-II (extracts), § 68). However, the six-month time-limit may not preclude the examination of complaints which arise out of situations continuously impeding the exercise of a Convention right (see, *mutatis mutandis*, *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, p. 18, § 41; and *Loizidou v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2235-2236, §§ 56-57, 62-64).

175. In the present case, the applicants complained about their inability to gain access to free medical care but did not submit any document in this regard or refer to any particular events that had occurred less then six months before the date they lodged their complaint. The Court observes that questions as to the exhaustion of domestic remedies and as to whether the facts relied on constitute a continuing situation for the purposes of the six-

month rule arise. However, it finds it unnecessary to examine these issues since this complaint is, in any event, inadmissible for the following reasons.

176. The Court observes that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care which they have undertaken to make available to the population generally. It notes in this connection that Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, p. 227, § 58; *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36; and *Cyprus v. Turkey* [GC], no. 25781/94, § 219, ECHR 2001-IV).

177. Turning to the issue under Article 8, the Court observes that the object of the provision relied on is essentially that of protecting the individual against arbitrary interference by the public authorities. It does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life (see the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32, p. 17, § 32). However, the Convention does not guarantee as such a right to free medical care (see *Pentiacova and Others v. Moldova* (dec.), no. 14462/03, ECHR 2005-I).

178. Taking into consideration the facts of the case and the aforementioned case-law, the Court concludes that no issue arises under Articles 2 and 8 (see also *X v. Ireland*, no. 6839/74, Commission decision of 4 October 1974, DR 7, p. 78; and *Cyprus v. Turkey*, cited above, § 221).

179. It follows that this complaint is manifestly ill founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

5. Complaints concerning deportation, re-entering and family reunion

180. The applicant Mr Velimir Debetić, who was working in Italy at the time of the erasure of his name from the Register, complained that he had not been allowed to re-enter Slovenia since. Mrs Ana Mezga claimed she had been prevented from being reunited in Slovenia with her first two daughters, who lived in Croatia. Mrs Ljubenka Ristanović and Mr Tripun Ristanović complained about their deportation to Serbia in 1994, without any decision of the Slovenian authorities. Mr Zoran Minić, who lives in Serbia, where he is married and has four children, complained about his deportation from Slovenia to Serbia in 2002 and the refusal of the Slovenian authorities to allow him to re-enter Slovenia in order to be reunited with his mother and siblings. With regard to these complaints the applicants rely on Article 8 of the Convention.

181. As to the complaints regarding Mrs Ljubenka Ristanović's and Mr Tripun Ristanović's expulsion in 1994 and Mr Zoran Minić's expulsion in 2002, the Court notes that those events occurred more than six months before the date the applicants addressed their complaints to the Court. It appears from the information submitted to the Court that the applicants did not institute any proceedings in this regard before the domestic courts. Even assuming the applicants had no effective domestic remedies available and therefore there was no obligation to exhaust domestic remedies, the Court observes that this part of the application was introduced more than six months after the impugned events took place. Hence, the complaint was lodged outside the six-month time-limit set out in Article 35 § 1 of the Convention.

182. As for the applicants' complaints concerning the right to enter Slovenia and the right of family reunification there, the Court recalls that in the ambit of immigration issues, no such rights are guaranteed by the Convention. This complaint is thus incompatible *ratione materiae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3.

183. This part of the application must consequently be declared inadmissible in accordance with Article 35 § 4 of the Convention.

B. Complaints raised under Article 6 of the Convention relating to the Constitutional Court's decision

184. The applicants argued under Article 6 of the Convention that the Slovenian legislator and administrative authorities had refused to give effect to the Constitutional Court's decision of 3 April 2003. The reiterated this complaint under Article 13 of the Convention (see paragraph 190 below).

The relevant passage of Article 6 of the Convention reads as follows:

Article 6 § 1

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

185. Firstly, as to the applicants' complaint about the lack of compliance with the Constitutional Court's decision, the Court recalls that enforcement proceedings are regarded as the second stage of the main proceedings or rather as their integral part (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510-511, § 40). Therefore, the applicability of Article 6 § 1 to enforcement proceedings is dependent upon the applicability of this provision to the main proceedings. The questions which arises is whether or not Article 6 § 1 is applicable to the proceedings conducted before the Constitutional Court which ended on 3 April 2003.

186. In this regard, the Court reiterates that Article 6 § 1 of the Convention does not apply to proceedings regulating a person's citizenship and/or the entry, stay and deportation of aliens, as such proceedings do not involve either the "determination of his civil rights and obligations or of any criminal charge against him" within the meaning of 6 § 1 of the Convention (see, among other authorities, *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002-II (extracts), § 94; *Maaouia v. France* [GC], no. 39652/98, § 36-40, ECHR 2000-X; *Karassev v. Finland* (dec.), cited above; *S. v. Switzerland* no. 13325/87, (dec.), 15 December 1988, DR 59 p. 257; and *Šoć v. Croatia* (dec.), no. 47863/99, 29 June 2000).

187. Secondly, the Court recalls that the proceedings conducted before a Constitutional Court may come within the scope of Article 6 § 1 only where their outcome is decisive for civil rights and obligations of the applicants or if they concern the determination of any criminal charge against them (see *Süssmann v. Germany* [GC], judgment of 16 September 1996, *Reports* 1996-IV, p. 1171, § 41, and *Tričković v. Slovenia*, no. 39914/98, § 41, 12 June 2001).

188. Since the proceedings before the Constitutional Court concerned the regulation of the residence status of "the erased", to which category the applicants belong, the Court observes that these proceedings did not concern the determination of their civil rights and still less any criminal charges against them. Hence, Article 6 § 1 does not apply to these proceedings and, as a consequence, is likewise inapplicable with respect to the applicants' complaints of the failure to comply with the Constitutional Court's decision of 3 April 2003.

189. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaints raised under Article 13 of the Convention in conjunction with Article 8 of the Convention

190. The applicants complained of the national authorities' reluctance to redress their position by complying with the Constitutional Court's decision of 3 April 2003 also under Article 13. In particular, they complained about the failure of the legislator to adopt a systemic law, which was indispensable to the full reintegration of the applicants, as required by that decision. They claimed that they had no access to a court in order to seek compliance with that decision, which consequently led to their being deprived of panoply of rights and benefits. Article 13 of the Convention reads as follows:

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

191. Notwithstanding its findings under Article 6, the Court considers that the applicants' complaints related to the lack of compliance with the Constitutional Court's decision of 3 April 2003 hinge essentially on the Slovenian authorities' procrastination in regularising their resident status, which became illegal shortly after Slovenia declared independence in 1991, and the effects this had on their private life and entitlement to various benefits as well as their enjoyment of a wide array of rights.

192. The Court considers that the overall situation affecting the applicants and the failure of the Slovenian authorities to comply with that decision may raise an issue under Article 8 (see paragraph 168 above), read in conjunction with Article 13, even though the applicants did not rely expressly on these provisions. However, regard being had to the information at its disposal, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

D. Complaints under Article 1 of Protocol No. 1

193. Mr Milan Makuc, Mr Ljubomir Petreš, Mr Mustafa Kurić and Mr Jovan Jovanović complained under Article 1 of Protocol No. 1 that they had been deprived of the benefits to which they should have been entitled as a result of their contributions to the pension fund over substantial periods of time. Relying on that same provision, both they, Mrs Ana Mezga and Mrs Ljubenka Ristanović alleged that they had lost the right to buy their apartments under the favourable conditions available in the privatisation process. Mrs Ana Mezga also claimed that she had been denied maternity leave to which she was entitled.

In so far as relevant, Article 1 of Protocol No. 1 reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law..."

194. The Court first recalls that Article 1 of Protocol No.1 only applies to existing possessions and does not confer a right to obtain property (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 23, § 50).

195. It follows that the complaint concerning the right to buy the apartments is incompatible *ratione materiae* with the provisions of the

Convention and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

196. The Court next recalls that although no right to a pension as such is guaranteed by the Convention, the payment of contributions to a social security fund may create a property right protected by Article 1 of Protocol No. 1 (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-...; *Hadžić v. Croatia* (dec.), no. 48788/99, 13 September 2001; and *Gaygusuz v. Austria* judgment of 16 September 1996, *Reports* 1996-IV, p. 1142, § 41).

197. Regard being had to the information at its disposal, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

E. Complaints under Article 3 of the Convention

198. The applicants contended that they had been victims of a violation of Article 3 of the Convention because they had been subjected to deliberate discriminatory and illegal treatment which had seriously undermined their human dignity and confined them to a life on the margins. This provision reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

199. It is the established case-law of the Court that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

200. Although the Court, in the present case, is well aware of the anguish and insecurity the applicants must have undergone during several years of uncertainty over their resident/citizenship status in Slovenia, it considers that the facts of the case do not meet the threshold required to attract the protection of Article 3 (see, *mutatis mutandis*, *Predojević and Others v. Slovenia* (dec.), nos. 43445/98, 49740/99, 49747/99 and 54217/00, 7 June 2001).

201. It follows that this complaint is manifestly ill founded and should be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

F. Complaints under Article 4 of the Convention

202. The second applicant, Mr Ljubomir Petreš, asserted that the tenant of the plot of land on which he had lived had forced him to work for him without pay and that the Piran local authorities, who owned the land, had allowed that situation to persist. He relied on Article 4 of the Convention, which in its relevant part provides:

> "1. No one shall be held in slavery or servitude.
>
> 2. No one shall be required to perform forced or compulsory labour."

203. Considering the information at its disposal, the Court observes that the applicant did not bring this complaint to the attention of the domestic authorities and has not availed himself of any available domestic remedies, which would ultimately mean lodging a constitutional appeal with the Constitutional Court, relying at least on Article 18 of the Constitution. Neither did he allege that the available remedies would be inadequate or ineffective in the circumstances of the present case. Besides, an examination of the case as it has been submitted to the Court does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from raising his complaints before the domestic authorities.

204. Accordingly, the applicant has failed to avail himself of the available domestic legal remedies as required by Article 35 § 1 of the Convention. Therefore his complaint under Article 4 must be rejected in accordance with Article 35 § 1 and 4 of the Convention.

G. Complaints under Article 3 of Protocol No. 1

205. The applicants alleged that they had been arbitrarily deprived of the right to participate in elections because they had been unable to acquire Slovenian citizenship. They rely on Article 3 of Protocol No. 1, which reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

206. The Court recalls that this provision guarantees individual rights, including the right to vote and to stand for election. However, these rights are not absolute but rather subject to limitations, such as citizenship (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, §§ 57-62, ECHR 2005-....; and (see *Luksch v. Italy*, no. 27614/95, Commission decision of 14 March 1995, unpublished).

207. The Court infers, from the facts submitted by the applicants, that they never brought this complaint before the competent domestic authorities. This raises an issue as to the admissibility of this complaint with

regard to the exhaustion of domestic remedies requirement set forth in Article 35 § 1 of the Convention. However, the Court need not examine this issue more closely in view of the above findings that the applicants were not citizens of Slovenia (see paragraphs 163 to165).

208. Since the Convention does not guarantee the applicants any right to citizenship and thus enable them to stand for or vote in elections, the applicants' complaint under Article 3 of Protocol No. 1 is manifestly ill-founded. It must therefore be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

H. Complaints under Article 2 of Protocol No. 4

209. Under Article 2 of Protocol No. 4 the applicants claimed that when their names were erased from the Register in 1992 they were deprived of all the documents that would allow them to move freely within Slovenia or to re-enter the country if they travelled abroad. Article 2 of Protocol No. 4 reads, in so far as relevant, as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own..."

210. The Court recalls that Article 2 of Protocol 4 secures freedom of movement to persons "lawfully within the territory of a State". This condition refers to the domestic law of the State concerned. It is for the domestic law and organs to lay down the conditions which must be fulfilled for a person's presence in the territory to be considered "lawful" (see *Sisojeva and Others v. Latvia* (dec.), no. 60654/00, 16 June 2005; and, *mutatis mutandis*, *P v. The Federal Republic of Germany*, no. 12068/86, Commission decision of 1 December 1986, DR 51, p. 237). This provision also cannot be interpreted as awarding an alien the right to reside or continue residing in a country of which he or she is not a citizen and it does not concern the conditions under which a person has the right to remain in a country (see *G. A. v. San Marino*, no. 21069/92, Commission decision of 9 July 1993, unpublished; and *N. v. France*, no. 16698/90, Commission decision of 3 February 1992, unpublished). The Court, in this respect, recalls its constant case-law according to which there is no right of an alien to enter, reside or remain in a particular country, as such, guaranteed by the Convention (see, among many other authorities, *Üner v. the Netherlands* judgment cited above, § 54; *Chahal v. the United Kingdom*, judgment cited above, § 73).

211. The Court notes that the arguments and documents submitted by the applicants disclose that they have not been legal residents of Slovenia since the day their names were erased from the Register. Accordingly, Article 2 of Protocol 4 is inapplicable in the instant case.

212. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

I. Complaints under Article 14, read in conjunction with Articles 6 and 8 of the Convention, Article 3 of Protocol No. 1 and Article 2 of Protocol No. 4

213. The applicants also claimed that they had been discriminated against in the enjoyment of their Convention rights guaranteed by Articles 6 and 8 of the Convention, Article 3 of Protocol No. 1 and Article 2 of Protocol No. 4.

In particular, they claimed that they had been treated less favourably than those foreigners who had not been subject to the erasure of their names from the Register in 1992 because they had acquired Slovenian citizenship on the basis of the Citizenship Act, those who had only temporary residence in Slovenia before independence but had retained their status afterwards, and those who had been subject to erasure but had subsequently received either permanent residence under the Legal Status Act or Slovenian citizenship pursuant to the amended Citizenship Act. In substance they claimed they were discriminated against on the ground of national origin and relied on Article 14, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

214. The Court recalls that Article 14 only complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 35, § 71).

215. As the Court has held that Article 6 of the Convention, Article 3 of Protocol No. 1, Article 2 of Protocol No. 4 and, in part, Article 8 were not applicable, Article 14 cannot apply to the complaints raised under those provisions.

216. As to the complaints made under Article 8 concerning the domestic authorities' refusal to comply with the Constitutional Court's decision of 3 April 2003, read in conjunction with Article 14, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints concerning the overall situation affecting the applicants and the failure to afford retrospective recognition of permanent residence (Article 8), the lack of an effective legal remedy in that respect (Article 13), the allegedly discriminatory treatment (Article 14) and the denial of pension benefits (Article 1 of Protocol No. 1);

Declares the remainder of the application inadmissible.

Santiago QUESADA
Registrar

Corneliu BÎRSAN
President