IN THE

EUROPEAN COURT OF HUMAN RIGHTS

COUNCIL OF EUROPE

BETWEEN:

MAKUC MILAN AND OTHERS Applicants

AND

REPUBLIC OF SLOVENIA Respondent

APPLICATION NO.: *26828/06*

OBSERVATIONS
OF THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA
AS TO THE ADMISSIBILITY AND THE MERITS OF THE APPLICATION

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Ljubljana, 26 October 2007

INTRODUCTION

1. On 16 November 2006 the Government of the Republic of Slovenia (hereinafter: the Government) received the application filed with the European Court of Human Rights (hereinafter: the Court) on 4 July 2006 by Mr Milan Makuc and other applicants pursuant to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention), as amended by Protocol No. 11 and Protocols No. 4, 6, and 7 (Official Gazette of the RS – International Agreements, no. 7-41/1994 (RS 33/1994)).

2. All the applicants, generally, allege the violation of:
- Article 8 of the Convention – violation of the right to respect for private and family life,
- Article 3 of the Convention – due to humiliating living conditions of the applicants,
- Article 3 of the Protocol No. 1 – due to the loss of active and passive right to vote,
- Article 2 of the Protocol No. 4 – due to the restrictions imposed on the applicants' freedom of movement,
- Article 6 § 1 of the Convention – due to the lack of compliance with the Constitutional Court's decisions, which consequently led to the hindrance of their right to access to court,
- Article 13 – due to the lack of an effective domestic remedy to invoke the violations originating in the "erasure" from the permanent residence register,
- Article 1 of the Protocol No. 1 – due to the deprivation of their property
- Article 14 of the Convention, read in conjunction with Article 8 of the Convention, Article 3 of the Protocol No. 1, Article 2 of the Protocol No. 4 and Article 6 § 1 of the Convention – due to the discrimination of the applicants in the peaceful enjoyment of their rights and freedoms.

3. The above violations supposedly derived (either cumulatively in some of the violations, either individually) from the following reasons: the loss of the status of the citizen of the former federal state (SFRY), the illegal »erasure« from the permanent residence register, the fact of permanent residence permits not being issued with a retroactive effect, the unwillingness of the Republic of Slovenia to regulate the applicants' status, and the failure of the Republic of Slovenia to adopt appropriate measures to regulate the applicants' status in order to comply with the Constitutional Court's decision.

4. Additionally, individual applicants allege the following violations:

Milan Makuc, Ljubomir Petreš, Mustafa Kurić and Ana Mezga,
- violation of Article 2 of the Convention (protection of life and psycho-physical integrity) as, allegedly, their health condition has deteriorated considerably due to their inability to have free access to basic medical care,

Ljubomir Petreš,
- violation of Article 4 of the Convention – due to his being exposed to forced labour with the tolerance of the authorities,

Milan Makuc and Ljubomir Petreš,
- violation of Article 8 of the Convention due to the lack of ensuring proper housing,

Tripun Ristanović, Ljubenka Ristanović, Zoran Minić, Velimir Dabetić and Ana Mezga,

- violation of Article 8 of the Convention due to frustration of their family ties.

5. On 10 November 2006 the Court decided, considering the circumstances of the case, to apply Rule 40 of the Rules of Court on urgent notification of the application, and at the same time decided to give priority to the case according to the Rule 41 of the Rules of Court.

6. On 31 May 2007 The Court (Third Section) deliberated on the admissibility of application and issued a partial decision as to the admissibility. In accordance with Rule 54A § 1 of the Rules of Court the Court decided to consider the merits and the admissibility of the application at the same time. The Court has requested the Government to present their observations by 17 September 2007, the time-limit which was later extended at the request of the Government until 29 October 2007. Under Rule 34 § 4 (a) the observations may be presented in Slovenian language, while the translation into English or French is to be submitted to the Court within four weeks after the time-limit for the submission of the observations. Within the time-limit the Government are to express their position regarding a friendly settlement of the case, and to present any proposals. In its letter, the Court has requested the Government to answer seven specifically targeted questions.

7. In view of the applicants being citizens of Bosnia and Herzegovina, Croatia, and Serbia, the Court has, according to the Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, invited the Governments of these states to submit written comments. On 15 October 2007 the Government were informed that the Serbian Government wished to take part in the proceedings as a third party.

8. On 17 September 2007 the Government were informed by a letter of 5 September 2007 that the Court has, under Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court, granted leave to intervene as a third party to the following organisations: the Peace Institute (Mirovni inštitut) and the Legal Information Centre for NGOs (Pravno- informacijski center nevladnih organizacij) from Ljubljana, Open Society Justice Initiative from New York, and The Equal Rights Trust from London.

9. According to the said, the position of the Government is presented below; predominantly, the answers to the questions asked by the Court are given, whereby the Government reserve themselves the right to submit further explanations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. From the end of the First World War up to 1991 the territory comprising the Republic of Slovenia was incorporated into a community with the other Slavonic nations of the western Balkans, initially in the Kingdom of Serbs, Croats and Slovenes, which was later renamed the

Kingdom of Yugoslavia. After World War II this common state bore the name Yugoslavia finally the Socialist Federal Republic of Yugoslavia, composed of six republics, with two autonomous regions within the Socialist Republic of Serbia.

11. The citizens of the former common state – the Socialist Federal Republic of Yugoslavia (hereinafter: SFRY) – had dual citizenship: that of a republic and that of the federation. Federal citizenship of the SFRY was common to all Yugoslav citizens, while every Yugoslav citizen also held another, republic citizenship.

12. The Democratic Federal Yugoslavia Citizenship Act (Official Gazette of DFY, no. 64/65; *Zakon o državljanstvu Demokratične federativne Jugoslavije*) provided under Article 1 the all-inclusiveness of Yugoslav citizenship which comprised both federal and republic citizenship. Every citizen of a republic was simultaneously a federal citizen and every federal citizen was also necessarily a republic citizen. Article 2 of the Yugoslav Citizenship Act (Official Gazette of the SFRY, no. 38/64; *Zakon o jugoslovanskem državljanstvu*) provided that only a Yugoslav citizen may hold republic citizenship. Thus the primacy of federal citizenship was established. Article 1 of the People's Republic of Slovenia Citizenship Act (Official Gazette of the PRS, no. 20/50; *Zakon o državljanstvu Ljudske republike Slovenije*) provided, similarly, that citizenship of the People's Republic of Slovenia may only be held by persons who are also citizens of the Federal People's Republic of Yugoslavia.

13. After 1974 the situation was reversed: republic citizenship gained primacy and federal citizenship proceeded there from. The changes were introduced by the Constitution of the Socialist Federal Republic of Yugoslavia (Official Gazette of the SFRY, no. 9/94; *Ustava socialistične federativne republike Jugoslavije*) which, in relation to citizenship, provided that SFRY citizenship was common to all residents of Yugoslavia, whereby every citizen of a republic was at the same time citizen of the Socialist Federal Republic of Yugoslavia (Article 294). These changes were also reflected in the Constitution of the Socialist Republic of Slovenia (Official Gazette of the SRS, no. 6/74; *Ustava socialistične republike Slovenije*), which provided that every citizen of the Socialist Republic of Slovenia was simultaneously a citizen of the Socialist Federal Republic of Yugoslavia.

14. The same concept was incorporated into the Socialist Republic of Slovenia Citizenship Act (Official Gazette of the SRS, no. 23/76; *Zakon o državljanstvu Socialistične republike Slovenije*) which provided that every citizen of the Socialist Republic of Slovenia was simultaneously a citizen of the Socialist Federal Republic of Yugoslavia (Article 1). Thus being a citizen of the Socialist Republic of Slovenia subsequently meant enjoying the SFRY citizenship as well.

15. The regulation of citizenship was similar in all the republics, with the basic principle of acquiring citizenship by blood (*ius sanguinis*): in principle a child's citizenship matched that of his parents; if the parents were citizens of different republics they jointly decided their child's citizenship and the child acquired the citizenship the parents had agreed upon. This was combined with the principles of place of birth within the territory of the republic (*ius loci*), of granting citizenship of the SRS to a citizen of another socialist republic, and the principle of naturalisation and recognition under international contract. Regarding the principle of granting citizenship, all post-war republic laws explicitly provided that a person could change his republic citizenship; however, this was only possible by way of application, and citizenship of another republic was by no means granted automatically. On the date of

admission into the citizenship of another republic, a person's prior republic citizenship terminated.

16. As in the area of citizenship, where after 1974 the primacy of republic citizenship prevailed, the whole system of government within the SFRY shifted from strict centralism to individual republics. Thus the SFRY Constitution defined SFRY as a federal state consisting of voluntarily united peoples (Article 1). Individual republics were defined **as states** based on national sovereignty, and on the rule and self-management of the working class and all working people (Article 3). Its preamble laid down the right of every nation to self-determination which included the right to secede, and explicitly provided that sovereign rights are fulfilled in the republics and, only when so determined for the common interest by the constitution, in the SFRY.

17. The shift towards the primacy of the Republic of Slovenia is also reflected in its 1974 Constitution. The duties of the republic (Article 2) set forth include duties typical of a state: ensuring and exercising sovereignty, equality and national freedom; ensuring independence and territorial integrity; ensuring human rights; ensuring conditions for the development and progress of the Slovenian nation; developing international relationships in the political, economic, cultural and other areas within the framework of SFRY foreign policy; performing all other functions which are important for political, economic and cultural activities, defence and socialist self-managing democratic social development of the Socialist Republic of Slovenia (SRS). Moreover, only those rights are fulfilled within the SFRY which, in the common interest of nations and nationalities and on the basis of an agreement of the republics and autonomous regions, are so defined by the constitution of the SFRY (Article 2).

18. In the years 1989 to 1991 numerous amendments to the SRS Constitution of 1974 were adopted. They aimed at a peaceful dissolution of the federal state and the establishment of an independent Slovenian state. With these constitutional changes Slovenia rendered its emancipatory aspirations and its wish to found its own state fully legitimate in terms of its legislative system.

19. Amendment X to the SRS Constitution, published in the Official Gazette of the SRS, no. 32/89 on 2 October 1989, replaced § 2 of Article 1 of the SRS Constitution with the text emphasizing the right of the Slovenian nation to self-determination ("The Republic of Slovenia is within the composition of the Socialist Federal Republic of Yugoslavia on the basis of the permanent, integral and inalienable right of the Slovenian nation to self-determination, which also includes the right to secede."). This amendment, among others, presented a basis for calling a referendum and for the secession of Slovenia in 1991.

20. In 1991 the residents of Slovenia seized the opportunity to establish an independent state. In contrast to some of the other former republics of the SFRY, particularly Croatia and Bosnia and Herzegovina, the nationality of the inhabitants of Slovenia was relatively homogenous, as roughly 90% of approximately two million residents had citizenship of the SRS and, in terms of ethnic origin, and a good 90% were likewise of Slovenian nationality.

21. On 23 December 1990 the plebiscite on the independence of the Republic of Slovenia was held. All adult residents of the then SRS with a registered permanent residence in SRS territory could vote. The condition for participation was not the citizenship of Slovenia but a registered permanent residence which consequently made the body of eligible voters significantly larger than it would have been if citizenship of the SRS had been required. Thus

both the citizens of the SRS and the citizens of other socialist republics living in Slovenia at the time could express their will in the plebiscite. There were 1,499,294 eligible voters of which a total of 42,274 were working abroad, in military service or military training exercise, so that 1,457,020 voters were taken into account in evaluating the outcome. The plebiscite saw a turnout of 1,361,738 voters, of which 1,289,369 or 88,5% voted in favour. 57,800 people (4%) voted against and a total of 1% cast invalid ballots (12,412 voters) or did not cast a ballot (2,157 voters). The plebiscitary decision signified a basis for and commitment to establishing an independent country.

22. The Official Gazette of the RS no. 1/91-I of 25 June 1991 published a series of what was termed the independence legislation. This included the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (*Ustavni zakon za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije*), the Aliens Act (hereinafter: ZTUJ; *Zakon o tujcih*), the National Border Control Act (hereinafter: ZNDM; *Zakon o nadzoru državne meje*), the Citizenship of Slovenia Act (hereinafter: ZDRS; *Zakon o državljanstvu Republike Slovenije*) and the Passports of the Citizens of the Republic of Slovenia Act (hereinafter: ZPLD; *Zakon o potnih listinah državljanov Republike Slovenije*). Adopting the (in particular) above legislation was essential to implementing normal operation of the newly established state.

23. With the Statement of Good Intentions of 6 December 1990 (Official Gazette of the RS, no. 44/90 – *Izjava o dobrih namenih*; see pp. 15-16 of partial decision as to the admissibility) the then Assembly of the Republic of Slovenia guaranteed that all persons with permanent residence in Slovenia would be enabled to acquire Slovenian citizenship if they so wished.

24. In accordance with the commitments made in the Statement of Good Intentions of 6 December 1990, Article 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia provided that those citizens of other republics, who on 23 December 1990, the date of the plebiscite on the independence and sovereignty of the Republic of Slovenia, were registered as permanent residents of the Republic of Slovenia and actually lived there, held equal rights and duties as the citizens of the Republic of Slovenia until they acquired citizenship of the Republic of Slovenia under Article 40 of the Citizenship of the Republic of Slovenia Act or until the expiry of the time-limit set forth in Article 81 of the Aliens Act, except in cases set forth in Article 16 of the same act (see p. 16 of partial decision as to the admissibility).

25. The text of these provisions itself shows that the Republic of Slovenia was willing to grant residents then holding citizenship of other republics equality with those already holding Slovenian citizenship, if they so desired; the basis for the possibility of achieving equality with citizens by blood was their permanent residence in the Republic of Slovenia on the day of the plebiscite, of which there must also be official evidence, namely a registration of permanent residence. However, for the establishment of a *corpus* of the citizens - and not least because of the National Assembly elections of 1992, since under the National Assembly Elections Act of the same year only citizens of the Republic of Slovenia could vote as opposed to the previous system where all residents holding citizenship of any republic could vote – this possibility of attaining equality in rights and duties could not last indefinitely. Most of all it depended on the will of the people concerned: the citizens of other republics were given the opportunity to acquire citizenship of the Republic of Slovenia, but this by no means meant being automatically granted Slovenian citizenship e.g. by the criterion of

permanent residence. The latter would have been a violation of the right of the persons concerned to decide for themselves whether they wished to acquire citizenship of the newly established state at all. Thus equality in rights and duties guaranteed to the citizens of other republics was limited both in terms of time and content: in terms of content – until the acquisition of the citizenship of the Republic of Slovenia, which could be applied for under the favourable conditions of the ZDRS; and for those who do not apply for citizenship, in terms of time – until the time-limit set out in Article 81 of the ZTUJ.

26. As mentioned before, the Statement of Good Intentions included the provision that citizens of other republics would be able to acquire citizenship "if they so whish", while the time and extent restrictions were made known to the residents of Slovenia in the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia.

27. It should be noted that this pivotal time of establishing a new state called for quick decisions. Nevertheless all residents of the Republic of Slovenia were enabled to settle their status within the prescribed period – of adequate duration in the opinion of the Republic of Slovenia – set by the legislator. At the time of the secession attention was drawn to the possibilities available to non-citizens of the Republic of Slovenia under the then effective legislation, namely through the public media and notices – posters displayed in the premises of internal affairs (= home affairs) departments of local municipalities. Other, more personal means of notification were used as well: in some municipalities (Ljubljana, Maribor, Koper) residents were invited to settle their status even in person, in some cases by phone, but mostly through second-class mail sent to the registered permanent residence address, and in some cases by personal service in accordance with the provisions of the General Administrative Procedure Act. The publication in the Official Gazette was therefore not the only notification made, although even this would have sufficed, as the regulations concerned were published in a manner prescribed by law and were therefore assumed to have been made known to the interested parties; or at any rate made accessible.

28. In the period immediately following the formation of the Republic of Slovenia it was therefore quite reasonable to expect that all persons concerned would show appropriate interest in settling their status either by applying for citizenship or by regularising their residence - by acquisition of a permit for either permanent or temporary residence, since they became aliens if they had failed to file an application for citizenship of the Republic of Slovenia in time. With the establishment of a new subject of international public law, which, in accordance with the principles of the said law defined citizenship of the newly founded state (Article 39 of the ZDRS) their former citizenship of the SFRY federation no longer existed in the territory of the Republic of Slovenia.

29. The acquisition of Slovenian citizenship was regulated by the ZDRS, which was based on the principle of preventing statelessness. In spite of the formation of the *corpus* of citizens of the Republic of Slovenia, the ZDRS did not make anyone stateless, since a person who had failed to file the application for Slovenian citizenship still remained citizen of his or her original republic. The transitional provisions of the ZDRS enabled the acquisition of Slovenian citizenship by naturalisation under exceptionally favourable conditions.

30. Article 39 of the ZDRS provided that anyone who had held citizenship of the Republic of Slovenia and the Socialist Federative Republic of Yugoslavia under the **regulations valid thus far** was considered to be a citizen of the Republic of Slovenia. Considering the

importance of the rights conferred by citizenship it was to be expected that persons who, in view of any pertinent circumstance (for example the ethnic origin of one or both parents, place of birth, moving from one republic to another...), could have inferred that they did not have citizenship of the Republic of Slovenia under the formerly valid regulations and might have shown minimal concern for their own affairs and inquired into their previous citizenship and, if they should not have it, would decide whether they wished to apply for it. As the ZDRS was published in the Official Gazette it is important to recall here the universally recognized legal principle of any modern state observing the rule of law that being ignorant of law harms (*ignorantia iuris nocet*).

31. Under Article 40 of the ZDRS three conditions had to be met to acquire citizenship: a citizen of another republic had to have permanent residence registered in the Republic of Slovenia on 23 December 1990, the day of the plebiscite on the independence and sovereignty of the Republic of Slovenia; he had to actually live in Slovenia; and he had to file an application - within six months of the entry into force of the ZTUJ, i.e. by 15 December 1991 - with the competent administrative authority in the municipality of permanent residence.

32. On filing the application for citizenship it was not necessary to enclose any official documents, e.g. the original birth certificate. In practice these facts could be proved in other ways, e.g. with old certificate copies or by presenting other official documents issued in the Republic of Slovenia, e.g. identity cards... The required permanent residence could be proved in many ways, e.g. by presenting a school certificate, employment booklet, certificate of registry at the employment service or similar, as well as witnesses. Substantiation by papers issued in former republics was only necessary later, on being entered into the register of births, marriages and deaths, but the fact of not being entered in the register did not result in curtailed rights: despite not being entered in the register a person would become a citizen of the Republic of Slovenia, obtain relevant documents such as a passport, identity card and driving licence and exercise the right to vote in the Republic of Slovenia.

33. On the basis of Article 40 of the ZDRS, citizenship of the Republic of Slovenia was acquired by approximately 170,000 citizens of other republics of the SFRY (precisely 171,132 people) or roughly 90% of the citizens of other republics living in Slovenia at the time. In doing so these people retained their previous citizenship, since the release from previous citizenship was not required to acquire citizenship of the Republic of Slovenia.

34. After the six-month deadline under Article 40 passed, less favourable conditions for acquisition of citizenship by naturalisation became effective, as set out in Article 10 of the ZDRS – general conditions for acquiring citizenship.

35. The citizens of other republics who chose not to submit an application for citizenship of the newly formed state then had to regularise their fact of residence in the Republic of Slovenia by other means. The transitional provision of Article 81 of the ZTUJ provided that after a certain period all the provisions of the ZTUJ, including those regarding the requirements for (permanent) residence in the Republic of Slovenia, would begin to apply to these persons, since they were not citizens but merely residents of a newly formed legal subject who were obliged to legalise their stay in the state. Thus on 26 February 1992 the citizens of other republics of the former SFRY who had not applied for Slovenian citizenship in accordance with Article 40 of the ZDRS, became subject to the ZTUJ provisions. **Following that date the registration of permanent residence in the Republic of Slovenia of all citizens of other republics of the former SFRY was terminated if they had not**

acquired a residence permit, since the basis for registration was either citizenship or an alien's permanent residence permit in the state, and for the registration of temporary residence, temporary residence permit in the state.

36. In the transitional provision of Article 81 of the ZTUJ provided that until a decision in the administrative procedure for granting Slovenian citizenship became final, the provisions of this act did not apply to SFRY citizens who were citizens of another republic and who, within six months of the entry into force of the Slovenian Citizenship Act, did not apply for Slovenian citizenship under Article 40 of the ZDRS. Citizens of the SFRY who were citizens of another republic and who did not apply for citizenship of the Republic of Slovenia within the set period or whose application was rejected, became subject to the provision of the act two months after the lapse of the period within which they could apply for citizenship of the Republic of Slovenia or upon the issue of a final decision.

37. This was owing to the need for the ZTUJ to settle the status of citizens of other republics who had not applied for Slovenian citizenship. As they were living in a newly founded state and were not its citizens by blood and had not applied for citizenship of the new state, it was entirely logical that they were aliens with citizenship of their "original" former republic. Naturally aliens are subject to the provisions of the ZTUJ, which moreover had also prescribed a transitional two-month period before these persons, i.e. citizens of other republics, would start being treated as aliens.

38. At this point attention should be drawn to the difference between aliens from the former SFRY republics under Article 81 of the ZTUJ and "real" aliens under Article 82 § 3 of the ZTUJ: permanent residence permits issued under the Movement and Residence of Aliens Act (Official Gazette of the SFRY, no. 56/80, as amended; *Zakon o gibanju in prebivanju tujcev*), continued to be valid for all aliens who were permanent residents in the territory of the Republic of Slovenia on the entry into force of the ZTUJ. As to the aliens referred to in Article 82 § 3, these were aliens who were not citizens of other former SFRY republics and who had, on the basis of previously valid legislation, regularised their permanent residence previously: as foreign citizens they had acquired a permanent residence permit prior to 25 June 1991, whereas the citizens of other SFRY republics never did, since up to 25 June 1991 they were not considered aliens and had registered their permanent residence in the same way as the citizens of the SRS, merely on the basis of their SFRY citizenship. This is the reason why the situation of the two groups of aliens bears no comparison.

39. Those persons who did not acquire citizenship of the Republic of Slovenia or did not apply for it, were therefore obliged to acquire a temporary or permanent residence permit, if they wished to continue living in the Republic of Slovenia. According to the data of the Ministry of the Interior of the Republic of Slovenia (hereinafter: the MNZ) the number of persons with non-regulated residence on 26 February 1992 was 18,305. That is the number of persons transferred from the register of permanent residents to the register of aliens with non-regulated status.

40. From 1983 on the registration and deregistration of permanent and temporary residence and the keeping of registers of the population in Slovenian territory was regulated by the Inhabitants' Residence Evidence and Population Registry Act (Official Gazette of the SRS, no. 6/83, as amended, hereinafter: ZENO; *Zakon o evidenci nastanitve občanov in o registru prebivalstva*). This was a regulation which was not adopted in the newly formed state, so it cannot be said that the residents of Slovenia were not familiar with it. In addition two

executive regulations issued on its basis were in place: the Rules on the data for the registration and deregistration of permanent residence and the registration of change of address and the corresponding form, and the Rules on the keeping and management of the register of permanent residents, both published in the Official Gazette of the SRS, no. 18/84. Both regulations were effective until 13 June 1992 after which the Rules on the form for registering and deregistering permanent residence, on the form of the personal card and the household card and on the manner of keeping and managing the register of permanent residents entered into force (Official Gazette of the RS, no. 27/92).

41. Pursuant to the ZENO and implementing regulations the competent authorities (the internal affairs departments of local municipalities) had to enter daily all changes and corrections of data and the dates of changes, including citizenship loss. Article 9 of the Rules on the keeping and management of the register of permanent residents states that the competent authority (it is clear from the text that this is the home affairs authority of a municipality) had to daily update and revise the card-indexes under Articles 5, 6, and 7 of these Rules following various events, including the loss of citizenship of the socialist republic and the SFRY, and the change in citizenship of a socialist republic. Article 6 sets forth how to keep the permanent resident card-index and instructs that in the event that the reasons for keeping the record of a certain inhabitant in the permanent resident card-index should ceased, his card should be removed from the card-index of permanent residents and filed in one of the special card-indexes. Special card indexes were kept for (among others) inhabitants who were released from current citizenship of the socialist republic and the SFRY. After Slovenia's independence an amendment to the ZENO was passed (Official Gazette of the RS, no. 11/91) which altered the content of the register of permanent residents by requiring the entry of information on citizenship. On the basis of the ZENO amendments two Rules were issued, one of which regulated the keeping of the register of temporary residents and the manner of keeping guest books (Official Gazette, no. 18/92), whereas the Rules on the form for registering and deregistering permanent residence, the form for the personal card and household card (Official Gazette of the RS, no. 27/92; *Pravilnik o obrazcu za prijavo oziroma odjavo stalnega prebivališča, o obrazcu osebnega kartona in kartona gospodinjstev*), regulated the method of keeping the register of permanent residents and relevant forms. Article 5 of the latter rules provided that the register of permanent residents contains data on citizens of the Republic of Slovenia who are registered as permanent residents within a municipality. This necessitated the establishment of a register of Slovenian citizens (*corpus* of citizens) separate from aliens. Pursuant to the ZENO and its amending act a register of citizens of the Republic of Slovenia was therefore established within the register of permanent residents. The register of permanent residents contained data on Slovenian citizens who had permanent residence registered in the municipality. The registration and deregistration of permanent residence, however, did not present a specific administrative act (i.e. administrative decision). By entering data into the official register the authorities did not decide on any rights, so an official decision on entering a change into the register was unnecessary. An inhabitant who felt that any data in the official register were incorrect had the right to request correction of the error through special application. However, in the case of transfer from one register to another (register of aliens) we cannot speak of an error but the establishment of the actual situation pursuant to the ZTUJ.

42. Bearing in mind all of the above we must stress that the registration and deregistration of residence (temporary or permanent) is the obligation of each individual, who must register his place of residence or temporary stay with the competent authority (failing to do so is punishable). In the ZENO a permanent residence was defined as a settlement where an

inhabitant settles with the intent to live there permanently, and the registration of residence, deregistration or registration of changed home address were obligatory for all inhabitants, and, under the amending act of the ZENO, for all Slovenian citizens. The obligatory registration or deregistration of foreigners was regulated until 1991 by the federal Movement and Residence of Aliens Act (Official Gazette of the SFRY, no. 56/80, 53/85, 30/98 and 26/90). This act provided that all foreigners aged above 16 were obliged to register and deregister. An alien was obliged to register his permanent residence to the competent authority (internal affairs departments of local municipality) within 8 days of settling in addition to the cumulatively met requirements of possessing a permanent residence permit in the SFRY and actual permanent residence. Temporary residence, on the other hand, had to be registered within two days of the alien's entry into the SFRY if he was granted temporary residence. After 1991 the registration and deregistration obligation of foreigners was defined in Articles 57 and 58 of the ZTUJ, requiring aliens to register and deregister permanent residence within 8 days, and register or deregister temporary residence within 3 days of settling, having previously acquired a permanent or temporary residence permit.

43. Since after 26 February 1992 there was no longer any basis for these persons to be entered in the register of permanent residents, as they had no permanent residence permit, the MNZ ordered the internal affairs departments of the municipalities to transfer them, after the expiry of the time-limit under Article 81 § 2 of the ZTUJ, from the register of permanent residents to a special register of aliens with non-regulated status. This fact of transfer was not an "erasure"; it simply meant adjusting the register in accordance with the fact that these persons had acquired neither citizenship nor a permanent residence permit in compliance with the ZTUJ. **By being transferred to a special register the persons concerned were not denied the right to continue living in their current place of residence.**

44. After 26 February 1992 these persons could regulate their residence under the general provisions of the ZTUJ on the acquisition of the right to residence, namely under the provision of Article 16 (p. 19 of the partial decision as to the admissibility), under which the condition for acquiring a permanent residence permit was at least three years of uninterrupted residence in the Republic of Slovenia on the basis of a temporary residence permit in addition to meeting the conditions in Article 13 § 2 of the same act (p. 18 of the partial decision as to the admissibility). The amendment to the ZTUJ, published in 1997, extended the required residence in the territory of the Republic of Slovenia in Article 16 to eight years.

45. Due to the large number of persons who had not regulated their status by 26 February 1992, the Government in its session 18 passed a decision of 3 September 1992 (***evidence B1***), on the basis of which three years of residence in the territory of the Republic of Slovenia could be counted in favour of these persons in dealing with their applications for a permanent residence permit, even if they had been residents before the date of entry into force of the ZTUJ: a person thus had to be registered as a permanent resident of the Republic of Slovenia and must have also actually lived there for at least three years, even if this was before the ZTUJ entered into force.

46. In this way a large number of "latecomers" were enabled to acquire a permanent residence permit, specifically in (source: Constitutional Court decision no. U-I-284/94) 1992 – 1,468 persons, 1993 - 763 persons, 1994 – 361 persons, 1995 – 312 persons, 1996 - 640 persons and 1997 – 1,259 persons, which means that a total of 4,393 permanent residence permits were issued.

47. In relation to the legislation bearing upon the situation of citizens of other SFRY republics in the Republic of Slovenia, we must also draw attention to the Employment of Aliens Act (Official Gazette of the RS, no. 33/92; *Zakon o zaposlovanju tujcev*), which entered into force on 18 July 1992. The transitional provision of Article 23 enabled the citizens of other former SFRY republics to acquire a one-year personal work permit, if on the effective date of entry into force of the act they were in formal employment for an indefinite period in Slovenia with less than 10 years of service in the Republic of Slovenia, or if they were in fixed-period employment, or were in employment relationship for a fixed or indefinite period as daily migrants, or registered at the Employment Service of Slovenia and receiving financial benefits in accordance with the regulations on employment and employment insurance. Any citizens of other former SFRY republics (except persons from the third indent of the preceding paragraph) who were on the date of entry into force of the act in indefinite-period employment relationship in Slovenia and had at least 10 years of service in the Republic of Slovenia were enabled to acquire a personal work permit for an indefinite period. Both groups could acquire a personal work permit on the condition they applied for it within 90 days of the act entering into force.

48. In the procedure following the initiative for the review of constitutionality, instituted in 1994, the Constitutional Court in its decision no. U-I-284/94 held the provision of Article 81 of the ZTUJ to be unconstitutional as it did not set out the conditions for acquiring a permanent residence permit by persons under Article 81 § 2 after the expiry of the time-limit within which they could have applied for citizenship of the Republic of Slovenia, if they had not done so, or after the date when decisions refusing the citizenship of the Republic of Slovenia became final. It ordered the legislator to eliminate the inconsistency within six months. According to the explanation of the Constitutional Court the provision is inconsistent with the Constitution owing to the violation of the principle of legal certainty and the principle of equality since it does not regulate the status of persons concerned after the expiry of the time-limit under Article 81 § 2 of the ZTUJ, thus constituting a legal void.

49. To execute the stated decision of the Constitutional Court, the Act Regulating the Legal Status of Citizens of Other Successor States to the Former SFRY in Slovenia (Official Gazette of the RS, no. 61/99; hereinafter: ZUSDDD; referred to as »the Legal Status Act« in the partial decision as to the admissibility; *Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji*) was passed. The ZUSDDD simplified the requirements for acquiring a permanent residence permit, since unlike the provision of Article 13 of the ZTUJ regarding the intention of residence it no longer contained such a provision but set out three conditions: registered permanent residence in the Republic of Slovenia on 23 December 1990, actual residence in the Republic of Slovenia from that date on and lodging an application within three months of the entry into force of the ZUSDDD, or actual residence in the Republic of Slovenia on 25 June 1991, actual continuous residence in its territory from that date on and lodging an application within three months of the entry into force of the ZUSDDD. Article 3 laid down three negative conditions regarding non-conviction for criminal offences and minor criminal offences.

50. In this way the legislator followed the instructions of the Constitutional Court as to resolving the legal vacuum, i.e. special regulation for those residents of the Republic of Slovenia from other SFRY republics, who had not applied for a residence permit in accordance with the ZTUJ, by no longer prescribing the requirement of justifying the residence in terms of schooling, employment, practicing a profession, marriage etc. laid down in Article 13 of the ZTUJ.

51. An initiative for the review of constitutionality and legality was then also launched against the ZUSDDD, and the Constitutional Court's judgment of 18 May 2000 (decision published in the Official Gazette of the RS, no. 54/2000) annulled the first, second and third indents of Article 3 of the ZUSDDD owing to what was in the opinion of the Constitutional Court the incorrectly prescribed legal requirements. Consequently the ZUSDDD was changed with an amending act, published in the Official Gazette of the RS no. 64/2001, which has been effective since 18 August 2001.

52. Under the ZUSDDD 13,355 applications for permanent residence permit were lodged **by 30 June 2007**, out of which **12,236 applications were granted** and the same number of permanent residence permits issued to citizens of other successor states of the former SFRY.

53. In 2002 the Act Amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the RS no. 96/2002, ZDRS-Č) was passed, in which the transitional provision of Article 18 once again enabled the acquisition of citizenship of the Republic of Slovenia under less restrictive conditions for all aliens who were permanent residents of the Republic of Slovenia on 23 December 1990 and have since then lived uninterruptedly in Slovenia. The deadline for applications on the basis of Article 19 of the Act Amending the Citizenship of the Republic of Slovenia Act expired on 29 November 2003, by which time 2,959 applications had been lodged, and by 30 June 2007 citizenship of the Republic of Slovenia was granted to 1,747 foreigners on the basis of the stated provision.

54. In 1994 the MNZ introduced computerised keeping of registers, including the register of permanent residents. That year also saw a campaign in which all persons with non-regulated status were notified by second-class mail sent to the residence address available to the MNZ. The campaign was carried out by administration units and shows the interest of the state in regularising the status of persons transferred from the register of permanent residents into the register of aliens with non-regulated status.

55. The Constitutional Court assessed the constitutionality of the ZSUDDD once again. In its decision no. U-I-246702 of 3 April 2003 it ruled that certain provisions of the ZSUDDD were inconsistent with the Constitution of the Republic of Slovenia because they did not recognize permanent residence for citizens of other former SFRY republics after 26 February 1992, when their registration of permanent residence terminated; because it did not regulate the acquisition of a permanent residence permit by citizens of other successor states of the former SFRY, for whom the measure of deportation (*prisilna odstranitev*) had been ordered; and because it failed to set criteria for establishing the undefined legal term of actual residence. The time-limit for lodging an application for a permanent residence permit in the Republic of Slovenia under the ZUSDDD is therefore open again in compliance with the stated Constitutional Court decision. This means that persons to whom the ZUSDDD applies can still apply for a permanent residence permit under the provisions of the ZUSDDD.

56. The MNZ has prepared a Draft Constitutional Law amending the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, which rectifies the inconsistency between the ZUSDDD and the Slovenian Constitution.

57. The proposed law amends Article 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia of

1991 (which stipulates that citizens of other SFRY republics, who on 23 December 1990 were permanently registered in Slovenia and actually lived there, are equal in their rights and duties to citizens of the Republic of Slovenia (except regarding the purchase of real estate) until they became subject to the ZTUJ provisions).

58. The draft law defines the conditions under which citizens of other successor states of the former SFRY are entitled to acquire a permanent residence permit in the Republic of Slovenia with retroactive validity, and the start date of its validity. It also sets out the conditions under which the permanent residence permits of citizens of other former SFRY successor states, who have already acquired a permanent residence permit in Slovenia, will be valid retroactively and from which date.

59. The draft law further defines the circumstances under which the requirement of actual residence in the Republic of Slovenia for acquiring a permanent residence permit is met, by enumerating a list of justified absences from the Republic of Slovenia, which do not breach the condition of actual uninterrupted residence. The specification of actual uninterrupted residence is based on the definition of this term, according to which actual uninterrupted residence in the Republic of Slovenia means that Slovenia is the centre of the person's life interests, which is assessed on the basis of his personal, family, business, social and other ties which show that there are actual and long-lasting ties between the person concerned and the Republic of Slovenia. Absence from the Republic of Slovenia lasting longer than a year and which is unjustifiable interrupts the actual uninterrupted residence in the Republic of Slovenia.

60. The law moreover regulates the granting of a permanent residence permit in Slovenia to those citizens of other former SFRY successor states who were deported from the state and stipulates the cases in which deportation does not affect the granting of a permanent residence permit or does not breach the condition of actual residence in the Republic of Slovenia. The absence of a citizen of another successor state of the former SFRY from the Republic of Slovenia due to deportation or unjustifiable denial of entry is thus considered as justified absence and does not breach the condition of actual uninterrupted residence in Slovenia.

61. The approach adopted by the Republic of Slovenia in addressing this complex and sensitive issue, which was also new for Europe at large, was extremely positively assessed on the part of world organisations concerned with such issues. On 1 December 1993 the experts of the Committee on Nationality of the Council of Europe confirmed at its international seminar in Ljubljana that the way Slovenia dealt with this issue was in full accordance with all standards relating to the regulation of citizenship in successor states. The same view was expressed in 1995 in Geneva when the UN Human Rights Committee discussed the first Slovenian report on observing human rights and accepted it without comment and in New York when the Sixth Committee of the UN General Assembly verified and confirmed the compliance of Slovenian legislation with international standards. It should be emphasized that the Republic of Slovenia has always supplemented the relevant legislation through the cooperation of all branches of government by following European legal examples. These include the provisions of the European Convention on Nationality, one of the most advanced instruments in this field. The Council of Europe adopted this convention in 1997, as late as six years after the introduction of Slovenian legislation in this field. Slovenia had already incorporated into its legislation the principles embraced by the Convention in Chapter 6, which regulates citizenship in the case of succession. Slovenian legislation consistently

observes one of the vital principles of that chapter – the principle of each individual's free will and choice.

II. THE ACTIVITIES OF INDIVIDUAL APPLICANTS REGARDING THE REGULATION OF THEIR STATUS

A. Milan Makuc

62. Milan Makuc was born on 11 February 1947 in Raša (Croatia) and is a Croatian citizen. He had his permanent residence registered in Slovenia from 23 November 1981 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. On 1 March 2006 he applied for a **permanent residence permit** in the Republic of Slovenia under the ZUSDDD; the permanent residence permit was **issued on 12 July 2006 and served on him on 28 July 2006**. He has never applied for Slovenian citizenship. On 20 September 2007 the Koper Unit of the Pension and Invalidity Institute of Slovenia issued a decision classifying him into the category I of invalidity with a right to invalidity pension as of 3 September 2007 onwards; the decision is not yet final (***evidence B2***). Had the applicant instituted the proceedings earlier, his application with the Institute would have been considered at an earlier time.

B. Ljubomir Petreš

63. Ljubomir Petreš was born on 15 September 1940 in Laktaši (Bosnia and Herzegovina) and is a citizen of Bosnia and Herzegovina. He had his permanent residence registered in Slovenia from 4 March 1964 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. On 24 December 2003 he applied for a **permanent residence permit** in the Republic of Slovenia under the ZUSDDD; the permanent residence permit was **issued on 29 December 2006 and served on him on 22 January 2007**. On 6 May 1993 he applied for Slovenian citizenship under Article 10 of the ZDRS; however, on 10 October 2000 the Ministry of the Interior issued the decision no. 0301-11/23 -XVII-328.290 terminating the proceedings due to the applicant's inactivity in the proceedings (***evidence B3***).

C. Mustafa Kurić

64. Mustafa Kurić was born on 8 April 1935 in Šipovo (Serbia) and is of unknown citizenship. He had his permanent residence registered in Slovenia from 23 July 1970 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. Mr Kurić has **never applied for a residence permit in the Republic of Slovenia**. On 21 June 2007 he applied for Slovenian citizenship under Article 12 § 8 of the ZDRS as a stateless person; the application has not yet been considered.

D. Jovan Jovanović

65. Jovan Jovanović was born on 30 August 1959 in Lopari (Bosnia and Herzegovina) and is a citizen of Bosnia and Herzegovina. He had his permanent residence registered in Slovenia from 1 October 1976 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. On 19 June 2006 he applied for a permanent residence permit under the ZTUJ; however, after his written withdrawal of the application on 22 September 2006, the Ljubljana Administrative Unit terminated the proceedings with a decision of 3 October 2006 (***evidence B4***). He applied for a **permanent residence permit under the ZUSDDD** on 31 March 2004, and as a result a permanent residence permit was **issued to him on 21 November 2006 and served on him on 8 January 2007**. On 27 June 2006 he applied for Slovenian citizenship under Article 10 of the ZDRS; by the decision no. 213-264/2006/16 (1341-11) of 1 December 2006 the Ministry of the Interior dismissed his application (***evidence B5***).

E. Velimir Dabetić

66. Velimir Dabetić was born on 22 September 1969 in Koper. It follows from the official evidences that he had a citizenship of Yugoslavia. He had his permanent residence registered in Slovenia from 29 September 1971 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. Mr Dabetić has **never applied for a residence permit in the Republic of Slovenia**. On 26 November 2002 he initiated the administrative dispute proceedings by filing an action due to non-response of the authority (*tožba zaradi molka organa*), since no additional decision was issued to him under point no. 8 of the operative part of the Constitutional Court decision no. U-I-245/02-28 of 3 April 2003. On 20 May 2005, his action was rejected by the Nova Gorica Unit of the Administrative Court of the Republic of Slovenia no. U 37/2004-11 (***evidence B6***). On 29 November 2003 he applied for Slovenian citizenship under Article 19 ZDRS; by the decision no. 213-326/5 (1341-33) of 14 November 2005 the Ministry of the Interior dismissed his application (***evidence B7***).

F. Ana Mezga

67. Ana Mezga was born on 4 June 1965 in Čakovac (Croatia) and is a Croatian citizen. She had her permanent residence registered in Slovenia from 28 July 1980 to 26 February 1992, when she was transferred from the permanent residence register into the register of aliens. She **applied for a permanent residence permit under the ZUSDDD** on 13 December 1999; however, **due to her inactivity in the proceedings, the Ministry of the Interior terminated the proceedings** by issuing the decision no. 1812/07-XVII-219.461 of 6 December 2004 (***evidence B8***). On 14 April 2004 she urged the issuing of an additional decision due to the non-response of the authority, since no additional decision was issued to her under point no. 8 of the operative part of the Constitutional Court decision no. U-I-246/02-28 of 3 April 2003. Her application of 29 April 2004 for Slovenian citizenship under Article 19 of the ZDRS was dismissed on 13 June 2006 by a decision of the Ministry of the Interior no. 213-346.206 (1341-33) (***evidence B9***).

G. Ljubenka Ristanović

68. Ljubenka Ristanović was born on 19 November 1968 in Zavidovići (Bosnia and Herzegovina) and is a citizen of Bosnia and Herzegovina. She had her permanent residence registered in Slovenia from 6 August 1986 to 20 November 1991. As the competent authorities were informed of her moving from the area of the municipality without having deregistered her permanent residence, her personal card was transferred from the permanent residence register into special evidence in the register, the so called "emigrated without having deregistered" evidence. She has **never applied for a permanent residence permit in the Republic of Slovenia**, nor has she applied for Slovenian citizenship

H. Tripun Ristanović

69. Tripun Ristanović was born on 20 August 1988 in Ljubljana and is a citizen of Bosnia and Herzegovina. He had his permanent residence registered in Slovenia from 20 August 1986 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. He has **never applied for a permanent residence permit in the Republic of Slovenia**, nor has he applied for Slovenian citizenship.

I. Ali Berisha

70. Ali Berisha was born on 23 May 1969 in the town of Peć (Serbia) and is a citizen of Serbia. He had his permanent residence registered in Slovenia from 6 October 1987 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. He submitted an **application** for a permanent residence permit pursuant to the ZUSDDD on **25 July 2005**. On 28 April 2006 he brought an action at the Administrative Court of the Republic of Slovenia due to the non-response of the authority in the matter of issuing a permanent residence permit pursuant to the ZUSDDD to himself, his wife and four children, but the administrative court has not yet decided on the action. The said person did not submit an application for citizenship of the Republic of Slovenia. On 1 February 2007 Ali Berisha and his family were handed over to the Federal Republic of Germany pursuant to Council Regulation (EC) establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, no. 343/2003 of 18 February 2003 (OJ L no. 50 of 25 February 2003, hereinafter: the Dublin regulation). On 19 July 2006 the Ministry of the Interior received a positive response from Germany regarding acceptance of the Berisha family pursuant to point (e) of Article 16 § 1 of the Dublin regulation, meaning that Germany is the responsible and competent state for examining the asylum applications of the aforementioned family. On the basis of the positive response, on 30 October 2006 a (Dublin) decision was issued whereby Slovenia is not competent to examine the asylum applications of the Berisha family and the said persons would be handed over to Germany as the responsible state. The correctness and lawfulness of this decision was confirmed by the judgment of the Supreme Court of 28 December 2006. Since the Supreme Court's decision rendered the (Dublin) decision of 30 October 2006 enforceable, upon prior notification of the competent German authorities, on 1 February 2007 the Ministry of the Interior carried out the handover of the Berisha family to Germany as the state competent for examining their asylum applications, since Germany had prior to this officially assumed its responsibility for examining these applications.

J. Zoran Minić

71. Zoran Minić was born on 4 April 1972 in Podujevo (Serbia) and is a Serbian citizen. He had his permanent residence registered in Slovenia from 1 August 1984 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. **On 30 June 2006 he applied for a permanent residence permit** in the Republic of Slovenia **under the ZUSDDD.** On **18 July 2007 the Ministry of the Interior issued a decision dismissing his application** it since the applicant did not meet the actual residence in the Republic of Slovenia requirement, namely the condition regarding the centre of his life interests. On 20 September 2007 he initiated the administrative dispute proceedings at the Administrative Court of the Republic of Slovenia. On 15 September 2003 Mr Minić applied for Slovenian citizenship under Article 19 of the ZDRS; the court has not yet decided on the action.

K. Ilfan Sadik Ademi

72. Ilfan Sadik Ademi was born on 28 July 1952 in Skopje (Macedonia) and is of unknown citizenship. He had his permanent residence registered in Slovenia from 24 April 1981 to 26 February 1992, when he was transferred from the permanent residence register into the register of aliens. He **applied for a permanent residence permit under the ZUSDDD** permit on 16 February 2005. Since he did not prove to be a citizen of one of the successor states of the former SFRY, **his application was rejected** on 26 May 2005 by the decision no. 1812-04-233-0110/05 of the Ministry of the Interior (***evidence B11***). On 23 November 1992 he applied for Slovenian citizenship under Article 10 of the ZDRS; the application was dismissed on 9 September 2005 by the decision no. 1341110-XVII-331.087.

73. With regard to the aforementioned personal circumstances of the individual applicants regarding the issuing of acts in administrative proceedings (permanent residence permit) the Government propose that the Court should call upon the applicants – for whom the Government assert that permanent residence permits were issued to them – to prove this fact, since permanent residence permit is not issued in a form of a written decision. With regard to certain applicants, the Government dispose of no evidence that they applied for permanent residence permit, so it proposes that the Court calls upon such applicants to submit other possible evidence, inasmuch as they insist that they applied for permanent residence permit. In this connection the Government reserve themselves the right to respond.

THE LAW

I. RELEVANT DOMESTIC LAW

74. Citizenship in Yugoslavia was regulated by federal and individual republic laws on citizenship. In view of Article 39 of the ZDRS (Citizenship of Slovenia Act), in order to determine citizenship it was necessary to adhere to the regulations in force prior to 25 June 1991, since this provision stipulated that anyone who under the **regulations valid thus far**

had citizenship of the Republic of Slovenia and the Socialist Federal Republic of Yugoslavia was considered to be a citizen of the Republic of Slovenia. Individual articles of the laws regulating this issue after World War II are set out below.

75. The preamble to the Constitution of the Socialist Federal Republic of Yugoslavia (Official Gazette of the SFRY no. 9/94) conceptualised the relations between the federation and the individual republics within it:

"Proceeding from the right of every nation to self-determination, which also includes the right to secede, the nations of Yugoslavia have, on the basis of the freely expressed will in the common struggle of all the nations and nationalities in the national liberation war and socialist revolution, in accordance with their historical aspirations, aware that the further strengthening of brotherhood and unity is in the common interest, together with the nationalities with which they live, united into a federal republic of free and equal nations and nationalities and have created a socialist federal community of working people – the Socialist Federal Republic of Yugoslavia – in which in the interest of each nation and each nationality in particular and of all together they shall fulfil and ensure:

.....

The working people and nations and nationalities shall fulfil their sovereign rights in the socialist republics and in the socialist autonomous regions in accordance with their constitutional rights and – where this Constitution so provides in the common interest – in the Socialist Federal Republic of Yugoslavia.

....."

76. The other articles of relevance to this matter are as follows:

Article 1

The Socialist Federal Republic of Yugoslavia is a federative state as a state community of voluntarily united nations and their socialist republics and socialist autonomous regions of Kosovo and Vojvodina within the Socialist Republic of Serbia, which is founded on the authority and self-management of the working class and all working people, and is a socialist self-managing democratic community of working people and citizens and equal nations and nationalities.

Article 3

The Socialist Federal Republic of Yugoslavia is a state founded on the sovereignty of the nation and on the authority and self-management of the working class and all working people, and is a socialist self-managing democratic community of working people and citizens and of equal nations and nationalities.

Article 249

Citizens of Yugoslavia hold uniform citizenship of the Socialist Federal Republic of Yugoslavia.

Each citizen of a republic is at the same time a citizen of the Socialist Federal Republic of Yugoslavia. The citizen of one republic has in the territory of another republic rights and duties that are equal to the citizens of that other republic.

77. The Citizenship of Democratic Federal Yugoslavia Act (Official Gazette of the DFY no. 64/45) provided:

"Article 1

Yugoslav citizenship is uniform and comprises federal and republic citizenship. Each republic citizen is at the same time a federal citizen, and each federal citizen is also of necessity a republic citizen."

78. The Yugoslav Citizenship Act (Official Gazette of the SFRY no. 38/64), which retained the primacy of federal citizenship, provided:

"Article 2

Only Yugoslav citizens can have citizenship of a republic. Loss of Yugoslav citizenship also denotes loss of republic citizenship."

79. Amendment X to the Constitution of the Socialist Republic of Slovenia (Official Gazette of the SRS no. 32/89) provided:

"The Republic of Slovenia is within the composition of the Socialist Federal Republic of Yugoslavia on the basis of the permanent, integral and inalienable right of the Slovenian nation to self-determination, which also includes the right to secede."

80. The Citizenship of the People's Republic of Slovenia Act (Official Gazette of the PRS no. 20/50) provided:

"Article 1

Only those who are at the same time citizens of the Federal People's Republic of Yugoslavia may be citizens of the People's Republic of Slovenia."

81. The Citizenship of the Socialist Republic of Slovenia Act (Official Gazette of the RS no. 23/76), which established the primacy of republic citizenship, provided:

"Article 1

Each citizen of the Socialist Republic of Slovenia is at the same time a citizen of the Socialist Federal Republic of Yugoslavia."

82. The Statement of Good Intentions of 6 December 1990 (Official Gazette no. 44/90-I) provides as follows:

»The Slovenian state shall guarantee to the Italian and Hungarian ethnic minorities in the sovereign Republic of Slovenia all rights as provided in the Constitution, the legislation, as well as by the international acts, which are concluded and recognized by SFRY. It shall also guarantee to all members of other nations and nationalities the right to a multi-faceted development of their culture and language, and to all permanent residents of Slovenia the right to obtain Slovenian citizenship if they wish so."

83. The Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Official Gazette no. 1/91 of 25 June 1991) provided as follows:

»Article 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 article 40 of the Citizenship of the Republic of Slovenia Act or until the expiry of the time-limit set forth in article 81 of the Aliens Act, have equal rights and duties as the citizens of the Republic of Slovenia.«

84. The relevant provisions of the Citizenship of the Republic of Slovenia Act (Official Gazette no. 1/91 of 25 June 1991) provide as follows:

»Article 39

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

Article 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.

A child up to the age of 18 shall acquire citizenship of the Republic of Slovenia under the conditions of Article 14 of the present Act.«

85. The most relevant provisions for the present case of the Aliens Act (Official Gazette no. 1/91 of 25 June 1991) provide as follows:

»Article 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.

Article 82

Passports issued to refugees, passports issued to foreigners and identity cards for foreigners issued in accordance with the Movement and Residence of Foreigners Act (Official Gazette of the SFRY no. 44/80, 53/85, 30/89 in 26/90) shall remain valid within the period of two years after entry into force of this Act.

Passports issued to refugees, passports issued to foreigners and identity cards for foreigners may be issued on forms valid until the entry into force of this Act, within a year after the entry into force of this Act.

Permanent residence permits issued in accordance with the Movement and Residence of Foreigners Act (Official Gazette of the SFRY no. 44/80, 53/85, 30/89 in 26/90) shall remain valid if the foreign holder of such a permit had permanent residence in the territory of the Republic of Slovenia on the day of entry into force of this Act. «

86. The provisions of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC relevant for the acquisition of the residence permit (card) for the family members of a Union citizen, who are not nationals of a member state, and for the registration of residence of a Union citizen in a host member state provide as follows:

»Article 9

Administrative formalities for family members who are not nationals of a Member State

1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months.

2. The deadline for submitting the residence card application may not be less than three months from the date of arrival.

Article 10

Issue of residence cards

1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called "Residence card of a family member of a Union citizen" no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

(a) a valid passport;

(b) a document attesting to the existence of a family relationship or of a registered partnership;

(c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining;

(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;

(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;

(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.

Article 11

Validity of the residence card

1. The residence card provided for by Article 10(1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.

2. The validity of the residence card shall not be affected by temporary absences not exceeding six-month a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

Article 16

General rule for Union citizens and their family members

1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.

2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.

3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of twelve consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.

87. In order to facilitate as much as possible to acquire permanent residence permit the citizens of the other republics of the former SFRY who had not within the legally prescribed time applied for Slovenian citizenship and who had also not acquired residence permits in accordance with the ZTUJ, the Decision of the Government of the Republic of Slovenia no. 260/01/91-2/5-8 of 3 September 1992 provided:

"... in examining applications for permanent residence permit for aliens referred to in Article 16 of the Aliens Act (Official Gazette of the RS no. 1-9/91) the Ministry of the Interior should take into account that the condition for permanent residence in the territory of the Republic of Slovenia has been met when the alien has had permanent residence registered for at least three years and was actually living here before the provisions of the Aliens Act started to apply to him."

88. The Act Supplementing the Citizenship of the Republic of Slovenia Act (Official Gazette of the RS no. 30/91) supplemented Article 40 of the existing act with new paragraphs 2 and 3:

"2. Irrespective of the fulfilled conditions referred to in the preceding paragraph, an application for citizenship of the Republic of Slovenia shall be rejected if the person after 26 June 1991 committed a criminal act referred to in chapters 15 or 16 of the Penal Code of the SFRY (Official Gazette of the SFRY no. 44/76, 34/84, 74/87, 57/89, 3/90 and 38/90), aimed against the Republic of Slovenia or other values which in accordance with the provision of Article 4 § 1 of the Constitutional Act Implementing the Basic

Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia are protected by the penal legislation of the Republic of Slovenia, irrespective of where such act was committed. If criminal proceedings have been instigated against such criminal act, the proceedings for acquisition of citizenship shall be stayed until the criminal proceedings have been completed by a final judgment.

3. Irrespective of the fulfilled conditions referred to in the first paragraph of this article, an application may also be rejected for a person for whom grounds referred to in point 8 of the first paragraph of Article 10 of this Act have been established."

89. The relevant provisions of the previously valid Movement and Residence of Aliens Act (Official Gazette of the SFRY no. 56/80, as amended), on the basis of which aliens, that is, any person who was not a citizen of the SFRY (Article 1 § 2 of the act), could acquire temporary residence permit or what was called a permit for permanent settlement in the SFRY, read as follows:

"I. Temporary residence

Article 31

An alien entering the Socialist Federal Republic of Yugoslavia with a foreign passport may, for the validity of the visa, stay temporarily in the Socialist federal Republic of Yugoslavia for a maximum of three months, and if travelling through the Socialist Federal Republic of Yugoslavia, for a maximum of seven days, counted from the day the alien crossed the state border.

Upon their request, aliens referred to in the first paragraph of this article may be approved temporary residence of longer than three months or more than seven days.

In any application for a temporary residence permit, the alien must set out the reasons for which he is requesting a temporary residence permit. Where the competent authority so requires, the alien must attach to the application evidence of justification of the reasons for which he is requesting temporary residence, and evidence that he has funds to cover his stay or that his stay in the Socialist Federal Republic of Yugoslavia will be covered in some other way.

Applications for temporary residence permit must be submitted prior to the expiry of the deadline referred to in the first paragraph of this article.

Article 32

Aliens entering the Socialist Federal Republic of Yugoslavia for education or specialisation or for the purpose of scientific research, employment or the performance of some other professional activity, must within three days of their entry into the Socialist Federal Republic of Yugoslavia apply for a temporary residence permit.

[....]

Article 33

Temporary residence is approved for aliens by the competent authority in the republic or autonomous region in which the alien has temporary residence.

Temporary residence permits are issued with a validity of up to one year, or until the expiry of the foreign passport, if that period is less than one year.

Where there are justified grounds, an alien's temporary residence may be extended, each time with validity as referred to in the second paragraph of this article.

2. Permanent settlement
Article 38

Aliens may settle permanently in the Socialist Federal Republic of Yugoslavia if they acquire permission to do so from the competent authority.

Permission referred to in the first paragraph of this article shall be terminated if the alien does not settle in the Socialist Federal Republic of Yugoslavia within one year of the day the permission was served on him.

Article 40

Permanent settlement in the Socialist Federal Republic of Yugoslavia is approved by the federal administrative authority with competence for interior."

90. The act further laid down the conditions under which aliens could acquire temporary residence permits or permanent settlement permits in the territory of the Socialist Federal Republic of Yugoslavia, cases where such permits would not be issued to aliens, and cases where permits would be revoked or where further stay by an alien in the country's territory could be cancelled.

91. In chapter "IV. Registering temporary and permanent residence and deregistering permanent residence" the act also provided the following:

"Article 78

Aliens staying in the Socialist Federal Republic of Yugoslavia must register their temporary residence and any change of address with the competent authority in the republic or autonomous region, and aliens granted permanent settlement must also register and deregister their permanent residence.

Article 79

Under this act, temporary residence is understood to be the location in which the alien is residing temporarily.

Under this act, permanent residence is understood to be the location in which, with the intention of living there permanently, the alien who had acquired permission for permanent settlement in the Socialist Federal Republic of Yugoslavia has settled."

92. The above provisions of the act indicate a **clear distinction between a permit for an alien's temporary or permanent residence in the territory of the state on the one hand and the temporary or permanent place of residence, denoting the actual location of residence, on the other hand.**

93. The relevant provisions of the Inhabitants' Residence Evidence and Population Registry Act (Official Gazette of the SRS no. 6/83, as amended – ZENO), as valid up to 6 September 1991, read as follows:

"Article 5

The registration and deregistration of permanent residence and registration of any change of address is obligatory for all inhabitants (*občan*), whenever they settle permanently in a settlement or move away permanently from a settlement or change their address in the same settlement.

Inhabitants under the age of 18 years must be registered or deregistered by their parents or guardians or by those with whom they reside.

Inhabitants over 15 years of age who under other regulations have acquired full contractual capacity shall be bound to register or deregister themselves.

Permanent residence and changes of address must be registered within eight days of moving in or change of address.

Permanent residence must be deregistered before it is relinquished. In deregistering, inhabitants shall be bound to indicate the settlement of their new permanent residence.

The official who receives the registration or deregistration shall issue to the registering person confirmation of registration or deregistration.

Residents' committees, other self-management bodies of the residential building or landlords shall be bound to direct inhabitants moving into residential buildings and apartments to register or deregister their permanent residence, and they shall have the right to verify whether such inhabitants have fulfilled this obligation.

Upon registering or deregistering permanent residence or upon registering a change of address or upon registering or deregistering temporary residence, inhabitants must provide truthful information.

Article 15

A register of permanent residents in the municipality and a record of temporary residences shall be kept by the competent authority.

The local community office, if so provided by the municipal assembly by official decision, shall keep a copy of the register of permanent residents for the area of the local community office.

A record of permanently registered residents in Slovenia shall be provided by the central population register of the Socialist Republic of Slovenia, which shall be an amalgamation of municipal registers of permanent residents and shall be kept by the Statistical Office of the Socialist Republic of Slovenia.

For the purpose of managing data in the central register of residents, the competent municipal authorities shall be bound to provide the Statistical Office of the Socialist Republic of Slovenia with all data on movements of permanent residents.

Article 16

The register of permanent residents shall be kept by the competent authority in the form of a card index.

..."

94. Article 5 § 1 of the ZENO was amended, as published in the Official Gazette no. 11/91-I, with validity starting from 7 September 1992:

"The registration of permanent residence and registration of any change of address is obligatory for all inhabitants, whenever they settle permanently in a settlement or change their address. Deregistration of permanent residence is obligatory for inhabitants who move from the territory of the Republic of Slovenia."

95. The Rules on the keeping and management of the register of permanent residents (Official Gazette of the SRS no. 18/84) provided:

"Article 1

These Rules lay down the manner of keeping and managing the register of permanent residents (hereinafter: RPR)....

Article 2

Within municipalities the RPR shall be kept by the municipal administrative authority for home affairs (hereinafter: competent authority). ....

Article 4

Personal cards shall contain the following data on the inhabitant:

1. unique personal identification number (EMŠO),

....

7. national affiliation, nationality or ethnic group,

8. citizenship of a socialist republic,

.....

Article 5

Personal cards shall comprise the card index of permanent residents, which is an overview of inhabitants permanently registered in the area in which the register is kept.

Article 6

If the competent authority determines that for an individual inhabitant the reasons for being kept in the card index of permanent residents have ceased, it shall remove that person's card from the card index of permanent residence and shall place it in one of the special card indexes.

Article 9

Card indexes referred to in Articles 5, 6, 7 and 8 of these Rules shall comprise the RPR of a municipality. The competent authority must harmonise and supplement the files daily with regard to the following events: .....7. loss of citizenship of a socialist republic and the SFRY and change in citizenship of a socialist republic, ..."

The Rules on the form for registering or deregistering permanent residence, the form for the personal card and household card and on the manner of keeping and managing the register of permanent residents (Official Gazette of the RS no. 27/92) provided:

"Article 5

The record of permanent residents contains data on citizens of the Republic of Slovenia who have registered permanent residence in the territory of the municipality.

In the record of permanent residents the competent authority shall identify citizens of the Republic of Slovenia who travel abroad temporarily for more than three months, and persons to whom the authority declined registration of permanent residence in accordance with paragraph four of Article 6 of the act regulating the record of residence of citizens and population register.

..."

96. In the Republic of Slovenia the employment of aliens was regulated by the Employment of Aliens Act (Official Gazette of the RS, no. 33/92), which was published on 3 July 1992 and entered into force on 18 July 1992. For the present case the relevant provisions of the Act are as follows:

"Article 1

This act lays down the conditions under which foreign nationals or stateless persons (hereinafter: alien) may work in the Republic of Slovenia.

Article 25

Citizens of the former SFRY and/or citizens of the other republics of the former SFRY shall acquire a one-year personal work permit, if on the day this act enters into force they are in the Republic of Slovenia:
- in unlimited-duration employment relationship and have in the Republic of Slovenia less than 10 years of service,
- in fixed-duration employment relationship,
- in formal employment of unlimited or fixed duration as daily migrant workers,
- registered at the Employment Service of Slovenia and receiving cash benefits in accordance with the regulations on employment and unemployment insurance.

Citizens of the former SFRY and/or citizens of the other republics of the former SFRY, with the exception of persons referred to in the third indent of the preceding paragraph, who on the day this act enters into force are in formal employment in the Republic of Slovenia of unlimited or fixed duration and have in the Republic of Slovenia at least 10 years of service shall receive personal work permit of indefinite duration.

Persons referred to in the preceding two paragraphs shall receive personal work permit if they apply for it within 90 days of the entry into force of this act."

97. The administrative proceedings are regulated by the General Administrative Procedure Act (Official Gazette of the RS no. 80/99, as amended, hereinafter: ZUP). Article 222 of the ZUP provides:

"Article 222

(1) Where the procedure is initiated at the request of the party or ex officio, if this is in the interest of the party, and prior to a decision there is no need for a special determining procedure, the competent authority must issue a decision and deliver it to the party as soon as possible, and no later than one month from the day the authority received a complete application to initiate the procedure, or from the day the procedure was initiated ex officio. In other cases where a procedure is initiated at the request of the party or ex officio, if this is in the interest of the party, the competent authority must issue a decision and deliver it to the party no later than in two months.

(2) If a party submits an application that is incomplete and then upon request supplements it, the deadline referred to in the preceding paragraph shall start to run from the day the authority received the supplement to the application.

(3) The deadline from the first paragraph of this article shall not run during any period when the procedure has been suspended pursuant to Article 153 of this act, and in cases referred to in paragraph ten of Article 82 of this act.

(4) If the competent authority, against whose decisions a complaint may be lodged, does not issue a decision and deliver it to the party within the prescribed deadline, the party shall have the right to lodge a complaint as if their request had been rejected."

98. Administrative disputes are regulated by the Administrative Dispute Act (Official Gazette of the RS no. 105/2006, hereinafter: ZUS-1). The time-limits for filing of actions and the types of action, including action due to non-response of the authority, are set out in Articles 28 and 33:

"Article 28

(1) The action must be filed within thirty days of the delivery of the administrative act by means of which the procedure was concluded. Public interest representative may file an action even if he was not a party to the proceedings in which the administrative act was issued, within the time-limit that applies to the party to the favour of which the administrative act was issued.

(2) If the second instance authority does not issue a decision on the appeal against the decision of first instance filed by the party within two months, or within a shorter period set out in a special regulation, and if, following a repeated request, it does not issue it within seven days, the party may initiate an administrative dispute as if his appeal had been rejected.

Article 33

(1) An action may be filed to request:

- the annulment of the administrative act (challenging action),
- the issuing or service of the administrative act (action due to non-response of the authority),
- amendment of the administrative act (action in a dispute of full jurisdiction)."

99. Similar provisions were contained in the previously valid Administrative Dispute Act (Official Gazette of the RS no. 50/97, as amended, hereinafter: ZUS).

"Article 26

(2) If the body of second instance does not issue a decision on the appeal against the decision of first instance filed by the party within two months, or within a shorter period prescribed by law, and if, following a repeated request, it does not issue it within seven days, the party may initiate an administrative dispute as if his appeal had been dismissed.

Article 31

An action may be filed to request the annulment of the administrative act (challenging action) or the issuing of the administrative act (action due to non-response of the authority)."

100. Articles 59 and 60 of the Constitutional Court Act (Official Gazette of the RS no. 15/94, as amended, hereinafter: ZUSTS) lays down the jurisdiction of the Constitutional Court in cases where it rules on constitutional complaints. Article 59 regulates the quashing powers of the Constitutional Court, and Article 60 the reformative powers.

"Article 59

If a constitutional complaint is accepted, the panel or the Constitutional Court may suspend the implementation of the individual act which is challenged by the constitutional complaint at a closed session if difficult to remedy harmful consequences could result from the implementation thereof.

Article 60

(1) If the Constitutional Court abrogates an individual act, it may also decide on a disputed right or freedom if such procedure is necessary in order to remedy the consequences that have already occurred on the basis of the annulled individual act, or if such is required by the nature of the constitutional right or freedom, and if such decision can be reached on the basis of information contained in the case file.

(2) The decision referred to in the preceding paragraph is implemented by the authority which is competent for the implementation of the individual act which the Constitutional Court abrogated or annulled and replaced by its decision. If there is no competent authority according to the regulations in force, the Constitutional Court determines one."

101. Regarding the regulation in the area of pension and invalidity insurance and the right to maternity leave and childcare leave, as well as adequate compensation for such time, the Government draw attention to the following provisions of legal instruments.

102. The Employment Act (Official Gazette of the RS, no. 17/91) – this relates to the alleged violated right of the applicant Ana Mezga to maternity leave and child-care leave – at the time in question provided:

"Article 80

During pregnancy and following birth, the female worker shall have the right to maternity leave and childcare leave in a total duration of 365 days.

The female worker shall use the right to maternity leave in the form of absence from work of 105 days, and following the expiry of maternity leave she shall use the right to childcare leave in the form of absence from work of 260 days or by working half her full working hours a day up until the child is 17 months old.

Article 81

A female worker who gives birth to twins or multiple live-born infants, a seriously physically or mentally handicapped child or a premature baby, shall have longer childcare leave than is provided in the second paragraph of the preceding article of this act.

If a female worker cares for a seriously physically or mentally handicapped child or twins, the longer childcare leave with full absence from work shall last up to the time the child is 15 months old. For the care of multiple live-born infants the female worker shall have the right to an additional three months of extra leave for each additional child."

103. The Self-management Agreement on Maternity Leave (Official Gazette of the SRS no. 36/87, 36/88 and 23/89) – this relates to the alleged violated right of the applicant Ana Mezga to benefit for the period of maternity leave and childcare leave – at the time in question provided:

"Article 4

Participants shall ensure the right to maternity leave and childcare leave in a duration of 365 days, of which maternity leave shall be 105 days, and childcare leave shall be 260 days.

Article 5

With a medical certificate of the competent health organisation, the woman entitled may begin maternity leave 45 days prior to birth, and must begin maternity leave 28 days prior to birth.

Article 12

During the period of maternity leave and childcare leave the participants will provide 100% compensation of personal income.

Article 20

If the eligible person cares for a seriously physically or mentally handicapped child or twins, the longer leave for child care with full absence from work shall last up to the time the child is 15 months old. For the care of multiple live-born infants the eligible person shall have the right to an additional three months of extra leave for each additional child."

104. The Pension and Invalidity Insurance Act - *Zakon o pokojninskem in invalidskem zavarovanju* (Official Gazette of the RS, no. 106/1999, as amended, hereinafter: ZPIZ-1) has been in force since 1 January 2000. The provisions relevant for the applicants claiming »the freezing of contributions to the pension fund«, are the following:

»Article 1

The pension and invalidity insurance system in the Republic of Slovenia shall cover:

- a compulsory pension and invalidity insurance scheme on the basis of intergenerational solidarity;
- compulsory and voluntary supplementary pension and invalidity insurance schemes; and
- a pension and invalidity insurance scheme on the basis of personal pension savings accounts.

Article 4

(1) The rights under compulsory insurance shall be as follows:

a. the right to pension:

- old-age pension,
- invalidity pension,
- widow/widower's pension,
- survivor's pension,
- partial pension;

b. the rights under invalidity insurance:

- the right to occupational rehabilitation,
- the right to invalidity benefit,
- the right to reassignment and part-time work,
- the right to other benefits under invalidity insurance,
- the right to travel allowance;

c. supplementary rights:

- the right to assistance and attendance allowance,
- the right to disability allowance,
- the right to pension support;

d. other rights:

- the right to transitional allowance,
- the right to maintenance allowance;
- the lump-sum yearly bonus.

(2) In addition to the rights under compulsory insurance, the present Act shall also regulate the right to state pension.

Article 5

(1) The rights under compulsory insurance shall be inalienable personal rights which can be neither assigned nor inherited. The cash amounts due and not disbursed prior to the recipient's death shall be inherited.

(2) The rights under compulsory insurance shall not be subject to the statute of limitations, with the exception of unpaid amounts of pensions due and other cash benefits in the cases specified hereunder.

(3) The rights under compulsory insurance may not be revoked, reduced or restricted, save in the cases specified hereunder.

Article 7

(1) Compulsory insurance shall cover the nationals of the Republic of Slovenia and foreign nationals, provided they fulfil the conditions stipulated by the present Act or by a relevant treaty.

(2) The insurance relationship shall be formed on the basis of the present Act by establishment of a legal relationship which serves as a basis for compulsory insurance.

(3) The employer or any other person liable to enrol shall notify the insurance carrier of the establishment of a legal relationship as per the preceding paragraph with a compulsory enrolment in membership of insurance.

(4) The insured and the employers shall be obliged to submit the data required for assessment, calculation and payment of contributions as well as supervision and collection of contributions. Records established for supervision of payment of public charges shall constitute an integrated system.

(5) An insured person shall be granted the rights under compulsory insurance solely on the basis of payment of contributions, unless specified otherwise for particular cases in the present Act.

(6) Unless specified otherwise in the present Act, the rights under compulsory insurance shall be proportional to the insured person's salary or other income and paid contributions.

Article 12

(1) The rights under compulsory insurance shall be asserted with the Institutes in accordance with the General Administrative Procedure Act, unless specified otherwise in the present Act.

(2) Legal protection of rights is ensured by law.

Article 13

(1) Compulsory insurance shall cover persons employed in the territory of the Republic of Slovenia.

(2) Compulsory insurance shall cover elected or appointed holders of a public or any other office in the bodies of legislative, executive or judicial authorities in the Republic of Slovenia or in the local self-government bodies, provided their office is salaried.

(3) Compulsory insurance shall likewise cover persons employed in the service of an employer with a seat in the Republic of Slovenia, who have been posted abroad, in the event they are not insured under compulsory insurance according to the regulations of the country they were posted to, unless specified otherwise in a relevant treaty.

(4) Compulsory insurance shall also cover foreign nationals employed with international organizations and institutions as well as foreign diplomatic and consular agencies in the territory of the Republic of Slovenia, if such insurance has been specified by a treaty.

(5) Compulsory insurance shall cover persons who engage in work against remuneration within any other legal relationship. An elected holder of a foundation, a co-operative, a public authority, a chamber, an insurance fund, a private company, a mutual insurance company, a private pension fund, an elected representative or an official of a local community, or a non-professional mayor shall likewise be deemed to be a person engaged in work within another legal relationship.

Article 36

(1) An insured person shall acquire the right to old-age pension when he has attained 58 years of age, if he has completed a pension qualifying period of 40 years (males) or 38 years (females).

(2) An insured person shall acquire the right to old-age pension when he has attained 63 years of age (males) or 61 years of age (females), if he has completed a pension qualifying period of 20 years.

(3) An insured person shall acquire the right to old-age pension when he has attained 65 years of age (males) or 63 years of age (females), if he has completed an insurance period of at least 15 years.

Article 177

(1) An insured person who satisfies the conditions for the acquisition of the right to two or more pensions under compulsory insurance in the Republic of Slovenia may enjoy only the one he opts for.

(2) The preceding paragraph shall also apply in the case when an insured person fulfils the conditions for the acquisition of pensions in other countries as well, if he has acquired the rights on the basis of the same pension qualifying periods.

Article 187

(1) The pension qualifying period, determined as the basis for the acquisition and assertion of rights under compulsory insurance, shall include:

- the period of time covered by compulsory insurance, which is taken into account in the insurance period according to the provisions of the present Act;

- the non-contributory period, credited to the pension qualifying period of an insured person pursuant to the present Act;

- the period of time completed prior to the enactment of the present Act, which shall be included in the pension qualifying period of a national of the Republic of Slovenia under regulations in force prior to the until the enactment of the present Act, unless otherwise specified in the present Act or a relevant international treaty.

(2) In case of a person who is not a holder of the citizenship of the Republic of Slovenia, the time covered by the insurance with the Institute prior to the enactment of the present Act shall be taken into account in the insurance period, unless otherwise specified in the present Act or a relevant international treaty.

Article 188

(1) The period of time under compulsory insurance in full-time employment as well as the period of time in which a disabled worker entitled to a partial invalidity pension is employed part-time shall be taken into account in the pension qualifying period.

(2) The period of time under compulsory insurance, in which an insured person was employed part-time due to the care of his child up to the age of three, or due to care of a person with a serious physical impairment or a moderately, seriously or severely mentally handicapped person in accordance with regulations governing the rights related to parenthood, shall likewise be considered as the period of full-time employment.

(3) The period of time in which an insured person is employed part-time for a duration corresponding to the total number of hours of such employment in a particular year, calculated to full working hours, shall likewise be taken into account in the insurance period.

(4) The provisions of the first and the second paragraph of this Article shall also apply if full working hours are obtained by work under two or more employment contracts.

(5) The apprenticeship of pupils shall be taken into account included in the insurance period so that each 12-months' apprenticeship period accounts for six months of insurance period.

Article 191

(1) The insurance period shall include periods of insurance if stipulated contributions have been paid for these periods.

(2) If only a part of contributions have been paid for a particular period, a proportional part of the insurance period shall be taken into account in the pension qualifying period.

Article 192

(1) Notwithstanding the provision of the preceding Article the pension qualifying period shall take into account the years in which, pursuant to the data of the compulsory insurance carrier, the employer has calculated contributions for compulsory insurance from the salary of the insured person, but has failed to pay them to the pension and invalidity insurance irrespective of the effect of measures for collection of contributions.

(2) If the existence of insurance or the existence of data applying to the insurance periods can be established on the basis of the records of compulsory insurance carrier, it shall be deemed - irrespective of the possibility of establishing the payment of compulsory insurance contributions, or in cases where this cannot be proved due to a bankruptcy or another form of the cancellation of the operations of the employer with whom an insured person was employed, that the compulsory insurance contributions have been paid.

Article 249

For decision-making concerning the rights under compulsory insurance, the provisions of the General Administrative Procedure Act shall apply unless otherwise provided for by the present Act.

Article 250

(1) The rights under the compulsory insurance may be asserted with the Institute by a person who was insured with this Institute, also when the rights on the basis of international treaties are concerned.

(2) The rights in case of invalidity or death due to employment injury shall be asserted with the Institute if an insured person was insured with the Institute at the time of injury.

(3) The rights in case of invalidity or death caused by occupational disease shall be asserted with the Institute if an insured person was insured with the Institute during the term of illness, or if he was not insured during that time, but his last insurance was nevertheless with the Institute.

(4) The pension qualifying period, salary and other facts influencing the acquisition and the assessment of entitlement shall be determined in accordance with the provisions of this Act.

Article 251

(1) An insured person shall be entitled to file an appeal against the decision issued at the first instance.

(2) In the procedure for assertion of rights on the basis of invalidity, the right to appeal shall also be vested with the employer.

Article 252

(1) Judicial protection of rights shall be provided by a competent court as provided for by law.

(2) Judicial protection may be asserted by an insured person within 30 days after the delivery of the decision issued at the appeal instance.

(3) Judicial protection may also be asserted by the employer if the final decision of the Institute deals with the right of an insured person on grounds of invalidity.

Article 253

(1) Decisions concerning the rights arising from insurance shall be made:

- at the first instance - by the unit of the Institute in the area of which an insured person asserting the right or a person whose right is being asserted, was last insured (hereinafter referred to as: the regional unit);

- at the appeal instance - by a special unit at the head office of the Institute (hereinafter referred to as the unit at the head office of the Institute).

(2) The rights under compulsory insurance asserted on the grounds of international treaties, and the rights on the transfer of pensions shall be subject to a decision made:

- at the first instance - by the unit at the head office of the Institute,

- at the appeal instance - by the Head of the Institute.

(3) The decisions from the first and the second indent of the first paragraph and from the first indent of the preceding paragraph shall be issued by the Head of a competent office of the Institute.

Article 256

(1) The decision of the first instance granting a right under this Act shall be submitted for review to the appeal instance.

(2) The review shall be carried out ex officio.

(3) The review shall not suspend execution of the decision.

(4) When an appeal is lodged against the firs instance decision the review and the appeal shall be decided upon within the same decision.

(5) Decisions granting right to pension according to a relevant treaty shall not necessarily be subject to review.

Article 257

(1) Judicial protection shall be provided against a decision issued in the review procedure by which a first-instance decision was revised.

(2) Judicial protection of rights shall not be possible against a decision issued in the first instance by which the first-instance decision was dismissed or annulled in the review procedure.

(3) Judicial protection shall not be possible against a decision issued in the appeal instance by which a decision issued in the first instance was at the same time dismissed or annulled in the review procedure.

Article 258

(1) The status of an insured person under the compulsory insurance shall be established on the basis of regulations on the personal data register of insured persons and recipients of rights under pension and invalidity insurance.

(2) In specific insurance cases pursuant to Articles 26, 27, 28, and 29 hereof, the status of an insured person shall be established when an insurance case arises on the basis of which an insured person shall acquire the rights under compulsory insurance.

Article 259

(1) The procedure for assertion of rights under compulsory insurance shall be initiated at the request of an insured person, while the procedure for the assertion of the right to a widow/widower's or a survivor's pension shall be initiated at the request of a widow or a widower, a family member or his legal representative.

(2) The procedure for assertion of rights under invalidity insurance shall also be initiated on proposal of the attending physician of an insured person, or by a medical board. If the procedure for assertion of rights under the invalidity insurance has been initiated on proposal of the physician or the medical board and they both withdraw the proposal, the procedure cannot be dropped if an insured person does not agree with the termination of the same and requests its continuation. If the procedure was initiated on proposal of the physician or the medical board, an insured person or his legal representative cannot submit that the proposal be withdrawn.

(3) The procedure has been initiated when the Institute receives an application for assertion of right.

(4) The procedure for assertion of rights under invalidity insurance begins when the Institute receives the complete employment documentation of the insured person and the application with complete medical documentation on the state of health of an insured person and his capacity for work.

(5) The application for initiation of the procedure for assertion or protection of rights shall be submitted in writing or orally on the record to any unit of the Institute. If a unit in another region is responsible for taking a decision about the application, the application shall be immediately submitted to the locally competent unit.

Article 393

(1) Persons who, after the effective date of this Act, lack the attributes of insured persons according to this Act but who were in possession of such attributes under the former regulations, may assert the rights under pension insurance according to conditions provided for by this Act.

(2) Persons insured with a foreign compulsory insurance carrier in a state with which an international social insurance treaty has been concluded shall also be deemed as persons with the attributes of insured persons according to the preceding paragraph if they assert the rights under such a treaty.

(3) The right to a survivor's or a widow/widower's pension may be – under conditions laid down herein - asserted by the family members of the person from the preceding two paragraphs, and by the family members of the pension recipient under the former regulations if they fulfil the conditions provided for herein for the family members.«

105. The Government shall submit the legislation cited in these observations if the Court so requires.

II. PRELIMINARY OBJECTIONS OF THE GOVERNMENT

106. In the present case the Government submit in the first place that the application is incompatible *ratione materiae* and *ratione temporis*, with the provisions of the Convention; additionally, they claim the objection of non-exhaustion of domestic remedies and the objection of non-compliance with the six-month time-limit for the submission of the application (both in Article 35 § 1 of the Convention), the objection of lack of victim status (Article 34 of the Convention) and the objection referred of the application being manifestly ill-founded (Article 35 § 3 of the Convention).

107. The Government need to stress that the alleged violations do not involve a continued situation as defined in the case law of the Court. According to the case law of the Court, one needs to distinguish the situations of continuing violations from the subsequent consequences of these violations, where the consequence might be lasting, but the violation itself is defined as a point with a beginning and end at a precisely determined moment in time. Paragraph 40 of the judgment in case no. 27824/95 of 24 September 2002 (*Posti and Rahko v. Finland*) indicates that the issuing of several regulations in 1994, 1996 and 1998 could not be interpreted as a continuing situation for the purposes of the six-month time-limit rule. The fact that the adoption of these instruments subsequently had considerable consequences extending to 1996 and beyond does not mean that these events created a "continuing situation".

108. By analogy to the decision in case of *Malhous v. the Czech Republic* (application no. 33701/96) of 12 December 1996 it is possible to consider that the Court is not competent *ratione temporis* to examine the circumstances of the expropriation or the continuing effects produced by it up to the present date. In the above-mentioned case, expropriation was carried out in 1949 (an instantaneous act), while its effects have extended to the present day, yet the Court nevertheless ruled that it does not produce a continuing situation. The Court came to the same conclusion in the case of *Kopecky v. Slovakia* [GC], no. 44912/98, judgment of 28 September 2004.

109. In the present case, it is therefore necessary to assess each of the actions of the state as an individual event, which may have effects over time; however, **according to the case-law of the Court mentioned above, it cannot be considered that the applicants are in a continuing situation.**

A. Preliminary objection of non-compliance with the six-month time-limit rule

110. Merely as a precaution, if the Court was to take the view that domestic remedies were ineffective (the Government indeed argue that the applicants did not exhaust all domestic remedies), the Government state that the applicants did not comply with the requirement to lodge the application within the six-month time-limit. The Government wants to draw attention to the Court's case-law in the case of *Laçin v. Turkey*, no. 23654/94, decision of 15 May 1995, in accordance with which the six-month time-limit for filing the application with the Court is to be calculated from the time when the applicant becomes aware, or should have become aware, of the circumstances which make that remedy ineffective.

111. The application was lodged with the Court on 4 July 2006. It is clear from the applicants' submissions that they did not become aware of their overall situation as late as January 2006, but considerably earlier. If not before, they were aware of their position at the latest when the subsequent legislative referendum was held (in April 2004).

112. For such a case the Government argue that the application is incompatible with the six-month time-limit laid down in Article 35 § 1 of the Convention. Hereby, the Government also responds the expressly asked question (no. 2) of the Court (*"Have the applicants complied with the six-month time-limit laid down in Article 35 § 1 of the Convention?"*).

B. Preliminary objection of the *ratione temporis* inadmissibility

113. The Government argue that the Court is not competent *ratione temporis* to consider the case.

114. Should the conduct of the Republic of Slovenia have violated Article 8 of the Convention and Article 1 of Protocol No. 1, independently and in conjunction with Articles 13 and 14 of the Convention (which the Government refute, see § 157 *et seq.*), the Government stress that the events which the applicants claim to be the source of the violations by the Republic of Slovenia took place in February 1992 (see §§ 107 to 109), while the Convention entered into force for Slovenia on 28 June 1994. As already stated above, the Court cannot consider an instantaneous violation that had taken place before the date of entry into force of the Convention for Slovenia.

115. With regard to the objection *ratione temporis* the Government believe that the act supposedly presenting the violation (the fact that on 26 February 1992 the provisions of the ZTUJ (Aliens Act) started to apply in full for the applicants, who were consequently transferred to the register of aliens) **was an instantaneous event**. It was carried out prior to the entry into force of the Convention for the Republic of Slovenia, and subsequently the Government believe the Court is not competent *ratione temporis* to consider the case.

116. The Court has ruled in several cases that individual actions or omissions whereby individual rights protected by the Convention have allegedly been violated ("events"), and all the associated procedures in national courts and other bodies are inextricably linked – it is therefore impossible to examine them separately. Since the actual event in the present case is outside the *ratione temporis* jurisdiction of the Court, it cannot rule on events which are in a direct causal link with the event but which occurred after the entry into force of the Convention. Any obligations of the state from the event are derived from the event itself, which owing to the lack of *ratione temporis* jurisdiction "does not exist" for the Court. As the event "does not exist", the Court has nothing to consider with regard to it.

117. The Court adopted such a view in the cases of *Moldovan and others* and *Rostas and others v. Romania*, no. 41138/98 and 64320/01, of 21 March 2001, *Voroshilov v. Russia*, no. 21501/02, of 8 December 2005, and *Kadiķis v. Latvia* (decision), no. 47634/99, of 29 June 2000.

118. With regard to the violation of Article 1 of Protocol No. 1 regarding Ana Mezga the Government want to further clarify their *ratione temporis* objection.

119. The applicant Ana Mezga claims that her right to peaceful enjoyment of her property was violated as she was supposedly deprived of six months of childcare leave and the compensation of personal income to which she should have been entitled upon the birth of her child Enes Husić on 26 April 1992 (the birth date of the child being evident in the copy of the central birth register attached by the applicant to the application). According to her allegations she should have been entitled to 15 months of maternity leave and child care leave.

120. The Self-management Agreement on Maternity Leave (Official Gazette of the SRS no. 36/87, 36/88 in 23/89), which regulated the area of maternity leave and childcare leave at the time relevant for the applicant, indicates that a woman entitled to maternity leave and childcare leave is eligible for leave in a duration up to the child is 15 months old if she cares for a seriously physically and mentally handicapped child. Otherwise maternity leave together with childcare leave amounts to 365 days. In view of the applicant's allegations that she was entitled to 15 months of maternity leave, her maternity leave together with childcare leave should have lasted until 26 July 1993 at the most. The documentation shows that the applicant received compensation of personal income until 30 November 1992.

121. At the time when the applicant supposedly used her maternity leave, the Convention did not yet apply. The alleged violation of the Convention as claimed by the applicant, that is, the loss of child care leave and compensation of personal income, is an expressly an instantaneous and time-limited event, which lasted from 1 December 1992 to 26 July 1993 at the latest (not being clear whether she was entitled to extended childcare leave - her allegations could not be verified owing to the changed competences of record keeping). The purpose of childcare leave is to ensure the best care for the newborn baby, that being provided for by the mother for a period of one year or, where necessary, for 15 months following birth. For the applicant and her baby this period should have ended for the applicant no later than on 26 July 1993 (if she was entitled to extended childcare leave). Therefore the applicant's allegations relating to facts and procedures prior to this date are *ratione temporis* incompatible with the provisions of the Convention.

C. Preliminary objection of non-exhaustion of domestic remedies

122. The Government recall that prior to the filing of their application, the applicants **did not exhaust domestic remedies**, and herewith also respond to the question expressly asked by the Court under no. 1 (*"Have the applicants exhausted all effective domestic legal remedies in connection with their complaints pursuant to Article 8 of the Convention and Article 1 of Protocol No. 1, as required by Article 35 § 1 of the Convention?"*).

123. According to the case-law of the Court, rights guaranteed by the Convention must be first exercised with the appropriate domestic courts, at least in substance and in compliance with the requirements laid down in domestic law (see e.g. the judgment of 20 September 1993, *Saidi v. France*, § 38). The intention of Article 35 of the Convention is oriented towards providing the Contracting Parties with the opportunity to prevent or remedy the alleged violations before they are submitted to the bodies set out in the Convention. As a consequence the countries are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system.

124. With regard to national systems for the protection of human rights, the mechanisms established by the Convention are subsidiary. Thus the complaint intended to be filed

subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law (see e.g. the judgment of 28 July 1999 in the case of *Selmouni v. France*, § 74). That rule is based on the assumption, reflected in Article 13 of the Convention that there is an effective remedy available in respect of the alleged breach in the domestic system.

125. Effective legal remedies according to Article 35 of the Convention are those that that relate to the breaches alleged and at are at the same time, not only in theory but also in practice, available and sufficient to remedy the breaches alleged and to provide to the applicants appropriate redress for the alleged violation of their rights.

126. As regards the objection of non-exhaustion of domestic remedies the Government want to refer to the well-established case-law of the Court, according to which the burden of proof that the applicants at the material time had at their disposal domestic remedies in theory as well as in practice, lies in fact with the responding state. Nevertheless, once this proof had been provided, it is incumbent on the applicant to establish that the domestic legal remedies were in fact exhausted or were inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (as stated expressly in the judgments of the Court of 8 February 2007, *Švarc and Kavnik v. Slovenia*, no. 75617/01, § 26; *Lukenda v. Slovenia*, no. 23032/02, judgment of 6 October 2005, § 43 and 44; *Akdivar and others v. Turkey*, no. 99/1995/605/693, judgment of 16 September 1996).

127. Initially, it should be determined which were the activities of the state that constituted the violation supposedly depriving the applicants of their rights guaranteed by the Convention. With regard to all of the alleged violations of Convention rights the Government must recall that the focus of the entire matter dates to February 1992, when the circumstances set out in Article 81 § 2 of the ZTUJ **were fulfilled**. The applicants allege that it was the "illegal erasure" which consequently deprived them of their rights under the Convention; however the Government stress that the crux of the problem does not lie in the transfer from the register of permanent residents to register of aliens with non-regulated status, but in the fact that the applicants did not acquire residence permit in accordance with the ZTUJ, whereupon the transfer from one register to another was a mere consequence of this fact (see more below in §§ 157 *et seq.*). **The nature of the entry in the register of permanent residents is merely declaratory, meaning that such entry in itself does not signify permission for an alien to reside in the country, but that – quite the contrary – entry in the register of permanent residents is a consequence of the alien having acquired a permanent residence permit.**

128. The Government stress that the activities carried out were legal and legitimate: legal, since they were adopted pursuant to the legislation which precisely laid down the (favourable) conditions for acquisition of citizenship for citizens of other republics then resident in the country, while for others it envisaged the duty to regulate their alien status in the newly created state; and legitimate, where in establishing the new state it set up the *corpus* of citizens wherein it set a reasonably long period of six months for the possibility of submitting applications for acquisition of citizenship, and eight months for acquisition of alien residence permit.

129. The Government therefore believe that **domestic remedies should have been exhausted with regard to acquisition of residence permit in the territory of the newly created state**. The Government emphasise that the applicants should have first exhausted the possibility of acquisition of (permanent) residence permit in administrative proceedings. In the Government's firm belief this is the effective legal remedy through which they might consequently have secured the official registration of their residence in the country and prevented events which they themselves cite as violations of their rights guaranteed by the Convention.

130. It must therefore first be determined, whether the applicants submitted applications for permanent residence permits, and for applicants who had already acquired permanent residence permits valid from their issue, what were their subsequent activities – if any – regarding the decision no. U-I-246/02 of the Constitutional Court (Official Gazette of the RS no. 36/2003 of 16 April 2003). In this decision the Constitutional Court – particularly in point 8 – ruled that the Ministry of the Interior (MNZ) must **issue *ex officio* supplemental decisions ascertaining** permanent residence in the Republic of Slovenia from 26 February 1992 on. These supplemental decisions should be issued to persons who pursuant to the ZUSDDD, the ZTUJ or the ZTUJ-1 (Aliens Act, Official Gazette of the RS no. 61/99) acquired permanent residence permits.

131. Mustafa Kurić, Velimir Dabetić, Ljubenka Ristanović and Tripun Ristanović **never applied for permanent residence permits.** Velimir Dabetić brought an action due to non-response from the authority (since no supplemental decision pursuant to point 8 of the Constitutional Court decision of 2003 had been issued); however, the action was rejected since the precondition given in point 8 of the decision, that the person concerned must have been issued the basic decision (residence permit) was not met.

132. Ana Mezga and Ilfan Sadik Ademi submitted applications for permanent residence permits, whereupon Ademi's application was rejected on 26 May 2005 (due to lack of evidence as to his citizenship), while in the case of Mezga the proceedings were terminated on 6 December 2004 owing to non-cooperation of the party (as she failed to submit additional evidence as requested by the administrative authority). Within thirty days of the service of the decisions in the administrative proceedings, the aforementioned applicants had the possibility of instigating administrative dispute, in other words to file actions against the decisions in the Administrative Court, which they did not do. Letter of correspondence from the Administrative Court of the Republic of Slovenia indicates that their records show no evidence of any administrative dispute, which might have been instigated by either of the aforementioned two applicants. These two applicants therefore **did not instigate an administrative dispute**.

133. Two applicants – Ali Berisha and Zoran Minić – applied for permanent residence permits, but were denied their issue, and they consequently **instigated an administrative dispute which is not yet concluded**.

134. Permanent residence permits pursuant to the ZUSDDD or the Aliens Act have already been issued to three applicants: Milan Makuc, Ljubomir Petreš and Jovan Jovanović. Permanent residence permits were issued to them valid from the date of issue – the issue being a constitutive act of the authority. However, they were not issued supplemental decisions determining their permanent residence in the sense of point 8 of the aforementioned Constitutional Court decision.

135. **For the applicants who have still not been issued permanent residence permits** (four of them never applied for permits), the effective legal remedy is the administrative proceedings: firstly a request for a permanent residence permit filed at the administrative unit or at the Ministry of the Interior (MNZ), if they wish to acquire permanent residence permits under the ZTUJ and under the ZUSDDD, respectively. In case of any potential negative decision from the administrative unit an appeal is possible to the MNZ within a 15–day time-limit; within a deadline of 30 days of delivery of a decision from the MNZ they also have the possibility of instigating an administrative dispute at the Administrative Court of the Republic of Slovenia. In the event of a negative decision from the MNZ in the proceedings for issuing permanent residence permits under the ZUSDDD they have the possibility, within 30 days of delivery of the decision, of instigating an administrative dispute at the Administrative Court of the Republic of Slovenia. In both cases the Supreme Court rules in the second instance. If the rights guaranteed by the Constitution have been violated (the applicants have cited violation of the principle of equality referred to in Article 14 of the Constitution in comparable cases) the possibility of constitutional complaint with the Constitutional Court exist; it is important to emphasize the both quashing and reformative powers of the Constitutional Court.

136. In addition to its rulings on constitutionality and legality with regard to the so-called "erased", the Constitutional Court has also ruled several times on alleged violations of the constitutional rights of these persons, who exercised their rights through constitutional complaints. In several cases the Constitutional Court determined violations of rights protected by the Constitution, and took appropriate action as well as instructed the administrative authority on its obligatory future actions. Thus, e.g., in decision no. **Up-60/97** (***evidence B12***) of 15 July 1999 it decided to set aside the judgments of the courts and the decisions of the MNZ, and ordered the administrative unit to enter the applicants, until the adoption of a law regulating the status of citizens of other successor states to the former SFRY in the Republic of Slovenia (this was the ZUSDDD), or until the expiry of the deadlines given in it, in the register of permanent residents of the Republic of Slovenia. In decision no. **Up-333/96** (***evidence B13***) of 1 July 1999 it decided to set aside the judgments and decisions and instructed the administrative to re-enter the applicant, until the adoption of a law regulating the status of citizens of other successor states to the former SFRY in the Republic of Slovenia, or until the expiry of the deadlines given in it, in the register of permanent residents of the Republic of Slovenia, and to issue him driving licence for this period.

137. In its decision in these two cases the Constitutional Court took into account its decision **U-I-284/94 of 4 February 1999 and in this way filled a legal vacuum** arising from the legislator's failure to amend the provisions of the act for which the Constitutional Court had determined in this decision that it ran counter to the Constitution. In several other cases, concerning in various fields the citizens of other republics who were transferred to the register of aliens, it set aside the decisions of administrative authorities and/or the courts and remanded the case back for re-examination. It also provided these bodies with guidelines on how to ensure respect for constitutional rights.

138. Thus e.g. in case no. **U-304/01** after setting aside the judgments and the decision of the MNZ it instructed the administrative authority that in the new proceedings, with regard to the condition of knowledge of language, it would have to apply the regulation valid at the time the application was submitted, and not the one valid at the time the decision was adopted

(the requirements regarding the knowledge of language have been made more stringent during the proceedings).

139. Of particular importance regarding the Constitutional Court decision no. U-I-246/02 (whereby it determined the non-compliance of certain provisions of the ZUSDDD with the Constitution, set aside the three-month time-limit set out in Article 2 § 2 of the ZUSDDD for submitting applications for permanent residence permits, instructed the legislator to eliminate the inconsistency within a six-month time-limit and instructed the MNZ to issue supplemental decisions ascertaining permanent residence in the Republic of Slovenia from 26 February 1992 onwards to persons who had under the ZTUJ, the ZUSDDD or the ZTUJ-1 already been issued permanent residence permits) is the decision following the constitutional complaint in case no. **Up-211/04** (Official Gazette of the RS no. 28/2006) (***evidence B14***). After having set aside the judgments of the Supreme Court and Administrative Court and remanding the case to the Administrative Court for re-examination, wherein that court should appropriately assess the legal term set out in Article 1 of the ZUSDDD "actually residing in the Republic of Slovenia from 23 December 1990 on", the Constitutional Court here particularly emphasised that **the fact that the legislator was late in eliminating the inconsistency in the ZUSDDD did not prevent the court from issuing a decision in the case**. It therefore made the assessment that the Administrative Court could – taking into account the instructions of the Constitutional Court from decision no. U-I-246/02 – decide in the case despite the unchanged legislation.

140. It follows from the above that persons concerned could, after the obligation had arisen for the legislator to adopt adequate legislation referred to in point 7 of decision no. U-I-246/02, effectively safeguard their rights protected by the Constitution by lodging an individual constitutional complaint.

141. In this context, it is essential to underline the fact that in respect of Article 60 of the ZUSTS, the Constitutional Court may itself decide on a disputed right or freedom, provided its decision can be reached on the basis of information contained in the case file, if such procedure is necessary in order to remedy the consequences that have already occurred on the basis of the annulled individual act or if such is required by the nature of the constitutional right or freedom. Where acting in such a manner, the Constitutional Court follows the **principle of full jurisdiction**, which is applied wherever the Constitutional Court takes the view that this is indispensable to protect fundamental rights and freedoms. In such cases, if the circumstances of the case so allow, the Constitutional Court may itself decide and apply its competences from Article 60 of the ZUSTS. There are several examples of such decisions in the area of minor criminal offences (e.g. cases no. **Up-371/03, Up-419/03, Up-1062/05**) – (***evidence B15 to B17***), and also e.g. in case no. **Up-171/95** (***evidence B18***), the latter relating to the claim for a pension by a former member of the Yugoslav People's Army; in this latter decision the Constitutional Court set aside the judgments of the courts and the decisions of the Pension and Invalidity Institute of Slovenia and decided that the applicant was entitled to a prepayment of military pension pursuant to the Decision on the prepayment of military pensions.

142. The Government underline that **in the case of applicants who have already been issued permanent residence permits** (three of the eleven) domestic remedies have not been exhausted either: the applicants failed to file an action due to non-response of the authority. These three applicant were indeed issued resident permits (valid from the date of issue) pursuant to the ZUSDDD, the ZTUJ or the ZTUJ-1, but they were not issued supplementary

decisions ascertaining their permanent residence in the sense of point 8 of decision no. U-I-246/02 of the Constitutional Court.

143. However, when the administrative authority fails to perform its duty, domestic law provides for appropriate remedies. Pursuant to Article 33 of the Administrative Dispute Act (Official Gazette of the RS no. 105/2006, as amended, hereinafter: ZUS-1) it is possible to file an action requiring the issuing or delivery of an administrative act (action due to non-response of the authority). The provision of Article 31 of the previously valid Administrative Dispute Act (Official Gazette of the RS no. 50/97, as amended, hereinafter: ZUS) was practically identical.

144. Since they were not issued supplemental decisions referred to in point 8 of the Constitutional Court decision, the aforementioned three applicants could have therefore required their issuing. The time-limit for issuing supplemental decisions is dependent on the time of obtaining the permanent residence permit, since that time marked the start of validity of the conditions for issuing the decisions as prescribed in point 8 of its decision no. U-I-246/02) by the Constitutional Court (the final condition fulfilled being the issuing of a permanent residence permit). Permanent residence permit was served on Milan Makuc on 28 July 2006, on Ljubomir Petreš on 22 January 2007 and on Jovan Jovanović on 8 January 2007. Pursuant to Article 222 of the General Administrative Procedure Act (Official Gazette of the RS no. 80/99, as amended, hereinafter: ZUP) the proceedings with the administrative authority should have been concluded at the latest two months from the day the individual applicant received a permanent residence permit. Since by that time no supplemental decisions had been issued in the sense of point 8 of decision no. U-I-246/02 of the Constitutional Court, the applicants were in position to file an action due to non-response of the authority (Ministry of the Interior - MNZ).

145. In a similar case (U 38/2002) the Administrative Court of the Republic of Slovenia instructed the MNZ to "decide on the claimant's permanent residence in the Republic of Slovenia from 26 February 1992 up to the date of acquisition of the permanent residence in the Republic of Slovenia" (which in this specific case the party received within the same preliminary administrative procedure on 29 March 2002). The Administrative Court states that the MNZ must issue, on the basis of the point 8 itself, to persons to whom point 8 of decision no. U-I-246/02 of the Constitutional Court relates supplemental decisions in case that these persons fulfil the substantive conditions set out in the cited decision. If the MNZ fails to act in accordance with a judgment of the Administrative Court, the party may, pursuant to the ZUS-1, file a new action (***evidence B19***).

146. **With regard to the specific violation of Article 1 of Protocol No. 1 (peaceful enjoyment of property) relating to four applicants** whose pension and invalidity insurance contributions were supposedly "frozen", and the applicant who was supposedly deprived of the compensation of income during the child-care leave from 1 December 1992 to 26 July 1993 at the latest, the Government underline that domestic remedies have not been exhausted in these cases, either.

147. With regard to the issue of whether the applicants' right to peaceful enjoyment of their property has been violated as they could not assert their right to pension, the Government emphasise that the right to pension has no statute of limitations and is inalienable, and that the applicants have the possibility to exercise their right to pension if they meet the conditions for retirement pursuant to the Pension and Invalidity Insurance Act

(Official Gazette of the RS no. 106/99, as amended, hereinafter: ZPIZ-1), since their pension qualifying period has not been deleted from the central records kept at the Slovenian Pension and Invalidity Insurance Institute (hereinafter: the Institute).

148. The ZPIZ-1 provides that the rights deriving under compulsory pension and invalidity insurance shall be asserted in accordance with the provisions of the General Administrative Procedure Act, unless specified otherwise in ZPIZ-1. Prior to 1992 the rules for asserting these rights were set out in a special self-management procedure adopted in the form of rules by the then assembly of the Pension and Invalidity Insurance Community in Slovenia. The procedure for asserting right to pension was regulated by the Rules on the procedure for asserting rights from pension and invalidity insurance (Official Gazette of the SRS no. 47/86), providing in Article 25 that the proceedings for assertion of individual rights from pension and invalidity insurance is initiated at the request of the insured person and is deemed to be initiated at the point of receipt of such request at the Community. *De lege lata* a person who was at any time insure with this Institute, also when the rights on the basis of international treaties are concerned. Decisions concerning the rights arising from compulsory insurance are made in the first instance by the unit of the Institute in the area of which the insured person asserting the right was last insured, and in the second instance by a special unit at the head office of the Institute. Judicial protection is provided by means of social dispute with the Labour and Social Court in Ljubljana. The proceedings for assertion of rights in always initiated at the request of the insured person or beneficiary, or their legal representative; in case of assertion of rights under invalidity insurance, it may also be initiated on proposal and/or request of the attending physician of the insured person or by a medical board.

149. It derives from the documentation of the Government (***evidence B20 - letter from the Institute of 18 October 2007, evidence B21 – letter from the Institute of 8 October 2007 and evidence B22 – letter from the Institute of 29 October 2007***) that none of the applicants ever submitted to the Institute - the exclusive provider of compulsory pension insurance in the Republic of Slovenia - a request to obtain the right to pension. If they had submitted a request for acquisition of the right to pension, the Institute would have issued an appropriate decision. Upon the issuing of such decision, the applicants would have had the right to lodge a complaint with the body of second instance, and thereafter also to file an action in the Labour and Social Court. Since the applicants did not even submit to the Institute a request to obtain the right to pension, they did not exhaust the domestic remedies for asserting their rights.

150. On proposal of 1 February 2007, filed by the attending physician of Milan Makuc, the Koper Regional Unit of the Slovenian Pension and Invalidity Insurance Institute issued a decision of 20 September 2007 classifying him into the category I of invalidity due to the consequences of disease, and granting him right to invalidity pension starting as of 3 September 2007 onwards. This was the first proceedings regarding the rights of applicant Milan Makuc instituted with the Institute, and it was terminated with the issuing of a decision which is not yet final. The Institute also informed the Government that they would have dealt with the applicant's request earlier if it had been submitted (see evidence B2).

D. Preliminary objection of inadmissibility *ratione materiae*

151. The Government further recall that according to the Court's practice regulation of the field of citizenship and residence is outside the scope of the Convention and the contracting states regulate it independently. Consequently the assessment of legislation and specific

actions relating to the acquisition of citizenship or residence permits is ***ratione materiae*** outside the scope of the Convention. Neither the Convention nor its Protocols guarantee any right to acquire or retain a particular citizenship; equally, they do not guarantee the right of an alien to enter or to reside in a particular country or the right to stay in its territory (see e.g. the case of *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). Moreover according to the case-law of the Court it is not possible to conclude that Article 8 of the Convention places an obligation on a contracting state to ensure in its territory family reunification, or an obligation to ensure for non-citizens the right to choose the most suitable place to develop family life (*Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports on judgments and decisions* 1996-VI, p. 2033, § 71). The above has been stated by the Court itself in the partial decision as to the admissibility (§ 160 and subsequent).

152. Right here, prior to substantive objections, the Government underline the difference between the acquisition of a permanent residence permit for an alien (representing for the alien the precondition for his entry into the register of permanent residents) and the actual transaction (act of business – *akt poslovanja*) whereby the register merely records the fact that the alien has acquired the right to permanent residence in the Republic of Slovenia and is thus obliged to register his residence, which resulted from the issuing of the residence permit. For this reason the Government underline that the causal link exists between the fact that the applicants did not submit applications for the acquisition of permanent residence permits, and the consequent situation of the applicants – and not between the transfer from one register to another register and this same situation. It is quite clear from the application that the applicants mix up the two concepts when they, e.g., state that with the loss of their "permanent residence" the "erased", according to the applicants' allegations, found themselves in the legal sense as "aliens without residence permits" – p. 11 of the application in Italian; "perdendo la "residenza permanente", i "cancellati" si sono di punto in bianco trovati ad essere legalmente degli "stranieri senza permesso di soggiorno"; the English version of the application on p. 7 – the part indicating the misunderstanding of the two concepts, summarises thus: "since their permanent residence addresses and permits were revoked, the erased in the legal sense, over night became "illegal" aliens, ...". If the application is to be understood as a criticism of the state that the applicants were not granted the right to permanent residence permit, it should be emphasised that in this regard that the application *ratione materiae* runs counter the provisions of the Convention.

153. If however the applicants maintain that their permanent residence permits were revoked, they clearly misunderstand the two concepts (permanent residence permit and the entry into the register of permanent residents), since until independence of the Republic of Slovenia **they never possessed** permanent residence permits. While they were citizens of the SFRY, there was no need for that, whereas in the independent state of the Republic of Slovenia they have not applied for such a permit to be issued, or applied for it at a much later time.

154. In its partial decision as to the admissibility the Court does cite two cases from its case-law asserting that in certain circumstances the arbitrary denial of citizenship might affect the applicant's rights. Yet these two cases (*X. v. Austria*, no. 5212/71, Commission decision of 5 October 1972, Decisions and Reports (DR) 43, p. 69; *Karassev v. Finland* (decision), no. 31414/96, ECHR 1999-II) are not comparable with the present case. Moreover the Government underline that in the present case **the right to citizenship was not arbitrarily denied to any of the applicants** - neither the right to citizenship of their original republic nor

the right to acquire other citizenship, i.e. citizenship of the independent Republic of Slovenia. At that time, none of the applicants even applied for citizenship of the country in which they resided. Equally, **they were not denied the right to permanent residence**, since they did not apply for permanent residence permit at that time - whereas some of them have never applied for it at all. They could still reside at the same address of their permanent residence, but they did not possess the necessary permit. Since no country can be expected to "conscript" its inhabitants to acquire its citizenship, but indeed on the contrary, in the circumstances given it was reasonable to expect that its inhabitants would show some autonomous action, the assessment of the applicants' position is *ratione materiae* incompatible with the Convention. The fact that three of the eleven applicants acquired permanent residence permits (Milan Makuc, Ljubomir Petreš and Jovan Jovanović) indicates that there was no arbitrariness in the issuing of permanent residence permits, but, on the contrary, that the assessment was made of whether the circumstances of the individual applicant met the conditions prescribed by law for acquisition of the permit, while also taking into account the spirit of Constitutional Court decision no. U-I-246/02 (see § 139 above).

E. Preliminary objection of the application being manifestly ill-founded

155. For the reasons set out above, the Government plead the preliminary objection of the application being manifestly ill-founded, since it is quite evident that the actions supposedly representing a breach of the Convention violated none of the applicants' rights protected by the Convention.

F. Preliminary objection of lack of victim status

156. As to the applicants who have already acquired permanent residence permit (Milan Makuc, Ljubomir Petreš and Jovan Jovanović), the Government recall that their victim status within the meaning of Article 34 of the Convention is also questionable.

III. THE ALLEDGED VIOLATIONS OF THE CONVENTION AND THE PROTOCOLS

A. Has there been a violation of the applicants' right to respect for their private and family life on the account of their overall situation and the lack of compliance with the Constitutional Court's decision of 3 April 2003, contrary to Article 8 of the Convention? What is the effect of the Constitutional Court's decision of 3 April 2003 on the applicants' rights? (Question no. 3)

157. In their application the applicants allege that within the SFRY "**permanent residence**" was acquired almost automatically in the location of usual residence. "Permanent residence" was also supposedly the pre-condition for the enjoyment of economic and social rights, as it was supposedly permanent residence what rendered a person a "citizen" in the true sense of the word. **"Permanent residence"** could also supposedly be granted to **aliens**,

whereby they obtained civil rights (except the voting right) of citizens of the SFRY (p. 7 of the application).

158. It is not possible to agree entirely with the allegation of the applicants that within the SFRY permanent residence was acquired automatically. In order to register permanent residence, the individual had to submit evidence of having deregistered previous permanent residence. The registration and deregistration of residence was obligatory for the inhabitant (citizen of the SFRY), while the administrative authority had the right to reject the registration of permanent residence if it determined data in the registration to be false, which it did by way of an administrative act. It was never the case, however, that permanent residence could also be acquired automatically by aliens, as one had to acquire permanent residence permit in order to be able to register his residence. This can also be seen from the transitional provision of Article 82 § 3 of the ZTUJ laying down that permanent residence permits issued pursuant to the Movement and Residence of Aliens Act (Official Gazette of the SFRY no. 56/80, 53/85, 30/89 and 26/90) continued to apply to all aliens who had permanent residence in the territory of the Republic of Slovenia upon the entry into force of this act.

159. As regards the permanent residence the Government recall the **distinction between two legal terms used incorrectly in the present case**. It is obvious that the applicants do not recognise the difference between a permanent residence permit and the registration of permanent residence. It is precisely this misunderstanding of the terms "permanent residence permit" and "registration of permanent residence" that has led to the applicants' incorrect conceptualisation of the scope of rights to which they should be entitled, and of the supposed violation of those rights. Indeed the misunderstanding of the essential difference between the two terms is the crux of the whole matter as submitted to the Court. **Understanding the difference between a permanent residence permit and the registration of permanent residence is thus of vital importance and even decisive for the matter, and consequently points to the lack of justification for using the expressions "erasure" and "the erased".**

160. Residence permit (both permanent and temporary) is a constitutive act by the issue of which an alien is permitted to reside in the territory of the state. It is the fact of a permit being issued what gives the alien the right to reside (for a longer period) in another country. The regulation of alien residence through a system of residence permits is something common to all countries.

161. Within the European Union the residence of Union citizens and their family members is regulated as well and there is no automatic right to move and reside in the territory of the entire Union. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) no. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC requires that family members of a Union citizen acquire a residence permit if they are not themselves citizens of one of the Member State. Even for a Union citizen the host Member State may adopt a system requiring his registration with the relevant authorities for periods of residence longer than three months (Article 8 of the Directive). As regards permanent residence of family members of a Union citizen who are not citizens of the Union, a permanent residence permit is issued to them upon submission of an application (Article 20 of the Directive). For persons who are not citizens of the Union, residence in a Member State of the Union is only possible on the basis of a residence permit – be it a temporary or permanent residence permit.

162. In contrast to a residence permit, registration of residence is a mere transaction (act of business), which records in the appropriate register the actual address of the individual, and registers him on the basis of the issued residence permit. **It is a mere demonstration of the fact that a person has the right to reside at a particular address.** Registration of residence is therefore a mere consequence of the fact of the alien's has acquisition of the residence permit and does not, as such, constitute any right.

163. In contrast to aliens, citizens are not obliged to acquire residence permits in their own country, and they merely register their residence in accordance with the currently valid legislation (up until the year 2001 this regulation was the ZENO; from 2001, the Registration of Residence Act (Official Gazette of the RS no. 9/2001, hereinafter: ZPPREB). Under the ZENO, entry in the register of permanent residents was possible for citizens merely on the basis of registration, whereas until the entry into force of the ZPPREB the registration of residence for aliens was regulated by the ZTUJ on the basis of the prior acquisition of a permanent residence permit.

164. The allegation on p. 10 of the application (Italian text), where the applicants recall that numerous social rights in the former SFRY, as well as in the Republic of Slovenia, were linked to the "permanent residence permit", shows once more their wrong comprehension of the situation. The applicants refer to a permanent residence permit in the SFRY; however, as they were citizens of that country they did not need one. Permanent residence permit could only be issued to the citizens of other countries, and not to the citizens of individual republics within the federal state.

165. The Government again emphasize what is in their belief one of the vital sentences in the application showing the lack of understanding of the terms used: **the applicants state that with the loss of their "permanent residence" the "erased" found themselves in the legal sense as "aliens without residence permits"** (p. 11 of the application in Italian; "perdendo la "residenza permanente", i "cancelllati" si sono di punto in bianco trovati ad essere legalmente degli "stranieri senza permesso di soggiorno"; the application in the English version on p. 7 – the part indicating the misunderstanding of the two institutions: "since their permanent residence addresses and permits were revoked, the erased in the legal sense, overnight became "illegal" aliens, ...").

166. On the basis of the above the Government underline once again that the applicants never possessed residence permits due to the fact that they did not need them as citizens of the then common state. With the transfer from one register into another they did not lose their permanent residence, either: the fact of residing at a certain address cannot be, by the nature of things, changed by such a transfer. The applicants could therefore still reside at their current address, although it is true that their residence was recorded not in the register of permanent residents (citizens), but in the record of aliens with non-regulated status. It is clear, however, that they could in no way lose their permanent residence permits, since these have never been issued them in the Republic of Slovenia, as they had never applied for them (apart from the applicants who applied for it considerably after the year 199).

167. With regard to the allegations of individual applicants, as to Velimir Dabetić the Government oppose to his allegation on p. 47 of the application (Italian text) that his request for the **return** of his "residenza permanente" (English translation: "permission for permanent residence", p. 40) in Slovenia was rejected. It was in no way possible to return to the applicant

Dabetić a permanent residence permit in Slovenia, since he had never held such a permit, having never applied for one. The applicant's awareness of the fact that alien residence permit needs to be applied for is clear from his statements about how up until 2002 Italy had issued him residence permit – it is perfectly clear that he had to apply for it.

168. As to the allegation of Ljubenka Ristanović that she had "permanent residence", which was supposedly the reason why she did not apply for Slovenian citizenship, the Government recall the above statement on the lack of understanding of terms permanent residence and permanent residence permit.

169. As to Ilfan Ademi Sadik the Government recall his allegation on p. 53 of the Italian text of the application that the applicant lives in Germany, where he has been granted alien status and issued a temporary residence permit. This indicates the applicant's clear effort to acquire such a permit in Germany, while his allegation that he was supposedly directed several times to the competent administrative unit in order to regulate his residence are not correct according to the information at the disposal of the Government, since the MNZ records indicate that he submitted an application for a permanent residence permit under the ZUSDDD as late as 16 February 2005. As in the proceedings he did not produce any evidence of being a citizen of one of the successor states to the former SFRY, the MNZ rejected his application as incomplete.

170. On p. 10 of the application (Italian text) the applicants allege that through "erasure" they lost overnight the right to exercise their civil, political, economic and social rights.

171. The applicants state that the transfer of their data from the register of permanent residents to the record of aliens without residence permits led to the "erasure" of more than 18,000 persons, who overnight **lost the right to exercise civil, political, economic and social rights (p. 10 of the application in the Italian version).** In this connection the Government underline that the applicants could not exercise civil rights in the Republic of Slovenia, since they had not applied for citizenship of the newly created state within the time-limit prescribed in the ZDRS and consequently did not acquire citizenship of that state. In legal order of every state political rights and freedoms are guaranteed to their own citizens only (e.g. voting right, the right to submit petitions and other initiatives of general importance).

172. It is not true that the applicants were denied enjoyment of economic or social rights due to the transfer to the record of aliens, but for other reasons. As to the applicant Ljubomir Petreš, it is clear from the allegations in the application that he has not been employed full-time since 1970; Jovan Jovanović did not lose his job owing to the transfer to the register of aliens, but has by himself terminated his employment; Mustafa Kurić has not been paying contributions from his independent business (craft) since 1988, which is also clear from the appendices to the application.

173. It follows from the information at the disposal of the Government that Ana Mezga did not acquire a personal work permit pursuant to the transitional provisions of the Employment of Aliens Act, since it is evident that she was released from employment owing precisely to the entry into force of that act. Given the duration of her employment at the time (which is evident from the application) she could have acquired such a permit. The alien work permit had no connection with the residence permit, since anyone who was not a citizen of the Republic of Slovenia had to apply for one.

174. The Government therefore once again recall that the transfer from one register into another, referred to by the applicants as the "erasure" which allegedly overnight took away their possibility to exercise civil, political, economic and social rights, was not the cause of the applicants' status after 26 February 1992. The cause for their situation lies in the fact that as citizens of another state they did not acquire permanent residence permit. Therefore the causal link exists between their non-acquisition of alien residence permit in the country and their situation, and not between the act of the state which was merely coordinating the records.

175. The scope of Article 8 of the Convention is evident from the latest case-law of the Court. In the case of *Sisojeva v. Latvia*, [GC], no. 60654/00 of 15 January 2007 (§ 91) the Court stated that Article 8 could not be construed as guaranteeing the right to a particular type of residence permit. Where the domestic legislation provides for several different types, the Court must analyse the legal and practical implications of issuing a particular permit. If a permit allows the holder to reside within the territory of the host country and to exercise freely the right to respect for his or her private and family life, the granting of such a permit represents in principle a sufficient measure to meet the requirements of this provision. The above of course presupposes that the **alien applies** for one of the types of permit and that it is not on the host country to grant him such a permit on its own initiative.

176. In the aforementioned judgment on *Sisojeva* (§ 92) the Court reiterates that it is not possible to claim that the person is victim of an act, which is, temporarily or permanently, deprived of any legal effect. Although in this judgment the reasoning relates to an expulsion order, which was no longer enforceable, it is equally possible to assert in the present case that the applicants are not victims of the alleged violations, since the transfer from one register to another did not have any legal effect, and constituted merely a transaction (act of business). The legal effect resulted form the fact that the applicants did not acquire residence permit.

177. If the Court took the view that the acts of the Republic of Slovenia amounted to the breach of rights guaranteed under Article 8 of the Convention, the Government assert that the independence legislation of the Republic of Slovenia in the area of citizenship and the status of aliens meets the requirements from Article 8 § 2 of the Convention. In any event the interference was in accordance with the law and pursued a legitimate goal, being at the same time necessary in a democratic society. One should be aware of the fact that the events of 1991 involved the historic creation of a new state and that it was therefore necessary to establish, as an element of statehood for the new subject of international law, its *corpus* of citizens and on the other hand to regulate the status of aliens, including persons who as citizens of the other republics of the SFRY with permanent residence in Slovenia had not applied for Slovenian citizenship. Of course every alien is required to regulate his status in a country of which he is not national. The requirement of every country that aliens who reside within its territory or enter it regularise their status is always legitimate in terms of ensuring public safety.

178. The Government reiterate that upon the independence of the Republic of Slovenia, the residents of Slovenia from other republics of the SFRY were informed in an appropriate way, such as through the public media and notices – posters displayed in the premises of home affairs departments of local municipalities – and even through personal written notification, of the fact that they either had to apply for citizenship of the newly created state or adequately regulate their alien status within it. The Government underline that despite the fact that a large number of persons did not regulate their status, which became evident after transfer from one

register into another, it tolerated their unlawful residence in the territory of the Republic of Slovenia and that it was in no way the intention of the state to remove these persons from its territory, which it could indeed have done.

179. As to the requirement for the urgency of the measure, the Government state that the regulation of citizenship and on the other hand the status of aliens is an urgent need for every state, provided the measure is proportionate to the legitimate goals pursued (judgment in the case of *Olsson v. Sweden*, no. 10465/83, of 24 March 1988). The objective cannot be achieved with other less restrictive measures, where it is essential to prevent any arbitrary encroachment upon the Convention rights. It is therefore necessary to weigh up rights and the public interest. In the present case, the Republic of Slovenia had of course important and adequate reasons for the adoption of the legislative provisions.

180. It follows that the Republic of Slovenia legitimately, in accordance with the law, and with respect of the principle of proportionality regulated the area of citizenship and the entry and residence of aliens. It should be reiterated that in dealing with applications for citizenship and applications for alien residence permits, the Republic of Slovenia did not act arbitrarily, since it dealt with identical situations in an identical way, and on the contrary, it did not deal with different situations in the same way. If the applicants' allegations are to be understood in the sense that the Republic of Slovenia should have automatically issued them residence permits without their request, this would actually have involved arbitrary treatment of citizens of other republics compared to aliens referred to in Article 82 § 3 of the ZTUJ, since in this case permits would have been issued without checking the fulfilment of the legal requirements. Moreover the Government underline that the area of acquisition of alien residence permits is *ratione materiae* outside the scope of the Convention.

181. Thus e.g. in the case of *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, no. 9214/80; 9473/81; 9474/81, judgment of 28 May 1985, the Court stated in § 67 that the case was concerned not only with family life but also with immigration issues, wherein every state had the right, as a matter of well-established international law and subject to its treaty obligations, to control the entry of non-nationals into its territory.

182. In this connection the Government want to draw attention to a further misunderstanding of the terms - of residence and citizenship this time. On p. 34 of the application (Italian text) the applicants allege that "they were all victims of "erasure" in 1992 and they could not **regain Slovenian citizenship or permanent residence**, in other words right since that time they have lived in a position of unlawfulness and in a complete legal vacuum." They also state (p. 34 of the application – Italian text) that numerous persons did not request citizenship as they were unable to provide the relevant documents since they were absent from Slovenia, sick or not informed.

183. The applicants could in no way "**re-acquire** Slovenian citizenship", since prior to 1991 in view of the then valid legislation they did not have Slovenian citizenship. They could only have acquired Slovenian citizenship if they had applied for it and met the legal requirements. Nor is it true that they could not acquire permanent residence again, since they had permanent residence, that is, the location where they actually lived at that time and were until then also entered in the register of permanent residents as citizens of the SFRY.

184. With regard to the Constitutional Court decision of 3 April 2003 and its influence on the respect of the applicants' rights to private and family life, and the effects of that decision

on their rights, the Government state that point 8 of the said decision relates to those applicants who had already acquired permanent residence under the ZUSDDD, the ZTUJ or the ZTUJ-1; in the present case, it only relates to Milan Makuc, Ljubomir Petreš and Jovan Jovanović. The Government reiterate that while the MNZ should have issued supplemental decisions ascertaining residence in the Republic of Slovenia from 26 February 1992 on ex officio, it is possible, since the MNZ did not do this, to file an action due to non-response of the authority (see § 145 above).

185. With regard to point 4 of the aforementioned decision the Government underline that it resulted in the time-limit for the submission of applications for permanent residence permits under the ZUSDDD being lifted, meaning that such applications can still be submitted. This fact is important for the applicants who still have not submitted an application for permanent residence permit under this act.

186. With regard to the first four points of the decision the Government recall, as above, that **the fact that legislator is late in eliminating the inconsistency in the ZUSDDD does not prevent the court from issuing a decision in a specific case** (thus the Constitutional Court decision following the constitutional complaint in case no. Up-211/04 (Official Gazette of the RS no. 28/2006)). For the applicants this means the possibility of their applications, where they have been submitted, being dealt with in the spirit of this decision of the Constitutional Court.

B. »Did the applicants have at their disposal an effective domestic remedy for their complaint under Article 8 as to the non-compliance with the Constitutional Court's decision of 3 April 2003, as required by Article 13 of the Convention?« (Question no. 4)

187. In response to this question the Government refer to their allegations in §§ 139 and 186 of the observations, that in view of the Constitutional Court decision no. Up-211/04 (Official Gazette of the RS no. 28/2006) **the fact that the legislator is late in eliminating the inconsistency in the ZUSDDD did not prevent the court from issuing a decision in a specific case**. To the opinion of the Constitutional Court the Administrative Court could – taking into account the instructions of the Constitutional Court from decision no. U-I-246/02 – decide in the case despite the unchanged legislation. The right move for the applicants would therefore be the institution of administrative proceedings and thereafter an administrative dispute.

188. As regards the fulfilment of point 8 of decision no. U-I-246/02 the available domestic remedy was filing of an action due to non-response of the authority as has already been stated above (§ 144 above).

C. » Have the applicants suffered discrimination in the enjoyment of their Convention rights on the ground of their status, contrary to Article 14 of the Convention read in conjunction with Article 8?« (Question no. 5)

189. The Government emphasize that the applicants' position is incorrectly linked with the transfer from the register of permanent residents, instead of with the fact that as aliens they did not acquire permanent residence permit. In this connection the Government reiterate that with regard to their non-regulated status the applicants were treated like all other aliens

without residence permit; moreover, they were subject to positive discrimination, since the Republic of Slovenia did not act towards them as it did towards other aliens, in other words they were in principle not subject to deportation from the country. The aforementioned decision of the Government of the Republic of Slovenia of 3 September 1992, which for the citizens of other republics ordered the taking into account "that the condition for permanent residence in the territory of the Republic of Slovenia has been met when the alien has had permanent residence registered for at least three years and was actually living here before the provisions of the Aliens Act started to apply to them", is yet another sign of positive discrimination.

D. "Did the applicants' overall situation originate in a "systemic problem" (see, Broniowski v. Poland, [GC], no. 31443/96, ECHR 2004-...)? « (Question no. 6)

190. The Government is convinced that the general situation of the applicants does not originate in a "systemic problem". It reiterates that upon independence the Republic of Slovenia legitimately defined the foundations of its legal order, including through the ZDRS and ZTUJ. It offered to citizens of other republics who were living in Slovenia the acquisition of the citizenship of the newly created state, while on the other hand it set out that if the offer was not taken up, the provisions of the ZTUJ would start to apply to them. It was for each individual to decide whether to apply for citizenship or to regularise his status as an alien. It was not a matter of an erroneously formulated system for acquisition of residence permits, but the inaction of individuals who did not regularise their status as aliens in accordance with the ZTUJ. In the case of *Broniowski v. Poland* [GC], no. 31443/96, ECHR 2004-V, §189, the Court determined that this case involved malfunctioning of domestic legislation and administrative practices, which was caused by the non-implementation of an effective mechanism for restoring the rights of entitled persons from the area of the Bug River; in the case of *Makuc and others* the originally formulated system under the ZDRS and the ZTUJ enabled the persons concerned who applied within the time-limit for citizenship or for permanent residence permit to actually acquire them. The persons transferred from one register to another did not apply for either citizenship or permanent residence permit.

E. »Has there been a breach of the rights of the applicants Milan Makuc, Ljubomir Petreš, Mustafa Kurić in Jovan Jovanović to peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1, in as much as they cannot benefit from their contributions to the pension fund?« (Question no. 7)

191. In the application the applicants allege that they have lost all their social security contributions which they had paid regularly until the date of their erasure, and thereby also the co-dependent right to pension for the period they worked. They allege that their pension contributions were "frozen".

192. At the time of the alleged violation, in February 1992, pension and invalidity insurance in the Republic of Slovenia was regulated by two laws, the first being the Act on Fundamental Rights Deriving from Pension and Invalidity Insurance (Official Gazette of the SFRY no. 23/82), which regulated on the general level the rights deriving from pension and invalidity insurance for the territory of the entire former SFRY, and the second being the

Pension and Invalidity Insurance Act (Official Gazette of the SRS no. 27/83), which regulated in detail the institutions of pension and invalidity insurance on the republic level. Following the independence of the Republic of Slovenia, the Pension and Invalidity Insurance Act (Official Gazette of the RS no. 12/92) started to apply from 1 April 1992.That act instituted a new instrument - voluntary and supplementary insurance; however, it remained based on the system of compulsory insurance, the inalienability of pension and invalidity insurance rights and their not being subject to the statute of limitations and the concept of the rights under compulsory insurance being granted solely on the basis of payment of contributions.

193. The current system of pension and invalidity insurance in the Republic of Slovenia is regulated by the Pension and Invalidity Insurance Act of 1999. The system consists of compulsory pension and invalidity insurance based on inter-generational solidarity, compulsory and voluntary supplementary pension and invalidity insurance schemes and pension and invalidity insurance scheme on the basis of personal pension savings accounts. The system is founded on several principles. The principle of compulsory insurance requires that every person entering formal employment or starting to perform an independent or a similar business activity and thereby achieving income, shall participate in compulsory pension and invalidity insurance. The principle that rights derive from work means that the insured person's work or pay for the work is the sole basis for the level of contributions and the assessment and scope of rights deriving from them. The principle of mutuality and solidarity, whereby subjects ensure for themselves material and social security by paying contributions in accordance with their means, and later, when they fulfil the conditions, they claim and receive the rights deriving from compulsory insurance, holds an important place in the system as well.

194. The rights guaranteed in the ZPIZ-1 are inalienable personal rights and cannot be assigned. They are not subject to the statute of limitations and cannot be revoked, reduced or restricted, except in cases expressly stipulated by law.

195. As the Court decided in the case of *Müller v. Austria*, no. 5849/72, the Convention does not guarantee the right to an old-age pension of itself, although the payment of contributions into a pension and invalidity insurance scheme may create a property right protected by Article 1 of Protocol No. 1 – but only, as the Court underlined in the above case, upon determining that the applicant has met all the requirements for obtaining the right to pension stipulated by the national law.

196. Pension insurance in the Republic of Slovenia covers the widest circle of persons. In the first place, it is the persons employed in the territory of the Republic of Slovenia whereby nationals and non-nationals are treated equally, irrespective of whether they are employed by national or foreign employers.

197. As a rule the insured person acquires the right from compulsory insurance on the day he meets the requirements for acquisition of the right. Apart from age, the main element required for fulfilment of the conditions for acquisition of the right pension is the pension qualifying period.

198. It is evident from the outline of the pension and invalidity insurance system in the Republic of Slovenia that the **right to pension** was and also still is **dependent on the payment of contributions for pension and invalidity insurance, and was and is inalienable and not subject to the statute of limitations; it bears no connection to**

citizenship, nor to the permanent residence of the insured person. The rights deriving from compulsory insurance cannot be revoked, reduced or restricted. For stateless persons the time spent in the insurance scheme adds to the pension qualifying period as well.

199. The applicants' allegations about the loss of their social security contributions, which they had paid regularly until the date of their erasure, and thereby also the loss of the co-dependent right to pension for the period they worked are unfounded. The documentary data indicate that the applicant Jovan Jovanović has 14 years, 11 months and 1 day of pension qualifying period recorded in the Institute's central records (see evidence B21), while the applicant Mustafa Kurić has 9 years, 7 months and 26 days of pension qualifying period. The data on the pension qualifying period for Ljubomir Petreš, born on 15 September 1940, are not evident from the central record of the Institute. The Institute in fact holds data in its central record for two persons bearing the same name, but neither of them have the same birth date as the applicant. There is no doubt, however, that the applicant Ljubomir Petreš, born on 15 September 1940, never submitted to the Institute a request claiming the right to pension. Equally, the documentation lodged with the Court by the applicant and received by the Government from the Court gives no indication that he submitted any such request. If the applicant were to insist in the allegation that he did submit such a request, the Government propose that the Court requests him to submit appropriate evidence. In such case the Government reserve themselves the right to respond.

200. On 14 May 2006 the Institute called upon the applicant Mustafa Kurić to submit documentation which would indicate that he paid contributions for the period when he performed the business activity of an independent craft establishment, in other words since 5 November 1988, but he has not responded to this request. The ZPIZ-1 indicates that periods of insurance are counted towards the insured period, if for such periods the prescribed contributions were paid. It is not clear from the Institute's records that as the proprietor of a craft establishment Mustafa Kurić paid contributions for pension and invalidity insurance. His allegation that he regularly paid contributions right up until the date of transfer to the register of aliens is therefore untenable. If the Court disposes of documentation which would prove the contrary, the Government reserve themselves the right to respond.

201. The applicant Jovan Jovanović was entered in the Institute's records until 1 October 1992 (as employed up until 31 March 1992 only). After he voluntarily terminated his employment relationship, from 1 April 1992 to 1 October 1992 his contributions were paid for him as an unemployed person registered with the Institute - a right granted of anyone whose employment relationship had ended in the same way; in the applicant's case, such status continued for the same period of time as it would have for any comparable worker with Slovenian citizenship. It follows, therefore, that the transfer to the register of aliens in no way affected his rights deriving from pension and invalidity insurance.

202. On proposal of 1 February 2007, filed by the attending physician of Milan Makuc, the Koper Regional Unit of the Slovenian Pension and Invalidity Insurance Institute issued a decision of 20 September 2007 classifying him into the category I of invalidity due to the consequences of disease, and granting him right to invalidity pension starting as of 3 September 2007 onwards. The said decision clearly indicates that he met the requirements of age and of pension qualifying period which entitle him to invalidity pension; it follows from the above that the Institute counted into his pension qualifying period all the years when

Should the Court hold that in the present case the applicants' rights under the Convention have been violated, the Government respectfully propose that the Court decides on the amount of just satisfaction according to its well established case law.

REPUBLIKA SLOVENIJA
DRŽAVNO PRAVOBRANILSTVO
LJUBLJANA

Lucijan Bembič
State Attorney General
Agent of the Republic of Slovenia

cc: Permanent Representative of the Republic of Slovenia to the Council of Europe

APPENDICES – list of evidence enclosed

B1- decision of the Government of the Republic of Slovenia of 3 September 1992

B2 – decision of the Pension and Invalidity Institute of Slovenia, unit Koper of 20 September 2007 classifying the applicant into the category I of invalidity with a right to invalidity pension as of 3 September 2007 onwards, and the accompanying letter of the Institute

B3 – decision of the Ministry of the Interior of 10 October 2000 no. 0301-11/23 -XVII-328.290 terminating the proceedings

B4 – decision of the Ljubljana Administrative Unit of 3 October 2006 terminating the proceedings in the matter of issuing a residence permit

B5 - decision of the Ministry of the Interior of 1 December 2006 no. 213-264/2006/16 (1341-11) dismissing the application for citizenship

B6 – decision of the Nova Gorica Unit of the Administrative Court of the Republic of Slovenia of 20 May 2005 no. U 37/2004-11 rejecting the action

B7 - decision of the Ministry of the Interior of 14 November 2005 no. 213-326/5 (1341-33) dismissing the application for citizenship

B8 – decision of the Ministry of the Interior of 6 December 2004 no. 1812/07-XVII-219.461 terminating the proceeding in the matter of issuing a permanent residence permit due to the party's inactivity in the proceedings

B9 – decision of the Ministry of the Interior of 13 June 2006 no. 213-346.206 (1341-33) dismissing the application for citizenship

B10 - decision of the Ministry of the Interior of 21 February 2006 no. 213-328.097/4 (1341-07) dismissing the application for citizenship

B11 – decision of the Ministry of the Interior of 26 May 2005 no. 1812-04-233-0110/05 rejecting the application for issuing a permanent residence permit

B12 – decision of the Constitutional Court no. Up-60/97 of 15 July 1999

B13 – decision of the Constitutional Court no. Up-333/96 of 1 July 1999

B14 – decision of the Constitutional Court no. Up-211/04 of 2 March 2006

B15 - decision of the Constitutional Court no. Up-371/03 of 16 June 2005

B16 - decision of the Constitutional Court no. Up-419/03 of 23 October 2003

B17 - decision of the Constitutional Court no. Up-1062/05 of 15 March 2007

B18 - decision of the Constitutional Court no. Up-171/95 of 10 December 1998

B19 - decision of the Administrative Court of the Republic of Slovenia no. Up-60/97 of 31 May 2006

B20 – letter from the Pension and Invalidity Institute of Slovenia of 18 October 2007

B21 – letter from the Pension and Invalidity Institute of Slovenia of 8 October 2007

B22 – letter from the Pension and Invalidity Institute of Slovenia of 29 October 2007

Observations of the Government of the Republic of Slovenia to the admissibility and the merits of the application in the European Court of Human Rights – case E-376/06 (*Milan Makuc and Others v. Slovenia*, application no. 26828/06)

On 31 May 2007 the European Court of Human Rights Court (hereinafter: the Court) issued a partial decision as to the admissibility of the application lodged with the Court on 4 July 2006 by Milan Makuc and others, represented by their Italian lawyers, against the Republic of Slovenia (hereinafter: the RS). In the application the eleven applicants allege to be victims of numerous violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention), which occurred due to the "illegal erasure" carried out by the RS without any legal ground.

The Court has decided in its partial decision as to the admissibility that several violations alleged by the applicants were inadmissible due to various reasons. However, it requested the Government of the Republic of Slovenia (hereinafter: the Government) to present their observations as to the admissibility and the merits of the claims under Article 8 of the Convention and Article 1 of the Protocol No. 1, both also read in conjunction with Articles 13 and 14 of the Convention.

1. Preliminary objections of the Government

a)

The main argument of the Government is the fact that **the applicants have not exhausted domestic remedies prior to filing the application with the Court.** Herewith the Government also respond to the question expressly asked by the Court under no. 1 ("*Have the applicants exhausted all effective domestic legal remedies in connection with their complaints pursuant to Article 8 of the Convention and Article 1 of Protocol No. 1, as required by Article 35 § 1 of the Convention?*"). In addition the objections *ratione temporis*, *ratione materiae*, of the application being manifestly ill-founded and lack of victim status are presented.

In the present case, after the time-limit stipulated in Article 81 of the Aliens Act (Official Gazette of the RS no. 1/91-I, hereinafter: ZTUJ; *Zakon o tujcih*), the applicants were transferred from the register of permanent residents (the basis for entry into the register being either citizenship or, in case of aliens, a permanent residence permit) to the register of aliens with non-regulated status as they had not in the six-month period set out for the acquisition of citizenship according to Article 40 of the Citizenship of the Republic of Slovenia Act (Official Gazette no. 1/91, hereinafter: ZDRS; *Zakon o državljanstvu Republike Slovenije*) lodged an application for the acquisition of Slovenian citizenship, or after such an application had been dismissed. As a consequence, on 26 February 1992 all the provisions of the ZTUJ began to apply for the applicants, including those regarding the obligation to acquire legal basis for residence in the RS in the form of permanent or temporary residence permit. As they possessed no permanent residence permit they were transferred from one register into another. Having no legal basis to reside in the country (permanent residence permit), the documents issued to them by the Socialist Republic of Slovenia (then a republic within the SFRY) at the time they were still citizens of the SFRY with permanent residence in the area of Slovenia, were consequently annulled.

The Government firmly believe that the right move to assure the respect of the rights guaranteed by the Convention would be the institution of administrative proceedings by filing an application for the acquisition of a permanent residence permit, and in case of an unfavourable outcome of such proceedings, even lodging of a constitutional complaint which in comparable cases has proved to be a successful remedy. The procedure to follow would therefore be an application for the acquisition of a permanent residence permit based on one of the acts regulating the matter: ZTUJ, Act Regulating the Legal Status of Citizens of Other Successor States to the Former SFRY in Slovenia (Official Gazette of the RS, no. 61/99; hereinafter: ZUSDDD; referred to as »the Legal Status Act« in the partial decision as to the admissibility; *Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji*) or Aliens Act (Official Gazette of the RS, no. 61/99, as amended; hereinafter: ZTUJ-1), all with a goal of acquiring the basis for legitimate residence in the territory of the RS.

The situation differs from one applicant to another since eight of the applicants have not been issued a permanent residence permit whereas three of them have already acquired one.

For the applicants who have still not been issued permanent residence permits (four of them have never applied for it), the effective legal remedy is the administrative proceedings: firstly a request for a permanent residence permit filed at the administrative unit or at the Ministry of the Interior (MNZ), if they wish to acquire permanent residence permit under the ZTUJ and under the ZUSDDD, respectively. In case of an unfavourable decision of the administrative unit an appeal is possible to the MNZ within a 15-day time-limit; within a time-limit of 30 days of delivery of the decision from the MNZ they also have the possibility of instigating an administrative dispute at the Administrative Court of the Republic of Slovenia. In the event of an unfavourable decision from the MNZ in the proceedings for issuing permanent residence permits under the ZUSDDD, they have the possibility, within 30 days of delivery of the decision, of instigating an administrative dispute at the Administrative Court of the Republic of Slovenia. In both cases the Supreme Court rules in the second instance. If the rights guaranteed by the Constitution have been violated (the applicants have cited violation of the principle of equality referred to in Article 14 of the Constitution in comparable cases) the possibility of constitutional complaint with the Constitutional Court exists; it is important to emphasize the both quashing and reformative powers of the Constitutional Court.

In addition to its rulings on constitutionality and legality with regard to the so-called "erased", the Constitutional Court has also ruled several times on alleged violations of the constitutional rights of these persons, who exercised their rights through constitutional complaints. In several cases the Constitutional Court determined violations of rights protected by the Constitution, and took appropriate action as well as instructed the administrative authority on its obligatory future actions. Thus, e.g., in decision no. Up-60/97 of 15 July 1999 it decided to set aside the judgments of the courts and the decisions of the MNZ, and ordered the administrative unit to enter the applicants, until the adoption of a law regulating the status of citizens of other successor states to the former SFRY in the RS (this was the ZUSDDD), or until the expiry of the deadlines given in it, in the register of permanent residents of the RS. In decision no. Up-333/96 of 1 July 1999 it decided to set aside the judgments and decisions and instructed the administrative unit to re-enter the applicant, until the adoption of a law regulating the status of citizens of other successor states to the former SFRY in the RS, or until the expiry of the deadlines given in it, in the register of permanent residents of the RS, and to issue him driving licence for this period.

In its decisions in these two cases the **Constitutional Court took into account its decision U-I-284/94 of 4 February 1999, and in this way filled a legal vacuum** arising from the legislator's failure to amend the provisions of the act for which the Constitutional Court had determined in this decision that it ran counter to the Constitution (ZUSDDD was published on 30 July 1999).

Of particular importance regarding the Constitutional Court decision no. U-I-246/02 (whereby it determined the non-compliance of certain provisions of the ZUSDDD with the Constitution, set aside the three-month time-limit set out in Article 2 § 2 of the ZUSDDD for submitting applications for permanent residence permits, instructed the legislator to eliminate the inconsistency within a six-month time-limit and instructed the MNZ to issue supplemental decisions ascertaining permanent residence in the RS from 26 February 1992 onwards to persons who had under the ZTUJ, the ZUSDDD or the ZTUJ-1 already been issued permanent residence permits) is the decision following the constitutional complaint in case no. Up-211/04 (Official Gazette of the RS no. 28/2006). After having set aside the judgments of the Supreme Court and Administrative Court and remanding the case to the Administrative Court for re-examination, wherein that court should appropriately assess the legal term set out in Article 1 of the ZUSDDD "actually residing in the Republic of Slovenia from 23 December 1990 on", the Constitutional Court here particularly emphasised that **the fact that the legislator was late in eliminating the inconsistency in the ZUSDDD did not prevent the court from issuing a decision in the case.** It therefore made the assessment that the Administrative Court could – taking into account the instructions of the Constitutional Court from decision no. U-I-246/02 – decide in the case despite the unchanged legislation.

It follows from the above that the persons concerned could, after the obligation had arisen for the legislator to adopt adequate legislation referred to in point 7 of decision no. U-I-246/02, effectively safeguard their rights protected by the Constitution by lodging an individual constitutional complaint.

In this context, it is essential to underline the fact that in respect of Article 60 of the ZUSTS, the Constitutional Court may itself decide on a disputed right or freedom, provided its decision can be reached on the basis of information contained in the case file, if such procedure is necessary in order to remedy the consequences that have already occurred on the basis of the annulled individual act or if such is required by the nature of the constitutional right or freedom. Where acting in such a manner, the Constitutional Court follows the **principle of full jurisdiction**, which is applied wherever the Constitutional Court takes the view that this is indispensable to protect fundamental rights and freedoms. In such cases, if the circumstances of the case so allow, the Constitutional Court may itself decide and apply its competences from Article 60 of the ZUSTS. There are several examples of such decisions in the area of minor criminal offences (e.g. cases no. Up-371/03, Up-419/03, Up-1062/05), and also e.g. in case no. Up-171/95, the latter relating to the claim for a pension by a former member of the Yugoslav People's Army; in this latter decision the Constitutional Court set aside the judgments of the courts and the decisions of the Pension and Invalidity Institute of Slovenia and decided that the applicant was entitled to a prepayment of military pension pursuant to the Decision on the prepayment of military pensions.

The Government underline that in the case of applicants who have already been issued permanent residence permits (three of the eleven) domestic remedies have not been exhausted either: the applicants failed to file an action due to non-response of the authority. These three applicants were indeed issued resident permits (valid from the date of issue) pursuant to the

ZUSDDD, the ZTUJ or the ZTUJ-1, but they were not issued supplementary decisions ascertaining their permanent residence in the sense of point 8 of decision no. U-I-246/02 of the Constitutional Court. However, when the administrative authority fails to perform its duty, domestic law provides for an appropriate remedy. Pursuant to Article 33 of the Administrative Dispute Act (Official Gazette of the RS no. 105/2006, hereinafter: ZUS-1; *Zakon o upravnem sporu*) it is possible to file an action requiring the issuing or delivery of an administrative act (action due to non-response of the authority – *tožba zaradi molka organa*). The provision of Article 31 of the previously valid Administrative Dispute Act (Official Gazette of the RS no. 50/97, as amended, hereinafter: ZUS) was practically identical.

Since they were not issued supplemental decision referred to in point 8 of the Constitutional Court decision, the aforementioned three applicants could have therefore required its issuing. In a similar case (U 39/2002) the Administrative Court of the Republic of Slovenia instructed the MNZ to "decide on the claimant's permanent residence in the RS from 26 February 1992 up to the date of acquisition of the permanent residence in the RS" (which in this specific case the party received within the same preliminary administrative procedure on 29 March 2002). The Administrative Court states that the MNZ must issue, on the basis of the point 8 itself, to persons to whom point 8 of decision no. U-I-246/02 of the Constitutional Court relates supplemental decisions in case that these persons fulfil the substantive conditions set out in the cited decision. If the MNZ fails to act in accordance with a judgment of the Administrative Court, the party may, pursuant to the ZUS-1, file a new action.

With regard to the specific violation of Article 1 of Protocol No. 1 (peaceful enjoyment of property) relating to four applicants whose pension and invalidity insurance contributions were supposedly "frozen", and the applicant who was supposedly deprived of the compensation of income during the child-care leave from 1 December 1992 to 26 July 1993 at the latest, the Government underline that domestic remedies have not been exhausted in these cases, either. None of the four applicants have even initiated the proceedings relating to the right to pension (in 2007, decision granting him right to invalidity pension was issued to one of the applicants; however, the proposal was filed by the applicant's attending physician).

b)

Additionally, the Government argue that the Court is not competent *ratione temporis* to consider the case. Should the conduct of the Republic of Slovenia have violated Article 8 of the Convention and Article 1 of Protocol No. 1, independently and in conjunction with Articles 13 and 14 of the Convention (prohibition of discrimination), the Government emphasize that the events which the applicants claim to be the source of the violations by the RS occurred prior to 28 June 1994 when the Convention entered into force for Slovenia. In accordance with generally recognized rules of international law (Article 28 of the Vienna Convention on the Law of Treaties, Official Gazette of the SFRY no. 30/72) international treaties cannot bind retroactively. The applicants allege close connection of the events supposedly being the source of the violation of the Convention rights with the elimination of the basis for permanent residence in the RS and, consequently, the transfer from the register of permanent residents; therefore the events which, by the applicants' view, present the consequence of this act, cannot be considered separately from the "violation" itself. Since the actual event in the present case is outside the *ratione temporis* jurisdiction of the Court, the latter cannot rule on events which occurred after the entry into force of the Convention, as a result of the direct causal link with the event which occurred prior to the entry into force of

the Convention. If the Court decided to consider these events, it would to the Government's belief extend its *ratione temporis* competence. The Court adopted such a view in the cases of *Moldovan and others* and *Rostas and others v. Romania*, no. 41138/98 and 64320/01, of 21 March 2001, *Voroshilov v. Russia*, no. 21501/02, of 8 December 2005, *Kadiķis v. Latvia* (decision), no. 47634/99, of 29 June 2000, and *Stamoulakatos v. Greece*, judgment no. 12806/87, of 26 October 1993.

The *ratione temporis* inadmissibility is further presented in the part relating to the applicant Ana Mezga. The loss of the childcare leave and of the compensation of personal income is an instantaneous event limited in time, which lasted from 1 December 1992 to 26 July 1993 at the latest and can therefore, due to its *ratione temporis* inadmissibility, not be considered by the Court.

c)

The Government further recall that according to the Court's case-law regulation of the field of citizenship and residence is outside the scope of the Convention and the contracting states regulate it independently. Consequently the assessment of legislation and specific actions relating to the acquisition of citizenship or residence permits is ***ratione materiae*** outside the scope of the Convention. Neither the Convention nor its Protocols guarantee any right to acquire or retain a particular citizenship; equally, they do not guarantee the right of an alien to enter or to reside in a particular country or the right to stay in its territory (see e.g. the case of *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). Moreover, according to the case-law of the Court it is not possible to conclude that Article 8 of the Convention places an obligation on a contracting state to ensure in its territory family reunification, or an obligation to ensure for non-citizens the right to choose the most suitable place to develop family life (*Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports on judgments and decisions* 1996-VI, p. 2033, § 71).

The Court does indeed cite some cases asserting that in certain circumstances the arbitrary denial of citizenship might affect the applicant's rights. However, in the present case – right from the start in 1991 and 1992 - the right to citizenship was not arbitrarily denied to any of the applicants - neither the right to citizenship of their original republic nor the right to acquire other citizenship, i.e. Slovenian citizenship. At that time, none of the applicants even applied for citizenship of the country in which they resided. Equally, they were not denied the right to permanent residence, since they did not apply for permanent residence permit at that time. Since no country can be expected to "conscript" its inhabitants to acquire its citizenship, but indeed on the contrary, in the circumstances given it is reasonable to expect that its inhabitants would show some autonomous action, the assessment of the applicants' position regarding the alleged violation of the right to respect for private and family life as protected in Article 8 of the Convention is *ratione materiae* incompatible with the Convention.

d)

As to the applicants who have already been issued permanent residence permit the Government plead that the applicants cannot be considered to be victims within the meaning of Article 34 of the Convention.

e)

For the reasons set out above, the Government plead the preliminary objection of the application being manifestly ill-founded, since it is quite evident that the actions supposedly representing a breach of the Convention violated none of the applicants' rights protected by the Convention.

2.

As to the merits the Government state that it offered to all citizens of the other republics of SFRY living in its territory upon the independence the acquisition of Slovenian citizenship by naturalisation under exceptionally favourable conditions; in this way it acted according to its domestic legislation, at the same time respecting the provisions of the Convention. The act of transfer of those residents of the RS who had not acquired citizenship of the RS from the register of permanent residents into a special register of aliens with non-regulated status cannot represent a violation, either.

It is evident from the Court's partial decision as to the admissibility, and more so from the application, that the two concepts - permanent residence permit and the entry into the register of permanent residents – are misunderstood.

Entry into the register of residents – permanent or temporary – is merely a transaction (act of business – *akt poslovanja*) of the administrative authority which records the actual address of the individual in the appropriate register. The legal basis for the entry into register of the citizens of the state is their citizenship, whereas in the case of aliens an issued residence permit is a precondition. Only when an alien had acquired residence permit allowing him to reside in the territory of a state he may register his address in this state. Therefore, residence permit is a constitutive act by the issue of which an alien is permitted to reside in the territory of the state. It is the fact of a permit being issued that gives the alien the right to reside (for a longer period) in another country. The regulation of alien residence through a system of residence permits is something common to all countries. Within the European Union as well the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States regulates the obligation of an alien – even a citizen of a Member State, to acquire prior to a (longer) residence in another Member State a residence permit. In the period following the independence of the RS, the matter of issuing of residence permits was regulated in the ZTUJ.

In contrast to a residence permit, registration of residence is a mere transaction (act of business) which records in the appropriate register the actual address of the individual, and registers him on the basis of the issued residence permit. **It is a mere demonstration of the fact that a person has the right to reside at a particular address.** Registration of residence is therefore a mere consequence of the fact the alien has acquired residence permit and does not, as such, constitute any right. In 1991 (actually, from 1983 onwards) registration of residence was regulated by the Inhabitants' Residence Evidence and Population Registry Act (Official Gazette of the SRS, no. 6/83, as amended, hereinafter: ZENO; *Zakon o evidenci nastanitve občanov in o registru prebivalstva*), whereas executive regulations issued on its basis regulated keeping of the registers.

Contrary to the allegations in the application, the transfer from one register into another was by no means discriminatory, since permanent resident permits of "real" aliens referred to in Article 82 § 3 of the ZTUJ were not revoked. These persons have prior to 1991 acquired residence permit on the basis of the Movement and Residence of Aliens Act (Official Gazette of the SFRY, no. 56/80, as amended; *Zakon o gibanju in prebivanju tujcev*), whereas citizens of the other republic have never been issued residence permit, since they never needed one until the time-limit set out in Article 81 § 2 of the ZTUJ. This is the precise reason why no discrimination occurred in the sense of Article 14 of the Convention: the aliens referred to in Article 82 § 3 of the ZTUJ who had previously already regulated their alien status, and the citizens of the former republics who became aliens upon the emergence of a new subject of international law and at the same time failed to apply for the citizenship of this new entity, were not in a comparable position. Impermissible discrimination involves the application of different rules to an essentially similar situation or the application of the same rule to essentially different situations.

With the emergence of the new independent state, the Republic of Slovenia, the former federal citizenship (citizenship of the SFRY) in the territory of the RS ceased to exist; the new subject of international law defined, in accordance with the rules of international law, the citizenship of the newly created state. The citizens of other republics of SFRY who had acquired Slovenian citizenship were not required to register their permanent residence (as they were now citizens of the new state) whereas the ones who failed to apply for citizenship or were not granted it, became aliens after the expiry of the time-limit set out in Article 81 § 2 of the ZTUJ and should have therefore acquired a residence permit allowing their residence in the newly created country. Being ignorant of law harms – citizens of other republics of SFRY should have demonstrated some autonomous action in regulating their status and either apply for the citizenship of the new state or regularize their residence in its territory.

The transfer from the register of permanent residents within which only citizens were registered (the matter was regulated by the Rules on the keeping and management of the register of permanent residents (Official Gazette of the SRS no. 13/84)) represented nothing but a consequence of the fact that the persons concerned became aliens without a permanent (or temporary) residence permit issued in accordance with the ZTUJ. The Rules mentioned saw to daily update of the evidences.

By stating the above, the Government demonstrate that upon its independence the RS offered to the citizens of the other republics residing in its territory the ppossibility to acquire citizenship of the RS; for the ones who did not opt for it and have consequently become citizens of another state, it regulated in its legistation – quite comparable to the legislation of other states - the obligation to acquire residence permits. As the persons concerned failed to acquire residence permit, their transfer from the register of permanent residents into a special register of aliens with non-regulated status could not represent a breach as it was nothing but an administrative act of business. Since the actual event – the transfer – cannot be considered a violation, the subsequent events may not represent the consequences prohibited by the Convention.

3.

As to the questions specifically asked by the Court the Government want to emphasize the following.

A. Has there been a violation of the applicants' right to respect for their private and family life on the account of their overall situation and the lack of compliance with the Constitutional Court's decision of 3 April 2003, contrary to Article 8 of the Convention? What is the effect of the Constitutional Court's decision of 3 April 2003 on the applicants' rights? (Question no. 3)

In answering this question the Government in their observations emphasize the **difference between the two legal terms which are being misused in the present case.** It is evident that the applicants do not recognize the difference between a permanent residence permit and the entry of permanent residence into the register. It is precisely this misunderstanding of the terms "permanent residence permit" and "entry of permanent residence into the register" which led the applicant to misunderstand the extent of the rights to which they are supposedly entitled, and the violation occurred. **The correct notion of the difference between "permanent residence permit" and "entry of permanent residence into the register" is of essential importance – if not crucial – for the present case; consequently, it renders the use of expressions "erasure" and "erased" unjustified.**

Residence permit (both permanent and temporary) is a constitutive act by the issue of which an alien is permitted to reside in the territory of the state. It is the fact of a permit being issued that gives the alien the right to reside (for a longer period) in another country. The regulation of alien residence through a system of residence permits is something common to all countries.

In contrast to a residence permit, registration of residence is nothing but a transaction (act of business) of the authority which records in the appropriate register the actual address of the individual, and registers him on the basis of the issued residence permit. **It is a mere demonstration of the fact that a person has the right to reside at a particular address.** Registration of residence is therefore a mere consequence of the fact of the alien has acquired residence permit and does not, as such, constitute any right.

The Government reiterate once again that the applicants never possessed residence permits due to the fact that they did not need them as citizens of the then common state. With the transfer from one register into another they did not lose their permanent residence, either: **the fact of residing at a certain address cannot be, by the nature of things, changed by such a transfer.** The applicants were therefore still able to reside at their current address, although it is true that their residence was recorded not in the register of permanent residents (citizens), but in the record of aliens with non-regulated status. It is clear, however, that they could in no way lose their permanent residence permits, since these have never been issued them in the RS, as they had never applied for them (apart from the applicants who applied for it considerably after the year 1991).

It is emphasized in the observations with regard to applicants' individual allegations that Vladimir Dabetić never held a permanent residence permit in Slovenia, as he never applied for one and therefore it was in no way possible to return it to him. However, he was aware if

the fact that alien residence permit needs to be applied for, since he has applied for it several times in Italy (up to 2002). As regards the applicant Ljubenka Ristanović, the observations emphasize once again the wrong notion of the concepts of permanent residence and permanent residence permit. As regards the applicant Ilfan Ademi Sadik, he did not apply for a permanent residence permit until 16 February 2005.

As to the applicants' allegations concerning the alleged loss of the right to exercise their civil, political, economic and social rights, the observations emphasize that the applicants were not able to exercise civil rights in the RS, since they had not applied for citizenship of the newly created state within the time-limit prescribed in the ZDRS and consequently did not acquire citizenship of the newly created state. In legal order of every state political rights and freedoms are guaranteed to their own citizens only.

In their observations, the Government contest the applicants' allegations that their economic and social rights were violated due to the transfer into the register of aliens. It was their own inactivity which led to the loss of their employment connected rights – as emphasized in the observations as to the applicants Jovan Jovanović, Mustafa Kurić and Ana Mezga. In the observations the Government emphasize that the applicants' situation derived from the fact that, being citizens of a foreign country, they did not acquire permanent residence permit. Therefore the causal link exists between their non-acquisition of alien residence permit in the country and their situation, and not between the act of the state which was merely coordinating the records.

The Government in their observations recall the latest case-law of the Court – the *Slsojeva v. Latvia* case [GC], application no. 60654/00, judgment of 15 January 2007.

Subordinately, if the Court took the view that the acts of the RS amounted to the breach of rights guaranteed under Article 8 of the Convention, the Government assert that the independence legislation of the RS in the area of citizenship and the status of aliens meets the requirements from Article 8 § 2 of the Convention. In any event the interference was in accordance with the law and pursued a legitimate goal, being at the same time necessary in a democratic society. One should be aware of the fact that the events of 1991 involved the historic creation of a new state and that it was therefore necessary to establish, as an element of statehood for the new subject of international law, its *corpus* of citizens and on the other hand to regulate the status of aliens, including persons who as citizens of the other republics of the SFRY with permanent residence in Slovenia had not applied for Slovenian citizenship. Of course every alien is required to regulate his status in a country of which he is not a national. The requirement of every country that aliens who reside within its territory or enter it regularise their status is always legitimate in terms of ensuring public safety. It is stressed that such action was absolutely necessary - the regulation of citizenship and on the other hand the status of aliens is an urgent need for every state, provided the measure is proportionate to the legitimate goals pursued. In the present case, the RS had of course important and adequate reasons for the adoption of the legislative regulation.

As to the Constitutional Court decision of 3 April 2003 and its influence on the respect of the applicants' rights to private and family life, and the effects of that decision on their rights, the Government state that point 8 of the said decision relates to those applicants who had already acquired permanent residence under the ZUSDDD, the ZTUJ or the ZTUJ-1; in the present case, it only relates to Milan Makuc, Ljubomir Petreš and Jovan Jovanović. The Government reiterate that while the MNZ should have issued supplemental decisions ascertaining

residence in the RS from 26 February 1992 on ex officio, it is possible, since the MNZ did not do this, to file an action due to non-response of the authority.

With regard to point 4 of the aforementioned decision the Government underline that it resulted in the time-limit for the submission of applications for permanent residence permits under the ZUSDDD being lifted, meaning that such applications can still be submitted. This fact is important for the applicants who still have not submitted an application for permanent residence permit under this act.

With regard to the first four points of the decision the Government recall that **the fact that legislator is late in eliminating the inconsistency in the ZUSDDD does not prevent the court from issuing a decision in a specific case** (thus the Constitutional Court decision following the constitutional complaint in case no. Up-211/04 (Official Gazette of the RS no. 28/2006)). For the applicants this means the possibility of their applications, where they have been submitted, being dealt with in the spirit of this decision of the Constitutional Court.

B. »Did the applicants have at their disposal an effective domestic remedy for their complaint under Article 8 as to the non-compliance with the Constitutional Court's decision of 3 April 2003, as required by Article 13 of the Convention?« (Question no. 4)

In answering this question, the Government reiterates its statements in the observations that, considering the Constitutional Court decision no. Up-211/04 (Official Gazette of the RS no. 28/2006) **the fact that the legislator is late in eliminating the inconsistency in the ZUSDDD does not prevent the court from issuing a decision in a specific case**. To the opinion of the Constitutional Court the Administrative Court could – taking into account the instructions of the Constitutional Court from decision no. U-I-246/02 – decide in the case despite the unchanged legislation. The right move for the applicants would therefore be the institution of administrative proceedings and thereafter an administrative dispute.

As regards the fulfilment of point 8 of decision no. U-I-246/02 the available domestic remedy was filing of an action due to non-response of the authority.

C. » Have the applicants suffered discrimination in the enjoyment of their Convention rights on the ground of their status, contrary to Article 14 of the Convention read in conjunction with Article 8?« (Question no. 5)

Regarding this particular question, the Government state that the applicants were not discriminated against but were, regarding their non-regulated status, subject to equal treatment as any other alien without a residence permit; moreover, they were subject to positive discrimination as the RS since the RS did not act towards them as it did towards other aliens, in other words they were in principle not subject to deportation from the country. In this connection the Government want to emphasize the decision of the Government of 3 September 1992 which for the citizens of other republics ordered the taking into account "that the condition for permanent residence in the territory of the RS has been met when the alien has had permanent residence registered for at least three years and was actually living here before the provisions of the Aliens Act started to apply to them.

D. "Did the applicants' overall situation originate in a "systemic problem" (see, Broniowski v. Poland, [GC], št. 31443/96, ECHR 2004-...)?« (Question no. 6)

In answering this question the Government expressly underline that the general situation of the applicants does not originate in a "systemic problem". It was not a matter of an erroneously formulated system for acquisition of residence permits, but the inaction of individuals who did not regularise their status as aliens in accordance with the ZTUJ.

E. »Has there been a breach of the rights of the applicants Milan Makuc, Ljubomir Petreš, Mustafa Kurić in Jovan Jovanović to peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1, in as much as they cannot benefit from their contributions to the pension fund?« (Question no. 7)

Regarding the question whether there has been a breach of the rights of four applicants to peaceful enjoyment of their possession in as much as they cannot benefit from their contributions to the pension fund the observations of the Government emphasize the fact that the right to pension is inalienable and not subject to the statute of limitations; the applicants may assert their right to pension upon meeting the requirements set out in the Pension and Invalidity Insurance Act - *Zakon o pokojninskem in invalidskem zavarovanju* (Official Gazette of the RS, no. 106/1999, as amended) since their pension qualifying period has never been deleted from the evidence of the Pension and Invalidity Institute of Slovenia.

REPUBLIKA SLOVENIJA DRŽAVNO PRAVOBRANILSTVO LJUBLJANA 4

Lucijan Berbič
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Agent of the Republic of Slovenia

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