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

Avvocati Anton Giulio LANA e Andrea
SACUCCI
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I - 00198 Roma

GRAND CHAMBER

ECHR-LE21.4R
AV/up

23 February 2011

Application no. 26828/06
Kurić and Others v. Slovenia

Dear Sir,

I write to inform you that the panel of five judges of the Grand Chamber decided on 21 February 2011 to accept the respondent Government's request that the above-mentioned case be referred to the Grand Chamber. I enclose a copy of the above mentioned request for information.

I shall advise you in due course as to how the case will subsequently be dealt with (Article 43 § 3 of the Convention).

Yours faithfully,

Johan Callewaert
Deputy Grand Chamber Registrar

Enc.

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BEFORE

THE EUROPEAN COURT OF HUMAN RIGHTS

COUNCIL OF EUROPE

between:

KURIĆ and OTHERS Applicant

and

THE REPUBLIC OF SLOVENIA Respondent state

APPLICATION NO.: 26828/06

REQUEST OF THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA FOR RE-EXAMINATION OF THE CASE BEFORE THE GRAND CHAMBER OF THE EUROPEAN COURT OF HUMAN RIGHTS

REPUBLIC OF SLOVENIA
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Ljubljana, 12 October 2010

INTRODUCTION

1. On 13 July 2010 the Government of the Republic of Slovenia (*Vlada Republike Slovenije*; hereinafter referred to as: the Government) received the judgement issued by the European Court of Human Rights (hereinafter referred to as: the Court) in the case of Kurić and others (hereinafter referred to as: the Kurić judgement). In the corresponding judgement the Court:

- Held that Ms Marija Ban does not have standing to continue the present proceedings in the applicant Mr Makuc's stead;
- Declared admissible the complaints under Article 8, 13, 14 of the Convention in respect of the applicants Mr Mustafa Kurić, Mr Velimir Dabetić, Ms Ana Mezga, Mrs Ljubenka Ristanović, Mr Tripun Ristanović, Mr Ali Berisha, Mr Ilfan Sadik Ademi and Mr Zoran Minić and the remainder of the complaints inadmissible;
- Held that there has been a violation of Article 8 of the Convention;
- Held that there has been a violation of Article 13 of the Convention;
- Held that no separate issue arises under Article 14 in conjunction with Article 8 of the Convention;
- Held that the Republic of Slovenia must, through appropriate general and individual measures, secure to the applicants the right to a private and/or family life and effective remedies in this respect;
- Held that, as far as the financial award to the applicants for any pecuniary or non-pecuniary damage resulting from the violations found in the present case is concerned, as well as the reimbursement of costs and the expenses incurred in the proceedings, the question of the application of Article 41 is not ready for decision. The Court therefore reserved the said question as a whole and invited the Government and the applicant to submit, within six months from the date of notification of this judgment, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach.

2. In accordance with § 1 Article 43 of the Convention as amended by Protocol nr. 11 and Protocols nrs. 4,6,7 (Official Gazette of the Republic of Slovenia - International Treaties, nr. 7/94) and the following Protocols (last ratified Protocol nr. 12, Official Gazette of the Republic of Slovenia, nr. 46/10—International Treaties, nr. 8/10) the Government of the Republic of Slovenia files a request for referral of the case to the Grand Chamber.

3. The Government files the request for the referral of the case for re-examination to the Grand Chamber, since it disputes a part of the Court's judgement.

The Government hereby presents the following issues:

- The Government objects to the fact that the Court rejected its objection on the non-exhaustion of domestic legal remedies and consequently recognised the applicants (Velimir Dabetić, Ljubenka Ristanović in Tripun Ristanović) in its judgement as victims of violation of the Convention on the protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention);

- It is arguable that the Republic of Slovenia should, through appropriate general and individual measures, ensure the applicants' right to private and/or family life and effective remedies in this respect;

- It is arguable that the judgement stipulates that the Republic of Slovenia created such personal situations that certain natural persons were left without any citizenship (the question of causing / creating alleged statelessness).

4. According to the Government's opinion the Court's decision represents an important question in the context of §2 Article 43 of the Convention from both the context of interpretation and application of the Convention, as well as general impact which the judgement shall have on the interpretation of specific provisions of the Convention. Findings concerning the exhaustion of domestic legal remedies and the existence of the status of victims due to violation of Convention's provisions differ from the established and/or relevant case-law of the Court and are esp. important due to procedural aspects concerning the right to respect of private and family life; moreover these new positions are rather important because of contextual intervention in the right of private and/or family life and effective legal remedies in this respect; furthermore, the position that the State is responsible for the occurrence of statelessness represents a very important question which is neither legally nor reasonably justified and may represent an interference in the sovereignty of other states (position that citizens of other states, according to the Government have citizenship of other states, while according to the Court's position these persons are stateless persons). Such a legal question was never examined by the Courts of the Republic of Slovenia including the highest body, safeguarding constitutionality and law in the Republic of Slovenia – the Constitutional Court of the Republic of Slovenia (*Ustavno sodišče Republike Slovenije*; hereinafter: the Constitutional Court).

5. Since the specified judgement can have extensive consequences on the maintaining of standards for the protection of human rights and fundamental freedoms in the entire Europe concerning the right to permanent residence and exhaustion of legal remedies as well as appropriate measures for just satisfaction (general and individual), the Government believes that the listed reasons justify the referral of the case to the Grand Chamber. In addition, the Government is of the opinion that it is very likely that any judgement in this case shall remain a *de facto* leading precedent in the relevant fields. Therefore it is absolutely necessary that all questions in this field are completely resolved as the Court should resolve also the inseparable question of the actual situation originating from the application (e.g. decision on the status of statelessness only on the basis of alleged claims of specific applicants that they are stateless although it is evident that they do have a citizenship). Finally, the Government also claims that during the examination of the case the Court should have taken into account the fact that - since 15 June 2010 - the Republic of Slovenia implemented a systematic reparation in the legislative field concerning questions contained in the judgement (adoption of the new act - ZUSDDD-B) which had also been examined by the Constitutional Court of the Republic of Slovenia that concluded that the act is fully compliant with the Constitution of the Republic of Slovenia. Taking into account the fact that by 15 June 2010 the Constitutional Court already delivered its decision concerning the new act, the Government believes it is possible to consider that the adopted act offers suitable and systematic satisfaction in the meaning of disputed judgement (Paragraph 311 and beyond – issuing of permanent residential permits and supplementary decisions represents an adequate and appropriate legal remedy and/or satisfaction within the meaning of provision of Articles 8, 13 and 14 of the Convention and thus the status of victims ceases to exist). Hereby, another question of significant legal importance also arises; whether it is disputable in this case and in a wider context of potential mass cases that – taking into account the above – the Court did not apply the principle of subsidiarity and/or did not recognize the need for its application, whereas the Government

believes this is an exemplary case where the latter principle could be applied or systematically considered.

6. Taking into account the latter and due to clarity of established case-law of the Court, the Government proposes to the Court to grant its request and refers the case to the Grand Chamber, whereby the Government disputes only specific erroneous findings/conclusions of the Court.

JUSTIFICATION OF THE REQUEST

7. In its judgement the Court declared that prior to 25 June 1991 (the date on which Slovenia declared its independence) the applicants were citizens of the Federative Republic of Yugoslavia (hereinafter referred to as: SFRY) and one of its founding republics, excluding Slovenia. They registered their permanent residence in Slovenia as citizens of SFRY and they kept this status until 26 February 1992. On that date the Aliens Act (*Zakon o tujcih*) entered into force and their right to the registration of a permanent residence ceased to exist (erasure from the permanent residents' register). Local (municipal) administrative bodies transferred these persons into the register of aliens without a regulated status.

8. Article 40 of the Citizenship Act, which entered into force on 25 June 1991 specified that citizens of republics of the former SFRY, who were not citizens of Slovenia (hereinafter referred to as: Citizens of former SFRY republics) could acquire Slovene citizenship provided that they satisfied the following three criteria: On 23 December 1990 (date of plebiscite) they had a registered permanent residence in Slovenia; they actually lived in Slovenia and they requested their citizenship within 6 months upon the Citizenship Act's entry into force. This deadline expired on 25 December 1991.

9. No official documents from other republics of the former SFRY were needed when filing the request for citizenship. Such documents were required in the later phase of the procedure only. According to the official data 174.173 citizens from republics of the former SFRY who resided in Slovenia requested citizenship of the new state under Article 40 of the Citizenship Act and 171.140 successfully acquired citizenship of the Republic of Slovenia on these grounds.

10. According to § 2 Article 81 of the Aliens Act citizens of former SFRY republics, who did not file a request for Slovenian citizenship within the prescribed deadline and/or their requests were not granted, became aliens. Provisions of the Aliens Act were applied for citizens of former SFRY republics two months after the expiry of deadline for filing a request for citizenship under Article 40 of the Citizenship Act, i.e. 26 February 1992 or the date of final decision rejecting the request for citizenship.

11. The Government assesses that the Court's summary of facts in the relevant case was fair and correct, however, in order to ensure a complete examination of the question of citizenship of the Republic of Slovenia after the dissolution of SFRY, it reiterates the decisive facts.

12. Upon its independency the Republic of Slovenia solved the question of *ex lege* citizenship in Article 39 of the Citizenship of the Republic of Slovenia Act (Official Gazette of the

Republic of Slovenia nr. 1/91-I to 24/07 – officially consolidated text 2, hereinafter: ZDRS) by constituting a founding citizens' body. Accordingly, citizens of Republic of Slovenia comprise all persons who had – according to prior regulations – the citizenship of the Republic of Slovenia and SFRY. The latter was to ensure the continuity of citizenship for those who had Slovenian Republic citizenship within the former SFRY, regardless of the fact whether they actually resided on the territory of the Republic of Slovenia or not. According to the latter ZDRS did not allow the possibility that a person, who had prior republic citizenship of the Republic of Slovenia and federal citizenship of SFRY, could become stateless. However, a person, who had republic citizenship of one of the other republics and federal citizenship of SFRY, could not automatically acquire citizenship of the Republic of Slovenia on 25 June 1991, but could request citizenship of Republic of Slovenia under special conditions (Article 40 of ZDRS).

13. For citizens of other SFRY republics who had a registered permanent residence on the territory of the Republic of Slovenia on 23 December 1990 Article 40 of the act stipulated that they can request for the award of citizenship of the Republic of Slovenia under mitigated conditions. For under aged natural persons the act provided that they can acquire citizenship upon parents' request if at least one of the parents had acquired Slovenian citizenship. If a person decided not to file a request for acquisition of citizenship of the Republic of Slovenia under Article 40 of the ZDRS he/she did not lose its original citizenship on 26 February 1992. However, such persons could request citizenship of the Republic of Slovenia according to other provisions of ZDRS.

14. This option (to acquire citizenship of the Republic of Slovenia under Article 40 of the ZDRS) was exhausted by the majority of permanent residents of the Republic of Slovenia who did not have prior citizenship of the Republic of Slovenia but had federal citizenship of the SFRY and citizenship of another republic (sovereign member state of the federal state), since 171.140 persons acquired citizenship of the Republic of Slovenia on these grounds, while 2.497 requests were rejected. Requests for citizenship on this legal basis could have been filed within six months (i.e. from 25 June 1991 until 25 December 1991). During this period 174.140 persons filed their requests. The highest share of resolved administrative cases was lodged in 1992. During this year citizenship of the Republic of Slovenia was granted to 140.551 persons, while requests of 651 persons were rejected (the highest percentage of these requests includes those, which were rejected due to non-compliance with the residence requirement; i.e. 544).

15. Persons who failed to meet the deadline for acquiring citizenship under Article 40 of the ZDRS or did not want to request citizenship under Article 40 had the option to acquire citizenship on different legal grounds, whereby the Government highlights the fact that the acquisition of citizenship in the procedure of regular naturalisation prior to the Act Amending the Citizenship of Republic of Slovenia Act (*Zakon o spremembah in dopolnitvah Zakona o državljanstvu Republike Slovenije*) of 29 November 2002 was not conditional upon a permanent or temporary residence in the Republic of Slovenia. The alien in the procedure had to prove only actual residence in the Republic of Slovenia (according to administrative judicial practice he/she had to prove that he/she carries out his/her main living activities in the territory of the Republic of Slovenia).

16. Citizens of other republics who did not decide to submit a request for acquisition of citizenship of the newly-formed state had to regulate otherwise their residence in the Republic of Slovenia. The transitional provision of Article 81 of the Aliens Act (*Zakon o tujcih*;

hereinafter: ZTUJ) stipulated that upon the expiry of a specific period these persons were subject to all provisions of the ZTUJ, including the conditions for (permanent) residence in the Republic of Slovenia, since they were not its citizens, but merely residents of a newly-founded legal entity and they had the obligation to legalize their residence in this state. Therefore, on 26 February 1992 the provisions of the ZTUJ started to apply for citizens of former SFRY republics who did not request citizenship under Article 40 of the ZDRS. On that date all citizens of other former SFRY republics ceased to have a registered permanent residence in the Republic of Slovenia unless they acquired residence permit, since the basis for registration had to be either citizenship or a permit for permanent resident of an alien in the state, while registration of a temporary residence required a permit for temporary residence in the state.

17. ZTUJ also had to regulate the status of citizens of other republics who did not request citizenship of the Republic of Slovenia. Since these persons lived in a newly founded state and were not their citizens by birth and did not request citizenship of the new state it was entirely logical that they are aliens with citizenship of the former republic of their origin. Hereby we must highlight the difference between aliens from other SFRY republics according to §2 Article 81 of the ZTUJ and »real« aliens according to §3 Article 82 of the ZTUJ: Residence permits issued under the Act on the movement and residence of aliens (*Zakon o gibanju in prebivanju tujcev*; Official Gazette of the SFRY, nr.56/80, including amendments) remained in force for all aliens who has a permanent residence on the territory of the Republic of Slovenia. In the case of aliens within the meaning of §3 Article 82 of the ZTUJ these were aliens, who were not citizens of other republics of the SFRY and who have on the basis of previously applicable legislation already regulated their permanent residence. Citizens of other SFRY republics never acquired such a permanent residence permit since they did not need one in the federal state, since they were considered aliens and could register their permanent residence like all other citizens of the SRS; merely on the basis of their SFRY citizenship. Situation of both groups of aliens is therefore not comparable.

18. The Government already described in its submissions to the Court the ways in which residents were informed about the possibility for regulating their status. To avoid repeating the Government reiterates that the possibility for acquisition of citizenship was sufficiently presented with the publication of the Citizenship of the Republic of Slovenia Act in the Official Gazette, while the same applies to the provision of Article 81 of the Aliens Act. Several newspapers, including Serbian Borba published several articles on the topic while information was available also through radio and TV channels.

19. Persons who failed to acquire citizenship of the Republic of Slovenia or di not request citizenship should have – according to applicable law – acquire a permanent or temporary residence permit if they wanted to continue to live in the Republic of Slovenia.

20. After 26 February 1992 these persons could regulate their residence according to general provisions of the ZTUJ concerning the acquisition of right to residence; i.e. provision of Article 16, which laid down the condition that prior to acquisition of a permanent residence permit must be preceded by three years of uninterrupted residence in the Republic of Slovenia on the basis of a temporary residence permit, while satisfying conditions specified in §2 Article 13 of the same Act. Draft ZTUJ, published in 1997 lays down in Article 16 the increased the condition of actual living on the territory of the Republic of Slovenia on the basis of a temporary residence permit to 8 years.

21. Since citizens of other former SFRY republics could not have met the condition of 3-year residence in the Republic of Slovenia on the basis of a temporary residence permit immediately when ZTUJ began to apply for them, therefore the Government (at its 18th meeting on 3 September 1992) adopted the decision on the basis of which 3-year residence in the Republic of Slovenia was recognised to such persons even if it occurred prior to entry into force of the ZTUJ: The person therefore had to have a registered permanent residence in the Republic of Slovenia where he/she actually resided at least three years prior to the effect of provisions of the ZTUJ. Thus a large number of citizens from other former SFRY republics, who had a registered permanent residence in the Republic of Slovenia on 26 February 1992 or the date of the effect of the provisions of the ZTUJ, were given the opportunity to acquire a permanent residence permit; i.e. in the period between 1992 and 1997 a total of 4.893 permits were issued.

22. In 1999 the Constitutional Court in the proceedings for the assessment of constitutionality decided with the decision nr. U-I-284/94 that the provision of Article 81 of the ZTUJ is not compliant with the Constitution since it does not lay down the criteria for acquisition of a permanent residence permit for persons under § 2 of this article upon the expiry of the time-limit within which these persons could request citizenship of the Republic of Slovenia, if they failed to do so or after the date on which the decision on the rejection of their request for citizenship of the Republic of Slovenia became final (§ 48) thus the Constitutional Court assessed such a solution, presented in §§19 and 20 as be unconstitutional. As a result of execution of the specified provision of the Constitutional Court the Republic of Slovenia adopted the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (*Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji*; Official Gazette of the Republic of Slovenia, nr. 61/99, hereinafter ZUSDDD). ZUSDDD simplified the conditions for acquisition of permanent residence permit for citizens from other successor states of the former SFRY since it did not contain a provision on the purpose of residence laid down in Article13 of the ZTUJ, but laid down the following three conditions: Registered permanent residence in the Republic of Slovenia on 23 December 1990, actual residing in the Republic of Slovenia from that date on and submission of a request within 3 months upon the enactment of the ZUSDDD (and/or within 3 months upon the final decision in the procedure for granting the citizenship of the republic of Slovenia under Article 40 of the ZDRS, if the decision became final after the enactment of the ZUSDDD) or actual residing in the Republic of Slovenia on 25 June 1991 and actual uninterrupted living on its territory from that date on and submitting of a request within three months upon the enactment of the ZUSDDD.

23. The legislator thereby followed the guidelines of the Constitutional Court on the regulation of a legal void, i.e. a special different regulation of issuing of permanent residence permit for citizens of other former SFRY republics, as well as other strangers, since it no longer required justification of residence in the context of education, labour, professional activities, marriage, etc. contained in Article 13 of the ZTUJ and laid down different residing requirements.

24. Prior to 24 June 2010 13.600 requests for issuing a permanent residence permit were filed, out of which 12.345 requests were granted and citizens of other SFRY successor states received their permanent residence permits accordingly.

25. In 2002 the Republic of Slovenia adopted the Act Amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, nr. 96/2002, ZDRS-

Č) which contained a transitional provision in Article 19 and provided another opportunity for acquisition of citizenship of the Republic of Slovenia under mitigated conditions to all aliens, who were permanent residents of the Republic of Slovenia on 23 December 1990 and have been uninterruptedly residing in the Republic of Slovenia ever since. The time limit for filing of requests under Article 19 of the ZDRS-Č expired on 29 November 2003. 2.897 requests were filed and 1.758 aliens received citizenship of the Republic of Slovenia under the specified provision.

26. Further on, the Constitutional Court re-examined the constitutionality of the ZUSDDD. With its decision nr. U-I-246/02 of 03 April 2003 it decide that specific provisions of the ZUSDDD are non-compliant with the Constitution of the Republic of Slovenia since it does not recognise permanent residence to those citizens from other SFRY republics, whose registration of permanent residence ceased on 26 February 1992, for the period from that date; since it does not regulate the permanent residence permit for citizens of former SFRY republics who were forcibly deported and since it does not specify the criteria for determination of an undetermined legal term of "actual residing". Time-limit for filing a request for a permanent residence permit in the Republic of Slovenia under ZUSDDD was re-opened according to the decision of the Constitutional Court. The latter means that under ZUSDDD all persons who fall within the scope of this act still request the acquisition of a permanent residence permit.

27. Applicants Velimir Dabetić, Ljubenka Ristanović and Tripun Ristanović never requested permanent or temporary residence permits in the Republic of Slovenia.

a) Objection of the non-exhaustion of domestic legal remedies

28. The Government highlights the established case-law of the Court in accordance with which the burden of evidence that an applicant had during the period under consideration at his/her disposal a domestic legal remedy lies with the respondent state. However, when the latter has been **proven the burden of evidence is on the side of the applicant to prove that he/she: a) exhausted the legal remedy or b) the remedy in actual circumstances was inappropriate and ineffective; or c) specific circumstances existed which justify non-compliance with this requirement** (this was explicitly defined by the Court in the cases of Švarc and Kavnik v. Slovenia, nr. 75617/01, 8 February 2007, § 26; *Lukenda v. Slovenia*, nr. 23032/02, 6 October 2005, §§ 43-44; *Akdivar and others v. Turkey*, nr. 21893/93, 16 September 1996, § 68).

29. The Government already stated in its reply to the application and later submissions which legal remedies are available to applicants to regularise their legal status. The number of those citizens from former Yugoslav Republics who successfully regularised their legal status proves that the listed legal remedies were also effective in practice, quite common and accessible to applicants and the applicants could have been exhausted them (i.e. in accordance with formal statutory conditions and within the specified time limits) to effectively stop the alleged violations. Presented legal remedies were accessible under equal conditions to all persons and are adequate and effective for repairing the alleged violations within the meaning of *Reilly v. the United Kingdom*, nr. 53731/00).

30. The above findings indicate that the applicants had the obligation to initiate appropriate administrative procedures. All persons who initiated such procedures and the administrative body rejected their request, or the Administrative Court decided in an administrative dispute

that a judgement is ill-founded and/or reasons for the dismissal of their lawsuit exist, had at their disposal additional legal remedies. Even in the event of silence of a state authority; when an administrative body fails to decide on the request of the applicant, the applicant can file a lawsuit due to the silence of the authority. Final legal remedy available to the applicants is the constitutional appeal, which must be lodged with the Constitutional Court.

31. The Government emphasizes that the European Court of Human Rights has never until now in any of the cases versus the Republic of Slovenia did not assess the constitutional appeal before the Constitutional Court as an ineffective legal remedy. Examples of filed Constitutional appeals submitted by the Government in previous written submissions and which were taken into account by the Court have shown that the Constitutional Court established that there had been a violation of human rights, heard and accepted the constitutional appeal and annulled the decision of a competent court and/or administrative body. The Government also emphasizes that the Constitutional Court - in any of its decisions in which it found the non-compliance of the ZTUJ and ZUSDDD with the Constitution - did not explicitly state that persons who have previously exercised their rights according to the listed acts are not obligated to first exhaust all domestic legal remedies.

32. Apart from the judgements on the constitutionality and legality concerning the erased the Constitutional Court adopted many decisions on the alleged violations of constitutional rights of these persons, which were enforced through a constitutional appeal. In some cases the Constitutional Court found that there had been a violation of rights safeguarded by the Constitution and adopted appropriate measures and ordered the administrative body how to act:

- e.g. it ordered to the administrative unit to register all the applicants until the adoption of the act which shall regulate the status of citizens of other former SFRY republics in the register of permanent residents of the Republic of Slovenia.
- The administrative unit has the obligation to re-enter the applicant into the register of permanent resident of the Republic of Slovenia until the adoption of the act, regulating the status of citizens of former SFRY republics, and/or until the expiry of time-limits stipulated therein, and issue a driving permit for the time being.

33. When adopting decisions in these two cases the Constitutional Court relied on its decision nr. U-I-284/94 of 4 February 1999 and thus filled the legal blank which occurred since the legislator has not yet amended the provisions of the Act for which the Constitutional Court concluded that it is not in line with the Constitution. In several other cases, relating to different fields of citizens from other republics, who have been transferred into the register of aliens, the Constitutional Court annulled the decisions by the administrative bodies and/or courts and returned the cases for re-examination or trial. Moreover, it provided the competent bodies how to act in order to respect constitutional rights.

34. The position of the Constitutional Court when the latter emphasised that **the fact that the legislator is late with the removal of non-compliances of the ZUSDDD and does not represent a barrier for deciding the actual case.** It therefore assessed that the Administrative Court can – if following guidelines of the Constitutional Court contained in the decision U-I-246/02 – despite the unchanged legislation decide in the case.

35. The Government also believes that **the applicants have not in any way proven that special circumstances existed which resolve them from meeting the requirement on the preliminary exhaustion of domestic legal remedies**. Cases from the established case-law of

the Court (i.e. *Akvidar*, listed above) represent **extreme situations which are completely incomparable with alleged violations in the present application**.

36. The position of the Court that the Government's objection on the non-exhaustion of domestic legal remedies is not acceptable in the present case is therefore erroneous.

b) Question of statelessness

37. The judgement of the Court in specific paragraphs states that the erasure from the permanent residents' register resulted in statelessness for individuals. In § 43 the judgement states that as a result the erased became aliens or stateless persons illegally residing in Slovenia. In § 317 the judgement states that some of the applicants were also unable to acquire citizenship of any other successor state of the SFRY andhave become *de facto* stateless persons. In § 361 the Court considered that the prolonged refusal of the Slovenian authorities to regulate the applicants' situation comprehensively, in line with the Constitutional Court's decisions, in particular the failure to pass appropriate legislation and to issue permanent residence permits to individual applicants, constitutes an interference with the exercise of the applicants' rights to respect for their private and/or family life, especially in cases of statelessness.

38. Erasure from the permanent residents' register therefore meant the cessation of the registered permanent address and had not had any impact on the citizenship of the erased individual. In the Government's opinion the statement concerning the responsibility for statelessness is legally and factually inaccurate. In the event of different broad interpretations of the judgement such a position of the Court could also have a significant impact on general and special measures which must be adopted by the Republic of Slovenia in line with the Court's judgement in order to ensure the applicants' right to respect of private and/or family life and the right to an effective legal remedy. In the Government's opinion such interpretations of the unfounded conclusion concerning statelessness from the judgement are realistic and already present.[1] The unfounded position on the occurrence of statelessness was neither verified nor alleged in proceedings before the competent bodies of the Republic of Slovenia, in particular the Constitutional Court. 40. Article 40 of the ZDRS which resolved the problem of administration of citizenships of residents in the Republic of Slovenia who had citizenship of other former SFRY republics did not result in statelessness, but – on the contrary – multiple (double) citizenship. With the provision of Article 40 the Republic of Slovenia resolved succession specifics for providing an opportunity for acquisition of Slovenian citizenship for SFRY citizens who did not have Slovenian citizenship at the time of independence. 40. According to Article 40 of the ZDRS the acquisition of citizenship of the Republic of Slovenia did not depend on cessation of original citizenship of another republic, now successor state of the former SFRY.

39. The dissolution of the former federal state – Socialist Federative Republic of Yugoslavia also caused in the segment of citizenship a change of legal status of persons, who were formerly citizens of a unified federal state and citizens of former republics (sovereign member

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[1] See:
1. http://blog.soros.org/2010/07/the-struggle-against-statelessness-advances-in-strasbourg/ ;
2. http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=68 ;
3. http://www.nationalityforall.org/news/victory-for-the-erased-at-the-european-court-of-human-rights/ ;
4. http://eudo-citizenship.eu/citizenship-news/364-ecthr-holds-slovenia-responsible-for-the-erasure

states[2] of a federal state). Since 28 August 1945, when the first act governing citizenship at a federal level (Citizenship of FPRY Act; *Zakon o državljanstvu FLRJ*) entered into force, citizens of the federal state (FPRY and SFRY) had a common federal citizenship and citizenship of one of the republics. Such an arrangement was in force on the territory of SFRY until the foundation of new international legal entities. The new legal order on the Republic of Slovenia entered into force on 25 June 1991 (Citizenship of the Republic of Slovenia Act, Official Gazette of the Republic of Slovenia, nr. 24/07-upb2).

40. Prior to the enforcement of the Citizenship of the Republic of Slovenia Act citizenship was governed by federal and republic acts. After 1945 the following acts governing federal citizenship were in force on the territory of the Republic of Slovenia: Citizenship of FPRY Act (Official Gazette of the FPRY, nrs. 54/46, 104/47, 88/48 and 104/48), Yugoslav Citizenship Act (Official Gazette of the SFRY, nr. 58/76) and three acts governing Slovene citizenship: Citizenship of PRS (*Zakon o državljanstvu LRS*; Official Gazzette of the PRS, nr. 20/50), Citizenship of the Socialist Republic of Slovenia (*Zakon o državljanstvu Socialistične republike Slovenije*; Official Gazette of SRS, nr. 11/65) and the Citizenship of the Socialist Republic of Slovenia (*Zakon o državljanstvu Socialistične republike Slovenije*; Official Gazette of SRS, nr. 23/76). Prior to 1991 there was statuary duality of citizenship: Federal and republic (no one had only republic citizenship without federal citizenship and vice versa). Republic citizenship was determined on the basis of legally relevant circumstances laid down in individual republic regulations (most often following the principle of acquisition of citizenship according to the republic citizenship of parents; in this context the Government highlights the significance of the statement with different republic citizenships on the determination of the child's republic citizenship; however, in the period between 1965 and 1988 a common circumstance taken into account when determining the citizenship of a child is the place of birth). In substance all acts laid down the same forms for acquisition of citizenship as the ZDRS, since these are generally acknowledged forms of acquisition of citizenship (through origin, birth on the territory of a state, naturalisation and according to an international treaty, whereas the ZDRS also provides the option to acquire citizenship with explicit acceptance). All acts also specified registration as a form of acquiring federal and republic citizenship, while republic citizenship could be further "changed" provided that the person, who wished to changed republic citizenship filed a request for approval (the person

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[2] The republics of former Yugoslavia had their own constitutions, their own laws and their own administration and their own jurisdiction, for which they were responsible and were also explicitly designated as "states" in federal and republic's constitutions. For a detailed overview of the development of the Yugoslav constitutional system (especially the relationship between the federation and the republics and the constitutional preference in favour of jurisdisctions of republics since 1974) see: Accetto Matej, On Law and Politics in the Federal Balance: Lessons from Yugoslavia, Review of Central and East European Law, Volume 32, Number 2, 2007, pp. 191-231 (41).
This was especially true since the adoption of the 1974 Constitution of the SFR Yugoslavia and of the republics' Constitutions of 1974 as well. The Constitution of the SFR Yugoslavia of 1974 "brought about an accentuated equality of all members and shifted the federal balance—previously heavily slanted towards centralization—in favor of the republics. [...] In other words, it instituted a system of 'cooperative federalism', whereby the members enjoyed original competences of their own but also a shared responsibility for the development of Yugoslavia as a whole (p. 202). [...] Yugoslavia had, thus, adopted a mixture of federal and confederal elements, which led some commentators to observe—in a more or less dissatisfied manner—that the latter, in fact, prevailed (p. 203). [...] The Constitution of 1974 abolished the distinction between the different *types* of federal legislation and replaced it with a strict enumeration of the federation's legislative rights and duties (p. 206). [...] The federal Constitutional Court was not competent to *rule* on the constitutionality of the members' constitutions but to merely state an *opinion* on the issue to the Federal Assembly. The issue ultimately had to be solved politically, not legally (p. 210). [...]

was also required to have a registered permanent residence in the republic in which that person wanted to acquire citizenship).

41. The forms for the cessation/termination of citizenship which had been legalised by the federal and republic acts are very similar in substance been to the forms legalised by the ZDRS (dismissal, rejection, revocation, international treaty). However, a special form of cessation/termination of citizenship was stipulated only by the legislation of the Kingdom of Yugoslavia and the Citizenship of the FPRY Act was the cessation of citizenship by absence. With the loss of federal citizenship republic citizenship also ceased to exist, while the change of republic citizenship (e.g. by receiving republic citizenship of another republic) did not result in the loss of federal citizenship; each citizen could have only a SINGLE republic citizenship.

42. In accordance with the provision of Article 1 of the Citizenship of the FPRY Act a citizen of the FPRY could have a citizenship of a single republic only. During the effect of the Citizenship of the People's Republic of Slovenia, citizenship of a people's republic could be lost by acquiring citizenship of another people's republic of Yugoslavia, while conditions where governed separately by republic regulations. During the effect of the Citizenship of the Socialist Republic of Slovenia Act (from 8 April 1965 to 1 January 1977) republic citizenship could be changed and it was possible to acquire citizenship of the Socialist Republic of Slovenia merely on the basis of a statement (Article 6 of the Citizenship of the Socialist Republic of Slovenia Act), from 1 January 1977 until the enforcement of the Citizenship of the Republic of Slovenia Act the change was possible simply on the basis of granting citizenship of the republic upon the interested person's request. Federal citizenship without republic citizenship did not exist; moreover, no person could have only republic citizenship. The forms of acquisition and/or loss of republic citizenship were subject to individual republic's legislation and regulations.

43. All citizenship acts in the former SFRY (federal and republic) provided each person with citizenship of a specific republic, while secondary acts to the federal and republic acts laid down the procedure for registration of citizenship in official records (citizenship books and later register of births). Citizenship books were kept by civil registry officers within local and city boards for the same territory, which was covered by their civil register. According to the provision of §1 of the Citizenship of the FPRY Act each citizen of a republic was also a federal citizen, therefore the register of republic's citizens also served as a register of federal citizens. Under Article 6 of regulations the citizenship book of a people's republic only included entries for citizens of the corresponding republic according to the place of their permanent residence. Apart from the citizenship book an alphabetical list of all registered persons was also kept, while archives for an individual entry included all documents on the basis of which the entry was completed and which proved the correctness of entered data. On the basis of Civil Register Basic Information Act (*Zakon o temeljnih podatkih za matične knjige*; Official Gazette of the SFRY, nr. 6/73) and the republic Civil Registers Act (*Zakon o matičnih knjigah*; Official Gazette of the SRS, nr. 16/74) the information on the republic and federal citizenship for newly-born children in the Socialist Republic of Slovenia was entered in the register of births after 1 September 1974. The entry of information on citizenship in the citizenship book finally ended according to active legislation on 1 January 1984. Since then the information on citizenship was entered into the register of births which was the basic statutory citizenship register under Article 26 of the Citizenship of the SRS Act (Official Gazette of the SRS nr. 23/76). Since the enforcement of changes of the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, nr. 127/06) the

information on citizenship is recorded in the civil register. However, it is undisputable that the sole entry in the citizens register had merely a declarative meaning since citizenship had to be based on then active regulations concerning citizenship.

44. Taking into account the above it is possible to conclude that the legal situation (esp. in the light of presented legislation, which was mainly used in 1991 and 1992) that it complied with the former (prior to 1991) fundamental and absolute legal rule of dual »citizenship« of the republic and federation and that the decision of the Republic of Slovenia not to automatically award citizenship to someone, who had (beside citizenship of the SFRY) citizenship of one of the other SFRY republics (regardless of the will of the person concerned) did not nor could have resulted in the alleged occurrence of statelessness. Moreover, in 2002 with the amendments of the Citizenship of the Republic of Slovenia Act (Article 19 of the Act amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia nr. 96/02, hereinafter ZDRS-Č) the legislative branch allowed the acquisition of citizenship of the Republic of Slovenia to all persons who had a registered permanent residence in the Republic of Slovenia on 23 December 1990 and have resided uninterruptedly in Slovenia from that date on; thus offering an opportunity to acquire Slovene citizenship under mitigated conditions to all persons who failed to acquire Slovene citizenship in 1991 under Article 40 of the Act. Legislative material indicates that the proposer of the act also lodged a proposal for amendments of the act with the specific purpose to facilitate the acquisition of citizenship under mitigated conditions compared to other foreigners for persons, who had a registered permanent residence in the Republic of Slovenia on 23 December 1990 and have been living in Slovenia ever since, regardless of the face whether they were citizens of other former SFRY republics or citizens of third countries. Overall 2.897 requests were filed on the basis of the ZDRS-Č, while 1.758 persons successfully acquired citizenship on this legal basis.

45. Since neither, the acquisition of citizenship under Article 40 of the ZDRS nor the acquisition of citizenship under Article 19 of the ZDRS-Č were not conditional upon the loss of former citizenship these persons also kept their former citizenship apart from Slovene citizenship. The legislator also stipulated that an individual's will shall be respected and the citizenship of the Republic of Slovenia was not forced upon anyone against his/her will and, while omitting the requirement of cessation of former citizenship, the legislator also respected the principle of prevention of statelessness.

46. Considering the fact that all successor states of the former SFRY when determining their citizenship bodies on the basis of republic citizenship (according to legislation governing citizenship in the former SFRY each citizen had one republic citizenship); in practice, each federal citizen (upon the dissolution of SFRY) should have automatically retained citizenship of one now-independent successor states. Consistent respect and enforcement of legislation of successor states in the area of citizenship should have provided each former federal citizen with continued citizenship of the successor state. Taking into account the fact that – in practice of the former SFRY legal statelessness was not possible – the dissolution of the common state should have not *de jure* resulted in statelessness. Hereby the Government reiterates that the cessation of registration of a permanent residence (i.e. erasure from the permanent residents' register) did not affect citizenship and/or did not result in the loss of former citizenship of the erased.

47. To conclude this part of the request the Government states that in the event that another successor state of the former SFRY denies further recognition of the right to citizenship to

anyone, who had previously had republic citizenship, and thus the other successor state causes the resulting statelessness this can be primarily regarded as a question of application of internal legal proceedings in that other state (question of internal legal remedies), and cannot be included in the examination of the present case. Moreover, in such cases sovereignty of other states must be taken into account due to the fact that a specific person is a citizen of another state.

48. The actual status of the actual administrative cases of the eight applicants who had been recognised as victims in the Court's judgement (i.e.: Mustafa Kurić, Velimir Dabetić, Ana Mezga, Ljubenka Ristanović, Tripun Ristanović, Alija Berisha, Ilfan Sadik Ademi in Zoran Minić) is as follows:

49. **Kurić Mustafa**, born on 8 April 1935 in Vražiči, Bosnia and Herzegovina had a registered permanent residence in the Republic of Slovenia on 23 December 1990; he did not file a request for citizenship of the Republic of Slovenia under Article 40; he did not file a request under Article 19 of the Act Amending the Citizenship of the republic of Slovenia Act (ZDRS-Č). On 21 June 2007 he filed a request for citizenship of the Republic of Slovenia on the basis of §8 Article 12 together with Article 10 of the ZDRS, however, the request was rejected since he did not have the alien status. He was served the decision of the Ministry of Internal Affairs nr. 213-936/2007/8(1323-15) of 27 July 2007 on 14 September 2007. The applicant did not file a lawsuit against the decision. He attached to administrative files photocopies of an old Yugoslav passport and a copy of a employment booklet which indicates that he was born on 20 May 1937 in Šipovo, Bosnia and Herzegovina. On 29 January 2008 he filed another request for citizenship of the Republic of Slovenia, which was rejected with the decision of the Koper Administrative Unit, nr. 213-8/2008-15 of 10 June 2009 (he failed to prove that he satisfies the requirement of an ensured income, while the body did not verify other criteria), which was served on him on 18 June 2009. He did not file a lawsuit. He attached to his request a copy of the entry from the birth register, issued on 28 August 1991, which states that he has BiH and SFRY citizenship.

50. **Dabetić Velimir**, born on 22 September 1969 in Koper had a registered permanent address in Slovenia on 23 December 1990; He did not file a request for citizenship of the Republic of Slovenia under Article 40. On 17 December 2003 he filed a request for citizenship of the Republic of Slovenia under Article 19 of ZDRS-Č. His request was rejected with the decision of the Ministry of internal affairs of the Republic of Slovenia, nr. 213-326.632/5 (1341-33) of 14 November 2005 (he failed to prove that he satisfied the condition of actual residence in the Republic of Slovenia), which was served on the applicant on 5 December 2005. No lawsuit has been filed against the decision. He did not attach any certificates on citizenship (mother Dabetić Ljubica, born on 25 April 1931 in Zagorije, Montenegro, registered in the Citizenship book Zagorije, page 194, nr. 1932; father Dabetić Velimir, born on 16 March 1935 in Kaludra, Montenegro attached to his request a Yugoslav passport, issued on 23 June 1998 and valid until 23 June 2008).

51. **Mezga Ana**, born on 4 June1965 in Čakovac, Republic of Croatia, had a registered permanent address in Slovenia on 23 December 1990; she did not file a request for citizenship of the Republic of Slovenia under Article 40. On 29 April 2003 she filed a request for citizenship of the Republic of Slovenia under Article 19 of ZDRS-Č. Her request was rejected with the decision of the Ministry of Internal Affairs of the Republic of Slovenia, nr. 213-346.208 (1341-33) of 13 June 2006 (she failed to prove that she satisfied the condition of actual residence in the Republic of Slovenia and the Slovene language skills requirement),

which was served on the applicant on 15 June 2006. No lawsuit has been filed against the decision. She attached a passport of the Republic of Croatia, issued on 24 February 1998, to the request.

52. **Ristanović Ljubenka**, born on 19 November 1968 in Karačić, BiH, had a registered permanent address in Slovenia on 23 December 1990; She did not file a request for citizenship of the Republic of Slovenia under Article 40 (she unregistered her permanent address on 20 November 1991). She also did not file a request for her under-age son Ristanović Tripun, born on 20 August 1988 in Ljubljana. Even later they did not file a request for citizenship. According to the archive on the entry of the birth of Ristanović Tripun (register of births Ljubljana, 1988/4749) Tripuns mother Ljubenka was – at the time of his birth – a citizen of the SR BiH, entered into the citizenship book Hajderovići, 11360.

53. **Ristanović Tripun** acquired citizenship of the former SR BiH; the information is entered into the register of births Ljubljana, year 1988/4749. He acquired citizenship upon birth since both of his parents were citizens of the former SR BiH (his mother was entered in the citizenship book Hajderovići, 11360; his father was entered in the citizenship book Kozluk 12061).

54. **Berisha Ali**, born on 23 May 1969 in Peć, Republic of Kosovo, had a registered permanent address in Slovenia on 23 December 1990; He did not file a request for citizenship of the Republic of Slovenia under Article 40. Even later he did not file a request for citizenship.

55. **Sadik Ilfan,** born on 28 July 1952 in Skopje, Republic of Macedonia (prior to his marriage his surname was Ademi) had a registered permanent address in Slovenia on 23 December 1990; He did not file a request for citizenship of the Republic of Slovenia under Article 40. On 23 November 1992 he filed a request for citizenship of the Republic of Slovenia under Article 10 of ZDRS. He attached to his application a citizenship certificate, issued on 19 November 1990 by the City Office for internal affairs of the city of Skopje, indicating that Ilfan Ademi was born on 28 July 1952 and had citizenship of the SR Macedonia and SFRY and was registered in the birth register of Skopje, year 1952, nr. 3083. During the administrative proceedings Ilfan Sadik also attached to his request a certificate issued by the Embassy of the republic of Macedonia in Bonn of 8 March 1995, certifying that Ilfan Ademi (no date and place of birth) is not a citizen of the Republic of Macedonia, while he received the same certificate from the same body on 5 March 1999. The information on the citizenship of the SR Macedonia and SFRY is also entered in the Skopje birth register, year 1952, nr. 3083.

His request for citizenship of the republic of Slovenia was rejected with the decision of the Ministry of Internal Affairs of the Republic of Slovenia, nr. 1341/10-XVII-331.087 of 9 September 2005 (he failed to meet the condition of actual residence in the Republic of Slovenia), which was served on the applicant on 23 September 2005. No lawsuit was filed.

56. **Minić Zoran**, born on 4 April 1972 in Podujevo, Republic of Kosovo, had a registered permanent address in Slovenia on 23 December 1990; He did not file a request for citizenship of the Republic of Slovenia under Article 40. On 23 September 2003 he filed a request for citizenship of the Republic of Slovenia under Article 19 of ZDRS-Č. His request was rejected with the decision of the Ministry of Internal Affairs of the Republic of Slovenia, nr. 328.097/4 (1341-07) of 21 February 2006, which was served on the applicant on 20 June 2006 (he failed

to prove that he satisfied the condition of actual residence in the Republic of Slovenia and the Slovene language skills requirement). The lawsuit against the decision was rejected with the judgement of the Constitutional Court of the Republic of Slovenia, nr. U 1748/2006-6 of 10 September 2008. He did not attach any certificates of citizenship to the application.

57. The information listed in paragraphs 49-56 therefore indicates that all applicants had a registered permanent residence in the Republic of Slovenia on 23 December 1990 and neither of them filed a request for citizenship of the Republic of Slovenia under Article 40 of the ZDRS. Three applicants (Ristanović Ljubenka, Ristanović Tripun and Berisha Ali) did not file a request for citizenship of the Republic of Slovenia under any legal grounds. Four applicants (Kurić, Dabetić, Mezga, Minić) filed a request for citizenship of the Republic of Slovenia under Article 19 of the ZDRS-Č, while one applicant (Sadik) filed a request under Article 10 of the ZDRS.

58. According to the Convention on the legal status of stateless persons, drafted in New York on 28 September 1954 a stateless person is a person which is not a citizen of any state under its domestic legislation. Since all applicants were born prior to the dissolution of the former SFRY they consequently acquired citizenship of one of the republics (this conclusion is also supported by documents submitted by the applicants in the proceedings before the bodies of the Republic of Slovenia and/or other official registers). Upon the dissolution of the former SFRY the fact whether applicants continued to keep their citizenship and whether they consequently became citizens of the successor states can only be confirmed or refuted by the competent authorities of the corresponding states according to procedures laid down in their domestic legislation.

59. According to the Government's opinion the Republic of Slovenia sufficiently justified the fact that in the case of listed applicants there are no legal nor actual grounds that a state of statelessness could have occurred.

c) Recognition of the status of victim

60. Among the applicants who should receive a permit for permanent residence with retro-active effect are also three (i.e. Velimir Dabetić, Ljubenka Ristanović in Tripun Ristanović) who have never requested a residence permit (temporary or permanent) in the Republic of Slovenia since their erasure from the register of permanent residents. Due to the above these persons cannot be considered victims of the alleged violations since they failed to exhaust all the available domestic legal remedies in the Republic of Slovenia.

61. In Government's opinion an overall assessment and/or opinion of the Court that the prolonged refusal of the Slovenian authorities to regulate the applicants' situation comprehensively, in line with the Constitutional Court's decisions, in particular the failure to pass appropriate legislation and to issue permanent residence permits to individual applicants, constitutes an interference with the exercise of the applicants' rights to respect for their private and/or family life (§ 361 of the judgement) and the assessment of violation of the right to an effective legal remedy since the most significant decisions of the Constitutional Court from 1999 and 2003 have not yet been implemented in full (§ 384 of the judgement), cannot imply recognised violations for those applicants who had never requested a permanent residence permit in the Republic of Slovenia following their erasure from the register of the permanent residents. Many persons erased from the register of permanent residents have, on the basis of legislation in force from the time of erasure from the register of permanent residents until the

entry into force of the Act Amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (*Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji*; Official Gazzette of the Republic of Slovenia nr. 50/10), acquired permanent residence permits and supplementary decisions with which their permanent residence permit has been recognised retroactively. Among such persons were also two of the applicants (Ljubomir Petreš and Jovan Jovanović). According to the Court's assessment all applicants who were already granted a permanent residence permits and supplementary decisions are no longer victims of violations of Articles 8, 13 and 14 of the Convention on the protection of human rights and fundamental freedoms (§ 311 of the judgement). Due to the above the Government objects to the finding that status of victims is recognised to individuals who have never requested a permanent residence permit in the Republic of Slovenia.

d) General measures

62. The Court ordered the respondent state to ensure the applicants' right to private and/or family life and effective legal remedies in this respect through appropriate general and individual measures. In §407 of the judgement the Court observed that, by its very nature, the violation found in the instant case on account of the failure by the Slovenian legislative and administrative authorities to comply with the Constitutional Court's decisions clearly indicates the appropriate general and individual measures to be adopted in the Slovenian domestic legal order so that the violations found may be remedied: enactment of appropriate legislation and regulation of the situation of the individual applicants by issuing retroactive permanent residence permits.

63. In its justification the Court took into account the fact that the Republic of Slovenia adopted the Act Amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (hereinafter: ZUSDDD-B; mentioned in §13 of the judgement), however at the time of deciding on the case it has not yet entered into force (also § 375). At the same time the Court summarises that a group of members of parliament demanded a referendum on the rejection of the Act amending ZUSDDD, with which it achieved a delay in its enactment. On 10 June 2010 the Constitutional Court decided that the rejection of the Act in a referendum would cause unconstitutional consequences.

64. The Government is of the opinion that the Court did not apply sufficient importance on the Constitutional decision of 10 June 2010 and therefore made an erroneous decision when it ordered the Republic of Slovenia to adopt general and individual measures to ensure the applicants' right to private and family life and effective legal remedies in this respect.

65. The Government clarifies that the decision of the Constitutional Court was issued and publicly announced on 15 June 2010. A written corrigendum of the decision of the Constitutional Court was served on the state's representatives who were present at the announcement as well as accredited Slovenian and foreign journalists. On the same day the Constitutional Court published the main corrigenda of the Decision on its web site and also notified the content of the decision to the Human Rights Commissionaire with the Council of Europe.

66. Due to the requested legislative referendum on the adopted ZUSDDD-B upon the initiative of the National Assembly of the Republic of Slovenia the Constitutional Court

decided with the decision nr. U-II-1/10-19 of 10 June 2010 that in the event of a legislative referendum, unconstitutional consequences would have emerged and decided to deny the referendum motion. In its decision nr. U-II-1/10-19 of 10 June 2010 the Constitutional Court also stated that ZUSDDD-B remedies the established unconstitutionality, specified in the decision of the Constitutional Court nr. U-I-246/02-28 of 3 April 2003, and other additional questions (regulation of the status of erased' children and regulation of retroactive status for citizens of the Republic of Slovenia) in a manner compliant with the Constitution, although the Constitutional Court in its former decisions did not require the latter, however these questions are inseparably connected with termination unconstitutionality. Constitutional Court also assessed that ZUSDDD-B will allow the regulation of the legal status of citizens of other former SFRY republics, who were deleted from the permanent residents' register if they had not already settled their status. During the examination of the referendum question the Constitutional Court also carried out a test of constitutionality of the adopted ZUSDDD-B and decided that its provisions are compliant with the Constitution. The Constitutional Court. In the relevant case it also relied on the above-mentioned decisions of the Constitutional Court from 1999 and 2003; the leading constitutional assessment and consequently it is almost certain that the specified decisions of the Constitutional Court were executed.

67. According to and in line with the decision of the Constitutional Court the Act Amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD-B) was published in the Official Gazette of the Republic of Slovenia nr. 50 on 24 June 2010 and entered into force on 24 July 2010.

68. With the enactment and implementation of the ZUSDDD-B all general measures were adopted or and appropriate legislation for remedying the violation and ensuring the right to private and family life and an effective legal remedy, was enacted correspondingly.

69. ZUSDDD-B provides for new regulation of criteria for issuing a permanent residence permits to those persons who were erased from the permanent residents' register and issuing of a special decision with retro-active effect (i.e. from the date of erasure until the date of acquisition of a permanent residence permit), as well as the opportunity for those citizens of other former SFRY republics who had been forcibly deported.

70. With the adoption and the implementation of the ZUSDDD-B the Republic of Slovenia adopted appropriate legislation to ensure the right to private and/or family life and an effective legal remedy. Consequently, the Government objects to the obligation ordered by the court in point 6 of the judgement concerning individual measures for the eight applicants. According to the government the legal basis for issuing a permanent residence permit to the eight applicants and special a decisions with retroactive effect is the national legislation of the Republic of Slovenia; i.e. the ZUSDDD-B. The decision on issuing permanent residence permits to the eight applicants shall be made in accordance with provisions of the ZUSDDD-B. Permanent residence permits for applicants will be issued under the condition that the applicants shall file requests and meet the criteria listed in the ZUSDDD-B.

71. In the relevant judgement the Court's decision, concerning the question of monetary damages for applicants for the suffered pecuniary and non-pecuniary damage, was to decide on the question of application of Article 41 of the Convention at a later stage, however it reserved the right to decide on that question as a whole. At the same time the Court proposed to the Government and the applicants to submit written observations on the subject matter.

72. It is must be reiterated that under Article 35 of the Convention the Court can examine a case only upon the exhaustion of all domestic legal remedies according to internationally acknowledged rules of international law. The mentioned rule on the exhaustion of domestic legal remedies therefore obligates the applicants in the present case to first exhaust legal remedies offered by the national judicial system in the Republic of Slovenia.

73. Applicable legislation in the Republic of Slovenia offers all persons equal protection of their rights in the proceedings before the courts as well as proceedings before other state bodies. The Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia nr. 33/91-I) in its Article 22 stipulates that: everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities, and bearers of public authority that decide on his rights, duties, or legal interests. Furthermore, Article 23 of the Constitution further stipulates that: everyone has the right to have any decision regarding his rights, duties, and any charges brought against him made without undue delay by an independent, impartial court constituted by law; While Article 26 stipulates that: everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or authority performing such function or activity within a state or local community authority or as a bearer of public authority.

74. Code of Obligations (*Obligacijski Zakonik*) from 2001 (Official Gazette of the Republic of Slovenia nr. 97-07 – officially consolidated act) in its section 7 within the chapter »Compensation of damages« (Articles 164-185) stipulates material and legal rules for the compensation of pecuniary and non-pecuniary damages while the Civil Procedure Act (*Zakon o pravdnem postopku*; Official Gazette nr.73/07 – officially consolidated act, nr. 45/08) stipulates process rules of the procedure according to which a court examines and decides in disputes originating from personal and family relationships and in pecuniary or other civil relationships of natural and legal persons.

75. Furtheron Article 14 of the State Attorney's Office Act (Official Gazette of the Republic of Slovenia nr. 94/07 - officially consolidated text, Official Gazette of the Republic of Slovenia nr. 77/09) stipulates that if a person intends to initiate a civil or other proceedings against an entity defended by the Stet Attorney's Office the person must propose to the State Attorney's Office to resolve the disputed relationship prior to the launch of a legal or other proceedings. On the basis of Article 7 of the State Attorney's Office Act the State in its bodies are represented by the State Attorney's Office in the proceedings before the courts.

76. The applicants Kurić, Dabetić, Mezga, Ristanović Ljubenka and Tripun, Berisha, Sadik and Minić failed to exhaust any of the legal remedies in the Republic of Slovenia and did not file any damage claims for the payment of damages fro pecuniary and non-pecuniary damage, nor did they lodge any lawsuits before the competent national courts referring to the payment of damages. Only upon filing of damage claims before the Competent Courts of the Republic of Slovenia and examination of circumstances of each specific case it shall be possible to establish before the national courts whether there are any material statutory grounds for the payment of damages in the specific cases of the applicants. In the event of filing claims only the competent court will be able to assess circumstances of a specific case and examine - on the basis of general civil law rules – whether there is any basis for liability for damages on behalf of the Republic of Slovenia; i.e. the existence of fundamental elements of a civil dispute: Unlawfulness, suffered damage, existence of a causation connection between the suffered damages and inadmissible actions, as well as existence of responsibility on behalf of

the person causing the damage. Since all four elements of a civil dispute in a specific case must be cumulatively given, the examination of its existence is linked to the procedure of taking evidence, which is possible only before the court (according to subject matter, since only before the court such a complex procedure of taking evidence is possible, as well as according to applicable Slovenian legislation). The mere fact of erasure however is only one of the elements examined during such civil proceedings.

77. In its decision nr. U-II-1/10 of 10 June 2010 the Constitutional Court established that in the event of rejection of the Act Amending the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia unconstitutional consequences would have occurred. The specified act regulates the status of erased persons both retro-actively and in the future. In the justification of the decision (§ 43) the Constitutional Court of the Republic of Slovenia stated: »Regulation of liability for damages within the ZUSDDD-B would actually mean the regulation of a question, which is not directly and inseparably linked to the remedy of unconstitutionality established in the decision nr. U-I-246/02. Publication of decisions on the basis of ZUSDDD and ZUSDDD-B on its own does not imply a new type of liability for damages on behalf of the state or new legal basis for enforcing damage claims that the question of judgement concerning damage claims against the state is not directly linked to the content of ZUSDDD-B.«

78. It is especially worth mentioning that the position of applicants (and/or erased persons in general) is not actually comparable with the situation of the applicant in the case of *Broniowski v. Poland* ([GC], nr. 31443/96, § 189, ECHR 2004-V) regardless of the fact whether we agree with the assessment that both cases are the result of a »systemic problem«; i.e. violations of the Convention are the result of non-functioning of the legal system and legal and/or administrative practice. The specified case concerned the question of violation of protection of property (Article 1 of the Protocol nr. 1 to the Convention), and therefore general measures and/or individual measures which had to be implemented by the respondent state needed to be appropriately adjusted and of material nature. However, the case of applicants in the case of Kurić concerns their status (therefore it is a problem of personal-legal nature or status nature) thus the general and/or individual measures which must be adopted by the respondent state should be appropriately adjusted. The question of potential damages is linked to consequences that the unregulated status could have had in a specific case (a person, who was erased could have lost his/her job, however the latter is not necessarily due to the erasure - these are questions which can only be judged and examined in the procedure of taking evidence before a court).

79. Finally the Court in its first decision in the case of Kurič stated that issuing of a permanent residence permit and supplementary decision in the case of applicants Mr Petreš and Mr Jovanović "represents an appropriate and adequate legal remedy for their applications concerning Articles 8, 13 and 14 of the Convention. The latter means that they can no longer allege that they have been victims of an alleged violation (§ 311).« The Court specified general and individual measures as "the enactment of appropriate legislation and regulation of the situation of the individual applicants by issuing retroactive permanent residence permits (§ 407).« The Court relied on the decision of the Constitutional Court.

80. Taking into account the fact that not even a single applicant filed a damage claim according to national legislation the Republic of Slovenia and the applicants cannot conclude any potential agreements on the payment of damages during this phase. If doing so, the Republic of Slovenia would have created a situation discriminatory to other persons who are

trying to prove the suffered damage through claims addressed to the State Attorney's Office or demand the payment of damages in civil proceedings..

81. Applicants (as well as all other persons) have at their disposal all legal remedies for the enforcement of damages according to national legislation of the Republic of Slovenia.

CONCLUSION

In line with arguments specified in paragraphs 12 to 81 the Government believes that its objection (to the dismissal of the Government's objection on the non-exhaustion of domestic legal remedies; recognition of the status of victims of violation of the Convention to Velimir Dabetić, Ljubenka Ristanović in Tripun Ristanović and that the Government should ensure the right to private and/or family life and effective legal remedies in this respect) has already been sufficiently justified.. The Government also believes that the question on the non-exhaustion of internal legal remedies and victim status of applicants as well as the question of appropriate general and individual measure represent important questions within the meaning of Article 43 of the Convention from both, the aspect of interpretation of the application of the Convention and the Protocols thereto, as well as a question of general importance. Another important question is also the question on the cause of statelessness, which could represent a potential interference in the sovereignty of other states. Taking into account the latter and due to clarity of established case-law of the Court, the Government proposes to the Court to grant its request and refer the case to the Grand Chamber.

The Government proposes to the Court to adopt the decision that application of applicants Velimir Dabetić, Ljubenka Ristanović in Tripuna Ristanović are inadmissible and are therefore incompatible with the Convention within the meaning of its Article 35(3).

The Government proposes to decide on the costs of the proceedings in line with its established case-law.

REPUBLIKA SLOVENIJA DRŽAVNO PRAVOBRANILSTVO LJUBLJANA

Lucijan BEMBIČ
State Attorney
Agent of the Republic of Slovenia

Attachment:

- B1 English translation of the decision of the Constitutional Court of the Republic of Slovenia nr. U-II-1/10-19 of 10 June 2010.