EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe
Strasbourg, France

URGENT

APPLICATION

AND REQUEST FOR INTERIM MEASURES

Filed on the basis of ***Article 34*** *of European Convention on Human Rights and* ***Articles 39, 40, 41, 45 and 47*** *of the Rules of Court*

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Versus

THE ACCUSED PARTY:

REPUBLIC OF SLOVENIA

II - AS TO THE FACTS

1. Explanation of a concept of citizenship in the former Socialistic Federative Republic of Yugoslavia (SFRJ): "federal citizenship", "republican citizenship" and "permanent residence"

In Socialist Federal Republic of Yugoslavia, a *status* of the citizen articulated on three levels.

Generally, the Yugoslavian citizenship guaranteed all civil and political rights: based on the Yugoslavian citizenship a citizen filed a request for a passport of a Socialistic Federal Republic of Yugoslavia at the local administrative unit in the place of his residence.

In addition, there was also a *status* of "republican citizenship", on the basis of which the individuals were officially registered into the register of the citizens of one of the six republics (Slovenia, Serbia, Montenegro, Croatia, Macedonia, Bosnia and Herzegovina) that formed the Yugoslavian Federation until 1991 (between the years 1991 and 1992, most of those Republics became independent).

The institution of "republican citizenship" was unknown to the public. Matevž Krivic, a former Slovenian Constitutional Court judge, publicly emphasized several times that in Socialistic Federal Republic of Yugoslavia this institution was completely unknown also to many lawyers. (compare J. DEDIĆ, V. JALUŠIČ, J. ZORN, *The Erased: Organized Innocence and the Politics of* Ex*clusion*, Ljubljana, 2003, p. 93[**doc. III**]).

Many people thus did not know their "republican citizenship" as registered in administrative classification. This classification was stored in the Archives of the Ministry of the Interior, and accompanied by information of an "ethnical identity" of the individuals.

There was also the third level, which was crucial from the civil rights' point of view, but at the same time quite surprising for someone who was not well informed about the multinational and multicultural federal structure of the Republic of Yugoslavia: the so-called "permanent residence".

The individuals obtained the "permanent residence" in the place of their actual residence almost automatically; however, many times the place of actual permanent residence was often different from the place where people were registered as "citizens of certain republic". The importance of a permanent residence became obvious only at the dissolution of the federal state between the years 1991 and 1992 when it became clear that the "permanent residence" is a basis from which nearly all economic and civil rights derived (the right to the housing, employment, education, health insurance, etc.) Only permanent residence was the basis that made Yugoslavian citizens "*citizens*" in the full meaning of the word; the concept of citizenship was therefore not tied to ethnicity, but to functionality and relation to the state that guaranteed the enjoyment of fundamental rights.

Based on "permanent residence" – and not on the republican citizenship – the Yugoslavian citizens had the right to vote on referendums as well as national and local elections.

Foreigners could also obtain "permanent residence" and consequently they enjoyed the same civil rights (except for the right to vote) as citizens of SFRY.

2. Conditions for obtaining citizenship of the Republic of Slovenia after the declaration of its independence

On 25 June 1991, Slovenia declared its independence from the SFRY. More than 200,000 persons (10% of the population) that were not registered in the Register of the Citizens of Republic of Slovenia permanently lived on the territory of Slovenia at that time.

On 6 December 1990, the National Assembly of the Republic of Slovenia promoted the core document of the Slovene independence process, the Statement on Good Intents. This document promised the members of the Italian and Hungarian minorities and the citizens of other Yugoslav republics, that the results of the plebiscite would not change their political status and their civil, economic and political rights. In this way they were invited to participate at the Plebiscite. The Basic Constitutional Charter on the Sovereignty and Independence adopted by the National Assembly of the Republic of Slovenia on 25 June 1991 stated:

> "The Republic of Slovenia guarantees the protection of human rights and fundamental freedoms to all persons in the territory of the Republic of Slovenia irrespective of their national origin, without any discrimination whatsoever, in accordance with the Constitution of the Republic of Slovenia and the treaties in force […]" (Article 3).

The Statement on Good Intents promised that it would be possible for the approximately 200,000 internal immigrants from the other republics of Yugoslavia, to obtain the Slovenian citizenship if they so desire.

This principle was enacted in the ***Citizenship of the Republic of Slovenia Act***, which entered into force on 25 June 1991 (on the day of the official announcement of independence) and in the **Constitution of Republic of Slovenia**. The conditions for obtaining the Slovenian citizenship for the members of other republics of the former Yugoslavia (i. e. internal immigrants) are defined in the Article 40 of the Citizenship of the Republic of Slovenia Act:

> "A citizen of another republic that had registered permanent residence in the Republic of Slovenia on the day of the Plebiscite of the independence and sovereignty of the Republic of Slovenia on December 23, 1990, and has actually been living here, shall acquire citizenship of the Republic of Slovenia if within six months of the entry into force of this Act, he/she files an application with the administrative authority competent for internal affairs of the community where he/she has his/her permanent residence."

There were three conditions for internal immigrants to obtain Slovene citizenship: 1) registered permanent residence in Slovenia on the day 23 December 1990 (the day of

the Slovenian Plebiscite); 2) actual, not just fictional, residence in Slovenia; 3) filled official application for Slovenian citizenship within the 6-month window.

Residents, registered as Slovenian citizens (in the Republican Register of Citizens), did not need to apply for the citizenship, since they got it automatically.

For the citizens of other republics who did not apply for the Slovenian citizenship or to whom a negative decision was issued, two months after the expiration of the date by which they could file their application for citizenship (i.e. on 26 February 1992) or two months after they got the final negative decision in the procedure of acquiring citizenship, became applicable the Article 81 of the **Aliens Act**, which states:

> "Up until the final effectiveness of a decision in the administrative procedure for obtaining citizenship of the Republic of Slovenia the provisions of this act shall not apply to citizens of the SFRY who are citizens of another republic, and within the six month window of the entry into force of the Citizenship of the Republic of Slovenia Act apply for the Slovenian citizenship on the basis of the Article 40.
>
> For citizens of the SFRY who are citizens of another republic, and who do not apply for the citizenship of the Republic of Slovenia within the deadline set forth in the preceding paragraph or to whom a negative decision has been issued, the provisions of this act shall begin to apply two months after the expiry of the deadline within which they could have applied for the citizenship of the Republic of Slovenia, or since issuance of a final decision."

According to the data provided by the Ministry of the Interior, approximately 171,000 residents from the other republics of the former Yugoslavia were granted Slovenian citizenship, based on the conditions stated in the above. 30,000 persons remained without citizenship. Among them, approximately 11,000 allegedly left the country; 18,305 allegedly did not file a request to obtain Slovenian citizenship in the prescribed time window (as already written, it was 6-month window only), or they applied for the citizenship in time, but their applications were solved by the negative decision (according to data provided by the Ministry, 2,400 applications were rejected on the basis of alleged criminal acts against the state or violation of public law and order). Either way, these persons used to have Yugoslav citizenship and permanent residence address in Slovenia: their documents (passport, driving license, ID, health insurance cards etc.) were almost as a rule issued by the Slovenian administrative units.

It has to be mentioned that the source of the information regarding the number of the erased persons (18,305) is the Ministry of the Interior. However, this information became public only after public pressure, campaigns of the erased and numerous heated debates in 2002.

It is possible that the number of persons, which found themselves in the position without legal status in the new state, is much higher. For example, a non governmental organization *Helsinki Monitor*, which used to be active on the issues concerning the erased persons' rights, encountered a higher number of the erased persons. They got the information that there were 62,816 erased persons, which was also delivered by the Ministry of the Interior in December 2000 (in the Annual Report of the *International Helsinki Federation for Human Rights*, 2001). There is no reliable information on the

number of the erased persons. However, the official information on 18,305 erased persons already presents about 1% of the Slovenian population.

The reasons why so many people did not apply for the Slovenian citizenship are diverse. Many could not obtain the necessary documents from the areas where the war just broke out. The others were not informed in time, because they were sick or were temporary absent from Slovenia. Quite a large percentage of the persons, that did not file an application for the new citizenship in time, were people of lower educational class that did not manage to utilize the media information on the citizenship procedure. Many of them did not get relevant information at the local administrative units. Numerous persons associated the Slovenian secession process and thus a decomposition of the former Yugoslavia with insecurity and did not want to renounce a status of a citizen of the SFRY for the status of the Slovenian citizen. In addition, in the period of the 6-month window to apply for the citizenship, Slovenia was not yet recognized as an independent state by the international community.

Many persons who did not apply for the Slovene citizenship confounded the concept of citizenship with ethnic belonging. They considered themselves Bosnians, Serbs, Roma, Hungarians, not Slovenes. Finally, there were also those who were falsely convinced that they would get Slovenian citizenship automatically, because they were born and grew up in Slovenia.

However, in any case, none of these persons could have ever imagined the actual consequences of a failure to obtain the citizenship of the new Republic of Slovenia. Suddenly and unexpectedly, they would find themselves in a position in which all rights that they had enjoyed until 1992 were revoked and trampled.

3. Erasure from the registers of permanent residents and the Ministry of the Interior's decree issued on 27 February 1992

On **26 February 1992,** the Ministry of the Interior of the new Republic of Slovenia, conducted a secret procedure of the erasure. This means that all members of other republics of the former Yugoslavia, who did not become Slovenian citizens under the article 40 of the Citizenship of the Republic of Slovenia Act, were removed from the Register of Permanent Residents. Following the data that the same Ministry published in 2002, this concerned 18,305 persons. This action, conducted on the bases of a Ministry decree, revoked numerous rights, legal and material base of these persons and their families' existence.

Namely, in Slovenia, all social and other rights (to descent accommodation, employment, education, health insurance, including the right to open or use a banc account) are tightly bound to the status of a permanent resident. This rule has been inherited from the former Yugoslavia.

Removal or the erasure from the Register was carried out without any legal ground. The affected persons were not notified about the revoke of their legal statuses. The Ministry transferred data from the Register of Permanent Residents to the "Register of Aliens without Permission to Reside in Slovenia". By this measure, 18,305 persons suddenly lost their civil, political, economic and social rights. The consequences of this

"virtual genocide", which happened on the computer screens of the Ministry of the Interior, were fatal and destructive for several ten thousands persons. The revoke of their rights, including the right to live in Slovenia affected not only the erased individuals, but also their family members.

However, in that time (26 and 27 February 1992) there was no sign of a change, everything seemed like it used to be. The life of the erased individuals continued in a normal way in peaceful, "democratic" state of Slovenia. Months, or in some cases, even years had to pass before the erased became aware that they were convicted to the "civil death". They encountered this shocking fact in different ways, by coincidence, i.e. by inaccessibility of their rights. However, this was no coincidence: underneath a planned and systematic administrative operation took place.[1]

The individuals found out that they were erased in different ways. Sometimes they were invited under a pretext to the local administrative units and were asked to present their passports and/or other documents, which were then destroyed by the employees in front of their helpless eyes. In other cases, they went to the public notary in order to certify the contract in the process of purchasing an apartment and then the clerks informed them that they could not certify the contract since they became "aliens" – even more – "illegal aliens". Many erased persons experienced the refusal of the medical treatment at general practice health services or in the hospitals (even if they were injured in a traffic accident) with an explanation, that as they were illegal aliens they do not have a right to free health insurance. This has happened to them despite they regularly paid their insurance contributions like all the other workers in the former Yugoslavia.

Since their permanent residence addresses and permits were revoked, the erased in the legal sense, over night became "illegal" aliens, in many cases even stateless persons without protection of any country.

Exactly twelve years after these tragic events, the daily newspaper **Večer** uncovered the "secret of the erasure". On the 25 February 2004, the article of Borut Mekina started with the following news:

> "The illegal and unconstitutional decree addressed to the local administrative units issued in 1992, has been finally found. The erasure happened on the basis of a decree no. 0016/04-14968. The Ministry of the Interior finally provided the documents on the basis of which the local administrative units in 1992 erased the permanent residents and launch the procedures for their expulsions. However, the police units firstly did not want to deport them without a written decision."

[1] "In 1992, I wanted to renew my driver's license in Dravograd. The clerk asked me to bring my passport because she had to enter some data. She took my passport, went to another room and punched it. […] It was strange, because the passport was issued in Dravograd and was valid until 1995. She said: 'You can't have your documents.' I was left without documents. She did not renew my driver's license but told me that I would have to renew it in my own country". (JELKA ZORN, *The politics of exclusion during the formation of the Slovenian State*, in *The erased. Organized innocence and the politics of exclusion*, Peace Institute, Ljubljana, 2003, p. 104-105).

The decree of the Ministry of the Interior no. 0016/04-14968, titled *Instructions for the Aliens Act Implementation*, was sent to all local administrative units on **27 February 1992**. Since this is one of the very crucial documents, we shall cite it:

> "By expire of the dates defined in the Article 81 of the Aliens Act (Official Gazette RS, No. 1/91), on 28 February 1992, the provisions of the Aliens Act shell come into force for all citizens of other republics, who did not apply for the Slovenian citizenship. For those who got a negative decision regarding their application for Slovenian citizenship, the Aliens Act will be applicable two months after they received a decision. All this persons need to sort out their status. Parallel with this clarification of the evidences shall take place.[2] In order to do this, the computer system to manage the aliens' evidences, has been established. A training to use this computer system will be provided. The training will take place according to the regions of what you will be notified in due time.
>
> In this period it is realistic to expect the numerous problems regarding those persons that will on 28 February become aliens, but did not apply for the permanent residence permit. We would like to remind you that documents which they posses, even if these have been issued by the relevant institutions of our country and if they are still valid, they have ceased to be valid because the status of these persons has changed.[3]
>
> Because of the different interpretations regarding the provisions of the cancellation of residence permits and forced removals of aliens under the Articles 23 and 28 of the Aliens Act, there is a confusion of how these Articles should be implemented, especially in cases when aliens reside in Slovenia unregistered or in the cases when they arrive to the country in illegal way (often they are even without means to support themselves).
>
> The Police persists, that in such cases the administrative units should issue a decision of cancellation of their residence status, however, this is not in accordance with the law.
>
> With regard to the Article 23 of the Aliens Act, the residence status may be cancelled only to those aliens whose residence on the territory of Slovenia is based on a valid passport, issued visa, permission for entry or residence permit. Only in these cases, the local administrative unit for the interior, on the proposal of the operative police department, issues a decision on the cancellation of the residence permit.
>
> If an alien comes to our territory in illegal way and resides here without permission, the Article 28 of the cited Act, shall be applied. This Act demands, that in the case, if an alien resides in the territory of Slovenia longer than allowed under the first paragraph of the Article 13, or resides longer than he is allowed by his temporary residence permit, the authorized official person of the Ministry of the Interior, leads him to the state border and direct him over the border, without any decision of the administrative unit."

[2] In the language of the Slovenian bureaucracy, the evidence corresponds to the term Register.

[3] The same documents (passport, driving license, etc.) were still valid for the Slovenian citizens; they had no problems using these personal documents. For the Slovene citizens Yugoslav passports were valid until June 1993 (Passports of the Citizens of the Republic of Slovenia Act, Official Gazette No. 1/91).

A lot of erased persons were forced to emigrate, they went to Italy, Germany and the new states on the territory of the former Yugoslavia. Some of them even had to pretend that they were asylum seekers or refugees in Slovenia – the country where they until recently lived on the same footing as other citizens. This happened to those who were "lucky" enough to come across a state employee, who was prepared to turn a blind eye and transfer them from the category of "the citizens without permanent residence" to "asylum seekers" or "refugees", who were coming in large numbers from war areas. For some this was the first step on the difficult path to the restoration of their "citizen recognition".

Many of the erased persons stayed in Slovenia, condemned to the illegal existence, whereby they often experienced detention at the police stations or in the Aliens Detention Centre. In some cases, the erasure resulted in the most tragic consequences: there have been cases of suicide and deaths because of the refusal and lack of medical treatment.

In the majority of cases, the erased lost their employment, without having a possibility of finding a new one. Many of them did not get their earned pensions. They could no longer drive their cars since their driving licenses, issued in Slovenia, ceased to be valid. They could not leave the country because then they would not be allowed to return. Some were exiled from their own homes, or they did not have a right – in contrast to the other tenants – to buy the apartment in which they had lived (in the process of the privatization process, the tenants had a possibility to buy the so called social apartments for a non-commercial price on the basis of so called Act of Jazbinšek). Because of the erasure, many families had to separate. Some parents experienced the violation of their right to formal recognition of biological connection with their own children.

Numerous erased were detained - and some of them are still detained – in the Aliens Centre. Many were deported from the country. Some of them first lost their property and were then exiled.

4. The decision of the Constitutional Court issued on 4 February 1999 which has enacted the Aliens Act (Article 81) was not in accordance with the Constitution

For the erased persons the discovery, that their rights were revoked came as a shock. For many years each of them dealt with the consequences of the erasure on individual level, in total isolation and despair. The secret manner in which the erasure was conducted led them to the conclusion that something was obviously wrong with bureaucracy, however they had assumed that injustice happened solely to them individually. They perceived their situations as incomprehensible, as random abuses that affected them by sheer coincidence.

For a decade the erased persons did not know, that the abuses they had suffered concerned at least every hundred person in Slovenia. It took several years for the truth to come out and for the erased to comprehend the erasure in its full nature. Gradually the victims of this quiet and complicated governmental operation started to meet, to share their experience and thus to became publicly visible.

Gradually high profile political and legal initiatives have been developed.

The cases of the erased reached the **Slovene Constitutional Court** that had to judge upon the laws and measures that deprived them of their rights. In the **decision from 4 February 1999, No. U-I-284/94** published in the Official Gazette of the Republic of Slovenia, No. 14/99, **the Constitutional Court judged that the erasure violated the Constitution and noted, that the erased were victims of the legal gap, since none of the existing legal provisions gave them a possibility to regulate their status.** Leading principle of this decision stated:

> "The principles of the rule of law were breached since the law did not regulate the transformation of the legal statuses of the citizens of the other republics, who had a permanent residence in the Republic of Slovenia and were actually living on its territory, to the status of aliens.
> Since the law does not regulate, in the transitional provisions, continuous residence of the citizens of other republics in the Republic of Slovenia, the principle of the protection of the legal safety was violated, which is one of the basic principles of the rule of law".

For the citizens of other republics, who legally resided on the territory of Slovenia and had the permanent residence, the law did not stipulate their transitional position, which caused that they found themselves in worse position than aliens, who had aliens status already before the independence of the Republic of Slovenia took place. Since there is no justifiable reason for the described discrimination, the absence of the legal regulation of these persons' statuses, means the violation of constitutional principle of equality.

Based on these departure points the Court decided:

> "The Aliens Act (Official Gazette of the Republic of Slovenia, No. 1/91-I, 44/97 and 50/98 – decision of CC) violates the Constitution, because it does not define the conditions for acquiring permanent residence permits for persons treated under the Article 81, Paragraph 2, after the period within which they could applied for the citizenship of the Republic of Slovenia in the case if they did not applied, or after the negative decision regarding the citizenship of the Republic of Slovenia became final.
> […] The legislator is obliged to remedy the established incompliance from the 1st point of findings within 6-month window, which begins after the publication of the above decision in the Official Gazette of the Republic of Slovenia.
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> Until the incompliance as described in the 1st point of these findings is remedied, the measures of the Article 28 of the Aliens Act concerning forced removals of aliens should not be applied in the case of aliens from other republics of the former Yugoslavia if on the day of the Plebiscite 23 December 1990, they had a permanent residence registered in the territory of the Republic of Slovenia, where they actually reside."

This accepted opinion, which enacts the right of the erased to re-obtain their statuses of permanent residents, were repeated by the Constitutional Court in its later decisions several times (Up-60/97, 15-7-99; U-I-89/99, 6-10-1999; U-I-295/99, 18-5-2000).

Two decisions of the Court (the first and the third) demanded the permanent residence status should be delivered retroactively, which means from 26 February 1992 onwards – i. e. from the day of the erasure.

5. Legal consequences of the decision of the Constitutional Court dated 4 February 1999

a) So called act "ZUSDDD" issued on 30 July 1999

With regard to Constitutional Court decisions the government was forced to respond. It has responded in three steps.

The first step was the introduction of 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* **(ZUSDDD)**, which was published in the Official Gazette of the Republic of Slovenia on 30 July 1999, determined the following conditions for anew acquisition of a permanent residence:

> "Article 1: A permanent residence permit may be issued to a citizen of another SFRY successor state (thereinafter: alien) who had permanent residence registered in the territory of the Republic of Slovenia on 23 December, 1990 and who has continued to live in the Republic of Slovenia since that date, or to an alien who was residing in the Republic of Slovenia on 25 June, 1991 and has continued to do so without interruption since that date, regardless of the provisions of the Aliens Act (Official Gazette RS, No. 1/91-I, 44/97, 50/98 – decision of CC and 14/99 - decision of CC), if they fulfill the conditions prescribed in this Act.
>
> Article 2: The request, for issuing the permission for permanent residence, has to be filed in the deadline of three months after this act enters into force, at the administrative unite of the community, where the alien resides."

It is obvious that Article 2 once again defines a very short deadline (only three months!) to apply for the foreigner status (one has to consider that the supplement to the application was a pile of documentation, which needed to be gathered on short notice).

Further criteria for the erased to regain their statuses of permanent residents was that they had to prove that they did not leave the territory of the Republic of Slovenia – notwithstanding that thousands of erased persons were forcibly removed or they were compelled, out of the different reasons, to emigrate!

None of the last, this Act enabled the erased to obtain permanent residence permit, but it ignored the **retroactive demand of the Court**[4] and preserved a gap in the personal civil curriculums on the account of the damage regarding social and economy rights and possibilities.

b) So called Act ""ZUSDDD-A" issued on 3 August 2001

The act ZUSDDD changed after two years, with the purpose to soften the Article 3 which originally prevented to obtain the permanent residence permits to those, who committed criminal offences. New act, titled "**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* **(ZUSDDD-A)** entered into force on 3 August 2001 and kept the central provisions of the act ZUSDDD unchanged (especially Article 1 and 2).

c) Amendments of the Citizenship of the Republic of Slovenia Act (ZDRS-Č) issued on 14 November 2002

The following year, the Citizenship Act was amended. The new version was titled "**Act amending the Citizenship of the Republic of Slovenia Act" -** *Zakon o spremembah in dopolnitvah zakona o državljanstvu Republike Slovenije* **(ZDRS-Č).** It has entered into force on 14 November 2002 and contained a special provision regarding the erased.

Article 19 defined **one year** window for the erased to apply for the citizenship under the following criteria:

> "An adult, who had registered permanent residence in the Republic of Slovenia on 23 December 1990 and had resided in Slovenia since that date can apply for Slovenian citizenship under advantageous conditions within one year, if he/she fulfills the conditions from Articles 5, 6, 8 and point 10 of first paragraph of Article 10 of this Act."

This Act enabled many of the erased living in Slovenia to obtain the citizenship and consequently the permanent residence. Besides, **the permanent residence was assigned only from the day of the acquisition of the Slovenian citizenship and without the retroactive character (meaning from the date of the erasure onwards).** Again, all those who were exiled or were forced to leave the country were entirely excluded; they did not meet the criteria set forth in this Article.

Two months after the promulgation, the Act ZDRS-Č was added to the latest version of the **Citizenship of the Republic of Slovenia Act** (ZDRS-UPB1) issued on 23 **January 2003**. This renewed Act has united all valid legal provisions regarding the citizenship and is still valid today.

[4] In spite of the decision of the Constitutional Court no. Up-60/97 issued on 15 July 1999 cited above, which determines a retroactive character and was issued before the ZUSDDD entered into force (see commentary to the decision of Constitutional Court issued 3 April 2003, point B).

6. The decision of the Constitutional Court issued on 3 April 2003 which enacted the unconstitutionality of the provisions of ZUSDDD regarding the conditions to regain a permanent residence

The Constitutional Court decision issued on **3 April 2003, No. U-I-246/02**, published in the Official Gazette of the Republic of Slovenia, No. 36/03 dealt with the provisions of the ZUSDDD Act (issued in 1999) and indirectly also with the provisions concerning the erased in the Act Amending the Citizenship of the Republic of Slovenia, Article 19 (issued in 2002).

Based on the investigation of the individual cases who managed to regain a permanent residence status, the Court promulgated unconstitutionality of the Act from the following points of view:

> "1. The *Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia* (Official Gazette RS, No. 61/99 and 64/01) **is inconsistent with the Constitution**, as **it does not recognize** citizens of other Republics of the former SFRY who were removed from the register of permanent residents on 26 February 1992, **permanent residence from the mentioned date.**
>
> 2. The *Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia* **is inconsistent with the Constitution, as it does not regulate the acquisition of a permit for permanent residence** by citizens of other Republics of the former SFRY from the previous paragraph **for whom the measure of the forcible removal of a foreigner was pronounced** under Art. 28 of the Aliens Act (Official Gazette of the Republic of the Slovenia, No. 1/91-I and 44/97).
>
> 3. Article 1^5 of the *Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia* is inconsistent with the Constitution for the reasons mentioned in the reasoning of this Decision.
>
> 4. Paragraphs 1 and 2 of Article 2 of the *Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia* **are annulled in the parts in which they determine a time limit of three months** for filing an application for the issuance of a permit for permanent residence."

This crucial decision has unambiguously underlined the principle, according to which the erased should not only regain permanent residences, but should have had **recognized their statuses retroactively** from 26 February 1992 onwards (point 1).

[5] Under this Article the possibility to obtain a permanent residence is subjected to the condition of **continuous residence** in Republic of Slovenia from 26 February onwards: "A permanent residence permit may be issued to a citizen of another SFRY successor state […] who had permanent residence registered in the territory of the Republic of Slovenia on 23 December 1990 and who **has continued to live in the Republic of Slovenia since that date**, or to an alien who was residing in the Republic of Slovenia on 25 June 1991 and has continued to do so without interruption since that date, […] if they fulfill the conditions prescribed in this Act."

Besides, two other provisions of the ZUSDDD Act were defined as unconstitutional: failing to recognize the rights of those who were **exiled** as a consequence of the erasure (point 2) and a condition to prove that they were **continuously residing** in the territory of the Republic of Slovenia (point 3).

Again the Constitutional Court defined the time limit for the government to annul the points of the Act that were not in accordance with the Constitution and by deciding this ordered:

> "7. The legislator is obliged to remedy the unconstitutionalities established in Paragraphs 1, 2 and 3 of the operative provisions within six months from the day of the publication of this Decision in the Official Gazette of the Republic of Slovenia.[6]"

The last point of the decision (point 8) enacts the obligation, that before the new act enters into force, **the supplementary decisions should be issued right away** (*dopolnilne odločbe*). These measure would remove the gap in civil *curriculums* of those categories of the erased who have already obtained a permanent residence permits.

> "8. **The permanent residence status of citizens** of other Republics of the former SFRY **is hereby established from 26 February 1992 onwards** if they were removed on that day from the register of permanent residents, by a permit for permanent residence issued on the basis of the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, the Aliens Act (Official Gazette RS, No. 1/91-I and 44/97), or the Aliens Act (Official Gazette RS, No. 61/99). The Ministry of the Interior must as an official duty issue them supplementary decisions on the establishment of their permanent residence in the Republic of Slovenia from 26 February 1992 onwards."

In the Constitutional Court decision following arguments are provided (point B II-15):

> "The principle of legal certainty as one of the principles of the rule of law under Article 2 of the Constitution requires that the position of the mentioned persons not remain unregulated for such period of time. **Permanent resident *status* is an important linking circumstance for the exercise of certain rights and legal benefits that the mentioned persons could not exercise due to the legally unregulated state of affairs.** Their position in the Republic of Slovenia was legally uncertain due to the unregulated state of affairs, as by the acquisition of the *status* of foreigner they lost permanent resident status in the territory of the Republic of Slovenia and found themselves in an unregulated position or in an essentially worsened legal position (e.g. that of having temporary resident status), which has lasted for some of the adversely affected persons for as much as ten years."

[6] Which means until the 16 October 2003.

In this part of the decision, the Constitutional Court clearly defines one of the fundamental points: the retroactive recognition of a permanent residence is not a reward without concrete effects, but means **a necessary preliminary condition for repayment of the damage and anew assignment of the legal rights and benefits which should be guaranteed by the new act. The National Assembly is obliged to adopt this new act in the sense of Article 7 of the decision.**

In the next part of the decision, the Constitutional Court expresses its opinion even clearer (points B III-22, B III-23):

> "Due to their unrecognized permanent resident status from the day when their legal status was, following the gaining of independence by the Republic of Slovenia, changed into the [different] status of a foreigner, citizens of other Republics **were not able to assert certain rights** that they would have otherwise been entitled to as foreigners permanently residing in the Republic of Slovenia. The petitioners did not explicitly define such, however, from the decisions of the Constitutional Court it follows that these in particular concerned the right to the advance payment of a military pension, the right to social security benefits and the inability to change one's driver's license. […] The citizens of other Republics to whom this Decision applies (Paragraph 13 of the reasoning), who could not assert certain rights due to their unregulated legal position, **will be able to assert these rights retroactively by means of the restoration of their permanent resident status, in conformity with the regulations dealing with particular fields of law."**

7. Numbers provided by the Ministry of Interior and the issue of so called aliens residing on the territory of Slovenia in the period of its secession [zatečeni tujci]

The Constitutional Court presented its arguments of the decision issued on 3 April 2003 as follows (point A6):

> "The Ministry of the Interior communicated the following data:
> – on 26 February 1992, 18,305 citizens of other Republics of the former SFRY who were registered until that date as permanent residents in the Republic of Slovenia were transferred from the Register of Permanent Residents to the records kept on foreigners;
> – on the basis of ZUSDDD, 12,937 applications for the issuance of a permit for permanent residence were filed;
> – as of 10 February 2003, 12,047 applications had been considered, of which 10,713 applications were granted resulting in the issuance of a permit for permanent residence, 288 applications dismissed, and 97 applications rejected; in 949 cases the procedure was discontinued due to the withdrawal of the application, or due to the fact that the applicant became a citizen of the Republic of Slovenia;

– until 10 February 2003, 1,033 permits for permanent residence were issued on the basis of Article 6 of ZUSDDD, as during the procedure it was established that ZUSDDS was more favorable for the applicant;
– the entire number of permits for permanent residence issued on the basis of ZUSDDD is 11,746;
– due to a failure to observe the time limit for the filing of an application, 79 applications were rejected."

As it can be comprehended, the Ministry of the Interior explicitly confessed that on 26 February 1992 they executed the erasure of 18,305 citizens, which had the permanent residence registered in Slovenia, and that they transferred their data from "the register of permanent residents to the register of foreigners". This information opened the possibilities to investigate and uncover the extent of the relatively large **operation of "administrative ethnical cleansing".** This number was inconceivable even for the activists of the erased movement. In their law suit filed to the Constitutional Court, they referred to the "unlawful position of approximately 10.000 residents, which lasted for many years" (point A1 of the reasoning of the decision).

Following the data of the Ministry 12,047 erased persons filed an application in order to obtain a status under ZUSDDD; the large majority of these requests was approved (11,746). The Ministry openly explains (point A6):

"The Ministry of the Interior does not maintain data on how many citizens of other Republics were forcibly removed on the basis of Article 28 of the Aliens Act, as the then applying Aliens Act did not prescribe the keeping of such a record."

Considering the issues concerning the numbers of the erased, it is possible to argue that data, forwarded by the Ministry of the Interior to the Constitutional Court, might be seriously underestimated. For example, the Minister of the Interior at the time Andrej Šter in some official document (which has never become public)[7] stated:

"To answer your questions on the issues of the statuses of the aliens and current administrative procedures for obtaining the Slovenian citizenship, we are forwarding you the following data from our computer record on 31 December 1995:
80,181 persons designated as an "ALIEN" (444 designated as passed away);
35,260 persons had the legal status of a aliens (valid permission for permanent or temporary residence, working or business visa);
20,432 persons' personal documents (one of the documents mentioned in the above) expired or its validity was not renewed;
24,489 persons never applied for any of the mentioned documents or visas (and have never regulated the status of an alien in Republic of Slovenia under the Aliens Act);

[7] This is an official and secret document of the Ministry of the Interior which was forwarded by the Minister Andrej Šter on 4 March 1996 to the president of the National Council of the Republic of Slovenia, Ivan Kristan.

950 persons' applications to obtain the permanent residence permit have been filled and are still under the consideration;
2,005 persons' applications to obtain the temporary residence permit have been filled and are still under the consideration.

The data of this document shows, that there have been in the computer record 44,921 persons designated as "aliens", of which the validity of the documents for residence has expired or they did not regulate their status in Republic of Slovenia.

Most of these persons, designated as aliens residing at the territory of Slovenia in the period of its secession [zatečeni tujci], were registered in the Register of Permanent Residents before 26 February 1992 and in 1995 they presented the majority of cases in the Register of Foreigners. One can assume that most of these aliens do not reside in Slovenia anymore, since more than a half of them never regulated their status, temporary or permanent residence permit, or temporary refugee status. The exception to this rule are those persons who applied for the Slovene citizenship (under the conditions of regular naturalization, i.e. after the deadlines of the Article 40 of the Citizenship Act) and therefore did not regulate the status of an legal alien or temporary refugee status."

8. Technical Act on the erased and supplementary decisions

Point 8 of the Constitutional Court decision from 3 April 2003 stated that the Ministry of the Interior must urgently begin to issue the supplementary decisions to the erased in order to restore their residence status retroactively, from 26 February 1992 onwards.

The mentioned Constitutional Court decision defines three groups of the erased, to whom the supplementary decisions should be issued; these persons obtained the permanent residence permit in one of the following three ways:

1) on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia
2) on the basis of the Aliens Act (Official Gazette RS, No. 1/91-I and 44/97)
3) on the basis of the amended Aliens Act (Official Gazette RS, No. 61/99).

The purpose of this part of the decision was to guarantee to a large part of the erased immediate and tangible recognition of their rights. This meant to be an interim measure and the permanent regulation should be introduced by the new Systemic Act, which needed to be adopted by the National Assembly until 16 October 2003 as stated in the point 7 of the decision.[8]

Events that followed later have gone to the directions, which essentially differed from the arguments set forth by the Constitutional Court.

Initially it seemed that all would develop in the best possible way. On 15 April 2003 the minister for the interior Rado Bohinc and the head of the *Sector for migration and naturalization* at the Ministry, Alenka Mesojedec Pervinšek, announced at the press conference, that they are planning to start the activities to implement the demands of the Constitutional Court. The Minister promised to prepare amendments or a new law, which

[8] It will be soon evident that because of the absence of this act the partial application of the point 8 of the decision of the Constitutional Court caused an extra fragmentation of the legal status of the erased.

would regulate the legal status of citizens of the former Yugoslavia living in the Republic of Slovenia. He also promised to issue the supplementary decisions ***to all those who were transferred from the register of permanent residents to the register of foreigners, with the decree on 26 February 1992.***

Later, at the press conference held on 23 June 2003, minister Bohinc explained that the governmental coalition has been already preparing a new law, examining 22,311 documents of the erasure and intends to issue approximately 12,000 supplementary decisions right away.

A month later, on 24 July 2003, the Minister asserted again, that the new act is almost prepared and that they are expecting to be able to issue the supplementary decisions in September 2003.

Unfortunately, the development that followed turned out differently. Namely, already on 30 July 2003 Zmago Jelinčič, the president of the extreme right political party Slovenian National Party [Slovenska nacionalna stranka, SNS], posed the parliamentary question in which he expressed a doubt regarding the correct procedures of the Ministry of the Interior since they stated that the supplementary decisions would be issued without a law regulating the whole issue of the erasure.

Political discussions have not extended beyond this point for several months. The issuance of the supplementary decisions that minister Bohinc announced to happen in short time, was thus delayed *sine die*.

In this time, the erased organized themselves to launch different forms of campaigns and protests. Between **September and November 2003** approximately 110 **urgent cases** were filed at the local administrative unites. They demanded supplementary decisions in order to get their statuses of permanent residents restored from the day of the illegal erasure. Their demand was founded on the Constitutional Court decision.

Parallel to these events there were discussions on the so called **Technical Act** in the Slovenian National Assembly. This Act meant to be the bases for issuing the supplementary decisions.

Technical Act was introduced in the National Assembly on 29 October 2003. Then on 5 November 2003 the National Council suspended it using veto. Once again and finally the law was adopted on 25 November **2003**. The crucial parts of this Act are as follows:

> "Article 1: This act regulates the conditions and procedure of issuing the decision on the permanent residence permit in the Republic of Slovenia to the citizen of another successor country of the former Yugoslavia, that had a registered permanent residence in Slovenia, on the day of 23 December 1990 and on the day of 25 February 1992 and who already obtained the permission for permanent residence on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia […] or on the basis of the Aliens Act (ZTuj and Ztuj-1) […].
>
> Article 2: The procedure of issuing the decision on the permanent residence permit to an alien […] in the Republic of Slovenia is conducted by the Ministry of the Interior […] ex officio.
>
> To an alien who obtained the permanent residence permit, under the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the

Republic of Slovenia or under the Aliens Act (Official Gazette RS, No. 108/02 – officially consolidated text), except to an alien who obtained the permanent residence permit under the Article 17 of the Aliens Act (ZTuj – 1991) or under the second paragraph of Article 41 of the Aliens Act (ZTuj-1 1999), the competent body issues a decision on his/her permanent residence in the Republic of Slovenia from 26 February 1992 or from the day of his/her erasure, up to his/her obtainment of the permanent residence permit as a supplement to the permanent residence permit.

Article 3: Regardless the regulations on the registration of the residence, the competent body ex officio makes an entry of the alien's data in the register of permanent residents or in the register of aliens with permanent resident permits obtained under the Aliens Act (Official Gazette RS, No. 1/91-I and 44/97) from the 26 February 1992 or form the day of the erasure onwards, until the obtainment of the permanent residence permit […].

If the competent body can not determine dates of the person's permanent residence with regard to the data from the previous paragraph, it shall request the administrative unit, which carries out a procedure of establishing the actual permanent residence, to make the entry for the person for the time period in which the address is not known."

As it is possible to understand, with regard to determination of the categories of the erased, to whom the supplementary provisions should have been issued, the Article 2 of the Technical Act is even more restrictive than the point 8 of the decision of the Constitutional Court.

Beside that, at the time when the National Assembly adopted the Technical Act, numerous erased applied for the Slovenian citizenship (and in many cases obtained it) based on the Article 19 of the Citizenship of the Republic of Slovenia Act issued on 14 November 2002 (ZDRS-Č). However, this Article did not provide the possibility to obtain the permanent residence permit in retroactive sense.

These persons (some of them were even family members) did not have a possibility to obtain the supplementary decisions of their residential status, despite that one of the conditions to obtain citizenship was to provide a proof that they ***continuously resided*** in the territory of Slovenia, ***from 26 February 1992 onwards***. In this way, a new paradox, which derives from the erasure, has been produced: ***those who obtained the citizenship before obtaining the permanent residence permits*** are ***discriminated against*** in the relation to those who did not yet succeed to become Slovenian citizens.

8. Referendum on the Technical Act and later political events related to its annulment

On 2 December 2003, 30 members of the parliament (13 from *Slovenian Democratic Party* – SDS, 8 from *New Slovenia* – NSI, 4 from *Slovenian National Party* – SNS, 4 from *Slovenian Peoples Party* – SLS and 1 from *Youth Party of Slovenia* – SMS) lodged a request to call for a subsequent legislative referendum asking voters, if the so-called Technical Act should be annulled or not.

On 8 December, their request was accepted. The government reacted to this with a statement that human rights "are not and cannot be the object of the referendum (because that would mean the violation of the constitutional principle of the rule of law)" and suggested to the National Assembly that the Constitutional Court should judge about the referendum proposal.

On 22 December 2003, the Constitutional Court proclaimed that it could not judge on the proposed referendum on the Technical Act, because the government did not respect the deadlines of the relevant procedure. Nevertheless, the Constitutional Court gave the **official statement** on the issue.

In the opinion of the Constitutional Court, the crucial problem was not the constitutionality or unconstitutionality of the request for referendum, but the fact, that **the Slovenian National Assembly has positioned itself outside of the constitutional domain**:

> "[…] ***Unconstitutional consequences have already appeared on 16 October 2003***, in the moment, when the six month deadline expired. During this time limit, the decision of the Constitutional Court issued on 16 April 2003 should have already turned into action. The **Constitutional Court considers every additional delay** that prevents implementation of its decision **equal to the extension of the unlawful state of affairs** […]."

In its statement, the Constitutional Court notified that execution of the decision from 3 April 2003, for the National Assembly means an obligation, in relation to which the outcome of the potential referendum is, in the legal sense, irrelevant. The Court demanded that the Ministry of the Interior shell issue the supplementary decisions by its official duty, what have been imposed in the point 8 of the mentioned decision.

The President of the state, Janez Drnovšek, also tried to convince the National Assembly to avoid the referendum, which would turn out into "referendum about the erased and their human rights, which is constitutionally unacceptable" (6 January 2004). Despite that, Slovenia unavoidably slid towards the referendum.

First months of the year 2004 were marked by the constant combat between the political groups. The National Assembly withdrew the so-called Systemic Act (which meant to regulate the whole issue of the erased and thus bring into action the principles enacted by the Constitutional Court decision).

On 3 February **2004,** the minister of the interior Rado Bohinc, finally started to issue **the supplementary decisions** that were confirming the permanent residence of the erased from 26 February 1992 onwards.

Two months later the referendum was held. Voters were invited to the polls to decide whether the Technical Act about the erased should be annulled, however wording of the referendum question was anything but simple. It was posed as follows:

> *"Do you agree that the act on the point 8 of the decision of the US RS no. U-I-26/02-28 (EPA 956/III), adopted in the National Assembly RS on 25 November 2003, enters into force?"*

On 4 April 2004, 31% of Slovenian voters (among whom of course were no persons that would be concerned by the erasure) went to the polls thus responding to the call of the right wing parties. In other countries, such small number of voters (less that one of the three potential) would be understood as a failure of the campaigners against the erased, what would led to the absurd annulment the absurd recourse to the referendum, which tried to prevent the implementation of the law imposed by the Constitutional Court. However, in Slovenia, the outcome of referendum got the opposite meaning: the victory of the xenophobic right wing parties.

Later political events continued to be harmful regarding the issue of the erased. The liberal, social democratic governmental coalition, while they were in power, endlessly prolonged the prescribed solution thereby acting ambiguously and obstructively.

On the other hand the right wing opposition parties using xenophobic discourse were not confronted with serious obstacles on their way towards election victory neither in Slovenia nor in Europe. They won **elections** held on **3 October 2004** thereby enthroned Janez Janša as new prime minister (president of the government).

Despite that the Technical Act was annulled, minister of the interior Rado Bohinc, continued to issue the supplementary decisions for some time. The legal base for this measure was found in the point 8 of the Constitutional Court decision of 3 April 2003. However, at the end of June 2004 issuing of the supplementary decisions stopped. Among 12,000 erased who, according to the opinion of minister Bohinc, met the conditions for these "supplementary decisions" only one out of three persons actually got it.[9]

Since June 2004 the Ministry of the Interior has not issued a single new supplementary decision.

On the account of the absence of the general act to regulate the entire matter of the erasure and the erased persons' rights, the supplementary decisions have proved to be practically useless. None among the erased has been compensated for material and immaterial damage that was caused by the illegal functioning and violation of their fundamental rights. The Slovenian government did not take any responsibility for the erasure. We could describe the acting of the government with the sentence: "It is not legal, it is not illegal. It is beyond legality".

The systemic act has never been adopted and the state of unlawfulness, declared by the Constitutional Court on 22 December 2003, has not been changed until today. The whole National Assembly and the entire country exist in the state of constitutional incompliance whereby the erased can be perceived as hostages and the Slovenian democracy as seriously endangered.

One of the crucial information in the story of the erased that needs to be emphasized is based on findings of different international organizations (see *infra*, §§ 10-11) that thousands of persons have still not obtained permanent residence permits. Some of them are allowed to reside in the Slovenian territory on the basis of different kinds of temporary residence permits, which brings about the state of unsolvable uncertainty. Many are even today still erased in the full sense of this term. Their situation is more and more dramatic: they survived fourteen years of violence, threats and systematic denial of

[9] The number varies between 3,327 and 4,372 and can be reconstructed on the bases of the Ministry of the Interior press releases.

human rights. The most tragic cases concern the minors that left Slovenia for a short time during their holidays, visiting their relatives. On their return to Slovenia they were forbidden to enter the country. This concerns a huge number of persons that live in poor conditions in Macedonia, Serbia, Bosnia, Kosovo and Croatia, Italy and Germany. Until today, they have not succeeded to regulate their status in Slovenia: even if they are born in Slovenia, they cannot get any document from the Slovenian state (see final thoughts of Commissioner for Human Rights at the Council of Europe, published in *infra*, § 11).

9. Initiatives at the European and international level regarding the position of the erased

Based on the initiative of the Italian-Slovenian network Karaula MiR – MigrazioniResistenze (Migrations-Resistance), European MPs Giusto Catania and Roberto Musacchio posed a parliamentary question to the European Parliament just before the announced deportation of the erased person Ali Berisha. The question is as follows:

> »Ali Berisha is a citizen of the former Yugoslavia, where he used to have all his civil and political rights guaranteed and until 26 February 1992. Until this date, he had a permanent residence in Slovenia. On 26 February 1992 the Slovenian government erased from the register of permanent residents several thousands of people (at least 18,305 according to the government's own figures) by secret operation. Thus they stripped them off their legal basis to live in Slovenia. They destroyed their personal documents in front of the eyes of the erased persons, they have lost the apartments, employment, health insurance. […] The consequence of the erasure was that Ali Berisha, previously employed in Slovenia and whose brother is a Slovenian citizen, was in 1993 detained in the Aliens Centre and deported from the Country. […] One has to take into consideration that the Slovenian Constitutional Court found these erasures to be unlawful and prohibited future removals of the erased persons. The Constitutional Court judged their status should be restored from 26 February 1992. One has also to consider that the Charter of Fundamental Rights of the European Union[10] (Article 21) prohibits discrimination of any kind, such as discrimination with regard to ethnicity, social class, genetic features, language and membership of a national minority. On 11 November 2005, the Slovenian Ministry of the Interior stated that the erasure was necessary to determine the basic citizenship body, and this is now the reason why Ali Berisha and his family cannot live in Slovenia. Are all these facts not a reason strong enough for the European Commission to find it necessary to ask the Slovenian and German government to prevent Ali Berisha's deportation and to ensure that he can regain permanent residence permit and thus his human, civil and political rights?"

The Committee for Economic, Social and Cultural Rights of the United Nations has been informed on the Berisha issue by the Amnesty International and has also called

[10] Charter of Fundamental Rights of the European Union, adopted in Nice, on 7 December 2000.

for fast and just decision in favor of the erased. For the same purpose Amnesty International sent letters to the president of the European Commission José Barroso and to the European Commissioner Franco Frattini.

In their annual report of 2005, Amnesty International emphasized the demand for respect of human rights in Slovenia in the following way:

> "Approximately 18,300 people were removed from the Slovenian register of permanent residents in 1992. Most of them were citizens of other former Yugoslav republics who had been living in Slovenia and had not filed an application for citizenship after Slovenia became independent. Many became stateless as a result, some were expelled from Slovenia. […] The Slovenian Constitutional Court judged in April 2003 that previous provisions to solve this issue were inadequate and ordered the Slovenian authorities to restore the permanent resident status of the former Yugoslav citizens who were unlawfully removed from Slovenian registers. […] AI has expressed concern on slow implementation of the Constitutional Court decision, and on the fact that individuals concerned might not be granted access to reparation, including compensation."

10. The position of the Committees of the United Nations about the respect of human rights of the erased

The Committees that were established on the basis of different agreements of United Nations for human rights have for some time been attentive to the question of the erased. These Committees repeatedly expressed their concern because of the effects that the erasure has on the respect of human rights, guaranteed with various international instruments.

Recently, the Human Rights Committee, established on the basis of the International Covenant of Civil and Political Rights, examined the second periodical report about the implementation of the Covenant, submitted by Slovenia (**Concluding observations of the Human Rights Committee, 25/07/2005, CCPR/CO/84/SVN**) and gave, among other, the following remarks:

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

Upon consideration of the fifth periodical report about Slovenia, the Committee on the Elimination of Racial Discrimination – established on the basis of International

Convention on the Elimination of All Forms of Racial Discrimination – also expresses concern and recommendations, which were unfortunately until now not taken into consideration. See **Concluding Observations of the Committee on the Elimination of Racial Discrimination, 02/06/2003, CERD/C/62/CO/9**, where it is written:

> "13. The Committee is encouraged by the steps taken by the State party to address the long-standing issue of persons living in Slovenia who have not been able to obtain citizenship. It is nevertheless concerned that many of the persons who have not acquired Slovenian citizenship may still experience administrative difficulties in complying with the specific requirements contained in the law. The Committee recommends that the State party give priority to addressing this issue and, taking into account the difficulties, which have arisen, ensure that the new citizenship legislation is implemented in a non-discriminatory manner.
>
> 14. The Committee is concerned that a significant number of persons who have been living in Slovenia since independence without Slovenian citizenship may have been deprived under certain circumstances of their pensions, of apartments they were occupying, and of health care and other rights. The Committee takes note of the efforts undertaken by the State party to address these issues and requests the State party to provide, in its next periodic report, specific information on these issues and on any **remedies** provided."

Also, the Committee on the Rights of the Child, established on the basis of the Convention on the Rights of the Child, examined the effects of the erasure on the execution of the obligations that derive from this document (**Concluding observations about the second periodical report of Slovenia, 26 February 2004, CRC/C/15/Add.230**) and warned about the following:

> "26. The Committee notes the rulings of the Constitutional Court (U-I-284/94 of 4 February 1999 and U-I-246/02 of 3 April 2003) that the erasure of about 18,300 people originating from other parts of the former Socialist Federal Republic of Yugoslavia had no legal basis and that the permanent residence status should be restored to the affected persons retroactively. The Committee is concerned that many children were negatively affected by this erasure, as they and their families lost their right to health care, social assistance and family benefits as a consequence of losing their permanent residence status and children born in Slovenia after 1992 became stateless.
>
> 27. The Committee recommends that the State party proceed with the full and prompt implementation of the decisions of the Constitutional Court, compensate the children affected by the negative consequences of the erasure and ensure that they enjoy all rights under the Convention in the same way as other children in the State party."

The clear appeal for the execution of the decisions of the Slovenian Constitutional Court about the erasure finally came at consideration of the first periodical report of Slovenia from the Committee on Economic, Social and Cultural Rights, established on the base of International Covenant on Economic, Social and Cultural Rights,

(**Concluding observations of the Committee, 25 of January 2006, E/C.12/SVN/CO/1**). The following findings of the Committee are most important:

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

11. The position of the Advisory Committee of the Council of Europe, established on the base of the Framework Convention for the Protection of National Minorities and the position of the Commissioner for Human Rights of Council of Europe:

The Advisory Committee of the Council of Europe established on the basis of the Framework Convention for the Protection of National Minorities was working on the problem of the erased when, evaluating the reports about Slovenia, it was issuing opinions in relation to the Article 25 of the Convention.

Above all, the following findings of the Committee that are referring to the opinion about the second circle of the reports, accepted on 1 December 2005, are important:

> "54. In its first Opinion on Slovenia, the Advisory Committee noted with concern the problematic situation of a number of former citizens of other republics of former Yugoslavia (SFRY), who found themselves foreigners in the territory they were living in and without confirmed legal status, following their removal from the register of permanent residents, in 1992.
>
> *Present situation*
> a) Positive developments

55. The Advisory Committee notes that a number of positive developments have taken place in this area. For instance, the Constitutional Court has taken a stand on these issues by clearly stating the need to restore, without further delay and retrospectively, the rights of non-Slovene former Yugoslav citizens who were, according to the Court, illegally removed from the register of permanent residents. The Advisory Committee also notes that efforts have been made at the legislative level to regularize the legal status of these persons, and that most of them have been granted permanent resident status in recent years on the basis of individual decisions issued by the Ministry of the Interior.

b) Outstanding issues

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

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

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

Recommendations

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

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

The Commissioner for Human Rights of Council of Europe, Alvaro Gil-Robles, examined the situation of the erased in his report from 15 October 2003, based on his visit

to Slovenia between 11 and 14 May 2003 (§§ 26-31). He recommended to the Slovenian authorities to "ensure that the situation of the persons erased from the list of permanent residents **be regularized without delay in the manner prescribed by the Constitutional Court**".

The next report, accepted on 29 March 2006, where the progress at putting into action the report of the Commissioner for Human rights is evaluated, states:

> "46. The **issue of erased persons continues to be a divisive and politically charged issue** in Slovenia and is the subject of heated debate. Regrettably, the issue has been frequently used by some political factions as a campaign tool. Especially during the period leading to the October 2004 general elections, **many politicians made xenophobic statements when referring to the issue of the erased persons** and to others considered non-Slovene or otherwise different.
>
> 47. In a ruling of April 2003, the Constitutional Court declared the 1999 law aimed at remedying the situation of the erased persons to be unconstitutional. The Court ordered that those who had already acquired permanent residency on the basis of the law, be granted permanent residence permits retroactively for the period from 26 February 1992 to the date if its formal acquisition. It also ordered the legislator to amend the law within six months to determine a new time limit for possible new applications for permanent residence permits.
>
> 48. The Constitutional Court decision imposed a duty on the Ministry of Interior to issue supplementary decisions giving retroactive effect to the residence permits to all those citizens of other former Yugoslav Republics, who were, on 26 February 1992, removed from the register of permanent residents, but who had since acquired a permit for permanent residence. The Constitutional Court's position was made clear in a further decision issued in December 2003 stating that the decision of April 2003 could be considered as sufficient legal basis for issuing decisions on permanent residence with retroactive effect, without there being any need for specific legislation. Following the Constitutional Court's decisions, the Ministry of Interior, after some delay, started issuing permanent residence decrees with retroactive validity. Approximately 4,100 such decrees have since been issued, but at the time of the follow-up visit, it appeared that the issuance of decisions was suspended.
>
> 49. According to the information received from the Association of Erased, out of the 18,305 erased persons, some 12,000 have over time either obtained citizenship or received a permanent residence permit. All of these 12,000 persons, according to the 2003 decision of the Constitutional Court, should have had their permanent residence status recognised with retroactive effect.
>
> 50. Regarding the enactment of the law required to regulate the status of those erased persons who had been expelled from or had left Slovenia, the issue is still unresolved. There has been an ongoing and heated discussion regarding this issue, which – quite apart from what the criteria for legitimate absence from Slovenia and the situation of the expelled should be – has focused also, on

whether the law should be enacted in the normal legislative process or adopted as a constitutional act.

Conclusions

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

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

53. The Commissioner is extremely concerned about the continuous public manifestations of **hate speech and intolerance by some politicians**. The Commissioner calls for greater responsibility of politicians and media in this regard and for the full respect of the rights and values laid down in European Convention on Human Rights and other international instruments."

12. The situation of the individual applicants

Placed within the above-described framework of complex political, legal and judicial circumstances are personal stories of Mr. **MILAN MAKUC**, Mr. **LJUBOMIR PETREŠ**, Mr. **MUSTAFA KURIĆ,** Mr. **JOVAN JOVANOVIĆ,** Mr. **VELIMIR DABETIĆ**, Ms. **ANA MEZGA**, Ms.. **LJUBENKA RISTANOVIĆ** and her son **TRIPUN RISTANOVIĆ**, of Mr. **ALI BERISHA**, Mr. **ILFAN ADEMI SADIK**, and of Mr. **ZORAN MINIĆ**, who are bringing a complaint in front of this Court against Slovenia based on the Article 34 of European Convention of Human Rights (from now on ECHR). The situations of particular applicants are mutually comparable, because they were all victims of the erasure from 1992 and they **could no longer obtain neither the Slovenian citizenship nor a permanent residence**; from that moment therefore they do not have a legal *status* and they live in total legal vacuum.

At this point, we will state some of the essential information for each of these stories, particularly stressing the consequences that the unlawful erasure from the register of permanent residents had on the life of the applicants. The analytical description of their situations and the documentation related to this refers to the material about each individual that is enclosed at the end of the application [**doc. II.1)-11)**].

1) MILAN MAKUC

Milan was born in Raša, in Istria (Croatia) on 11 February 1947. **Both parents were Slovenian, they were born and they grew up in Slovenia**. His father, Franc Makuc was from Cerkno nad Idrijo, his mother Frančiška Krapež from Vipava. The father, who was a miner, moved for a short time to Raša in Istria because of work (which

lies not far behind today's Slovenian-Croatian border). The rest of the family followed him. In the year 1953 father, mother and two sons (both born in Raša) returned to Slovenia.

From 1953 Milan lives in Portorož, in Slovenia, where he attended secondary school for hotel workers, and he worked for twenty-one years, mostly as a waiter, always regularly employed and paying pension, health and other contributions all those years.

Milan always considered himself as a Slovenian. He could not imagine that because of the first six years of his life that he spent with his family in Istria, he was not registered in the register of "Slovenian citizens".

In the year 1991 he was happy because of the independence of Slovenia. At the referendum, he voted yes.[11] When the armed conflict erupted[12], he presented himself at the White Cross (above the Bay of Piran) to join the Territorial Defense and defend his homeland in the case of attacks. Then, he waited to get the citizenship. Considering that he did not receive anything by post, he decided to get the necessary information at the Piran administrative unit. There they told him that he does not have a right to citizenship.

- Work

From the day of the erasure (26.2.1992), Milan has been without any legal *status*. He worked for the company of Marjan Bubala in Piran, near the stadium. When he was left without documents, he lost his employment and at the same time the twenty-one years of regularly paid pension contributions.

- Domicile

The company "Splošna plovba" where he had previously been employed, allocated him social housing at the address Ulica borcev 2, Lucija (municipality Piran). In the year 1991, they sent him a confirmation that he can buy this apartment for the lower price, like all other employees of this company (with Slovenian citizenship). Milan could not do so because he was left without documents as a consequence of the erasure.

When he lost his employment, after a certain time Milan could not pay the rent for the apartment anymore. He was threatened with the arrival of the inspection and forcible removal. His electricity, heating and water began being shut down.

One afternoon, when he returned home (he does not remember whether this was in the year 1994 or 1995) **he saw a police car in front of the door of the bloc of flats and all his personal belongings thrown into the garbage or in a mess on the floor**.

He was in a shock, he could not react. He run away, he did not have enough force to return and collect his personal belongings. **His documents also ended up in the garbage.**

From then he lived in a shed or "on the bench" in a park. Recently, he also had to leave the shed because the owner was performing certain works on the land where it stands (in Lucija, near Portorož). Now he is without a shelter, he lives of the charity of individuals, those, who protected him all these years.

[11] Like in other elections, it was only necessary to have »permanent residence« in order to participate at the referendum for independence of Slovenia, which took place in December 1990.

[12] This concerns a short, ten days long »war« between the Territorial Defense units of Slovenia and the Yugoslav People's Army that finished proportionally bloodless with the retreat of the latter.

- Health condition

Until the erasure, the applicant was of a great health condition. In the next 14 years, he could not go to the doctor anymore, **because as illegal alien he did not have any health insurance**. In this period, his health condition quickly aggravated because of the extremely bad living conditions. Most of the time he was homeless; he was living on the street and in the winter he took shelter in provisional, drafty shed. There were **lengthy periods when he was consuming very little or no food.**

For five years already, he has been experiencing **strong back pains**, because of which he can hardly walk (every step causes him pain, for a long time he was only capable of walking with a walking stick). He thinks that the pain is a consequence of "compressed" nerve at the lower part of the spine.

On the face, above the upper lip, he has a **big, open wound and bleeding haematoma** (example: photos enclosed). The consequence of this open and never treated wound was that he **lost a part of his lip**. **This haematoma is cancerous.**

- Present situation

With the exception of the time when they broke into his apartment by force, the police was never violent towards him. However, despite that, **all these years Milan was dreading that he will be deported to Croatia**. His exposed and vulnerable situation causes him to **live in never-ending anxiety**.

Desperately poor hygiene living conditions, extreme poverty, total dependence on charity of others, and on the "lenience" of the authority (in the context of the deprivation of all the rights), **incapability to heal his illness that deformed his face** – all this is a constant source of suffering for the sensitive person that is, despite this, striving to preserve the dignity and equilibrium.

Many times, he was at the administrative unit in Piran. They always dismissed him.

In the recent time social worker Dragica Rihter started to work on his case; with her help he filed a request for the permission of permanent residence based on ZUSDDD, on 1 March 2006. (See the wording of a letter that Dragica Rihter sent to the Ministry of the Interior on 15 May 2006)

2) LJUBOMIR PETREŠ

Ljubomir was born on 15 November 1940 in Jaružani, in the municipality Laktaši, in Bosnia and Herzegovina. As a construction worker he **came to Slovenia in the year 1958** to find work.

From 1958 until 1961, he lived in Tržič near Kranj, in the north of Slovenia. From 28 March 1961 until 11 February 1963, he served the military in Slovenia – in Maribor and Celje (document 5: military booklet, issued on 28 March 1961 by the Yugoslav People's Army in the Celje unit).

From 1963 until 1992 he lived in Piran, with a permanent residence at the address Vodnikov trg 2, Piran (document 7: perforated identity card, issued on 11 May 1982 at the Municipality Piran and valid until 11 May 1992; document 8: Yugoslav passport, issued on 13 May 1982, at the Municipality Piran.)

- Employments:

1958 – 1961: Company "Projekt" in Kranj and Tržič (full-time employment for indefinite time)

1961 – 1963: Military service in Slovenia

1963 – 1967: Company "Obnova Izola" (full-time employment for indefinite time)

1970: Fell seriously ill (TBC) and spent nine months, starting from May 1970, undergoing treatment in the Hospital for the treatment and rehabilitation of chronic pulmonary patients in Sežana.

1971–1992: He was working for different companies and for private entrepreneurs in Italy, Germany (company Inex Adria) and Slovenia. Because he was ill, nobody wanted to employ him regularly for full-time.

In seven years of employment for indefinite period of time, he regularly paid all social contributions; from 1970 he was registered in the register of unemployed (he handed his Employment Booklet to the Lucija Employment Service).

- The erasure:

In the year 1991, the applicant went to the administrative unit Piran, to learn whether he has to file a request for the citizenship because many of his acquaintances and friends warned him that he has to do this before the end of the year 1991. **He wanted to verify the information that seemed unusual to him, because he had not received any official warning by post.**

At the administrative unit, he asked if he has to file a request for citizenship and which documents he must obtain from Bosnia and Herzegovina (he was prepared to travel to provide the documents). The employee told him **that he does not need to file any request, because he had, already from the year 1963, a registered permanent residence in Piran.**

The applicant found out that he was erased already in the year 1992. On the one hand, it seemed unusual to him that he did not get an invitation to the local elections, but on the other hand, some of his friends notified him in March 1992 that the deadline to file a request for citizenship already expired. At the Piran administrative unit, they perforated his identity card (document 7). This happened, when he went there to prolong it: he wanted to visit Croatia (Buje that are situated near Piran on the Croatian side of the border). **The employee took away his identity card and perforated it in front of his eyes.**

This was in March 1992, and straight away he went to see a lawyer (Nikica Kljajić), who promised him to immediately file in his name a request for citizenship and he apologized for the delay in lodging the request.

Ljubomir had to pay the lawyer Nikica Kljajić the advance fee of then 300 German Marks. Because he did not trust him very much ("many told me that he takes money without doing anything"), he personally went to the administrative unit Piran after a couple of days to verify if they received his request.

They answered that they got it all. The employee asked him where he works. He answered that he is "privately" employed, as a private entrepreneur.

In a couple of days, the **Tax Administration demanded from the applicant the payment of taxes.** He went immediately to the administrative unit, to get the information

about that. Because he did not have enough money, he told the same employee that he could not pay the demanded amount.

Based on her reaction and the way that she treated him, he found out that he would probably have problems in getting any documents whatsoever at the administrative unit and that they would most probably keep his request for citizenship, without sending it to the Ministry of the Interior in Ljubljana. **Later, his lawyer sent the request for citizenship many times directly to the Ministry, without receiving any reply.**

Only in the year 1996, he received a first negative reply, with the demand to present a line of evidence that he could not acquire in any case. (example: documents enclosed)

- Employment:

Because they took away all valid documents that would allow him to cross the border, the applicant after the act of "erasure" **lost all possibilities to go to Italy**, where several opportunities for work were offered to him.

In Slovenia, he also could not find employment anymore. Consequently, he was left without money and **without any possibility to have a life worthy of a human being**.

- Health condition:

In the year 2001 the applicant had "spontaneous pneumothorax on the right side of the lungs" (document 9: The notice to the doctor, issued on the 30 October 2001 at the Hospital for treatment and rehabilitation for chronic pulmonary patients in Sežana; Document 10: a list of illness, issued on 2 November 2001 in the Hospital for treatment and rehabilitation for chronic pulmonary patients in Sežana).

He was in mortal danger and was urgently transported into the Hospital for treatment and rehabilitation for chronic pulmonary patients in Sežana, where the nurse at the reception office **did not want to admit him because he was without valid health insurance**. Doctor Srečko Stojkovski (of Macedonian nationality) spoke on his behalf and declared that he will personally take all responsibility for the treatment of Ljubomir Petreš, who was in mortal danger.

Ljubomir stayed four days in the intensive care (document 10). He was issued a bill in the value of 99.680 tolars (approximately 410 EURO) for the medical care and hospitalization (document 11).

Only after when the doctor Srečko Stojkovski again interceded on his behalf and asked the administration of the hospital to countermand the bill, **they allowed Ljubomir Petreš to be discharged.**

The doctor warned him that he **has a serious pulmonary disease and that he needs additional treatment for full recovery.** Considering that he **is without health insurance and without any source of incomes, the applicant cannot proceed in accordance with this instruction.**

- Domicile:

The consequence of the erasure was that the applicant lost his right to live in social housing in Vodnikov trg 2, Piran, where he was living from the year 1963 and so he had to leave. After the loss of domicile in Piran, he lived in different places as homeless.

- Freedom of movement:

The police frequently stopped him on the street and in bars, asked him for documents and sometimes threatened to deport him to Bosnia. In Piran and Portorož many police officers knew him; when they learned that he had been living in Piran from the year 1963, they stopped threatening him.

Because of all this, he was afraid to travel outside of the Piran municipality, because he did not know police officers elsewhere and he was afraid that they would hurt him.

Consequently, he almost did not move for more that 14 years from the Piran municipal territory. It is also clear that he could not travel outside of Slovenia to visit his relatives in Bosnia.

- The loss of the right to legal protection:

In the year 2003 he crossed the street like a pedestrian, at the marked pedestrian crossing in Belvedere (the place situated between the municipalities Izola and Piran), and a car hit him at full speed. The driver of the car Bradač, was entirely responsible for the accident. The ambulance took Ljubomir Petreš to the hospital Izola, where he was kept for three days: he had a broken collar bone and damaged skull.

After three days, **they demanded from him to pay the treatment**. Again, some other doctor from Macedonia protected him and asked the administration of the hospital to annul the payment.

Ljubomir Petreš asked the administration of the hospital to send him the medical documents about the accident and treatment by post, but he never received them.

His lawyer (Dokić) advised him **to sue the car driver**, who hurt him, but **he could not do this, because he was without documents**.

However, a few days later, he learned that the driver (Bradač) sued him **because of the repayment of damage of the broken front car window** – his application came to the judge for misdemeanors.

After a couple of days, **the police officers came** to his hut and **forced the door open**, when Ljubomir Petreš was still sleeping. They told him that he **has to pay immediately 7.000 SIT** (not giving him any document or issuing a bill), because he was supposed to be in the procedure at the Judge for misdemeanors. After this event, he was not informed how his case ended at the Court.

- Present situation:

Considering that the applicant does not have any valid documents, he is risking being taken to the Aliens Centre in Postojna any time and deported to Bosnia and Herzegovina.

The applicant is in bad health condition and does not have a possibility to get a proper treatment: he is a pulmonary patient; has problems with breathing, chronic cough, but he was not examined by a doctor since the year 2001.

The applicant does not have any permanent residence and forced labor is demanded from him. He has been living in a shed for 4 years (size of 3x2m, less than 2m height, constructed from thrown-away wood and other waste materials), without water, electricity and heating. The territory where the hut is situated (in Šentjane) is a

property of the municipality Piran, but the municipality gave this piece of land in administration to Mr. Bernardi, until the year 2016. The applicant is a victim of constant threats from Mr. Bernardi, who is trying to expell him from the land or he threatens him to expell him by force, if he is not going to perform for him the hard physical works for free. The social worker Dragica Rihter (the same person, who is working on a case of Milan Makuc) tried to find out how she can protect Petreš. The municipality Piran replied that Bernardi has a full right to expell him from the land, because he has this property on the lease from the municipality.

- Different administrative procedures of Ljubomir Petreš that were left unresolved:

From the day of the erasure from the registry of permanent residents, 26 February 1992, the applicant Ljubomir Petreš is **in Slovenia completely without any legal *status* and documents.**

On 29 December 2003, he filed a request for permanent residence, based on the act "ZUSDDD" (document no. 12, issued on 3 March 2006 at the administrative unit Piran). In March 2006, the administrative unit Piran (the director of the department Aris Loboda) ordered him to find four witnesses that will be capable to provide proof of his continuous and actual residence from the 1992 onwards.[13]

In the year 2002 the applicant tried to obtain the citizenship of Bosnia and Herzegovina; his sister and a friend requested the citizenship in his name, for the passport of BIH in the community Laktaši – the municipality of the applicant's birth (and they enclosed numerous documents). They were not successful because Ljubomir Petreš does not have a permanent residence registered in BIH.

The applicant first filed a request for Slovenian citizenship in March 1992 (through the lawyer Nikica Kljajić) and received different responses:

a) 29 November 1996: The Ministry of the Interior notified Ljubomir Petreš and his lawyer Nikica Kljajić that the request must be completed in the deadline of two months, in which he has to prove that he satisfies the numerous conditions.[14] In the case that the applicant will not enclose the demanded evidences or will not explain the reasons to the Ministry why he did not enclosed them, the procedure for obtaining the Slovenian citizenship will be stopped (document no. 1 – of 29 November 1996, issued by the Ministry of Interior; document no. 2 - of 4 December 1996; the letter of the lawyer Nikica Kljajić to Petreš, in which he notifies him about the demands of the Ministry of the Interior). His lawyer requested that the deadline for delivery of the completions to the

[13] The Constitutional Court decision of 3 April 2003 defines that this condition is not in accordance with the Constitution of the Republic of Slovenia.

[14] He mostly had to prove that: 1. he has secured housing (the prove the ownership of apartment or apartment house; the lease contract drawn in accordance with the Housing Act and registered at the competent organ for the housing issues); 2. that he has a secured permanent source for survival at least in the amount that enables material and social security (the employment contract, valid working permission, attestation about the amount of gross personal income for the last three months period), 3. that he was not convicted to prison sentence longer than one year (attestation about impunity that he gets at the competent organ for the interior in the community of his birth), 4. that he is not in a criminal procedure (the attestation of competent court that he is not in criminal procedure); 5. that he has all the tax obligations settled; 6. that he fluently speaks Slovenian language (the prove of the exam passed, issued from one of the official authorized centers).

request would be extended for the applicant, because Ljubomir Petreš did not have a chance to provide the demanded documentation in the demanded time.

b) 6 August 1998: The Ministry of the Interior demands from the lawyer Nikica Kljajić that he encloses within 3 months the missing evidence, emphasizing that in the opposite case the procedure will be terminated, on the base of Article 38 of the Citizenship of the Republic of Slovenia Act (document 3 –issued on 6 August 1998, by the Ministry of the Interior and sent to the lawyer Nikica Kljajić). Ljubomir Petreš could not gather all the evidences in 3 months.

c) 18 June 2000: The Ministry of the Interior **(**Internal Administrative Affairs Directorate, Migration and Naturalization Section) communicated to Ljubomir Petreš that his request for the citizenship is incomplete and warned him again to forward to the Ministry certain documents that are equivalent to those mentioned above, they only differ (in the negative sense for the applicant) in certain points (document no. 4 – of 19 June 2000, issued by the Ministry of the Interior).

3) MUSTAFA KURIĆ

Mustafa Kurić was born on 8 February 1935 in Vražić – in municipality Šipovo (Bosnia and Herzegovina). He is shoemaker by profession. He came to Slovenia in 1965, after he had been working for some years in famous shoemaker workshop in Sarajevo (that collaborated with France). After living in Ljubljana for a month, he moved to Koper. Until 1993, he lived at the address Ulica osvobodilne fronte 8, Koper. Since 1993, he lives at Čevljarska ulica 9, Koper.

- Employments:

From 15 April 1965 until 1970, the applicant worked (employed for indefinite time, regularly paying all the contributions) for the shoemaker Bogdan Stepančič in his workshop in Koper (Župančičeva 34). From 1970 until 1972, he was working in the company Tomos (Koper) and from 1972 until 1975 in the Trieste company for repair and sale of shoes "Nino Norbedo" (via San Giacomo 2, Treiste).

In 1976, he opened his own artisan's workshop, as independent artisan's worker, on the address Cankarjeva 13, Koper. Many years he had problems with registration of his company, because the municipality Koper intended to destroy the house where he had a workshop, without guaranteeing him an alternative location. Only in 1981, when the municipality Koper leased him premises at Triglavska 7 (document no. 3 – contract between Mustafa Kurić and municipality Koper for the rent of premises of 16,82 m² in Triglavska 7, in Koper), he solved the problem of registration.

From 1981, the applicant works as independent artisan in Triglavska 7 in Koper.

- The erasure:

In 1991, **in the period of the 6 months, when he should file a request for Slovenian citizenship, he had serious lungs disease and was hospitalized in hospital for pulmonary diseases for three months.** Despite the fact that he was determined to file a request for Slovenian citizenship, **his health condition did not permit him to do so**. At the same time, he was convinced that he would be able to file a request also later: "nobody notified me that this was the only chance to obtain the citizenship; on the

contrary, a lot of people guaranteed me not to worry, if I cannot file a request in this deadline."

In the year 1993, there was a fire in the house where his apartment was and he was left without documents.

Among rare things that were saved from the fire, were also his Employment Booklet and identity card, issued on 9 May 1985 in Koper. At that time he did not yet know that it was without any value.

He found this out after a couple of days. **He realized because of the fire that he was erased**; he went to the administrative unit Koper, to get the new documents, where the employee informed him that he cannot obtain them because he is no longer in the registers of permanent residents – he was erased.

- Work:

Because of the erasure, the applicant had to start working illegally. He continued to work in the same workshop and he was **paying the rent to the same community, which erased him.** Considering that he got less and less work, he could not make regular payments. At the end of 90', when he could not pay the rent for several months, the municipality sent him a notice several times that the **inspection will come to his place and seize all his valuable possessions.** When the inspection came, they discovered that he does not possess anything of value that they would be able to seize. The debts of Mustafa Kurić were still high, therefore he had to lease half of the workshop to the restaurant that is near and with the rent he settled part of his debts.

He has been without work for several months already, because of which he cannot pay the rent. Consequently, **it is highly likely that he will soon have new problems with the inspection.**

- Health condition and health insurance:

After serious health problems that he had in 1991, the applicant fell ill many times, without having a possibility to get medical care. Moreover, he was in a traffic accident: while driving a bicycle he was hit by a truck. When the police came to the scene of the accident, the policemen advised him to sue the truck driver, but this was not possible, because Mustafa Kurić was without documents. When the ambulance came, the paramedics established that he has a broken collar bone: but the applicant did not want to be hospitalized – even though the medical workers tried to convince him – because he was afraid that he will have to pay. His actual health condition is not good, because he has strong pains in the part of prostate and permanent pains in one leg (that is completely black from the knee downwards), however he does not have a possibility to get a free medical care and at the same time, he cannot pay it.

- The domicile:

At present time the applicant lives in the apartment that the municipality leased him (so called social apartment). Ever since, as a direct consequence of the erasure, the financial problems appeared, the applicant was not able to pay the rent regularly, and because of that the municipality threatened him for several times that he has to leave the apartment.

- Freedom of movement:

Until this moment the applicant has never been confined to the Aliens Centre or in any other similar institutions, still **his freedom of movement was strongly impeded**, because **he lives in constant fear that he will get stopped and deported** if he leaves the Koper municipality territory. In Koper, the policemen know him and they are not violent towards him, yet once, when he went only to Izola (the town closest to Koper), the local policemen threatened him with deportation: "If you will not regulate your documents right away, we will put you on the first flight to Sarajevo!"

The applicant is therefore actually forced to live in Koper, without having a possibility of freedom of movement on the Slovenian territory or outside of it - abroad: for more than 14 years he did not have the chance to visit his family and relatives that live in Sarajevo. Because of the difficult situation in the time of the war and also after, for some time he did not even know if his family members are still alive or not.

- Administrative situation:

From 26 February 1992 the applicant is without any legal *status* and documents. At the administrative unit Koper he asked several times, how he could regulate his legal situation, but he did not get any answer (the witnesses that went with him to the administrative unit are the journalist of *Primorske novice* Franko Hmeljak and private entrepreneur Mirzet Katheon).

In the year 2005, he wrote a letter to the Ministry of the Interior in which he requested the Slovenian citizenship (document no. 4 – letter of Mustafa Kurić to the Ministry of the Interior, of 7 May 2005). In this case he also received no answer.

4) JOVAN JOVANOVIĆ

Jovan Jovanovič was born on 30 August 1959 in the town Peljave, municipality Lopare (Bosnia and Herzegovina). He left Bosnia and Herzegovina in 1976, when he went to Slovenia to find work.

From the year 1978 until 1992 he was regularly employed in the Union Brewery, one of the two principal Slovenian breweries (document no. 3: Attestation of brewer factory Union, issued in 2006 that the applicant worked in this company from 1978 until 31 March 1992 – 13 years and 11 months).

He had a permanent residence in Ljubljana, at the address Triglavska 19, later he moved to the apartment at Ruska 4 in Ljubljana, which was allocated to him by the company in which he worked.

- The erasure:

The applicant did not file a request for the citizenship **in 1991, because he did not succeed to obtain the documents from Bosnia and Herzegovina and at the same time, he could not leave Slovenia.** He also did not believe that Slovenia would actually gain and preserve the independence.

The applicant found out that he is erased from the register of permanent residents when searching for work at some company. In this period the police, during a routine check, took away first his passport and then his identity card, issuing him a document that his identity card is to be found at the Ljubljana Municipality. When he went to the

Grosuplje Police Station and then also to the Ljubljana Municipality to get back his identity card, nobody could find it there. As he had no personal documents, he had to pay several fines to the police during their frequent controls.

- Employment:

The applicant stopped working in the Union Brewery and opened his own company (import – export between Slovenia and BIH), because he was not expecting that it will come to the armed conflict in BIH. Afterwards, he was registered for 6 months as unemployed at the Employment Service.

Because of the erasure and loss of all his documents, the applicant could not set up his own company, which resulted in him losing a permanent source of income, and the contributions that he was paying for 14 years of his regular employment.

- Domicile:

Two months after he stopped working at the Union Brewery, the applicant also had to leave the apartment, which the company allocated him. After this, he did not succeed in finding work and was therefore forced to live without permanent residence and shelter.

He now lives in a rented flat at the address Pot k Savi 13, Tomačevo in Ljubljana.

- Present situation:

The applicant is at **risk of being expelled from Slovenia to Bosnia and Herzegovina**. After he was erased he never left the territory of Slovenia (because in this case he could not return any more) not even to **attend the funerals of his brother and sister.**

The Ministry of the Interior rejected his request for permanent residence because of the absence of witnesses or documents that would prove the fulfillment of different conditions (illegally) demanded by law.

Until two years ago, he did not have a domicile: now he lives in Triglavska 19 in Ljubljana, but he does not have an employment.

- Family situation:

From 1992, the applicant **lived in non-marital partnership** with Ljubica Novaković, who is a BIH citizen, who succeeded to obtain the **Slovenian citizenship**. They have a son Slobodan Jovanović, who is in the second grade of secondary school and has a Slovenian citizenship. In addition, the sister of the applicant and other family members did not have any problems in obtaining the Slovenian citizenship.

- Administrative situation:

The applicant **filed a request for Slovenian citizenship in 2004.** In the reply from 14 April 2004, the Ministry of the Interior gave him one month to produce documents that attest to the following:

1) That he has a secured permanent source for survival at least in the amount that enables material and social security,

2) If he is regularly employed, the employment contract, the attestation about the amount of salary for the period of last three months and legally attested photocopy of Employment Booklet,
3) The statement about how many family members are living on the attested income,
4) The evidence that he has settled his tax obligations,
5) The extract from the birth register,
6) The evidence that he has the aliens status regulated,
7) Detailed CV,
8) *The evidence that he was not convicted to imprisonment sentence longer than one year* (issued in the country where he was born),
9) *The evidence that he actively speaks Slovenian language*,
10) The confirmation that he paid the administrative tax (in the amount of 34.850 tolars, circa 150 EURO).

Because of understandable reasons, the applicant could not undergo ***probatio diabolica*** that the Ministry of the Interior imposed on him, also because he could by no means prove that he has a legal *status* in Slovenia. Because of that, his request for the citizenship (despite that he satisfied numerous conditions with the enclosed documentation) was rejected.

5) VELIMIR DABETIĆ

Velimir was born on 22 September 1969 in Koper, where he finished primary and secondary school. In 1991, he went to Verona (Italy) for a few months, where he worked as a construction worker.

Even before the erasure, Velimir's family was exposed to serious threats and violent actions that were related to the fact that his parents were born in Montenegro. Just before the collapse of Yugoslavia, one neighbor reported them as hiding the Četniks.[15] At night the police broke into their apartment and tortured Velimir's brother Desimir. At gunpoint, Desimir was forced to walk on his knees for over than 2 km; from the apartment to the little house, where his parents were staying at the time. When they came to the house, they started to shoot: they fired more than 30 cartridges and by doing this destroyed the water cistern and several other things. When they came into the house, they aimed the gun at Velimir's parents, illumined them with reflector, all the time asking the question: "Where are the Četniks?" The parents kept responding that they never had any contact with the Četniks and that Velimir's grandfather was an important partisan hero. After a certain time, they finally agreed with their explanation and left the destroyed house, without any explanation.

- The erasure:

When Velimir Dabetić wanted to file a request for Slovenian citizenship at the Administrative unit Koper, the employee told him that he has to bring the Slovenian Employment Booklet. Velimir told her that he works in Italy. "If it is like this", responded the employee, "Italy has to give you the citizenship, not us." After this event, the applicant returned to Italy. Since then, he never again returned to Slovenia and many years nobody knew where he was.

[15] Četniks – soldiers of Sebia.

Like all other members of his family (father, mother and two brothers), Velimir was also erased from the register of the permanent residents, with only one difference. Considering that he was born in Slovenia, he could not obtain any other citizenship in the republics of former Yugoslavia (his brothers could demand, and also obtained Serbian or "Yugoslav" citizenship, because they were born in Montenegro).

- The applicant's residence in Italy:

Until 2002, the Italian authorities kept issuing Velimir the permission for residence *(permesso di soggiorno)* on the base of the "old" (red) passport of former Yugoslavia. In the period between 1990 and 1996, the applicant lived in Vecenza (near Vicenza in the town Monte Bello, where he lived with his brother for some time) and later in Verona (1996 - 2000).

When his passport expired in 2002, the Italian authorities did not extend his permission for residence anymore and he was forced to start living illegally. He could not work legally any more, he had to change his residences all the time, hiding. This is also Velimir's present situation: without permanent residence, "illegal", without any means of subsistence.

Since his illegal situation, he has traveled the places between Trento and Bolzano, then he went to Rimini; now he is in Senegallia (near Ancona).

- Administrative situation:

When all his family members again filled a request for Slovenian citizenship in 2004 (except his mother, who got the citizenship already in 1997), based on the Citizenship of the Republic of Slovenia Act, only his father got Slovenian citizenship.

The applicant's request for Slovenian citizenship, filed in 2004, was rejected. The applicant's requests to obtain the permission for permanent residence also remained without positive answer.

The Ministry of the Interior justified its negative answer (issued on 14 November 2005) with the fact that Velimir Dabetić was not continuously living in Slovenia from 23 December 1990 and in so doing that he does not satisfy the condition from the Article 10 of the Citizenship of the Republic of Slovenia Act, which demands actual residence in Slovenia within the last 10 years and continuous residence in the last 5 years before lodging the request.

The applicant also went to the Consular mission of RS in Trieste, to get the documents – the employees issued a document, stating that he is **a stateless person** … despite the fact that he was born in Koper.

- Family situation:

Velimir Dabetić cannot visit his family members (his ill father and aged mother, which **both have Slovenian citizenship**).

- Present situation:

Now the applicant lives in Italy, where the Italian authorities – without permission for residence – **ordered his expulsion from Italy**.

However, considering that he is without any citizenship, **they cannot expel him to any country.** He does have a right to get the status of *stateless person* recognized, based on the Convention that was adopted on 28 September 1954.

The request of recognition of the status without citizenship was filed at the competent Italian authorities; however, the decision process takes a long time. Considering that he actually could not follow the order that contained the decree for his expulsion, and therefore leave the Italian state, Velimir Dabetić was arrested on 16 June 2006. Immediately afterwards a procedure for criminal offence followed, based on the article 14, paragraph 5-*bis*, 5-*ter* and 5-*quinques* of d.lvo 1998/286, as well as on the amendments l. 271/2004 (law Bossi-Fini). Despite the fact that the judicial procedure finished with the release of the applicant because of the "irrelevancy of the criminal offence", as Velimir Dabetić has a "well founded motive not to leave Italy because neither Slovenia nor any other country would accept him", Velimir remains in legal vacuum because the Italian authorities did not yet legalize his status, as the Convention from the year 1954 relating to the Status of Stateless Persons imposes.

6) ANA MEZGA

The applicant was born on 4 July 1965 in Čakovec (Croatia). She came to Slovenia in 1979, **when she was 14**, and started to live at her sister's apartment in Ljubljana. At her sister's address she got her permission for a permanent residence.

Until 1987, she was working at different premises and enterprises, and between the years 1987 and 1992, she was regularly employed in M Hotel in Ljubljana.

- The erasure:

The applicant found out that she has been erased in 1992, when she had her second child, Enes. Considering that she had no valid Slovenian documents left, the enterprise for which she worked **cut or terminated her maternity leave to which she was entitled** (instead of the entitled 15 months of maternity leave, she could only use 6 months), and immediately afterwards the enterprise **fired her**. Because the applicant lost her job, she also lost her health insurance.

In March 1993, she was subjected to police control and was detained at a police station and then taken to Detention Centre. When she was dismissed from the Centre, she had to pay high penalty because she was without documents.

- Place of residence:

After spending a month at her parent's house in Croatia, the applicant came back to Slovenia where she found out that she lost her apartment (it is »social apartment« that she got from the enterprise where she was employed and in which she invested a lot of money). All her personal assets were put in boxes and taken to the storehouse that belonged to the enterprise.

Concerning the fact she did not feel safe in Ljubljana, she moved to the Slovenian coast, where she met Hasan Šabić with whom she still lives in non-marital relationship in Portorož. There, Ana applied for a "social apartment" for her and her family, but **the municipality of Piran did not consider her application, arguing that she has no**

documents. When her family finally got the »social apartment«, it was allocated to Hasan Šabić and the kids only; Hasan was considered as a single parent of the children.

- Family situation:

In 1996, Ana gave birth to her third child in Izola hospital. After birth, they demanded that she pays a large amount of money; otherwise, they threatened, they would keep her child. After this, she put in an application for the Croatian citizenship for her two children that lived in Croatia with her parents. Her two other children (Katja was born in 1997) have Slovenian citizenship, after their father.

After the death of Ana's father and considering the grave medical situation of her mother, her first two children – based on the regulations of the social services – were given to foster care to another family, without ever informing their mother, Ana.

- The present situation:

From 26 February 1992, Ana Mezga was in Slovenia without any legal status (despite the fact that two of her children are Slovenian citizens). She tried to get permanent residence permission several times, but the Ministry of the Interior rejected her applications several times, with the justification that she did not meet the condition of »actual and continuous residence in the Republic of Slovenia" (the condition that Constitutional Court ruled unconstitutional several times).

The applicant has no access to proper medical care, even though she has a stomach ulcer which causes her a lot of pain.

For several years Ana lives, with only a part of her family, in a one-bedroom apartment. The municipality of Piran still refuses to recognise her as a part of her own family because she has no documents.

7) and 8) LJUBENKA AND TRIPUN RISTANOVIĆ

Ljubenka vas born on 19 November 1968 in Zavidovići in Bosnia and Hercegovina. In 1986, she moved to Ljubljana because of work. In the years 1986 and 1987, she was employed in Ljubljana university hospital, and between the years 1987 and 1992 in the Hotel Lev. She married Ristan Ristanović who lived in Ljubljana. Their son Tripun was born on 20 August 1988 in Ljubljana.

- The erasure:

Because she had permanent residence, the applicant did not file the application for Slovenian citizenship, as she was sure it would be granted to her automatically.

On 26 February 1992, Ljubenka and her son Tripun were erased from the register of permanent residents and had no legal documentation up until the year 2004. In 1994, they were both deported to Serbia, near the Bosnian border (it was the time of war in former Yugoslavia).

Ristan Ristanović, Ljubenka's husband and Tripun's father, was not erased and was therefore not forced to leave Slovenia, because in 1992 he had temporary residence.

- Work:

After erasure, Ljubenka lost her work without being given the real reasons for this measure. Because she was without legal documents until 2004, she could not find employment and is currently unemployed.

- Health condition:

As a consequence of prolonged stress and anxiety that was caused by the erasure and breaking-up her family, the applicant suffered from a heart attack in 2004 and is still in **bad physical and mental condition**. She is under the threat of losing touch with her son Tripun, who can be deported from Serbia at any time because he does not have any valid Serbian document.

- The present situation:

From the erasure on, the applicant lives in Serbia with her son, but far away form her husband who stayed in Slovenia. Even though, after 12 years of apolidity, she got Serbian passport and identity card in 2004, she cannot stay with her husband because she has no valid documentation that would enable her expatriation. Because she is unemployed, the applicant has no health insurance.

Tripun was born on 20 August in 1988 in Ljubljana, Slovenia.

- The erasure:

After the erasure in 1992, Tripun was left without all legal documentation and was deported to Serbia together with his mother. After 12 years of apolidity, in 2004 he got Bosnian passport and identity card. He can attend school but cannot enforce any other right because he does not have valid Serbian documentation. From 1994, he lives far away from his father, in constant fear of deportation.

9) ALI BERISHA

Ali Berisha was born in Kosovo on 23 May 1969 and is Roma. He lived in Slovenia all his life, possessed passport of former Yugoslavia that was issued by Slovenian authorities and was registered in the register of permanent residents.

From 18 January 1989 until 18 January 1990, he served the Slovenian army, being summoned by the municipality of Maribor.

- The erasure:

In 1993, Ali Berisha found out he was erased from the register of permanent residents, when he was coming back to Slovenia from visiting his relatives in Germany. The Slovene police stopped him at the border, took his passport (which he never got back) without explanation, and forcefully transferred him to the Aliens Detention Centre in Ljubljana.

- Forceful detention at the Aliens Detention Centre and expulsion to Albania:

The applicant was held in the Detention centre for 10 days, **without being issued any legal act and without any explanation of the reasons for his detention. He also**

could not receive any visitors (not even his lawyer or his brother, a Slovenian citizen). The police just made him aware that he can no longer live in Slovenia as he was born in Kosovo.

After ten days, on 3 July 1993, Ali Berisha was deported to Albania. No legal documentation was issued to him at this occasion either.

When he got off the plane at Tirana airport, together with other deportees, he was stopped by Albanian police. As he had no passport, he had to board the same plane and was taken back to Slovenia.

When he came back to Slovenia, he was arrested by the police and taken back to the deportation centre, where he was threatened to be deported to the Czech Republic.
Ali Berisha succeeded to run away from the centre; he hurt his knee and secretly received treatment in a clinic in Celje.

- Migration to Germany:

After three days of medical care, Ali Berisha was visited by his friends who took him to his relatives with permanent residence in Germany. There he got the permission to stay (with the argumentation of humanitarian protection) that he kept extending for ten years.

During this time, the applicant lived in a reception centre Kaltstruc (the first month) and several other reception centres all over Germany. His migrations were dependent on decisions of German authorities, most probably based on momentary availability of space in these centres.

- Family conditions:

On 9 August 1996, Ali Berisha married a woman, born in Kosovo, who had Yugoslav citizenship (she is also Roma) and got residence permission from the German authorities due to humanitarian reasons.

In their marriage certificate, Ali Berisha and his wife are registered as Yugoslav citizens. In the next years, the spouses got four children (three boys and a girl); each of them was born in a different municipality. The children are registered as Yugoslavian citizens as well.

- Extradition from Germany:

In 2003, the German state passed a law under which the right to humanitarian protection was denied to refugees and asylum applicants from Kosovo, because the political circumstances in the province changed. Ali Berisha was denied the extension of the residence permission and was issued a provision of extradition.

The applicant demanded another legal judgment of the provision and managed to be granted residence permission due to humanitarian reasons. When the last extension expired on 19 September 2005, the German authorities ordered Ali Berisha and his family to leave the German territory and go back to Kosovo.

- Asylum application in Slovenia and present situation:

Ali Berisha and his family came back to Slovenia and sought help with lawyer Krivic (former Slovenian constitutional judge and former president of the association of

erased. With his help, Ali Berisha applied for the refugee status and was transferred to Asylum Home.

On 26 October 2005, the Ministry of the Interior of the Republic of Slovenia declared Slovenia as incompetent to resolve the asylum application (in accordance with the article 16 of the Dublin convention) and ordered, on 7 November, the extradition of Ali Berisha and his family to German authorities.

Because of the legal and media campaign that was sponsored by Amnesty International and the Italian-Slovene NGO network Karaula MiR - MigrazioniResistenze, the deportation of Ali Berisha and his family was declared illegitimate. Ali Berisha and his family live in Asylum centre in Ljubljana and are still erased at all levels.

10. ILFAN ADEMI SADIK

Ilfan Ademi Sadik was born on 28 July 1952 in the Former Yugoslav Republic of Macedonia and moved to Slovenia on 7 December 1972 for work.

- The erasure:

On 26 February 1992, he was erased together with his family. In 1993, the Slovene police deported his family to Hungary three times, because they illegally returned every time. For a long time they lived here in secrecy and locked themselves in their house because of fear of being detected by the police and deported back to Hungary.

- Work:

Ilfan was employed in Žito enterprise, in printing house Emona, Union Brewery and at the Slovene Railways. After he was erased, he was unable to perform any work.

- Extraditions:

After a police control in 1993, he was together with his family forcibly taken to the Bežigrad police station. Because they did not have any documentation, they drove them to Dolga vas border crossing and deported them to Hungary.

From Hungary, Ilfan's family went to Croatia, from where they returned illegally to Slovenia, where they lived in hiding, until police discovered them again and deported them to Hungary. After another return to Slovenia, they were deported to Hungary again.

- Legal situation:

Ilfan went to competent administrative unit several times and tried to sort out his status, but he had no success. They kept telling him he has to get Macedonian citizenship. He applied for it several times, but the Macedonian authorities kept denying his applications with the justification that he was absent from Macedonia for more than 20 years because he lived in Slovenia.

The Ministry of the Interior of the Republic of Slovenia denied his application for Slovene citizenship on 11 July 2005 with the reference to 3rd item of the 1st section of the Article 10 of the Citizenship of the Republic of Slovenia Act (document 10) because the applicant did not prove that he has actually lived in Slovenia for 10 years total, and consecutively for 5 years.

- Present situation:

Ilfan Ademi Sadik lives in Germany where he got the status of a foreigner, temporal permission of residence and a "foreigner's passport". He could get neither Slovenian nor Macedonian citizenship.

The Ministry of the Interior keeps denying his application for a grant of permission for a permanent residence with the justification that by the Act ZUSDDD the erased with the status of stateless person cannot get a permanent residence. **To sum up: according to the opinion of the Ministry, the applicant cannot have a permanent residence in Slovenia because he is without citizenship – and he cannot get the citizenship because he has no permanent residence in Slovenia.**

11. ZORAN MINIĆ

Zoran Minić was born on 4 April 1972 in Podujevo, in Kosovo. He came to Slovenia in 1977 with his family (mother Rada, father Mirko, sister Zorica and brother Gorica). He attended high school and underwent the professional training to become a cook. On 26 February 1992, the whole Minić family was erased (together with the third brother Miloš who was born in Slovenia).

In the summer of 2002, Zoran was arrested while he was working at his friend's. He was convicted to money penalty because of illegal work.

- Legal situation:

In 1991, the Minić family applied for citizenship, a month after the deadline because they had to enclose birth certificates of their children and finding them in the time of war was not easy. The administrative unit granted the application of mother Rada and both younger children (mother got her citizenship in 2000, Gorica and Miloš only in 2003). On 6 September 1996 sister Zorica, in a state of depression, attempted to commit suicide, resulting in cut of the nerve that ties the leg with brain. Zorica was granted citizenship in 2002.

- Deportation to Kosovo:

In the summer of 2002 Zoran was arrested by the police for illegal work; he was sentenced to money penalty. During the trial, Zoran had a temporal visa that would have expired six days after the end of the trial (on 17 June 2002). Irrespective of that, the police waited for him outside the courtroom and deported him – despite objections from his mother – to the Slovene-Hungarian border. They told his mother she would have to pay the expenses of his deportation to Kosovo.

It all happened without any legal background or written explanation, even though the decision of the Constitutional Court from 4 February 1999 explicitly forbids the deportation of persons that had, like Zoran did, permanent residence in Slovenia on the day of 23 December 1990 (*supra*, ρ II.4).

About a year after the deportation, Zoran got a visa and came to visit his mother; he applied for Slovene citizenship in accordance with the article 19 of the Citizenship of the Republic of Slovenia Act.

- Present situation:

Zoran now lives in Serbia where he got a status of the refugee from Kosovo (he is now a double refugee: erased in Slovenia and prosecuted in Kosovo). He has no economic resources. He married a Serbian citizen and they have four children, for whom they get a financial support of 50 euros per month.

In 2002, **he applied for citizenship**. In the spring of 2006 he was formally invited to come to the Ljubljana administrative unit because of »handing over of documents of the Ministry of the Interior of the Republic of Slovenia related to granting the citizenship of the Republic of Slovenia«. He assumed his application has been granted.

However, the Slovene consulate in Belgrade did not want to grant him the entry visa for several months. On 28 June 2006, Zoran finally came back to Slovenia (with a visa that was valid until 2 July 2006) but he found out that his application was denied. He is now in danger of a new deportation.

III. VIOLATIONS OF THE CONVENTION

A. INITIAL FINDINGS

1. The competence ratione temporis and the "continuous" nature of the violations of the European Convention of Human Rights (ECHR), which were a consequence of the erasure of the applicants from the register of permanent residents by the Slovenian authorities

1. Slovenia ratified the ECHR and its Protocols 1, 4 and 7 on **28 June 1994**. At the same day it accepted for the first and indefinite time a right to the individual petition (Article 25 of the preceding ECHR) and judicial competence of European Court (Article 46 of the preceding ECHR), without declaring any reservations.

2. Considering the established jurisprudence and in accordance with the general principles of international law "the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party". However, in spite of this fact it is clear that **the European Court (hereinafter: the Court) has competence *ratione temporis* in cases of violations of a continuing character whose harmful consequences continued to exist even after ECHR was ratified by the signatory State.** The Court particularly emphasized:

> "facts subsequent to the entry into force of the Convention in respect of one Contracting State cannot be excluded from the jurisdiction of the Court even where they are merely extensions of an already existing situation. From the critical date onward all the State's acts and omissions not only must conform to the Convention but are also undoubtedly subject to review by the Court" (e.g. decision of 29 June 2000, application No. 47634/99, *Kadiķis v. Latvia*, and decision of 7th March 2002, *Trajkovski v. Macedonia, Former Republic of Yugoslavia*).

3. As the Court explained, "the concept of a 'continuing situation' refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicants victims" (e.g. Eur. Comm., decision of 9 April 1996, application No. 25681/94, *McDaid and Others v. Great Britain* and Eur. Court, judgment of 24 September 2002, *Posti and Rahko v. Finland*). Therefore, not only that "from the ratification date onwards, all of the State's acts and omissions must conform to the Convention" (e.g. judgment of 8 June 1995, *Yağcı and Sargın v. Turkey*, § 40), but, under the ECHR and its Protocols, the State is also responsible for violations that are a consequence of the continuing situation incompatible with the respect of rights and freedoms protected by ECHR (e.g. in particular judgment of 24 June 1993, *Papamichalopoulos and others v. Greece*, §§ 40-46, judgment of 24 October 1995, *Agrotexim and others v. Greece*, § 58 and judgment of 18 December 1996, *Loizidou v. Turkey*, § 41).

4. This is also regulated by the Draft Articles on Responsibility of States for Internationally Wrongful Acts, which were accepted into second reading by the United Nations International Law Commission (e.g. Report of the International Law Commission on the Work of its Fifty-third Session, *Official Records of the General Assembly*, *Fifty-sixth Session*, *Supplement No. 10* (A/56/10), chap.IV.E.1 and chap.IV.E.2, pp. 46 and 133-145). In particular, Article 14 states as follows:

> "1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue. 2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation. 3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation".

5. Therefore, in this case the violations suffered by the applicants can definitely be understood as a "continuing situation" for the purpose of the application *ratione temporis* of ECHR and its Protocols. Moreover, even if the violations began before entry the ECHR and its Protocols entered in force in Slovenia, they became **concrete and their harmful effects continued after the ECHR entered into force** – which requires the accountability of the State.

6. **After the date of entry into force (28 June 1994) the following took place:**

- **two decisions of the Slovenian Constitutional Court**, which until today have still not been entirely implemented;
- **the act "ZUSDDD"** and two acts adopted later: new **Citizenship of the Republic of Slovenia Act** and later annulled **Technical Act** which was afterwards annulled;
- decisions of Slovenian authorities that rejected the requests of the applicants for obtaining the citizenship and/or permanent residence;
- **all measures and concrete actions** carried out by the Slovenian authorities towards the applicants which directly violated their fundamental rights – as **individuals whose citizenship and permanent residence were withdrawn**.

For more than 14 years the applicants have been living in uninterrupted and continuing situation of complete legal void which is contrary to the Slovenian Constitution and also contrary – for reasons stated in the continuation – to the ECHR and its Protocols.

7. Besides, the European Court – in a few recent judgments that concern Slovenia and refer to cases, at least partly deriving from the facts that are also subject of this application – once again affirmed the above-mentioned principles and enforced its competence *ratione temporis* in connection with the applications filed by the applicants, because:

> "in the present case, many decisions were adopted after the pertinent date, among others, the decision of the Constitutional Court" (decision of 9 December 2004, application No. 43445/98, 49740/99, 49747/99 and 54217/00, *Predojević, Prokopović, Prijović and Martinović v. Slovenia* and also decision of 19 January 2006, application no. 48775/99, *Bunjevac v. Slovenia*).

8. The harmful effects on the enjoyment of fundamental rights – caused by not granting Slovenian citizenship, unlawful "erasure" from the register of permanent residents and the lack of possibility for this *status* to be restored retroactively from the moment of the erasure – have already been condemned by various international bodies (such as United Nations treaty bodies and Council of Europe Advisory Committee, established on the basis of Framework Convention for the Protection of National Minorities; example *supra* § II). These effects are stated in detail in the publication by authors J. DEDIĆ, V. JALUSIĆ, J. ZORN, *The Erased. Organized Innocence and the Politics of Exclusion*, Ljubljana, 2003, pp. 147-148):

- Inability to obtain employment legally or a loss of a job;
- Material damage caused: due to inability to employ legally the employment record is terminated which is crucial for obtaining pension rights; high expenses for legal aid, for attorneys' fees, for administrative fees, for costs of court procedures; high expenses for medical assistance which are a consequence of exclusion from health insurance system;
- Denial of the right to earned pension;
- Denial of the right to health services – the erased were denied the possibility to benefit from health services to the same extent as Slovenian citizens who are included in the health insurance system;
- Denial of the right to an apartment and of the right to buy an apartment that was in their use and possession (under the so-called "Jazbinšek law" – in the process of privatization the Slovenian citizens had a possibility to buy the "social" apartments for low prices, this possibility was denied to "the erased");
- Denial of the right of children and adults to elementary schooling;
- Separation of family unities and violation of children's rights to live with their parents (separation of families due to expulsions and due to administrative erasure of people as family members in official records on household communities);

- Creation of Slovenian refugees (the erased who voluntarily or forcibly left Slovenia, fled to various European countries – predominantly to the republics of the former Yugoslavia, Germany and Italy);
- Violation of the right to choose one's place of residence (the erased were forced to obtain a permanent residence addresses abroad);
- Violation of the right to family reunification, specifically to the formal recognition of fatherhood (the child's father was refused to be inscribed on the child's birth certificate with the explanation that he was "a foreigner");
- Denial of free movement across the state borders. The erased that left Slovenia could not legally enter the country anymore. For that reason many people could not be present at the funerals of their loved ones. For that reason many young people, who visited their relatives abroad in the summer break of 1992, found out about the erasure at the border when they attempted to re-enter Slovenia. Consequently, they could not return to their parents;
- Denial of driving a car legally. The rules referring to the driver's licenses changed, without notifying – in a transparent and public way – the persons concerned. Those who had foreign driver's licenses (issued either in Slovenia or in another republic of Yugoslavia), had to replace them for Slovenian driving licenses in six months after they began to reside in Slovenia or until a certain date. The problem was that no one knew about this obligation; after the expired time limit, the people found themselves in a situation of violating the law only due to driving with a Croatia or Yugoslavian driver's license;
- Denial of performing crucial economic and social activities legally. The erased could not buy or sell property, start certain commercial activity, establish a company or open a banc account. They could not register their car or sign a subscription contract for a cell phone;
- Exclusion from the political participation and denial of public acting (no one wanted to "hear" them);
- Daily exposure to the arbitrariness of the police, which frequently forced its will upon the erased in a brutal way, but was never sanctioned for it;
- Daily exposure to the arrogant treatment by the administrative officials at the Administrative Units, accompanied with nationalistic and racist insults. The humiliation of the erased by officials and withdrawal of key information prolonged the procedures of legalization of residence;
- Neighbors' harassment of the erased over the phone and through letters containing insults and threats;
- Violation of the right to legal and judicial protection;
- Violation of the right to be informed: In addition to not being informed about the "erasure" from the register of permanent residents, many people even in later years could not obtain key information from the responsible institutions;
- Violation of the right to privacy of letters;
- Violation of the right to apply for social aid;
- Violation of the rights of the persons serving prison terms (those who were subject to expulsion were not allowed to short term leaves;

B. VIOLATIONS OF THE RIGHTS ENACTED BY ECHR AND INFLICTED TI ALL APPLICANTS REGARDLESS OF CONCRETE DAMAGE CAUSED TO THEM INDIVIDUALLY BY THE ERASURE

1. Violation of Article 8 of ECHR due to general effects on the respect of private and family life of the applicants, caused by the loss of status of citizenship of the Socialist Federal Republic of Yugoslavia, inability to acquire Slovenian citizenship, the "erasure" from the register of permanent residents and not granting permanent residence retroactively.

1. As a consequence of the Citizenship of the Republic of Slovenia Act and Article 81 of the Aliens Act adopted on 25 June 1991 (e.g. *supra*, § II.2), the applicants were, after they lost the citizenship of the dissolved SFRY, arbitrarily taken away the possibility to acquire citizenship of the newly established state Slovenia and / or preserve their status of permanent residence. Although they basically fulfilled the conditions which were prescribed for this purpose (they had permanent residency in Slovenia on the day of the declaration of independence and they actually resided there), the applicants - for various reasons – could not file a formal application in an unreasonably short time limit, prescribed by the law (6 months), and were even illegally erased from the register of permanent residents, and by that they became illegal migrants by all means, without citizenship or any kind of other status whatsoever within the Slovenian legal order.

2. After several interventions of the Constitutional court and the legislator, the applicants again tried to obtain their permanent residence and / or Slovenian citizenship, but without success. Their claims and filed applications were rejected, left without decision or the authorities demanded a submission of documents or evidence which were physically not possible to acquire.

3. In relation to this, Article 15 of the **Universal declaration on human rights** needs to be recalled, stating that:

> "1. Everyone has the right to a nationality.
> 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

4. On the other hand, paragraph 3 of Article 24 of **International Covenant on Civil and Political Rights** states that "[e]very child has the right to acquire nationality". This provision means that the States that signed the Covenant (including Slovenia), are obliged to grant citizenship to minors who are stateless and are present on their territory. (**Concluding observations of the Human Rights Committee in the report on Kuwait,** 27 July 2000, CCPR/CO/69/KWT, § 31 and also JOSEPH, SCHULTZ, CASTAN, *The International Covenant on Civil and Political Rights*, 2 ed., Oxford, 2004, p. 648). In addition, the Human Rights Committee generally stands on the position that the requirements for obtaining citizenship should not be too "sharp". (**Concluding observations of the Human Rights Committee in the report on Estonia,** 9 November 1995, CCPR/C/79/Add. 59, § 12, where the Committee expressed its "concerns that a significantly large segment of the population, particularly members of the Russian-speaking minority, are unable to enjoy Estonian citizenship due to the plethora of criteria

established by law, and the stringency of language criterion, and that no remedy is available against administrative decision rejecting the request for naturalization under the Citizenship Law"; this concern is expressed again in **Concluding observations** of 15 April 2003**,** CCPR/CO/77/EST, § 14).

5. Article 20 of the American Convention of Human Rights clearly states:

"1. Every person has the right to a nationality. 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. 3. **No one shall be arbitrarily deprived of his nationality or of the right to change it**".

In relation to this, the Inter-American Court for Human Rights specifically stated:

"It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual's legal capacity. Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that **international law does impose certain limits on the broad powers enjoyed by the states in that area**, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their **obligations to ensure the full protection of human rights**. [...] The classic doctrinal position, which viewed nationality as an attribute granted by the State to its subjects, has gradually evolved to a conception of nationality which, in addition to being the competence of the State, is a human right" (I/A Court H.R., *Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion OC-4/84 of January 19, 1984, § 35 and also *the Case of the girls Jean and Bosico v. Dominicans Republic*, Judgment of September 8, 2005, §138).

Besides, the Court very significantly underlined the following:

"The Court considers that the peremptory legal principle of the equal and effective protection of the law and non-discrimination determines that, when regulating mechanisms for granting nationality, **States must abstain from producing regulations that are discriminatory or have discriminatory effects** on certain groups of population when exercising their rights. Moreover, States must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals (…). States have **the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons.** This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness deprives an individual

of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability" (I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants,* Advisory Opinion OC-18 of September 17, 2003, §88 and *the Case of the girls Jean and Bosico v. Dominicans Republic*, §141-142).

6. At the more general level and after the dissolution of several countries in central and southeastern Europe, the United Nations saw the need to guarantee a codification of rules, drafted in accordance with the existing practice in relation to the acquisition of the citizenship in cases of succession of states. This was – by the order of United Nations General Assembly – carried out by the International Law Commission with the adoption (in 1999) of the Draft Articles on Nationality of Natural Persons in Relation to the Succession of States.

6.1. Considering the provision of Article 1 stating that:

"Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, **has the right to the nationality of at least one of the States concerned**, in accordance with the present draft articles",

and the provision of Article 4 stating that:

"States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession",

The Draft articles set out some general principles, which should be followed by the legislation of each successor state. Among them, the principles that should be explicitly mentioned are the principle of **"presumed nationality"** according to which "persons concerned having their **habitual residence** in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession" (art. 5); the principle of **"the choice on the basis of being informed"**, under which the State must adopt proper measures "to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have there under, as well as of the consequences that the exercise of such choice will have on their status" (art. 6); the principle of **"no discrimination"** under which the concerned countries "shall not deny persons concerned the right to retain or acquire a nationality (…) by discrimination on any ground" (art. 15); and the principle of **"no arbitrariness"**, under which "persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State" (art. 16).

6.2. In addition, Article 14 of the Draft Articles emphasizes that:

"1. **The status of persons concerned as habitual residents shall not be affected**

by the succession of States. 2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto".

6.3. At the regional level, the Council of Europe also detected the need to regulate uniformly the conditions for acquisition and withdrawal of citizenship in accordance with the principles that would enact fair balance between the interests of the state and the respect for the rights of individuals. For this purpose **the Convention on Nationality** was adopted on the 6 November 1997. Article 4 of this convention states that:

"The rules on nationality of each State Party shall be based on the following principles: a) everyone has the right to a nationality; b) statelessness shall be avoided; c) no one shall be arbitrarily deprived of his or her nationality; d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse".

6.4. With the intention to strengthen the effectiveness of above-mentioned measures for the enforcement of the right to citizenship, the new **Convention on the avoidance of statelessness in relation to state succession** was recently adopted, and the states started to sign it on 19 May 2006. The intention of this Convention (which should have primary had the form of an additional Protocol to the Convention on Nationality) was supported – with the proposition of certain amendments – by the Parliamentary Assembly of the Council of Europe with the opinion no. 258(2006), which was accepted on 27 January 2006 and which states:

"**The human right to nationality is a fundamental right recognized by the 1948 Universal Declaration of Human Rights and the 1997 European Convention on Nationality** (CETS No. 166). The Parliamentary Assembly therefore welcomes the draft protocol on the avoidance of statelessness in relation to state succession, which it regards as an essential instrument complementing the existing conventions. It fully supports the objective of avoiding cases of statelessness by facilitating the acquisition of nationality and generally subscribes to the provisions laid down therein".

6.5. In the Preamble of the Convention we read:

"[I]n order to give effect to the principles established in the European Convention on Nationality that everyone has the right to a nationality and that the rule of law and human rights, including the **prohibition of arbitrary deprivation of nationality and the principle of non-discrimination**, must be respected in order to avoid statelessness"

6.6. This Convention defines several rules – which to a high degree derive form the Draft Articles prepared by the International law Commission – which are intended for

restriction and direction of the discretional right of the States at granting citizenships. Particularly, Article 5 of the Convention states:

> "1. A successor State shall grant its nationality to persons who, at the time of the State succession, had the nationality of the predecessor State, and who have or would become stateless as a result of the State succession if at that time:
>
> a. they were habitually resident in the territory which has become territory of the successor State, or
>
> b. they were not habitually resident in any State concerned but had an appropriate connection with the successor State.
>
> 2. For the purpose of paragraph 1, sub-paragraph b, an appropriate connection includes inter alia:
>
> a. a legal bond to a territorial unit of a predecessor State which has become territory of the successor State;
>
> b. birth on the territory which has become territory of the successor State;
>
> c. last habitual residence on the territory of the predecessor State which has become territory of the successor State".

6.7. In addition, Article 8 of the Convention states that:

> 1. A successor State s**hall not insist on its standard requirements of proof** necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements.

and Article 11 that:

> "States concerned shall take all necessary steps to ensure that persons concerned have **sufficient information about rules and procedures** with regard to the acquisition of their nationality".

7. The fact that the right to citizenship is of greater and greater importance is proven by the **Eritrea-Ethiopia Claims Commission,** which recently alerted about the existence of the **rule of international customary law**, which imposes to the States the obligation not to arbitrarily withdraw the citizenship from the individuals. The Commission particularly emphasizes that:

> "[I]nternational law limits States' power to deprive persons of their nationality. In this regard, the Commission attaches particular importance to the principle expressed in Article 15, paragraph 2, of the Universal Declaration of Human Rights, that 'no one shall be arbitrarily deprived of his nationality'. In assessing whether deprivation of nationality was arbitrary, the Commission considered several factors, including whether the action had a basis in law; whether it resulted in persons being rendered stateless; and whether there were legitimate reasons for it to be taken given the totality of the circumstances" (partial decision of the arbitrage of 17 of December 2004, Eritrea's claims no.15, 16, 23, 27-32, § 60).

8. The bodies established by the European Convention on Human Rights already in many cases dealt with the effect that the **rejection or withdrawal of citizenship may have on the respect for family life, protected by Article 8 of the ECHR**. Although it is argued that "no right to citizenship is as such included among the rights and freedoms guaranteed by the Convention or its Protocols" and that "it is a prerogative of the State to regulate citizenship and the relevant rules constitute public law" (Eur. Comm., decision of 5 October 1972, *X v. Austria* and decision of 1 July 1985, application no. 11278/84, *Family K. and W. v. Netherlands*, in *DR*, 43, pp. 222), they emphasize:

> "**[A]n arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual**" (Eur. Comm., report of 1 July 1997, application no. 21106/92, *Kafkasli v. Turkey* and the Eur. Court, decision of 12 January 1999, *Karassev and others v. Finland* and decision of 17 March 2005, *Kuduzović* v. *Slovenia*).

9. Exactly these principles, established by the European case law in relation to the loss of citizenship, can, *mutatis mutandis*, be applied to the withdrawal (and to the later non-granting) of the *status* of permanent residence – considering the special meaning that this *status* has in Slovenian regulation (e.g. *supra*, §II.1). The Court was already dealing with a similar case on the legal situation of **Russian citizens who were long-term residents in Latvia** and were denied the permission for permanent residence in this country. After the Court found the existence of "strong personal or family ties in the host country" and again emphasized that Article 8 of ECHR presupposes also positive obligations for the signatory States, it especially found the following:

> "[I]t is not enough for the host State to refrain from deporting the person concerned; it must also, by means of positive measures if necessary, afford him or her the opportunity to exercise the rights in question without interference.
>
> Consequently, the Court considers that **the prolonged refusal of the Latvian authorities to grant the applicants the right to reside in Latvia on a permanent basis constitutes an interference with the exercise of their right to respect for their private life**" (Judgment of 16 July 2005, *Sisojeva and others v. Latvia*, §§ 104-105; analogous also judgment of 9 October 2003, *Slivenko v. Latvia*).

9.1. Contrary to the case stated above, the matter of this application presents other aspects that need to be emphasized, because they indicate even more expressive connection to Article 8 of ECHR. Namely, in the above stated case two of three applicants had Russian citizenship and the court found that:

> "[T]he applicants have not been Latvian citizens at any time since 27 June 1997, the date of the Convention's entry into force in respect of Latvia. Nor is there any indication that **they had any lawful claim to Latvian nationality under the laws**

of that State, or that they were arbitrarily denied Latvian citizenship" (*ibidem*, § 100).

9.2. However, in our case the applicants – as the citizens of former Yugoslavia that were at the independence of Slovenia registered in the register of permanent residents of this country – were arbitrarily withdrawn the Slovenian citizenship, to which they should have been entitled in accordance with the legislation, which was put into force immediately after the independence. Moreover, the applicants did not automatically get the citizenship of any of the successor States of the former Yugoslavia, which means that consequently due to the above mentioned events they became *de facto* stateless. The majority of the applicants are still stateless today, while some of them were forced – only in order to get to any document whatsoever, for them and for their family members – to acquire "available citizenship" of another State, although they had no real and actual ties to it. This was the case for **Ljubenka Ristanović** (*supra*, § 12.7): she managed to obtain a Serbian passport; her son has Bosnian citizenship and her husband a permanent residence in Slovenia. The situation is similar for **Ana Mezga** (*supra*, § 12.6): two of their children have Croatian citizenship and two Slovenian, in spite of the fact that they are all born in Slovenia.

10. All applicants are part of the group of thousands of people, who after the dissolution of SFRY, after the expiration of the time limit for filing a request for Slovenian citizenship and after the secret inaction of their "erasure" from the register of permanent residents of Slovenia, **they did not manage to obtain either Slovenian citizenship or permanent residence** – despite several decisions of Constitutional Court that were never executed, although they declared the illegality of the erasure and ordered the legislator to abolish the illegal situation.

11. On the other hand, in the past the European Commission already took the position that the **restrictions that derive from the status of statelessness** (which is, by its essence, comparable to the status of the applicants) **can have a harmful and destructive effect on private and family life** (European Commission, report of 1 July 1997, application no. 21106/92, *Kafkasli v. Turkey).* Most of the applicants became *de facto* stateless precisely because of the events described in this application. Namely, the applicants could not acquire either Slovenian citizenship or citizenship of any of the other successor states of the former Yugoslavia.

12. In addition, the principles that have until now been developed by the case law of the ECHR bodies have to be placed in the most general context of the international protection of human rights, where – since Article 15 of the Universal Declaration of Human Rights on – the existence of obligations of individual states came into force, deriving from customary law and influencing the implementation of their competencies considering granting and withdrawal of citizenships and status of permanent residency, as preposition for ensuring one's human rights. These obligations are enacted both on the level of the United Nations (at the International Law Commission) and on the European level (with the Conventions adopted by the Council of Europe. E.g. *supra*, §6).

12.1. If it is true – as often emphasized by the European Court – that ECHR is means that has to be interpreted in accordance with the existing situation, then it is without a doubt that the evolution of international law as such influences the interpretation and application of rights that are enacted by it – starting with the right to respect for private and family life (it is no coincidence that a reference to this right is included in the Preamble of the above mentioned Convention on Nationality of the Council of Europe, in which the state parties declare that they are "**aware of the right to respect for family life as contained in article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms**").

13. In our case there is no doubt that the applicants – as well as thousands of persons who live in the same or similar situation – **suffered a range of serious upheavals of their private and family life**, which was a consequence of the fact that they could not obtain Slovenian citizenship, that they were illegally erased from the register of permanent residents and that the Slovenian authorities rejected the execution of decisions of the Constitutional Court, which would return their statuses of permanent residents since 26 February 1992 (example, *supra*, §A.2). Regardless of the later and even more specific harmful effects (in relation to which compare *infra*, §C.2), these upheavals alone already represent an interference with the respect for private and family life of the applicants – the interference that needs to be subject to examination whether or not it is in accordance with the criteria of **legality, finality and proportionality**, enacted by paragraph 2 of Article 8 of ECHR.

14. **In the case of applicants it has been found that none of the mentioned critera was fulfilled.**

14.1. Above all, it is **not possible to claim that the intervention was "in accordance with the law"** either from the aspect of domestic law or from the aspect of international law:

- because the erasure of the applicants from the register of permanent residents by the Slovenian authorities was executed secretly and with a trick, **in the absence of any legal basis whatsoever** and **without informing the applicants properly** about the rules and procedures regulated by the Citizenship of the Republic of Slovenia Act and also about the consequences of the lack of submission of the request in the set time limit (e.g. Article 11 of the Convention of Council of Europe, of the 19th May 2006 and Article 6 of the Draft articles of the International Law Commission that are stated *supra*, §6);
- because the applicants **were not capable to foresee precisely** what were going to be the consequences of the erasure, and at the same time they did not have any remedy at their disposal to protect their situation;
- because the Slovenian Constitutional Court several times **ruled that the erasure was counter to the principles, stipulated in the Slovenian Constitution** (e.g. *supra*, § II.4 and 6) and on the illegal situation caused by the legal vacuum, which prevented and still prevents the applicants to regulate their *statuses*, and emphasized the duty of the legislator to take care of their legal and material re-integration in specifically set time limits (that were never respected);

- because the conditions for reinstitution of permanent residence or Slovenian citizenship are evidently counter to the principle of "presumed citizenship" (Article 5 of the Draft Articles) and with the principle of **preservation of the status of the persons, who have residence in the territory** of one of the successor States in the moment, when this country becomes successor (Article 14 of the Draft Articles).

14.2. In addition, the interference obviously **does not lead to the execution of any of the legitimate aims**, explicitly enumerated in paragraph 2 of Article 8 of ECHR (national security, public safety, economic well-being of the country, prevention of disorder or criminal acts, protection of health or morals, protection of rights and freedoms of others).

14.3. Finally, even if imagined that the above stated criteria are fulfilled, **the democratic society would still not justify such interference, because it is obviously not proportional with the aims that are being followed**. From this aspect the factors illuminating the unreasonableness of the interference are as follows:

- its duration and permanent rejection by Slovenian legislative and executive authorities, to execute the decisions of Constitutional Court and to take into consideration the recommendations of the United Nations Committees repeated several times (e.g. *supra*, § II.10-11);
- the erasure and inability of the applicants to regulate their legal status left very harsh consequences at all the levels of their private and family life (work, health, housing, social and pension insurance), which has been warned upon by numerous international organs (e.g. *supra*, § II.10-11);
- concrete procedures used by administrative authorities to execute the erasure, while they never informed the applicants through official notice and prevented them from having access the acts that caused the loss of their permanent residence and from the possibility to dispute the acts through in legal proceedings;
- expressive discriminatorily effects (e.g. also *infra*; § III.B.7), which arose as a consequence of a range of normative measures and executed administrative provisions, which were influenced by the political factors of a **xenophobic nature** (e.g. Report of the Commissioner for Human rights at the Council of Europe, 29 March 2006, *supra* § II.11) and led to paradoxical situations within the homogeneous family nucleuses. This can be illustrated by the case of the applicant **Milan Makuc** whose brother was, like him, born in Raša in Croatia, but obtained the Slovenian citizenship unlike the applicant; the case of **Jovan Jovanović**, who from the year 1976 permanently resided in Slovenia and whose family members (former unmarried partner Ljubica and son Slobodan) obtained Slovenian citizenship; the case of **Ana Mezga**, whose unmarried partner and two of their children have Slovenian citizenship (while herself and her other two children were due to the "erasure" forced to declare themselves as "Croats"); the case of **Velimir Dabetić**, whose parents, born in Montenegro, obtained the Slovenian citizenship, but he is stateless, in spite of that fact that he was born in Slovenia, and the case of **Zoran Minić**, whose mother, brother and two sisters obtained the Slovenian citizenship.

2. Violation of Article 3 of ECHR because of "humiliating" conditions, in which the applicants have to live due to their unlawful "erasure" from the register of

permanent residents and due to the lack of adoption of appropriate measures by the Slovenian state to regulate their situation in accordance with the decisions of Constitutional Court

1. In accordance with the established case law of this Court, certain acts have to exceed **a minimum level of severity** if they are to fall within the scope of Article 3. The assessment of this unavoidably relative and depends on all circumstances of the case, such as **the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and health condition of the victim** (e.g. judgment of 18 January 1978, *Ireland v. United Kingdom*, § 162, judgment of 7 July 1989, *Soering v. United Kingdom*, § 100, judgment of 25 March 1993, *Costello Roberts v. United Kingdom*, § 30, judgment of 28 November 1996, *Nsona v. Netherlands*, § 92, judgment of 28 June 2005, *Gallico v. Italy*, § 19). However, in any case **it does not suffice that some aspects of the situation claimed by the applicant are "unpleasant or even irksome"** (judgment of 6 November 1980, *Guzzardi v. Italy*, § 107, and decision of 25 November 1999, *Canepa v. Italy*).

2. In addition, the Court clearly stated that the adjective »inhuman« stands for treatment that "deliberately causes particularly intensive bodily or mental suffering", while **the adjective "degrading" stands for treatment "that grossly offends the person in front of the others, drives the person to act against his will or conscience or devalues the individual in his own eyes"**. In these cases it has to be taken into consideration whether such treatment had a specific objective to degrade or devalue the victim, however, the absence of such objective does not exclude the finding of the violations of Article 3 of ECHR (e.g. judgment of 16 December 1999, *V. v. United Kingdom*, § 71, judgment of 16 December 1997, *Raninen v. Finland*, § 57, judgment of 18 October 2001, *Indelicato v. Italy*, § 32).

3. In specific cases of situations that could lead to the »degrading treatment«, the law first excluded that such acts should necessarily be the acts of physical violence and ruled that the notion of degrading treatment includes also

> "the infliction of **mental suffering** by creating a state of anguish and stress by means other than bodily assaults" "**which lowers a person in rank, position, reputation or character**" (e.g. Report of 5 November 1969, *First case Greco in Yearbook*, pp. 461, and report of 14 of December 1973, *East African Asians v. United Kingdom*, §§ 189-191).

4. Particularly in the last mentioned case, the European Commission emphasized that the legislation of United Kingdom, which regulates the arrival and duration of residence on the British territory for the citizens of Asian origin, residing in former African colonies, caused "degrading treatment" because of its discriminatory nature based on the grounds of race. The Commission stated:

> "[T]o publicly single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to

human dignity /…/ and therefore be capable of constituting degrading treatment" (*ibidem*, § 207).

5. Later also the Commission several times referred to the same principles, while **relating to both the acquisition and the loss of citizenship**. Particularly in the case of Roma applicants who were pointing out to the inability to acquire citizenship in accordance with the legislation of the Czech Republic after the dissolution of Czechoslovakia, the Commission recognized that the emerged situation was "**capable of raising issues under Articles 3 and 14 of the Convention**" (e.g. judgment of 2nd September 1996, application no. 30913/96, *Slepcik v. Czech and Netherlands*), while in the case of a family of Turkish origin whose Greek citizenship was withdrawn, the Commission emphasized that "**differential treatment of a group of persons on the basis of race might be capable of constituting degrading treatment prohibited under Article 3 of the Convention**" (e.g. decision of 21st of May 1997, application no. 34372/97, *Zeibek v. Greece*).

6. In recent time, the European judiciary expressed certain willingness to expand the protection, guaranteed by the Article 3 of ECHR, to **the situations of extreme poverty and social marginalization**, which are gravely affecting human dignity. The Court, for example, concluded that "the total insufficiency of the amount of pension or other social sources of the income, may in principle activate the procedure on the basis of Article 3, if this amount does not guarantee minimum human dignity" (e.g. decision of 23 April 2002, *Larioshina v. Russia*).

7. Therefore, if we examine **the situation of the applicants** in the light of the described legal guidelines, we can claim that:

- the Slovenian authorities consciously **exposed them to discriminatory and unlawful treatment, which essentially harmed their human dignity**, because they were for years and years forced to live in the situation of **total social and legal exclusion**, that was constantly aggravated by the persistent rejection of the regulation of their situation;
- this kind of a treatment caused to the applicants the feelings of deep frustration, extreme moral and also physical suffering (especially to those, who despite serious illnesses did not have access to basic health services), ignorance, vulnerability, insecurity about their own future and degradation in the eyes of the other members of the society;
- the **duration** of this treatment, **sharpness** of the consequences and gradual **worsening of the living situation** of the applicants are so grave that they exceed the minimum level of severity and can therefore be classified as "degrading" treatment in the sense of Article 3 of ECHR.

8. The case of the applicants can be from the many aspects compared with above-mentioned case *East African Asians.* If the events are assessed comprehensively, it can be implied that all applicants – victims of the "erasure" (with the exception of Milan Makuc) are of non-Slovenian linguistic and cultural origin. The decision of the authorities to erase them from the register of permanent residents and their subsequent rejection to regulate the situation of the applicants in accordance with the decisions of the Constitutional

Court, was deeply influenced by the positions of a "nationalistic" nature, which turned into the **actual administrative "cleansing" of the elements, which ethnically differ from the majority of the Slovenian citizens.**

8.1. In fact the loss of the citizenship and "erasure" from the register of permanent residents, affected the citizens of former Yugoslavia, who came from other republics and were permanently included in the social-economic tissue of Slovenia, where they even obtained their permanent residence. As a consequence of the described events the applicants were victims of **persecution on the ground of ethnicity** by the Slovenian authorities, which tried in all ways to prevent the integration of these persons (among them also the applicants) into Slovenian society and put them into a much worse position than **all the other foreigners**.

9. In the case *East African Asians,* the prohibition of entry and stay on the British territory had a valid domestic legislative basis; however, on the contrary, the erasure from the registry of permanent residents and "reduction" of the erased to illegal aliens without the right of stay on the state territory was justified on the legal regulations that were declared unconstitutional by the Slovenian Constitutional Court and are therefore **from the legal point of view without any valid legal base.**

9.1. The fact that the Slovenian authorities reject the execution of the decisions of the Constitutional Court and the regulation of the situation of the applicants with the effect *ex tunc*, which would guarantee them a full legal, moral and economic re-integration, causes serious situation of permanent illegality and a break down of constitutional order, which is being instigated by "the nationalistic" logic incompatible with the cultural tolerance that needs to be enforced in contemporary multiethnic societies. All of this presents **the aggravating factor** that has to be taken into account while evaluating a "degrading" nature of the treatment worth condemnation (report of 14 December 1973, *East African Asians v. United Kingdom*, §§ 196).

10. Lastly, it needs to be pointed out that because of the erasure from the register of permanent residents, the applicants found themselves (and still are) in the situation of **legal vacuum** and **total insecurity about their legal *status*** within the Slovenian legal system, which exposes them to all kinds of abuse and exploitation, both from the side of the state authorities and other private subjects (e.g. the exploitation experienced by Mr. Ljubomir Petreš), which they cannot counter in any way.

10.1. In this sense, the case law of Inter-American Court condemned the consequences that prejudice the respect of fundamental rights, deriving from **non-recognition of any legal *status* whatsoever** within the country. When it was dealing with the case of a girl who was denied citizenship by the Dominican authorities, the Court found as follows:

> "The Court considers that the Dominican Republic failed to comply with its obligation to guarantee the rights embodied in the American Convention, which implies not only that the State shall respect them (negative obligation), but also

that it must adopt all appropriate measures to guarantee them (positive obligation), owing to the situation of extreme vulnerability in which the State placed the Yean and Bosico children, because it denied them their right to nationality for discriminatory reasons, and placed them in the impossibility of receiving protection from the State and having access to the benefits due to them, and since they lived in fear of being expelled by the State of which they were nationals and separated from their families owing the absence of a birth certificate" (I/A Court H.R., *Case of the girls Jean and Bosico v. Dominicans Republic*, Judgment of September 8, 2005, §173).

10.2. Considering the findings, the Court concluded:

"The Court considers that the failure to recognize juridical personality harms human dignity, because it absolutely denies an individual's condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals" (*ibidem*, §179).

10.3. If the same principles are transferred to the case of the applicants, it can be concluded that with the permanent **rejection of the regulation of their legal status** and situation of their extreme **vulnerability, insecurity as well as material and moral humiliation**, in which they found themselves since the year 1992, concretizes the "degrading" treatment, which is contrary to the Article 3 of ECHR.

3. Violation of the Article 3 of the Protocol No. 1 to the ECHR, because of the loss of the active or passive right to vote as a consequence of the illegal "erasure" from the register of permanent residents

1. Due to the inability to acquire Slovenian citizenship and the consequences of illegal "erasure" from the register of permanent residents, the applicants were over the night deprived of **active or passive right to vote**, the right that they fully enjoyed as citizens of the Socialistic Federative Republic Yugoslavia with the permanent residence in Slovenia.

2. In accordance with the established case law, Article 3 of Protocol No. 1 guarantees the right to vote and right to be elected, which are rights "**crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law**" (e.g. judgment of 16 March 2006, *Zdanoka v. Latvia*, § 103). These rights can be subject to the restrictions, but:

"[I]t is however for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions imposed on the rights to vote or to stand for election do not curtail the exercise of those rights to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed

in pursuit of a legitimate aim; and that the means employed are not disproportionate (*ibidem*, § 104).

3. Regarding the cases connected to the right to vote, the Court found that "**exclusion of any groups or categories of the general population must be reconcilable with the underlying purposes of Article 3 of Protocol No. 1**" (*mutatis mutandis*, application no. 69949/01, *Aziz v. Cyprus*, § 28 and also judgment of 16 March 2006, *Zdanoka v. Latvia*, § 105).

4. In our case, there are **no objective reasons** that could justify the deprivation of active and passive right to vote suffered by the applicants (and thousands of other individuals, who are in the same situation). All applicants lived for a long time on the Slovenian territory or were even born there and developed strong family, emotional and professional ties; besides, by paying the contributions, they contributed to the satisfaction of the collective needs of local communities in which they permanently resided. Therefore, they had **a legitimate expectation to preserve their right to participate at the functioning of the democratic governmental institutions and in active political life** in the new country, which rose after the dissolution of the former Yugoslavia.

5. At the same time the above mentioned principles, connected to the acquisition and loss of citizenship (which can are implied both from the general principles of international law and from the case law of the bodies of ECHR) have to be applied also by referring to the interpretation of the extent of active and passive right to vote. Even if until now the European Court studied this question only from the aspect of the right to respect for private and family life, we think that, using the words of the Court, "**an arbitrary denial of citizenship might in certain circumstances raise an issue**" also from the point of view of Article 3 of Protocol No. 1, **"because of the impact of such a denial" on the individual's right to participate at the election of the representative organs.**

4. Violation of Article 2 of Protocol No. 4 to the ECHR, because of the restrictions of the freedom of movement of the applicants, which are the consequences of their illegal "erasure" from the register of permanent residents and rejection by the Slovenian authorities to regulate their statuses

1. Because of the erasure from the register of permanent residents and because of the rejection of the Slovenian authorities to regulate their legal statuses, the applicants suffered and are still suffering severe restrictions of the freedom of movement, which is guaranteed under Article 2 of Protocol 4 to ECHR (e.g. § 57 of the opinion of the Advisory Committee, stated *supra*, § II.11).

2. Because the applicants have no status or permission, which would permit them to reside in the territory of the Slovenian state, they cannot move freely outside the region where they live and where the local authorities know them and "tolerate" them. Even less they can go abroad because after that their possibility to return to Slovenia would be taken away from them (see especially the cases of Mr. Mustafa Kurić and Mr. Jovan

Jovanović). Besides, the Slovenian authorities confiscated or destroyed (in quite strange ways**) the personal documents** of the applicants. The same happened with **the driving licenses** of those that had them.

2.1. It needs to be added that some of the applicants were **physically deported** from Slovenia and prevented to return to Slovenia permanently (this happened in cases of Mr. Tripun and Ms. Ljubenka Ristanović, Mr. Sadik Ilfana, Mr. Ali Berisha and Mr. Zoran Minić).

3. Referring to the extent of the application of Article 2 of Protocol No. 4, the Court clearly too a stand that it could not be relied upon by **those that were already served the expulsion order and because of that lost their status of "lawful residents"**. Particularly, in the case of expulsion of a German citizen from the French Polynesia, who, among others, claimed the violation of the Article 2 of Protocol No. 4, the Court emphasized that:

> "[O]nce the expulsion order had been served, the applicant was no longer lawfully on Polynesian territory and in those circumstances did not suffer any interference with the exercise of her right to liberty of movement, as secured by the provision in question" (e.g. judgment of 27 April 1995, *Piermont v. France*, § 44).

4. In our case, **none of the applicants has been served an official expulsion order, which would be based on the erasure from the register of permanent residents**. Some of them still live on the Slovenian territory (even if illegally), and the Slovenian authorities generally "tolerate" their presence, but at the same time they are constantly threatened to be deported. Other applicants were physically deported from Slovenia (even several times as in the case of Mr. Ilfan Ademij Sadik), **but this deportation was performed without issuing a formal decision by the authorities** (which can be implied from the Circular letter of the Ministry of the Interior, of 27 February 1992, stated *supra*, § II.3).

4.1. From the stated facts it follows that the applicants can rely on the Article 2 of Protocol 4 of ECHR and that the persistent rejection of the state to regulate their status – with the re-institution of the permanent residence and the issuing of adequate personal documents – represents the interference with their freedom of movement.

5. In relation with the dispossession of personal documents, the Court established that:

> "a measure by means of which an individual **is dispossessed of an identity document such as, for example, a passport**, undoubtedly amounts to an interference with the exercise of liberty of movement" (e.g. judgment of 22nd May 2001, *Baumann v. France*, § 62, and judgment of 13 November 2003, *Napijalo v. Croatia*; § 69).

6. The conformity of these interferences with the freedom of movement, guaranteed by the Article 2 of Protocol No. 4, has to be examined based on the criteria, established by the Court as follows:

> "[I]n order to be compatible with the guarantees of Article 2 of Protocol No. 4 the impugned restriction should be 'in accordance with the law', pursue one or more of the legitimate aims contemplated in paragraph 3 and be 'necessary in a democratic society' (...) or, where the restriction applies to particular areas only, be 'justified by the public interest in a democratic society' as established in paragraph 4" (e.g. judgment of 22 February 1994, *Raimondo v. Italy*, § 39, judgment of 13 December 2005, *Timishev v. Russia*, § 45 and judgment of 23 May 2006, *Riener v. Bulgaria*, §§ 109 ss.).

7. To prove the disrespect of the above-mentioned criteria (legality, legitimate purpose and proportionality) we would like to point out once again to the findings, analyzed *supra*, concerning the mentioned violation of article 8 of ECHR.

5. Violation of paragraph 1 of Article 6 of ECHR, because of the lack of execution of the decisions of the Constitutional Court of the Republic of Slovenia (which promulgated the unconstitutionality of the regulations, based on which the erasure was executed, and recognized to the erased – among them also the applicants – the right to reinstate their permanent residence in the Republic of Slovenia from the date of the erasure onwards) and the interference with the right to judicial protection

1. As we analytically pointed out in § II, the Constitutional Court several times ruled on the domestic regulations, which caused the erasure of the applicants from the register of permanent residents, found their incompatibility with the constitutional principles and emphasized the obligation of the legislator to adopt the special measures directed towards the abolishment of the effects, deriving from the application of these regulations.

2. Especially in the first **decision of 4 February 1999**, the Constitutional Court declared the **unconstitutionality of the Article 81 of the Aliens Act**, which did not regulate the status of these persons, who, regardless of the fact that they had permanent residence in Slovenia, did not file the application for the Slovenian citizenship, or this application was rejected. This decision enacted the obligation of the legislator to abolish the inconformity **a time limit of 6 months** from the publication of the decision.

3. With **the decision of 3 April 2003** the Constitutional Court declared that some provisions of **ZUSDDD** are unconstitutional; namely, it declared that the lack of reinstitution of permanent residences retroactively and the exceptionally short deadline (3 months) established by the law, in which it was possible to obtain permanent residence, are not in accordance with the Constitution. Also, in this case, it was imposed to the legislator to abolish all unconstitutional aspects of the Act **in the period of 6 months,** with an additional demand that the administrative authorities immediately start with

issuing of supplementary decisions, with which they would obtain the permanent residence from the day of the erasure.

4. Based on these decisions, the applicants had a right to recognition of permanent residence from the day of the erasure and accordingly to the reinstitution of rights they were deprived of. At this, the retroactive recognition of permanent residence was the necessary condition "to enforce these rights in accordance with the regulations, valid in particular legal areas" (e.g. point B-III.23 of the decision of 3 April 2003), among others the right to compensation for the damage suffered due to erasure, as demanded by the United Nations treaty bodies (e.g. *supra*, § II.10).

5. As already stated, **the legislator did not execute the decisions of the Constitutional Court**, on the contrary, after [the adoption of] the first, insufficient legal measure [to resolve the problem], the annulment referendum was organized, which supposedly - with the exceptionally low participation rate – expressed the alleged "will of the Slovenian nation" that the Constitutional decisions are not executed (e.g. supra, § II.8), which preserved the situation which is in contradiction with the Constitutional principles.

6. On the basis of the established case law of the Court, the execution of decisions represents the fundamental aspect of the right to fair trial, protected by paragraph 1 of the Article 6 of ECHR and accordingly the right to judicial protection (e.g. judgment of 19 March 1997, *Horsby v. Greece,* § 40). As the Court pointed out

> "that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention" (e.g. intern alia, judgment of 28 July 1999, *Immobiliare Saffi s.r.l. v. Italy*, § 63, judgment of 1st May 2002, *Kutić v. Crotia*, § 22, judgment of 7th May 2002, *Burdov v. Russia*, § 34).

7. Concerning this, the Court also explained that:

> "It is not open to a State authority to cite lack of funds as an excuse for not honoring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1" (e.g. judgment of 28 July 1999, *Immobiliare Saffi s.r.l. v. Italy*, § 64, and judgment of 7th May 2002, *Burdov v. Russia*, § 35).

8. Besides, the Court recently pointed out again, although in the different context, that

"the principle of the rule of law and the notion of fair trial enshrined in Article 6 of the Convention **preclude any interference by the legislature** – other than on compelling grounds of the general interest – **with the administration of justice** designed to influence the judicial determination of a dispute (see *Zielinski and Pradal & Gonzales v. France* [GC], no. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII; *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B; and *Papageorgiou v. Greece*, judgment of 22 October 1997, *Reports* 1997-VI)" (judgment of 29 March 2006, *Scordino v. Italy*, § 126).

9. On the basis of the above described principles, we think that the applicants can be viewed as victims of the violation of paragraph 1 of Article 6, because, when the legislative and administrative authorities decided that they will not execute, with the *erga omnes* effect, the conclusions of the decisions of Constitutional Court, they influenced the highest level of the judiciary. Accordingly, they disabled the applicants from re-obtaining their permanent residence retroactively and from effectively enforcing their rights (using legal procedures), which were violated because of the illegitimate erasure.

10. The applicants are aware of the fact that the subject of this application is of a different character than the above-mentioned cases, in which the Court was dealing with the right to judicial protection. In our case it is not about the lack of execution of the binding decision, which were issued pursuant the claim of the applicants and which concerned them personally and individually. However, the decisions of the Constitutional Court of the 4 February 1999 and of 3 April 2003, declared the unconstitutionality of the legislative provisions with the Slovenian Constitution and imposed (to the legislative and administrative) authorities certain tasks, which **concern all those** (including the applicants), **who were illegally erased** and were not able to obtain their permanent residence retroactively.

10.1. The *erga omnes* effect of the mentioned decisions; the fact that because of the lack of adoption of the necessary legislative and administrative measures the applicants cannot perform any legal action through which they could re-gain their rights; the annulment of the so-called Technical Act on the basis of the referendum and the permanent situation of the interruption of the constitutional order, which puts under question the foundations of Rule of Law and the respect for law – all these are the factors, on the basis of which we can in our case invoke the principles, developed by the European Court in connection to the right to judicial protection and the prohibition of the interferences by the legislative authority with the judiciary.

10.2. It has to be truly emphasized that, due to the interweaving of these factors, the actual access of the applicants to Court is concretely prevented in order to protect their rights. It has to be emphasized that the issuing of negative decisions (or silence) by the administrative bodies on the applications for citizenships or permanent residence filed after the issuing of the Constitutional Court decisions, contributed to this.

10.3. The attitude of the administrative authorities is incontestably evident also from the **decision of the Administrative Court in Celje, of 14 March 2006** [**doc. IV**] in relation with the application of an erased (Milena Damjanič), after the Ministry of the Interior rejected her request for issuing a supplementary decision on the basis of the decision of the Constitutional Court of 3 April 2003. In this decision, the justification of the applicant's claim was recognized, but the application was rejected, because the judges could not compensate the lack of action of the legislative authorities. The decision rules that:

> "On the basis of the facts stated above and considering the circumstances presented by the applicant, **the case could prove unconstitutionality of the applicant's situation**. However, it is necessary to follow point 7 of the decision, which requires the legislative authority to annul the incompatibility in points 1, 2 and 3 of the decision in six months after the publication in the Official Journal. If the applicant was in an unconstitutional situation – as it derives from the points 1 and 3 of the above mentioned decision of the Constitutional Court – **the legislative authorities should resolve this situation in accordance with point 7 of the decision of the Constitutional Court."**

6. Violation of Article 13 of ECHR, because of the absence of effective means whatsoever, with which the applicants could report the violations of their rights, because of their unlawful "erasure" from the register of permanent residents.

1. Despite the violations of Article 6, paragraph 1, of ECHR, the unexecuted decisions of the Constitutional Court and the fact, that the legislative authority did not issue the systematic act (as required by the mentioned decisions) which would comprehensively regulate the situation of erased and completely re-instate their status in *status quo antem*, represent the violation of Article 13 of ECHR. The applicants were deprived for any effective remedy, which they could use to report the violations of the rights ensured by ECHR because of their illegal erasure from the register of permanent residents.

2. The principles established by the case law of the Court concerning the meaning of the right to effective remedy are resumed as follows:

> "Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an 'arguable application' under the Convention and to **grant appropriate relief**, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's application under the Convention. Nevertheless, **the remedy** required by Article 13 **must be 'effective' in practice as well as in law**, in particular in the sense that its exercise must not be unjustifiably hindered by the

acts or omissions of the authorities of the respondent State" (e.g. inter alia, judgment of 28 March 2000, *Mahmut Kaya v. Turkey*, § 124, and judgment of 5 February 2002, *Çonka v. Belgium*, § 75).

3. Also after the issued decisions of the Constitutional Court, the applicants several times and in different ways requested the authorities to recognize them the citizenship and / or permanent residence. However, every attempt was unsuccessful. Some applicants never got a response to their request, and from the others it has been demanded, to prove that they fulfill the conditions, which they physically could not satisfy. Before that the Constitutional Court confirmed the unconstitutionality of some of those conditions. The effect of the domestic legal remedies is highly problematic exactly because of the inability of the applicants to obtain an insight into an of the documents which would explain the type of procedure on the basis of which they were erased.

4. Even if the applicants re-gained permanent residence or supplementary decision on the basis of point 8 of the Decision of the Constitutional Court of 3 April 2003 (*supra*, § II.6), t**his would not suffice for the effective reparation of all the violations suffered** because of the illegal erasure. Until the Systemic Act proposed by the Constitutional Court with the decision of 3 April 2003, is not adopted the applicants will not be able to achieve the **complete reinstitution of all the rights retroactively**, to which they were entitled at the erasure. In case this proves to be materially unattainable, they will not be able to achieve **compensations for the damage suffered**.

5. The obligation of Slovenian state, to get a move on the adoption of the measures, with which it will repair the violations suffered by the erased, were several times dealt with by the United Nations Committees in the periodic reports (*supra*, § II.10).

5.1. Accordingly the Committee on the Elimination of Racial Discrimination in 2003 emphasized that due to erasure an extensive number of people "may have been **deprived** under certain circumstances **of their pensions, of apartments they were occupying, and of health care and other rights**" and asked Slovenia "to provide, in its next periodic report, specific information on these issues and on any **remedies** provided".

5.2. In 2004 the Committee on the Rights of the Child recommended to the Slovenian authorities to "implement fully and promptly the decisions of the Constitutional Court" and "to compensate the children affected by the negative consequences of this measure".

5.3. In January 2006 the Committee for economic, social and cultural rights affirmed that the situation of the erased in Slovenia "**entails violations of these persons' economic and social rights, including the rights to work, social security, health care and education"**. At this, it encouraged Slovenia "to take the necessary legislative and other measures to **remedy** the situation" and explained that "these measures should allow these individuals to reclaim their rights and regain access to health services, social security, education and employment".

6. Still, until the present day all recommendations of United Nations Treaty Bodies remained entirely without response: the applicants are still suffering for the harmful consequences of the illegal erasure. At the same time they do not have at their disposal any effective remedy to stop these violations and to regain everything they are entitled to (see also *infra*, § IV.1.).

7. Violation of Article 14 of ECHR, read parallel with Articles 8 and 3 of Protocol no. 1, with Article 2 of Protocol 4 and with paragraph 1 of Article 6 of ECHR, because of the deprivation of the applicants to enjoy these rights without any discrimination on the basis of whichever personal circumstance

1. Under the established case law of the Court, for referring to violations of Article 14 of the ECHR, it is necessary to establish the difference in treatment of the execution and enjoyment of the rights, guaranteed by the ECHR, and this difference in treatment should have no reasonable and objective justification.

2. The existence of such "difference in treatment" presupposes **the analogy or comparability of situations** concerned. The application about the violation of Article 14 of ECHR is justified only if the situation of the alleged victim is comparable with the situation of others that received more favorable treatment (e.g. judgment of 18 February 1991, *Fredin v. Swiss*, § 60, judgment of 27 March 1998, *Petrovic v. Austria*, § 36, and judgment of 18 February 1999, *Larkos v. Cyprus*, § 30).

3. In the present case, **the situation of the applicants is comparable**, for the comparative assessment, **with the situation of all those, who at the declaration of independence were not registered in the register of the citizens of Republic of Slovenia, but were "regularly" living in the Slovenian territory, because they obtained permanent or temporary residence.**

4. Unequal position concerning treatment the applicants were subject to while enjoying the fundamental rights, protected by Article 8 and 3 of the Protocol No. 1, Article 2 of Protocol 4 and paragraph 1 of Article 6 of ECHR, is especially evident if compared to the following categories of people:

- those who were not the victims of the erasure from the register of permanent residents, because they obtained the Slovenian citizenship on the basis of the 1991 *Citizenship of the Republic of Slovenia Act*, after filing a request in the time limit of six months;
- those who were not registered into the register of permanent residents on 25 June 1991, but could enjoy the temporary residence, which enabled them to continue to legally live and work in Slovenia;
- those who were erased from the register of permanent residents, but regained permanent residence (with or without retroactive effect) on the basis of the *Act* ZUSDDD and subsequent modifications or other procedures;

- those who were erased from the register of permanent residents, but obtained Slovenian citizenship on the basis of the *2002 Act* ZDRS-Č, amended by the new 2003 *Citizenship o Republic of Slovenia Act*.

5. Unequal treatment derives from the circumstance in accordance to which the situation of persons from the above stated categories was regulated with the recognition of the legal status (citizenship or permanent residence) with the consequential return (at least *ex nunc*) of the complete execution of fundamental rights, or in accordance to which their position never became legally irregular (in the case of the possessors of temporary residence). **But the applicants are still in "illegal" position and without being recognized legally**, which disables them from total enjoyment of fundamental rights, guaranteed by ECHR, the violation of which they report which this application.

6. The fact that the difference in treatment does not result in the discrimination, which is contrary to Article 14 of ECHR, the unequal treatment has to have **reasonable and objective justification**; this means that the adopted measure has to follow a certain "legitimate aim" of the democratic society and has to respect "**the reasonable relationship between the means employed and the aim sought**" (judgment of 23 July 1968, Belgian linguistic case, § 10).

6.1. Particularly the absence of this relationship presents a crucial criterion, which enables that a certain difference in treatment can be understood as discriminatory. In this respect, the Court admitted that the states are entitled to a "certain margin of appreciation in assessing whether or not and to what extent the differences in otherwise similar situations justify a different treatment in law. At this the Court reserved the right to examine comprehensive justification of such decisions (for all judgment of 28 November 1984, *Rasmussen v. Denmark*, § 40).

6.2. While examining the respect of the proportionality principle, the Court above all considers the "legal and actual facts, which are typical for the life of a society of a concerned state" as well as particular circumstances and their context. While examining the justification of the unequal treatment, the Court gives special weight to examining the "factor of a common ground between the legal systems of the states concerned (e.g. judgment of 9 January 2003, *L. and V. v. Austria*, §§ 47-55, and *S.L. v. Austria*, §§ 39-47, as well as judgment of 3 February 2005, *Ladner v. Austria*, 26th May 2005, *Wolfmeyer v. Austria*, and 2 June 2005, *H.G. and G.B. v. Austria*; and judgment of 28th May 1985, *Abdulaziz, Cabalez and Bankandali v. United Kingdom*, § 78, judgment of 21 February 1997, *Van Raalte v. the Netherlands*, § 39, and judgment of 27 March 1998, *Petrovic v. Austria*, § 37). In short, if the legal systems and case law of the states concerned in certain issues prove to be expansive and unified, the freedom of those countries at justifying the unequal treatment is that much smaller.

7. As was already indicated (supra, § III.A.1.14) in the present both the principle of "legitimate aim" and the principle of "proportionality" are absent. The inexistence of reasonable and objective justification is even more obvious when considering the following factors:

- **total coincidence and unpredictability of the decisions**, adopted by the responsible administrative authorities on the basis of various legislative measures adopted in those years that lead to the contradicting situations in homogeneous families, such as in the case of Mr. Jovanović (§ II.12.4), Mr. Velimir Dabetić (§ II.12.5) and Mme. Mezga (§ II.12.6) and Mr. Tripun and Mme Ljubenka Ristanović (§ II.12.7.8);
- the **existence of the common-ground factor in the systems of the member states of the Council of Europe concerning the lenient factors in obtaining citizenship** for persons, who would otherwise become stateless in the case of the state succession (where these persons have an actual and permanent connection with the territory of the successor State); this common-ground factor was confirmed with the adoption of the Convention on reduction of statelessness in relation to the succession of States, of 19 May 2006;
- **underground "ethnic" connotation in unequal treatment**, because the decisions about granting the citizenship and/or returning permanent residence were based on the assessment about the ethnic origin of the applicants.

8. Reported discriminatory treatment is even more evident, if the erased are compared with all the other **foreigners** that obtain the permission for temporary residence: how can it be justified that those persons enjoy more favorable treatment from those (as for example the applicants), who were until 26 February 1992 registered in the register of permanent residence, lived in Slovenia for a long time, and established strong professional, family and social ties? This happened, for example, also in the case of a married couple **Ljubenka and Ristan Ristanović (§ II.12.7-8):** the latter was namely granted a permission for temporary residence and was not erased, while his wife – who in 1992 had a permanent residence – was erased and then deported to Serbia, together with their son Tripun.

C. VIOLATIONS OF ECHR SUFFERED BY THE INDIVIDUAL APPLICANTS DUE TO THE ERASURE FROM THE REGISTER OF PERMANENT RESIDENTS

1. Violations of positive obligations concerning protection of life and psycho-physical integrity, which derive from Article 2 and 8 of ECHR; and severe health condition of Mr. Milan Makuc, Ljubomir Petreš, Mustafa Kurić and Ana Mezga as well as their incapability of free access to basic medical care.

1. Because of the loss of citizenship and the erasure from the register of permanent residents, all the applicants lost their right to free access to the state health system and to the basic care. This fact proved to be extremely worrisome for **Milan Makuc (§ II.12.1), Ljubomir Petreš (§ II.12.2), Mustafa Kurić (§ II.12.3) and Ana Mezga (§ II.12.6)**, who are suffering from **severe illnesses** and whose health condition is deteriorating in such a way, that their lives are in danger.

1.1 Especially Mr. **Milan Makuc** suffers, for already five years, from **strong kidney pains**. Besides, he has outstanding **bleeding haematoma** on his face, which is

very likely of a cancerous nature and has already strongly hurt the functionality of his lips. Haematoma is getting worse each day, also because of the very bad living conditions he lives in. Mr. **Mustafa Kurić** has TBC, for a long time he suffers from **a severe illness of the lungs**, which requires appropriate health care. In addition to that, he also suffers from **severe pain on the prostate**. Mr. **Ljubomir Petreš** has TBC: in 2001, he recovered from the "spontaneous **pnevmotoraks** on the right side of the lungs" and was then provided with the assistance at the urgent department of the hospital in Sežana, where he was operated only thanks to the doctor Srečko Stojkovski. Ms. **Ana Mezga** suffers from the severe **ulkus on the duodenum.**

2. The Court accords priority to the right to life as one of the most fundamental provisions of the Convention which are considered primary, and stands on the position that without the possibility to enjoy this right all other rights, protected by the Convention, would be senseless (judgment of 29 April 2002, *Pretty v. Great Britain*, § 37). The right to life is, namely, **"an inalienable attribute of human beings" (**judgment of 22 March 2001, *Streletz, Kessler and Krenz v. Germany*, § 94) and therefore one of the basic values of the democratic societies forming the Council of Europe (judgment of 27 September 1995, *McCann and others v. Great Britain*, § 147).

3. As it derives from the established case law of the Court, for the effective fulfillment of rights and freedoms, guaranteed by ECHR, the state has to, at times, adopt "positive measures". The state therefore should not be passive regarding such requirements (judgment of 9 October 1979, *Airey v. Ireland*, § 25, judgment of 8 July 2004, *Ilascu and others v. Moldova and Russia*, especially §§ 332-352).

3.1. The responsibility of the State can be established not only due to its "active" interference with the exercise of the rights protected by the ECHR, but also due to its "passive" interference, therefore when the state fails to adopt the necessary "positive measures" interferes with the exercise of a certain right *in concreto*.

3.2. The ECHR is not intended to guarantee the theoretical and illusory rights, but concrete and actual rights (judgment of 9 October 1979, *Airey v. Ireland*, § 24). Each signatory State therefore has a "positive duty" to take »reasonable and appropriate« measures to secure the rights enacted by the Convention (judgment of 9 December 1994, *Lopez Ostra v. Spain* § 51): as the Court stated, while determining the scope of this obligation:

> "regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which is inherent throughout the Convention. The scope of this obligation will inevitably vary, having regard to the diversity of situations obtaining in Contracting States, the difficulties involved in policing modern societies and the choices which must be made in terms of priorities and resources" (judgment of 16 March 2000, *Özgür Gündem* v. *Turkey*, § 43).

3.3. With a special regard to the right to life, the Court ruled that "**the first indent**" of Article 2 of the ECHR (everyone's rights to life shall be **protected by law**)

imposes the signatory State not only **a duty** to refrain from the intentional causing of death (a basic "negative" obligation), but also **to take appropriate measures to safeguard the lives of those within its jurisdiction ("positive obligation"):** in this sense the task of the Court is to find out

> "whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk" (judgment of 9 June 1998, *L.C.B. v. Great Britain*, § 36).

3.4. The State therefore has the positive obligation to prepare all **legislative measures, regulatory or administrative for a purpose to prevent the threatening of human lives** ("basic" obligation). In addition, the State has to punish potential behavior, which could negatively affect the right to life and has to ensure the appropriate settlement for the victims (procedural obligation).

3.5. The principle according to which "the state has to take appropriate steps to prevent the unnecessary threatening of lives (judgment of 9 June 1998, *L.C.B. v. Great Britain*, § 36; decision of 16 January 2001, application no. 44617/98, *Leray and others v. France*), is relevant also "**in the public health sphere**". In this regard, the Court meaningfully stated that

> "The aforementioned positive obligations therefore require States to make **regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives**. They also require an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable" (e.g. judgment of 17 January 2002, *Calvelli and Ciglio v. Italy*, § 49, and judgment of 8 July 2004, *Vo v. France*, § 89).

3.6. Each signatory State therefore has to satisfy a "primary duty" to put in place a legislative and administrative framework designed to provide **effective deterrence of situations which could threat to the right to life**. The State also has to take "practical measures to ensure the effective protection of citizens **whose lives might be endangered"** (e.g. judgment of 30 November 2004, *Oneryildiz v. Turkey*, § 89, judgment *Vo v. France*, § 89). In addition to that, Article 2 of the ECHR imposes on the State an obligation to **"protect the life (…) from the danger of the illness".**

3.7. In respect of the latter purpose, the Court explained that

> "an issue may arise under Article 2 where it is shown that the authorities of a Contracting State put an individual's life at risk through the **denial of health care which they have undertaken to make available to the population generally**" (e.g. judgment of 10 May 2001, *Cyprus v. Turkey*, § 219, decision of 21 March 2002, application no. 65653/01, *Nitecki v. Poland*, decision of 4 may 2000,

application no. 45305/99, *Powell v. Great Britain* and decision of 30 April 2003, application no. 14462/03, *Pentiacova v. Moldova*).

4. As Article 2 of ECHR, also **Article 8** imposes on the signatory States a **positive obligation to protect the psychophysical integrity** of human beings in the sphere of **public health**.

4.2. The Court especially emphasizes that

> "while the Convention does not guarantee as such a right to free medical care, in a number of cases the Court has held that Article 8 is relevant to applications about public funding to facilitate the mobility and quality of life of disabled applicants" (decision of 30 April 2003, application no. 14462/03, *Pentiacova v. Moldova*, decision of 8 July 2003, application no. 27677/02, *Sentges v. Netherlands*, and decision of 14 May 2002, application no. 38621/97, *Zehnalová and Zehnal v. Republic Czech*), adding that "while **it is clearly desirable that everyone should have access to a full range of medical treatment, including life-saving medical procedures and drugs**, the lack of resources means that there are, unfortunately, in the Contracting States many individuals who do not enjoy them, especially in cases of permanent and expensive treatment" (decision of 30 April 2003, application no. 14462/03, *Pentiacova v. Moldova*).

4.3. In the stated cases, the applicants separately reported inappropriateness of free health care they received by the state health system, even though they officially had a right to access "**to the standard of health care offered to the general public**". However, in the present case, **the applicants were completely denied the possibility to access free services and basic health care, guaranteed by a health system.** Because of that they did not have the possibility to treat their illnesses and consequently their condition further deteriorated.

5. Considering therefore the principles case law of the Court, we believe that preliminary rejection by the Slovenian authorities to regulate legal status of Milan Makuc, Ljubomir Petreš, Mustafa Kurić and Ana Mezga, who were illegally erased from the register of the permanent residents, and to render them all the rights on the base of the domestic legislation, represent obvious violation of positive obligations, which are imposed on the State by Articles 2 and 8 of ECHR. Namely, because of this rejection, the state of health of the applicants – which do not have access to the basic free health care – deteriorated so much, that their lives are now seriously threatened (also *infra*, § VI).

2. Violation of Article 4 of ECHR in the case of Ljubomir Petreš, who was forced into forced labour, tolerated by the authorities

1. As the Court recently reminded, Article 4 of ECHR enacts one of the **"fundamental rights of democratic society",** which consequently states that

> "in accordance with contemporary norms and trends in this field, the member States' positive obligations under Article 4 of the Convention must be seen as requiring the penalization and effective prosecution of any act aimed at maintaining a person in such a situation" (judgment of 26 July 2005, *Siliadin v. France*, §§ 111-112).

2. While interpreting Article 4 of ECHR as to the existing international means in this regard, the Court emphasized, that **the meaning of "forced labour"**

> "brings to mind the idea of physical or mental constraint. What there has to be is work "exacted ... under the menace of any penalty" and also performed against the will of the person concerned, that is work for which he "has not offered himself voluntarily" (*ibidem*, § 116),

while the meaning of **"slavery"**

> "prohibits a particularly serious form of denial of freedom (…), [which] includes, in addition to the obligation to provide certain services to another... the obligation on the "serf" to live on the other's property and the impossibility of changing his status" (*ibidem*, § 123, with the further instructions to the jurisdiction of European Commission).

3. Because of the status of an erased person, Ljubomir Petreš (§ II.12.2) is therefore forced to live for already a long time in an illegally built hut in Šentjan, on the piece of land owned by the Municipality Piran, without lightning, electricity or water. A few years back the Municipality Piran has allocated this part of land until 2016 to the private person, who exploits the unregulated position of the applicant and forces him against his will to perform hard work on the land.

4. Taking into account all specific circumstances of this case, the **psychological force**, to which the applicant is exposed (and which is tolerated by the local authorities), suffices to represent a sufficiently **serious "threat" to be able to claim that the applicant is exposed to the "forced labour" and fraudulent form of "slavery" against his will.** This case represents a typical case of total helplessness of the erased, who are deprived of any means of protection from the private persons, precisely because of the lack of legal status in domestic legislation.

5. In the present case, the exploitation of the applicant by the tenant of the land is executed with the tolerance and implicit consent of the local authorities, which are otherwise acquainted with the situation, but do not want to take appropriate measures to protect the rights of the applicant. As to this, the Court persistently emphasized, that

> "the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention" (judgment of 10th May 2001, C*yprus v. Turkey*, § 81).

3. Violation of the positive obligations, deriving from Article 8 of the ECHR concerning the fact that the health condition of Milan Makuc and Ljubomir Petreš is seriously threatened and that the Slovenian authorities do not ensure them appropriate housing

1. Because of the illegal "erasure", the applicants were inter alia deprived of the right to housing in the premises they lived in, and of the right to sign the legal lease agreements in the Slovenian territory. This circumstances forced many of them to seek provisional housing and/or into life "without the roof above the head", which was unexpectedly extended for long years.

2. Particularly, in the case of **Milan Makuc (§ II.12.1) and Ljubomir Petreš (§ II.12.2)** their already serious health condition continues to deteriorate, because of the **destructive conditions in which they are forced to live**, without access to basic services, necessary for decent living (water, electricity, gas, etc.).

3. As to this the Court emphasized, that

> "although Article 8 does not guarantee the right to have one's housing problem solved by the authorities, **a refusal of the authorities to provide assistance in this respect to an individual suffering from a severe disease might in certain circumstances raise an issue under Article 8** of the Convention because of the impact of such refusal on the private life of the individual. The Court recalls in this respect that, while the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, this provision does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private life. A State has obligations of this type where there is a direct and immediate link between the measures sought by an applicant and the latter's private life" (decision of 4th May 1999, application no. 36448/97, *Marzari v. Italy*: also *mutatis mutandis*, decision of 26 June 2001, application no. 39022/99, *O'Rourke v. Great Britain*, and decision of 10 September 1996, application no. 31600/96, *Burton v. Great Britain*).

4. When the Court applied these principles in the case *Moldovan and others v. Romania (n. 2),* it affirmed that – performed interference with the law on account of the right to private life of the applicants and preliminary rejection of the authorities to stop the violation of their rights – represent "**a serious violation of Article 8 of the Convention of a continuing nature"**. At this it pointed out that

> "the applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of

the authorities, must have caused them considerable **mental suffering**, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement" (judgment of 12 July 2005, *Moldovan and others v. Romania (n. 2)*, § 123).

5. The same conclusion can be reached in cases of Mila Makuc and Ljubomir Pereš, who for many years have been living in destructive circumstances, which fatally influence their already bad health condition and which the authorities did not try to stop.

4. Violation of Article 1 of Protocol 1 in connection with the loss or deprivation of property and rights deriving from it or property benefits, because of illegal erasure of the applicants from the register of permanent residents, or because of the lack of execution of the decisions of Constitutional Court by the Slovenian authorities

1. One of the main consequences of the unlawful erasure of the applicants from the register of permanent residents and the lack of returning of statuses *quo ante* to the applicants regarding the execution of the Slovenian Constitutional Court decisions from years 1999 and 2003 concerns the right to property, enacted by the Article 1 of Protocol 1.

2. As alerted by the Constitutional Court in the reasoning of the decision of 3 April 2003 (*supra*, § II.6), the loss of permanent residence and the inability of the erased to have their status recognized, caused "the freeze" of all their contributions, as well as all their rights preliminary obtained with the contributions for the social and health insurance, etc.

3. This situation, which is still not regulated in spite of numerous orders of the Constitutional Court, caused the interference with the all applicants' rights to the property, protected by Article 1 of Protocol 1. Above all, they "lost" all **social contributions**, which they were regularly paying all the time until erasure (Milan Makuc: 21 years of contributions; Petreš Ljubomir: 7 years of contributions; Mustafa Kurić: 26 years of contributions; Jovan Jovanović: 14 years of contributions). Besides, they also lost a correlative right to social security they were entitled to previously. In addition, because of the erasure **Milan Makuc (§ II.12.1), Ljubomir Petreš (§ II.12.2), Mustafa Kuric (§ II.12.3), Jovan Jovanović (§ II.12.4), Ana Mezga (§ II.12.6) and Ljubenka Ristanović (§ II.12.7-8)** lost their rights to the advantageous buying of the apartment, which they leased from the company they were employed at. Due to the erasure, **Ana Mezga** was withdrawn denied **financial assistance for the maternity leave and for the care and protection of a child**, which she received only for 6 months, but was entitled to it for 15 months.

4. As it is known, the case law of the Court interprets the meaning of "possession" in the widest meaning of the word, as stated in Article 1 of Protocol 1, which includes **any right or benefit of a financial nature, as well as the justified possibility of a future loan**, as long as they are sufficiently determinative. The Court emphasized several times that:

> "the concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning and that Article 1 of Protocol No. 1 in substance guarantees the right of property (...) A 'possession' within the meaning of the above provision may be either an 'existing possession' or a claim, in respect of which the applicant can argue that he has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right (…). The 'legitimate expectation' may also encompass the conditions attaching to the acquisition or enjoyment of property rights (judgment of 24 February 2005, *Veselinski* v. *Former Yugoslavian Republic of Macedonia*, § 75, and judgment of 24 February 2005, *Djidrovski v. Former Yugoslavian Republic of Macedonia*, § 80).

5. This enabled to Court, to use that kind of provision also in the field of **social security**. The Court emphasized that

> "whilst no right to pension is as such included in the Convention, the making of compulsory contributions to a pension fund may, in certain circumstances, create a property right in a portion of such fund" (judgment of 3 October 2000, *Wessels-Bergevoet v. Netherlands*).

5.1. Recently, the Grad Chamber of the Court explained some aspects of previous case law concerning the nature of social contributions, which can fall under the application of Article 1 of Protocol 1, where the distinction between their contributive or solidarity character has been dropped. It especially emphasized that

> "In the modern, democratic State, many individuals are, for all or part of their lives, **completely dependent for survival on social security and welfare benefits**. Many domestic legal systems recognize that such individuals require a degree of certainty and security, and provide for benefits to be paid – subject to the fulfillment of the conditions of eligibility – as of right. Where an individual has an assertable right under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable",

and concluded that

> "if any distinction can still be said to exist in the case-law between contributory and non-contributory benefits for the purposes of the applicability of Article 1 of Protocol No. 1, **there is no ground to justify the continued drawing of such a distinction**" and that consequently "if (…) a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements" (decision of 6 July 2005, applications no. 65731/01 and 65900/01, *Stec v. Great Britain*, §§ 51-55).

5. Based on these principles, the Court, for example, connected with the Article 1 of Protocol 1, the right to receive the compensation for unemployment (judgment of 16 September 1996, *Gaygusuz v. Austria*, §§ 36-41), the right to receive certain social contributions (judgment of 21 February 1997, *Van Raalte v. Netherlands*, §§ 33-35), the right to pension for elderly (judgment of 4 July 2002, *Wessels-Bergevoet v. Netherlands*, §§ 39-43), the right to compensation for widowhood (judgment of 11 June 2002, *Willis v. Great Britain*, §§ 29-36), the right to pension (judgment of 26 November 2002, *Buchen v. Republic Czech*, §§ 46 and 54-55) and the right to pension for the disabled (judgment of 30 September 2003, *Koua Poirrez v. France*, §§ 33-42).

6. The Court ruled that the right to advantageous buying of the apartment, foreseen by the domestic provision of the State, also represents the same kind of "possession" as in the Article 1 of Protocol 1. Is some cases concerning Macedonia, the Court emphasized that

> "taking into account the applicant's previous contributions and the agreements in force at the time, the Court considers that the applicant may be regarded as having a 'legitimate expectation' that the purchase of his apartment would be at a reduced price" (judgment of 24 February 2005, *Veselinski* v. *Former Republic Yugoslavia of Macedonia*, § 80, and judgment of 24 February 2005, *Djidrovski v. Former Republic Yugoslavia of Macedonia*, § 85).

7. From this it results that "the freeze" of all the contributions for the pensions, which the applicants were paying before the erasure, the loss of the right to advantageous buying of the apartment for Milan Makuc, Ljubomir Petreš, Mustafa Kuric, Jovan Jovanović, Ana Mezga, and Ljubenka Ristanović, and the loss of compensation for maternity leave as in the case of Ana Mezga, represent severe interference with their right to property. Non-justifiability of that kind of interference is based on Article 1 of Protocol 1, as it has already been explained (*supra*, § III.B.1.12).

5. Violation of Article 8 of ECHR concerning the consequences of deportation and/or prevented permanent return to Slovenia and/or prevented reunification with family members of Tripun and Ljubenka Ristanović, Zoran Minić, Velimir Dabetić and Ana Mezga

1. As already pointed out, some of the applicants were forced to tear the ties with other members of their families because of the erasure from the register of permanent residents.

1.1. **Tripun and Ljubenka Ristanović (§ II.12.7)** were deported to Serbia (after the ratification of the ECHR by Slovenia), despite the absence of an official deportation order (*supra*, III.B.4), which prevents them from reunification with their husband or father in Slovenia.

1.2. The same happened to **Zoran Minić (§ II.12.11)**, who was in 2002 deported to Kosovo and then fled to Serbia, from where he cannot return to Slovenia to reunify with his mother and his two sisters and brother **(they are Slovenian citizens),** in spite of the fact that he also received the invitation from the administrative unit to come by concerning the citizenship.

1.3. **Velimir Dabetić (§ II.12.5)** was at the time of the erasure living in Italy because of work, and now he cannot legally return to Slovenia. Besides, in 2002, he also lost the status of regular immigrant in Italy (because his Yugoslavian passport finally expired), where he now lives illegally. After that he was also issued a deportation order, because of which he was detained (even if it is clear that he has no citizenship whatsoever and is therefore *de facto* stateless person).

1.4. Finally, **Ana Mezga (§ II.12.6)** also cannot reunite with her minor son, who lives in Croatia, because she has no legal status in Slovenia, which would enable her to demand for the reunification:

Considering the established case law of the Court,

> "the decisions taken by States in the immigration sphere can in some cases amount to interference with the right to respect for private and family life secured by Article 8 § 1 of the Convention, in particular where the persons concerned possess **strong personal or family ties in the host country which are liable to be seriously affected by an expulsion order**. Such interference is in breach of Article 8 unless it is 'in accordance with the law', pursues one or more legitimate aims under the second paragraph of that Article, and is 'necessary in a democratic society' in order to achieve them" (e.g. inter alia, judgment of 18 February 1991, *Moustaquim v. Belgium*, § 36; judgment of 19 February 1998, *Dalia v. France*, § 52, judgment of 11 July 2002, *Amrollahi v. Denmark*, § 33, and judgment of 16 June 2005, *Sisojeva v. Latvia*, § 101).

3. In relation to this, the case law of the Court clearly defined the elements necessary to consider while assessing whether that kind of interference with the right to respect of private and family life of a foreigner is proportional to the aim pursued; Concerning this the Court points out that it is always necessary to consider all circumstances of the case.

3.1. In the opinion of the Court it is necessary to consider the nature and gravity of the offence committed by the applicant; the duration of the applicant's residence in the country from which he is going to be expelled; the time which has elapsed since the commission of the offence and the applicant's behavior until then; the nationalities of the persons concerned; the duration of the possible family ties and the actual family life, possible children and their age as well as possible problems the spouse of a foreigner would face in the state where the foreigner would be expelled (judgment of 2 August 2001, *Boultif v. Swiss*, § 48; analogous, judgment of 20 June 2002, *Al-Nashif v. Bulgaria*,

§ 117 ss., judgment of 17 April 2003, *Yilmaz v. Germany*, § 42 ss., and judgment of 15 July 2003, *Mokrani v. France*, § 27 ss.).

4. In the case concerned, there is no doubt about **firm family ties**, which the applicants developed in Slovenia **and which have to be protected under the Article 8 of ECHR.**

5. Interference of the Slovenian authorities with the applicants' right to family life and permanent rejection of the permission to reunification of the families, are not in compliance paragraph 2 of Article 8 of ECHR, because of the reasons already presented (*supra*, § III.B.1). In addition, in the circumstances of the case concerned, the positive obligations of the State have even a stronger meaning in the field of international law, as affirmed by the 1999 Draft Articles of the International Law Commission (supra, § 1.6.2), where article 12 stipulates that

> "Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned **shall take all appropriate measures to allow that family to remain together or to be reunited**".

IV. EXPLANATION CONCERNING CRITERIA STATED IN ARTICLE 35 OF THE CONVENTION

1. Absence of effective domestic remedies and non-application of the rule of the exhaustion of all domestic remedies

1. As it has already been presented (supra, § III.A.1.), the violations concerning the applicants turned out to be continuous/repeated and connected to the loss of Yugoslavian citizenship, with inability to obtain the Slovenian citizenship, with the erasure from the register of permanent residents, with the rejection of the Slovenian authorities – which now lasts for already 14 years – to reinstate status *quo ante* to the applicants and to adopt an appropriate systemic act, which would regulate their status with a retroactive effect, as ruled by the decisions of the Constitutional Court in 1999 and 2003.

2. Concerning the situation where the Technical Act was annulled with the public referendum marked by the augmenting hatred towards people, who "are not of a Slovenian ethnic origin", the applicants found themselves in a situation of **total inability to recourse to any accessible legal remedy that would actually realize what is defined by paragraph 1 of Article 35 of ECHR** and what in relation to this, is required by the case law of the Court and the rules of international law, on which the Court is based.

3. In this respect, the Court several times alerted that

> "est tenu de faire **«un usage normal» des recours vraisemblablement effectifs et suffisants pour porter remède à ses griefs**. Par ailleurs, les voies de recours indiquées par le Gouvernement doivent exister avec **un degré suffisant de certitude, en pratique et en théorie**, sans quoi leur manquent l'accessibilité et l'effectivité voulues, et il incombe à l'Etat défendeur de démontrer que ces diverses conditions se trouvent réunies" (judgment of 16 September 1996, *Akdivar and others v. Turkey* §§ 66 and 68, judgment of 26 November 2002, *Buchen v. Republic Czech*, § 49).

4. The case law of Strasbourg also determined the scope of exceptions at the use of the rule of exhaustion of all domestic legal remedies, prescribed by paragraph 1 of the Article 35 of ECHR.

4.1. Exhaustion of all legal remedies is not required in a case, when **"an irregular administrative procedure"** is established, i.e. when an administrative practice, which violates human rights in a systemically repeating way and has no written basis in the laws or regulations and are tolerated by the state authorities. Repetition of the act is defined as

> "an accumulation of identical or analogous breaches which are sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system" (judgment of 18 January 1978, *Ireland v. great britain*, § 159);

official toleration of prohibited acts is ascertainable, when

> "the superiors of those immediately responsible, though cognizant of such acts, take no action to punish them or to prevent their repetition; or that a higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings a fair hearing of such applications is denied» (European Commission, report of 5 November 1969, application no. 3321-3323 and 3344/67, *Denmark, Norwegian, Swiss and Netherlands v. Greece*, in *YECHR 1969*, p. 169).

4.2. Second, the case law of Strasbourg defined a range of "special discharging circumstances", which can exceptionally excuse the applicants from the obligation to exhaust the domestic remedies. These circumstances are: **material inability to exercise those remedies because of the State authorities' treatment** (judgment of 9 October 1979, *Airey v. Ireland*, § 19); **senselessness of the recourse to such remedies** because of the effect of a decision of State authority which would prevail over other State authorities, to which applicants theoretically could recourse (European Commission, decision of 30 August 1958, application no. 332/57, *Lawless v. Ireland*, in *YECHR 1958-1959*, p. 319, and decision of 5 March 1976, application no. 5613/72, *Hilton v. Great Britain*, in *DR*, 4, pp. 186-187); **fear from violent retaliate measures** (European Commission, decision of 20 February 1995, application no. 22497/93, *Aslan v. Turkey*, and decision of 22 May 1995, application no. 24276/94, *Kurt v. Turkey*); or **the feeling of**

insecurity and vulnerability of the applicants deriving from the violations the victim of which they have been (European Court, judgment of 18 December 1996, *Aksoy v. Turkey*, §§ 52-57, judgment of 28 November 1997, *Menteş and others v. Turkey*, §§ 57-61, judgment of 24 April 1998, *Selçuk and Asker v. Turkey*, §§ 65-71, and judgment of 25 May 1998, *Kurt v. Turkey*, § 83).

4.3. The Court inter alia recognizes that the objective situation in a certain state may prevent the functioning of the judiciary, so that the applicant is dismissed from the duty to exhaust domestic legal remedies. Accordingly, in the *Akdivar* case the Court recognized a special discharging circumstance

> "[in] the national authorities r**emaining totally passive** in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance», considering «not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the **general legal and political context** in which they operate as well as the personal circumstances of the applicants".

Therefore the Court in the stated case was of opinion that

> "there may be obstacles to the proper functioning of the system of the administration of justice. In particular, the difficulties in securing probative evidence for the purposes of domestic legal proceedings, inherent in such a troubled situation, may make the pursuit of judicial remedies futile and the administrative inquiries on which such remedies depend may be prevented from taking place" (European Court, judgment of 16 September 1996, *Akdivar and others v. Turkey*, §§ 68-70; the same principles were repeated in the judgment of 28 July 1999, *Selmouni v. France*, § 77).

4.4. For this purpose, it is also necessary to point out the case law of the Inter-American bodies, which ensured that

> "if [the applicant's] indigence or a general fear in the legal community to represent him prevent a complainant before the Commission from invoking the domestic remedies necessary to protect a right guaranteed by the Convention, he is not required to exhaust such remedies» (inter-American Court, opinion of 10 August 1990, no. OC-11/90, Ex*ceptions to the* Ex*haustion of Domestic Remedies*, cit., § 42, inter-American Commission, decision of 17 December 1998, no. 97/1998, application no. 11825, *Neville Lewis v. Jamaica*, §§ 54-60, and decision of 17 December 1998, no. 96/1998, application no. 11827, *Peter Blaine v. Jamaica*, §§ 56-61).

5. In the present case, the applicants requested several times – also after the decisions of Constitutional Court in 1999 and 2003 – for anew registration into the register of permanent residents and / or for Slovenian citizenship, but did not get any positive answer. Nothing more could have been expected from them. Namely, there is a range of

justified reasons, which discharges them of the responsibility to search for the potential further solutions.

6. First, we have to point out, how a general situation in which the stories of particular applicants unrolled, represents "**an irregular administrative procedure"** with regard to the European law. As already mentioned and as it was confirmed by the responsible international bodies (United Nations Treaty Bodies, Commissioner for Human Rights at the Council of Europe, Advisory Committee, established on the basis of Framework Convention for the Protection of National Minorities), **the described situation affected thousands of people** (more that 18.000 under the estimations of Slovenian Ministry of the Interior) and was put into action with the systemic repetition of illegal action ("erasure"). The authorities then rejected any comprehensive reparation of injustices and accordingly proved their **"indulgence"** to violations of human rights, which affected erased and about which they are now complaining.

7. Second, in the present case "special circumstances", which in accordance with the case law of the Court can justify the exception to the rule of exhaustion of all legal remedies, are successively repeating. There is no doubt, that because of having been erased and because of the behavior of State authorities, the applicants found themselves **in a position of exceptional insecurity and vulnerability.** They are exposed to possible retaliate measures and they actually do not have a possibility to find a remedy inside the **"general political and judicial context"**, which is marked by a **total passiveness of the State authorities** and even bigger **social exclusion** by the Slovenian population.

8. Finally, we cannot suppress **the difficulties, which the applicants faced and are still facing while searching for assistance at the qualified Slovenian attorneys,** prepared to represent the interests of the group of people (erased), which are observed with distrust if not with despise (at least 31% of the population in 2004 voted against the execution of the decisions of the Constitutional Court). Because of these facts, they had to turn to the Italian advocates to prepare the present application before the European Court of Human Rights.

9. The listed facts discharge the applicants of the obligation to recourse to the available domestic legal remedies. Even if all of the presented exceptions prove to be useless in the present case, it would still not be possible to refer to the rule of exhaustion of all legal remedies because of the evident ineffectiveness of these remedies in a possible situation in reality.

9.1. Concerning the latter aspect, it needs to be emphasized that potential granting of a Slovenian citizenship and / or permanent residence, even with the retroactive effect from the erasure, **would not be appropriate either before or now for remedying the violations**, suffered by the applicants. It would be necessary to adopt an organic law, which would precisely regulate a comprehensive restitution of the applicants' rights and therefore enable them to put into force their claims, **including the claims concerning compensation**, taking into consideration specific situations of the applicants, as ordered by the Constitutional Court in the decision of 3 April 2003 (*supra*, § II.6).

9.2. When the Court was dealing with a certain case, which is in many aspects similar as the present case, it explained that possible decisions of state authorities to regulate the residence of the applicants in the territory of the State, by itself are not sufficient to stop counting the applicants as victims. The Court invoked to its established case law which states that "a decision or measure favorable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention", and emphasized that

> "in the present case, (…) the Latvian authorities **have not acknowledged, still less afforded redress for, the damage sustained by the applicants**. (…) Nor has the **decision in question erased the long period of insecurity and legal uncertainty which they have undergone in Latvia**" (judgment of 16 June 2005, *Sisojeva v. Latvia*, §§ 53-54).

9.3. Because the political and administrative authorities even before that persistently rejected the execution of the Constitutional Court decisions, **each legal move would inevitably be condemned to failure (and would therefore be practically senseless).** This is proven by the fact that in the last years there are no cases in which ordinary and administrative judges would find in favor of the erased (see especially the explanation of the Administrative Court in Celje, stated *supra*, § III.B.5.10.3). But even in case of finding in favor of the erased, the administrative authorities, responsible for the issuing of the permission of permanent residence and other supplementary decisions, could still reject (and most probably this would actually happen) the execution of the decision of the judges.

2. Repeated violations and the use of a six months deadline for the submission of the proposition of the application

1. In accordance with the established case law of the Court, in a case of repeated violations, as foreseen in paragraph 1 of Article 35 of ECHR, the six-month deadline for the submission of the proposition of the individual claim starts running in the moment when the negative effects of the violations are terminated.

2. The Court especially emphasized – and by this followed the explanation of the Commission – that

> "in respect of a complaint about the absence of a remedy for a continuing situation, such as a period of detention, the six-month time-limit under Article 35 § 1 starts running from the end of that situation – for example, when an applicant is released from custody" (judgment of 31 July 2000, *Jecius v. Lithuania*, § 44; analogous, judgment of 23 September 1994, *Hokkanen v. Finland*).

2.1. Recently, the same principle was invoked in the case of the repeated violation of the right to freedom of movement, which rose as the consequence of the range of several repeated measures, and it was judged that

> "the fact that the travel ban was periodically re-confirmed and that several sets of proceedings ensued cannot lead to the conclusion that the events complained of were composed of separate and unrelated occurrences so that a fresh six months' period should start to run after every relevant decision" (judgment of 23rd May 2006, *Riener v. Bulgaria*, § 101).

3. In the present case, the applicants are complaining exactly because of the violation of ECHR, which lasts already for several years and still has negative effects (*supra*, § III.A.1). Considering the lack of the effective domestic remedies, which would settle the presented violations (supra, § III.B.7), and considering that the Slovenian authorities did not want to adopt measures to repair the situation, which would cease the violations, it can be concluded, that the period of six months, under paragraph 1 of Article 35 of ECHR, did not even start running yet.

V. OTHER INTERNATIONAL BODIES DEALING WITH THE APPLICATION

The violations that are the subject of this application were not registered at any other international body for the investigation or deliberation.

VI. THE REQUEST FOR THE INTERIM MEASURES UNDER ARTICLE 39 OF THE RULES OF COURT

1. The case law of j the Court concerning the application of Article 39 of the Rules of Court

1. The power of the Court at issuing interim measures as foreseen in Article 39 of the Rules, is, as a rule, carried out with the purpose to prevent the potential deportation and extraditions to States, where there is a danger of treatment or punishment, which is contrary to Articles 2 and 3 of ECHR (e.g. judgment of 27 April 2000, *Aspichi Dehwari v. Netherlands*, § 5; decision of 9 July 2002, application no. 61350/00, *Thampibillai v. Netherlands*; decision of 11 March 2003, application no. 645999/01, *Ali Reza Razaghi v. Swiss*; decision of 9 July 2002, application no. 58510/00, *Venkadajalasarma v. Netherlands*).

2. This does not mean though that this kind of power cannot be executed (and that it has not been actually executed) to protect the other pledgeable needs of material or procedural nature, above all **with the purpose to ensure the actual exercise of the right to individual complaint guaranteed under Article 34 of ECHR.**

3. The practice of the bodies of the Convention concerning interim measures showed that these kinds of measures could be used also for various precautionary purposes of suspending of the deportation or extradition, which are contrary to the Articles 2, 3 and 8 of the ECHR. This kind of use of the measures is possible if there is *periculum in mora*, i.e. there is a substantiated fear that in the period of judicial deliberation "severe and irreparable damage" for a life or psychophysical health of a person, is put into action.

3.1. Namely, the European Commission many times issued the interim measures in order to prevent the degradation of the harmful effects of the alleged repeated procedures, which threatened the life or psychophysical health of the applicants (decision of 3 December 1986, application no. 11488/85, *Patané v. Italy*; decision of 15 January 1993, application no. 19796/92, *Vakalis v. Greece*; decision of 14 October 1981, application no. 9338/81, not published, decision of 15 March 1984, applications no. 9911/82 and 9945/82, *R., S., A. and C. v. Portugal*, partial publication in *Decisions and Reports*, 36, p. 200, and decision of 20 October 1997, application no. 33977/96, *Llijkov v. Bulgaria*; decision of 11 September 1992, complaint no. 20347/92, *B.M. and 51 others v. Spain*).

3.2. Also the new Court made use of the precaution power for the other purposes then deportation and extradition; especially it made use of the principle to protect the health and psychophysical integrity of the detained people (example of the interim measures of the Court in connection with the application no. 18372/04, *Mirtskhoulava v. Georgia*, with application no. 14787/04, *Mzhachikh v. Ukraine*, with application no. 17116/04, *Sizarev v. Ukraine*, decision of 2 September 2004, application no. 5142/04, *Hun v. Turkey*, and decision of 2 September 2004, complaint no. 8062/04, *Eren v. Turkey*). In the *Ocalan* case, the Court inter alia issued an interim measure in order to ensure the protective guarantees during the legal procedure of first instance, as guaranteed by Article 6 of ECHR (decision of 14 December 2000, application no. 46221/99, *Öcalan v. Turkey*).

The same Court recently also ruled that

> "la pratique passée montre qu'en principe, les demandes de mesures provisoires au titre de l'article 39 sont celles qui font état d'un **danger imminent menaçant la vie du requérant, ou de traitements ou peines inhumains ou dégradants**",

and therefore emphasized that the interim measures are otherwise designed to suspend the deportation or extradition, however this does not exclude the possibility of their use in other fields (judgment of 4 February 2005, *Mamatkulov and Askarov v. Turkey*, § 55).

5. In this last judgment, the Court inter alia exposed the conservative function and judicial effectiveness of the interim measures, which are closely connected to the effective execution of individual complaints, guaranteed under Article 34 of ECHR, and with the principle of the effectiveness of the final judgment. With the exceptional

progress in comparison to the position the Court took in the *Cruz Varas* case onward, the Court established that

> "tout Etat Partie à la Convention saisi d'une demande de mesures provisoires indiquées en vue d'éviter qu'un préjudice irréparable ne soit causé à la victime de la violation alléguée **doit respecter** ces mesures et s'abstenir de tout acte ou omission qui porterait préjudice à l'intégrité et à l'effectivité de l'arrêt final" (*ibidem*, §§ 110 and 111; analogous, judgment of 17 January 2006, *Aoulmi v. France*, §§ 101-112).

2. The existence of the danger that in the present case threatens the life and psychophysical health of Milan Makuc, Petreš Ljubomir and Mustafa Kurić, that justifies the indication of the interim measures

1. As presented above and as proven by the documentation enclosed to the application, all the applicants suffer from severe illnesses, which demand immediate medical intervention and appropriate medical and social care.

2. Mr. **Milan Makuc (§ II.12.1)** already for five years suffers from **severe pains in the kidneys.** Besides, he has an expressive **bloody haematoma** on his face, which is most probably of a cancerous nature and has already affected functionality of his lips. Haematoma is deteriorating daily, also due to the bad living conditions in which he lives. Mr. **Petreš Ljubomir (§ II.12.2)** has TBC: in 2001, he recovered from "spontaneous **pneumothorax** on the right side of the lungs" and then got assistance at the urgent department of the hospital in Sežana, where he was operated only thanks to the doctor Srečko Stojkovski. His health conditions still require urgent treatment with the appropriate therapies, but he himself is not capable to carry the expenses of the medical treatment, while no free of charge treatment was offered to him. Mr. **Mustafa Kurić (§ II.12.3)** already for a long time suffers from a **severe illness of the lungs,** which require appropriate medical care; also, he feels **strong pains on the prostate.**

3. In these cases there are reasons for the Court to issue interim measures under Article 39 of the Rules of Court, because **the life and psychophysical health of the applicants is seriously threatened** because of the violation of fundamental rights presented by this application.

4. For the sake of the applicants and for correct course of the judicial procedure, we ask the Court to advise the Slovenian government to adopt **all the necessary interim measures**, **which should guarantee that the applicants will immediately obtain free of charge and appropriate medical and hospital care**, and accordingly prevent the deterioration of their already very bad and potentially irreparable health condition.

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VII. CONCLUSIONS

Based on the above presented findings and considering the enclosed documentation, we ask the Court to:

- preliminary

a) request the Slovenian Government, under the principles and effects of Article 39 of the Rules of Court, to ensure to the applicants, whose names are marked with § VI, access to appropriate medical and hospital care and accordingly prevent severe and irreparable threatening of their psychophysical condition and consequently the violations of Article 2, 3 and 8 of the ECHR;

b) authorize the Minister of Justice, in accordance with the Article 40 of the Rules of Court, to immediately notify the Slovenian government about the deposition of this application and about the facts dealt with by the application;

c) to order priority deliberation of this application, in accordance with Article 40 of the Rules of Court;

- in deliberation

a) in cases of all applicants to recognize the violation by the State Slovenia of the obligations deriving from **Article 8, Article 3, Article 3 of the Protocol 1, Article 2 of the Protocol 4, Article 6 and Article 13 of ECHR, as well as Article 14 of ECHR**, as explained in § III.B of this application;

b) regarding the situations of individual applicants, to recognize the violation by the State Slovenia of the obligations deriving from **Article 2, Article 8, Article 4 and Article 1 of Protocol 1 of ECHR,** as explained in § III.C of this application;

c) in accordance with **Article 41 of ECHR,** to rule that the State Slovenia to pay to the applicants the amount of money for an equal redress of severe immaterial and material damage suffered due to the presented violations, as well as to pay the expenses of the present application and of any potential procedure that the individual applicants might instigate on the national level to redress the injustices suffered; the precise amounts will be determined subsequently, as prescribed with the Article 60 of the Rules of the Court;

d) in accordance with **paragraph 1 of the Article 46 of ECHR**, to confirm that the State Slovenia is obliged to take all individual measures to terminate the violations of ECHR and its Protocols and therefore prevent all harmful consequences, caused by this kind of violation;

e) in accordance with **paragraph 1 of Article 46 of ECHR**, to confirm that the reported violations in the present application derive form "**an irregular administrative procedure"** or from the structural problem of the existing legal order in the State Slovenia, where the latter has the obligation to redress the injustices with the appropriate general measures.

VIII. THE DECLARATION AND THE SIGNATURES

We state at the full conscience that to our knowledge all information in this application are correct.

Genova-Rome, 26 June 2006

Attorney Alessandra Ballerini

Attorney Anton Giulio Lana

Attorney Marco Vano

Attorney Andrea Saccucci

IX. DOCUMENTS

I) CD-ROM, with all main legislative and judicial measures concerning the erased.

II) Analytical tables with documents (including the power of attorney) about each individual applicant.

III) J. DEDIĆ, V. JALUSIĆ, J. ZORN, *The Erased. Organized Innocence and The Politics of* Ex*clusion*, Ljubljana, 2003.

IV) Decision of the Administrative Court of RS, external department in Celje of 14 March 2006.