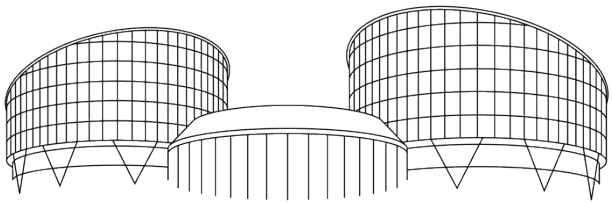

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF KURIĆ AND OTHERS v. SLOVENIA

(Application no. 26828/06)

JUDGMENT

STRASBOURG

26 June 2012

This judgment is final but may be subject to editorial revision

In the case of Kurić and Others v. Slovenia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,
Jean-Paul Costa,
Françoise Tulkens,
Nina Vajić,
Dean Spielmann,
Boštjan M. Zupančič,
Anatoly Kovler,
Elisabeth Steiner,
Isabelle Berro-Lefèvre,
Päivi Hirvelä,
George Nicolaou,
Luis López Guerra,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Guido Raimondi,
Ganna Yudkivska,
Angelika Nußberger, *judges*,
and Vincent Berger, *Jurisconsult*,

Having deliberated in private on 6 July 2011 and 11 April 2012,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 26828/06) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Milan Makuc, a Croatian national, and by ten other applicants, on 4 July 2006. After the death of Mr Makuc, the case was renamed *Kurić and Others v. Slovenia*. Eight applicants remain before the Grand Chamber (see paragraph 15 below).

2. The applicants were represented before the Court by Mr A.G. Lana and Mr A. Saccucci, lawyers practising in Rome, and Ms A. Ballerini and Mr M. Vano, lawyers practising in Genoa (Italy).

3. The Slovenian Government ("the Government") were represented by their Agent, Mr L. Bembič, State Attorney.

4. Under Article 8 of the Convention, the applicants alleged, in particular, that they had been arbitrarily deprived of their status as permanent residents after Slovenia had declared its independence in 1991.

They also complained under Article 13 of the Convention that no effective legal remedies were available in that respect, and under Article 14, read in conjunction with Article 8 of the Convention, that they had been subjected to discriminatory treatment. Lastly, they submitted that, in breach of Article 1 of Protocol No. 1, they had been arbitrarily denied their pension rights.

5. The application was allocated to the Court's Third Section (Rule 52 § 1 of the Rules of Court), which decided on 10 November 2006 to notify the respondent Government of it as a matter of urgency under Rule 40 of the Rules of Court and to grant priority to it under Rule 41.

6. On 31 May 2007 the Third Section, composed of the following judges: Corneliu Bîrsan, Boštjan M. Zupančič, Elisabet Fura, Alvina Gyulumyan, Egbert Myjer, David Thór Björgvinsson and Ineta Ziemele, and also of Santiago Quesada, Section Registrar, decided to give notice to the respondent Government of the complaints under Article 8, taken alone and in conjunction with Articles 13 and 14 of the Convention and under Article 1 of Protocol No. 1. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The remainder of the application was declared inadmissible.

7. Furthermore, third-party comments were received from the Serbian Government, who had exercised their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)). Third-party observations were also submitted by the Equal Rights Trust, Open Society Justice Initiative, the Peace Institute – Institute for Contemporary Social and Political Studies, and the Legal Information Centre of Non-Governmental Organisations, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3). The respondent Government and the applicants replied to the Serbian Government's comments.

8. Further to the notification under Article 36 § 1 of the Convention and Rule 44 § 1 (a), the Croatian Government and the Government of Bosnia and Herzegovina did not wish to exercise their right to intervene in the present case.

9. On 13 July 2010 a Chamber of the Third Section, composed of the following judges: Josep Casadevall, Elisabet Fura, Corneliu Bîrsan, Boštjan M. Zupančič, Alvina Gyulumyan, Egbert Myjer and Ineta Ziemele, and also of Santiago Quesada, Section Registrar, declared the application admissible in respect of the complaints of eight of the applicants under Articles 8, 13 and 14 of the Convention, and held unanimously that there had been a violation of Articles 8 and 13 of the Convention and that it was not necessary to examine the complaint under Article 14 of the Convention. The Chamber also held that a relative of the late applicant Mr Makuc did not have standing to continue the proceedings in his stead. The complaints of Mr Petreš and Mr Jovanović, who had been granted permanent residence

permits, and the remainder of the other applicants' complaints were declared inadmissible. In addition, the Chamber indicated to the respondent Government the appropriate general and individual measures to be adopted under Article 46 and reserved the question of just satisfaction under Article 41 of the Convention.

10. On 13 October 2010 the Government asked for the case to be referred to the Grand Chamber by virtue of Article 43 of the Convention and Rule 73. On 21 February 2011 a panel of the Grand Chamber granted that request.

11. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. On 3 November 2011 Jean-Paul Costa's term as President of the Court came to an end. Nicolas Bratza succeeded him in that capacity and took over the presidency of the Grand Chamber in the present case (Rule 9 § 2). Jean-Paul Costa continued to sit following the expiry of his term of office, in accordance with Article 23 § 3 of the Convention and Rule 24 § 4.

12. The applicants and the respondent Government each filed written observations. In addition, third-party comments were received from the Office of the United Nations High Commissioner for Refugees ("UNHCR"), which had been given leave by the President to intervene in the written procedure before the Grand Chamber (Article 36 § 2 of the Convention and Rule 44 § 3). Open Society Justice Initiative also filed updated and consolidated submissions.

13. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 July 2011 (Rule 59 § 3).

There appeared before the Court:

(a) *for the respondent Government*

Mr L. BEMBIČ, State Attorney, *Agent*,
Ms V. KLEMENC, State Attorney, *Co-Agent*,
Ms N. GREGORI, Ministry of the Interior,
Mr J. KOSELJ, Ministry of the Interior,
Ms I. JEGLIČ, Ministry of the Interior,
Ms A. SNOJ, Ministry of the Interior,
Mr A. JERMAN, Ministry of the Interior,
Mr P. PAVLIN, Ministry of the Interior,
Mr S. BARDUTZKY, Ministry of Justice, *Advisers*;

(b) *for the applicants*

Mr A. G. LANA,
Mr A. SACCUCCI, *Counsel*,
Ms N. KOGOVŠEK ŠALAMO,
Ms A. SIRONI, *Advisers*.

14. The Grand Chamber heard addresses by Mr Lana, Mr Saccucci and Mr Bembič, as well as their answers to questions put by the judges. Additional information was submitted by the applicants and the respondent Government in writing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

15. The first applicant, Mr Mustafa Kurić, was born in 1935 and lives in Koper (Slovenia). He is a stateless person. The second applicant, Mr Velimir Dabetić, was born in 1969 and lives in Italy. He is a stateless person. The third applicant, Ms Ana Mezga, is a Croatian citizen. She was born in 1965 and lives in Portorož (Slovenia). The fourth applicant, Mrs Ljubenka Ristanović, is a Serbian citizen. She was born in 1968 and lives in Serbia. The fifth applicant, Mr Tripun Ristanović, the son of the fourth applicant, was born in 1988 and is currently living in Slovenia. He is a citizen of Bosnia and Herzegovina. The sixth applicant, Mr Ali Berisha, was born in 1969 in Kosovo. According to the most recently available data, he is a Serbian citizen. He currently lives in Germany. The seventh applicant, Mr Ilfan Sadik Ademi, was born in 1952. He lives in Germany and is now a Macedonian citizen. The eighth applicant, Mr Zoran Minić, was born in 1972. According to the Government, he is a Serbian citizen.

A. Background to the case

1. Citizenship in the SFRY

16. The Socialist Federal Republic of Yugoslavia ("the SFRY") was a federal State composed of six republics: Bosnia and Herzegovina, Croatia, Serbia, Slovenia, Montenegro and Macedonia. SFRY nationals had "dual citizenship" for internal purposes, that is, they were citizens both of the SFRY and of one of the six republics. Until 1974, federal citizenship prevailed over republic citizenship: republic citizenship could only be held by a Yugoslav citizen.

17. The regulation of citizenship was similar in all republics of the SFRY, with the basic principle of acquiring citizenship by blood (*jus sanguinis*). In principle, a child acquired his or her parents' citizenship; if the parents were citizens of different republics, they jointly agreed on their child's citizenship. On the date of acquisition of the citizenship of another republic, a person's prior republic citizenship came to an end.

18. From 1947 a separate Register of Citizenship was kept at the level of the republics and not at the level of the federal State. From 1974 the citizenship data for newly born children were entered in the Register of Births and from 1984 the entry of data in the Register of Citizenship ended, all citizenship data being entered in the Register of Births.

19. SFRY citizens had freedom of movement within the federal State and could register permanent residence wherever they settled on its territory. Full enjoyment of various civil, economic, social and even political rights for SFRY citizens was linked to permanent residence.

20. SFRY citizens living in the then Socialist Republic of Slovenia who were citizens of one of the other SFRY republics, such as the applicants, registered their permanent residence there in the same way as Slovenian citizens. Foreign citizens could also acquire permanent residence in the SFRY under a separate procedure.

2. The independence of Slovenia and the "erasure"

21. In the process of the dissolution of the SFRY, Slovenia took steps towards independence. On 6 December 1990, the then Assembly of the Republic of Slovenia adopted the "Statement of Good Intentions" (*Izjava o dobrih namenih*), guaranteeing that all persons with permanent residence on Slovenian territory would be enabled to acquire Slovenian citizenship if they so wished (see paragraph 200 below).

22. On 25 June 1991 Slovenia declared its independence. A series of laws termed "the independence legislation" were passed. This included the Citizenship of the Republic of Slovenia Act (*Zakon o državljanstvu Republike Slovenije* – "the Citizenship Act"), the Aliens Act (*Zakon o tujcih*, see paragraphs 205-207 below), the National Border Control Act (*Zakon o nadzoru državne meje*) and the Passports of the Citizens of Slovenia Act (*Zakon o potnih listinah državljanov Republike Slovenije*).

23. At the material time, in contrast with some of the other former SFRY republics, the Slovenian population was relatively homogeneous, as roughly 90% of the 2 million residents had Slovenian citizenship. Approximately 200,000 Slovenian residents (or 10% of the population), including the applicants, were citizens of the other former SFRY republics. This proportion also broadly reflects the ethnic origin of the Slovenian population at that time.

24. In accordance with the Statement of Good Intentions, section 13 of the 1991 Constitutional Law provided that those citizens of other republics of the former SFRY who, on 23 December 1990, the date of the plebiscite on the independence of Slovenia, were registered as permanent residents of the Republic of Slovenia and actually lived there, held equal rights and duties to citizens of the Republic of Slovenia, with the exception of the acquisition of property, until they acquired citizenship of the Republic of Slovenia under section 40 of the Citizenship Act or until the expiry of the

time-limit set out in section 81 of the Aliens Act (25 December 1991 – see paragraphs 202, 205 and 207 below).

25. Section 40 of the Citizenship Act, which entered into force on 25 June 1991, provided that citizens of the former SFRY republics who were not citizens of Slovenia ("citizens of the former SFRY republics") could acquire Slovenian citizenship if they met three requirements: they had acquired permanent resident status in Slovenia by 23 December 1990 (the date of the plebiscite), were actually residing in Slovenia, and had applied for citizenship within six months after the Citizenship Act entered into force. As indicated in paragraph 24 above, this deadline expired on 25 December 1991. After that date, the less favourable conditions for acquisition of citizenship by naturalisation provided for by section 10 of the Citizenship Act became applicable also for citizens of other former SFRY republics (see paragraph 205 below).

26. According to the official data, 171,132 citizens of the former SFRY republics living in Slovenia applied for and were granted citizenship of the new State under section 40 of the Citizenship Act. Estimations are that an additional 11,000 persons left Slovenia.

27. Under the second subsection of section 81 of the Aliens Act, citizens of the former SFRY republics who either failed to apply for Slovenian citizenship within the prescribed time-limit or whose requests were not granted became aliens. The provisions of the Aliens Act became applicable to the former SFRY citizens either two months after the expiry of the time-limit (that is, by 26 February 1992), or two months after a decision issued in administrative proceedings rejecting their application for citizenship became final (see paragraph 207 below).

28. After the declaration of independence, the Ministry of the Interior ("the Ministry") sent several unpublished internal instructions (*okrožnice, navodila, depeše*) to municipal administrative authorities relating to the implementation of the independence legislation, and in particular the Aliens Act. In a circular of 26 June 1991 the Ministry instructed the administrative authorities that citizens of other SFRY republics living in Slovenia were henceforth considered aliens in all administrative proceedings and that, in accordance with section 13 of the 1991 Constitutional Law, they held equal rights and duties to citizens of the Republic of Slovenia until the expiry of the relevant time-limits (see paragraph 24 above). It further gave technical instructions in the field of passports and aliens. On 30 July 1991 the Ministry informed the municipal administrative authorities that, further to the Brioni Declaration between the European Community Ministerial Troika and representatives of Slovenia, Croatia, Serbia and Yugoslavia, the enforcement of the independence legislation in the sphere of internal affairs had been suspended for a period of three months. During this period, citizens of other SFRY republics would not be treated as aliens. Two further administrative circulars were issued on 5 and 18 February 1992, drawing

attention to the general problems relating to the implementation of the Aliens Act. The former circular stated that, when administering matters concerning the status of aliens, the personal documents of citizens of other SFRY republics issued by the Slovenian administrative authorities should be kept and their passports revoked and destroyed.

29. On 26 February 1992, the date on which the second subsection of section 81 of the Aliens Act became applicable, the municipal administrative authorities removed those who had not applied for or obtained Slovenian citizenship from the Register of Permanent Residents (*Register stalnega prebivalstva* – "the Register") and, according to the Government, transferred them into the Register of Aliens without a Residence Permit.

30. On 27 February 1992 the Ministry indicated in its instructions to the municipal administrative authorities that it would be necessary to regulate the legal status of these persons. It drew their attention to the fact that numerous problems were expected to arise; the legal status of the persons concerned should be regulated and, in parallel, "the clearing of records" should be undertaken. In addition, the Ministry pointed out that the papers of such persons, even if issued by the Slovenian authorities and formally valid, would in fact become invalid owing to the persons' change in status *ex lege*. The Ministry also gave an interpretation of sections 23 and 28 of the Aliens Act in cases of cancellation of residence and forcible removal.

31. The applicants stated that persons whose names were removed from the Register received no official notification. They pointed out that no special procedure was provided for to that effect and no official documents were issued. They only subsequently became aware that they had become aliens, when, for example, they attempted to renew their personal documents (personal identification card, passport, driving licence). The Government, however, maintained that, in addition to the publication in the Official Gazette, the Slovenian population was informed about the new legislation through public media and notices. In some municipalities, personal means of notification were allegedly also used.

32. According to official data from 2002, the number of former SFRY citizens who had lost their permanent residence status on 26 February 1992 amounted to 18,305, of whom approximately 2,400 had been refused citizenship. They became known as the "erased" (*izbrisani*), and included the applicants in the present case. New data on the "erased" were collected in 2009 (see paragraph 69 below).

33. As a result, the "erased" became aliens or stateless persons illegally residing in Slovenia. In general, they had difficulties in keeping their jobs and driving licences and obtaining retirement pensions. Nor were they able to leave the country, because they could not re-enter without valid documents. Many families became divided, with some of their members in Slovenia and others in one of the other successor States to the former

SFRY. Among the "erased" were 5,360 minors. In most cases their identity papers were taken away. Some of the "erased" voluntarily left Slovenia. Some were served with removal orders and deported from Slovenia.

34. After 26 February 1992 the registration of permanent residence of citizens of other former SFRY republics was terminated if they had not acquired a new residence permit. However, under section 82 of the Aliens Act, permanent residence permits issued to foreigners with citizenship of States other than the former SFRY republics continued to be valid after the entry into force of the Aliens Act (see paragraph 207 below).

35. On 4 June 1992 the then Minister for the Interior sent a letter (no. 0016/1-S-010/3-91) to the Government, informing them of the questions that remained open relating to the implementation of the Aliens Act, in view of the large number of persons from the other republics of the former SFRY living in Slovenia without a regulated status. He also stated that, in his view, during the process of independence, all the rights of citizens of other SFRY republics living in Slovenia, as resulting from international conventions and bilateral treaties, had been taken into account. The Government maintained that, further to this letter, they took action in order to attenuate the consequences of the "erasure" by interpreting the provisions of the Aliens Act in a more flexible manner (see paragraph 36 below). In addition, on 15 June 1992 another administrative circular with instructions on the implementation of the Aliens Act was sent to the municipal administrative authorities. It addressed a number of open questions relating to such matters as the allocation of military apartments, registration of temporary refugees from Bosnia and Herzegovina, the keeping of records, transmission of personal information from the population register, and proceedings involving aliens. Personal identification cards issued to aliens by the Slovenian authorities were to be destroyed. In particular, as far as former SFRY citizens with permanent residence in Slovenia were concerned, it specified the dates to be entered in the register: either when they became Slovenian citizens or when they became aliens under section 81 of the Aliens Act (26 February 1992 or two months after the date of receipt of the decision not to grant Slovenian citizenship).

36. On 3 September 1992 the Government decided to take into account the period before the entry into force of the Aliens Act for the purposes of calculating the required period of three years' residence in Slovenia for issuing a permanent residence permit. A total of 4,893 permanent residence permits were thus issued in the period from 1992 to 1997.

37. On 28 June 1994 the Convention took effect in respect of Slovenia.

38. The Slovenian Parliament submitted a request for a referendum on the question whether or not citizenship granted to former SFRY citizens on the basis of section 40 of the Citizenship Act should be withdrawn. On

20 November 1995 the Constitutional Court held that the request was unconstitutional.

39. In the years that followed, several non-governmental organisations, including Amnesty International and Helsinki Monitor, and the Slovenian Human Rights Ombudsman issued reports drawing attention to the situation of the "erased".

3. The Constitutional Court's decision of 4 February 1999 and subsequent developments

40. On 24 June 1998 the Constitutional Court declared partly admissible a challenge to the constitutionality of the first subsection of section 16 and the second subsection of section 81 of the Aliens Act (see paragraphs 27 above and 207 below), brought in 1994 by two individuals whose names had been removed from the Register in 1992.

41. In a decision of 4 February 1999 (U-I-284/94) the Constitutional Court declared that section 81 of the Aliens Act was unconstitutional since it had not set out the conditions for acquisition of permanent residence for those subject to its second subsection. It noted that the authorities had deleted from the Register the names of citizens of the former SFRY republics who had not applied for Slovenian citizenship and entered them *ex proprio motu* in the Register of Aliens, without any notification. It further found that there was no legal basis for this measure; the Inhabitants' Evidence of Residence and Population Registry Act did not provide for *ex lege* deregistration.

42. The provisions of the Aliens Act were, in general, designed to regulate the status of aliens who entered Slovenia after independence, not of those who were already living there. While section 82 of the Aliens Act did regulate the legal status of aliens originating from outside the former SFRY republics, no similar provision existed in respect of persons from the former SFRY. As a consequence, the latter were in a less favourable legal position than aliens who had lived in Slovenia since before independence.

43. A proposal had been made in the legislative process in 1991 for a special provision regulating the temporary situation of former SFRY citizens living in Slovenia who had not applied for Slovenian citizenship. The legislature had maintained that their situation should not be regulated by the Aliens Act but rather by an agreement between the successor States to the former SFRY. Since the relevant agreements had not been concluded, notably because of the state of war in Croatia and in Bosnia and Herzegovina, their situation remained unaddressed. In the Constitutional Court's view, in the light of modern developments in human-rights protection, the situation of persons who had held the nationality of the predecessor but not of the successor State, with permanent residence on the territory of States that had disintegrated after 1990, had become a matter governed by international agreements.

44. Section 81 was therefore declared unconstitutional as it did not prescribe the conditions under which persons who either failed to apply for or were denied Slovenian citizenship could apply for permanent residence after the expiry of the prescribed time-limit. A legal void had thus formed and the principles of the rule of law, legal certainty and equality had been breached.

45. Furthermore, the provisions of the Aliens Act regulating the acquisition of permanent and temporary residence for aliens entering Slovenia (sections 13 and 16 of the Aliens Act – see paragraph 207 below) should not be used to regulate the status of citizens of the former SFRY republics who had a reasonable expectation that the new conditions for retaining permanent residence in Slovenia would not be stricter than those set forth in section 13 of the Constitutional Law (see paragraph 202 below) and section 40 of the Citizenship Act (see paragraph 205 below), and that their status would be determined in accordance with international law.

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

47. The legislature was given six months in which to modify the unconstitutional provisions. In the meantime, the Constitutional Court ruled that no citizen of the former SFRY who was registered as a permanent resident in Slovenia on 23 December 1990 and was actually residing there could be forcibly removed from Slovenia pursuant to section 28 of the Aliens Act.

48. The Constitutional Court also pointed out that the unregulated situation of citizens of the former SFRY republics who had found themselves in a precarious legal position could lead to a violation of, *inter alia*, the right to respect for family life, as protected by Article 8 of the Convention (extracts of this decision are quoted in paragraph 214 below).

49. As a consequence, the Act on Regularisation of the Legal Status of Citizens of Other Successor States to the Former SFRY in Slovenia (*Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji* – "the Legal Status Act") was passed on 8 July 1999 to regulate the legal status of the "erased" by simplifying the requirements for acquiring a permanent residence permit.

50. Under section 1 of the Legal Status Act, citizens of other successor States to the former SFRY who were registered as permanent residents on Slovenian territory on 23 December 1990, the date of the plebiscite, or on 25 June 1991, the date of independence, and had been actually resident there were entitled to a permanent residence permit, regardless of the provisions of the Aliens Act. They had three months to submit an application. Section 3 of the Legal Status Act provided for some exceptions for those with criminal convictions. Residence permits were granted *ex nunc* to those fulfilling the above conditions (see paragraph 210 below).

51. Ruling on another constitutional challenge (U-I-295/99), on 18 May 2000 the Constitutional Court set aside one part of section 3 of the Legal Status Act as unconstitutional because it found that the requirements for the acquisition of permanent residence set forth therein were stricter than the grounds for revoking a permanent residence permit under the Aliens Act.

4. The Constitutional Court's decisions in other cases brought by the "erased"

52. Relying on its leading decision of 4 February 1999 (see paragraphs 41-48 above), the Constitutional Court has given several decisions in individual cases brought by some of the "erased".

53. On 1 July 1999 (Up-333/96) it examined the case of a claimant who had been refused the renewal of his driving licence because of the "erasure" of his name from the Register. The Constitutional Court noted that following its decision of 4 February 1999, the Legal Status Act had been drafted, but had not yet been passed. It decided that, until the Legal Status Act entered into force, the claimant should enjoy the status he would have had before the expiry of the time-limit set forth in the second subsection of section 81 of the Aliens Act (see paragraph 27 above). The administrative authorities were ordered to register the claimant as a permanent resident at the address where he had been living before his name was illegally deleted from the Register and to renew his driving licence.

54. A similar decision (Up-60/97) was adopted on 15 July 1999 with regard to claimants who were all members of one family and citizens of one of the former SFRY republics, and had been denied permanent residence under section 16 of the Aliens Act, because the father had lost his job.

55. On 18 November 1999 (Up-20/97) and 16 December 1999 (Up-152/97), in cases concerning the payment of a military pension to two "erased" persons, the Constitutional Court quashed the judgment of the Supreme Court and sent the case back for re-examination.

56. On 20 September 2001, in a case (Up-336/98) concerning an individual's right to a childcare allowance, the Constitutional Court quashed the decisions of the lower authorities and sent the case back for re-examination.

57. Furthermore, the Constitutional Court has examined a number of cases brought by "erased" persons concerning the conditions for acquiring Slovenian citizenship. In a decision of 6 July 1995 (Up-38/93) it held that the condition of "actually residing in Slovenia" in section 40 of the Citizenship Act (see paragraphs 25 above and 205 below) could be fulfilled in a situation where a person's residence in Slovenia had been interrupted on justifiable grounds if there were other circumstances proving that the centre of his or her life interests was on Slovenian territory. It quashed the Supreme Court's decision because there had been differential treatment of analogous cases and sent the case back for re-examination.

5. The Constitutional Court's decision of 3 April 2003

58. On 3 April 2003, ruling on a challenge to the constitutionality of the Legal Status Act in its version of 8 July 1999 in a case (U-I-246/02) brought by the Association of the "Erased" and by other "erased" persons, the Constitutional Court found the Legal Status Act unconstitutional because it did not grant retrospective permanent residence from the date of the "erasure", it did not define the meaning of the words "actually residing" which appeared in section 1 and it failed to regulate the acquisition of permanent residence for citizens of former SFRY republics who had been forcibly removed from Slovenia pursuant to section 28 of the Aliens Act.

59. Although the exact number of those deported was unknown, the Constitutional Court considered that the numbers would probably be low, since the unregulated status of the "erased" had generally been tolerated. It also struck down the three-month time-limit for submitting applications for permanent residence because it was unreasonably short and ordered the legislature to rectify the unconstitutional provisions of the impugned Act within six months. The Constitutional Court further observed that permanent residence was important in securing certain rights and benefits, such as military pension rights, social allowances and renewals of driving licences.

60. In point no. 8 of the operative part of the decision, the Constitutional Court ordered the Ministry to issue, *ex proprio motu*, decisions establishing permanent residence in Slovenia *ex tunc* with effect from 26 February 1992, the date of the "erasure", to those who already had *ex nunc* (non-retroactive) permits in accordance with the Legal Status Act or the Aliens Act (extracts of this decision are quoted in paragraph 215 below).

61. On 25 November 2003 Parliament enacted the Act on the Application of Point No. 8 of the Constitutional Court's Decision no. U-I-246/02-28 (*Zakon o izvršitvi 8. točke odločbe Ustavnega sodišča Republike Slovenije št. U-I-246/02-28*), also known as the "Technical Act". This Act laid down the procedure for issuing *ex tunc* permanent residence permits to citizens of the former SFRY republics who had been registered as permanent residents in Slovenia on both 23 December 1990 and 25 February 1992 and who had already acquired a permanent residence permit under the Legal Status Act or the Aliens Act.

62. However, a referendum on whether the Technical Act should be implemented was held on 4 April 2004. The turnout was 31.54%; 94.59% of valid votes were against its implementation, and therefore the Act never entered into force.

63. In the meantime, in a decision (U-II-3/03) handed down on 22 December 2003, the Constitutional Court specified that the legal basis for the issuance of the supplementary residence permits by the Ministry was its decision of 3 April 2003 (see paragraphs 58-60 above); the Ministry was under an obligation to implement the decision.

64. Furthermore, in an individual case (Up-211/04) brought by one of the "erased", claiming that his absence from Slovenia was due to the state of war, on 2 March 2006 the Constitutional Court set aside the judgments of the Supreme Court dismissing the claimant's request for a permanent residence permit under the Legal Status Act, and remitted the case to the Administrative Court. It instructed the latter to make an appropriate assessment of the legal condition of "actually residing on the territory of the Republic of Slovenia" from 23 December 1990 onwards and of the reasons for the claimant's absence from Slovenia.

65. In particular, the Constitutional Court held that the fact that the legislature had been late in eliminating the inconsistencies did not prevent the courts from determining the case in conformity with its decision of 3 April 2003 (see paragraphs 58-60 above).

66. In 2004 the Ministry issued 4,034 retroactive permits to the "erased", solely on the basis of the above-mentioned Constitutional Court decision. The issuing of these permits by the authorities *ex proprio motu* was temporarily stayed and resumed in 2009, further to a change in government (see paragraph 70 below).

67. According to the Government, 13,355 applications had been submitted under the Legal Status Act by 30 June 2007. As a result, 12,236 permanent residence permits were issued.

68. Following the parliamentary elections held on 21 September 2008, a new government was appointed in November 2008. The regulation of the status of the "erased" in compliance with the Constitutional Court's decisions was established as one of its priorities.

69. Further to an upgrading of the IT system, the Ministry collected new data on the "erased" and issued a report stating that on 24 January 2009 the number of the people removed from the Register amounted to 25,671, of whom 7,899 had subsequently acquired Slovenian citizenship; 7,313 of them were still alive. A further 3,630 had acquired a residence permit. 13,426 "erased" persons did not have a regulated status in Slovenia on that date and their current residence was unknown.

70. In 2009 the Ministry resumed the process of issuing, *ex proprio motu*, decisions establishing permanent residence in Slovenia *ex tunc* with effect from 26 February 1992 under point no. 8 of the operative part of the Constitutional Court's decision of 2003 (see paragraph 60 above) to those who were already in possession of *ex nunc* permits. 2,347 such decisions were issued.

6. The amended Legal Status Act

71. Subsequently, the Ministry prepared amendments and supplements to the Legal Status Act ("the amended Legal Status Act"), regulating the incompatibilities between the Legal Status Act and the Constitution, following the Constitutional Court's decision of 3 April 2003, in particular

in respect of those who had been deported and those who had had to leave Slovenia because of other reasons related to the "erasure". On 8 March 2010 the amended Legal Status Act was passed.

72. On 12 March 2010 thirty-one parliamentarians requested that a referendum be held on the amended Legal Status Act, *inter alia* because it did not regulate the question of compensation for the "erased"; as a result, its entry into force was postponed. On 18 March 2010 the National Assembly decided that the postponement of the entry into force of the amended Legal Status Act or its rejection in a referendum would have unconstitutional consequences and referred the matter to the Constitutional Court.

73. In its decision of 10 June 2010 (U-II-1/10) the Constitutional Court relied on its previous leading decisions and found that the provisions of the amended Legal Status Act were consistent with the Constitution. The amended Act was considered to provide for a permanent solution to the status of those "erased" persons who had been unable to regularise their status, including that of their children, and for the issuing of special retroactive decisions to those of them who had been granted Slovenian citizenship, without the requirement of having a prior permanent residence permit. The Constitutional Court refused to allow a referendum to be held, considering that the potential rejection of the amended Legal Status Act would lead to unconstitutional consequences. It further found that the delay in implementing its leading decision of 2003 had entailed a fresh violation of the Constitution.

74. In paragraph 43 of its decision the Constitutional Court held that, by passing the Act in question, which provided for the retroactivity of permanent residence status, the legislature had introduced moral satisfaction as a particular form of reparation for the "erased". If damage was caused to individuals as a result of their "erasure", the question of possible State liability could arise on the basis of Article 26 of the Constitution if other conditions provided for by that Article and the relevant statutory conditions were met. In any event, the amended Legal Status Act on its own did not entail a new type of State liability for damage or a new legal basis for enforcing claims for damages. It was legitimate for the legislature to pass specific legislation limiting the State's liability, as had been done, for instance, in respect of the victims of the Second World War. The Constitutional Court held that the fact that the amended Legal Status Act did not address the question of financial reparation was not unconstitutional.

75. On 15 June 2010 the President of the National Assembly publicly apologised to the "erased"; the Minister for the Interior did the same on 22 June 2010.

76. On 24 June 2010 the amended Legal Status Act was published in the Official Gazette. It entered into force on 24 July 2010, a few days after the delivery of the Chamber judgment. Prior to its enactment, 13,600 requests

for residence permits had been submitted, of which 12,345 had been granted.

77. Section 1 of the amended Legal Status Act applied to aliens who had been citizens of other former SFRY republics on 25 June 1991, had been registered as having their permanent residence in Slovenia on 23 December 1990 or on 25 June 1991, and had actually resided there since then, regardless of the provisions of the Aliens Act. It provided for the acquisition of both *ex nunc* and *ex tunc* permanent residence permits by the "erased". It also regulated the status of the children of the "erased" and provided for the issuing of retroactive decisions to those "erased" persons who had been granted Slovenian citizenship without having obtained a permanent residence permit.

78. In particular, section 1 (č) defined the meaning of the words "actually residing" in Slovenia, which was a precondition for obtaining permanent residence status, as a situation where the person had the centre of his or her life interests in Slovenia, this being determined on the basis of personal, family, economic, social and other ties demonstrating the existence of actual and permanent connections between the individual and Slovenia.

79. It further indicated that the condition of "actually residing" could be met in cases of justifiable absence for more than a year (forced removal from Slovenia, absence as a consequence of the "erasure" or impossibility of returning because of the state of war in other successor States of the SFRY). In the case of a longer absence, the condition of "actually residing" could be satisfied for the period of five years and for a further five years only if the person had tried to return to Slovenia – see paragraph 211 below).

80. According to the data submitted by the Government, from 24 June 2010 to 31 May 2011 the territorial administrative units received 173 applications for *ex nunc* permanent residence permits and eighty-four applications for supplementary, *ex tunc* permits. Including the permits issued by the Ministry of the Interior, these applications resulted in the issuing of sixty-four *ex nunc* permanent residence permits and 111 *ex tunc* permanent residence permits, in some cases by the authorities *ex proprio motu*. Further proceedings were still pending. The deadline for submitting requests under the amended Legal Status Act expires on 24 July 2013.

81. On 26 April 2011 an association, Civil Initiative of the "Erased", together with fifty-two other private individuals, lodged a petition with the Constitutional Court for constitutional review of the amended Legal Status Act (U-I-85/11). The proceedings are currently pending.

82. Furthermore, one of the "erased" lodged a constitutional appeal challenging the rejection by the Supreme Court of his compensation claim, amounting to 50,492.40 euros (EUR) for loss of work and non-pecuniary damage. As far as pecuniary damage was concerned, the Supreme Court

observed that the State authorities had not acted unlawfully and that Article 26 of the Constitution was therefore inapplicable. On 5 July 2011 (Up-1176/09) the Constitutional Court rejected the constitutional appeal, upholding the Supreme Court's view that, in spite of the decision of the Constitutional Court subsequently abrogating the impugned provision of the Citizenship Act, it could not be said that administrative authorities or courts had acted unlawfully at the material time. Furthermore, since the loss of work had been related to the refusal to grant Slovenian citizenship to the claimant and not to the refusal to grant a permanent residence permit, the leading decisions of the Constitutional Court on the subject of the "erasure" could not be taken into account.

83. On 21 July 2011 the Government submitted some thirty final judgments delivered by the courts of first and second instance and by the Supreme Court in compensation proceedings brought by the "erased". All the compensation claims were in the end dismissed, mostly for failure to comply with the prescribed time-limits, although the courts had in some cases initially established that the compensation claims were well-founded. At that time, proceedings in eleven cases brought by "erased" persons were pending before the Supreme Court. Finally, on 7 November 2011 the Government submitted a new decision delivered by the Constitutional Court on 26 September 2011 (Up-108/11) in a case brought by one of the "erased" who had claimed compensation for pecuniary and non-pecuniary damage. In that case the first-instance court had initially held in an interim judgment that there were grounds for holding the State liable for damages. However, the Supreme Court upheld the second-instance decision dismissing the claim on account of the expiry of the statutory time-limit. That decision was endorsed by the Constitutional Court.

B. The individual circumstances of the applicants

84. Before 25 June 1991, the date on which Slovenia declared its independence, the applicants were citizens of both the SFRY and one of its constituent republics other than Slovenia. They had acquired permanent resident status in Slovenia as SFRY citizens, a status which they retained until 26 February 1992, when their names were deleted from the Register.

85. Further to the entry into force of the amended Legal Status Act on 24 July 2010, Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić received both *ex nunc* and *ex tunc* permanent residence permits. Mr Dabetić and Mrs Ristanović did not apply for residence permits. The following is a summary of the specific situation of each applicant.

1. Mr Mustafa Kurić

86. Mr Kurić was born on 8 April 1935 in Šipovo (Bosnia and Herzegovina). According to the Government, he is of unknown citizenship.

After completing his elementary education, he trained as a shoemaker. He moved to Slovenia at the age of twenty and settled in Koper in 1965. In 1976 he rented a small workshop from the Koper Municipality and established a private business there. He was registered as a permanent resident in Slovenia from 23 July 1970 until 26 February 1992.

87. In 1991 he fell seriously ill, was hospitalised for three months, and allegedly failed for that reason to lodge an application for Slovenian citizenship. He stated that he had been reassured that there would be further opportunities to apply for it. The Government confirmed that the applicant had been hospitalised. However, he had already been released from hospital on 15 June 1991.

88. The applicant never received any official notification that he no longer had a legal status in Slovenia.

89. In 1993 the applicant's home caught fire and he lost most of his papers. When he applied to the Koper Municipality for replacement papers, he was informed that his name had been deleted from the Register.

90. The applicant continued with his business and was paying rent until the late 1990s, when he started experiencing financial difficulties. Since he could no longer pay the rent, he lost the right to remain in the premises. Without any identity documents, he was at risk of being expelled if he travelled outside the local community, where the police tolerated his presence.

91. The applicant stated that in the 1990s he tried on various occasions to regularise his status with the Koper Administrative Unit but allegedly received no reply or instruction on how to proceed. In 2005 he wrote a letter to the Ministry in which he requested to be granted Slovenian citizenship. He received no reply. However, the Government maintained that Mr Kurić had never applied for a residence permit in Slovenia.

92. The applicant further maintained that in 2006 he had started proceedings for pension rights with the Institute of Pension and Invalidity Insurance. On 14 May 2006 the latter sent him a letter with evidence of his years of employment, requesting him to provide a certificate of citizenship. However, further to an enquiry by the Agent of the Government, on 29 October 2007 the Institute of Pension and Invalidity Insurance stated that the applicant had not begun any official proceedings before it.

93. On 7 May 2007 the applicant applied for Slovenian citizenship as a stateless person. His request was dismissed on 27 July 2007.

94. On 29 January 2008 the applicant again applied for Slovenian citizenship under section 10 of the Citizenship Act. On 10 June 2009 the Koper Administrative Unit dismissed his request. He did not challenge this refusal before the Administrative Court.

95. On 24 February 2009 the applicant applied for a permanent residence permit. On 2 November 2010 he was granted both *ex nunc* and *ex tunc* residence permits. They were delivered to him on 26 November 2010.

96. The applicant stated that even after receiving the permanent residence permit, he was still encountering many difficulties, particularly with regard to his claims for pension rights, and had serious health problems.

2. Mr Velimir Dabetić

97. Mr Dabetić was born on 22 September 1969 in Koper (Slovenia). He is a stateless person. He was registered as a permanent resident in Slovenia from 29 September 1971 until 26 February 1992. His parents and two brothers were born in Montenegro and they, like the applicant, were removed from the Register in 1992. The applicant's mother was granted Slovenian citizenship in 1997 and his father in 2004. The applicant completed elementary school and two years' specialised education in a secondary school for metal workers. He currently lives in Italy without any legal status.

98. The applicant stated that in 1991 he had moved to Italy, but remained registered as a permanent resident in Koper (Slovenia) until the events of 1992. He allegedly received false information from the Koper Administrative Unit. The Government stated that the applicant had been living in Italy since 1989, and not since 1991. He had therefore not been resident in Slovenia when it became independent.

99. The applicant alleged that when he had sought to apply to the Koper Administrative Unit for Slovenian citizenship, the employee had told him to submit his Slovenian employment record. The applicant stated that he worked in Italy on the basis of a lawful working permit and that he could not provide such a document. The employee allegedly replied that Italy and not Slovenia should grant citizenship to the applicant.

100. The applicant further stated that he had learned about the "erasure" later than the other applicants. In 2002, when his old SFRY passport expired, the Italian authorities had refused to extend his working residence permit (*permesso di soggiorno*) and had ordered him to return to Slovenia. Even though he had tried to return to Slovenia lawfully, he had been unable to regularise his status there. The Government maintained that the applicant had never properly applied for a residence permit in Slovenia.

101. On 26 November 2003 the applicant urged the Ministry to issue a supplementary, *ex tunc* decision regulating his status following the delivery of the Constitutional Court's decision of 3 April 2003, without having previously submitted a request for an *ex nunc* permanent residence permit.

102. On 29 November 2003 the applicant applied for Slovenian citizenship under section 19 of the Citizenship Act as amended in 2002.

103. On 9 February 2004 the applicant lodged a complaint with the Nova Gorica Unit of the Administrative Court, alleging inaction on the part of the administrative authorities (*tožba zaradi molka upravnega organa*), which had failed to issue a supplementary *ex tunc* decision.

104. On 20 May 2005 the applicant's complaint was rejected by the Administrative Court.

105. On 14 November 2005 the Ministry dismissed his application for Slovenian citizenship because he had failed to prove that he had actually resided in Slovenia for ten years and had lived there uninterruptedly for the last five years.

106. At the same time, the applicant also applied to the Italian Ministry of the Interior to obtain the status of a stateless person.

107. In recent years the applicant has been repeatedly stopped and detained by the Italian police. Moreover, on 20 April 2006 he was ordered to leave the country within five days. Eventually, he was given leave to remain in Italy since he had applied for recognition of his stateless person status and the proceedings were pending.

108. The applicant was also charged with illegal immigration into Italian territory. On 19 June 2006 the Mantua District Court acquitted him, on the ground that he had no citizenship and could not be expected to leave Italy voluntarily. At the time his application for stateless person status was pending. His application was eventually dismissed on the ground that an alien who was unlawfully residing in Italian territory was not entitled to the status in question.

109. The applicant stated that he had been living in extremely difficult conditions. He has not brought any proceedings under the amended Legal Status Act.

3. Ms Ana Mezga

110. Ms Mezga was born on 4 June 1965 in Čakovec (Croatia). She is a Croatian citizen. In 1979 she moved to Ljubljana (Slovenia), where she later found work. She completed eight years of elementary school and was registered as a permanent resident in Slovenia from 28 July 1980 to 26 February 1992.

111. According to the applicant, in 1992, after the birth of her second child, she became aware of the fact that her name had been "erased" from the Register. Her employer had shortened her maternity leave and made her redundant. Moreover, in March 1993 she was stopped by the police during a routine check. Since she had no identity documents, she was detained at the police station and later in a transit centre for foreigners (*prehodni dom za tujce*), but was released after paying a fine. The applicant considered that this arrest amounted to confirmation of the loss of her legal status.

112. Subsequently, she moved to Piran, where she met H.Š., a Slovenian citizen, with whom she had two children, both of whom are Slovenian citizens. She stated that she had not started any proceedings in order to regularise her status since she clearly did not fulfil the conditions under the existing legislation.

113. After the entry into force of the Legal Status Act, on 13 December 1999 Ms Mezga submitted an application for a permanent residence permit. The Ministry asked her five times to complete her application and informed her that she could also have sought a permanent residence permit under the provisions for family reunion.

114. On 14 April 2004 the applicant requested the Ministry to issue a supplementary decision under point no. 8 of the operative part of the Constitutional Court's decision of 3 April 2003 (see paragraph 60 above).

115. On 29 April 2004 the applicant applied for Slovenian citizenship under section 19 of the amended Citizenship Act.

116. On 15 October 2004 she attended a meeting at the Piran Administrative Unit in the context of proceedings for a permanent residence permit. On 25 October 2004 she was requested to complete her application.

117. On 5 November 2004 the Institute of Pension and Invalidity Insurance stated that the applicant's employment in Slovenia was registered in their files.

118. On 6 December 2004 the Ministry terminated the proceedings relating to the applicant's request for a permanent residence permit on account of her inactivity and her inability to prove that she had been actually resident in Slovenia since 23 December 1990 onwards.

119. In the proceedings concerning citizenship, on 18 November 2005 the Ministry gave the applicant two months to complete her application. Among other things, she had to prove that she had been actually resident in Slovenia since 23 December 1990.

120. On 13 June 2006 the Ministry dismissed her application for Slovenian citizenship.

121. On 10 August 2007 the applicant applied for a temporary permit as a family member of a Slovenian citizen.

122. On 13 September 2007 she received a temporary residence permit valid until 13 September 2012.

123. On 22 July 2010 the applicant applied for a permanent residence permit under the amended Legal Status Act. On 1 March 2011 she was granted both *ex nunc* and *ex tunc* residence permits. They were delivered to her on 2 March 2011.

124. The applicant stated that even after receiving the permanent residence permit she had experienced difficulties in arranging her health insurance and social financial support. She had serious health problems.

4. Mrs Ljubenka Ristanović

125. Mrs Ristanović was born on 19 November 1968 in Zavidovići (Bosnia and Herzegovina). She is currently a Serbian citizen. She moved to Ljubljana (Slovenia) in 1986 in search of work. She married there and on 20 August 1988 her son, the fifth applicant Mr Tripun Ristanović, was born.

Mrs Ristanović was registered as a permanent resident in Ljubljana from 6 August 1986 to 20 November 1991.

126. Mrs Ristanović maintained that she believed that she would be granted Slovenian citizenship automatically as a permanent resident. However, in 1994 both Mrs Ristanović and her son were deported from Slovenia. She stated that she learned about the "erasure" at that time. However, Mrs Ristanović's husband, who was in possession of a work permit and a temporary residence permit at the material time, remained in Slovenia. He later received a permanent residence permit.

127. According to the respondent Government, Mrs Ristanović moved from her municipality without deregistering her permanent residence and her personal records were transferred from the Register of Permanent Residents into the register of persons who had "emigrated without having deregistered".

128. The applicant stated that she had lived in Serbia as a refugee and had been without any identity papers for many years. In 2004 she acquired a Serbian identity card and in 2005 a Serbian passport. She stated that she and her son had not applied for a permanent residence permit or for Slovenian citizenship since for many years they had not fulfilled the condition of actually residing in Slovenia under the existing legislation.

129. Mrs Ristanović has not brought any proceedings under the amended Legal Status Act. She stated that she had serious health problems.

5. Mr Tripun Ristanović

130. Mr Tripun Ristanović was born on 20 August 1988 in Ljubljana (Slovenia). He is the son of the fourth applicant, Mrs Ljubenka Ristanović. He is a citizen of Bosnia and Herzegovina. Mr Ristanović was registered as a permanent resident in Ljubljana from 20 August 1988 until 26 February 1992.

131. In 1994 Mr Ristanović, who was a minor at the time, was deported from Slovenia with his mother.

132. He lived in Serbia with his mother as a refugee for many years. In 2004 the authorities of Bosnia and Herzegovina issued an identity card and a passport to Mr Ristanović. Since he had no Serbian documents, he had allegedly been living in Serbia in constant fear of being deported.

133. On 9 November 2010 he applied for a permanent residence permit under the amended Legal Status Act. On 10 March 2011 he was granted both *ex nunc* and *ex tunc* residence permits. They were delivered to him on 11 March 2011 and the applicant returned to Slovenia.

134. According to the Government, the applicant lodged a petition with the Constitutional Court for constitutional review of the amended Legal Status Act. The petition was joined to those lodged by the association Civil Initiative of the "Erased" and by other private individuals. The proceedings are currently pending (see paragraph 81 above).

6. Mr Ali Berisha

135. Mr Berisha was born on 23 May 1969 in Peć (Kosovo) in a Roma ethnic community. According to the Government, he is a Serbian citizen. He moved to Slovenia in 1985. He worked in a factory in Maribor until 31 May 1991. He was registered as a permanent resident in Slovenia from 6 October 1987 until 26 February 1992.

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

137. In 1993 the applicant was detained by the Slovenian border police when re-entering the country after visiting relatives in Germany. His SFRY passport was taken away from him and he was kept in a transit centre for foreigners for ten days. The applicant maintainted that it was then that he learned about the "erasure". Moreover, on 3 July 1993 he was deported to Tirana (Albania), allegedly without any decision. The Albanian police returned the applicant to Slovenia because he had no valid passport. He was again placed in the transit centre, from which he escaped during the night.

138. In 1993 the applicant fled to Germany, where he received a temporary residence permit for humanitarian reasons, owing to the unstable situation in Kosovo at the time.

139. On 9 August 1996 he married M.M., who was born in Kosovo and was also a member of a Roma ethnic group. They had four children between 1997 and 2003 while the family were living in Germany.

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

141. At an unknown time, the applicant and his family submitted requests for asylum in Germany.

142. Subsequently, the applicant and his family returned to Slovenia.

143. On 13 July 2005 the applicant and his family submitted an application for temporary residence permits. On 25 July 2005 they also applied for permanent residence permits under the Legal Status Act.

144. Since they believed that they ran the risk of being deported, on 26 September 2005 the applicant and his family also submitted asylum requests. In addition, the applicant sought refugee status.

145. Further to the withdrawal of their asylum requests, on 19 October 2005 the Ministry terminated the proceedings. The Ministry also ordered that the applicant and his family should return to Germany. On 28 October 2005 the removal order was issued but was not executed. On 10 November 2005 a new removal order was issued, setting the date of removal for 18 November 2005. The applicant started proceedings before the Administrative Court. On 15 November 2005 his request was granted.

146. At that time the case also received considerable attention from the local and international community owing to the efforts of Amnesty International.

147. On 27 February 2006 the family again applied for asylum in Slovenia. They were living in an asylum centre at the time.

148. On 28 April 2006 the applicant brought a complaint before the Administrative Court, alleging inaction on the part of the administrative authorities in the proceedings relating to the permanent residence permits for him, his wife and their four children.

149. On 19 July 2006 the German authorities informed the Slovenian authorities that Germany had jurisdiction under the Dublin Regulation to examine the asylum requests by the Berisha family.

150. On 28 July 2006 the applicant's fifth child was born in Slovenia.

151. On 30 October 2006 the Ministry decided, further to the above-mentioned decision of the German authorities, that it did not have jurisdiction to examine the asylum requests by the applicant and his family and that they would be handed over to Germany. The Ministry had also received fresh evidence that Mr Berisha and his family were asylum seekers in Germany, where they had received financial aid for that purpose.

152. On 5 November 2006 the applicant and his family instituted proceedings in the Administrative Court, contesting the Ministry's decision. On the same day they also requested the non-enforcement of the impugned decision and withdrew their application for asylum (see paragraph 147 above).

153. According to the applicant, on 7 November 2006 the Ministry again tried to transfer him and his family to Germany. On 15 November 2006 the Administrative Court annulled the removal order. The Ministry lodged an appeal.

154. On 28 December 2006 the Supreme Court upheld the Ministry's decision of 30 October 2006 that Germany had jurisdiction under the Dublin Regulation to decide on the applicant's request for asylum.

155. On 1 February 2007 the applicant and his family were handed over to Germany, where they have lived with "toleration" status (*Duldung*).

156. Neither the applicant nor his family have applied for Slovenian citizenship.

157. In the context of asylum proceedings, on 18 April 2008 the Constitutional Court rejected a constitutional appeal by the applicant.

158. On 19 October 2010 Mr Berisha was granted both *ex nunc* and *ex tunc* residence permits further to his request lodged on 25 July 2005 (see paragraph 143 above). The permits were delivered to him on 24 November 2010 through the Slovenian Consulate in Munich.

159. The applicant, who is currently still living in Germany, stated that he was for the time being prevented from returning to Slovenia as his five

children and his wife did not have any legal status there and would not have fullfilled the conditions for family reunion under the Aliens Act.

160. On an unspecified date, the applicant filed a compensation claim with the State Attorney's Office, which was rejected. According to the respondent Government, he did not initiate court proceedings.

7. Mr Ilfan Sadik Ademi

161. Mr Ademi was born on 28 July 1952 in Skopje ("the former Yugoslav Republic of Macedonia") in a Roma ethnic community. He is now a Macedonian citizen. In 1977 he moved to Slovenia, where he worked until 1992. He had his permanent residence registered there from 27 September 1977 to 26 February 1992.

162. According to the applicant, in 1991 he missed the deadline for applying for Slovenian citizenship. In 1993 he was stopped by the police in the course of a routine check. Since he had no valid identity documents, he and his family were expelled to Hungary. The applicant maintained that he had learned about the "erasure" at that time. Shortly afterwards the applicant and his family moved to Croatia, from where they re-entered Slovenia illegally.

163. On 23 November 1992 the applicant applied for Slovenian citizenship with the assistance of a lawyer.

164. The applicant later moved to Germany, where he declared himself a stateless person and obtained a temporary residence permit and a passport for foreigners.

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

166. On 16 February 2005 the applicant applied for a permanent residence permit under the Legal Status Act. On 20 April 2005 the Ministry requested him to supplement his application with evidence of citizenship.

167. On 26 May 2005 his application was rejected on the ground that he was a stateless person. The Ministry stated that the Legal Status Act applied only to citizens of other successor States to the former SFRY.

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

169. On 9 September 2005 his application for Slovenian citizenship was dismissed.

170. On 31 July 2007 the applicant again applied for a permanent residence permit under the Legal Status Act. On 31 March 2008 the Ministry rejected his application, again on the ground that he was not a

citizen of any other successor State to the former SFRY. The applicant started proceedings before the Administrative Court.

171. On 18 February 2009 the Administrative Court upheld the decision by the Ministry, dismissing the applicant's request for a permanent residence permit. The applicant appealed.

172. On 6 October 2010 the Supreme Court granted his appeal and sent the case back for re-examination. It noted that the amended Legal Status Act had been enacted in the meantime and that the applicant's request should now be examined in the light of the new legislation. In the course of these proceedings, the applicant submitted a Macedonian passport issued on 19 August 2010.

173. On 20 April 2011 Mr Ademi was granted both *ex nunc* and *ex tunc* residence permits. They were delivered to him on 23 May 2011.

174. The applicant, who has serious health problems, is currently living between Slovenia and Germany, where his temporary status has been terminated in the meantime.

8. Mr Zoran Minić

175. Mr Minić was born on 4 April 1972 in Podujevo (Kosovo). According to the Government, he is a Serbian citizen. He moved to Slovenia with his family in 1977. The applicant completed elementary school, followed by a three-year secondary school course in cookery. He was registered as a resident in Slovenia from 1 August 1984 to 26 February 1992.

176. According to the applicant, in 1991 he was visiting his grandparents in Kosovo. For that reason, he and his family missed the deadline for submitting the application for Slovenian citizenship by one month, as the war in Kosovo had made collecting the necessary documents difficult. According to the Government, there was no evidence that Mr Minić had applied for Slovenian citizenship in 1991. In addition, it followed from the applicant's employment documents that he had been working in Podujevo from 1992 until 1999. He married a Serbian citizen, with whom he has four children.

177. The applicant stated that he had found out that he had been "erased" together with other members of his family when trying to regularise his status in Slovenia. As a result of the unbearable living conditions in Slovenia without any legal status, he had been compelled to move temporarily to Kosovo.

178. He returned to Slovenia on several occasions. In 2002 the applicant was arrested by the police in Slovenia because he was working without a permit. He was prosecuted, ordered to pay a fine and on 5 June 2002 expelled to Hungary, in spite of the Constitutional Court's decision of 4 February 1999 (see paragraphs 41-48 above), without any formal order.

179. The applicant stated that he had not applied for any legal status in Slovenia for many years because he did not meet the conditions for Slovenian citizenship or for a permanent residence permit under the legislation existing at the time. As to his family, his mother was eventually granted Slovenian citizenship in 2000 and his siblings in 2003.

180. After the delivery of the Constitutional Court's decision of 3 April 2003 (see paragraphs 58-60 above), on 15 September 2003 the applicant applied for Slovenian citizenship under section 19 of the amended Citizenship Act.

181. Between 26 April and 9 October 2004 the Ministry asked the applicant five times to complete his application by providing evidence, among other things, that he had been living in Slovenia without interruption since 23 December 1990. When he failed to do so, he was summoned for a hearing at the Ministry.

182. At the hearing on 17 December 2004 he confirmed the information stated in his employment record, namely that he had worked in Podujevo (Kosovo) from 8 January 1992 to 6 April 1999 and had thus not been living in Slovenia uninterruptedly since 23 December 1990.

183. On 21 February 2006 his application for Slovenian citizenship was accordingly dismissed. That decision was served on Mr Minić between 28 June and 2 July 2006 during a trip to Slovenia.

184. On 17 July 2006 the applicant initiated proceedings before the Administrative Court.

185. On 30 June 2006 he applied for a permanent residence permit under the Legal Status Act.

186. On 29 March 2007 a hearing was held at the Ministry. On 14 July 2007 the applicant provided supplementary documents in support of his request.

187. On 18 July 2007 the Ministry dismissed the applicant's request since he did not meet the requirement of actual residence in Slovenia.

188. On 19 September 2007 the applicant initiated proceedings before the Administrative Court.

189. On 10 September 2008, in the context of administrative proceedings concerning the applicant's request for Slovenian citizenship, the Constitutional Court dismissed a constitutional complaint lodged by him.

190. On 26 November 2008 the Administrative Court quashed the Ministry's decision of 18 July 2007 (see paragraph 187 above) and sent the case back for re-examination.

191. On 24 July 2009 the Ministry again dismissed the applicant's request since he did not meet the requirement of actually residing in Slovenia.

192. The applicant then initiated proceedings before the Administrative Court. He stated that he had been inextricably blocked in Kosovo in 1992

and had since returned to Slovenia as often as possible, but that the war and other circumstances had prevented him from doing so to any significant extent. Moreover, he was a Serb from Kosovo who had been granted the status of displaced person in Serbia after his house in Kosovo had been burnt down. He had tried on several occasions to regularise his status in Slovenia but had been deported in 2002. His parents, brother and two sisters were all Slovenian citizens.

193. On 19 January 2011 the Administrative Court quashed the decision of the Ministry and sent the case back for re-examination with an indication that his request should be dealt with under the amended Legal Status Act.

194. On 4 May 2011 the applicant was granted both *ex nunc* and *ex tunc* residence permits. They were delivered to him on 9 June 2011.

195. On 1 June 2011 the applicant lodged a compensation claim with the State Attorney's Office. His claim was rejected owing to the expiry of the statutory time-limit, on the ground that he had found out about the damage caused to him by the "erasure" when he had applied for Slovenian citizenship or for a permanent residence permit.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

A. Domestic law and practice

1. Legislation of the former Socialist Republic of Slovenia

(a) Citizenship of the Socialist Republic of Slovenia Act *(Zakon o državljanstvu Socialistične republike Slovenije* – Official Gazette of the SRS, no. 23/76 of 1976)

196. Section 1 of this Act provided that every citizen of the Socialist Republic of Slovenia was simultaneously a citizen of the SFRY, thus establishing the primacy of republic citizenship.

(b) Movement and Residence of Aliens Act *(Zakon o gibanju in prebivanju tujcev* – Official Gazette of the SFRY, no. 56/80 of 1980, as amended)

197. This Act distinguished between a permit for temporary or permanent residence of an alien in the State territory and the temporary or permanent place of residence of an SFRY citizen, denoting the actual location of his or her residence.

(c) Inhabitants' Evidence of Residence and Population Registry Act *(Zakon o evidenci nastanitve občanov in o registru prebivalstva* – Official Gazette of the SRS, no. 6/83 of 1983 and no. 11/91 of 1991)

198. This Act regulated the registration and deregistration of permanent and temporary residence and the keeping of population registers on Slovenian territory.

199. In 1991, section 5 of the Act was amended to provide:

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

2. Legislation of the Republic of Slovenia

(a) Statement of Good Intentions *(Izjava o dobrih namenih* – Official Gazette of the RS, no. 44/90-I of 1990)

200. The purpose of the Statement of Good Intentions, adopted on 6 December 1990 in the course of preparations for the plebiscite on the independence of Slovenia, was to express the State's commitment to certain values in pursuit of its independence. The relevant provision of this document provides:

> "... The Slovenian State ... shall ... guarantee to all members of other nations and nationalities the right to an all-embracing development of their culture and language and to all those who have their permanent residence in Slovenia the right to obtain Slovenian citizenship if they so wish ..."

(b) Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia *(Temeljna ustavna listina o samostojnosti in neodvisnosti Republike Slovenije* – Official Gazette of the RS no. 1/91-I of 1991)

201. The relevant provisions of the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, published on 25 June 1991, provide:

Section III

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

(c) 1991 Constitutional Law relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia *(Ustavni zakon za izvedbo Temeljne ustavne listine o samostojnosti in neodvisnosti RS* – Official Gazette of the RS no. 1/91-I of 1991)

202. The relevant provisions of the 1991 Constitutional Law provide:

Section 13

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

(d) Constitution of the Republic of Slovenia *(Ustava Republike Slovenije*, Official Gazette no. 33/91-I of 1991)

203. The relevant provisions of the Constitution of the Republic of Slovenia provide:

Article 8

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

Article 14

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

All are equal before the law."

Article 26

"Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body performing a function or engaged in an activity on behalf of a State or local authority or as a holder of public office.

Any person suffering damage also has the right, in accordance with the law, to claim compensation directly from the person or body that has caused the damage."

(e) Constitutional Court Act *(Zakon o Ustavnem sodišču*, Official Gazette of the RS, no. 15/94 of 1994, as amended)

204. The relevant provisions of the Constitutional Court Act provide:

Section 59

"The Constitutional Court shall deliver a decision declaring an appeal unfounded or shall allow the appeal and quash the act that was the subject of the appeal or declare it null and void in whole or in part, and return the matter to the competent body. ..."

Section 60

"1. If the Constitutional Court quashes an individual act, it may also determine a disputed right or freedom if such a procedure is necessary in order to put an end to consequences that have already occurred as a result of that act or if such is the nature of the constitutional right or freedom and provided that a decision can be reached on the basis of information in the record.

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

(f) Citizenship of the Republic of Slovenia Act *(Zakon o državljanstvu Republike Slovenije*, Official Gazette nos. 1/91-I, 30/91 and 96/2002 of 1991 and 2002)

205. The relevant provisions of the Citizenship Act provide:

Section 10

"The competent authority may, within its discretion, accept a person's request for naturalisation if this is in compliance with the national interest. The person must fulfil the following conditions:

(1) be eighteen years of age;

(2) have been released from current citizenship or prove that he or she will be released [from such citizenship] if he or she acquires citizenship of the Republic of Slovenia;

(3) have been actually resident in Slovenia for ten years, of which the five years immediately preceding the submission of the application must have been continuous;

(4) have a guaranteed permanent source of income, at least in an amount that enables material and social security;

(5) have a command of the Slovene language for the purposes of everyday communication;

(6) not have been sentenced to a prison sentence longer than one year in the country of which he or she is a citizen or in Slovenia for a criminal offence which is prosecuted by law, provided that such an offence is punishable pursuant to the

regulations of his or her country and also pursuant to the regulations of the Republic of Slovenia;

(7) not have had his or her residence in the Republic of Slovenia prohibited;

(8) the person's naturalisation must pose no threat to the public order, security or defence of the State;

..."

Section 39

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

Section 40

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

206. On 14 November 2002 the Citizenship of the Republic of Slovenia Act was amended. The relevant provision reads:

Section 19

"An adult who on 23 December 1990 was registered as a permanent resident on the territory of the Republic of Slovenia, and has lived there uninterruptedly since that date, may apply for citizenship of the Republic of Slovenia within one year after the present Act enters into force if he or she meets the requirements set forth in ... this Act.

When deciding under the preceding subsection whether the applicant meets the requirements set forth in ... this Act, the competent authority may take into consideration the length of the applicant's stay in the State, his or her personal, family, business, social and other ties with the Republic of Slovenia and the consequences a refusal of citizenship would have for the applicant.

..."

(g) Aliens Act (*Zakon o tujcih*, Official Gazette no. 1/91-I of 1991)

207. The relevant provisions of the Aliens Act read as follows:

Section 13

"A foreigner who enters the territory of the Republic of Slovenia with a valid passport may remain there for three months or as long as the validity of an issued visa allows him or her to, unless otherwise provided by an international agreement ...

A foreigner wishing to remain on the territory of the Republic of Slovenia for longer than provided for by the preceding subsection for reasons of education, specialisation, employment, medical treatment, professional experience, or because he or she has married a citizen of the Republic of Slovenia, has immovable property on the territory of the Republic of Slovenia, or enjoys the rights afforded by employment in the State or for any other valid reason requiring his or her residence in the State, must apply ... for a temporary residence permit.

..."

Section 16

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

Section 23

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

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

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

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

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

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

(vi) for the protection of public health."

Section 28

"An authorised officer of the internal affairs authority may take a foreigner who fails voluntarily to leave the territory of the Republic of Slovenia when required to do so by the competent authority or administrative body in charge of internal affairs, or who resides on the territory of the Republic of Slovenia beyond the period provided

for in section 13(1) of this Act or beyond the period allowed in the decision granting temporary residence, to the State border or diplomatic/consular representation of the State of which he or she is a citizen, and direct such person to cross the border or hand him or her over to the representative of a foreign country.

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

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

Section 81

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

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

Section 82

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

208. In order to facilitate the acquisition of permanent residence permits for citizens of the other former SFRY republics who had either failed to apply for Slovenian citizenship or had not acquired residence permits under the Aliens Act, on 3 September 1992 the Government adopted the following decision:

"... in examining applications for permanent residence permits for aliens referred to in section 16 of the Aliens Act ..., the Ministry of the Interior shall consider that the condition for permanent residence in the territory of the Republic of Slovenia has been met when the alien has had permanent residence registered for at least three years and was actually residing here before the provisions of the Aliens Act started applying to him."

(h) 1999 Aliens Act (*Zakon o tujcih*, Official Gazette nos. 61/99, 108/2002, 112/2005, 107/2006, 71/2008 and 64/2009)

209. The 1999 Aliens Act replaced the Aliens Act of 1991. Several amendments were made to the 1999 Aliens Act in the subsequent years. In 2011 it was replaced by a new Aliens Act (Official Gazette, no. 50/2011).

(i) Act on Regularisation of the Legal Status of Citizens of Other Successor States to the Former SFRY in Slovenia ("the Legal Status Act" – *Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji,* Official Gazette, nos. 61/99 and 54/2000 of 1999 and 2000)

210. The relevant provisions of the Legal Status Act, enacted further to the Constitutional Court's decision of 4 February 1999 (see paragraphs 41-48 above), provide:

Section 1

"Citizens of another successor State to the former SFRY (hereinafter 'foreigners') who were registered as permanent residents on the territory of the Republic of Slovenia on 23 December 1990 and are actually resident in the Republic of Slovenia, and foreigners who were actually resident in the Republic of Slovenia on 25 June 1991 and have been living there continuously ever since, shall be issued with a permanent residence permit, regardless of the provisions of the Aliens Act ..., if they meet the requirements set forth in this Act."

Section 2

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

A foreigner who has lodged an application for permanent residence pursuant to section 40 of the Citizenship of the Republic of Slovenia Act ..., but has received a decision refusing to grant his application, may submit an application under the preceding subsection within three months after this Act enters into force or the decision became final, if such decision is issued after this Act entered into force..."

211. On 24 July 2011 the amended Legal Status Act (*Zakon o spremembah in dopolnitvah Zakona o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji*, Official Gazette no. 50/2010) came into force. Section 1 (č) of the Act provides:

"Actual residence in the Republic of Slovenia for the purposes of this Act shall mean that an individual has the centre of his or her life interests in the Republic of Slovenia, this being determined on the basis of his or her personal, family, economic, social and other ties demonstrating the existence of actual and permanent connections between an individual and the Republic of Slovenia. Justifiable absence from the Republic of Slovenia because of reasons referred to in the third subsection of this section shall not mean an interruption of actual residence in the Republic of Slovenia.

The condition of actual residence in the Republic of Slovenia shall be met if the person left the Republic of Slovenia and his or her continuous absence was not longer than one year, irrespective of the reason for the absence.

The condition of actual residence in the Republic of Slovenia shall also be met in the event that the absence was longer than one year but was justifiable for the following reasons:

- if the person left the Republic of Slovenia as a consequence of removal from the Register of Permanent Residents;

- if the person left the Republic of Slovenia because he or she was assigned to work, study or undergo medical treatment by a legal entity from the Republic of Slovenia or, in the case of a minor, by his or her parents or guardians, or if the person was an employee on a ship with a home port in the Republic of Slovenia, during the period of posting, study or treatment or the period of employment on the ship;

- if the person left the Republic of Slovenia because he or she could not acquire a residence permit in the Republic of Slovenia owing to non-fulfilment of the relevant conditions and the application for a permit was rejected or dismissed or the procedure was terminated;

- if the person could not return to the Republic of Slovenia because of the state of war in other successor States to the former Socialist Federal Republic of Yugoslavia, or for medical reasons;

- if the person was expelled from the Republic of Slovenia pursuant to section 28 ... or section 50 of the Aliens Act ..., unless the person was an alien expelled from the country as a sanction for having committed a criminal offence;

- if the person was refused entry to the Republic of Slovenia, except where entry was refused because of the imposition of a secondary sanction of expulsion for having committed a criminal offence ...

If the absence for reasons referred to in the preceding subsection, except for those referred to in the second indent, lasted more than five years, it shall be deemed that the condition of actual residence is satisfied for the period of five years and for a further period of five years only if the conduct of the person demonstrates that, during the period of absence, the person tried to return to the Republic of Slovenia and to continue his or her actual residence there.

For the purposes of this Act, a permanent residence permit or a specific decision on a retroactive permanent residence permit and registered permanent residence or a supplementary decision issued pursuant to point 8 of the Constitutional Court decision ..., no U-1-246/02-28 of 3 April 2003 ... shall not mean that the condition of actual residence in the Republic of Slovenia in proceedings initiated under the Citizenship of the Republic of Slovenia Act is met.”

(j) Rules on the Form for Registering or Deregistering Permanent Residence, the Form for the Personal and Household Card and the Manner of Keeping and Managing the Register of Permanent Residents (*Pravilnik o obrazcu za prijavo oziroma odjavo stalnega prebivališča, o obrazcu osebnega kartona in kartona gospodinjstev ter o načinu vodenja in vzdrževanja registra stalnega prebivalstva*, Official Gazette no. 27/92 of 1992)

212. The relevant provision of the Rules provides:

Rule 5

"The Register of Permanent Residents contains data on citizens of the Republic of Slovenia who have registered permanent residence in the territory of the municipality.

In the Register of Permanent Residents, the competent authority shall identify citizens of the Republic of Slovenia who travel abroad temporarily for more than three months, and persons to whom the authority has declined registration of permanent residence ..."

(k) State Attorney Act (*Zakon o državnem pravobrailstvu*, Official Gazette no. 94/07)

213. The relevant provision of the State Attorney Act provides:

Section 14

"If a person intends to initiate civil or other proceedings against an entity defended by the State Attorney, this person should first submit a proposal to the State Attorney's Office for resolution of the disputed relationship before the beginning of the proceedings. The State Attorney should as soon as possible, and not later than in thirty days, act appropriately and inform the person concerned of its position."

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

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

214. The relevant parts of the Constitutional Court's decision of 4 February 1999 (see paragraphs 41-48 above) read as follows:

"At the session of 4 February 1999 concerning the proceedings for the review of constitutionality commenced on the initiative of B.M. and V.T. ..., the Constitutional Court gave the following decision:

1. The Aliens Act (Official Gazette of RS, Nos. 1/91-1, 44/97 and 50/98) is inconsistent with the Constitution in that it fails to determine the conditions for the acquisition of a permanent residence permit by the persons referred to in subsection 2 of section 81 upon the expiry of the period during which they had the possibility of applying for citizenship of the Republic of Slovenia, if they did not do so, or after the date on which the decision on refusal to grant citizenship became final. ...

3. The inconsistency as established in paragraph 1 of the operative provisions shall be eliminated by the legislature within six months from the date of publication of this decision in the Official Gazette of the Republic of Slovenia.

4. Pending the elimination of the inconsistency established in paragraph 1 above, no deportation order as referred to in section 28 of the Aliens Act shall be made against citizens of any other republic of the former Socialist Federal Republic of Yugoslavia if on the date of the plebiscite of 23 December 1990 they were registered as having permanent residence in, and are actually resident in, the Republic of Slovenia.

Reasons:

...

14. The Constitutional Court finds that the provisions of subsection 2 of section 13 and subsection 1 of section 16 of the Aliens Act should not apply to citizens of other republics who have not acquired the citizenship of the Republic of Slovenia. Neither should the competent authorities have transferred these persons from the existing Register of Permanent Residents to the Register of Aliens *ex proprio motu*, without any decision or notification being addressed to the persons concerned. There was no statutory basis whatsoever for them to take such action. The Inhabitants' Evidence of Residence and Population Registry Act, which is invoked by the Government in its explanations, does not contain any provisions on the removal of permanent residents from the Register on the basis of the Act itself.

Neither is the Government empowered by statute to adopt individual decisions determining the manner in which statutory provisions are to be implemented. On the basis of Article 120 of the Constitution, duties and functions associated with public administration are to be conducted independently and at all times pursuant to, and in a manner consistent with, the Constitution and the law. When the Government found that the Aliens Act could not also be applied in practice to citizens of other republics, it should have proposed that the legislature regulate their legal position, and should not have interfered with the legislative power by adopting a decision.

15. For the foregoing reasons, the Aliens Act, whose transitional provisions do not regulate the legal status of citizens of other republics who had permanent residence in the Republic of Slovenia and were actually resident in its territory, has violated the principles of a law-governed State under Article 2 of the Constitution. For this reason, the citizens of other republics, upon the expiry of the time-limits set in subsection 2 of section 81, found themselves in an insecure legal position. From the text of the transitional provisions, which specify that the provisions of the Aliens Act are to be applied, the said persons could not have grasped what their position would be as foreigners and which statutory provisions should apply to them. Accordingly, the Constitutional Court concludes that, because the legal position of citizens of other republics as foreigners has not been regulated in the Republic of Slovenia, the principle of legal certainty as one of the principles of a law-governed State has been violated.

16. The principle of legal certainty guarantees to the individual that the State will not make his or her legal position worse without justified reasons. It was quite justified that citizens of other republics who did not opt for Slovenian citizenship should not expect that they would be made equal to foreigners who had only just

come into the Republic of Slovenia and that they would be deprived of permanent residence, without, moreover, being given any notice whatsoever. ...”

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

215. The relevant parts of the Constitutional Court’s decision of 3 April 2003 (see paragraphs 58-60 above) read as follows:

“At a session held on 3 April 2003 in the proceedings to examine petitions and in the proceedings to review constitutionality commenced upon petitions by the Association of the Erased of Slovenia, Ptuj, and others, represented by M.K. ... and N.M.P. ... , the Constitutional Court decided as follows:

1. The Act on Regularisation of the Legal Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia (Official Gazette RS, Nos. 61/99 and 64/01) is inconsistent with the Constitution, as it does not recognise citizens of other republics of the former SFRY who were removed from the Register of Permanent Residents on 26 February 1992 as having permanent residence from the aforementioned date.

2. The Act on Regularisation of the Legal 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 as referred to in the previous paragraph whose forcible removal as a foreigner was ordered under section 28 of the Aliens Act (Official Gazette RS, No. 1/91-1 and 44/97).

3. Section 1 of the Act on Regularisation of the Legal 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. Subsections 1 and 2 of section 2 of the Act on Regularisation of the Legal Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia are abrogated in the parts in which they determine a time-limit of three months for submitting an application for the issuance of a permit for permanent residence. ...

7. The legislature is obliged to remedy the unconstitutionalities established in paragraphs 1, 2 and 3 of the operative provisions within six months from the date of the publication of this decision in the Official Gazette of the Republic of Slovenia.

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 means of a permit for permanent residence issued on the basis of the Act on Regularisation of the Legal Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, the Aliens Act (Official Gazette RS, Nos 1/91-1 and 44/97), or the Aliens Act (Official Gazette RS, No. 61/99). The Ministry of the Interior must as an official duty issue supplementary decisions on the establishment of their permanent residence in the Republic of Slovenia from 26 February 1992 onwards.

R e a s o n s :

...

15. As the challenged Act does not enable citizens of other republics to acquire permanent resident status from the day when it was not formally recognised in their case [that is, when such status was taken away], and thus only partially remedies the established unconstitutionality, it is inconsistent with the Constitution. The principle of legal certainty as one of the principles of a State governed by the rule of law under Article 2 of the Constitution requires that the position of the persons concerned should not remain unregulated for any period of time. Permanent resident status is an important linking aspect for claiming certain rights and legal benefits which the persons concerned could not claim owing to the legally unregulated state of affairs. Their position in the Republic of Slovenia was legally uncertain owing to the unregulated state of affairs, as by acquiring the status of foreigner they lost their 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 (for example, that of having temporary resident status), which has lasted, in the case of some of the adversely affected persons, for as much as ten years. From the recommendation that the National Assembly made in the light of the 7th annual report of the Human Rights Ombudsman for the year 2001 (Official Gazette RS, No 2/03), it follows that the issue of the legal position of such citizens of other republics still calls for legal regulation. ...

22. On account of the fact that their permanent resident status was not recognised from the day when their legal status was, following the gaining of independence by the Republic of Slovenia, changed to 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 these rights; however, from the decisions of the Constitutional Court it follows that these concerned, in particular, the right to the advance payment of a military pension, the right to social-security benefits and the ability to change one's driving licence. ..."

B. International instruments and documents

1. Arbitration Commission of the Conference on Yugoslavia

216. The Arbitration Commission of the Conference on Yugoslavia (commonly known as the Badinter Arbitration Commission, chaired by Mr Robert Badinter) was a commission set up by the Council of Ministers of the European Economic Community on 27 August 1991 to provide the Conference on Yugoslavia with legal advice. The Badinter Arbitration Commission handed down fifteen opinions on "major legal questions" arising from the dissolution of the SFRY.

217. In its Opinion No. 9, the Commission considered how the problems of State succession resulting from the dissolution of the SFRY should be resolved. It ruled that they should be resolved by mutual agreement between the various successor States.

2. Council of Europe

(a) Conventions relating to nationality

218. The principal Council of Europe instrument concerning citizenship is the European Convention on Nationality, which was adopted on 6 November 1997 and entered into force on 1 March 2000. Slovenia has not signed this convention, the relevant part of which reads:

Article 18

"1. In matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights and the principles contained in ... this Convention ..., in particular in order to avoid statelessness.

2. In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of:

(a) the genuine and effective link of the person concerned with the State;

(b) the habitual residence of the person concerned at the time of State succession;

(c) the will of the person concerned;

(d) the territorial origin of the person concerned.

..."

219. On 19 May 2006 the Council of Europe adopted the Convention on the Avoidance of Statelessness in relation to State Succession. This convention entered into force on 1 May 2009. Slovenia has not signed it. The relevant parts read as follows:

Article 5

"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."

Article 11

"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."

(b) The Framework Convention for the Protection of National Minorities

220. On 26 May 2005 the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its second opinion concerning Slovenia and expressed concern about the problematic situation of the "erased". On 1 December 2005 the Government filed their written comments (see the relevant part of the report in *Kurić and Others v. Slovenia*, no. 26828/06, § 262, 13 July 2010 – hereinafter referred to as "the Chamber judgment").

221. On 14 June 2006 the Committee of Ministers of the Council of Europe adopted Resolution ResCMN(2006)6 on the implementation of the Framework Convention for the Protection of National Minorities by Slovenia. It noted as an issue of concern the situation of the "erased".

(c) The Council of Europe Commissioner for Human Rights

222. The Council of Europe Commissioner for Human Rights has addressed the issue of the "erased" on a number of occasions and addressed recommendations to the Government in order to remedy the situation (see the relevant extracts of the Commissioner's reports in paragraphs 264-265 of the Chamber judgment).

223. Further to his visits, during which he discussed the issue of the "erased" with the Slovenian authorities, he sent letters to the Prime Minister in office. In his letter of 10 May 2011 he expressed appreciation of the Government's determination to find a solution for "the erased". He welcomed the enactment of the amended Legal Status Act. He nevertheless expressed concern that the law did not fully remedy the negative impact of the "erasure". Only 127 of the "erased" had submitted requests under the new law at that time and thirty-two of them had been rejected. The fulfilment of the condition of actual residence for those who had left Slovenia for longer than ten years continued to be a problem in his view. He was also concerned by the non-existence of any reparation mechanism at the domestic level that would provide redress to the "erased". He added that a number of the "erased" persons had become stateless and drew attention to

the Council of Europe's international-law instruments on the avoidance and the reduction of statelessness and the need for Slovenia to ratify them.

(d) The European Commission against Racism and Intolerance

224. On 13 February 2007 the European Commission against Racism and Intolerance ("ECRI") published its third report on Slovenia, which was adopted on 30 June 2006. This report described the situation of the "erased" and made recommendations to the Government (for the relevant extracts see paragraph 266 of the Chamber judgment).

3. United Nations

225. In 1961 the United Nations adopted the Convention on the Reduction of Statelessness. Slovenia has not ratified it.

226. In 1999 the International Law Commission of the United Nations adopted the Draft Articles on Nationality of Natural Persons in relation to the Succession of States. Article 6 of the Draft Articles states as follows:

> "Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present draft articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable 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 choices will have on their status."

227. On 24 August 2010 the United Nations Committee on the Elimination of Racial Discrimination issued concluding observations stating, *inter alia*:

> "While taking note of the adoption in March 2010 of the law regulating the legal status of the 'erased' people, the Committee remains concerned at the situation of the non-Slovenes from the former Yugoslavia, including Bosnians, ethnic Albanians from Kosovo, Macedonians and Serbs, whose legal status remains unresolved and who are therefore facing difficulties in terms of access to social and economic rights, such as access to healthcare services, social security, education and employment. The Committee is also concerned that the new law does not envisage any outreach campaign directed towards the 'erased' people living abroad in order to inform them of its existence ...
>
> The Committee recommends that the State party:
>
> (a) Resolve definitely the legal status of all concerned citizens from the former Socialist Federal Republic of Yugoslavia States presently living in Slovenia;
>
> (b) Ensure the full enjoyment of their economic and social rights including the access to health services, social security, education and employment;
>
> (c) Conduct an outreach campaign to inform the 'erased' currently living outside Slovenia of the existence of the new legislative measures and the possibility of benefiting from them; and

(d) Grant full reparation, including restitution, satisfaction, compensation, rehabilitation and guarantees of non-repetition, to all individuals affected by the 'erasure'."

228. On 20 June 2011 the United Nations Committee against Torture issued its concluding remarks, stating, *inter alia*:

"While noting the legislative measures taken to amend the Act Regulating the Legal Status of citizens of Former Socialist Federal Republic of Yugoslavia Living in the Republic of Slovenia in order to remedy the provisions that were found to be unconstitutional, the Committee remains concerned that the State party failed to enforce the Act and to restore the residency rights of persons, known as the 'erased', originating from other Yugoslav republics whose permanent residence in Slovenia was unlawfully revoked in 1992 and already returned to other republics of Former Socialist Republic of Yugoslavia. The Committee is concerned that the discrimination against the so called 'erased' persons, including against those who belong to Roma community, is persistent (arts. 3 and 16).

In light of its general comment No. 2 (2008) on implementation of article 2 by States parties, the Committee recalls the special protection of certain minorities or marginalized individuals or groups especially at risk is part of the State party's obligations under the Convention. In this respect, the Committee recommends that the State party takes measures to restore the permanent resident status of the so-called 'erased' persons who were returned to other States in Former Socialist Federal Republic of Yugoslavia. The Committee also encourages the State party to facilitate the full integration of the 'erased' persons, including of those who belong to Roma communities and guarantee them with fair procedures for application for citizenship."

THE LAW

I. PRELIMINARY ISSUES

A. The scope of the case

1. The Chamber's findings

229. On 3 March 2009, in the course of the proceedings before the Chamber, the applicants Mr Petreš and Mr Jovanović – both already in possession of *ex nunc* permits issued in 2006 – were awarded *ex tunc* permanent residence permits by the authorities *ex proprio motu* with effect from 26 February 1992.

230. Relying on the judgments in the cases of *Shevanova v. Latvia* ((striking out) [GC], no. 58822/00, §§ 48-50, 7 December 2007) and *Kaftailova v. Latvia* ((striking out) [GC], no. 59643/00, §§ 52-54,

7 December 2007), the Chamber held that the issuance of the retroactive residence permits constituted an "adequate" and "sufficient" remedy for the complaints of Mr Petreš and Mr Jovanović under Articles 8, 13 and 14 of the Convention and that those applicants could no longer claim to be the "victims" of the alleged violations (see paragraphs 309-311 of the Chamber judgment).

231. The Chamber also held that the applicants' complaints concerning the lack of opportunity to acquire Slovenian citizenship in 1991 were incompatible *ratione temporis* with the provisions of the Convention, and thus declared them inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention (see *Makuc and Others v. Slovenia* (dec.), no. 26828/06, §§ 162-165, 31 May 2007; see also paragraph 355 of the Chamber judgment).

2. The parties' submissions before the Grand Chamber

(a) The applicants

232. The applicants essentially requested the Grand Chamber to reverse the Chamber's finding in so far as the Chamber had declared the application inadmissible with regard to Mr Petreš and Mr Jovanović. The mere regularisation of their legal status after many years of unlawful interference with their right to respect for private and family life could not be considered to afford "adequate" and "sufficient" redress for their complaints under Articles 8, 13 and 14 of the Convention (they cited *Aristimuño Mendizabal v. France*, no. 51431/99, § 79, 17 January 2006). The two applicants were also unable to seek adequate reparation before the domestic courts or the State Attorney's Office for the damage sustained over a long period of time.

(b) The Government

233. The Government asked the Grand Chamber to confirm the Chamber's finding that the two applicants had lost their "victim" status. They had been granted both *ex nunc* and *ex tunc* permanent residence permits in the course of the proceedings before the Chamber and had been afforded just satisfaction in respect of the violation of their rights under Article 8 of the Convention. In any event, the Grand Chamber could not examine those parts of the application which had been declared inadmissible by the Chamber (they cited *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 61, ECHR 2007-I).

3. The Grand Chamber's assessment

234. According to the Court's settled case-law, the "case" referred to the Grand Chamber necessarily embraces all aspects of the application previously examined by the Chamber in its judgment. The content and

scope of the "case" referred to the Grand Chamber are therefore delimited by the Chamber's decision on admissibility (see *K. and T. v. Finland* [GC], no. 25702/94, §§ 140-141, ECHR 2001-VII; *Azinas v. Cyprus* [GC], no. 56679/00, § 32, ECHR 2004-III; and *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 194, 3 October 2008).

235. This means that the Grand Chamber may examine the case in its entirety in so far as it has been declared admissible; it cannot, however, examine those parts of the application which have been declared inadmissible by the Chamber. The Court sees no reason to depart from this principle in the present case (see *Sisojeva and Others*, cited above, §§ 59-62).

236. In sum, the Court holds that, in the context of the present case, it no longer has jurisdiction to examine the complaints raised by Mr Petreš and Mr Jovanović. Similarly, it cannot examine the complaints concerning the lack of opportunity to acquire Slovenian citizenship in 1991, which were declared inadmissible as being incompatible *ratione temporis* with the provisions of the Convention (see paragraph 231 above).

237. Therefore, the Grand Chamber will only examine the complaints of the remaining applicants (Mr Mustafa Kurić, Mr Velimir Dabetić, Ms Ana Mezga, Mrs Ljubenka Ristanović, Mr Tripun Ristanović, Mr Ali Berisha, Mr Ilfan Sadik Ademi and Mr Zoran Minić) pertaining to the consequences of the "erasure" for their residence status in Slovenia.

B. The Government's objections that the application is incompatible *ratione materiae* and *ratione temporis* with the Convention and was lodged out of time

1. The Government's objections

238. Before the Chamber, the Government objected that the applicants' complaints concerning the repercussions of the "erasure" on their residence status were incompatible *ratione materiae* and *ratione temporis* with the provisions of the Convention. The Convention did not regulate citizenship or residence and the entry into force of the independence legislation and the "erasure" had taken place in 1992, that is, before 28 June 1994, the date on which the Convention entered into force in respect of Slovenia. As to the subsequent proceedings, they were inextricably linked with the initial event (see paragraphs 278-281 of the Chamber judgment).

239. Furthermore, the Government submitted that the applicants had failed to comply with the six-month rule set forth in Article 35 § 1 of the Convention, as the situation complained of could not be construed as a "continuous" one (see paragraph 282 of the Chamber judgment).

2. The Chamber judgment

240. The Chamber dismissed all these pleas, observing, in particular, that it could have regard to the facts which had occurred prior to ratification inasmuch as they could be considered to have created a continuous situation extending beyond that date or might have been relevant for the understanding of facts occurring after that date (see, in particular, *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 147-153, ECHR 2006-VIII). The repercussions of the "erasure", which had been found to be unconstitutional on 3 April 2003, had still obtained on 28 June 1994 and were continuing to adversely affect the applicants more than fifteen years after the entry into force of the Convention in respect of Slovenia (see paragraphs 303-306 of the Chamber judgment).

3. The Grand Chamber's assessment

241. The Grand Chamber observes that the Government have reiterated the above objections in their memorial before the Grand Chamber. However, having regard to the Government's arguments, it does not see any reason to depart from the Chamber's findings.

242. The Government's objections that the application is incompatible *ratione materiae* and *ratione temporis* with the provisions of the Convention and was lodged out of time are accordingly dismissed.

C. The Government's objection of lack of victim status

243. The Government submitted that the six applicants (Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić) who had been granted both *ex nunc* and *ex tunc* permanent residence permits after the 2010 Chamber judgment (see paragraphs 95, 123, 133, 158, 173 and 194 above) could no longer claim to be "victims" of the facts complained of within the meaning of Article 34 of the Convention.

244. The applicants challenged this position.

1. Arguments of the parties

(a) The Government

245. The Government maintained that it was an irrefutable fact that the "erasure" was illegal and had led to an unconstitutional situation. The Republic of Slovenia had acknowledged this at both a symbolic and a legal level. On 15 June 2010 the President of the National Assembly had publicly apologised to the "erased", as had the Minister for the Interior on 22 June 2010 (see paragraph 75 above). As to the legal level, from 1999 onwards the Constitutional Court had held on several occasions that the "erasure" was

unconstitutional (see paragraphs 41-48, 52-56, 58-60 and 214-215 above). The applicants' allegation that the Republic of Slovenia continued to deny the illegality of the "erasure" was therefore not accurate. Significant activities had been performed in order to comply fully with the Constitutional Court's decisions and to redress the unlawfulness and the unconstitutionality of the "erasure".

246. The amended Legal Status Act, which had been passed on 8 March 2010 and had entered into force on 24 July 2010 (see paragraphs 71, 76-79 and 211 above), had eliminated the remaining unconstitutionalities in the domestic legislation, offering the applicants who had not yet settled their legal status the possibility of requesting both *ex nunc* and *ex tunc* residence permits. With this special remedy, the legislature had provided for moral satisfaction as a special form of redress for the consequences of violations resulting from the "erasure".

247. As to the six applicants (Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić) who had been granted both *ex nunc* and *ex tunc* permanent residence permits after the Chamber judgment, their status was equivalent to that of Mr Petreš and Mr Jovanović, who had been considered to have lost their "victim" status by the Chamber. The application in respect of them should therefore be declared inadmissible.

248. The same should apply to the remaining applicants (Mr Dabetić and Mrs Ristanović), who had never started proceedings in Slovenia with a view to requesting permanent residence permits.

249. Contrary to what the applicants alleged, a permanent residence permit was definitely not just "a piece of worthless paper". It linked the holder to twenty-seven different rights in the field of social care, including pension rights, education, health and access to the labour market. As far as those rights were concerned, permanent residents were placed on the same level as Slovenian citizens. They did not enjoy the same political rights, but could vote in local elections.

250. As to compensation claims, Article 26 of the Constitution (see paragraph 203 above) provided for the right to compensation for damage caused by a civil authority. The applicants and other "erased" persons had the possibility of bringing civil proceedings in order to claim compensation for pecuniary and non-pecuniary damage under the Code of Obligations 2001, and could eventually lodge a constitutional appeal. In paragraph 43 of its decision of 10 June 2010, the Constitutional Court had held that "the delivery of decisions on the basis of the Legal Status Act and the amended Legal Status Act on its own did not imply a new type of State liability for damage or a new legal basis for enforcing claims for damages" (see paragraph 74 above). Claiming damages was also possible under section 14 of the State Attorney Act (see paragraph 213 above).

251. In their submissions after the hearing, the Government relied on the Constitutional Court's decision of 5 July 2011 in one of the cases brought

by the "erased", from which it followed that the Constitutional Court had not yet taken a position on the question of State liability for the damage caused by the "erasure" (see paragraph 82 above). In addition, on 26 September 2011 the Constitutional Court had not accepted for consideration a constitutional appeal lodged by one of the "erased" (see paragraph 83 above).

252. The Government observed that none of the applicants had claimed compensation before the domestic courts. Only Mr Berisha and Mr Minić had filed a claim for damages with the State Attorney's Office, which had been rejected. Mr Berisha had not instituted court proceedings (see paragraph 160 above).

(b) The applicants

253. The six applicants who had been granted both *ex nunc* and *ex tunc* permanent residence permits in the course of the proceedings before the Grand Chamber remained in their view "victims" of the human rights violations caused by the "erasure" since they had not received any proper redress for the breaches of the Convention.

254. Although it followed from the earlier case-law and also some later decisions that an applicant could cease to be a "victim" if a remedy was provided in the course of the proceedings (they cited, *inter alia*, *Maaouia v. France* (dec.), no. 39652/98, ECHR 1999-II; *Pančenko v. Latvia* (dec.), no. 40772/98, 28 October 1999; and *Mikheyeva v. Latvia* (dec.), no. 50029/99, 12 September 2002), the recent case-law under Article 8 of the Convention clearly indicated that the recognition of a violation was not sufficient in this respect; "adequate" redress, including the reparation of adverse consequences suffered by the applicants over a long period of time, was also required (they cited *Aristimuño Mendizabal*, cited above, § 79; *Mengesha Kimfe v. Switzerland*, no. 24404/05, §§ 41-49, 29 July 2010; and *Agraw v. Switzerland*, no. 3295/06, §§ 27-34, 29 July 2010). The Court had also made a distinction between cases involving deportation of non-nationals, and those concerning the failure to regulate the applicant's legal status over a long period. In the first category of cases, an applicant could no longer claim to be a "victim" if the deportation measure was not enforceable or if he or she had been issued with a residence permit (the applicants referred to *Sisojeva and Others*, cited above, § 100, and *Kaftailova*, cited above, §§ 52-54). On the other hand, in the second category of cases (*Aristimuño Mendizabal*, *Mengesha Kimfe*, and *Agraw*, cited above) the Court had clearly stated that the issuance of residence permits was not enough, especially on account of the lapse of time needed to grant them. The present application was more similar to the second category of cases.

255. The issuance of the residence permits to the six applicants, which was a measure preventing the continuation of a violation, could not be seen

as recognition by the Slovenian authorities – at least in substance – of the violation complained of. The authorities had continued to deny that their actions were illegal. Here, unlike in the Latvian cases, the deprivation of permanent residence status had been carried out in flagrant breach of domestic law. Finally, the retroactive nature of the permanent residence permits remained only declaratory since the applicants were unable to receive proper reparation under the domestic legislation. For that reason, the permits were "just a piece of paper".

256. As to Mr Dabetić and Mrs Ristanović, the State should regulate their legal status *ex proprio motu* by issuing a retroactive permanent residence permit in compliance with the Constitutional Court's decisions.

257. Finally, as to the question of pecuniary and non-pecuniary compensation, the amended Legal Status Act contained no specific provisions. Moreover, claiming damages before the domestic courts on the basis of the ordinary rules on tort liability would be virtually impossible. According to the latest statistics, by May 2011 the Ministry had dealt with 157 compensation claims. Out of these, forty-one claims had been dismissed with final effect by the domestic courts. Only fifteen had been challenged before the Supreme Court and five of them had been dismissed. In addition, eight of the "erased" had brought claims directly before the courts. None of them had been successful (see paragraph 83 above). The main reason for the rejection of the claims was the application of statutory limitations under the Code of Obligations: three years since the victim had learned of the damage and five years since the damage had occurred. The domestic courts had so far deemed that the latter date was 12 March 1999, when the Constitutional Court's first leading decision had been published in the Official Gazette.

2. The Chamber judgment

258. The Chamber did not have the opportunity to rule on this plea, which related to facts that occurred after the delivery of its judgment (see paragraph 243 above).

3. The Grand Chamber's assessment

259. The Court reiterates that it falls, firstly, to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a "victim" of the violation alleged is relevant at all stages of the proceedings under the Convention (see, *inter alia*, *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III). A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the

Convention (see, for example, *Eckle v. Germany*, 15 July 1982, §§ 69 et seq., Series A no. 51; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-180, ECHR 2006-V; and *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010).

260. As to the redress which is "appropriate" and "sufficient" in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake (see, for instance, *Gäfgen*, cited above, § 116).

261. The Court has held in a number of cases under Article 8 of the Convention relating to the deportation or extradition of non-nationals that the regularisation of an applicant's stay or the fact that the applicant was no longer under the threat of being deported or extradited – even if the case was still pending before the Court – was "sufficient" in principle to remedy a complaint under Article 8 (see *Pančenko*, cited above; *Yang Chun Jin alias Yang Xiaolin v. Hungary* (striking out), no. 58073/00, §§ 20-23, 8 March 2001; *Mikheyeva*, cited above; *Fjodorova and Others v. Latvia* (dec.), no. 69405/01, 6 April 2006; *Sisojeva and Others*, cited above, §§ 102-104; *Shevanova*, cited above, §§ 48-50; and *Kaftailova*, cited above, §§ 52-54).

262. Furthermore, the Court has already had occasion to indicate in the context of different Convention Articles that an applicant's "victim" status may also depend on the level of compensation awarded at domestic level, where appropriate, or at least on the possibility of seeking and obtaining compensation for the damage sustained, having regard to the facts about which he or she complains before the Court (see, for instance, *Gäfgen*, cited above, § 118, in respect of a complaint under Article 3; *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001, and *Scordino (no. 1)*, cited above, § 202, in respect of a complaint under Article 6; *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003, in respect of a complaint under Article 11). This finding applies, *mutatis mutandis*, to complaints concerning a breach of Article 8.

263. Turning to the present case, the Grand Chamber reiterates that it has no jurisdiction in respect of the complaints of Mr Petreš and Mr Jovanović, as they were declared inadmissible by the Chamber after the issuance of the *ex tunc* residence permits (see paragraph 236 above).

264. However, no such procedural bar occurs as far as Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić are concerned. The Grand Chamber therefore has jurisdiction to examine whether, notwithstanding the issuing of *ex nunc* and *ex tunc* residence permits, these six applicants can still claim to be victims of the alleged violations. This examination may therefore lead to conclusions different from those reached by the Chamber in respect of Mr Petreš and Mr Jovanović, despite the similarity of the facts at stake. Such a result is,

however, an unavoidable consequence of the restricted scope of the Grand Chamber's jurisdiction (see paragraph 235 above).

265. The Grand Chamber considers that the first condition for the loss of victim status, the acknowledgment of a violation by the national authorities, has been fulfilled. The administrative authorities granted permanent residence permits to the six applicants following the Constitutional Court's decisions finding the existing legislation unconstitutional and after the amendments to the Legal Status Act had been enacted. In addition, in June 2010, there was also an official acknowledgment of a violation of the applicants' rights on the part of the Government and Parliament. The finding of a violation by the national authorities has therefore been made in substance (see, *mutatis mutandis*, *Scordino (no.1)*, cited above, § 194).

266. Furthermore, the Grand Chamber notes that in several other cases concerning the regularisation of the status of aliens, including cases involving comparable circumstances of the break-up of a predecessor State, the Court has held that the applicants were no longer victims of the alleged violations of the Convention after the issuing of a permit and has declared their applications inadmissible or found that the regularisation arrangements made available to the applicants constituted an "adequate" and "sufficient" remedy for their complaints under Article 8 of the Convention and has thus decided to strike the cases out of its list. The fact that the applicants were no longer at risk of deportation has also been taken into account by the Court (see *Pančenko*, cited above; *Mikheyeva*, cited above; *Fjodorova and Others*, cited above; *Sisojeva and Others*, cited above, §§ 102-104; *Shevanova*, cited above, §§ 48-50; and *Kaftailova*, cited above, § 54). In some of these cases, however, the Court noted that the applicants were at least partly responsible for the difficulties encountered in regularising their status (see *Shevanova*, cited above, §§ 47 and 49; *Kaftailova*, cited above, § 50; and *Sisojeva and Others*, cited above, § 94).

267. However, whereas those cases related to specific problems, the Grand Chamber finds that one of the characteristics of the present case is the widespread human-rights concern created by the "erasure". Furthermore, this situation lasted nearly twenty years for the majority of the applicants, in spite of the Constitutional Court's leading decisions, which were themselves not complied with for more than a decade (see *Makuc and Others*, cited above, § 168). Having regard to this lengthy period in which the applicants experienced insecurity and legal uncertainty and to the gravity of the consequences of the "erasure" for them, the Grand Chamber, unlike the Chamber, considers that the acknowledgment of the human rights violations and the issuance of permanent residence permits to Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić did not constitute "appropriate" and "sufficient" redress at the national level (see, *mutatis mutandis*, *Aristimuño Mendizabal*, cited above, §§ 67-69 and 70-72;

Mengesha Kimfe, cited above, §§ 41-47 and 67-72; and *Agraw*, cited above, §§ 30-32 and 50-55).

268. As to the possibility of seeking and obtaining compensation at the domestic level (see paragraphs 250-252 and 257 above), the Court observes that none of the "erased" have so far been awarded compensation in a final and binding judgment for the damage sustained, although several sets of proceedings are currently pending (see paragraph 83 above). In addition, none of the applicants have so far been successful before the State Attorney's Office in their claims for compensation. Therefore, their prospects of receiving compensation in Slovenia appear, for the time being, to be too remote to be relevant for the purposes of the present case (see, *mutatis mutandis*, *Dalban*, cited above, § 44).

269. In conclusion, the Court holds that the six applicants who were awarded both *ex nunc* and *ex tunc* permanent residence permits in the course of the proceedings before the Grand Chamber may still claim to be "victims" of the alleged violations. The Government's preliminary objection in this respect should accordingly be dismissed.

270. Lastly, as to the Government's plea of lack of "victim" status in respect of the remaining applicants (Mr Dabetić and Mrs Ristanović), who never started proper proceedings in Slovenia with a view to being granted permanent residence permits, the Court finds that it is not necessary to examine it since these applicants' complaints are in any event inadmissible for non-exhaustion of domestic remedies (see paragraphs 293-294 below).

D. The Government's objection of non-exhaustion of domestic remedies

271. The Government objected that the applicants had failed to exhaust domestic remedies.

1. Arguments of the parties

(a) The Government

272. Before the Grand Chamber the Government objected that three of the applicants (Mr Dabetić, Mr Ristanović and Mrs Ristanović) had never applied for a residence permit. Relying on the *Kaftailova* and *Shevanova* judgments (cited above, §§ 52-54 and §§ 48-50 respectively), they stated that the applicants were under an obligation to act lawfully and to try to regularise their status in Slovenia. No procedure was available under the Administrative Procedure Act which would enable the State to issue a residence permit *ex proprio motu* without a request having been made. Subsequently, Mr Ristanović, who had in the meantime submitted a request

under the amended Legal Status Act, had been granted both *ex nunc* and *ex tunc* permits (see paragraph 133 above).

273. Moreover, all the applicants had failed to pursue the available legal avenues for obtaining permanent residence permits, either under the Aliens Act or under the Legal Status Act. After exhaustion of the remedies at their disposal in the framework of administrative proceedings (application for a residence permit, administrative proceedings, complaint alleging inaction on the part of the authorities), the applicants should have lodged a constitutional appeal in their individual cases. In a large number of Slovenian cases, the Court had held that a constitutional appeal was an effective remedy.

274. Further to the Constitutional Court's leading decisions of 4 February 1999 and 3 April 2003 on the "erasure" (see paragraphs 41-48, 58-60 and 214-215 above), which had the effect of precedents, the applicants could have effectively relied on their right to obtain residence permits before the Constitutional Court, which enjoyed full jurisdiction under section 60 of the Constitutional Court Act (see paragraph 204 above). In a number of cases brought by other "erased" persons, the Constitutional Court had ordered the re-entry of their names in the Register pending the enactment of the new law, thus filling the legal vacuum arising from the legislature's failure to enforce its decisions. The Constitutional Court had also remitted some cases to the Supreme Court or quashed the lower courts' judgments (see paragraphs 52-56 above). None of the applicants had lodged such an individual appeal, which was an "accessible", "adequate" and "effective" remedy both in theory and in practice.

275. In addition, individuals could also lodge a petition for a review of the constitutionality of the relevant legislation. The decisions on such petitions had *erga omnes* effect and were binding. The fact that the legislature had not executed the decisions within the specified time-limit did not mean that the decisions were not enforceable in individual and administrative legal proceedings. Contrary to the Bosnian Constitutional Court (the Government cited *Tokić and Others v. Bosnia and Herzegovina*, nos. 12455/04, 14140/05, 12906/06 and 26028/06, §§ 57-59, 8 July 2008), the Slovenian Constitutional Court could effectively remedy the alleged violations.

276. The Government also noted that on 8 March 2010, prior to the adoption of the Chamber judgment, the National Assembly had already passed a systemic Act (the amended Legal Status Act) regulating the status of the "erased" both *ex nunc* and *ex tunc*, in compliance with the Constitutional Court's decision of 2003 (see paragraphs 71, 76-79 and 211 above). In its decision of 10 June 2010 on a referendum, the Constitutional Court had considered that the amended Legal Status Act should provide for a permanent solution of the status of those "erased" persons who had been unable to regularise their status, and had not allowed a referendum to be

held (see paragraph 73 above). On 24 June 2010 the amended Legal Status Act had been published in the Official Gazette and on 24 July 2010, almost immediately after the delivery of the Chamber judgment, it had entered into force (see paragraph 76 above). The applicants had therefore had at their disposal a new legal avenue with the eventual possibility of lodging a constitutional appeal. The deadline for submitting requests for permanent residence permits under the amended Legal Status Act would not expire until 24 July 2013 (see paragraph 80 above).

277. The implementation of the Act was regularly monitored by the authorities. By 31 May 2011, sixty-four *ex nunc* and 111 *ex tunc* permanent residence permits had been issued under the amended Legal Status Act. Under both the Legal Status Act and the amended Legal Status Act, approximately 12,500 of the "erased" had regularised their status (see paragraphs 67, 76 and 80 above). The applicants who had not yet received permanent residence permits should apply for them under the amended Legal Status Act.

278. In any event, in the Government's view the applicants had failed to prove the existence of special circumstances which could have dispensed them from having to exhaust domestic legal remedies (the Government cited *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV).

(b) The applicants

279. The applicants contended that the domestic remedies at their disposal were in general not "accessible", "adequate" and "effective" as required under Article 35 § 1 of the Convention since none of them was capable of addressing the substance of the relevant Convention complaints and of awarding appropriate relief, especially considering the prolonged and systematic refusal of the administrative authorities to comply with the Constitutional Court's decisions and the substantial and unjustified delay of the legislature in passing the new law. Accepting the Government's arguments would imply placing on the Constitutional Court the burden of adjudicating on each single case by repeating its previous findings of general flaws in the relevant legal provisions.

280. In addition, even under the Legal Status Act as it had previously stood, 1,250 requests for permanent residence had been rejected (see paragraphs 67 and 76 above), which showed the existence of serious flaws in the legislative framework at the material time. For many of the "erased", and not just for the applicants, it was objectively impossible to satisfy the requirements of that Act, which in any event had been found to be unconstitutional by the Constitutional Court. The ineffectiveness of the remedies concerned was exemplarily demonstrated in the case of Mr Minić, who had had to wait for a long time to regularise his status in spite of two

judgments in his favour delivered by the Administrative Court (see paragraphs 190 and 193-194 above).

281. Even assuming that the remedies relied on by the Government were "adequate" and "effective", three of the applicants – Mr Dabetić, Mr Ristanović and Mrs Ristanović – would still be exempted from having to make use of them in the light of the exceptional circumstances of their cases and their personal situation, and also in view of the general political and social situation in Slovenia and the total passivity of the administrative authorities. They had also been clearly unable to fulfil the criteria at the relevant time.

282. In particular, Mr Dabetić had no legal status either in Slovenia or in Italy and was *de jure* and *de facto* stateless. Even though he had not submitted a request for a permanent residence permit, he had urged the Ministry of the Interior, after the delivery of the Constitutional Court's decision in 2003, to issue a decision regulating his status and had filed a complaint alleging inaction on the part of the administrative authorities. He had also submitted a request for Slovenian citizenship (see paragraphs 101-105 above), and had thus done everything that could reasonably be expected of him in order to regularise his position.

283. As to Mrs Ristanović and Mr Ristanović, it should not be overlooked that they had been deported from Slovenia and that it would have been very difficult for them to pursue any legal remedy there. In sum, the remedies available to the three applicants did not offer them realistic chances of success. Moreover, the general climate of social and political adversity encountered by the "erased" should not be overlooked. Since the "erasure" the applicants had continued to find themselves in a state of extreme vulnerability and insecurity.

(c) The third parties

284. The Serbian Government and most of the other third-party interveners submitted that the legal remedies referred to by the Government had proved to be both ineffective and inadequate in the circumstances of the instant case.

2. The Chamber judgment

285. The Chamber noted that the Constitutional Court had found the "erasure" unconstitutional on various occasions and that the applicants essentially complained about the lack of compliance with those decisions. Relying on the judgment in the case of *Tokić and Others* (cited above, §§ 57-59), it dismissed the Government's plea of failure to exhaust domestic remedies (see paragraph 308 of the Chamber judgment).

3. The Grand Chamber's assessment

286. The general principles on the exhaustion of domestic remedies are set out in *Sejdovic v. Italy* ([GC], no. 56581/00, §§ 43-46, ECHR 2006-II). The Court will apply these principles to the different legal avenues referred to by the Government. It emphasises, at the outset, that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case. This means, amongst other things, that the Court must take realistic account 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 (see, among other authorities, *Akdivar and Others*, cited above, §§ 66 and 68-69; *Orchowski v. Poland*, no. 17885/04, §§ 105-106, 22 October 2009; and *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04, § 70, ECHR 2010).

287. The Government cited five different grounds why in their opinion domestic remedies had not been exhausted. First, two applicants (Mr Dabetić and Mrs Ristanović) had never properly applied for a residence permit (this plea was initially also directed against Mr Ristanović, who, however, subsequently made a request under the amended Legal Status Act and was granted a residence permit – see paragraph 272 above). Moreover, all the applicants had failed to lodge individual constitutional complaints before the Constitutional Court, to challenge the constitutionality of the relevant legislation and to avail themselves of the more favourable provisions of the amended Legal Status Act.

288. The Grand Chamber observes that in the course of the proceedings before it, six applicants – Mr Kurić, Ms Mezga, Mr Berisha, Mr Ademi, Mr Minić and Mr Ristanović – obtained both *ex nunc* and *ex tunc* permanent residence permits (see paragraph 243 above). They are therefore in a different factual situation from that of the remaining two applicants (Mr Dabetić and Mrs Ristanović), who never obtained such permits. The Court will therefore examine separately the Government's plea of non-exhaustion in respect of these two groups of applicants.

(a) The two applicants who never obtained residence permits (Mr Dabetić and Mrs Ristanović)

289. The Government objected that Mr Dabetić and Mrs Ristanović had failed to submit a proper request for a residence permit under the Aliens Act and the Legal Status Act (see paragraph 272 above). The applicants stated that they should be exempted from exhausting domestic legal remedies in view of their personal situations (see paragraph 281 above).

290. The Court observes that Mr Dabetić, who left Slovenia at an unspecified date, but most probably in 1990 or 1991, and settled in Italy, where he has lived ever since, failed to submit a proper request for an *ex nunc* residence permit in Slovenia. He confined himself to urging the Ministry of the Interior to issue a supplementary, *ex tunc* decision regulating his status (see paragraph 101 above). This legal avenue proved to be an incorrect one and no decision was issued (see paragraphs 103-104 above).

291. Mrs Ristanović, who now lives in Serbia, made no attempts after her deportation to obtain a residence permit in Slovenia, in spite of the fact that the Constitutional Court's decision of 3 April 2003 also addressed the situation of those "erased" persons who had been deported (see paragraphs 58-59, 128 and 215 above).

292. In the Court's view, the failure by Mr Dabetić and Mrs Ristanović to manifest in any manner their wish to reside in Slovenia, that is, to take any proper legal steps in order to regularise their residence status, shows that they did not have sufficient interest in the subject matter (see, *mutatis mutandis*, *Nezirović v. Slovenia* (dec.), no. 16400/06, §§ 39-41, 25 November 2008). Although, as the Court will later establish, further domestic remedies against a refusal to grant a residence permit proved to be ineffective (see paragraphs 295-313 below), Mr Dabetić and Mrs Ristanović cannot be considered to be dispensed from the obligation to apply formally for a residence permit in the first place. Instead, they submitted their application to the Court without initiating a statutory procedure at the national level on the basis of which the authorities could have taken action in their favour.

293. It follows that the Government's preliminary objection of non-exhaustion of domestic remedies in respect of Mr Dabetić and Mrs Ristanović should be upheld.

294. The application in respect of those two applicants should therefore be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) The six applicants who eventually received residence permits (Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić)

(i) Individual constitutional appeals

295. The Government first objected that these applicants had failed to lodge a constitutional appeal in their individual cases and pointed out that a number of other "erased" persons had been successful before the Constitutional Court (see paragraphs 273-274 above).

296. The Court notes that, as regards applications lodged against Slovenia, applicants are, according to its case-law, in principle required to exhaust remedies before the domestic courts, and ultimately to lodge a constitutional appeal (see *Švarc and Kavnik v. Slovenia*, no. 75617/01,

§§ 15 and 16, 8 February 2007, and *Eberhard and M. v. Slovenia*, nos. 8673/05 and 9733/05, §§ 103-107, 1 December 2009).

297. When the Constitutional Court examines an individual constitutional appeal and quashes a legal act breaching the individual's constitutional rights and freedoms (see section 60 of the Constitutional Court Act – paragraph 204 above), it may also remedy violations committed by authorities or officials. It may do so by determining a contested right or freedom, if such a procedure is necessary in order to put an end to consequences that have already occurred, or if such is the nature of the constitutional right or freedom. The Slovenian constitutional appeal is thus similar to those existing in, for example, Germany, Spain or the Czech Republic which make it possible for the constitutional courts of those member States to remedy violations of fundamental rights and freedoms (see *Riera Blume and Others v. Spain* (dec.), no. 37680/97, ECHR 1999-II; *Hartman v. the Czech Republic*, no. 53341/99, § 49, ECHR 2003-VIII; *Sürmeli v. Germany* [GC], no. 75529/01, § 62, ECHR 2006-VII; and, by contrast, *Apostol v. Georgia*, no. 40765/02, §§ 42-46, ECHR 2006-XIV).

298. In the instant case, the Constitutional Court had already adopted *erga omnes* decisions, finding that the legislation applicable to the applicants had breached their constitutional rights and ordering the adoption of general measures. In particular, on 4 February 1999 the Constitutional Court found the "erasure" unlawful and unconstitutional (see paragraphs 41-48 and 214 above) and on 3 April 2003 it declared certain provisions of the Legal Status Act unconstitutional (see paragraphs 58-60 and 215 above). It should therefore be ascertained whether the applicants were still under an obligation to lodge a further constitutional appeal requesting the Constitutional Court to re-enter their names in the Register of Permanent Residents. In this connection, it is worth noting that the applicants did not contest the Government's allegation that other "erased" persons had been successful in lodging such appeals.

299. The Court observes, however, that the applicants have taken several steps before the domestic authorities – including, for many of them, before the courts – in order to obtain permanent residence permits either under the Legal Status Act or, like Mr Ristanović, under the amended Legal Status Act (see paragraph 133 above). Unlike in the case of Mr Dabetić and Mrs Ristanović, the authorities can be said to have been aware of their wish to regularise their status in Slovenia. Moreover, the two leading decisions of the Constitutional Court ordering general measures were not fully complied with for eleven and seven years respectively. In the Court's opinion, this fact undermined trust in the effectiveness and the prospects of success of further individual constitutional appeals.

300. In this connection, the Court observes that in other cases where a Constitutional Court has found a general or a structural problem in a decision which was not complied with by the domestic authorities during a

long period, it has viewed that conduct as undermining the authority of the judiciary and of the rule of law (see *Broniowski v. Poland* [GC], no. 31443/96, § 175, ECHR 2004-V, and *Orchowski*, cited above, § 151).

301. Furthermore, the Court observes that the Constitutional Court has, in all its subsequent decisions, referred to its two leading decisions of 1999 and 2003, holding in its decision of 10 June 2010 that the failure to implement its leading decision of 2003 entailed a fresh violation of the Constitution (see paragraph 73 above).

302. Lastly, the Court cannot overlook the fact that the applicants, who did not have any Slovenian identity documents, were left for several years in a state of legal limbo, and therefore in a situation of vulnerability and legal insecurity (see, *mutatis mutandis*, *Tokić and Others*, cited above, §§ 57-59, and *Halilović v. Bosnia and Herzegovina*, no. 23968/05, § 22, 24 November 2009).

303. Having regard to the above considerations, and in particular to the overall duration of the administrative proceedings brought by the applicants and to the feelings of helplessness and frustration which inevitably derived from the prolonged inaction of the authorities in spite of the theoretically binding decisions of the Constitutional Court, the Court finds that, in the particular circumstances of the present case, the applicants were dispensed from having to lodge individual constitutional appeals.

304. This decision is limited to the particular circumstances of the present case and must not be interpreted as a general statement to the effect that an appeal to the Constitutional Court is never a remedy which must be used in Slovenia in cases of non-compliance with decisions in which that court has laid down general measures (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 81, ECHR 1999-V, and *Tokić and Others*, cited above, § 59).

(ii) Petition for an abstract review of the constitutionality of the legislation

305. The Government further objected that the applicants could have filed a petition for an abstract review of the constitutionality of the legislation (see paragraph 275 above). The applicants contested the effectiveness of that remedy.

306. The Court notes that the Constitutional Court's leading decisions of 1999 and 2003 were adopted following the initiative of a number of "erased" persons and of the Association of the "Erased" (see paragraphs 40, 58 and 214-215 above), whereas none of the applicants had previously challenged the relevant provisions of the Aliens Act or of the Legal Status Act before the Constitutional Court. Only Mr Ristanović recently lodged a petition challenging the provisions of the amended Legal Status Act, which was joined to the petition lodged by the association Civil Initiative of the "Erased" and to petitions lodged by fifty-one other individuals (see paragraph 81 above). Those proceedings are currently pending.

307. However, the Court cannot but reiterate that the Constitutional Court's leading decisions of 1999 and 2003, both ordering general measures, were not fully complied with for several years (see paragraph 298 above). The essence of the applicants' complaints had, at the material time, already been addressed by those leading decisions (see, *mutatis mutandis*, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 122, ECHR 2007-IV). The applicants were therefore not required to lodge an additional petition for an abstract review of the constitutionality of the impugned legislation, as it would essentially have duplicated the petitions that had previously been filed and determined.

(iii) The amended Legal Status Act

308. Prior to the issuance of the residence permits to the six applicants during the proceedings before the Grand Chamber, the Government also objected that some of the applicants had failed to submit requests under the amended Legal Status Act, which was in their view a systemic instrument regulating comprehensively the status of the "erased" (see paragraph 276 above). It entered into force on 24 July 2010 (see paragraph 76 above), almost immediately after the delivery of the Chamber judgment on 13 July 2010, in which the applicants' complaints under Articles 8, 13 and 14 of the Convention were declared admissible (see paragraph 9 above).

309. According to the Court's case-law, objections of non-exhaustion of domestic remedies raised after an application has been declared admissible cannot be taken into account at the merits stage (see *Demades v. Turkey* (merits), no. 16219/90, § 20, 31 July 2003, and *Lordos and Others v. Turkey* (merits), no. 15973/90, § 41, 2 November 2010). In the instant case, the amended Legal Status Act entered into force after the applicants' complaints had been declared admissible. For this reason, this part of the Government's objection cannot be upheld.

(iv) Citizenship proceedings in respect of the four applicants who applied for Slovenian citizenship

310. The Government also objected that four applicants – Mr Kurić, Ms Mezga, Mr Minić and Mr Ademi – who had submitted applications for Slovenian citizenship had failed to properly exhaust domestic legal remedies.

311. The Grand Chamber observes that the applicants' complaints concerning the impossibility for them to obtain Slovenian citizenship were declared incompatible *ratione temporis* with the provisions of the Convention by the Chamber (see paragraphs 231 and 236 above). Accordingly, the Grand Chamber has jurisdiction to examine the applicants' complaints only in so far as they concern their residence status in Slovenia (see paragraph 237 above).

312. Under these circumstances, the Court is of the opinion that an application for Slovenian citizenship was not a remedy aimed at addressing the essence of the applicants' complaints, as delimited by the decision on the admissibility of the application. Consequently, it does not need to examine whether this remedy was effective and accessible.

(v) Conclusion

313. For the above reasons, the Government's preliminary objection of non-exhaustion of domestic remedies in respect of the six applicants who obtained permanent residence permits should be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

314. The applicants claimed that they had been arbitrarily deprived of the possibility of preserving their status as permanent residents in Slovenia. They invoked Article 8 of the Convention, which reads as follows:

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

A. Arguments of the parties

1. The applicants

315. The applicants alleged that they had not been in a position to submit a formal request for citizenship within the short period set out in the domestic legislation. As a result, on 26 February 1992 their names had been unlawfully "erased" from the Register. The applicants Mr Kurić, Mr Dabetić and initially also Mr Ademi were also unable to acquire citizenship of any other successor State of the SFRY and had become, *de facto*, stateless persons. Subsequently, the applicants had not been in a position to successfully apply for permanent residence in Slovenia until the entry into force of the amended Legal Status Act in 2010.

316. Before the Chamber, the applicants submitted that the provisions of the Aliens Act were neither accessible nor foreseeable in effect. With respect to accessibility, the authorities had failed to provide adequate and detailed information to all persons concerned. As to foreseeability, the Aliens Act did not expressly apply to the "erased" since it was designed to regulate the status of illegal aliens. In addition, the applicants regarded the

Slovenian authorities' overall conduct as arbitrary. The interference complained of was not proportionate to the aim allegedly pursued, namely the control of the entry and residence of aliens, since the applicants had had permanent residence in Slovenia at the time of its independence.

317. The applicants essentially agreed with the Chamber's findings and urged that the Government's passive attitude be stigmatised in stronger terms. They stated that they had not been properly informed about the consequences of not having successfully applied for Slovenian citizenship; public announcements and newspaper articles were not enough. The "erasure" had been carried out arbitrarily, without any legal basis and in secret, and had concerned 25,671 persons.

318. It was only in 1999, after the decision of the Constitutional Court, that the "erased" had begun to discover what had really happened. In the subsequent years, the Constitutional Court's decisions had been systematically and deliberately disregarded by the Government and Parliament. The new framework legislation – the amended Legal Status Act – had been passed eleven years after the first leading decision on the unlawfulness of the "erasure" and seven years after the second leading ruling. Contrary to the Government, the applicants submitted that no genuine change had taken place in the policy of the Slovenian authorities since that Act had been passed.

319. The "erased" were not only denied access to Slovenian citizenship but were also bereft of any legal status conferring "the right to have rights". This was a serious encroachment on human dignity. The "erasure" irremediably affected their private or family life or both under Article 8 of the Convention, which also protected the right to establish details of a person's identity as an individual human being (the applicants cited, *inter alia*, *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 90, ECHR 2002-VI, and *Mikulić v. Croatia,* no. 53176/99, § 53, ECHR 2002-I). From being citizens in full possession of their rights, they had become illegal aliens overnight; some of them had also become stateless, and had lived for twenty years in a most precarious situation and been seriously hindered in the full enjoyment of their basic human rights. The difficulties the "erased" had to surmount were illustrated by the applicants' personal histories.

320. The Government had continued to minimise the unlawfulness and arbitrariness of the "erasure". The weakness of the Government's argument that the presence of the "erased" was tolerated was brought out by the fact that many had been forcibly deported from Slovenia, including five of the present applicants.

321. The Government had also minimised the consequences ensuing from the Constitutional Court's decisions of 1999 and 2003. The prior legislative framework or its implementation or both by the competent administrative authorities were clearly inadequate. Most of the applicants

had obtained their residence permits very recently, under the amended Legal Status Act. In spite of that, their situation had not yet been settled in the absence of any financial redress.

322. As to the amended Legal Status Act, only thirty permits had been granted so far. According to the official data, approximately 13,000 of the "erased" were therefore still waiting for the situation to be settled. It was therefore clear that the effects of the Court's judgment would extend well beyond the specific situations of each applicant since the judgment would concern the entire category of the "erased".

323. As to the Government's criticism of the Chamber's findings concerning statelessness, the Chamber had in any event not ruled that the "erasure" as such had caused statelessness or that the violations of the applicants' rights had originated from their statelessness, but had recorded an undisputable objective fact. The applicants believed that the Chamber should have gone further in assessing the real impact the "erasure" had had on citizenship rights, taking into account the relevant substantive and procedural rules of international law concerning the avoidance of statelessness. The "erasure" had created a factual situation in which it was much more difficult, and sometimes impossible, for the applicants to regularise their citizenship in accordance with the relevant legislation either in Slovenia or in the other former republics of the SFRY.

324. The Government's assumption that every former SFRY citizen should have kept his or her previous republic citizenship was not entirely correct. There were many reported cases showing the opposite, such as that of Mr Dabetić (see paragraph 97 above). Mr Ademi had only recently, in August 2010, been issued with a Macedonian passport (see paragraph 172 above). The Government had failed to give any consideration at all to situations where a person had not had the citizenship of a republic. This occurred in particular where the person concerned was born in Slovenia to parents with the citizenship of another republic or with no republic citizenship at all. Since 1968, the practice had been to enter one's citizenship in the registers kept in Slovenia, but the relevant data were in practice often not reported to the republic of origin in spite of the existing legislation. At the time of the dissolution of the SFRY, the Government had been under an obligation to give all persons living in Slovenia a choice between obtaining Slovenian citizenship and a residence permit.

2. The Government

325. Before the Chamber, the Government submitted that the events in 1991 had involved the historic creation of a new State and that it had therefore been necessary, on the one hand, to establish rapidly a corpus of citizens in view of parliamentary elections and, on the other hand, to regulate the status of aliens, including that of citizens of the other former republics of the SFRY with permanent residence in Slovenia. This pivotal

time for the establishment of a new State called for the quick adoption of decisions owing to the pressing social need. Under both the Statement of Good Intentions and the independence legislation (see paragraphs 21-22 and 24-25 above), the Republic of Slovenia had allowed citizens of the other former republics of the SFRY with permanent residence on its territory to acquire Slovenian citizenship by naturalisation under exceptionally favourable conditions. Those who had not taken advantage of this had become aliens and should have regularised their status. In the sphere of immigration, the State was entitled not only to regulate the stay and residence of aliens but also to take dissuasive measures, such as deportation. It had therefore been necessary to enact the appropriate legislation, which was accessible to the applicants and foreseeable in effect, in order to ensure public safety. Such legislation was necessary in a democratic society and proportionate to the aims pursued.

326. Before the Grand Chamber, the Government acknowledged that the "erasure" had been illegal and had led to an unconstitutional situation. They had fully complied in recent years with the Constitutional Court's decisions in order to redress the consequences of the "erasure": on 24 July 2010 the amended Legal Status Act had entered into force, and in 2009, after the change in government, the Ministry had resumed issuing *ex tunc* permanent residence permits. Moreover, various media had been used to provide information to the "erased" (for example, a brochure, the Internet and a free phone line). The Chamber judgment had failed to attach sufficient weight to these activities.

327. In 1991 the applicants had already been sufficiently informed, via publication in the Official Gazette and the press, about the possibility of regularising their status and the need to acquire a permanent or a temporary residence permit if they wished to continue residing in Slovenia under the general provisions of the Aliens Act (section 16). Between 1992 and 1997 a total of 4,893 such permits had been issued and the relevant conditions had been interpreted favourably. Approximately 12,500 permanent residence permits had been granted under both the Legal Status Act and the amended Legal Status Act (see paragraphs 67, 76 and 80 above).

328. In addition, although Article 8 of the Convention could not be construed as guaranteeing, as such, the right to a particular type of residence permit, and although the choice as to the most appropriate means of achieving respect for the rights enshrined in the Convention was a matter for the domestic authorities alone (the Government cited *Sisojeva and Others*, cited above, § 91), the Republic of Slovenia had decided to grant the "erased" permanent retroactive residence permits, as the most favourable legal status for aliens. This exceeded the minimum required by the Convention.

329. The Government challenged in particular the statements contained in the Chamber judgment concerning the issue of statelessness. They

stressed that the "erasure" had resulted only in the cessation of registered permanent residence and had had no impact on the individual's citizenship. Therefore, the Chamber's findings on this issue had been legally and substantively inaccurate.

330. They drew attention to the concept of "dual citizenship": in principle, all SFRY citizens had had citizenship of one of the republics. Since the SFRY system had not permitted statelessness, the break-up of the SFRY should not have created it.

3. The third parties

331. Open Society Justice Initiative stated that a process by which individuals were left at risk of being arbitrarily denied citizenship and becoming stateless had such a profound impact upon the victims as to interfere with Article 8 of the Convention. According to UNHCR data, at the end of 2009, 4,090 former SFRY citizens who had been "erased" in 1992 and were now stateless were living in Slovenia. According to a European Union study, only five stateless persons had been naturalised in Slovenia after 2002.

332. Under customary international law there was a positive obligation to avoid statelessness and to ameliorate the condition of those who were left stateless, especially in cases of State succession. Stateless persons were marginalised and particularly vulnerable. Open Society Justice Initiative relied on the provisions of the European Convention on Nationality, which placed a distinct emphasis on the importance of habitual residence in nationality rules, the notion of a "genuine and effective link" and the State's obligation to facilitate the acquisition of nationality by stateless persons habitually resident on the territory, and in particular children.

333. Moreover, the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession had entered into force on 1 August 2010. The explanatory report stated that the avoidance of statelessness formed a part of customary international law binding on Slovenia, even though the latter had not ratified this treaty.

334. Serious issues of statelessness had occurred in the context of the successor States of the SFRY. Among the group of the "erased" in Slovenia, a significant number remained stateless. The fact that the SFRY successor States had chosen to grant nationality on the basis of the list of names in their registers on republic citizenship had a number of consequences: some former SFRY citizens did not possess or could not prove their republic citizenship for different reasons (destruction of documents or registers or both in the context of an armed conflict, impossibility of obtaining confirmation of one's republic citizenship at the place of birth, and so on). UNHCR had had substantial information and legal-aid programmes in place for a number of years in five of the successor States. The situation had

disproportionately affected vulnerable groups, particularly minority groups from other former republics and Roma people.

335. The Government's efforts to regularise the status of the "erased" by issuing residence permits *ex proprio motu* and by implementing the amended Legal Status Act were welcomed. However, UNHCR remained concerned that the reforms would not allow all those affected by the "erasure" to receive a permanent residence permit and citizenship because of the onerous requirements imposed. The other third-party interveners basically agreed with the submissions of Open Society Justice Initiative.

B. The Chamber judgment

336. The Chamber observed that before 1991 the applicants had had their lawful permanent residence on Slovenian territory under the SFRY legislation applicable at the material time for several years, and most of them for decades, and had had a stronger residence status than long-term migrants. They had all spent a substantial part of their lives in Slovenia and had developed there the network of personal, social, cultural, linguistic and economic relations that made up the private life of every human being; most of them had also formed families in Slovenia or maintained ties with their families living there.

337. The Chamber concluded that the applicants had therefore had a private or family life or both in Slovenia at the material time within the meaning of Article 8 § 1 of the Convention. Furthermore, the repercussions of the "erasure" and the prolonged refusal of the Slovenian authorities to comprehensively regulate the applicants' situation constituted an interference with the exercise of their rights under Article 8 of the Convention, in particular in cases of statelessness (see paragraphs 348-361 of the Chamber judgment).

338. As to whether that interference was "in accordance with the law" under paragraph 2 of Article 8, the Chamber held that the "erasure" had been found to be unlawful by the Constitutional Court and saw no reason to depart from that court's decisions. The Chamber therefore found a violation of Article 8, also in the light of relevant international-law standards aimed at the avoidance of statelessness, especially in situations of State succession (see paragraphs 362-376 of the Chamber judgment).

C. The Grand Chamber's assessment

1. Whether Article 8 applied to the applicants' complaints

339. The Grand Chamber observes at the outset that the Government did not contest before it that the "erasure" and its repercussions had had an

adverse effect on the applicants and amounted to an interference with their "private or family life" or both within the meaning of Article 8 § 1 of the Convention (see *Slivenko v. Latvia* [GC], no. 48321/99, § 96, ECHR 2003-X). Having regard to both parties' arguments, the Grand Chamber sees no reason to depart from the Chamber's findings that, although the "erasure" had been carried out before 28 June 1994, when the Convention entered into force in respect of Slovenia, the applicants had a private or family life or both in Slovenia within the meaning of Article 8 § 1 of the Convention at the material time, and that the "erasure" interfered with their Article 8 rights and continues to do so (see paragraph 337 above).

340. It remains to be examined whether that interference was compatible with the second paragraph of Article 8 of the Convention, that is, whether it was "in accordance with the law", pursued one or more of the legitimate aims listed in that paragraph and was "necessary in a democratic society".

2. Justification of the interference

(a) Was the interference "in accordance with the law"?

341. According to the Court's established case-law, the expression "in accordance with the law" requires that the impugned measure should have some basis in domestic law, and it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Amann v. Switzerland* [GC], no. 27798/95, § 50, ECHR 2000-II, and *Slivenko*, cited above, § 100).

342. The Court observes that the "erasure" of the applicants' names from the Register, together with the names of more than 25,000 other former SFRY citizens, occurred as a result of the joint effect of two sections of the independence legislation enacted on 25 June 1991: section 40 of the Citizenship Act and section 81 of the Aliens Act (see paragraphs 25 and 27 above). Those ex-SFRY citizens with the citizenship of one of the other republics and permanent residence in Slovenia who failed to submit requests for Slovenian citizenship by 25 December 1991, or whose requests had been rejected, fell under the second subsection of section 81 of the Aliens Act. On 26 February 1992, when the latter provision became directly applicable, the applicants became aliens.

343. The Court considers that section 40 of the Citizenship Act and section 81 of the Aliens Act were legal instruments which were accessible to any interested persons. The applicants could therefore foresee that by failing to apply for Slovenian nationality, they would be treated as aliens. However, in the Court's opinion, they could not reasonably have expected, in the absence of any clause to that effect, that their status as aliens would entail the unlawfulness of their residence on Slovenian territory and would lead to such an extreme measure as the "erasure". In this connection, it is to be recalled that the "erasure" was carried out automatically and without

prior notification. Nor were the applicants given the opportunity to challenge it before the competent domestic authorities or to give explanations as to the reasons for their failure to apply for Slovenian citizenship. The absence of any notification or personal information could have led them to believe that their status as residents had remained unchanged and that they could continue residing and working in Slovenia as they had done for several years. Indeed, it was only incidentally that they learned about the "erasure" (see paragraphs 89, 111, 126, 137, 162 and 177 above). Serious doubts may therefore arise as to the foreseeability of the measure complained of.

344. Moreover, the Court cannot but attach significant weight to the fact that in its leading decision of 4 February 1999, the Constitutional Court held that the transfer of the names of the "erased" from the Register of Permanent Residents to the Register of Aliens without a Residence Permit had no domestic legal basis; neither the Aliens Act nor the Inhabitants' Evidence of Residence and Population Registry Act provided for such *ex lege* deregistration and transfer (see paragraphs 41 and 214 above). Furthermore, the Constitutional Court found that no legal provision regulated the transition of the legal status of the "erased" to the status of aliens living in Slovenia; sections 13 and 16 of the Aliens Act (see paragraph 207 above) were designed for aliens entering Slovenia and were therefore not applicable to the applicants (see paragraphs 41-42, 44-45 and 214 above). There was therefore a legal vacuum in the legislation at the time since for those ex-SFRY citizens holding the citizenship of one of the other republics who fell within the scope of the second subsection of section 81 of the Aliens Act, no procedure was put in place to request permanent residence permits. Under section 13 of the Aliens Act, they could only apply for a temporary residence permit, as if they were aliens entering Slovenia with a valid visa who wished to remain longer on Slovenian territory.

345. In addition, it is evident from the administrative circulars addressed by the Ministry of the Interior to the administrative units, in particular those dated 27 February and 15 June 1992 relating to the implementation of the Aliens Act, the interpretation of section 81 and the keeping of records (see paragraphs 28, 30 and 35 above), that the Slovenian authorities were aware at the material time of the negative consequences of the "erasure", which was carried out in secret. By definition, these administrative circulars were not accessible to the applicants.

346. The Court therefore finds that, until 8 July 1999, when the Legal Status Act was passed, the impugned Slovenian legislation and administrative practice which resulted in the "erasure" lacked the requisite standards of foreseeability and accessibility, as developed in the Court's case-law.

347. It is true that following the Constitutional Court's decision of 4 February 1999, on 8 July 1999 the Legal Status Act was passed in order to regularise the situation of the "erased" (see paragraphs 49-50 above). However, the Constitutional Court held on 3 April 2003 that certain provisions of the Legal Status Act were unconstitutional, in particular since they failed to grant the "erased" retroactive permanent residence permits and to regulate the situation of those who had been deported (see paragraphs 58-60 and 215 above). Finally, it took more than seven years, until 24 July 2010, for the latter decision of the Constitutional Court ordering general measures to be complied with, when the amended Legal Status Act was enacted (see paragraph 76 above).

348. It follows that, at least until 2010, the domestic legal system failed to regulate clearly the consequences of the "erasure" and the residence status of those who had been subjected to it. Therefore, not only were the applicants not in a position to foresee the measure complained of, but they were also unable to envisage its repercussions on their private or family life or both.

349. This is sufficient for the Court to come to the conclusion that the interference with the applicants' Article 8 rights was not "in accordance with the law" and that this provision has been violated.

350. However, in the particular circumstances of the present case, and given the widespread repercussions of the "erasure", the Court considers it necessary to examine also whether, quite apart from its lack of sufficient legal basis, this measure pursued a legitimate aim and was proportionate to it.

(b) Did the interference pursue a legitimate aim?

351. The Government submitted that at the time when the new State was being created, the independence legislation had pursued the legitimate aim of protecting national security. Moreover, the right for the State to control the entry and residence of aliens within its territory presupposed that it could take dissuasive measures, such as deportation, against persons infringing immigration laws (see paragraph 325 above).

352. The Court considers that the aim of the independence legislation and the measures taken in respect of the applicants cannot be dissociated from the wider context of the dissolution of the SFRY, the achievement of Slovenia's independence in 1991 and the establishment of an effective political democracy, which entailed the formation of a "corpus of Slovenian citizens" with a view to the parliamentary elections. The interference complained of (the "erasure") has to be seen within this general framework.

353. The Court therefore considers that with the enactment of the independence legislation, which contained an option for all citizens of the other former republics of the SFRY resident in Slovenia to acquire Slovenian citizenship within a short period of time only, the Slovenian

authorities sought to create a "corpus of Slovenian citizens" and thus to protect the interests of the country's national security (see, *mutatis mutandis*, *Slivenko*, cited above, §§ 110-111), a legitimate aim within the meaning of Article 8 § 2 of the Convention.

(c) Was the interference "necessary in a democratic society"?

354. This independence legislation, however, had adverse consequences for those former SFRY citizens who had not applied for Slovenian citizenship within the prescribed time-limit of six months and who consequently became aliens unlawfully residing on Slovenian territory because their names were "erased" from the Register of Permanent Residents. The Court will assess the compatibility of this measure with the applicants' right to respect for their private or family life or both. It reiterates that a measure interfering with rights guaranteed by Article 8 § 1 of the Convention can be regarded as being "necessary in a democratic society" if it has been taken in order to respond to a pressing social need and if the means employed are proportionate to the aims pursued. The Court's task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other (see *Slivenko*, cited above, § 113).

355. According to the Court's case-law, the Convention does not guarantee the right of an alien to enter or to reside in a particular country and Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, among many other authorities, *Chahal v. the United Kingdom*, 15 November 1996, § 73, *Reports* 1996-V; *El Boujaïdi v. France*, 26 September 1997, § 39, *Reports* 1997-VI; *Baghli v. France*, no. 34374/97, § 45, ECHR 1999-VIII; *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; and *Slivenko*, cited above, § 115). However, measures restricting the right to reside in a country may, in certain cases, entail a violation of Article 8 of the Convention if they create disproportionate repercussions on the private or family life, or both, of the individuals concerned (see *Boultif*, cited above, § 55; *Slivenko*, cited above, § 128; *Radovanovic v. Austria*, no. 42703/98, §§ 36-37, 22 April 2004; and *Maslov v. Austria* [GC], no. 1638/03, § 100, ECHR 2008).

356. In the present case, the applicants, who, prior to Slovenia's declaration of independence, had been lawfully residing in Slovenia for several years, had, as former SFRY citizens, enjoyed a wide range of social and political rights. Owing to the "erasure", they experienced a number of adverse consequences, such as the destruction of identity documents, loss of job opportunities, loss of health insurance, the impossibility of renewing

identity documents or driving licences, and difficulties in regulating pension rights. Indeed, the legal vacuum in the independence legislation (see paragraph 344 above) deprived the applicants of their legal status, which had previously given them access to a wide range of rights.

357. Allegedly, the "erasure" was a consequence of their failure to seek to obtain Slovenian citizenship. However, the Court points out that an alien lawfully residing in a country may wish to continue living in that country without necessarily acquiring its citizenship. As shown by the difficulties faced by the applicants, for many years, in obtaining a valid residence permit, the Slovenian legislature failed to enact provisions aimed at permitting former SFRY citizens holding the citizenship of one of the other republics to regularise their residence status if they had chosen not to become Slovenian citizens or had failed to do so. Such provisions would not have undermined the legitimate aims of controlling the residence of aliens or creating a corpus of Slovenian citizens, or both.

358. In this connection, the Court reiterates that, while the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, it 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 or family life or both, in particular in the case of long-term migrants such as the applicants (see, *mutatis mutandis*, *Gül v. Switzerland*, 19 February 1996, § 38, *Reports* 1996-I; *Ahmut v. the Netherlands*, 28 November 1996, § 67, *Reports* 1996-VI; and *Mehemi v. France (no. 2)*, no. 53470/99, § 45, ECHR 2003-IV).

359. The Court is of the opinion that, in the particular circumstances of the present case, the regularisation of the residence status of former SFRY citizens was a necessary step which the State should have taken in order to ensure that failure to obtain Slovenian citizenship would not disproportionately affect the Article 8 rights of the "erased". The absence of such regulation and the prolonged impossibility of obtaining valid residence permits have upset the fair balance which should have been struck between the legitimate aim of the protection of national security and effective respect for the applicants' right to private or family life or both.

(d) Conclusion

360. The Court considers that, despite the efforts made after the Constitutional Court's decisions of 1999 and 2003, as well as recently with the enactment of the amended Legal Status Act, the Slovenian authorities have failed to remedy comprehensively and with the requisite promptness the blanket nature of the "erasure" and its grave consequences for the applicants.

361. For the reasons set out above, the measures complained of were neither "prescribed by law" nor "necessary in a democratic society" to achieve the legitimate aim of the protection of national security.

362. Accordingly, there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

363. The applicants maintained that they had no effective remedy at their disposal in respect of their grievances under Article 8 of the Convention.

They invoked Article 13 of the Convention, which reads as follows:

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

A. Arguments of the parties

1. The applicants

364. Relying on the Court's judgment in the case of *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, § 291, ECHR 2011), and on the arguments set out in paragraphs 279-280 above, the applicants alleged that none of the remedies at their disposal at the material time had proved to be capable of addressing the substance of their complaints under Article 8 of the Convention and of awarding them appropriate relief.

365. In spite of the Constitutional Court's leading decisions, the Government were not even willing to issue *ex tunc* residence permits to those who were already in possession of *ex nunc* permits, let alone to adopt a comprehensive legal solution to the problem arising from the "erasure" over a considerable number of years.

2. The Government

366. The Government maintained that the legal remedies at the applicants' disposal – the administrative proceedings, the individual constitutional complaint and the action for damages – had been both accessible and effective, in compliance with Article 13 of the Convention.

3. The third parties

367. The third parties maintained that as a result of the State's prolonged failure to enforce the Constitutional Court's decision of 3 April 2003, which

was legally binding, the applicants' right to an effective remedy had been violated, owing to a lack of political will.

B. The Chamber judgment

368. The Chamber found a violation of Article 13 in conjunction with Article 8 of the Convention on account of the non-compliance with the leading decisions of the Constitutional Court and held that the Government had failed to establish that the remedies available to the applicants were effective (see paragraphs 383-386 of the Chamber judgment).

C. The Grand Chamber's assessment

369. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may 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 complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

370. The Court has already found that the applicants' "erasure" amounted to a violation of Article 8 of the Convention (see paragraph 362 above). The applicants' complaints in that regard are therefore "arguable" for the purposes of Article 13.

371. The Court refers to its finding that the Government failed to establish that the remedies available to the applicants were "adequate" and "effective" in order to redress, at the material time, the alleged violation of Article 8 of the Convention (see paragraphs 295-313 above).

372. Accordingly, there has been a violation of Article 13 in conjunction with Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

373. The applicants claimed that in enjoying their rights under Article 8 of the Convention, they had been discriminated against on the ground of their national origin, when compared to other foreign citizens (the so-called "real" aliens) who continued to live in Slovenia on the basis of temporary or permanent residence permits.

374. They invoked Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Arguments of the parties

1. The applicants

375. The applicants argued that they had been treated less favourably than "real" aliens who had lived in Slovenia since before independence and whose permanent residence permits remained valid under section 82 of the Aliens Act.

376. In the applicants' view, the issue of discriminatory treatment of the "erased" was one of the main features of the present case, and the Grand Chamber should examine the merits of their complaint under Article 14 (they cited *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 160-168, ECHR 2005-VII). They underlined that the Constitutional Court itself had confirmed the existence of discrimination. If the continuous right to residence of "real" aliens was recognised by the Aliens Act, the same should apply all the more to the "erased".

377. Lastly, the applicants contested the respondent Government's allegations (see paragraph 379 below) that positive discrimination had been carried out in respect of them since they had not been subjected to deportation; five of the applicants had in fact been deported.

2. The Government

378. The Government stated that at the time of its independence, the Republic of Slovenia had allowed citizens of the other former republics of the SFRY with permanent residence in Slovenia to acquire Slovenian citizenship under exceptionally favourable conditions. In addition, the 1991 Constitutional Law guaranteed them equal treatment to Slovenian citizens until their acquisition of Slovenian citizenship or the expiry of the time-limits set by the Aliens Act (see paragraph 202 above). However, bearing in mind the necessity of forming a corpus of Slovenian citizens – especially with a view to the 1992 parliamentary elections – this equality in treatment could not last indefinitely. Therefore, it was up to the permanent residents without Slovenian citizenship to seize the opportunity to acquire citizenship of the independent Slovenia; this was not granted automatically.

379. The applicants' position was therefore linked to the fact that they, as aliens, had not acquired permanent residence permits. They had been treated like all other aliens without a residence permit. As to the SFRY legislation and the provisions of the Aliens Act, the applicants and the

"real" aliens had never been in a comparable situation. Moreover, the applicants had benefited from positive discrimination, since they had in principle not been deported from Slovenia.

3. The third parties

380. Apart from the Serbian Government, the other third parties' submissions before the Chamber focused primarily on the issue of discrimination, which had been recognised as being of fundamental importance in the Court's case-law.

381. The third-party interveners stated that the "erased" had been subject to discrimination, both direct and indirect, on the ground of national origin or ethnicity or both (citing *D.H. and Others v. the Czech Republic*, cited above, § 175). The Aliens Act contained stricter provisions for the "erased" than for other aliens. Because the Slovenian population was ethnically homogeneous as compared to other former SFRY republics, the "erasure" disproportionately affected non-ethnic Slovenes, ex-SFRY minorities, and Roma, thereby also discriminating among residents on ethnic grounds. There was no objective justification for what had resulted in decades of legal limbo experienced by the "erased". Lastly, other Council of Europe bodies had interpreted the right to non-discrimination as requiring positive action on the part of member States.

B. The Chamber judgment

382. The Chamber considered that, in view of its finding of a violation of Article 8 of the Convention, it was not necessary to rule on the applicants' complaint under Article 14 (see paragraph 400 of the Chamber judgment).

C. The Grand Chamber's assessment

383. Having regard to the importance of the discrimination issue in the present case, the Grand Chamber considers, unlike the Chamber, that the applicants' complaint under Article 14 of the Convention should be examined.

1. Applicability of Article 14 of the Convention

384. As the Court has consistently held, Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application

unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports* 1997-I; *Petrovic v. Austria*, 27 March 1998, § 22, *Reports* 1998-II; and *Zarb Adami v. Malta*, no. 17209/02, § 42, ECHR 2006-VIII).

385. In the present case, the Court has found that the measures complained of constituted an unlawful interference with the applicants' "private or family life" or both within the meaning of Article 8 § 1 of the Convention (see paragraph 339 above). Article 8 thus being applicable to the facts of the case, Article 14 is applicable too.

2. Compliance with Article 14 of the Convention taken in conjunction with Article 8

(a) General principles

386. According to the Court's well-established case-law, discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). A difference in treatment has no objective and reasonable justification if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised. Where the difference in treatment is based on race, colour or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible (see, among many other authorities, *Oršuš and Others v. Croatia* [GC], no. 15766/03, § 156, ECHR 2010).

387. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see *Gaygusuz v. Austria*, 16 September 1996, § 42, *Reports* 1996-IV). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background (see *Rasmussen v. Denmark*, 28 November 1984, § 40, Series A no. 87, and *Inze v. Austria*, 28 October 1987, § 41, Series A no. 126), but the final decision as to observance of the Convention's requirements rests with the Court. Since the Convention is first and foremost a system for the protection of human rights, the Court must, however, have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved (see *Ünal Tekeli v. Turkey*, no. 29865/96, § 54, ECHR 2004-X, and, *mutatis mutandis*, *Stafford v. the United Kingdom* [GC], no. 46295/99, § 68, ECHR 2002-IV).

388. That being said, Article 14 does not prohibit Contracting Parties from treating groups differently in order to correct "factual inequalities" between them. Indeed, in certain circumstances a failure to attempt to

correct inequality through different treatment may, without an objective and reasonable justification, give rise to a breach of that Article (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV, and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 44, ECHR 2009). The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group, and that discrimination potentially contrary to the Convention may result from a *de facto* situation (see *D.H. and Others v. the Czech Republic*, cited above, § 175, and the authorities cited therein).

389. Lastly, as to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (ibid., § 177).

(b) Whether there has been a difference in treatment between persons in similar situations

390. Turning to the instant case, the Court observes that the status of citizens of States other than the former SFRY republics who had lived in Slovenia before its independence (the so-called "real" aliens) was regulated by section 82 of the Aliens Act, which provided that their permanent residence permits remained valid (see paragraph 207 above). However, the Aliens Act failed to regulate the status of the citizens of other SFRY republics who were residing in Slovenia. As underlined above (see paragraph 344 above), this legal vacuum resulted in the "erasure" of the latter and the unlawfulness of their stay on the Slovenian territory.

391. It could be argued that before the independence of Slovenia there was a difference between these two groups, since one was composed of aliens, whereas the other was composed of citizens of the former federal State of which Slovenia was a constituent part. However, in the Court's opinion, after the declaration of independence and the coming into existence of the new State, their situation became at least comparable. The two groups were both composed of aliens holding citizenship of a State other than Slovenia or stateless people. As an effect of the "erasure", members of only one of the groups could keep their residence permits.

392. Therefore, there has been a difference in treatment between two groups – "real" aliens and citizens of former SFRY Republics other than Slovenia – which were in a similar situation in respect of residence-related matters.

(c) Whether there is objective and reasonable justification

393. The Court does not see how the necessity, referred to by the Government, of forming a corpus of Slovenian citizens with a view to the

parliamentary elections of 1992 (see paragraph 378 above) could have required differential treatment in granting foreigners the possibility of residing in Slovenia, as a residence permit did not confer the right to vote on the holder. It is true that only the "erased", and not "real" aliens, were given the possibility of acquiring Slovenian nationality on favourable conditions. However, the Court has already underlined that, as such, a failure to apply for citizenship cannot be considered a reasonable ground for depriving a group of aliens of their residence permits (see paragraph 357 above).

394. Under these circumstances, the Court considers that the differential treatment complained of was based on the national origin of the persons concerned – as former SFRY citizens were treated differently from other foreigners – and that it did not pursue a legitimate aim and therefore lacked an objective and reasonable justification (see, *mutatis mutandis*, *Sejdić and Finci*, cited above, §§ 45-50). Moreover, the situation of the former SFRY citizens, including the applicants, was significantly altered after the declaration of independence when compared with that of "real" aliens. Before 1991, former SFRY citizens were, in matters connected to residence, in a privileged position in comparison with "real" aliens. At the relevant time, citizenship of the federal State could have been looked at as an objective ground for such preferential treatment. However, as a consequence of the independence legislation, former SFRY citizens suddenly found themselves in a situation of unlawfulness which has been found to breach Article 8 (see paragraphs 361-362 above) and in a disadvantaged position *vis-à-vis* "real" aliens, as only the permanent residence permits of the latter remained valid, even in the absence of an application for Slovenian nationality (see paragraph 390 above). In the Court's view, the legislation at stake thus placed a disproportionate and excessive burden on former SFRY citizens.

395. The above conclusion is also confirmed by the decision of 4 February 1999 in which the Constitutional Court held that the "erased" were in a less favourable legal position than "real" aliens who had been living in Slovenia before independence and whose special permanent residence permits remained valid under section 82 of the Aliens Act (see paragraph 42 above).

396. Having regard to the foregoing, the Court finds that there has been a violation of Article 14 taken in conjunction with Article 8 of the Convention.

V. ARTICLE 46 OF THE CONVENTION

397. Article 46 of the Convention provides, in so far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

..."

398. Under this provision, the applicants requested the Court to indicate general measures aimed at redressing the situation of the "erased".

A. Arguments of the parties

1. The applicants

399. The applicants submitted that, at this stage and in the absence of any settled practice, the enactment and implementation of the amended Legal Status Act could not be regarded as general measures capable of removing the systemic violation of the rights of the "erased".

400. The amended Legal Status Act was *prima facie* an insufficient legal remedy, the decision of 3 April 2003 being applied in the most minimal and restrictive way, preserving the main features and requirements of the previous legislation. The condition of "actually residing in Slovenia" had been changed in order to include some exceptions. However, not all the cases of the "erased" fell under any of the exceptions mentioned. The procedure was cumbersome and costly and the burden of proof was incumbent on the "erased". In the event of prolonged absence from Slovenia, they had to show that they had tried to return during the first ten years, which was extremely difficult to prove. It was therefore not surprising that according to the latest statistics as of June 2011, out of 127 applications submitted (from a total of 13,000 eligible persons), only thirty had been successful while sixty had been dismissed. The heavy rate of rejected applications showed that the legislation had serious shortcomings.

401. As to the individual measures, the issuing of permanent residence permits did not constitute sufficient redress for the violations found. The serious non-pecuniary and pecuniary damage suffered required further remedial action, namely the adoption of individual measures of reparation. This had also been stressed in the 2010 concluding observations of the Committee on the Elimination of Racial Discrimination. The Council of Europe's Commissioner for Human Rights had also stated that other measures were necessary in order to redress the violations suffered by the "erased", for instance in relation to family reunion. He had stressed that the new legislation did not provide for any specific mechanism for affording fair compensation for the many years of unregulated status. The concluding observations of the Committee against Torture had also urged the respondent Government to facilitate the full integration of the "erased", including those belonging to Roma communities. Furthermore, the three

above-mentioned international bodies had underlined the shortcomings of the amended Legal Status Act.

2. The Government

402. The Government maintained that the enactment and implementation of the amended Legal Status Act had constituted an appropriate, comprehensive and general measure for ensuring the right to private or family life, or both, of the "erased". With this, the Constitutional Court's decision of 2003 had been fully implemented.

403. In their view, the Chamber had failed to attach sufficient weight to the fact that the amended Legal Status Act was about to enter into force. The Republic of Slovenia had therefore already taken appropriate steps before the delivery of the Chamber judgment. Moreover, various media had been used to provide information to the "erased" (a brochure, the Internet, a free phone line, and so on). This was also the main reason why referral to the Grand Chamber had been requested.

404. Furthermore, on 25 November 2011 an intergovernmental commission had been set up in order to deal with the problem of the "erased". The implementation of the Act was also regularly monitored by the authorities. Sixty-four permanent residence permits and 111 supplementary permits had been issued under the amended Legal Status Act. Altogether, 12,500 of the "erased" had regularised their status.

B. The Chamber judgment

405. The Chamber held that the violation found on account of the failure by the Slovenian legislative and administrative authorities to comply with the Constitutional Court's decisions clearly indicated the appropriate general and individual measures to be adopted in the Slovenian domestic legal order: enactment of appropriate legislation and regulation of the situation of the individual applicants by issuing retroactive permanent residence permits (see paragraphs 401-407 of the Chamber judgment).

C. The Court's assessment

406. By Article 46 of the Convention the High Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to choose the general or, if appropriate, individual measures or both to be adopted. As the Court's judgments are essentially declaratory, the

respondent State remains free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Sejdovic*, cited above, § 119; and *Aleksanyan v. Russia*, no. 46468/06, § 238, 22 December 2008).

407. However, in exceptional cases, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of measure that might be taken in order to put an end to a situation it has found to exist (see, for example, *Broniowski*, cited above, § 194).

408. In the present case, the Court has found violations of the applicants' rights guaranteed by Articles 8, 13 and 14, which essentially originated in the prolonged failure of the Slovenian authorities, in spite of the Constitutional Court's leading judgments, to regularise the applicants' residence status following their "erasure" and to provide them with adequate redress.

409. The "erasure" concerned an entire category of former SFRY citizens with permanent residence in Slovenia who had the citizenship of one of the other former SFRY republics at the time of Slovenia's declaration of independence. It has therefore affected and still affects a large number of persons.

410. However, it should be borne in mind that various legislative reforms, notably the amended Legal Status Act (see paragraphs 76-79 and 211 above), have been implemented after the delivery of the Chamber judgment. This new law enables the "erased" to take steps to regularise their residence in Slovenia. It is also worth noting that the six applicants in respect of whom the Court has found a breach of the Convention have been provided with permanent residence permits (see paragraphs 95, 123, 133, 158, 173 and 194 above) and that the Government have set up an intergovernmental commission in order to monitor the implementation of the amended Legal Status Act and to tackle the problem of the "erased" (see paragraph 404 above).

411. It is true that the amended Legal Status Act has been in place since 24 July 2010 and that some international monitoring bodies have underlined certain of its shortcomings (see paragraphs 223 and 227-228 above). However, the Court considers that it would be premature at this stage, in the absence of any settled domestic practice, to examine whether the reforms outlined above and the various steps taken by the Government have achieved the result of satisfactorily regulating the residence status of the "erased" (see, *mutatis mutandis*, *Sejdovic*, cited above, §§ 119 and 123).

412. At the same time, the Court has found that the applicants were not awarded proper financial redress for the years during which they were in a

position of vulnerability and legal insecurity and that, as matters currently stand, the possibility of obtaining compensation at the domestic level in civil proceedings or before the State Attorney's Office is still remote (see paragraph 268 above). Therefore, the Court finds that the facts of the case disclose the existence, within the Slovenian legal order, of a shortcoming as a consequence of which the whole category of the "erased" are still denied compensation for the infringement of their fundamental rights.

413. The Court considers that the present case is suitable for the adoption of a pilot-judgment procedure within the meaning of Rule 61 of the Rules of Court, given that one of the fundamental implications of this procedure is that the Court's assessment of the situation complained of in a "pilot" case necessarily extends beyond the sole interests of the individual applicants and requires it to examine that case also from the perspective of the general measures that need to be taken in the interest of other potentially affected persons (see *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 36, ECHR 2005-IX, and *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 33, 28 April 2008). In this connection, the Court observes that, further to the pilot judgment in the case of *Lukenda v. Slovenia* (no. 23032/02, §§ 89-98, ECHR 2005-X), concerning the excessive length of judicial proceedings and the malfunctioning of the domestic legal system in this respect, the Government adopted a number of measures, including the setting up of a special financial mechanism. This has enabled the Court to dispose of a high number of pending cases.

414. Although only a few similar applications lodged by "erased" persons are currently pending before the Court, in the context of systemic, structural or similar violations the potential inflow of future cases is also an important consideration in terms of preventing the accumulation of such repetitive cases on the Court's docket. As regards the consultation of the parties to the proceedings on this matter, as provided for by Rule 61 § 2 (a), the Court would point out that this provision entered into force on 1 April 2011, well after this case was brought before the Grand Chamber, thus preventing it from being applied in the present case.

415. The Court therefore decides to indicate, in accordance with Rule 61 § 3, that the respondent Government should, within one year, set up an *ad hoc* domestic compensation scheme (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 239, and *Xenides-Arestis v. Turkey* (merits), no. 46347/99, § 40, 22 December 2005). Pursuant to Rule 61 § 6 (a), the examination of all similar applications will be adjourned pending the adoption of the remedial measures at issue.

VI. ARTICLE 41 OF THE CONVENTION

416. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

417. The applicants claimed awards for pecuniary and non-pecuniary damage, as well as the reimbursement of the costs and expenses incurred before the Court. The Government disputed their claims.

A. Arguments of the parties

1. The applicants

418. The applicants contended that the Government's position that they should first file their compensation claims before the domestic courts or the State Attorney's Office had no merit (they cited *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, § 17, Series A no. 285-C). The admissibility of claims for just satisfaction was not subordinate to the prior exercise of domestic legal remedies. This was particularly true where, as in the present case, the remedies in question were manifestly incapable of offering the injured parties a speedy and simple opportunity to obtain pecuniary reparation.

419. Before the Grand Chamber, the applicants updated their just satisfaction claims. Each applicant with no income requested an amount corresponding to the social and housing allowances which he or she could have received if the "erasure" had not taken place.

The applicants submitted the following claims in respect of pecuniary damage:

- Mr Kurić: EUR 37,929.85;
- Ms Mezga: EUR 58,104.03;
- Mr Ristanović: EUR 15,698.07;
- Mr Berisha: EUR 104,174.25;
- Mr Sadik: EUR 41,374.95;
- Mr Minić: EUR 40,047.24.

420. Furthermore, in respect of non-pecuniary damage, the applicants stated that the "erasure" had had extremely serious consequences for them and had caused dramatic and wide-ranging upheaval in their lives: unregulated status, loss of employment, living conditions unworthy of a human being, and serious health problems for many of them. In short, they had sustained different forms of suffering recognised by the Court's case-law: pain and feelings of deep instability and insecurity about the future, which they had endured for an extremely long period, anxiety deriving from the danger of deportation, and a deep sensation of anxiety and sadness because of xenophobic attitudes and because of the absence of

effective remedies. They contended that the non-pecuniary damage should be calculated from February 1999, the date of the Constitutional Court's first decision, and claimed the following amounts:

- Mr Kurić: EUR 147,822;
- Ms Mezga: EUR 151,986;
- Mr Ristanović: EUR 151,986;
- Mr Berisha: EUR 146,781;
- Mr Sadik: EUR 154,068;
- Mr Minić: EUR 154,068.

421. Lastly, the applicants claimed EUR 49,975.82, plus VAT and additional taxes (EUR 62,369.82), for the costs and expenses incurred before the Court. They underlined that given the exceptional circumstances of the case and their extremely poor living conditions, their representatives had agreed to waive their fees should the Court reject their complaints. Therefore, no payment had been made so far by the applicants, and no relevant supporting documents could be produced.

2. The Government

422. The Government stated that none of the applicants had claimed compensation before the domestic courts. Only Mr Berisha and Mr Minić had filed a partial claim for damages with the State Attorney's Office, which had been rejected.

B. The Chamber judgment

423. The Chamber considered that the question of the application of Article 41 of the Convention was not ready for decision and accordingly decided to reserve it as a whole (see paragraphs 422-423 of the Chamber judgment and point 7 of its operative provisions).

C. The Grand Chamber's assessment

1. Pecuniary damage

424. In the circumstances of the present case, the Court considers that the question of compensation for pecuniary damage is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having due regard to any agreement which might be reached between the Government and the applicants and in the light of such individual or general measures as may be taken by the Government in the execution of the present judgment (Rule 61 § 7 and Rule 75 § 1 of the Rules of Court).

2. Non-pecuniary damage

425. Having regard to the nature of the violations found in the instant case and the suffering endured by the applicants, the Court is prepared to uphold their claims in part and to award, on an equitable basis, EUR 20,000 to each successful applicant (Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić) in respect of non-pecuniary damage.

3. Costs and expenses

426. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

427. The Court notes that the case involved perusing a certain amount of factual and documentary evidence and required a fair degree of research and preparation. Although the Court does not doubt that the fees claimed were actually incurred, it considers the amount claimed for the costs and expenses relating to the proceedings before it excessive. Having regard to the fact that the legal issues raised by the application were similar for all the applicants, the Court decides to award them the overall sum of EUR 30,000.

4. Default interest

428. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds,* by fifteen votes to two, that it does not have jurisdiction to examine the complaints raised by Mr Petreš and Mr Jovanović;

2. *Dismisses,* unanimously, the Government's objections that the application is incompatible *ratione materiae* and *ratione temporis* with the provisions of the Convention and was lodged out of time;

3. *Holds,* unanimously, that Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić may claim to be "victims", for the purposes of Article 34 of the Convention, of the alleged violations of their Convention rights;

4. *Upholds,* by nine votes to eight, the Government's preliminary objection of non-exhaustion of domestic remedies in respect of Mr Dabetić and Mrs Ristanović;

5. *Dismisses,* unanimously, the Government's preliminary objection of non-exhaustion of domestic remedies in respect of the remaining applicants (Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić);

6. *Holds,* unanimously, that there has been a violation of Article 8 of the Convention;

7. *Holds,* unanimously, that there has been a violation of Article 13 in conjunction with Article 8 of the Convention;

8. *Holds,* unanimously, that there has been a violation of Article 14 in conjunction with Article 8 of the Convention;

9. *Holds,* unanimously, that the respondent Government should, within one year of the delivery of the present judgment, set up an *ad hoc* domestic compensation scheme (see paragraph 415 above);

10. *Holds,* unanimously, that, as far as any pecuniary damage resulting from the violations found in the present case is concerned, the question of the application of Article 41 is not ready for decision and accordingly,
(a) *reserves* the said question in this respect;
(b) *invites* the Government and the applicants to submit, within three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Court the power to fix the same if need be.

11. *Holds,* unanimously,
(a) that the respondent State is to pay, within three months, the following amounts:
(i) EUR 20,000 (twenty thousand euros) each to Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić in respect of non-pecuniary damage, plus any tax that may be chargeable on these sums;
(ii) EUR 30,000 (thirty thousand euros) to the applicants jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

12. Dismisses, unanimously, the remainder of the applicants' claims under Article 41 in respect of non-pecuniary damage and costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 June 2012.

Vincent Berger	Nicolas Bratza
Jurisconsult	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Zupančič;
(b) Partly concurring, partly dissenting opinion of Judge Vučinić;
(c) Joint partly dissenting opinion of Judges Bratza, Tulkens, Spielmann, Kovler, Kalaydjieva,Vučinić and Raimondi;
(d) Partly dissenting opinion of Judge Costa;
(e) Joint partly dissenting opinion of Judges Kovler and Kalaydjieva.

N.B.
V.B.

CONCURRING OPINION OF JUDGE ZUPANČIČ

Especially in the international jurisdiction, this case raises very serious moral dilemmas. Some of these questions, as we shall see, were blocked from arising within the much narrower scope of the national jurisdiction. However, the historical spirit of the Convention, stemming from the similar *sequelae* of the Second World War, both enables the larger perspective and – *necessitate nature* – requires it! Indeed, in this and in other important cases this specificity of the broader perspective and especially of the enhanced objectivity due to the distance from the isolated national theatre seems to be the historically maturing purpose of our own international jurisdiction.

The number of persons allegedly affected since 1992 by this officially authorised legalistic attempt at ethnic cleansing, as Judge Vučinić rightly calls it, stands at 25,671. Following the new 1999 Citizenship Act – ultimately in conformity with the first judgment of the Constitutional Court – at least 6,621 of the aggrieved have apparently so far demonstrated their legal interest and have in fact regularised their residence or citizenship status. Up until 31 January 2012 the administrative units of the Ministry of the Interior had registered 229 applications for permanent residence as well as 101 applications for *ex tunc* regularisation. They had issued 59 permanent residence permits; 83 applications were rejected, whereas 87 applications were still pending. They had rendered 52 special and *ex officio* positive decisions, as well as 74 decisions upon a special application; of these, 10 applications were rejected administratively, whereas 17 were still pending. Against these decisions an administrative appeal was possible; up until 31 January 2012 there were 29 administrative appeals to the Ministry of the Interior. Presumably, after that recourse to a judicial decision is possible. Apparently, about half of the original 25,671 affected persons either no longer live in the Republic of Slovenia or have not so far manifested their legal interest in regularising their residence status. As for indemnification of the victims, the domestic law, as per the decision of the Constitutional Court, posted a five-year deadline ending in March 2004. Given the legislative disregard of the judgment of the Constitutional Court until 1999 and the obvious continuity of the violation, this closing date ought not to be applicable.

On the other hand, I hasten to add, one cannot be certain in how many of these cases the victims, that is, those entitled to standing (*legitimatio activa*) in potential future cases, have themselves indeed neglected to apply for their citizenship in due time. Also, the twenty-year postponement in legally resolving this question – on a case-by-case basis! – in the domestic legal system was to some extent due to the contrived and disingenuous impression, maintained in the misled Slovenian public, to the effect that at

least some of the aggrieved had brought the problem upon themselves; allegedly their procrastination was due to their own nationalist (Serbian, Croatian etc.) ambivalence as to their *animus manendi* concerning their continued residence in the then newly established Republic of Slovenia. This was before, during and after the Balkan wars twenty years ago. One must therefore keep in mind that – at the time – it was far from obvious for many of those concerned, in the context of their own wishful thinking, that the megalomaniac myths of Greater Serbia or greater whatever in the Balkans were unfounded. The real, and not merely legal, victims of these primitive tribal wars – fraught with the narcissism of small differences and with the consequent unspeakable atrocities that followed in Croatia, Serbia and Bosnia and Herzegovina – are now counted in the hundreds of thousands of those killed, tortured, raped, and so on. Moreover, the perfidious instigation of certain continental European foreign intelligence services interested in the disintegration of Yugoslavia, which triggered the rest of the insane activation of the chauvinist and revanchist collective unconscious, has been duly publicised, especially in the American press, and is now an established historical fact. This unfortunate process caused the surfacing of figures now known to be psychopaths, who were personally responsible for all manner of inhuman callousness. The latter was simply unimaginable in Yugoslavia before this tsunami of cruelty actually started to roll over the country. The historian A.J.P. Taylor, for example, considered Josip Broz Tito to be the last of the Habsburgs, capable of keeping together a tolerant multinational community; A.J.P. Taylor did not live to see it disintegrate. On the other hand, from the corroborated retrospective view of twenty years, the disintegration of Yugoslavia was and continues to be an unmitigated disaster. In this historical reassessment, the French would say: "*A quoi tout cela a-t-il servi?*" No reasonable person can reasonably answer this question except by saying, as Erich Fromm would have, that this was a *folie à millions*. We do not wish to draw parallels here with the disintegration of the ex-Soviet empire and its consequences; suffice it to say, because this is a matter of international law, that Woodrow Wilson, before launching, under the influence of Tomáš Garrigue Masaryk, his famous catchphrase concerning the self-determination of nations – had been explicitly and repeatedly forewarned about the possible consequences. The consequences are now here; that is to say, the particularisation and balkanisation of national entities has in fact materialised. This will hopefully be compensated for, as I emphasised at the time in an article in *El País*, by universalisation in the context of the European Union. Nationalist squabbles would be in the Hegelian sense transcended and would, including border disputes, become largely inapposite within the context of the European Union. The European free movement of people, for example, makes what is at stake in this case simply *sans objet.* What has come apart on one level is, with the tragic historical delay, slowly coming together on a

higher level. It is also increasingly clear that the keeping together, in the manner of A.J.P. Taylor, of *this*, in other words, the European entity, will require much political wisdom. Still, the historical delay has caused this case and many other still more appalling consequences. Some of them have ascended to international jurisdictions, most of them have not.

Because the ethnic cleansing attempt in the case before the Grand Chamber was done through misconstruction of the Slovenian Citizenship Act and its premeditated legal *lacunae*, the specificity of the case lies in its minutely recorded legalistic features. This is why we have a precise historical record of the number of the aggrieved, the number of those who were not provided for by the domestic system, in the manner of Article 41 of the Convention, and so on. The above-mentioned two-faced legalistic legacy of the communist system reminds us of the case of *Streletz, Kessler and Krenz v. Germany* ([GC], nos. 34044/96, 35532/97 and 44801/98, ECHR 2001-II); there, too, the façade of schizophrenic legality had been maintained, in East Germany, as seemingly intact. Behind the façade the impunity had continued unimpeded. In the case before us we had an intentional *lacuna* in the law, which was then filled in by the semi-official but unpublished *dépêches* issued by the then Minister of the Interior and his Secretary of State. They were explicitly approved by the then Prime Minister and his Government. In terms of criminal law we may therefore speak of *dolus directus* in the first case and at least of *dolus eventualis* in the latter case. Meanwhile, the public had been misled to believe, as I said, that the thousands affected by this were simply negligent in failing to apply for their Slovenian citizenship. Fortunately, owing to the legalistic nature of the abuse, all these actions, correspondence and so on, as pointed out above, were recorded and are on file; the Grand Chamber had the opportunity to see the relevant correspondence and the *dépêches* and to take them into account. It remains to be seen whether the domestic criminal legal system will, *vis-à-vis* the protagonists, react accordingly; if not the issue will again come to Strasbourg under the procedural limbs of Articles 3 and 8, among others. Similarly, when it comes to compensating the 25,671 allegedly aggrieved persons, the judicial branch of the domestic legal system would, as in the judicial delay cases (see *Lukenda v. Slovenia*, no. 23032/02, ECHR 2005-X), be well advised to process all of the situations fairly and on a case-by-case basis.

In fairness to the national legal system, we must consider the honourable and courageous stance – faced with the continuity of this appalling situation – taken twice by the Constitutional Court in Slovenia. This proves all over again that the national defence of constitutional rights is the best antechamber for our own protection of human rights. The relevant judgments of the Constitutional Court in Ljubljana were snubbed by both the executive and the legislative branches at the time. The price will now be paid by the Slovenian taxpayer. As per recent information, the rest of the

judicial branch, owing to its characteristic post-communist legal formalism, has likewise failed to compensate the aggrieved for the continuing violations such as we have established in the cases before us.

This case also proves that legal mills do grind slowly – but unremittingly. Precisely because of international jurisdiction, at least here, justice will have been done. Moreover, while justice as such cannot be defined, injustice is easily recognisable. The broader question is, therefore, why it was not recognised in the domestic legal system. Indeed, in post-communist legal systems there seems to be an irreconcilable mutual exclusion between mechanical legal formalism on the one hand and the simple sense of justice on the other. Often enough, we encounter this irreconcilability – *summum ius, summa iniuria!* – in other cases, including Western ones, except that in this colossal instance the Constitutional Court had identified the injustice. It was the malevolent political will that impeded the rule of law and blocked the proper judicial remedy.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE VUČINIĆ

In this case the Court unanimously found a clear violation of Article 8 of the Convention, considering that the "erasure" of the applicants amounted to an interference with their "private or family life" or both within the meaning of Article 8 § 1 of the Convention (see *Slivenko v. Latvia* [GC], no. 48321/99, § 96, ECHR 2003-X).

The main and the worst consequence of the "erasure" was that it was factually and legally impossible for the applicants to obtain permanent residence permits and/or Slovenian citizenship, and thus to continue to enjoy the full range of social and political rights which they had enjoyed prior to Slovenia's independence, having been lawfully residing there for several years, or even decades, as former SFRY citizens.

As the Court pointed out in paragraph 356 of the judgment, "owing to the 'erasure', they experienced a number of adverse consequences, such as the destruction of identity documents, loss of job opportunities, loss of health insurance, the impossibility of renewing identity documents or driving licences, and difficulties in regulating pension rights. Indeed, the legal vacuum in the independence legislation ... deprived the applicants of their **legal status,** which had previously given them access to a wide range of rights" (emphasis added).

While I agree with the general sense of paragraph 356 of the judgment, which captures the essence of this case, this paragraph is, in my opinion, to some extent legally incomplete and unfinished. This is no "ordinary violation" of Article 8 § 1 of the Convention. We are dealing with large-scale violations of the right of every person **to be a person before the law, the right to his or her legal personality.**

This **absolutely fundamental** right is directly provided for by Article 6 of the Universal Declaration of Human Rights and by Article 16 of the International Covenant on Civil and Political Rights. This *per se* testifies abundantly to the fact that we are dealing here with something extraordinary! Moreover, the right to legal personality is very well founded in universal and customary international human-rights law. This right is a fundamental precondition for the enjoyment not only of the basic human rights and freedoms, but also of the whole range of different substantive and procedural rights.

By their "erasure" the applicants were *de facto* deprived of their legal personality, because they had been simply and ruthlessly "erased" from the legal order of Slovenia. They ceased to exist as "legal subjects" – that is, as "natural persons" in the Slovenian legal system. They were treated as disposable objects and not as subjects of the law. Needless to say, this runs counter to the applicants' inherent human personality and dignity.

The fact that this right is not mentioned *expressis verbis* in the Convention does not mean that it is not indirectly and tacitly included within the ambit of Article 8 § 1 of the Convention. As the Court has ruled on several occasions, the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers, among many other things, the personal identity and physical, psychological and moral integrity of a person. It can therefore embrace multiple aspects of the person's physical, social and moral identity and dignity. The right to private life cannot be restricted to the so-called "inner circle" of human existence, in which an individual may live his or her own personal life as he or she chooses, thus excluding entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A 251-B). It follows *necessitate nature* that Article 8 protects in addition the right to personal development and the right to establish and develop relationships with other human beings as well as the outside world, even in the public context, which may also fall within the scope of "private life" (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, ECHR 2008, and *P.G. and J.H. v. the United Kingdom*, no. 44787/98, ECHR 2001-IX).

On the one hand, it is absolutely clear that the right to legal personality is a basic precondition and essential necessity both for the realisation and enjoyment of the aforementioned different aspects of private life, including the so-called "inner circle", and also – in the public context – for the "external development" of personality.

On the other hand, the right to legal personality is a normal, natural and logical consequence of human personality and inherent human dignity; it is a natural and inherent part of every human being and his or her human personality. The broad, non-exhaustive and flexible nature of Article 8 of the Convention obviously means that this right is included within its comprehensive ambit. This right is tacitly, but very clearly, included and deeply rooted in the concept of individual personality and inherent human dignity embraced by Article 8 of the Convention.

The right to be a person before the law is acquired by birth, but unfortunately it can be restricted or totally denied by the illegal and arbitrary action of a government. The restriction or denial of this right can take place through two principal means of "vulgar positivism": the passing of "illegal and illegitimate laws", that is, laws with illegal and illegitimate aims or with an "anti-human content"; and the improper and arbitrary implementation of formally "legal and legitimate laws", as happened in the present case.

The Court had an excellent opportunity to rule that this right was an inherent part of Article 8 of the Convention. The majority unfortunately failed to say so and to confirm expressly and explicitly something that

already falls implicitly and tacitly within the ambit of Article 8 of the Convention. This aim could have been achieved by adding one short and simple sentence to this effect at the end of paragraph 356.

Divesting the applicants of their legal personality by virtue of the large-scale "erasure" deprived them not only of their legal status, which had previously given them access to a wide range of rights. It also essentially and substantially decreased their legal capacity and procedural ability to use the allegedly accessible domestic remedies to regulate their legal status. For this reason, all the remedies mentioned by the Government may be considered to have been essentially inaccessible and insufficient for the applicants, as stated in the joint dissenting opinion of Judges Bratza, Tulkens, Spielmann, Kovler, Kalaydjieva, Vučinić and Raimondi. Not only the legal vacuum in the independence legislation (see paragraphs 344-356 of the judgment), but also the deliberate implementation of this legislation through secret and subordinate regulations with clearly illegitimate aims, placed additional, insurmountable administrative obstacles in the applicants' way and thwarted the subsequent success of their legitimate claims for regularisation of their legal status.

In such circumstances Mr Dabetić and Mrs Ristanović should have been considered to have been dispensed from the obligation to apply formally for a residence permit in the first place. In a situation where they had previously been "erased" from the legal system of Slovenia, *de facto* deprived of their legal capacity and confronted with an organised and carefully planned governmental policy with the aim of decreasing the number of "ethnically unsuitable" citizens, such an application, no doubt, would have been totally pointless and futile, as was clearly the case for the other applicants.

The applicants, including Mr Dabetić and Mrs Ristanović, could not have lost their victim status, because they are still suffering. They have to endure the consequences of the "erasure" and the deprivation of their legal personality. Nor have they yet been given any appropriate redress and compensation!

Furthermore, for years the Government blatantly disregarded the judgments of the Constitutional Court of Slovenia. These judgments of the Constitutional Court clearly confirmed the violations of the applicants' rights. In this case, we have what is a classic example of a "continuing violation" of the Convention.

Last but not least, in my opinion, the Court did not sufficiently take into consideration the particularly aggravating circumstances in this case, namely the fact that this was a large-scale, gross and systematic violation of basic human rights as a consequence of a deliberately organised and planned governmental policy, as more than 25,000 persons were "erased" from the Slovenian legal system and thus deprived of their right to be recognised as a person before the law. Needless to say, this amounted to a legalistic means of ethnic cleansing.

JOINT PARTLY DISSENTING OPINION OF JUDGES BRATZA, TULKENS, SPIELMANN, KOVLER, KALAYDJIEVA, VUČINIĆ AND RAIMONDI

(Translation)

1. We are unable to follow the majority in upholding the Government's preliminary objection of non-exhaustion of domestic remedies in respect of Mr Dabetić and Mrs Ristanović (point 4 of the operative provisions of the judgment).

2. In the present case the Court found a violation of Article 13 in conjunction with Article 8 of the Convention. In paragraph 371 of the judgment it referred to its finding that the Government had failed to establish that the remedies available to the applicants were "adequate" and "effective" in order to redress, at the material time, the alleged violation of Article 8. The Court linked its finding of a violation of Article 13 of the Convention to its decision to dismiss the objection of non-exhaustion in respect of the six applicants who eventually received residence permits (Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić – see paragraphs 295-313 of the judgment). In accordance with the traditional approach taken in its case-law, it thereby applied the principle of the "close affinity" characterising the subtle links between Articles 35 and 13 of the Convention. The non-exhaustion rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in the domestic system in respect of the alleged breach (see, as most recent authorities, *Sabeh El Leil v. France* [GC], no. 34869/05, § 32, 29 June 2011, and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

3. The Court conducted a detailed examination of the various options referred to by the Government in support of their objection, namely individual constitutional appeals, a petition for an abstract review of the constitutionality of legislation, the amended Legal Status Act and citizenship proceedings. The Court was not persuaded by any of these remedies put forward by the Government, holding that the objection should be dismissed and quite logically concluding, on exactly the same grounds, that there had been a violation of Article 13 in conjunction with Article 8.

4. There are only two alternatives here: either there are remedies satisfying the criteria of adequacy and effectiveness, or there are not. In opting for the second alternative, the Court should in our view have also dismissed the objection of non-exhaustion of domestic remedies in respect of Mr Dabetić and Mrs Ristanović. The fact that these two applicants did not attempt to obtain a residence permit or take any other steps to regularise their residence status (see paragraphs 289-294 of the judgment) is of no relevance to a finding that domestic remedies were not exhausted.

PARTLY DISSENTING OPINION OF JUDGE COSTA

(Translation)

I readily subscribe to the excellent arguments put forward by Judge Spielmann and several other colleagues in their joint opinion: the application, in so far as it was lodged by Mr Dabetić and Mrs Ristanović should not, in my opinion, have been rejected for failure to exhaust domestic remedies. Since the Court found that the domestic remedies were not sufficiently effective, it should not have been necessary to exhaust them, and the reasoning in the judgment is contradictory in this respect; I shall not labour the point.

I would, however, add an observation covering two aspects.

In my view, it would have been preferable to examine in the first place whether these two people qualified as victims or whether, as the Slovenian Government also maintained, the fact that they did not seek to avail themselves of the laws whereby their claims could (possibly) have been satisfied demonstrated their lack, or loss, of victim status.

Firstly, although the Court's case-law does not lay down a rigid hierarchy regarding objections to admissibility, it would seem more natural to determine whether applicants have victim status before deciding whether they have exhausted domestic remedies. The former issue, moreover, is referred to in Article 34 of the Convention and the latter in Article 35, although I accept that this textual argument is not compelling.

Secondly, I consider that the Government were mistaken in confusing the apparent lack of interest shown by these applicants with the loss of their status as victims. Mr Dabetić and Mrs Ristanović were in very difficult circumstances for reasons relating to ill health and geographical distance, and the complexity of the various legal changes affecting their situation did not make it any easier for them to become acquainted with the instruments that might have formed the basis for their requests. It is therefore harsh to maintain that their subjective – and, I repeat, apparent – lack of interest can be taken to equate to loss of victim status, which is an objective factor. A shift from subjective to objective considerations is not impossible in certain special circumstances, but it can certainly not be presumed.

Admittedly, by upholding the objection of failure to exhaust domestic remedies, the judgment was not required to examine the objection of lack of victim status, rightly noting that it was not necessary to do so. However, I wished to point out that in my view, the complaints which Mr Dabetić and Mrs Ristanović brought before the European Court of Human Rights were admissible on *two* counts, and probably well-founded. I thus find it all the more regrettable that these complaints were rejected.

JOINT PARTLY DISSENTING OPINION OF JUDGES KOVLER AND KALAYDJIEVA

Together with Judges Bratza, Tulkens, Spielmann, Vučinić and Raimondi, we have expressed our disagreement with the conclusions of the majority as concerns the admissibility of the complaints by the applicants Mr Dabetić and Mrs Ristanović. In our view similar concerns were applicable to the conclusions reached by the Chamber of the Third Section in its judgment of 31 May 2007 in respect of the victim status of the applicants Mr Petreš and Mr Jovanović. In this regard the Chamber on the one hand found that "the issuing of the retroactive residence permits, in line with the Constitutional Court's decision, constitutes an adequate and sufficient remedy for their complaints" (see paragraph 311 of the Chamber judgment), while on the other hand finding a violation of Article 13 of the Convention, holding that "the respondent Government have failed to establish that the [same] remedies at the applicants' disposal can be regarded as effective remedies" (see paragraph 385 of the Chamber judgment).

We fully subscribe to the Grand Chamber's express conclusions that "[h]aving regard to this lengthy period in which the applicants experienced insecurity and legal uncertainty and the gravity of the consequences of the 'erasure' for them, ... the acknowledgment of the human rights violations and the issuance of permanent residence permits [to the other six applicants] did not constitute 'appropriate' and 'sufficient' redress at the national level" (see paragraph 267 of the judgment) and that in view of the Government's failure to establish the effectiveness of the available remedies, there was a violation of Article 13 in conjunction with Article 8. For the same reasons why we disagree that an applicant may be required to make use of remedies that are unable to provide "adequate and sufficient" redress, we equally fail to see how the implementation of the same measures could deprive an applicant of his or her victim status. In previous cases the Grand Chamber has subjected the victim status of applicants to scrutiny in the light of the (in)appropriateness and (in)sufficiency of the remedies available at the national level as two issues that should be examined together, since they reflect two sides of the same coin (see *Gäfgen v. Germany* [GC], no. 22978/05, ECHR 2010; *Sakhnovskiy v. Russia* [GC], no. 21272/03, 2 November 2010; and *Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012).

We regret the majority's view that the controversial findings of the Chamber on the victim status of the applicants Mr Petreš and Mr Jovanović constituted a "procedural bar" to the Grand Chamber's jurisdiction (see paragraph 263 of the judgment), thus allowing a clearly different outcome in identical individual cases.