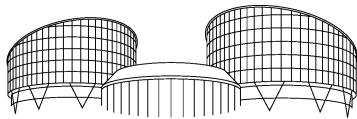

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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ECHR 373 (2016)
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The issue of "erased" people who have settled their legal status in Slovenia has been resolved at national level

In its decision in the case of Anastasov and Others v. Slovenia (application no. 65020/13) the European Court of Human Rights has unanimously decided to strike the application out of its lists of cases. The decision is final.

The 212 applicants in this case belong to a group of people known as the "erased" (*izbrisani*). Former nationals of the Socialist Federal Republic of Yugoslavia ("the SFRY") with permanent residence in Slovenia, their names were deleted from Slovenia's Register of Permanent Residents following the dissolution of the SFRY, Slovenia's declaration of independence and passing of the "independence legislation" in 1991. They thus became aliens with no legal status in Slovenia and remained so for periods ranging from seven months to more than 22 years.

In a previous pilot[1] judgment (in the Grand Chamber case of *Kurić and Others v. Slovenia*, application no. 26828/06) of June 2012 the European Court of Human Rights found that the Slovenian authorities had failed to regulate the issue of "erased" people and to provide them with adequate redress for the years during which they had been in a position of vulnerability and legal insecurity; it also ordered Slovenia to set up a domestic compensation scheme.

The Court was satisfied that the system introduced by the Slovenian Government (and its functioning in practice) following the *Kurić and Others* judgment offered to the remaining "erased" persons who had regularised their legal status – such as the 212 applicants in this case – reasonable prospects of receiving compensation for the damage caused by the systemic violation of their Convention rights. It noted in particular that the Committee of Ministers of the Council of Europe, responsible for supervising the implementation of the European Court's judgments, had recently closed its examination of *Kurić and Others* as it was satisfied that all measures required in that judgment had been adopted.

The matter giving rise to the present application and the remaining applications against Slovenia lodged by the "erased" – where the applicants had regularised their legal status – had thus been resolved at national level. Nor did the Court find any special circumstances regarding respect for human rights as defined in the European Convention and its Protocols which required the continued examination of the case. In those circumstances, the Court decided to close the pilot-judgment procedure initiated in *Kurić and Others*, considering that it was no longer justified.

Principal facts

The 212 applicants belong to a group of people known as the "erased" (*izbrisani*). Former nationals of the SFRY with permanent residence in Slovenia, their names were deleted from Slovenia's Register of Permanent Residents following the dissolution of the SFRY and Slovenia's declaration of independence in 1991. According to official data, 25,671 were "erased". Such people experienced years of hardship: their identity papers were destroyed; they could not work, have health insurance or renew their identity documents and driving licences; they had difficulties securing pension rights; and some were even deported from Slovenia.

[1] This procedure has been used by the Court in recent years to deal with large groups of identical cases arising out of the same structural problem. See Factsheet on Pilot judgments.

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Most of the applicants were “erased” from Slovenia’s Register on 26 February 1992, since they had failed to apply for Slovenian citizenship within the prescribed time-limit. Some of the applicants had applied in time, but their requests were refused. They thus became aliens with no legal status in Slovenia and remained so for periods ranging from seven months to more than 22 years. They all eventually regularised their legal status in Slovenia either by obtaining permanent residence permits or by acquiring Slovenian citizenship. However, neither the legislation nor the practice of the Slovenian courts at the time provided for any financial compensation to the “erased”.

In a pilot judgment (in the Grand Chamber case of *Kurić and Others v. Slovenia*, application no. 26828/06) of June 2012 the European Court of Human Rights found that the Slovenian authorities had failed to regulate the issue of “erased” people and to provide them with adequate redress for the years during which they had been in a position of vulnerability and legal insecurity; it awarded each of the six applicants 20,000 euros (EUR) in respect of non-pecuniary damage. It also ordered Slovenia to set up a domestic compensation scheme no later than June 2013. A just satisfaction judgment for pecuniary damage was subsequently handed down in the case in March 2014: the Court considered it reasonable to award each applicant an amount of just satisfaction based on the time spent as an “erased” person, from 28 June 1994 – when the European Convention on Human Rights entered into force in respect of Slovenia – until the date on which his or her legal status was finally restored, multiplied by a monthly lump sum of EUR 150 euros. The six applicants were thus awarded sums ranging from EUR 29,400 to EUR 72,770.

A compensation scheme was set up in Slovenia; the relevant legislation entered into force in December 2013. This legislation essentially provides for financial compensation to the “erased”, to be claimed in administrative proceedings, calculated on the basis of a lump sum of EUR 50 euros for each completed month of “erasure”. After an award in administrative proceedings, there remains also the possibility for the “erased” to lodge a claim for additional compensation in judicial proceedings. Different forms of redress aimed at the reintegration of the “erased” into Slovenian society are also provided for under this legislation. None of the 212 applicants in the present case has informed the European Court that they have as yet made use of these compensatory remedies.

In May 2016 the Committee of Ministers of the Council of Europe, responsible for supervising the implementation of the European Court of Human Right’s judgments, closed its examination of the case *Kurić and Others* as it was satisfied that all the measures required in that judgment had been adopted.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 14 October 2013.

Relying on Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 46 (binding force and execution of judgments), the applicants complained about their unsettled situation for a number of years as a result of having been arbitrarily deprived of their status as permanent residents of Slovenia. Having lodged their applications before the European Court in October 2013, they also complained that the Slovenian authorities had failed to set up a compensation scheme within the deadline (June 2013) indicated in the judgment *Kurić and Others* and that, in any event, the financial redress proposed had been neither prompt nor adequate.

The decision was given by a Chamber of seven, composed as follows:

András **Sajó** (Hungary), *President*,
Vincent A. **de Gaetano** (Malta),
Nona **Tsotsoria** (Georgia),
Paulo **Pinto de Albuquerque** (Portugal),
Krzysztof **Wojtyczek** (Poland),

Egidijus **Kūris** (Lithuania),
Gabriele **Kucsko-Stadlmayer** (Austria), *Judges*,

and also Marialena **Tsirli**, *Section Registrar.*

Decision of the Court

The Court found that the developments in Slovenia since the judgment in the case *Kurić and Others* had been satisfactory. Funds had been earmarked in the State's budget for the compensation scheme for the "erased" and, in the period between June 2014 – when the relevant legislation setting up the scheme became applicable – and February 2016, 97.5% of 7,268 claims for compensation had thus been resolved in administrative proceedings. Furthermore, 80 claims had been lodged in judicial proceedings and with the State Attorney's Office. Of these, in two cases decided by the courts and in one case terminated by the Attorney General compensation had to be paid to the "erased". In 18 other cases closed by the Attorney General, the proceedings have been terminated. The Constitutional Court has also already examined such cases and remitted them for rehearing. Other proceedings are awaiting a decision.

As to applicants' complaint about the level of domestic financial compensation awarded, the Court noted that it was inferior to the awards made to each successful applicant in its judgment *Kurić and Others.* Notably, the monthly lump sum (EUR 50) for each completed month of "erasure" that could be claimed in administrative proceedings under the domestic compensation scheme represented approximately 20% of the average monthly lump sum (EUR 250) awarded by the European Court for pecuniary and non-pecuniary damage.

However, after an award in such administrative proceedings, the possibility remained open to the "erased" to lodge a claim for additional compensation in judicial proceedings. The maximum amount that could be awarded within the framework of those proceedings would theoretically represent 60% of the individual award made in the Court's pilot judgment. In that connection, the Court recalled a number of other pilot judgments where it had accepted lower financial compensation at domestic level. It held that compensation chosen by the domestic authorities ranging between 20% and 60% of the individual award in the pilot case did not appear to be unreasonable or disproportionate, bearing in mind the wide room for manoeuvre ("margin of appreciation") left to the domestic authorities in assessing the amount of compensation to be paid. Nor could it be argued that bringing such a claim was a futile avenue as there was currently relatively scarce established domestic case-law in this area. Moreover, any criticism concerning the amount of domestic financial compensation should first be voiced through domestic judicial proceedings.

Furthermore, the Court did not find it unreasonable that the payment of the compensation (for amounts exceeding EUR 1,000) should be arranged by instalments.

As to the applicants' complaint that the Slovenian Government had not set up the compensation scheme until five months after the deadline indicated in *Kurić and Others*, the Court pointed out that it was for that reason that the Grand Chamber had handed down the just satisfaction judgment in that case, finding a preliminary positive assessment of the domestic compensation scheme. In any case, the delay had had no significant influence on the assessment recently undertaken in May 2016 by the Committee of Ministers. Indeed, the Committee of Ministers had closed its examination of *Kurić and Others* as it was satisfied that all measures required in that judgment had been adopted.

Underlining its subsidiary role, the Court was therefore satisfied that the system introduced by the Slovenian Government (and its functioning in practice) following the *Kurić and Others* judgment offered to the remaining "erased" persons who had regularised their legal status in Slovenia reasonable prospects of receiving compensation for the damage caused by the systemic violation of their Convention rights.

Lastly, the Court's role after the delivery of the pilot judgment *Kurić and Others* and after the State had taken remedial action in conformity with the Convention could not be converted into that of providing individualised financial relief in each and every repetitive case arising from the same systemic situation.

The matter giving rise to the present application and the remaining applications against Slovenia lodged by the "erased" – where the applicants had regularised their legal status – had thus been resolved at national level. It was therefore no longer justified to continue examination of those cases. Nor did the Court find any special circumstances regarding respect for human rights as defined in the European Convention and its Protocols which required the continued examination of the case. On that basis, the Court decided, unanimously, that it was appropriate to strike the application out of its list of cases , as provided for by Article 37 § 1 (striking out applications) of the European Convention.

The Court stressed nevertheless that that conclusion did not prejudice its decision to restore, under Article 37 § 2, the present, or any other similar application, to its list of cases if the circumstances, in particular the future functioning of the domestic compensation scheme, justified such a course, or to deal substantively with subsequent cases if the circumstances so justified.

Accordingly, the Court decided to close the pilot-judgment procedure initiated in *Kurić and Others*, considering that it was no longer justified.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.