ECtHR - Kurić and others v Slovenia

Eight applicants some of whom were stateless and others were nationals of former-Yugoslavian failed to request or were refused Slovenian citizenship, following its independence.Their names were “erased” from the Register of Permanent Residents, resulting in them becoming aliens without residence permits. The Court held that the domestic legal system had failed to clearly regulate the consequences of the “erasure”, resulting in a violation of Article 8(2), 14, and 13.

Case name (in original language) : Kurić and others v Slovenia Application no: 26828/06
Case status: Decided
Case number: 26828/06
Citation: European Court of Human Rights, Kurić and others v Slovenia (Application no: 26828/06), 26 May 2012
Date of decision: 26/05/2012
State: Slovenia
Court / UN Treaty Body: European Court of Human Rights
Language(s) the decision is available in: English
Applicant's country of birth: Yugoslavia {former}
Applicant's country of residence: Slovenia
Legal instruments: European Convention on Human Rights (ECHR), Other international law
Key aspects: Discrimination, Residence permit, State succession
Relevant Legislative Provisions:

Relevant domestic law of the Republic of Slovenia included:

- Sections 10, 19, 39 and 40 of the Citizenship Act 1991 (as amended 2002)
- Sections 13, 16, 23, 28, 81 and 82 Aliens Act 1999
- Sections 1 and 2 of the Legal Status Act 1999

European Convention on Human Rights:

- Article 8, 13, and 14

Facts

The case concerned eight appellants, some of which were stateless, and some of which were nationals of states which formerly constituted the Socialist Federal Republic of Yugoslavia (SFRY). In 1991, Slovenia declared its independence, and the applicants, as nationals of the SFRY, gained permanent residence. In the process of becoming independent, Slovenia passed the Aliens Act of 1999, under which permanent residents, such as the appellants, were entitled under certain conditions, to apply for citizenship in Slovenia, and were given 6 months to do so. The appellants failed to do so within the deadline. On 26 February 1992, two months after the 6 months deadline, their names were erased from the civil registry, which resulted in the appellants becoming stateless together with approximately 25,671 other people in Slovenia, who became known as “the erased”. The impact of the erasure of their names from the registry was significant, as the appellants’ former SFRY documents and passports became void. Consequently, the appellants faced severe difficulties, including lack of access to regular jobs, in obtaining pensions, and their ability to leave the country.

As a result of the Aliens Act, the treatment of the appellants and other ex-nationals of the SFRY, differed from the treatment of non-SFRY nationals who obtained status before the independence. The plight of “the erased” was taken to Constitutional Court in 1999, where the appellants held that section 81 of the Aliens Act was unconstitutional, as it did not set out the conditions for the acquisition of permanent residence of “the erased” and left them in a less favourable position than non-SFRY nationals. Consequently, Slovenia passed its Legal Status Act in 1999, to regulate the legal position of “the erased”. However, the Constitutional Court found in 2003, that this act was also unconstitutional because, amongst other things, it did not grant retrospective permanent residence from the date of the “erasure” or regulate the position of those who had been deported following “erasure”.

Consequently, the Constitutional Court found that the Act was constitutional in 2010, after it was amended, to deal with its prior deficiencies. In 2006 the appellants brought the case before the ECtHR for breaches to Article 8, 13 and 14, concerning the situation.

Legal arguments by the applicant

The primary argument of the appellants was that the Aliens Act breached their rights under Article 8, as the erasure of their legal status affected their private and

family life. The Aliens Act was neither foreseeable in effect, nor accessible and the conduct of the Slovenian Authorities was arbitrary. Moreover, 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 Slovenian citizenship and a residence permit.

In relation to Article 14, the appellants stated that in respect to the right of enjoyment of private and family life under Article 8 they were discriminated against due to their national origin. In comparison to non-SFRY citizens, they were treated less favourably than aliens who lived in Slovenia since before its independence and whose permanent residence permits remained valid under the Aliens Act. Moreover, they argued that the continuous right to residence of the "erased" ought to be recognised.

The appellants rejected the government's argument that they had benefited from "positive discrimination" on the ground that they did not get deported. To this end, the appellants stated that five of them did get deported.

Lastly, they contended that Slovenia failed to provide the "erased" with an effective remedy under Article 13. None of the remedies available at the time addressed the substance of their complaints under Article 8, concluding that the Legal Status Act was an insufficient remedy.

Legal arguments by the opposing party

The Slovenian Government argued that it had given favourable conditions to its permanent residents who were former SFRY citizens following independence, enabling them to access Slovenian citizenship. However, based on the argument that it needed to form the newly founded state, this treatment could not last indefinitely. It stated that the legislation it had enacted had been necessary and constituted a proportionate means of achieving the legitimate aim of ensuring security post-independence. Slovenia acknowledged that "the erasure" had been illegal and unconstitutional. However, it argued that the implementation of the Legal Status Act was appropriate and comprehensive for ensuring rights under Article 8 of "the erased".

Related to a violation of Article 14, Slovenia argued that the appellants were treated equally to those aliens without residence permits. Moreover, it argued that the applicants had benefited from "positive discrimination" since they were not,

theoretically, deported. Lastly, Slovenia stated that there were sufficient remedies available, which were both accessible and effective and consequently in compliance with article 13.

Decision & Reasoning

The Court decided that there had been a violation of Article 8, 14(in conjugation with article 8), and 13 (in conjugation with article 8) of the Convention.

Article 8

It agreed that the “erasure” had an impact on the private and family life of the appellants, as stated under Article 8(1). Regarding whether the interference with the appellants’ Article 8 rights could be justified under Article 8(2), the Court stated that the “erasure” occurred in pursuance to national law contained in the Citizenship Act and Aliens Act which was accessible to the applicants. However, to be “in accordance with the law” for Article 8(2), the law had to be sufficiently foreseeable and accessible. The Court also found that this was not the case because the applicants could not expect, due to the absence of an explicit legal clause, that their status would become irregular following the “erasure”. The Court also found that the partly regularisation of the “erased” through the Legal Status Act of 1999, was first accomplished 7 years later and was not expansive enough.

Article 14

The Court noted the importance of the discrimination in the case under Article 14. It argued that, following the independence, the difference in treatment between former SFRY citizens, and the “real aliens” increased. It rejected Slovenia’s argument that it had to form a corpus of the Slovenian citizens justified that the regularisation period of “the erased” could not continue. It considered that the difference in treatment was based on national origin and that it had not pursued a legitimate aim. Accordingly, the Grand Chamber found a violation of Article 14 taken with Article 8.

Article 13

The Grand Chamber noted the significant years of hardship that had been faced by the applicants. It held that the retroactive provision of permanent residence was not an “adequate” or “effective” remedy for this suffering and that there was, therefore, a breach of Article 13.

Decision documents
CASE OF KURIC AND OTHERS v. SLOVENIA.pdf
Outcome

The Court ruled against two of the applicants, based on the ground that they were lacking jurisdiction due to the fact they already held permanent residence but held a breach of Article 34, 8, 13, and 14 of the Convention for six of the applicants.

Caselaw cited

Shevanova v. Latvia (striking out) [GC] [2007] - 58822/00

Kaftailova v. Latvia (striking out) [GC] [2006], 59643/00

Makuc and Others v. Slovenia [2007], 26828/06

Aristimuño Mendizabal v. France [2006], 51431/99

Sisojeva and Others v. Latvia (striking out) [GC] [2007], 60654/00

K. and T. v. Finland [GC] [2007], 25702/94

Azinas v. Cyprus [GC]] [2001], 56679/00

Kovačić and Others v. Slovenia [GC] [2009], 44574/98, 45133/98 and 48316/99

Hutten-Czapska v. Poland [GC] [2006], 35014/97

Maaouia v. France [1999], 39652/98

Pančenko v. Latvia [1999], 40772/98

Mengesha Kimfe v. Switzerland [2010], 24404/05

Agraw v. Switzerland [2010], 3295/06

Burdov v. Russia [2002], 59498/00

Eckle v. Germany [1982], 8130/78

Dalban v. Romania [GC], no. 28114/95, § 44, ECHR 1999-VI

Scordino v. Italy (no. 1) [GC] [2006], 36813/97

Gäfgen v. Germany [GC] [2010], 22978/05

Yang Chun Jin alias Yang Xiaolin v. Hungary (striking out) [2001], 58073/00

Normann v. Denmark [2001], 44704/98

Fjodorova and Others v. Latvia [2002], 69405/01

Tokić and Others v. Bosnia and Herzegovina [2002], 12455/04, 14140/05, 12906/06 and 26028/06

Jensen and Rasmussen v. Denmark [2003], 52620/99

Sejdovic v. Italy ([GC] [2006], 56581/00

Orchowski v. Poland [2009], 17885/04

Demopoulos and Others v. Turkey [2010][GC], 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04

Oršuš and Others v. Croatia [GC] [2010], 15766/03

Švarc and Kavnik v. Slovenia [2007], 75617/01

Ünal Tekeli v. Turkey [2004], 29865/96

Stafford v. the United Kingdom [GC] [2002], 46295/99

Chassagnou and Others v. France [GC] [1999], 25088/94, 28331/95 and 28443/95,

Nachova and Others v. Bulgaria [GC] [2005], 43577/98 and 43579/98,

M.S.S. v. Belgium and Greece [GC] [2011], 30696/09

Chahal v. the United Kingdom [2011], 70/1995/576/662

El Boujaïdi v. France [1997], 123/1996/742/941

Baghli v. France [1999], 34374/97

Boultif v. Switzerland [2001], 54273/00

Üner v. the Netherlands [GC] [2006], 46410/99

Radovanovic v. Austria [2004], 42703/98

Maslov v. Austria [GC] [2008], 1638/03

Amann v. Switzerland [GC] [2000], 27798/95

Christine Goodwin v. the United Kingdom [GC] [2002], 28957/95

Mikulić v. Croatia [2002], 53176/99

Slivenko v. Latvia [GC], [2003], 48321/99

Lordos and Others v. Turkey (merits) [2010], 15973/90

D.H. and Others v. the Czech Republic [GC] [2007], 57325/00

Selmouni v. France [GC] [1999], 25803/94

Broniowski v. Poland [GC] [2004], 31443/96

Halilović v. Bosnia and Herzegovina[2009], 23968/05

Riera Blume and Others v. Spain [1999], 37680/97

Hartman v. the Czech Republic [2003], 53341/99

Sürmeli v. Germany [GC] [2006], 75529/01

Apostol v. Georgia [2006], 40765/02

Nezirović v. Slovenia [2008], 16400/06

Scozzari and Giunta v. Italy [GC] [2000], 39221/98

Aleksanyan v. Russia [2008], 46468/06

Broniowski v. Poland [GC] [2005], 31443/96,

Hutten-Czapska v. Poland [GC] [2006], 35014/97

Lukenda v. Slovenia [2005], 23032/02

Xenides-Arestis v. Turkey (merits) [2005], 46347/99

Barberà, Messegué and Jabardo v. Spain [1994], 10590/83

Third party interventions

Intervention by the Office of the United Nations High Commissioner for Refugees:

The UNCHR intervention welcomes the Slovenian Government's efforts to regularise the legal status of the erased. However, they express concern that the Government's reform will not be sufficient to award all those affected with permanent residence permits and citizenship, because the requirements imposed as part of the permanent residence process, which proves particularly hard for vulnerable and marginalised groups.

It further argues that those who have been, and who are in the future, able to regularise their legal status through the grant of a retroactive permanent residence permit, consideration must also be given to past and continuing harm and injustices suffered by such people because of having been erased. In certain instances, the granting of a permanent residence permit, can only constitute partial redress, given the seriousness of the situation that some of the erased, in particular for those who remained stateless.

UNHCR further shares this Court's assessment "that the principles underlying the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be interpreted and applied in a vacuum," and that this instrument "should be interpreted as far as possible in harmony with other principles of international law of which it forms part."

The following UN and Council of Europe instruments relating to the right to nationality and the avoidance and reduction of statelessness, are highlighted as particularly important for the Court's assessment:

- 1951 Statelessness Convention- acknowledges that the vulnerability of stateless persons. Consequently, contains provisions for State Parties to extend administrative assistance to stateless persons and to issue them with identity papers (regardless of legal status), travel documents, and naturalisation.

- 1961 Convention on the Reduction of Statelessness: Requires States to prevent and reduce statelessness by: avoiding statelessness due to loss or renunciation of nationality; reducing statelessness due to deprivation of nationality; avoiding statelessness at birth and among children; and avoiding statelessness in the context of State succession.
- Article 15 of the Universal Declaration of Human Rights (“UDHR”): “everyone has the right to a nationality.”
- Draft Articles on Nationality of Natural Persons in Relation to the Succession of States: 5 and 15 deal with the rights to nationality of those habitually resident in the territory of a successor State; draft articles 6 and 7 concerning the enactment and implementation of legislation concerning the acquisition of nationality in a successor State; draft article 12 reflecting the importance of maintaining family unity in relation to acquisition or loss of nationality in a successor State; and draft articles 15 and 16, which respectively underline the importance of avoiding discrimination or arbitrariness in decisions concerning nationality issues. Draft article 22, which is concerned with the attribution of the nationality of successor States in the context of State dissolution, confirms the importance of habitual residence as the principal criterion for the grant of nationality upon State succession.
- 1997 European Convention on Nationality: States must take into account a concerned person’s habitual residence in, and links with, the State when granting nationality: