



[Slovenia - Administrative Court, Judgment no. II U 503/2016-9](#)

The applicant lived in Slovenia for 52 years, of which he had a permanent residence for 28 years. After being erased from the register of permanent residents, he lived in Slovenia for another 24 years. In 2014, a return decision was issued to him. Two years later, when the deadline for voluntary return had expired, he filed an application for permission to stay. The competent authority rejected his request and the case was referred to the administrative court.

The administrative court ruled that when considering the applicant's stay in Slovenia, specific circumstances must be taken into account, especially the length of the applicant's residence in Slovenia and his social status, as well as the fact that he was a stateless person. In that regard, it is necessary to ensure that his right to respect for this private life is respected.

Case name (in original language) : UPRS Sodba II U 503/2016-9

Case status: Decided

Case number: II U 503/2016-9

Citation: Judgment of the Administrative Court no. II U 503/2016-9, 22 August 2018

Date of decision: 22/08/2018

State: Slovenia

Court / UN Treaty Body: Administrative Court of the Republic of Slovenia

Language(s) the decision is available in: Slovenian

Applicant's country of birth: Yugoslavia {former}

Applicant's country of residence: Slovenia

Key aspects: Residence permit, Respect for private and family life, State succession

Relevant Legislative Provisions:

- Article 73 of the Foreigners Act (Permission to stay)

- Article 35 of the Constitution of the Republic of Slovenia (Protection of the Rights to Privacy and Personality Rights)
- Article 8 of the European Convention on Human Rights (Right to respect for private and family life)
- Article 7 of the General Administrative Procedure Act (Protection of the rights of parties and protection of public benefits)

Facts

The applicant has lived in Slovenia since 1964. He is one of the so-called “erased”, i.e. persons who, as citizens of the Socialist Federal Republic of Yugoslavia (SFRY) or as citizens of other republics of the former SFRY, lived in Slovenia and had a permanent residence on the territory of Slovenia, and were erased from the register of permanent residents in 1992.

Before being erased from the register, the applicant lived in Slovenia for 28 years, which means that until then he had a permanent residence in accordance with the applicable regulations, and actually resided in the territory of Slovenia. From the time when he was erased from the register to the issuance of the challenged decision in the case, the applicant lived in Slovenia for a further 24 years, i.e. 52 years in total.

A return decision was issued to him on 18 March 2014, in which a 30-day deadline for voluntary return was set, which was extended to 21 April 2014. This deadline expired, and on 6 June 2016, the applicant submitted a request for permission to stay under Article 73 of the Foreigners Act, but his request was not granted.

Legal arguments by the applicant

The applicant invokes the right to respect for personal and family life in relation to the regularisation of his long-term tolerated stay, on the basis of Article 8 of the European Convention on Human Rights (ECHR).

The applicant based his request for permission to stay in Slovenia on the second, third and fifth indents of the second paragraph of Article 73, that is if a foreigner does not hold or is unable to obtain a valid travel document of his or her country of citizenship, if the doctor advises against immediate removal from the country due to the foreigner's health condition and if it is necessary to ensure the required participation of a foreigner in the procedure before the State body of Slovenia.

Regarding the reason for a stay because of the impossibility of obtaining a travel document, the applicant stated that the first-instance authority's claim that he was lacking the necessary and expected law diligence was not correct and that the authority did not understand the specific legal situation: the disintegration of SFRY, the fact that he had lived legally in Slovenia for almost 30 years before he was erased from the register, and continued to live peacefully for another 20 years after.

Legal arguments by the opposing party

The applicant's appeal against the decision was rejected. In its reasoning, the competent authority concluded that in the proceedings the applicant did not demonstrate the necessary and expected diligence in his efforts to obtain a needed travel document. The authority has also argued that the subject matter does not refer to the determination of the applicant's citizenship, but to the determination of entitlement of stay on the grounds that the applicant does not have and cannot obtain valid travel documents of the country of which he is a citizen. It claimed that the question of the applicant's citizenship is of an indirect nature and concluded that if the applicant wanted, he could at least try to obtain a travel document in the country of descent or birth, where he is entered in the birth register.

Decision & Reasoning

The court ruled that the action was well-founded.

It explained that in the present case, the decision is based on Article 73 of the Foreigners Act, which determines the conditions under which a foreigner who must be removed is allowed to remain temporarily in Slovenia.

The court referred to Article 8 of ECHR (Right to respect for private and family life) and Article 35 of the Constitution of the Republic of Slovenia (Protection of the Rights to Privacy and Personality Rights).

In its reasoning, it also emphasized an important circumstance which is that the applicant declared himself a stateless person. In the contested decision, it was stated that it was not a procedure to determine the applicant's citizenship, which the court agrees is true, but nevertheless, **the question of which country the applicant should return to is important from the point of view of assessing the right to respect for private life.**

The court pointed out that the applicant has lived in Slovenia for more than 50 years, the first 28 years on a legal basis. His entire life takes place in Slovenia. Therefore, **it would mean an impermissible interference with the applicant's right to respect for his private life, if he were forcibly required to continue his life somewhere else.**

The court held that, in addition to the prohibition of impermissible interference with an individual's right to private life (which the ECtHR calls a negative obligation, see e.g. *Osman v. Denmark*), the State also has a positive obligation to act with the aim of ensuring that the individual's private life is free from impermissible interference, i.e. interference which is not necessary in a democratic society and exceeds the standards laid down in Article 8(2) ECHR, or, taking into account the principle of proportionality, constitutes a violation of the individual's right to respect for, or the uninterrupted enjoyment of, his or her private life. (paragraph 28)

The court also specified that the State's positive obligation to realise the individual's right to respect for his private life under **Article 8(1) ECHR requires the State to regularise the applicant's situation.** (paragraph 29) For this reason, the provisions of Article 73 of the Foreigner Act must also be interpreted in accordance with the ECHR and the Constitution, or in such a way that the individual - in the specific case the applicant - is guaranteed respect for his right to private life. In doing so, the responsible authority must make sure that the ignorance or laity of the party is not detrimental to the rights to which he is entitled in accordance with the law (Article 7(4) of the General Administrative Procedure Act). (paragraph 31)

Decision documents

[The Administrative Court of the Republic of Slovenia, Judgment no. II U 503/2016-9](#)

Outcome

The court ruled that due to the incorrect application of substantive law, the facts of the case were determined incompletely. The court, therefore, annulled the contested administrative act and referred the case back to the authority that issued the administrative act for new adjudication.

Caselaw cited

[European Court of Human Rights, *Kurić and others v Slovenia* \(Application no: 26828/06\), 26 May 2012](#)

European Court of Human Rights, Osman v. Denmark (Application no: 38058/09), 14 June 2011

European Court of Human Rights, Butt v. Norway (Application no. 47017/09), 4 December 2012

European Court of Human Rights, Maslov v. Austria (Application no. 1638/03), 23 June 2008