



Kurić and Others v. Slovenia

Application No. 26828/06

Country: Slovenia

Region: Europe

Year: 2012

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Health care and health services, Health systems and financing, Poverty

Human Rights: Freedom from discrimination, Freedom of movement and residence, Right to acquire nationality, Right to family life, Right to privacy

Facts

The eight applicants had previously been citizens of both the former Yugoslavia and one of its constituent republics other than Slovenia. They had acquired permanent residence in Slovenia, but, following its independence, had either not requested Slovenian citizenship or had had their application refused. On 26 February 1992, pursuant to the newly enacted Aliens Act, their names were deleted from the Register of Permanent Residents and they became aliens without a residence permit. Some 25,000 other people were in the same situation. According to the applicants, none of them were ever notified of the decision to deregister them and they only discovered at a later stage that they had become aliens, when they attempted to renew their identity documents. The erasure of their names from the register had serious and enduring negative consequences: some of the applicants became stateless, while others were evicted from their apartments, could not work or travel, lost all their personal possessions and lived for years in shelters and parks. Still others were detained and deported from Slovenia. In 1999 the Constitutional Court declared unconstitutional certain provisions of the Aliens Act, as well as the automatic "erasure" from the register, after finding that under the impugned legislation, citizens of former Yugoslavia had been in a less favourable legal position than other aliens who had lived in Slovenia since before its independence, in that there was no legal instrument regulating the transition of their legal status to the status of aliens living in Slovenia. Following the Constitutional Court's decision, a new law was adopted to regulate the situation of the "erased". In a decision of 2003 the Constitutional Court declared certain provisions of the new law unconstitutional, in particular since they failed to grant the "erased" retroactive permanent residence permits or to regulate the situation of those who had been deported.

[Adapted from European Court of Human Rights Information Note on the Court's case-law, with permission]

Decision and Reasoning

The Court upheld the victim status of the applicants under Article 34. In cases concerning the deportation or extradition of non-nationals, the regularisation of an applicant's stay or the fact that the applicant was no longer under the threat of being deported or extradited was in principle "sufficient". However, an applicant's "victim" status could 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. One of the characteristics of the present case was the widespread human rights concern created by the "erasure". Furthermore, this situation had lasted for some twenty years. The acknowledgment of the human-rights violations and the issuance of permanent residence permits to six of the applicants did not constitute "appropriate" and "sufficient" redress for them, having regard to the lengthy period in which they had experienced insecurity and legal uncertainty and to the gravity of the consequences of the "erasure" for them. Accordingly, the applicants who had been awarded permanent residence permits could still claim to be "victims" of the alleged violations.

The Court found a violation of Article 8 (right to private and family life): The "erasure" and its repercussions had had an adverse effect on the applicants and continued to do so, amounting to interference with their private and family life. The "erasure" of the applicants' names from the register, together with the names of more than 25,000 other citizens of former Yugoslavia, had resulted from the combined effect of two provisions of the independence legislation. The two legal instruments in question had been accessible to any interested persons. However, the applicants could not reasonably have expected that their status as aliens would make their residence on Slovenian territory unlawful and would lead to such an extreme measure as the "erasure". Furthermore, the "erasure" had been carried out automatically and without prior notification, and the applicant

had not been 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. In addition, the Constitutional Court had 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 had no basis in domestic law. Lastly, there had been a legal vacuum in the legislation in force at the time as there had been no procedure whereby the applicants could apply for permanent residence permits. The relevant legislation and administrative practice had therefore lacked the requisite standards of foreseeability and accessibility. Admittedly, the Legal Status Act had been passed in order to regularise the situation of the “erased”. However, the Constitutional Court had found that certain provisions of the Act were unconstitutional, and it had taken more than seven years for that decision, ordering general measures, to be complied with. It followed that, at least until 2010, the domestic legal system had failed to regulate clearly the consequences of the “erasure” and the residence status of those who had been subjected to it. Therefore, not only had the applicants not been in a position to foresee the measure complained of, but they had also been unable to envisage its repercussions on their private and/or family life. The interference in issue had thus not been in accordance with the law. However, in the particular circumstances of the present case, the Court also considered it necessary to examine whether this interference had pursued a legitimate aim and had been proportionate to it. The aim of the independence legislation and the measures taken in respect of the applicants could not be dissociated from the wider context of the dissolution of the former Yugoslavia, 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 authorities had sought to create a “corpus of Slovenian citizens” and thus to protect the interests of the country’s national security, a legitimate aim within the meaning of Article 8 § 2 of the Convention. However, as to whether the measures in question had been proportionate, the legal vacuum in the independence legislation had deprived the applicants of their legal status, which had previously given them access to a wide range of rights. An alien lawfully residing in a country might wish to continue living in that country without necessarily acquiring its citizenship. However, the Slovenian legislature had failed to enact provisions aimed at permitting citizens of former Yugoslavia holding the citizenship of one of the other republics to regularise their residence status if they had chosen not to take Slovenian citizenship or had not applied for it. Such provisions would not have undermined the legitimate aims pursued. Accordingly, the measures complained of had been neither in accordance with the law nor necessary in a democratic society to achieve the legitimate aim of protecting national security.

The Court found a violation of Article 14 (non-discrimination) taken in conjunction with Article 8: There had been a difference in treatment between two groups “real” aliens and citizens of former Yugoslav republics other than Slovenia “ who had been in a similar situation in respect of residence related matters. This difference in treatment, based on nationality, had placed a disproportionate and excessive burden on citizens of former Yugoslavia.

The Court also found a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 8.

Article 46: In the absence of any settled domestic practice, it would be premature at this stage to examine whether the reforms and the various steps taken by the Government had achieved the result of satisfactorily regulating the residence status of the “erased”. In any event, the whole category of the “erased” were s compensation for the infringement of their fundamental rights. Moreover, the assessment of the situation complained of extended beyond the sole interests of the applicants and required the case to be examined also from the perspective of the general measures that needed to be taken in the interests of other potentially affected persons. The present case was therefore suitable for the adoption of the pilot judgment procedure. Only a few similar applications lodged by “erased” persons were currently pending before the Court, but in the context of systemic, structural or similar violations their number was likely to increase considerably. The respondent State should therefore, within one year, set up an ad hoc domestic compensation scheme. The examination of all similar applications would be adjourned pending the adoption of that measure.

[Adapted from European Court of Human Rights’ Information Note on the Court’s case-law, with permission]

Decision Excerpts

¶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 measure (see paragraphs 89, 111, 126, 137, 162 and 177 above). Serious doubts may therefore arise as to the foreseeability of the measure complained of.

357. Allegedly, the measure 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.

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.