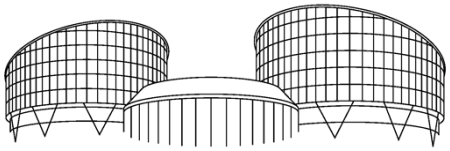

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF KURIĆ AND OTHERS v. SLOVENIA

(Application no. 26828/06)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

12 March 2014

In the case of Kurić and Others v. Slovenia,

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

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

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 28 February 2014,

Delivers the following judgment, which was adopted on that 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 ten other applicants, on 4 July 2006. After the death of Mr Makuc, the case was renamed *Kurić and Others v. Slovenia*. Eight applicants remained in the proceedings before the Grand Chamber (see paragraph 4 below).

2. The applicants were represented before the Court by Mr A.G. Lana and Mr A. Saccucci, lawyers practising in Rome.

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

4. In a judgment delivered on 26 June 2012 ("the principal judgment") the Grand Chamber declared, by a majority, the part of the application in respect of two applicants, Mr Dabetić and Mrs Ristanović, inadmissible for non-exhaustion of domestic remedies.

5. It further held, unanimously, that there had been a violation of the right to respect for "private or family life" or both (Article 8 of the Convention), the right to an effective remedy (Article 13) and the prohibition of discrimination (Article 14 taken in conjunction with Article 8) in respect of the remaining six applicants: Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić.

6. It found that the violation had 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 unlawful "erasure" from the Register of Permanent Residents on 26 February 1992 and to provide them with adequate redress. As a result, not only the applicants in this particular case, but also a large number of other persons (the whole category of the so-called "erased" (*izbrisani*), former citizens of the Socialist Federal Republic of Yugoslavia with permanent resident status in Slovenia whose names had been "erased" on 26 February 1992), had been and were still affected by that measure (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 29, 408-09 and 412, ECHR 2012).

7. In that connection, the Court decided to apply the pilot-judgment procedure under Article 46 of the Convention and Rule 61 of the Rules of Court and ordered that the respondent State should set up as a general measure an *ad hoc* domestic compensation scheme within one year of the delivery of the principal judgment, that is, no later than 26 June 2013 (see point 9 of the operative provisions and paragraph 415 of the principal judgment). It further noted that the amendments and supplements to the Legal Status Act ("the amended Legal Status Act") had been implemented only recently and that it was premature to examine whether or not this legislative reform and various other steps taken by the Government had achieved the result of satisfactorily regulating the residence status of the "erased" (see paragraphs 410-11 of the principal judgment).

8. Under Article 41 of the Convention, the applicants sought just satisfaction in respect of the pecuniary and non-pecuniary damage resulting from the violations found in the present case, as well as reimbursement of the costs and expenses incurred before the Court.

9. The Court held that the question of the application of Article 41 was not ready for decision in so far as the applicants' claims for pecuniary damage were concerned and reserved that question, inviting the Government and the applicants to submit, within three months from the date of notification of the principal judgment, their written observations on the matter and, in particular, to notify the Court of any agreement that they might reach. More specifically, the Court considered that the issue of the application of Article 41 should be resolved not only having regard to any agreement that might be reached between the parties, but also in the light of such individual or general measures as might be taken by the Government in

execution of the principal judgment (paragraph 424 and point 10 of the operative provisions of the principal judgment; see also *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, §§ 3 and 36, ECHR 2005-IX, and *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, §§ 3 and 33, 28 April 2008). Pending the implementation of the relevant general measures, the Court adjourned its consideration of applications deriving from the same cause (see paragraph 415 of the principal judgment).

Lastly, the Grand Chamber awarded 20,000 euros (EUR) to each successful applicant (Mr Kurić, Ms Mezga, Mr Ristanović, Mr Berisha, Mr Ademi and Mr Minić) in respect of non-pecuniary damage and an overall sum of EUR 30,000 to the applicants in respect of the costs and expenses incurred up to that stage of the proceedings before the Grand Chamber, and dismissed the remainder of their claims under these heads.

10. 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 31 October 2012 Nicolas Bratza's term as President of the Court came to an end. Dean Spielmann succeeded him in that capacity and took over the presidency of the Grand Chamber in the present case (Rule 9 § 2). Jean-Paul Costa, Nicolas Bratza, Françoise Tulkens and Nina Vajić continued to sit following the expiry of their terms of office, in accordance with Article 23 § 3 of the Convention and Rule 24 § 4. By virtue of Rule 24 § 3, Anatoly Kovler, who was prevented from sitting, was replaced by Mark Villiger.

11. Following an initial extension of the relevant time-limit as regards both the outstanding just-satisfaction claims under Article 41 and the possibility of reaching a friendly settlement in the context of the pilot-judgment procedure under Rule 61 § 7, the President of the Grand Chamber granted a second request to that effect by the Government and informed the parties that, in the absence of a suitable proposal for a friendly settlement by 24 June 2013, the Court would rule on the claims for pecuniary damage.

12. Moreover, following a request by the Government for an extension by one year of the time-limit for setting up an *ad hoc* compensation scheme (see paragraph 7 above), the Court informed the parties on 9 April 2013 that it was not disposed to grant that request. In the Court's opinion, this was a matter which should be taken up with the Committee of Ministers acting under Article 46 § 2 of the Convention.

Further to a request by the Government to reconsider that decision, on 14 May 2013 the Court, having regard to the uncertainty of the legislative process relating to the *ad hoc* compensation scheme and to the relatively little progress that appeared to have been made by that time, decided not to grant the request, emphasising that this decision should not be interpreted as in any way prejudicing any future decision of the Committee of Ministers in the exercise of its supervisory functions under Article 46 of the Convention.

13. On 24 June 2013 the applicants and the Government each filed observations on the outstanding just-satisfaction claims under Article 41 of the Convention. Both parties expressed their readiness to reach a friendly settlement, without, however, making a concrete proposal to that effect. Consequently, the Court decided that it would adjudicate on the outstanding issues under Article 41 of the Convention and informed the parties accordingly.

THE FACTS

14. The first applicant, Mr Mustafa Kurić, was born in 1935 and lives in Koper (Slovenia). He is a stateless person. The second applicant, Ms Ana Mezga, is a Croatian citizen. She was born in 1965 and lives in Portorož (Slovenia). The third applicant, Mr Tripun Ristanović, was born in 1988 and is currently living in Slovenia. He is a citizen of Bosnia and Herzegovina. The fourth 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 fifth applicant, Mr Ilfan Sadik Ademi, was born in 1952. He lives in Germany and is a Macedonian citizen. The sixth applicant, Mr Zoran Minić, was born in 1972. According to the Government, he is a Serbian citizen. His exact whereabouts are unknown.

DEVELOPMENTS FOLLOWING THE PRINCIPAL JUDGMENT

15. The deadline for the "erased" to submit requests for permanent residence permits under the amended Legal Status Act expired on 24 July 2013. That Act was passed in order to regulate the incompatibilities between the Legal Status Act and the Constitution, following the Constitutional Court's decision of 3 April 2003, and came into force on 24 July 2010.

16. The amended Legal Status Act provided for the acquisition of both *ex nunc* and *ex tunc* – that is, since 26 February 1992 – permanent residence permits by the "erased" persons "actually residing" in Slovenia, according to the definition in the Act. It also regulated the status of the children of the "erased" and provided for the issuing of retroactive decisions concerning those "erased" persons who had been granted Slovenian citizenship without having previously acquired a permanent residence permit (see paragraphs 71 and 76-79 of the principal judgment).

17. A petition (no. U-I-85/11) for constitutional review of the amended Legal Status Act lodged on 26 April 2011 by an association, Civil Initiative of the "Erased", together with other private individuals, is still pending before the Constitutional Court (see paragraph 81 of the principal judgment).

18. On 10 January 2013 the Constitutional Court handed down a decision concerning the State's liability under Article 26 of the Constitution in a case stemming from the systemic problem of the protracted length of proceedings (see *Lukenda v. Slovenia*, no. 23032/02, §§ 89-98, ECHR 2005-X). It held that Article 26 could not be interpreted narrowly and that it also entailed the State's liability for unlawful conduct that could not be attributed to a particular person or a particular authority falling within the State's jurisdiction, but only to the State itself. This also applied to the guarantee of a trial without undue delay, for which not only the courts, but all three branches of power – legislative, executive and judiciary – were responsible. The Constitutional Court's decision is relevant for the implementation of the principal judgment in the present case.

19. In May 2013 the government presented to the "general public" an initial proposal for a bill aimed at introducing an *ad hoc* compensation scheme for the "erased".

20. On 25 July 2013 the government submitted to Parliament a Bill on Compensation for Damage to Persons Erased from the Register of Permanent Residents (*Predlog Zakona o povračilu škode osebam, ki so bile izbrisane iz registra stalnega prebivalstva* – see paragraph 7 above). The Bill, with amendments, was passed on 21 November 2013. The resulting Act was published in Official Gazette no. 99/2013 on 3 December 2013. It came into force on 18 December 2013 and will become applicable on 18 June 2014.

21. The Act provides that the beneficiaries of the compensation scheme will be those "erased" persons who have acquired a permanent residence permit, on any legal grounds, or been granted Slovenian citizenship. The beneficiaries are also those "erased" persons who made an unsuccessful application to that effect under the previous legislation – prior to the enactment of the Amended Legal Status Act – subject to certain conditions, namely that their application must not have been rejected because they represented a threat to the public order, security or defence of the Republic of Slovenia, to international relations and to the prosecution of criminal offences, as specified in the relevant legislation, or on any of the grounds set out in section 3 of the Legal Status Act; the proceedings in respect of their application must not have been discontinued on account of their failure to cooperate; and they must have been "actually resident" in Slovenia. The last-mentioned condition is interpreted in the light of section 1(č) of the amended Legal Status Act (see paragraphs 77-79 and 211 of the principal judgment).

In defining the circle of beneficiaries, the Government took into account the Grand Chamber's decision to declare the part of the application concerning Mr Dabetić and Mrs Ristanović inadmissible for non-exhaustion of domestic remedies (see paragraph 4 above), noting that those two applicants had failed to manifest in any manner their wish to reside in

Slovenia, that is, to take any proper legal steps to regularise their residence status, which showed that they did not have sufficient interest in the subject matter (compare paragraph 292 of the principal judgment). Any claims for compensation under the new Act will have to be filed no later than three years after its entry into force or after receipt of the decision on permanent residence or Slovenian citizenship. In any event, the period of "erasure" may not extend beyond the date of entry into force of the Act.

22. The amount of compensation will be calculated on the basis of a lump sum of 50 euros (EUR) for each completed month of "erasure", covering both pecuniary and non-pecuniary damage sustained. For those "erased" persons whose requests were not granted, the period of "erasure" will be terminated by the final negative decision. If several negative decisions were given, the period will end as a result of the last decision in respect of which the condition of "actually residing" in Slovenia was fulfilled (see paragraph 21 above). Such "erased" persons may lodge their requests within three years from the date of the final negative decision.

23. In addition, should the "erased" consider that they are entitled to additional compensation, they will be able to lodge a claim under the general rules of the Code of Obligations (*Obligacijski zakonik*, Official Gazette no. 83/2001). The Act removes the statute of limitations for claiming damages under the Code of Obligations, as interpreted to date by the Slovenian courts (see paragraph 83 of the principal judgment), and introduces a new three-year period for claiming compensation under this head. Those "erased" persons whose applications were rejected may lodge their requests within three years from the date of the final negative decision. The explanatory memorandum states that the limitation of the amount of compensation is justified by the current financial situation of Slovenia and considerations relating to the welfare State.

24. Compensation of this kind may be claimed either through administrative proceedings, in relation to the lump sum, or through judicial proceedings, in relation to additional compensation claims, it being specified that the total amount may not exceed three times the lump sum of EUR 50 for each month of "erasure".

25. Moreover, those "erased" persons who have had their claims for compensation rejected or the proceedings stayed may lodge new claims.

26. Beneficiaries entitled to receive more than EUR 1,000 in compensation will receive immediate payment of an initial amount of EUR 1,000, the outstanding sums to be paid in instalments.

27. They will also be entitled to other forms of just satisfaction, with a view to facilitating their reintegration into Slovenian society. These include payment by the authorities of compulsory health insurance, benefits and preferential treatment under social security programmes; access to other forms of public assistance and State grants; benefits and preferential treatment in the matter of housing (non-profit rent); access to the education

system; and, lastly, preferential treatment under programmes for aliens who are not citizens of the member States of the European Union, with a view to their integration into cultural, economic and social life in Slovenia.

28. The explanatory memorandum states that, by July 2013, when the preparation of the Bill was concluded, 10,046 of the 25,671 "erased", including 5,360 minors (see also paragraphs 33 and 69 of the principal judgment), had settled their residence status (2,807 by acquisition of a permanent residence permit and 7,239 by acquisition of Slovenian citizenship). Some have died and an unspecified number of the "erased" have left Slovenia.

29. According to the information published on the Ministry of the Interior's website on 25 July 2013, 849 applications for *ex nunc* permanent residence permits had been received under the amended Legal Status Act (174 applications had been rejected, 138 residence permits had been issued, and 537 applications were pending on that date).

In addition, 627 applications for *ex tunc* permanent residence permits had been received: 417 applications had been granted, 76 requests had been rejected or proceedings stayed, and 134 requests were pending on that date.

THE LAW

I. ARTICLE 41 OF THE CONVENTION

30. 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."

A. Pecuniary damage

1. The applicants' submissions

(a) General remarks

31. On 26 September 2012, after the delivery of the principal judgment, the applicants amended their claims in respect of pecuniary damage. On 24 June 2013 they confirmed that they maintained their claims as amended.

The applicants claimed compensation for pecuniary damage under different heads for the whole period from the "erasure" on 26 February 1992 until the date when they had acquired permanent residence permits: loss of past income in respect of social, housing, spouse and child allowances; and loss of future income in respect of pension rights (they cited *Iatridis v.*

Greece (just satisfaction) [GC], no. 31107/96, § 37, ECHR 2000-XI, and *Willis v. the United Kingdom*, no. 36042/97, §§ 65-70, ECHR 2002-IV).

32. The applicants emphasised that precise calculation of the sums necessary to make reparation (*restitutio in integrum*) for the pecuniary losses they had suffered might be prevented by the "inherently uncertain character" of the damage flowing from the violation (citing *Young, James and Webster v. the United Kingdom* (Article 50), 18 October 1982, § 11, Series A no. 55) and the lapse of time since the "erasure" had occurred. Given the large number of imponderables involved in the assessment of past and future losses, the applicants relied on the Court to determine the matter at its discretion, having regard to what was equitable (citing The Sunday Times *v. the United Kingdom (no. 1)* (Article 50), 6 November 1980, § 15, Series A no. 38). In particular, in *Smith and Grady v. the United Kingdom* ((just satisfaction), nos. 33985/96 and 33986/96, §§ 18-21, ECHR 2000-IX) the Court had pointed out that there was no reason to doubt that, had the applicants not been discharged in breach of their Convention rights, they would have continued to perform their service duties efficiently, and it had awarded them just satisfaction in respect of pecuniary damage for the loss of past and future income, taking into account their career prospects.

(b) Loss of past income

(i) Social allowances

33. As regards social allowances, the applicants pointed out that it was undisputed that they had been prevented from working in Slovenia or acquiring means of subsistence for reasons beyond their influence and control, and that they had not had access to certain social allowances provided for by the relevant legislation.

34. The applicants each claimed an amount corresponding to their total entitlement in respect of monthly social allowances. For the purpose of calculating this total, they took as a basis the standard monthly amount of 260 euros (EUR) that they would have received if the "erasure" had not taken place, multiplied by the number of months of "erasure", plus interest. This amount corresponded to the social allowance fixed by the Financial Social Assistance Act (*Zakon o socialno varstvenih prejemkih*, Official Gazette no. 61/2010), read together with section 152(1) of the Fiscal Balance Act (*Zakon za uravnoteženje javnih financ*, Official Gazette no. 40/2012).

35. In reply to the Government's submissions, the applicants considered that the Government's position – according to which the standard monthly amount should only be EUR 230.61, as applicable until December 2011 and adjusted to consumer prices until 30 June 2013 – was acceptable (see paragraph 55 below).

36. In addition, the legislation provided for social allowances in respect of children and spouses for families with insufficient income which was set at EUR 208 for the first child and EUR 182 for each additional child, while an additional adult would be entitled to EUR 130.

37. As to the contested entitlement of Mr Berisha to have his claims granted for the whole period of the "erasure" (see paragraphs 56 and 71 below), the applicants stated that the Government had failed to specify the amounts he had allegedly received in Germany after 1998. He would be entitled to at least the difference between the two amounts for that period, as well as to the total amount prior to that, given the lack of any conclusive evidence showing that he had actually received any money in Germany and, if so, how much. Mr Berisha would also be entitled to social allowances in respect of his wife and five children.

38. As to Mr Ademi's contested entitlement under this head, the applicants submitted that the statement by his daughter, in the course of administrative proceedings, that the applicant had been in receipt of a social allowance during his entire stay in Germany (see paragraphs 56 and 75-76 below) was not a sufficient basis to deprive him of his rights.

(ii) Housing allowance

39. In respect of housing allowances, the applicants claimed 25% of the amount of social allowance to which they would have been entitled under the Social Security Act 2007 (*Zakon o socialnem varstvu*, Official Gazette no. 3/2007).

40. The applicants disputed the Government's argument that they did not fulfil the statutory conditions in that only those tenants who had acquired a "specially protected tenancy" or an "occupancy right" (*stanovanjska pravica* – see *Berger-Krall and Others v. Slovenia* (dec.), no. 14717/04, § 4, 28 May 2013) were entitled to the housing allowance and then, only if a request for housing allowance had been submitted and, after the coming into effect of the Housing Act 2003, if they possessed Slovenian citizenship (see paragraph 57 below). The applicants maintained that a "specially protected tenancy" was not a condition under the Social Security Act 1992 (*Zakon o socialnem varstvu*, Official Gazette no. 54/1992) for the award of a housing allowance. While accepting that the Housing Act 2003 (*Stanovanjski zakon*, Official Gazette no. 69/2003) had introduced the condition of Slovenian citizenship, they contended that had they not been "erased", they could by that date have acquired Slovenian citizenship.

(iii) Child benefit

41. As regards child benefit, where applicable, the applicants stated that they would have been entitled to it under the Exercise of Rights to Public Funds Act (*Zakon o uveljavljanju pravic iz javnih sredstev*, Official Gazette no. 62/2012). The monthly child benefit for families with no income was

currently set at EUR 114.30 for the first child, EUR 125.73 for the second and EUR 137.18 for any additional child. Child benefit, which was distinct from the social allowance in respect of children (see paragraph 36 above), was awarded both to families receiving social allowances and to those with a low income.

42. In response to the Government's statement that Mr Berisha's claims in respect of his five children would have been justified only for the period when he had stayed with his family in Slovenia (see paragraphs 59 and 71-74 below), the applicants contended that he had been entitled for the whole period, taking into account the age of his children.

43. As to Ms Mezga's claims in respect of her two eldest children living in Croatia, in response to the Government's argument that she would not have been entitled to child benefit since her children had been living in foster care in Croatia (see paragraph 60 below), the applicants contended that she was entitled to compensation for child benefit in respect of both her daughter Ines and her son Enes, since, had the applicant not been "erased", her children would have lived with her in Slovenia and would have been in receipt of child benefit.

(c) Loss of future income

Pension rights

44. As regards loss of future income, the applicants submitted that they had been unable to pay their contributions to the pension scheme and were not entitled to a pension under the national legislation. Accordingly, it was possible to determine their minimum loss of future income by reference to the minimum pension to which they would have been entitled.

45. Under the Pension and Disability Insurance Act (*Zakon o pokojninskem in invalidskem zavarovanju*, Official Gazette no. 106/99, as amended), the basic minimum pension was currently EUR 551.16 for people who had worked for at least fifteen years. The applicants would have been entitled to a portion of that amount in the future, currently corresponding to EUR 192.90 for men and EUR 209.44 for women. In calculating the total amounts claimed under this head, the applicants took into consideration the current life expectancy (73.83 years for men and 81.36 years for women).

46. The Government's statement to the effect that all persons with a permanent residence permit who were resident in Slovenia, including foreigners, and who had not acquired the right to a pension were entitled to receive income support or minimum pension support (see paragraphs 63-64 below) was interpreted by the applicants as an undertaking that they would receive minimum pension support when they met the age condition (63 for women and 65 for men), should they not be eligible for a pension or not

have income or income from property amounting to more than EUR 460 per month.

(d) The individual applicants

(i) Mr Mustafa Kurić

47. Mr Kurić had no legal status from 26 February 1992 until 2 November 2010 (eighteen years, eight months and seven days).

He had therefore spent an overall period of 224 months without a regulated status.

He claimed EUR 58,240 for social allowance and EUR 14,560 for housing allowance.

In addition, he claimed EUR 9,259.20 in respect of pension rights. Given that the applicant's age (seventy-seven) was already higher than the male life expectancy, the female life expectancy was applied.

In total, he claimed EUR 82,059.20 in respect of pecuniary damage.

(ii) Ms Ana Mezga

48. Ms Mezga had lost her legal status on 26 February 1992 and had been granted a temporary residence permit, as a family member of a Slovenian citizen, on 13 September 2007 and a permanent residence permit on 1 March 2011 (nineteen years and two days later). She had therefore spent an overall period of 186 months without a regulated status and had had to wait 228 months before obtaining her permanent residence permit, the temporary residence permit not entitling her to social allowance.

She claimed EUR 59,280 for social allowance and EUR 14,820 for housing allowance.

In addition, she claimed EUR 13,373.10 for child benefit in respect of Ines and EUR 27,157.68 in respect of Enes, her eldest children living in Croatia.

Lastly, she claimed EUR 85,451.52 in respect of pension rights.

In total, she claimed EUR 200,082.30 in respect of pecuniary damage.

(iii) Mr Tripun Ristanović

49. Mr Ristanović had no legal status from 26 February 1992 until 10 March 2011 (fourteen years, five months and twenty-five days as a minor until 20 August 2006, and four years, six months and twenty days as an adult). He had therefore spent an overall period of 228 months without a regulated status.

He claimed EUR 36,192 for social allowance as a child and EUR 14,040 as an adult, as well as EUR 3,510 for housing allowance.

In addition, the applicant, who was 24 years old at the time of his submissions, claimed EUR 6,386.58 in respect of the monthly pension contributions he could have paid.

In total, he claimed EUR 60,128.58 in respect of pecuniary damage.

(iv) Mr Ali Berisha

50. Mr Berisha had no legal status from 26 February 1992 until 19 October 2010 (eighteen years, seven months and twenty days). He had therefore spent an overall period of 223 months without a regulated status.

He claimed EUR 57,980 for social allowance in respect of himself and EUR 22,100 in respect of his wife, as well as EUR 14,495 for housing allowance.

In addition, he claimed child benefit for his five children as follows: EUR 17,602.20 for Dem, EUR 16,973.55 for Egzon, EUR 15,775.70 for Egzona, EUR 10,974.40 for Haxhi and EUR 6,996.18 for Valon.

Lastly, he claimed EUR 71,758.80 in respect of pension rights.

In total, he claimed EUR 234,655.83 in respect of pecuniary damage.

(v) Mr Ilfan Sadik Ademi

51. Mr Ademi had no legal status from 26 February 1992 until 20 April 2011 (nineteen years, one month and twenty-one days). He had therefore spent an overall period of 229 months without a regulated status.

He claimed EUR 59,540 for social allowance and EUR 14,885 for housing allowance.

In addition, he claimed EUR 32,407.20 in respect of pension rights.

In total, he claimed EUR 106,832.20 in respect of pecuniary damage.

(vi) Mr Zoran Minić

52. Mr Minić had no legal status from 26 February 1992 until 4 May 2011 (nineteen years, two months and five days). He had therefore spent an overall period of 230 months without a regulated status.

He claimed EUR 59,800 for social allowance and EUR 14,950 for housing allowance.

In addition, he claimed EUR 78,703.20 in respect of pension rights.

In total, he claimed EUR 153,453.20 in respect of pecuniary damage.

2. The Government's submissions

(a) General remarks

53. In their submissions of 24 June 2013, the Government stated that the situations of the individual applicants differed greatly and that certain of them would potentially be entitled to compensation on the basis of different social allowances and/or child benefit. Nevertheless, the causal link between the alleged damage and the violation found was difficult to prove. There were many circumstances which were unclear and uncertain.

54. In addition, the applicable legislation continued to change and to introduce new restrictions. Furthermore, the living conditions of the

applicants were changing and it was not clear whether they would meet all the criteria set out in a particular piece of legislation. Finally, due regard had to be had to the current economic situation in Slovenia when assessing the amounts to which the applicants would potentially be entitled and when making a concrete proposal to them (see under "Individual applicants", paragraphs 65-78 below).

(b) Loss of past income

(i) Social allowances

55. The Government noted that the applicants had claimed an amount corresponding to their alleged total entitlement in respect of monthly social allowances for the period of the "erasure", taking as a basis a standard monthly amount of EUR 260 (see paragraph 34 above). However, prior to the entry into force of the amendments to the Financial Social Assistance Act in 2012, the basic amount had been fixed at EUR 230.61. In the Government's view, the standard monthly amount of minimum social allowance to which the applicants would potentially be entitled could only be EUR 230.61, the amount applicable until 31 December 2011 and adjusted for inflation. Nevertheless, no real offer was made on that basis since the actual amounts proposed by the Government to the applicants were considerably lower, without any indications being given as to how those amounts had been calculated (see paragraphs 66, 68, 70, 74, 76 and 78 below).

56. Furthermore, the Government noted that some of the applicants would not be entitled to the amounts corresponding to the whole period of the "erasure" owing to their personal circumstances. In addition, other relevant facts and applicable legislation should also be taken into account for the determination of the amounts to which the applicants would potentially be entitled. The Ministry of Labour, Family, Social Affairs and Equal Opportunities ("the Ministry") had prepared calculations of the social allowances to which the applicants would potentially be entitled if all the conditions were met, taking as a basis the monthly amounts for single persons adjusted for inflation.

(ii) Housing allowance

57. As regards housing allowances, the Government contended that the applicants' claims under this head were ill-founded. Under the Social Security Act 1992, only those tenants – Slovenian citizens or not – who had acquired a "specially protected tenancy" prior to 19 October 1991 were entitled to this allowance, provided that they had made a request to that effect by 25 February 1992. And even if such requests had been granted, the applicants would have been entitled to a housing allowance only until

14 October 2003, when the Housing Act 2003 – which specified citizenship as a condition for receiving such an allowance – had come into force.

According to the data provided by competent housing funds, of all the applicants, only Mr Kurić had acquired a "specially protected tenancy", although he had failed to apply for a housing allowance by 1992.

In any event, the causal link between the violation of the applicants' Convention rights and the alleged damage sustained under this head was not established.

(iii) Child benefit

58. As regards child benefit, the Government noted that Mr Berisha had made a claim under this head for his five children and Ms Mezga for her two eldest children living in Croatia. Child benefit had initially been regulated by the Family Income Act (*Zakon o družinskih prejemkih*, Official Gazette no. 65/93) and subsequently by the Parental Protection and Family Benefit Act (*Zakon o starševskem varstvu in družinskih prejemkih*, Official Gazette no. 97/2001). Under section 67 of the latter Act, the right to child benefit was granted to one of the parents under certain conditions.

59. The Government accepted that Mr Berisha's claims would be justified in part, in respect of the periods during which he had stayed with his family in Slovenia (see paragraphs 71-74 below).

60. As to Ms Mezga, the Government contended that she would not have been entitled to child benefit either before or after the entry into force on 1 January 2002 of the Parental Protection and Family Benefit Act, which withdrew child benefit for children placed in foster care, since her two eldest children were in foster care in Croatia and not in Slovenia. She had never claimed child benefit for them in Slovenia and the Croatian foster family had received Croatian child benefit in respect of her son Enes.

(c) Loss of future income

Pension rights

61. As to the loss of future income, the Government noted that the applicants had claimed the lowest pension to which they would have been entitled had they not been removed from the Register of Permanent Residents. However, in the Government's view their claims in respect of social allowances precluded any claim for loss of future income in respect of pension rights. The causal link between the violation of the applicants' Convention rights that had been found and the alleged damage they had sustained under this head was not established.

62. Under the Pension and Disability Insurance Act, the payment of pension contributions was mandatory for individuals who were employees, self-employed or worked in some other manner. An individual was eligible for pension rights only if he or she had paid contributions for at least fifteen

years and once the prescribed age condition was met, the latter having constantly risen over the past few years and being expected to rise exponentially.

63. The unemployed were not obliged to pay pension contributions and were not entitled to pension insurance but rather to social security. Until such persons met the age condition (63 for women and 65 for men), social security was provided in the form of a social allowance. After reaching the prescribed age, anyone who did not have the right to a pension, or whose pension was too low, acquired the right to income support or minimum pension support. Foreigners with a permanent residence permit residing in Slovenia could also acquire the right to minimum pension support. The monthly income threshold determining eligibility for minimum pension support was set at EUR 460.

64. In conclusion, on the one hand, persons who did not have income or income from property which amounted to or exceeded EUR 460 per month and who met all the other appropriate conditions could acquire the right to minimum pension support. On the other hand, the applicants were not eligible for pension rights, contrary to what they had maintained.

(d) The individual applicants

(i) Mr Mustafa Kurić

65. As regards social allowances, the Government observed that Mr Kurić had been employed until the beginning of 2000, a fact confirmed by the data provided by the Health Insurance Institute. However, he had not paid the compulsory social security contributions between 1992 and 2000. As such, he would potentially be entitled to an amount of EUR 29,479.09.

66. The Government were prepared to pay the applicant EUR 8,843.73 under this head.

(ii) Ms Ana Mezga

67. As regards social allowances, the Government observed that Ms Mezga had become unemployed on 30 November 1992 and would potentially have been entitled to a social allowance after she had stopped receiving unemployment benefit. In addition, the applicant's partner and her two younger children living in Slovenia had been receiving a social allowance since 1999. For that period she would have been entitled to a social allowance as a member of their family. According to the Ministry's calculations, taking into account the different social regimes, Ms Mezga would potentially be entitled to the amount of EUR 35,359.94.

68. The Government were prepared to pay the applicant EUR 10,607.98 under this head.

(iii) Mr Tripun Ristanović

69. As regards social allowances, the Government stated that Mr Ristanović, who had been living in Serbia for a number of years before returning to Slovenia (see paragraphs 132-33 of the principal judgment), would, in the light of the relevant criteria, potentially be entitled to the amount of EUR 17,404.25.

70. The Government were prepared to pay the applicant EUR 5,112.08 under this head.

(iv) Mr Ali Berisha

71. As regards social allowances, the Government contended that Mr Berisha had been receiving a similar allowance from the German authorities. At the request of the Slovenian authorities, the competent German authorities had confirmed that the applicant had been receiving a social allowance since 1998, except during the periods from 2001 to 2005 and in 2006, and, furthermore, that he had been receiving money from different sources since 1991 for the purposes of pension insurance, without specifying the amounts and periods concerned. On the basis of the data available to the Ministry, the applicant would be entitled to the amount of EUR 3,790.43 in respect of himself and EUR 2,653.30 in respect of his wife, for the period when he had lived in the Asylum Centre in Slovenia (see paragraph 147 of the principal judgment).

72. As regards child benefit, the applicant would be entitled to EUR 8,625.33 in respect of his five children.

73. The applicant would therefore potentially be entitled to a total amount of EUR 15,069.06 in respect of social allowances and child benefit.

74. The Government were prepared to pay the applicant EUR 4,520.72 under this head.

(v) Mr Ilfan Sadik Ademi

75. As regards social allowances, in view of the fact that Mr Ademi's daughter had stated during the administrative proceedings that he had been receiving social assistance from the German authorities, the Government contended that he would not be entitled to any social allowance. The Slovenian authorities had made enquiries to the competent German social welfare centre, which had failed to reply. Nevertheless, according to the data provided by the German pension-insurance authority, the applicant had been employed in Germany in 2003 and 2004 and had received unemployment benefit in 2005.

76. The Government were not prepared to make any award to the applicant under this head.

(vi) Mr Zoran Minić

77. As regards social allowances, according to the data available to the Government, Mr Minić had been employed in Podujevo (then in Serbia, now in Kosovo) from 26 February 1992 to 6 April 1999 (see paragraph 176 of the principal judgment). Therefore, he would not have been entitled to a social allowance for that period. For the remaining period, he would potentially be entitled to EUR 31,463.38.

78. The Government were prepared to pay the applicant EUR 9,439.02 under this head.

3. The Court's decision

(a) General principles

79. The Grand Chamber reiterates that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach.

80. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see, among many authorities, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B; *Iatridis*, cited above, §§ 32-33; and *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009).

81. As regards the applicants' claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention. In appropriate cases, this may include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV).

82. A precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicants may be prevented by the inherently uncertain character of the damage flowing from the violation (see, *mutatis mutandis*, *Young, James and Webster*, cited above, § 11). An award may still be made

notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved, the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary losses, which it is necessary to award each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see, *mutatis mutandis*, The Sunday Times, cited above, § 15; *Smith and Grady*, cited above, §§ 18-19; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 119-20, ECHR 2001-V; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 218-22, ECHR 2012).

(b) Application of these principles to the present case

83. The Grand Chamber held in the principal judgment that the applicants, who prior to Slovenia's declaration of independence had been lawfully residing in Slovenia for several years, had, as citizens of the former Socialist Federal Republic of Yugoslavia, enjoyed a wide range of social and political rights there. Owing to their "erasure" on 26 February 1992 from the Register of Permanent Residents, which had deprived them of their legal status, they had 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 securing pension rights.

84. The Grand Chamber also stressed that the applicants, who did not possess any Slovenian identity documents, had as a result of the "erasure" been left in a legal vacuum, and therefore in a situation of vulnerability, legal uncertainty and insecurity, for a lengthy period, amounting to nearly twenty years for all of them. The Court emphasised the gravity of the consequences of the "erasure" for them (see paragraphs 267, 302-03, 356 and 412 of the principal judgment).

85. The Constitutional Court held in its leading decision of 3 April 2003 that permanent resident status was an important linking aspect for claiming certain rights and legal benefits, such as military pension rights, social allowances and renewals of driving licences, which the "erased" had been unable to claim owing to the legally unregulated state of affairs (see paragraphs 59 and 215 of the principal judgment).

86. In the Grand Chamber's view, it is clear that the loss of legal status as such resulting from the "erasure" entailed significant material consequences for all the applicants, including the loss of access to a wide range of social and political rights and legal benefits, such as identity documents, driving licences, health insurance and education, as well as the loss of job and other opportunities, until they were granted permanent residence permits (see paragraphs 59, 215, 302 and 356 of the principal judgment).

87. The Grand Chamber notes in this connection that both the applicants and the Government emphasised the particular difficulty in the present case in making a precise estimation of the pecuniary damage incurred by the applicants as a result of the "erasure", owing to the inherently uncertain character of its consequences and the lapse of time since it had taken place (see, *mutatis mutandis*, *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, § 22, 25 July 2000, and *Lallement v. France* (just satisfaction), no. 46044/99, §§ 16-17, 12 June 2003). The parties were in agreement on this point (see paragraphs 31-32 and 53-54 above).

88. The Grand Chamber cannot but agree with the assumption made by the parties that a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicants is prevented by the inherently uncertain character of the damage flowing from the violation (see *Young, James and Webster*, cited above, § 11).

89. Given that the applicants were removed from the Register of Permanent Residents without prior notification on 26 February 1992 and that they learned about the "erasure" only incidentally (see paragraphs 29 and 343 of the principal judgment), the Grand Chamber considers that there is a multi-layered causal link between the unlawful measure and the pecuniary damage sustained by the applicants, its effects being spread over time and having further side effects. Moreover, the consequences of the "erasure" were aggravated by the long period of time during which the applicants' legal status was unregulated. Thus, the damage sustained on that account does not lend itself to precise estimation.

90. Accordingly, the question to be decided by the Grand Chamber concerns the applicants' entitlement to just satisfaction – and, if appropriate, the amount – in respect of pecuniary damage under the following heads: social and housing allowances, child benefit and pension rights, the matter to be determined by the Court at its discretion, having regard to what is equitable (see, *mutatis mutandis*, *Z and Others v. the United Kingdom*, cited above, §§ 121-22, and *Lordos and Others v. Turkey* (just satisfaction), no. 15973/90, §§ 64-70, 10 January 2012).

(c) Loss of past income

(i) Social allowances

91. The Grand Chamber notes that the applicants' claims in respect of social allowances were not contested in principle by the Government. However, the latter challenged the entitlement of some of the applicants for periods during which they had worked, or had been in receipt of unemployment benefit, or appeared to have been living abroad and receiving social allowances or working there. The Government also

disputed the amounts claimed under this head (see paragraphs 56 and 65-78 above).

92. The Grand Chamber observes that it was the "erasure" of the applicants' names which gave rise to the violations found by the Court in the principal judgment and in respect of which pecuniary damage falls to be assessed. It finds that it is not possible to speculate as to what the applicants' situation would or might have been had the "erasure" not occurred. In particular, it is not possible to determine whether some of the applicants would have continued to live or work in Slovenia had they not been "erased" and, in the absence of sufficient evidence to the contrary, the Grand Chamber will assume that the applicants would have continued living in Slovenia had they retained their legal status there. Nor is it possible on the material made available to the Court to assess whether any sums paid to the applicants in respect of employment or by way of benefits outside the country would have exceeded or matched those lost in Slovenia as a result of the "erasure". Certainly, it does not appear from the documents at the Court's disposal that the applicants were unfairly enriched by other sources of income which they might have enjoyed so as to dispense the Government from their obligation to compensate for the pecuniary loss suffered by the applicants due to being deprived of their social allowances.

93. In these circumstances, the Grand Chamber finds that all the applicants should receive compensation in respect of the loss of social allowances suffered by reason of the "erasure" of their names.

94. In conclusion, ruling on the basis agreed upon by the parties, the Grand Chamber will make an award to each applicant under this head, as specified below (see paragraphs 110-15 below).

(ii) Housing allowance

95. The Grand Chamber notes that, in the Government's submission, the applicants were not entitled to housing allowance, since out of all the applicants only Mr Kurić had had a "specially protected tenancy" on his flat prior to October 1991 and even he had failed to submit a request under the relevant legislation. In any event, the Government observed that from 14 October 2003 the housing allowance had been subject to possession of Slovenian citizenship, a condition not fulfilled by any of the applicants (see paragraph 57 above). The applicants challenged the requirement of a "specially protected tenancy" under the Social Security Act 1992, without providing any further clarification. As to the condition of citizenship introduced by the Housing Act 2003, the applicants stated that had they not been "erased", they could by that date have acquired Slovenian citizenship (see paragraph 40 above).

96. The Grand Chamber cannot speculate on whether the applicants would have been granted Slovenian citizenship had they not been "erased" from the Register of Permanent Residents. It finds that it is undisputed

between the parties that the applicants would not have been entitled to a housing allowance under the Housing Act 2003. Furthermore, the applicants failed to prove that they would have fulfilled the conditions under the previous legislation.

97. Accordingly, the Grand Chamber makes no award to the applicants under this head.

(iii) Child benefit

98. As regards the child benefit claimed by Ms Mezga and Mr Berisha in respect of their children, the Grand Chamber observes that the Government argued that Ms Mezga was not entitled to it since her two eldest children had been in foster care in Croatia, and disputed Mr Berisha's entitlement for certain periods in respect of his five children (see paragraphs 59-60 above). The applicants contended that compensation should be granted under this head to the two applicants in question (see paragraphs 41-43 above).

99. The Grand Chamber notes that families receiving social allowances are entitled under the relevant Slovenian legislation to claim child benefit (see paragraph 58 above). It refers to its finding that all the applicants should receive compensation for their inability to receive social allowances as a result of the loss of their legal status *per se*, regardless of the specific personal circumstances on the basis of which they might no longer have been eligible for benefits under the law in force (see paragraphs 92-94 above). This is especially true if the children had to stay abroad or were separated from their parents as a consequence of the "erasure". The Grand Chamber notes in this connection that the amended Legal Status Act also regulated the status of the children of the "erased" (see paragraphs 16 and 28 above, as well as paragraph 77 of the principal judgment).

100. Therefore, in the Grand Chamber's view, Ms Mezga is entitled to compensation in respect of her two eldest children and Mr Berisha in respect of his five children, in the amounts specified below (see paragraphs 111 and 113 below).

(d) Loss of future income

Pension rights

101. As regards loss of future income in respect of pension rights, the applicants stated that they were claiming compensation for the contributions which they had been unable to pay to the pension scheme and for their resulting lack of entitlement to a pension in accordance with the national legislation. However, they asserted that it was possible to determine their minimum loss of future income by reference to the minimum pension to which they would have been entitled (see paragraphs 44-45 above).

102. The Government contended that the applicants' claims in respect of social allowance precluded any claim for loss of future income and stressed

that unemployed persons were not entitled to pension insurance but rather to social security. However, after reaching the age threshold (63 for women and 65 for men), such persons – including foreigners residing in Slovenia with a permanent residence permit – were entitled to minimum pension support, provided that their income did not exceed the minimum amount, set at EUR 460 (see paragraphs 61-64 above).

103. The Grand Chamber accepts the Government's argument that the granting of the applicants' claims in respect of social allowance precludes any claim for loss of future income in respect of pension rights.

104. Therefore, the Grand Chamber dismisses these claims.

105. However, it takes note of the Government's statement that foreigners with a permanent residence permit residing in Slovenia may acquire the right to minimum pension support once they have reached the age of entitlement, and that this will in principle apply to the applicants if they meet the statutory conditions (see paragraphs 63-64 above).

(e) Individual applicants

106. The Grand Chamber reiterates that it has decided to make an award to each of the applicants in respect of social allowances (see paragraph 94 above).

107. The applicants claimed compensation for the pecuniary damage sustained from 26 February 1992, when they were "erased" from the Register of Permanent Residents, until their acquisition of permanent residence permits (see paragraph 34 above).

108. The Grand Chamber notes, however, that the Convention came into force in respect of Slovenia on 28 June 1994. Making an assessment on an equitable basis and having regard to the circumstances referred to above, the Court considers it reasonable to award the following amounts, based on the number of months spent by each applicant as an "erased" person, from 28 June 1994 until the date on which his or her legal status was finally restored, multiplied by a monthly lump sum of EUR 150 (see, *mutatis mutandis*, *Centro Europa 7 S.r.l. and Di Stefano*, cited above, §§ 220 and 222).

109. The Grand Chamber will also award the amounts indicated below (see paragraphs 111 and 113 below) to Ms Mezga and Mr Berisha in respect of their children, based on the number of months from the entry into force of the Convention in respect of Slovenia – or, as applicable, the children's dates of birth – until the children reached the age of majority or the respective applicants' legal status was regulated, multiplied by a monthly lump sum of EUR 80. However, it does not find it appropriate to award any just satisfaction to Mr Berisha's wife, since she could have brought an application before the Court in her own name.

(i) Mr Mustafa Kurić

110. Mr Kurić had no legal status from 28 June 1994 until 2 November 2010 (sixteen years, four months and nine days), that is, for 196 completed months.

Consequently, the Grand Chamber awards him the amount of EUR 29,400.

(ii) Ms Ana Mezga

111. Ms Mezga had no permanent legal status from 28 June 1994 until 1 March 2011 (sixteen years, eight months and seven days), that is, for 200 completed months. Consequently, the Grand Chamber awards her EUR 30,000 in respect of social allowance.

An award for her daughter, Ines, is to be made for the period from 28 June 1994 until 22 November 2001, when she reached the age of 18 (seven years, four months and twenty-seven days – eighty-eight completed months); this amounts to EUR 7,040.

An award for her son, Enes, is to be made for the period from 28 June 1994 until 26 April 2010, when he reached the age of 18 (fifteen years, ten months and two days – 190 completed months); this amounts to EUR 15,200.

Consequently, the Grand Chamber awards Ms Mezga a total of EUR 52,240 in respect of pecuniary damage.

(iii) Mr Tripun Ristanović

112. Mr Ristanović had no legal status from 28 June 1994 until 10 March 2011 (sixteen years, eight months and fifteen days), that is, for 200 completed months.

Consequently, the Grand Chamber awards him EUR 30,000.

(iv) Mr Ali Berisha

113. Mr Berisha had no legal status from 28 June 1994 until 19 October 2010 (sixteen years, three months and twenty-five days), that is, for 195 completed months. Consequently, the Grand Chamber awards him EUR 29,250 in respect of social allowance.

An award for his son, Dem, is to be made for the period from 29 December 1997 until 19 October 2010, when Mr Berisha was granted a residence permit (twelve years, nine months and twenty-three days – 153 completed months); this amounts to EUR 12,240.

An award for his son, Egzon, is to be made for the period from 13 July 1999 until 19 October 2010 (eleven years, three months and ten days – 135 completed months); this amounts to EUR 10,800.

An award for his daughter, Egzona, is to be made for the period from 29 March 2001 until 19 October 2010 (nine years, six months and twenty-three days; 114 completed months); this amounts to EUR 9,120.

An award for his son, Haxhi, is to be made for the period from 9 February 2003 until 19 October 2010 (seven years, eight months and eleven days – ninety-two completed months); this amounts to EUR 7,360.

An award for his son, Valon, is to be made for the period from 28 July 2006 until 19 October 2010 (four years, two months and twenty-three days – fifty completed months); this amounts to EUR 4,000.

Consequently, the Grand Chamber awards Mr Berisha a total of EUR 72,770 in respect of pecuniary damage.

(v) Mr Ilfan Sadik Ademi

114. Mr Ademi had no legal status from 28 June 1994 until 20 April 2011 (sixteen years, nine months and twenty-six days), that is, for 201 completed months.

Consequently, the Grand Chamber awards him EUR 30,150.

(vi) Mr Zoran Minić

115. Mr Minić had no legal status from 28 June 1994 until 4 May 2011 (sixteen years, ten months and ten days), that is, for 202 completed months.

Consequently, the Grand Chamber awards him EUR 30,300.

B. Costs and expenses

1. The applicants' submissions

(a) Domestic administrative proceedings

116. The applicants sought the reimbursement of the costs incurred in the domestic administrative proceedings, in relation both to permanent residence permits and to citizenship. This amount should consist of the actual costs known to the Government or, failing that, a lump sum of EUR 200 per applicant. The applicants themselves were no longer in possession of proof of payment.

(b) Proceedings before the Court

117. Lastly, the applicants sought full reimbursement, amounting to EUR 11,190.00, plus value-added tax (VAT) and additional taxes (EUR 14,081.49), of the costs and expenses reasonably incurred in the proceedings before the Grand Chamber after the delivery of the principal judgment. They observed that given the exceptional circumstances of the case and the applicants' extremely poor living conditions, their representatives had agreed to provide legal services without requiring the

applicants to bear any financial burden in advance, and had reserved their right to seek reimbursement directly before the Court from the Government (referring to *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 412-14, ECHR 2011).

2. The Government's submissions

(a) Domestic administrative proceedings

118. The Government accepted that the applicants had had to pay costs in the administrative proceedings under the Legal Status and amended Legal Status Acts and were entitled to their reimbursement if they had actually paid them. They contested the lump sum of EUR 200 per applicant.

However, the applicants were not entitled to reimbursement of the costs incurred in the administrative proceedings relating to citizenship. There was no causal link between the costs incurred in applying for citizenship and the breaches of the Convention that had been found.

119. On the basis of the material at the Government's disposal, four of the applicants were entitled to the reimbursement of the costs that had actually been incurred in the domestic administrative proceedings relating to permanent residence permits.

120. In particular, Ms Mezga was entitled to EUR 29.47, Mr Ristanović to EUR 79.87, Mr Ademi to EUR 86.77 and Mr Minić to EUR 143.31.

(b) Proceedings before the Court

121. The Government disputed the additional amount claimed by the applicants in respect of costs and expenses for the proceedings before the Court. The Attorney's Fee Act (*Zakon o odvetniški tarifi*, Official Gazette no. 67/08), which was applicable in Slovenia to proceedings before the Court, provided that a representative was entitled to an amount between EUR 500 and EUR 1,500.

122. The part of the claim relating to VAT was also questionable. The invoice from the applicants' representatives dated 31 July 2012, when the Republic of Slovenia had paid the compensation for non-pecuniary damage, indicated that there was no obligation to pay VAT but only a 4% tax to the Lawyers' Pension Fund (CPA). Therefore, the applicants' representatives were not entitled to costs in respect of VAT.

3. The Court's decision

(a) Domestic administrative proceedings

123. As to the applicants' claims for the costs incurred in the domestic administrative proceedings, the Grand Chamber notes that the applicants relied on the information at the Government's disposal as to the costs

actually incurred. In the alternative, they claimed a lump sum of EUR 200 per applicant.

124. The Grand Chamber notes that in their most recent submissions the Government provided precise figures as to the costs actually incurred by four of the applicants in the proceedings following their application for permanent residence permits. Consequently, it awards EUR 29.47 to Ms Mezga, EUR 79.87 to Mr Ristanović, EUR 86.77 to Mr Ademi and EUR 143.31 to Mr Minić under this head. Moreover, the Grand Chamber rejects the claims relating to citizenship proceedings on the grounds that the latter were not brought to prevent or redress the violations of the Convention which it has found.

125. In sum, the Grand Chamber awards EUR 339.42 for the costs incurred in the domestic administrative proceedings to Ms Mezga, Mr Ristanović, Mr Ademi and Mr Minić.

(b) Proceedings before the Court

126. The Grand Chamber observes that in the principal judgment the applicants were awarded an overall sum of EUR 30,000 in respect of the costs and expenses incurred up to that stage of the proceedings before the Court (see point 11 of the operative provisions and paragraph 427 of the principal judgment).

127. As to the issue of VAT raised by the Government, the Grand Chamber reiterates that, if necessary, the Court makes awards in respect of costs and expenses with a view to reimbursing the sums which the applicants have had to incur in seeking to prevent a violation, to have it established by the Court and (if need be) to obtain just satisfaction – following a judgment in their favour – either from the competent national authorities or, where appropriate, from the Court (see *Neumeister v. Austria* (Article 50), 7 May 1974, § 43, Series A no. 17; *König v. Germany* (Article 50), 10 March 1980, § 20, Series A no. 36; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 284, ECHR 2006-V). Such costs and expenses are frequently subject to tax; for example, the majority of the High Contracting Parties levy VAT on certain goods and services. Where the services of lawyers, translators and other professionals are concerned, although the tax is paid to the State by these professionals, it is nevertheless billed to the applicants and is ultimately payable by them. Applicants should be protected against this additional charge. For this reason alone, in the operative provisions of its judgments the Court directs that any tax that may be chargeable to the applicant is to be added to the sums awarded in respect of costs and expenses (see *Association Les Témoins de Jéhovah v. France* (just satisfaction), no. 8916/05, § 37, 5 July 2012).

128. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum (see, for example, *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 94, ECHR 2013).

129. In the present case, regard being had to the documents in its possession and the above criteria, the Grand Chamber considers it reasonable to award EUR 5,000 under this head to the applicants jointly for the proceedings after the delivery of the principal judgment.

C. Default interest

130. 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.

II. ARTICLE 46 OF THE CONVENTION

131. The relevant parts of Article 46 of the Convention provide:

> "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.
>
> ..."

A. General principles

132. The Grand Chamber reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicants which the Court has found to be violated. Such measures must also be taken in respect of other persons in the applicants' position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Lukenda*, cited above, § 94; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008). This obligation has been consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, for instance, Interim Resolutions DH(97)336 in cases concerning the length of proceedings in Italy; DH(99)434 in cases concerning the action of the security forces in Turkey; ResDH(2001)65 in the case of *Scozzari and Giunta v. Italy*; and ResDH(2007)75 in cases concerning the length of detention on remand in Poland).

133. In order to facilitate effective implementation of its judgments along these lines, the Court may adopt a pilot-judgment procedure allowing

it to clearly identify in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 189-94 and the operative provisions, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 231-39, ECHR 2006-VIII). This adjudicative approach is, however, pursued with due respect for the Convention institutions' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see, *mutatis mutandis*, *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 42, ECHR 2005-IX, and *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 42, 28 April 2008).

134. Another important aim of the pilot-judgment procedure is to allow the speediest possible redress to be granted at domestic level to the large number of people suffering from the general problem identified in the pilot judgment, thus implementing the principle of subsidiarity which underpins the Convention system (see *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 127 and 142, ECHR 2009, and *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, § 108, ECHR 2010). It may thus be decided in the pilot judgment that the proceedings in all cases stemming from the same problem should be adjourned, pending the implementation of the relevant measures by the respondent State.

135. Furthermore, it cannot be ruled out that even before any – or any adequate – general measures have been adopted by the respondent State in the execution of a pilot judgment on the merits (Article 46 of the Convention), the Court might give a judgment striking out the "pilot" application on the basis of a friendly settlement (Articles 37 § 1 (b) and 39) or awarding just satisfaction to the applicant (Article 41 – see *Broniowski* (friendly settlement), cited above, § 36, and *Hutten-Czapska* (friendly settlement), cited above, § 34).

136. If, however, the respondent State delays the implementation of general measures beyond a reasonable time (see *Broniowski* (merits), cited above, § 198), leaves the problem unresolved and continues to violate the Convention, the Court will have no choice but to resume examination of all similar applications pending before it and to take them to judgment in order to trigger the execution process before the Committee of Ministers and to ensure the observance of the Convention at domestic level (see, *mutatis mutandis*, *E.G. v. Poland and 175 other Bug River applications* (dec.), no. 50425/99, § 28, ECHR 2008).

B. The Court's assessment

137. The Grand Chamber observes that in the principal judgment in the present case, it decided to apply the pilot-judgment procedure under

Article 46 of the Convention and Rule 61 of the Rules of Court and ordered the respondent State, as a general measure, to set up an *ad hoc* domestic compensation scheme within one year of the delivery of the present judgment – that is, no later than 26 June 2013 – in order to secure proper redress to the "erased" at national level (see paragraph 7 above, and point 9 of the operative provisions and paragraph 415 of the principal judgment).

138. It notes that the Government had failed to set up an *ad hoc* domestic compensation scheme by 26 June 2013, when the one-year period referred to in the principal judgment expired. However, it was not disputed by the Government that general measures at national level were called for in order to ensure the proper execution of the judgment in *Kurić and Others* (*v. Slovenia* [GC], no. 26828/06, ECHR 2012), extending beyond the sole interests of the individual applicants and necessary in the interests of other potentially affected "erased" persons (see paragraph 6 above, and paragraphs 29, 408, 409 and 412 of the principal judgment).

139. In this context, the Grand Chamber has due regard to the fact that on 25 July 2013 the Government sent a bill on the setting-up of an *ad hoc* compensation scheme to Parliament. It was passed on 21 November 2013, with some amendments. The resulting Act was published in the Official Gazette on 3 December 2013 and came into force on 18 December 2013. It will become applicable on 18 June 2014 (see paragraph 20 above).

140. This statute will introduce compensation on the basis of a lump sum for each month of the "erasure" and the possibility of claiming additional compensation under the general rules of the Code of Obligations (see paragraphs 20-27 above). In the exceptional circumstances of the present case, the basic solution of awarding a lump sum in respect of the non-pecuniary and pecuniary damage sustained by the "erased" – which is the approach taken by the Grand Chamber in respect of pecuniary damage in the present judgment (see paragraphs 106-09 above) and in respect of non-pecuniary damage in the principal judgment (see paragraph 425 thereof) – appears to be appropriate.

141. The Grand Chamber observes in this connection that according to the principle of subsidiarity and the margin of appreciation which goes with it, the amounts of compensation awarded at national level to other adversely affected persons in the context of general measures under Article 46 of the Convention are at the discretion of the respondent State, provided that they are compatible with the Court's judgment ordering those measures (see, *mutatis mutandis*, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 88, ECHR 2009).

142. By virtue of Article 46 of the Convention, it will be for the Committee of Ministers to evaluate the general measures adopted by the respondent State and their implementation as far as the supervision of the execution of the Court's principal judgment is concerned. The Court has consistently ruled that it does not have jurisdiction to verify, by reference to

Article 46, whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments unless Article 46 § 4 of the Convention, as it stands since the entry into force of Protocol No. 14, applies (see *Hutten-Czapska* (friendly settlement), cited above, § 43; *Akdivar and Others v. Turkey* (Article 50), 1 April 1998, § 44, *Reports of Judgments and Decisions* 1998-II; *Verein gegen Tierfabriken Schweiz (VgT)*, cited above, §§ 83-90; and *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, nos. 41561/07 and 20972/08, § 66, 18 October 2011).

143. Lastly, as to the Court's docket, although at the time of the adoption of the principal judgment only a few similar applications lodged by "erased" persons were pending before the Court, the Grand Chamber emphasised that, in the context of systemic, structural or similar violations, the potential inflow of future cases was also an important consideration in terms of preventing the accumulation of repetitive cases and decided that the examination of other similar applications should be adjourned pending the adoption of the remedial measures in issue (see paragraph 9 above and 415 of the principal judgment).

144. In this connection, the Grand Chamber notes that there are currently some sixty-five cases lodged by "erased" persons pending before the Court, involving more than 1,000 applicants. Swift implementation of the judgment in *Kurić and Others* is therefore of the utmost importance (see, *mutatis mutandis*, *Greens and M.T.*, cited above, § 111).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds*

(a) that the respondent State is to pay the applicants, within three months, the following amounts:

(i) EUR 29,400 (twenty-nine thousand four hundred euros) to Mr Kurić, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 52,240 (fifty-two thousand two hundred and forty euros) to Ms Mezga, plus any tax that may be chargeable, in respect of pecuniary damage;

(iii) EUR 30,000 (thirty thousand euros) to Mr Ristanović, plus any tax that may be chargeable, in respect of pecuniary damage;

(iv) EUR 72,770 (seventy-two thousand seven hundred and seventy euros) to Mr Berisha, plus any tax that may be chargeable, in respect of pecuniary damage;

(v) EUR 30,150 (thirty thousand one hundred and fifty euros) to Mr Ademi, plus any tax that may be chargeable, in respect of pecuniary damage;
(vi) EUR 30,300 (thirty thousand three hundred euros) to Mr Minić, plus any tax that may be chargeable, in respect of pecuniary damage;
(vii) EUR 339.42 (three hundred and thirty-nine euros and forty-two cents) to Ms Mezga, Mr Ristanović, Mr Ademi and Mr Minić collectively, to be divided as indicated in paragraph 124 above, plus any tax that may be chargeable to the applicants, in respect of costs and expenses incurred in the domestic administrative proceedings;
(viii) EUR 5,000 (five thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses in proceedings before the Court;

(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;

2. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English and in French, and notified in writing on 12 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle
Deputy Registrar

Dean Spielmann
President