CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 60723/00
by Ismet KUDUZOVIĆ
against Slovenia

The European Court of Human Rights (Third Section), sitting on 17 March 2005 as a Chamber composed of:

Mr J. HEDIGAN, *President*,
Mr B.M. ZUPANČIČ,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Ms R. JAEGER,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 6 July 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ismet Kuduzović, is a Bosnian national, who was born in 1966 and lives in Šoštanj, Slovenia. He is represented before the Court by the Verstovšek law office from Celje.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 14 February 1987 the applicant, a mine worker of Bosnian citizenship who has lived on the territory of Slovenia since 1984, had a work-related accident while working for »Rudnik lignita Velenje«, a mining enterprise.

On 10 March 1992 the Pension and Disability Fund of Slovenia granted the applicant the status of partial ("third-degree") disability, including the right to a reduced workload.

In 1991, after Slovenia became an independent state, the applicant did not obtain Slovenian citizenship because, as he claims, he lived in a bachelor's home and did not, therefore, satisfy the statutory condition of "permanent residence". He thus became an alien and lodged a request to obtain a work permit, which was issued for the period of one year, expiring on 8 October 1993.

On 21 September 1993 the »Rudnik lignita Velenje« enterprise terminated the applicant's contract of employment on the ground that his work permit was about to expire. The termination was to take effect on 8 October 1993.

On 6 October 1993 the applicant lodged an objection with the appellate authority of the enterprise, claiming that the enterprise could not dismiss him because he was a disabled worker with the right to a reduced workload. The objection was rejected on 18 November 1993.

On 17 December 1993 the applicant instituted proceedings at the Celje Employment Tribunal, arguing that the legislation on the protection of disabled workers should have precedence over the legislation governing the employment of aliens.

On 14 March 1994 the Tribunal held a hearing and adopted a decision on the same day, rejecting the applicant's claim on the ground that his employment contract had been terminated *ex lege*, as provided by the Aliens Employment Act 1992 in force at the material time. The Tribunal stated that the Act did not provide for any exception for disabled persons, nor did it require an employer to obtain a work permit for disabled persons.

On 30 March 1994 the applicant lodged an appeal against the first-instance decision, but on 1 June 1995 the Higher Labour and Social Court rejected the appeal.

On 24 July 1995 the applicant lodged an appeal on points of law, which was rejected by the Supreme Court on 28 May 1996. The Supreme Court held that the Aliens Employment Act 1992 was adopted later (*lex posterior*) and governed a more specific subject-matter (*lex specialis*) than the Basic Rights of Employees Act 1989, which regulates the protection of disabled workers. The applicant's employment had accordingly been lawfully terminated.

On 2 August 1996, the applicant lodged a constitutional appeal with the Constitutional Court. The constitutional appeal was declared admissible on 23 June 1999 but was rejected on the merits on 20 January 2000. The Constitutional Court found that the interpretation of the legislation adopted

by the Supreme Court did not infringe the applicant's human rights and fundamental freedoms ("fourth-instance"). One judge wrote a dissenting opinion.

Further to two separate requests in April and July 2004, the applicant's lawyer informed the Court in December 2004 that the applicant and his two children had acquired the Slovenian citizenship on 29 April 2002 by virtue of a decision issued by the Ministry of Interior. It could also be understood from the lawyer's submissions that the applicant had been working on a temporary basis for different companies, including for the Velenje mining enterprise since the beginning of the nineties.

B. Relevant domestic law and practice

1. *The Aliens Employment Act 1992 (*Zakon o zaposlovanju tujcev*, Official Journal of the Republic of Slovenia, no. 33/92)*

Section 3

"An employer may not enter into an employment relation or a work contract with an alien who does not have a work permit ...

A contract of employment or a work contract concluded with an alien who does not have a work permit is void."

Section 16

"An alien's employment relation with his employer is terminated if the work permit expires ... or if it is revoked ..., on the expiry date or on the date when the revocation decision becomes final respectively."

2. *The Basic Rights of Employees Act 1989 (*Zakon o temeljnih pravicah iz delovnega razmerja, *Official Journal of the Socialist Federal Republic of Yugoslavia, no. 60/89 et seq.)*

Section 48

"A disabled worker has the right to be transferred to an appropriate post with due regard to his remaining capacity to work, the right to retraining or additional training, the right to be transferred to a post appropriate to his skills, and the right to appropriate wage compensation related to the exercise of these rights according to the legislation on retirement and disability insurance.

...

In all cases mentioned in the first ... paragraph of this section the organisation or the employer must provide the worker a post appropriate to his skills, under conditions and in the manner provided by an internal act or a collective agreement in accordance with the law."

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that he was denied the right to a fair trial in his proceedings before Slovenian courts because their interpretation and application of law was unfair and discriminatory. He claims, in particular, that the legislation regulating the protection of disabled workers should take precedence over the legislation regulating the employment of aliens. He further complained that his employment was terminated merely because of his status as an alien and that social rights cannot depend on citizenship.

2. The applicant also alleged discrimination on the basis of nationality and invoked Article 14 of the Convention. He submitted that the conditions for obtaining Slovenian citizenship were unduly restrictive, as he would have satisfied the statutory conditions for obtaining citizenship if had not lived in a bachelor's home, and that, moreover, he would have kept his job as a partly-disabled worker if he had Slovenian citizenship.

THE LAW

1. The applicant alleged a violation of the right to a fair trial and invokes Article 6 of the Convention, the pertinent part of which is worded as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

The Court firstly reiterates that according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is the national authorities, in particular courts and tribunals, that are charged with interpreting the internal law of a contracting party (see, *inter alia*, *Houfova v. Czech Republic* (partial dec.), no. 58177/00, 1 July 2003).

The Court notes that the applicant had the benefit of adversarial proceedings. He was able to avail himself of all legal remedies available under domestic law, including an appeal on points of law to the Supreme Court and a constitutional appeal to the Constitutional Court. He was represented during all stages of the proceedings by a law office and did not adduce any evidence of lack of impartiality of judges deciding his case. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. Moreover, there is no indication that the

conclusion of the national authorities was arbitrary or contrary to the provisions of national law applied by them.

In the light of the foregoing considerations, it follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

2. The applicant alleges discrimination on the basis of nationality and invokes Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court firstly notes that, to the extent that the complaint relates to events before 28 June 1994, the date when the Convention entered into force with respect to Slovenia, it falls outside its jurisdiction *ratione temporis*.

In so far as the applicant's complaint may be understood to concern the denial of citizenship, the Court recalls that the right to citizenship is not as such guaranteed by the Convention or its Protocols, although the Court does not exclude that an arbitrary denial of a citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see, *inter alia*, *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II). However, despite two separate requests, the applicant's lawyer submitted only the Ministry of Interior's decision of 29 April 2002 awarding the Slovenian citizenship to the applicant and his two children. The Court therefore concludes that the applicant can no longer claim to be a victim of the alleged violation.

It follows that this part of the application must be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER Registrar	John HEDIGAN President