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

THIRD SECTION

DECISION

Application no. 17268/23
Miloš MIHAJLOVIĆ
against Slovenia

The European Court of Human Rights (Third Section), sitting on 17 March 2026 as a Committee composed of:

Lətif Hüseynov*, President*,
Canòlic Mingorance Cairat,
Vasilka Sancin*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 17268/23) 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") on 21 April 2023 by a national of Bosnia and Herzegovina, Mr Miloš Mihajlović ("the applicant"), who was born in 1961 and lives in Bled, and was represented by Odvetniška družba Čeferin in partnerji, a law firm from Grosuplje;

the decision to give notice of the application to the Slovenian Government ("the Government"), represented by their Agent, Mrs V. Klemenc, Senior State Attorney;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

A. The "erasure" of the applicant's name from the Register of Permanent Residents and related general legal context

1. The applicant was a former national of the Socialist Federal Republic of Yugoslavia with permanent residence in Slovenia. His name was deleted from the Register of Permanent Residents on 26 February 1992 on the basis of legislation adopted by Slovenia until 11 June 2002, when he obtained a permanent residence in Slovenia.

2. The Court examined the "erasure" of such former permanent residents in Slovenia in the pilot case of *Kurić and Others v. Slovenia* [GC], no. 26828/06, ECHR 2012 (extracts). In that case the Grand Chamber held that there had been a violation of the applicants' rights as guaranteed by Articles 8, 13 and 14 of the Convention. For more details regarding the general context, see *Kurić and Others* (cited above, §§ 16-83) and *Anastasov and Others v. Slovenia* ((dec.), no. 65020/13, §§ 6-10, 18 October 2016).

3. On 21 November 2013 the Act on Compensation for Damage to Persons Erased from the Register of Permanent Residents (*Zakon o povračilu škode osebam, ki so bile izbrisane iz registra stalnega prebivalstva, ZPŠOIRSP*) ("the 'Erased' Compensation Act") was enacted. The "Erased" Compensation Act sets out an *ad hoc* compensation scheme for the "erased", providing for financial compensation and other forms of redress, and specifies the procedure to be followed. The compensation was to be claimed in administrative proceedings and calculated on the basis of a lump sum of 50 euros (EUR) for each completed month of "erasure". Should the "erased" consider that they are entitled to additional compensation, they may lodge a claim under the general rules of the Code of Obligations (*Obligacijski zakonik*, Official Gazette no. 83/2001) in the judicial proceedings (see *Anastasov and Others*, cited above, §§ 13-19 and 38-44)

4. On 25 May 2016 the Committee of Ministers of the Council of Europe adopted Resolution CM/ResDH (2016)112 in the pilot case of *Kurić and Others* under the terms of Article 46 § 2 of the Convention. After satisfying itself that both the general and individual measures required by Article 46 § 1 had been adopted by the respondent State, the Committee of Ministers declared that it had exercised its functions under Article 46 § 2 and decided to close its examination of the case (see *Anastasov and Others,* cited above, §§ 25-32)

B. The relevant domestic proceedings instituted by the applicant

5. On 19 March 2009 the Ministry of the Interior granted the applicant *ex tunc* permanent residence from the date of his "erasure" until the date when he had obtained permanent residence in Slovenia.

6. The applicant lodged a civil claim on 20 April 2017 with the Ljubljana District Court, seeking compensation for the damage he had suffered because of the "erasure". He claimed EUR 18,000 in respect of non-pecuniary damage and EUR 120,000 in respect of pecuniary damage. In support of his claim in respect of pecuniary damage for loss of income, the applicant stated that he had lost his job and had been unable to obtain new employment on account of his unregularised status. In addition, he alleged that he had lost earnings because he had no longer been able to perform his part-time job (as a taxi driver). In this connection he requested the appointment of a financial expert witness to assess the income of taxi drivers at the relevant time.

7. On 5 June 2019 the applicant amended his claim, increasing the amount of the claim in respect of non-pecuniary damage to EUR 40,000.

8. On 18 October 2019 the Ljubljana District Court held a hearing in which it pointed out to the applicant that the part of the claim related to his work as a taxi driver was unspecified. The applicant was questioned at the hearing and stated, *inter alia*, that since the "erasure", he had not been working because he was mentally incapable of doing so.

9. On 11 September 2020 the Ljubljana District Court delivered a judgment, awarding the applicant compensation in respect of non-pecuniary damage in the amount of EUR 11,070, with statutory default interest from 19 April 2017 onwards. It rejected the remaining part of the applicant's claim.

10. The court based its decision on the relevant documentary evidence, the opinion of the appointed medical expert witness and the testimonies of witnesses and the applicant. It dismissed, *inter alia*, the proposal for the appointment of a financial expert witness, noting that the applicant had failed to establish the basis of his claim or provide evidence of his earnings prior to the "erasure", rendering the proposed expert evidence unnecessary.

11. In its judgment, the Ljubljana District Court emphasised that in cases concerning "erasure", both the unlawfulness of the conduct and the defendant's fault were to be presumed. However, the burden of putting forward the grounds and the evidence (*trditveno in dokazno breme*) in respect of the damage and the causal link between the damage suffered and the "erasure" remained to be placed on the plaintiff.

12. With regard to the applicant's claim for compensation for loss of income, the Ljubljana District Court found that while the applicant had initially lost his employment on account of the "erasure", he had been issued a personal work permit on 12 January 1993, which was valid indefinitely. He did not claim that he had tried to find new employment and had been rejected for being "erased". It further observed that the applicant had not formulated his claim for compensation on the ground that he had been unable to work because of the psychological effects of the erasure. In view of the foregoing and the fact that the applicant remained unemployed for over 13 years after his status had been regularised, the court concluded that he had not proven a causal link between the "erasure" and his unemployment.

13. Similarly, the Ljubljana District Court found that the applicant had failed to prove that he could no longer have worked as a taxi driver on account of the "erasure" and had not provided sufficient factual basis regarding the amount of his earnings before the "erasure".

14. By a judgment of 2 April 2021, the Ljubljana Higher Court dismissed the applicant's appeal, finding, *inter alia*, that there had been no causal link between the "erasure" and the pecuniary damage claimed by the applicant.

15. Following an unsuccessful application to appeal on points of law, the applicant lodged a constitutional complaint on 4 July 2022. The

Constitutional Court decided not to accept the constitutional complaint for consideration on 30 December 2022.

16. The applicant complained under Article 6 of the Convention, and in substance under Article 13 taken together with Article 8 of the Convention, that the domestic courts had arbitrarily denied the existence of a causal link between the "erasure" and the pecuniary damage alleged. He further complained that the first-instance court had unjustly refused his request to appoint a financial expert to assess his loss of income.

THE COURT'S ASSESSMENT

17. The application concerns a question of adequacy of compensation paid to the applicant who was "erased" from the Register of Permanent Residents on 26 February 1992 (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 341-62 and 393-96, ECHR 2012 (extracts), where a violation of Articles 8 and 14 of the Convention was found because of the applicants' "erasure").

18. The Court would emphasise that the respondent State is under an obligation to provide adequate redress at national level to the "erased" for the violations suffered (see *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, §§ 79 and 137, ECHR 2014, and *Anastasov and Others v. Slovenia* ((dec.), no. 65020/13, § 103, 18 October 2016). In determining whether the plaintiffs have discharged their burden of proof, the domestic courts must thus take into account the particular difficulty in proving the pecuniary damage incurred by the "erased", owing to the inherently uncertain character of its consequences and the lapse of time since it took place (see *Kurić and Others* (just satisfaction), cited above, §§ 87-88). Nevertheless, the plaintiffs are also required to act diligently in domestic proceedings and to adequately raise before the domestic courts the same legal arguments which they subsequently make to the Court (see, *mutatis mutandis*, *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, §§ 171-72, 1 June 2023).

19. The Court observes that the Government contested the admissibility of the application for failure to comply with the requirement to exhaust domestic remedies and for abuse of the right of application. However, the Court considers that it is not necessary to deal with the Government's objections because the application is in any event inadmissible for the reasons laid out below.

20. In the present case the domestic courts awarded the applicant non-pecuniary compensation, but dismissed the pecuniary damage alleged, as they had found no causal link between it and the applicant's "erasure" from the Register of Permanent Residents (see paragraphs 9-14 above).

21. The Court notes that the applicant enjoyed the right to adversarial proceedings, in which he was represented by a lawyer, and was able to put forward all the arguments he considered relevant, at several levels of

jurisdiction. Furthermore, the Ljubljana District Court carried out an assessment of the evidence in the light of all the facts of the case before it and gave adequate reasons for the decision it reached. The domestic courts' finding that the applicant did not satisfy the burden of presenting the grounds and the evidence to substantiate his claim (see paragraphs 12-13 above) does not appear arbitrary or manifestly unreasonable (see *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017, and *Semenya v. Switzerland* [GC], no. 10934/21, § 193, 10 July 2025). The rules of burden of proof are primarily matters for regulation by national law and the national courts (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 131, 1 June 2023).

22. Having regard to its subsidiary role, the Court sees no reasons to depart from the conclusion reached by the domestic courts, which cannot be considered arbitrary or as imposing an excessive burden on the applicant. It therefore finds no reason to consider that the remedies available to the applicant to enforce the substance of his right protected by Article 8 were ineffective. It reiterates in this connection that "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 157, ECHR 2006-IX).

23. In so far as the applicant complained under Article 6 § 1 of the Convention about the first-instance court's refusal to appoint a financial expert witness, the Court notes that the Ljubljana District Court gave sufficient grounds for its decision, which the Court does not consider unreasonable (see paragraph 10 above). Furthermore, as mentioned above, the applicant was able to fully participate in the domestic proceedings and did not show in the proceedings before the Court that the domestic proceedings in question had fallen short of the requirements of Article 6 § 1.

24. Having due regard to the facts above and to the reasons adduced by the domestic courts, the Court finds no reason to doubt that the domestic proceedings as a whole were fair and that the applicant had at his disposal an "effective" remedy capable of directly providing redress for his complaint under Article 8. It concludes that the applicant's complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 April 2026.

Olga Chernishova Deputy Registrar	Lətif Hüseynov President