Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

58.

On 12 Aug 2015, the applicant made an oral request to the Administrative Unit Maribor for information relating to him. The officer gave him a printout (p. 14) disclosing:
- that he made a violation (misdemeanor) on 2010 in violation of Article 22 of Act on misdemeanors (ZP-1-UPB4)
- that the Local Court Ptuj issued a judgment number EPVD
- that the judgment of the Local Court Ptuj became final on .
- that the sanction was "Termination of the driver's license" ("Prenehanje veljavnosti VD")
- that the sanction was issued for "Entire drovers license, class B" ("Celotno VD, B")
- that the sanction started on 2010, lasts 6 months, valid until 2011.
- that current status of the applicant's drivers license is "Invalid" ("Neveljavno")

On 18 Aug 2015, he requested that the Ministry of Infrastructure, which manages the database, erases all the data listed above except for the information that his driver's license is invalid (p. 15).

He explained that any person has a right to have their criminal record and misdemeanor record erased. He referred to Art 82 of the Penal Code (KZ-1, previously Article 103 KZ). He explained that all the misdemeanor data should be deleted after three years. He explained that if some data is not deleted, the authorities should not consider it in decision-making, and he referred to the Constitutional Court decision Up-970/06, para 7. He explained that more than three years have passed since his sanction had expired. He wrote that this data should be erased, and if not erased, it should not produce any legal consequences. If the data are not erased or if they still produce legal effects, they may stay in databases and produce legal effects indefinitely. This would make the effects heavier than are the effects of most severe crimes. He referred to Art 8 ECHR, to Constitutional Court case law, and British case law (pp. 15-16).

On 16 Sep 2015, the Ministry rejected the request (p. 17). It did not respond to any of the applicant's arguments, the Constitution, or ECHR. It referred to legislation, which allows the Ministry to manage databases of the traffic violations history.

On 29 Oct 2015, the applicant filed a lawsuit at the Administrative Court (p. 20). He referred to Art. 8 ECHR, Art. 38 of the Constitution, Art. 16 of the Treaty of the functioning of the EU, Art. 8 of the EU Charter of fundamental rights, Art. 13 of the Directive EU 95/46/EC, ECHR judgment M.M. v UK, 24029/07, of 13 Nov 2012, and some other ECHR judgments, and Council of Europe documents (pp. 20-25).

On 12 Apr 2017, the Administrative Court issued a judgment rejecting the lawsuit and confirming the Ministry's decision (p. 26). The court explained what the legislation on keeping the traffic violation history says. It explained that legislation pursues the aim of "increasing the safety of the road traffic and lowering the number of traffic accidents with most severe consequences". According to the court, to achieve the same aim, the legislation plans resocialization of a person whose driver's license is terminated. One of the measures is also the management of databases on drivers licenses, which include "notes and limitations" ("zaznamki in omejitve") (see p. 30, judgment para 9).

The court wrote that the constitutional right to privacy "is not unlimited, and it is not absolute" ("ni neomejena, ni absolutna") (see p 30, judgment para 12). It wrote that the legitimate aim of the concerned data retention is "increasing the road traffic safety" (p 31, judgment para 13). The court concluded that the measures taken are necessary and proportional.

The court only discussed the retention of data as a whole, not each specific information such as violation date, judgment's number and date, type of violation, etc. The court did not evaluate whether each of these data serves a legitimate aim and is necessary. The court also did not assess the proportionality of indefinite or permanent data retention, or the proportionality of indefinite or permanent legal effect of the data.

Statement of the facts (continued)

59.

The court confirmed that the data should produce effect even if many years have passed (see p 32, judgment para 18). The court wrote that abuse of rights could not enjoy legal protection (see pp 32-33, judgment para 19). The court did not discuss the ECHR case law or other international documents to which the applicant referred.

On 25 May 2017, the applicant appealed to the Supreme Court (p. 34). He stated that this case is about an important legal question: "Can the authorities retain sensitive personal data about misdemeanors indefinitely-permanently?"

In his appeal, he again claimed that indefinite or permanent data retention violated his privacy rights. He again claimed that data should not have any effect after some time limit. He insisted that there should be a time limit to data retention and the impact of the data. He again referred to ECHR case law M.M v. UK, and he referred to Surikov v Ukraine, 42788/06, of 26 Jan 2017. He explained that permanent data retention does not pass any step of the proportionality test.

On 8 Nov 2017, the Supreme Court rejected the appeal (p. 40). The court applied proportionality test to the wrong data: while the applicant explicitly stated that his request for erasure does not apply to the information that he does not hold a valid license, but to other retained data, the court evaluated whether the deletion of the information that he does not have a valid license would be proportional. The court concluded that this data (data on whether he holds a valid permit) should be retained.

The Supreme Court wrongly stated that the authorities do not retain the data on whether the applicant had been driving under the influence of alcohol or not. The court wrote that the document in possession of authorities does not disclose any information on whether alcohol was involved. The court was wrong. The document (the certificate) clearly refers to legislative provisions, which apply to alcohol-related violations only. At that time a sanction listed in the certificate could be assigned for alcohol-related violations. The certificate also includes the number of the judgment ("Okrajno sodišče Ptuj, EPVD 68/2010"), and the day of the violation, and all judgments are public records and anyone who has the number of the judgment, has access to the text of the judgment.

On 22 Jan 2018, the applicant filed a constitutional appeal (p. 50). He again referred to the ECHR case law, and claimed violation of his privacy rights. He claimed that his rights under ECHR are violated because, firstly, his private data is still retained, secondly, his private data is accessible to others, and thirdly, this data still produces legal effects (if he wishes to replace a foreign license with a Slovenian license, for example; or, if he wishes to apply for a new license, different rules apply to him than to other applicants despite the fact that many years have passed since he made a misdemeanor). He also asked the Constitutional Court to review the constitutionality of the legislation, which permits data retention.

On 9 Sep 2019, the Constitutional Court rejected the constitutional appeal (p. 58) without explanation, referring only to Article 55.b of the Act on Constitutional Court. Constitutional Court stated that it would not consider the request for the review of constitutionality of the legislation because the applicant requested this review "subordinately" ("podrejeno"). The court's conclusion makes no sense. Never had applicant requested the review "subordinately". It seems like the court just tried to evade to review the constitutionality.

In Slovenia, crime convictions are erased from the records after certain time, depending on the severity of crimes. Even severe crimes are erased. Misdemeanors are erased after three years. The only exception seem to be the crimes of genocide and war crimes, and the misdemeanor of drunk driving.

In Slovenia, there is no system in place for review of the necessity of data retention, or of the proportionality of data retention in individual cases. There is no system in place for review of necessity and proportionality after certain period of time. There is no system of review whether data retention is still justified and necessary.

Statement of the facts (continued)

60.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked	Explanation
Article 8	Relying on Article 8 (right to respect for private and family life), the applicant complains about the authorities retaining his data indefinitely and without any possibility of meaningful review. He complains that while data on other misdemeanors and felonies are erased after a certain time, and data about drunk driving is not erased, this is disproportionate and violates his rights. The case M.M. v UK dealt with the retention of criminal records. If the authorities keep records too long, this interferes with the applicant's rights (M.M. v UK, 24029/07, of 13 Nov 2012, see also Surikov v Ukraine, 42788/06, of 26 Jan 2017, see also Catt v UK, 43514/15, of 24 Jan 2019). Keeping records indefinitely and without a possibility of review of its necessity is a violation of rights, and especially so in a country where all other records are erased after several years. The ECHR found in Gaughran v. UK, 45245/15, of 12 Feb 2020, that the majority of member States had regimes that put a time-limit on retaining the data. The Court found that indefinite retention of data violated Article 8 rights. It also found that the lack of possibility of a meaningful review violated the Convention. Applicant's rights are violated because there is no existence and functioning of safeguards. The state has to ensure that certain safeguards are present and effective for the applicant (see Gaughran v UK). The state must provide a statutory process to have a conviction removed from records and data to be erased when they are no longer necessary to retain. Retained data without reference to the seriousness of the offense and without regard to any continuing need to keep that data indefinitely violates rights guaranteed by Article 8 (Gaughran v UK). When the applicant cannot request a review of the retention of his data, if conserving the data no longer appears necessary given the nature of his offense, his age, or the time that had elapsed and his current personality, rights are violated (Gaughran v UK). In such a regime, a state fails to strike a fair balance between the competing public and private interests (Gaughran v UK). In such circumstances, the State oversteps the acceptable margin of appreciation, and the retention constitutes a disproportionate interference with the applicant's right to respect for private life, which could not be regarded as necessary in a democratic society (Gaughran v UK). Slovenian laws dictate that misdemeanor records should be erased after three or four years, so not deleting them violated the applicant's rights (the first step of the proportionality test - the interference being "in accordance with the law"). He also complains that his data should not produce legal effects forever. The consequences of a misdemeanor should not last indefinitely, while those of other misdemeanors and crimes do not last indefinitely. After certain time, let's say five years, he should be able to obtain his driving license by a regular procedure and under regular conditions, just like those persons who have never had a misdemeanor. After certain time, he should be able to change his foreign license into a Slovenian one under the same conditions that apply to persons who had no misdemeanor.

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

62. Article invoked	Explanation
Article 8	The applicant obtained driving licenses in other countries in 2014, 2017, and 2019, but he still cannot remove the data about his old misdemeanor from the records in Slovenia, and cannot obtain Slovenian drivers license under conditions that apply to others. British courts have considered the matter of retention and disclosure of criminal records extensively. They found that data retention can last long for crimes, and for drunk driving when a driver causes a serious accident that results in a death or injury. For minor violations a record will be removed after 3 or 6 years. For example, "For individuals a period of 3 years should have elapsed before the conviction is filtered out." See "The retention and disclosure of criminal records", House of Commons Library, by Jacqueline Beard, Briefing Paper Number CBP6441, 17 May 2019.

G. Compliance with admisibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

63. Complaint	Information about remedies used and the date of the final decision
Article 8:	The applicant invoked the Article 8 complaint at the Administrative Court, Supreme Court, and Constitutional Court. He referred to the ECHR case law on all court levels. Six month time limit: the final decision at domestic level was the Constitutional Court decision dated 9 Sep 2019, postmarked and sent out of the Constitutional Court on 12 Sep 2019 (see envelope, attached p. 60). The envelope states that on 13 Sep 2019 a note about the court's mail was left in the mailbox for the applicant. This application is sent to the ECHR before the expiry of the six month time limit (before 13 Mar 2020). This proves that the applicant has complied with the six-month time-limit.