STATELESSNESS
Case Law Database

ECtHR - Hoti v. Croatia

A stateless person of Albanian origin, whose parents had been granted refugee status in the former SFRY, had lived in Croatia for nearly forty years, but his repeated attempts to regularise his residence were largely unsuccessful, apart from short term permits that were granted and withdrawn sporadically. The Court found that Croatia's failure to comply with its positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of his further stay and status in Croatia determined amounted to a violation of the right to private and family life under Article 8 ECHR. The Court determined that the applicant was stateless and emphasised that statelessness was a relevant factor towards establishing Croatia's violation of the ECHR.

Case status: Decided
Case number: 63311/14
Date of decision: 26/07/2018
State: Croatia
Court / UN Treaty Body: European Court of Human Rights (First Section)
Language(s) the decision is available in: English, Romanian
Applicant's country of residence: Croatia
Legal instruments: European Convention on Human Rights (ECHR)
Key aspects: Access to social and economic rights, Residence permit, Respect for private and family life, State succession
Relevant Legislative Provisions:

Articles 8, 8(1), 35, 35(1) and 35(3)(a)

Facts

The applicant was born in Kosovo which was part of the SFRY and moved to Croatia at the age of seventeen. In 1987 the applicant applied for a permanent residence and was provided with a temporary residence permit pending the decision regarding his permanent residence. The applicant had a certificate issued by the SRFY

authorities in Kosovo in 1988 stating that he had been an Albanian national. His application for permanent residence permit was refused based on the policy that Albanian refugees should apply for SRFY citizenship which was refused by the applicant due to disadvantages of it. In 1991, Croatia became independent and the applicant applied for Croatian citizenship which was supposed to be granted after the applicant renounces his Albanian citizenship. However, he was unable to obtain a certificate of renunciation of Albanian citizenship and thus, the Croatian authorities dismissed his citizenship application. In the meantime, his temporary residence permit has been extended on humanitarian ground but failed to provide a travel document and thus, the extension ceased which was appealed by the applicant. The applicant's temporary residence permit has been extended yearly. The Court found that Croatia's failure to provide stability of residence amounts to a violation of Art. 8 of the ECHR.

Legal arguments by the applicant

Paras 97 to 99: The applicant contended that he had been erased from the register of residence in Croatia. Thus, he had been denied Croatian citizenship as well as a legal status of residence in Croatia. The erasure from the residence register and the lack of personal documents had led to his loss of access to social and economic rights, such as the right to work, the right to health insurance and to pension benefits. If identified by the police, he could be subject to detention for up to eighteen months and possibly to deportation. The applicant also stressed that the Croatian authorities had failed to take any action to regularise the situation of the "erased". The erasure also caused the inability to obtain or renew any identity documents, a loss of job opportunities, a loss of health insurance, and difficulties in regulating pension rights.

Legal arguments by the opposing party

Paras 100 to 104: The applicant was not stateless but a citizen of Albania. In several documents issued by the SFRY authorities in Kosovo, the applicant had been considered an Albanian citizen. Furthermore, the applicant did not take any action to renounce his Albanian citizenship in order to obtain Croatian citizenship. The applicant was unable to regularise his status and to provide a travel document. In the Government's view, it was for the applicant, and not for the Croatian authorities, to renounce his citizenship or to show that he was stateless or to obtain a valid travel document from a country whose citizen he was. With regard to the situation in Croatia in general, the Government pointed out that there were not many stateless

persons in comparison to the number of stateless persons globally. According to the 2011 census of population, there were 749 stateless person and 2,137 persons with unknown citizenship living in Croatia. Moreover, the “erasure” of the former SFRY nationals with a registered domicile in Croatia had been impossible owing to the safeguards provided.

Decision & Reasoning

Para 115: Moreover, in the Court’s view, the applicant’s case should be distinguished from cases concerning “settled migrants” as this notion has been used in the Court’s case-law, namely, persons who had already been formally granted a right of residence in a host country and where a subsequent withdrawal of that right, with a possibility of expulsion, was found to constitute an interference with his or her right to respect for private and/or family life within the meaning of Article 8, which needed to be justified under the second paragraph of Article 8

Para 117: The applicant’s situation is rather a specific situation of a stateless migrant who complains that the uncertainty of his situation and the impossibility to regularise his residence status in Croatia following his almost forty-year, at times regular and constantly tolerated, stay in Croatia adversely affects his private life under Article 8 of the Convention. The instant case thus concerns the issues of the respect for the applicant’s private life and immigration lato sensu, both of which have to be understood in the context of the complex circumstances of the dissolution of the former SFRY.

Para 126: At the same time, the applicant’s residence status in Croatia is uncertain as it depends on one-year extensions of his residence permit on humanitarian grounds, dependent on him providing a valid travel document, a condition which the applicant considers impossible for him to meet as he is stateless, or obtaining the discretionary consent of the Ministry for his stay, which has not been exercised consistently (see paragraphs 49 and 55-56 above). Moreover, although nominally available to him, the applicant’s prospect of finding employment is de facto hampered without a regularisation of his residence status. He is therefore unemployed and survives by helping out on the farms in the Novska area (see paragraphs 43 and 48 above), which undoubtedly adversely affects the prospect of him securing normal health insurance or pension rights (see paragraph 99 above). In these circumstances, particularly in view of the applicant’s advanced age and fact that he has lived in Croatia for almost forty years without having any formal or de

facto link with any other country, the Court accepts that the uncertainty of his residence status has adverse repercussions on his private life.

Para 128: A second important feature of the instant case is the fact that, as already noted above, the applicant is at present stateless (see paragraphs 24 and 110 above). A further important feature of the case is the fact that the applicant's parents died and that over the years he lost contact with his sisters (see paragraph 8 above). He has no other family or relatives in another country with whom he maintains contact nor was it ever established during the domestic proceedings that the applicant had any link with Albania or any other country. In fact, the applicant only in 1992 mentioned a brother who lived in Albania, but he did not even know where that brother lived (see paragraph 21 above). Thereafter the applicant never mentioned that brother and the information obtained by the police during the domestic proceedings did not establish that the applicant had maintained any links with his brother or anybody else in another country.

Para 136: With regard to the applicant's possibility of obtaining a valid travel document to extend the stay on humanitarian grounds, the Court takes note of the third-party intervener's submission according to which in practice this means providing a valid national biometric passport of the current country of origin, which is a requirement that stateless persons are unable to meet (see paragraph 108 above). Indeed, the Court has already noted above that the applicant's possibility of obtaining Albanian nationality cannot be taken as an effective and realistic option.

Para 137: It should also be noted that under the relevant domestic law stateless persons are not required to have a valid travel document when applying for a permanent residence permit in Croatia. However, as the applicant's case shows, in practice this is of a limited relevance as in order to be able to apply for permanent residence, a stateless person would need to have a five-year uninterrupted temporary residence in Croatia for which a valid travel document is needed. Thus, in reality, contrary to the principles flowing from the Convention relating to the Status of Stateless Persons (see paragraph 65 above), stateless individuals, such as the applicant, are required to fulfil requirements which by the virtue of their status they are unable to fulfil. Para 138: Furthermore, the Court finds it striking that despite being aware that the applicant does not have any nationality, as is evident from his birth certificates issued by the authorities in Kosovo in 1987 and 2009, when extending the applicant's residence status on humanitarian grounds the Croatian authorities insisted that the applicant was a national of Kosovo. As there was no

suggestion that the applicant had ever had Kosovo nationality, it is difficult to understand the Croatian authorities' insistence on the fact that the applicant should obtain a travel document from the authorities in Kosovo. It is also noted in this connection that despite the applicant's statelessness, which was apparent from the relevant documents available to the Croatian authorities, they never considered taking the relevant measures, such as providing administrative assistance to facilitate the applicant's contact with the authorities of another country, to resolve the applicant's situation, as provided in the international documents to which Croatia is a party.

Decision documents

Case of Hoti v Croatia

Outcome

Violation of Article 8 of the Convention;

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas (HRK) at the rate applicable at the date of settlement: (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representative's bank account;

(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;

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

Paras 105 – 108: States need to address statelessness. In Croatia, issues emerged after the disintegration of SFRY, providing citizenship only to persons registered. Statelessness in Croatia has affected mainly persons who had been habitually residing in the former Socialist Republic of Croatia but whose residence had never been registered as well as those who had had Federal citizenship and had moved to reside in Croatia from another Republic before the dissolution of the SFRY. There has

been a lack of adequate public information and legal advice about the administrative procedures. This had disproportionately affected vulnerable groups, particularly minority groups from other republics. The UNHCR argued that persons with a registered domicile in the former Socialist Republic of Croatia who had not acquired Croatian nationality had needed to regularise their residence status in the new State of Croatia as foreigners. If they had not been able to fulfil all of the requirements to obtain temporary or permanent residence in the new State of Croatia, they had been erased from the register of domicile. Among them had been persons who had not acquired a nationality of another successor State of the SFRY and had been thus stateless. As a result of the erasure, they had not only been denied access to Croatian citizenship but had also been left bereft of any legal status granting them a right of residence in Croatia. In most cases, the persons concerned had not been informed about the erasure. The renewal of temporary residence permits on humanitarian grounds was difficult for stateless persons since it required a valid national biometric passport of the current country of nationality which stateless persons could not meet. Moreover, Croatian legislation did not take fully into account the particular situation of such persons, notably their vulnerabilities and their close ties to the country through their long-term residence. The UNHCR also argued that following the erasure, a number of stateless persons had been denied Croatian citizenship and had continued to experience insecurity and legal uncertainty until today. Since 1991, the Government of Croatia had not undertaken measures to regularise the legal status or provide other remedies for those affected.

ENS, Blog-entry by Katja Swider, Hoti v Croatia – a landmark decision by the European Court of Human Rights on residence rights of a stateless person
Strasbourg Observers, Article by Dr. Hélène Lambert, Nationality and Statelessness Before the European Court of Human Rights: A landmark judgment but what about Article 3 ECHR?

Caselaw cited

Domestic law:

- Section 29(2) of the Act on the Movement and Stay of Foreigners
- Sections 92, 93 and 96 of the Aliens Act

Strasbourg caselaw:

- A.S. v. Switzerland, no. 39350/13, § 46, 30 June 2015

- Abuhmaid v. Ukraine, no. 31183/13, 12 January 2017
- Aristimuño Mendizabal v. France, no. 51431/99, § 66, 17 January 2006
- B.A.C. v. Greece, no. 11981/15, 13 October 2016
- Blečić v. Croatia [GC], no. 59532/00, § 67, ECHR 2006 III
- Chahal v. the United Kingdom, 15 November 1996, § 73, Reports of Judgments and Decisons 1996 V
- Fernández Martínez v. Spain [GC], no. 56030/07, § 114, ECHR 2014 (extracts)
- Gross v. Switzerland [GC], no. 67810/10, § 28, ECHR 2014
- H.P. v. Denmark (dec.), no. 55607/09, § 66, 13 December 2016
- Harakchiev and Tolumov v. Bulgaria, nos. 15018/11 and 61199/12, § 185, ECHR 2014 (extracts)
- Jeunesse v. the Netherlands [GC], no. 12738/10, 3 October 2014
- Kaftailova v. Latvia (striking out) [GC], no. 59643/00, § 49, 7 December 2007
- Khan v. Germany [GC], no. 38030/12, § 33, 21 September 2016
- Kurić and Others v. Slovenia [GC], no. 26828/06, ECHR 2012 (extracts)
- Maslov v. Austria [GC], no. 1638/03, ECHR 2008
- Ramadan v. Malta, no. 76136/12, § 91, ECHR 2016 (extracts)
- Roche v. the United Kingdom [GC], no. 32555/96, § 162, ECHR 2005 X
- Savasci v. Germany (dec.), no. 45971/08, 19 March 2013
- Shevanova v. Latvia (striking out) [GC], no. 58822/00, § 46, 7 December 2007
- Sisojeva and Others v. Latvia (striking out) [GC], no. 60654/00, ECHR 2007 I
- Slivenko v. Latvia [GC], no. 48321/99, ECHR 2003 X
- Travaš v. Croatia, no. 75581/13, § 83, 4 October 2016
- Udovičić v. Croatia, no. 27310/09, § 125, 24 April 2014
- Üner v. the Netherlands [GC], no. 46410/99, ECHR 2006 XII

Third party interventions

Submission by UNHCR in the case of HOTI. v. Croatia (Application No.63311/14) , 3 July 2015

Third party interventions (docs)
Submission by UNHCR in Hoti v. Croatia