STATELESSNESS
Case Law Database

Croatia – High Administrative Court of the Republic of Croatia, judgment no. Usž-1311/20-2

The applicant was born in Croatia in 1998 and has lived there ever since. His parents are citizens of Serbia, but the applicant's citizenship status remained unclear. His request for a permanent residence permit in Croatia was rejected, among others due to lack of a valid travel document, lack of means of subsistence, and lack of health insurance. The Court ordered the authorities to issue a new decision, taking into account the ECHR judgment in Hoti v. Croatia, and the applicant's potential statelessness which is related to widespread difficulties in confirming Serbian citizenship of individuals in a similar situation to the applicant. The applicant initiated a new administrative dispute and the Administrative Court in Rijeka ruled in his favour, however, on appeal, the High Administrative Court rejected the applicant’s request.

Case name (in original language) : X. K. Usž-1311/20-2
Case status: Decided
Case number: Usž-1311/20-2
Citation: https://sudskapraksa.csp.vsrh.hr/decisionText?id=090216ba808c1f17&q
Date of decision: 16/02/2021
State: Croatia
Court / UN Treaty Body: High Administrative Court of the Republic of Croatia
Language(s) the decision is available in: Croatian
Applicant's country of birth: Croatia
Applicant's country of residence: Croatia
Legal instruments: 1954 Statelessness Convention
Key aspects: Access to social and economic rights, Burden of proof, Determination/confirmation of nationality, Protection, Residence permit, State succession, Statelessness determination

Facts

The applicant was born on 16 July 1998 in Zagreb. His application for a permanent residence permit in Croatia was rejected on 10 February 2017, because he does not have a valid travel document, means of subsistence and no health insurance. Between 2016 and 2018, the applicant was being held in a correctional institution.

Legal arguments by the applicant

The applicant argued that due to being in a correctional institution he had limited possibilities to communicate with the administrative authorities. He completed vocational training as a welder, which would enable him to secure a means of subsistence, as well as to obtain a health insurance after he is discharged from the institution. He further claimed that he has lived in Croatia from his birth; he speaks and writes Croatian language, and has not committed any crimes since the imposition of the correctional measure and the referral to the correctional institution. He asks the Court to annul the administrative decision, and to grant him a permanent residence permit.

The applicant, in further proceedings, claimed that it was the proceedings were excessively conducted, that there was a transitional element (the dissolution of a State) and that his status must not be compared to a position of an ordinary foreigner in Croatia. He also claimed that the acquisition of citizenship should not be a precondition for permanent residence, especially for persons born in Croatia.

Legal arguments by the opposing party

The authorities argued that the applicant did not comply with the relevant requirements for a permanent residence permit at the time the decision was issued. They further submitted that they do not consider the applicant to be stateless, as his parents are citizens of Serbia. The fact that Serbia has not yet established the citizenship of the applicant does not mean he is not a Serbian citizen. There are systemic problems in obtaining relevant documentation on Serbian citizenship from the Serbian authorities.

In further proceedings, the Ministry of the Interior stated that the applicant was able to have temporary residence for many years, without providing his passport, without means of subsistence nor health insurance. The applicant was thereby able to have residence and free access to the labour market and to freedom of movement.

Decision & Reasoning

The Administrative Court reasoned as follows:

(Administrative Court of Rijeka, judgment no. 2 UsI-603/17-17 of 5 September 2018)

“On the basis of the facts and legal arguments, the Court finds that the complaint is well founded. Permanent residence may be granted to a foreigner who has been legally residing in the Republic of Croatia for a continuous period of 5 years prior to the application, which includes temporary residence permits, asylum and subsidiary protection […]. According to Article 96(1) of the Foreigners Act, permanent residence will be granted to a foreigner who, subject to the conditions referred to in Article 92, has a valid travel document (point 1); has means of subsistence (point 2); has a health insurance (point 3); knows the Croatian language and the Latin alphabet, as well as Croatian culture and structure of society (point 4); does not pose a danger to public order, national security or public health (point 5).”

“Article 7 of the General Administrative Procedures Act (hereafter GAP) provides that when a civil servant learns that an individual has a certain right, the civil servant is to inform the individual of that, as well as of the consequences of actions or inactions related to it. The civil servant ensures that lack of knowledge on the part of the individual does not come at a cost for his rights. According to Article 8 of the GAP, administrative procedures should determine the truth, and for that purpose all the relevant facts and circumstances must be established for a lawful and adequate resolution of an administrative matter. According to Article 47(3) GAP, the individual is obliged to provide precise, true and specific information about the factual situation on which his request is based. Where it is not a matter of generally known facts, the individual is obliged to offer justifications for his claims and, if possible, submit evidence. If the individual fails to do so, the authority shall invite him/her to do so within a reasonable time. Based on the letter of the Correctional Institution in Turopolje dated 16 August 2018, it appears that the letters dated 17 November 2016 could not have been delivered to the applicant at his address in Rijeka on 7 December 2016, as stated on the confirmation of those letters. In addition, the signature recorded on that confirmation is completely different from the applicant’s signature, which is attached to the file […]. The Court, therefore, finds that the delivery of the said letters was not effective, and therefore it cannot be established that the above-cited provisions of GAP were fully and correctly applied when adopting the disputed decision.”

“Based on the above, the Court annuls the disputed decision concerning the applicant, and […] returns the case to the authorities for reconsideration […]. When reconsidering, the authorities should, taking into account that the applicant is currently in a correctional institution and is poorly informed, invite him to submit evidence about how he meets the conditions for granting him his request. If necessary, the applicant should seek help from other public bodies for legal assistance.”

“It is not disputed between parties that the process for determining Serbian citizenship of individuals who are in a similar position as the applicant suffers from practical administrative obstacles. Therefore, the authorities will instruct the applicant as to what actions he should undertake in such a situation, including reminding him of the possibilities within the free legal aid system.”

“Moreover, when interpreting relevant substantive law, the authorities will ensure not to cause a situation in which – due to excessive formalism that does not take into account the specific circumstances of the case – proving that relevant requirements have been fulfilled may become impossible in a manner that raises questions as to the meaning and purpose of such requirements, and where in the light of international law a conclusion could be reached that the Republic of Croatia has not established an efficient and effective legal system that allows foreigners to quickly and effectively acquire a status of a more permanent nature (for example the judgment of the European Court of Human Rights of 26 April 2018 in Hoti v. Croatia, application no. 63311. The Court emphasises that the general principles pronounced in this judgment cannot be set aside solely because the factual circumstances are not entirely identical to the present case).”

“The disputed decision does not question the fulfilment by the applicant of the requirement of Article 92(1) of the Foreigners Act. Therefore, in resolving this administrative matter, the indirect interpretative effect of the Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals with long-term residence should also be taken into account […]. This effect entails an obligation on administrative bodies and national courts within the European Union to interpret national law in accordance with the European norms, attributing national laws the meaning that achieves the aims of the relevant European law, and giving effect to the principle of sincere cooperation contained in Article 4(3) of the Treaty on the European Union.”

“If during the reconsideration of the decision it is established that the applicant is a stateless person, the relevant norms of the Convention Relating to the Status of Stateless Persons […] must be taken into account.”

The High Administrative Court of the Republic of Croatia reasoned as follows:

(High Administrative Court of the Republic of Croatia, judgment no. Usž-1311/20-2 of 16 February 2021)

The Court confirmed that the applicant has no means of subsistence, no health insurance and no passport. It also stated that the mother of the applicant was instructed to regularise the applicant's citizenship. The Court confirmed the standpoints of the defendant, i.e. the Ministry of the Interior.

Outcome

The High Administrative Court of the Republic of Croatia Court annulled the judgment and rejected the applicant's request.

Caselaw cited

Administrative Court of Rijeka, judgment no. 2 UsI-603/17-17 of 5 September 2018

European Court of Human Rights, Hoti v. Croatia