STATELESSNESS
Case Law Database

ECtHR - Hoti v. Croatia

A stateless person born in Kosovo of Albanian origin, whose parents had been granted refugee status in the former SFRY, had lived in Croatia for nearly 40 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attempts to regularise his residence were largely unsuccessful, apart from short term permits that were granted and withdrawn sporadically.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
Citation: Hoti v Croatia (European Court of Human Rights, First Section, Application No 63311/14, 26 July 2018)
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 birth: Kosovo
Applicant's country of residence: Croatia
Legal instruments: European Convention on Human Rights (ECHR)
Key aspects: Access to social and economic rights, State succession and (de)colonisation, Respect for private and family life, Residence permit
Relevant Legislative Provisions:

European Convention on Human Rights: Articles 8, 8(1), 35, 35(1) and 35(3)(a)

Facts

In 1960 the applicant’s parents fled Albania as political refugees and fled to Kosovo, which was part of the Socialist Federal Republic of Yugoslavia (SFRY). The applicant was born in Kosovo and moved to Croatia at 17 years old in 1979. In 1987, the applicant applied for a permanent residence permit but was refused. At the time it was encouraged that Albanian refugees apply for SFRY citizenship rather than residence statuses as foreigners. The applicant refused as he saw no benefit in acquiring SFRY citizenship. He remained and worked in Croatia on the basis of his documents from Kosovo.

In 1991, Croatia became independent and the applicant applied for Croatian citizenship which he was due to be awarded when he renounced his Albanian citizenship. The applicant was unable to obtain a certificate of renunciation of Albanian citizenship and therefore his Croatian citizenship application was unsuccessful.

In 2001, Mr Hoti applied for a permanent residence permit, arguing that he was employed and had sufficient means of subsistence and a strong interest to live in Croatia. His application was dismissed in 2003 on the basis that he did not meet the statutory requirements, including that he was not married to a Croatian national or permanent resident, he did not have three years of uninterrupted employment, and there was no interest of Croatia in granting him residence. The applicant appealed this decision but was unsuccessful.

In the meantime, his temporary residence permit had been extended on humanitarian grounds for periods of one year. When extending his permit in 2013, the applicant explained why he did not have a travel document of Kosovo which was a prerequisite to obtain an extension, but his application was refused. The applicant continued to challenge this decision domestically without success.

In 2015, the police granted the applicant temporary residence status on humanitarian grounds for a further year and invited to provide a travel document, but stressed that the Ministry had given consent to the extension irrespective of whether the applicant provided a valid travel document. His status was extended again for a year in 2016.

Legal arguments by the applicant

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. [97]

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. [98]

The applicant also stressed that prior to Croatia’s independence he had lawfully resided there for 12 years and had enjoyed a range of rights. [99]

Legal arguments by the opposing party

The Government argued that the applicant was not stateless but a national of Albania, and that he did not take any action to renounce his Albanian citizenship in order to obtain Croatian citizenship. [100, 102]

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. The applicant was unable to regularise his status as he had consistently failed to provide a travel document. [103]

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. [104]

Decision & Reasoning

The Court noted that the applicant’s case should be distinguished from cases concerning “settled migrants”, namely persons who had already been formally

granted a right of residence in a host country and where a subsequent withdrawal of that right was found to constitute an interference with the right to respect for private and/or family life. [115]

The applicant's situation is specifically of a stateless migrant who complains that the uncertainty of his situation and the impossibility to regularise his residence status in Croatia (where he had been staying for almost 40 years) adversely affects his private life under Article 8 ECHR [117]. His situation occurs in the context of the complex circumstances of the dissolution of the former SFRY.

The applicant's residence status in Croatia is uncertain as it depends on one-year extensions of his residence permit on humanitarian grounds, on him providing a valid travel document, a condition which the applicant considers impossible to meet as he is stateless, or obtaining the discretionary consent of the Ministry, which had not been granted consistently. [126]

Moreover, the applicant's prospect of finding employment is hampered without a regularisation of his residence status, which undoubtedly adversely affects the prospect securing health insurance or pension rights. 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 accepted that the uncertainty of his residence status has adverse repercussions on his private life. [126]

The Court also stated that a "second important feature of the instant case is the fact that […] the applicant is at present stateless", and that he has no 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 [128]. Further, "there are no reasons to doubt the applicant's arguments that he was advised by the Albanian authorities that he was not an Albanian national." [110]

With regard to obtaining a valid travel document to extend the stay on humanitarian grounds, the Court noted the requirement to provide a valid national biometric passport is one that stateless persons are unable to meet (as noted by the third-party intervener) [136]. The Court further 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". It therefore considered that stateless individuals, including the applicant, were in reality required to fulfil requirements that they are unable to meet which is contrary to the principles flowing from the Convention relating to the Status of Stateless Persons. [137]

The Court found striking that the authorities insistent that the applicant was a national of Kosovo despite evidence from his birth certificate that he was stateless. It stated that "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", and that the Croatian authorities never considered taking relevant measures to resolve the applicant's situation, such as providing administrative assistance to facilitate the applicant's contact with the authorities of another country. [138]

Decision documents
ECtHR - Hoti v Croatia
Outcome

Following this reasoning, the Court found that the respondent State had failed 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 with due regard to his private-life interests under Article 8" [141], and unanimously held that there was a violation of Article 8.

It further held:

(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.)

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