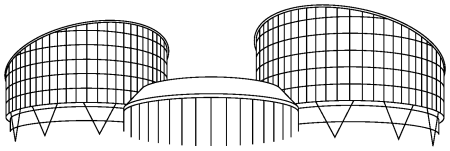

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HOTI v. CROATIA

(Application no. 63311/14)

JUDGMENT

STRASBOURG

26 April 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hoti v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Linos-Alexandre Sicilianos, *President,*
Aleš Pejchal,
Krzysztof Wojtyczek,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 3 April 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 63311/14) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Bedri Hoti ("the applicant") on 15 September 2014.

2. The applicant was represented by Ms N. Owens, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged that he had not had an effective possibility to regularise his residence status in Croatia, and that he was discriminated against in that respect. He relied on Article 8 of the Convention, taken alone and in conjunction with Article 14, and on Article 1 of Protocol No. 12.

4. On 9 February 2015 the application was communicated to the Government. In addition, third-party comments were received from the Office of the United Nations High Commissioner for Refugees (the UNHCR) (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Novska. He is of Albanian origin.

A. Background to the case

6. In 1960 the applicant's parents fled Albania as political refugees and settled in Kosovo,[1] which was at the relevant time an autonomous province of Serbia. They were granted refugee status in the former Socialist Federal Republic of Yugoslavia ("the SFRY"). The SFRY was a federal State composed of six republics: Bosnia and Herzegovina, Croatia, Serbia (with two autonomous provinces, Vojvodina and Kosovo), Slovenia, Montenegro and Macedonia.

7. The applicant was born in Kosovo soon after his parents' arrival to the SFRY. In 1979 the applicant, at the time seventeen years old, came from Kosovo to Croatia. He settled in Novska, where he has lived ever since.

8. The applicant has no family in Croatia. Since moving to Croatia, his parents have died in Kosovo. For a while, the applicant maintained a relationship with his two sisters, who lived in Germany and Belgium (see paragraphs 21, 29 and 35 below). In 2014 he declared to the domestic authorities that his only close relative was his sister in Belgium, with whom he had lost contact (see paragraph 48 below).

9. In 1987 the applicant applied for a permanent residence permit to the relevant police station in Novska.

10. He was instructed by the Novska police that he should regularise his status in Kosovo, where he had been officially registered. However, as the applicant refused to do that, he was provided with a temporary residence permit in Novska for the period between 4 January and 30 June 1988, pending the determination of his request for a permanent residence permit.

11. At the relevant time, the applicant possessed a certificate issued by the SFRY authorities in Kosovo in 1988 indicating that he had been an Albanian national with the status of a foreigner holding a temporary residence permit in the SFRY. The certificate also indicated that the applicant's parents had been nationals of Albania living in the SFRY as refugees.

12. On 2 February 1989 the Ministry of the Interior of the then Socialist Republic of Croatia informed the Novska police that the applicant's application for a permanent residence permit in the SFRY had been refused in accordance with the government policy according to which Albanian refugees should be instructed to apply for the SFRY citizenship.

13. On 22 February 1989 the applicant was interviewed by the Novska police in connection with the Ministry of the Interior's instruction. He explained that he had been granted a temporary residence permit by the relevant authorities in Kosovo which was valid until July 1989. He also stated that he had attempted to travel to Germany but had not had a valid

1. All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

visa and had thus been refused entry. At the time he was waiting for a visa for Belgium. The applicant further explained that he hoped to be granted a permanent residence permit but that he was not interested in acquiring SFRY citizenship as that would not provide him with any security. He considered that by acquiring SFRY citizenship, he should be granted a flat or a house in private ownership just as one had been granted to his father when he had come from Albania as a refugee. However, as he would not be granted any property, he refused to apply for SFRY citizenship.

14. On 23 February 1989 the Novska police informed the Ministry of the Interior that the applicant had refused SFRY citizenship. The report further explained that the applicant was employed in a garage of a private entrepreneur, M.R., and that he had several times contacted the Novksa police insisting that he be granted permanent residence. The report also indicated that according to the available information the applicant had secured a temporary residence permit from the authorities in Kosovo until July 1989.

15. A further report of the Novska police to the Ministry of the Interior of 26 February 1990 indicated that the applicant was still living in Novska and working in a restaurant. As his temporary residence permit issued by the authorities in Kosovo had expired, he had been instructed to regularise his status. This report also contains a handwritten note dated 12 June 1990 according to which the applicant had come to the police station and presented an identity card for a foreigner with temporary residence status in the SFRY issued by the relevant authorities in Kosovo and valid until 5 November 1991.

16. On 25 June 1991 the Croatian Parliament (*Sabor Republike Hrvatske*) declared Croatia independent of the SFRY, and on 8 October 1991 all ties between Croatia and the SFRY were severed.

17. Meanwhile, war broke out in Croatia and the applicant was called up for mandatory civilian service with the local authorities. On 22 March 1992 the Novska police issued a permit to the applicant to move freely within the region of Novska-Kutina in order to perform his mandatory civilian service. The permit was valid until 31 December 1992.

B. The applicant's application for Croatian citizenship

18. On 9 June 1992 the applicant applied for Croatian citizenship with the Novska police. He submitted that he had been living at his current address in Novska since 1980s, and that he had been a refugee from Albania. He also explained that he was working in a garage of a private entrepreneur, Z.A.

19. On 20 July 1992 the Novska police forwarded the applicant's application to the Ministry of the Interior of the Republic of Croatia

(*Ministarstvo unutarnjih poslova Republike Hrvatske* – hereinafter "the Ministry") with a suggestion that it be granted.

20. On 2 November 1992 the Ministry instructed the Novska police that they had failed to provide a report concerning the applicant's personal circumstances and information on his residence in Croatia.

21. In connection with the above application, on 16 December 1992 the applicant was interviewed by the Novska Police. In his interview, the applicant explained that he had Albanian nationality as he had been a refugee from that country. He further explained that he had come to Novska in 1979 where he had first worked as a waiter until 1984. Between 1986 and 1989 he had worked as a car mechanic for a private entrepreneur, M.R., and since 1989 for Z.A. During the war he had worked as a car mechanic for the police and the army. He was not married and did not have children. He had a sister living in Germany and one living in Belgium. He also had a brother living in Kosovo and another brother living at an unknown place in Albania. His parents lived in Kosovo.

22. On 18 December 1992 the Novska police informed the Ministry of the obtained information explaining that the applicant had lived in Novska as a foreigner since 1980 and that he had Albanian citizenship.

23. In May 1993 the national intelligence agency informed the Novska police that there was nothing preventing the applicant from being allowed to acquire Croatian citizenship.

24. According to the available information, the file concerning the applicant's application also contained a birth certificate issued by the SFRY authorities in Kosovo on 23 December 1987 according to which the applicant did not have any nationality.

25. On 14 June 1993 the Ministry issued an assurance that the applicant would obtain Croatian citizenship if he obtained a release or provided evidence that he had renounced his Albanian citizenship within a period of two years. In its reasoning to this assurance, the Ministry explained that the applicant had met all the necessary conditions to be granted the assurance and thus Croatian citizenship. It also referred to section 8a of the Croatian Citizenship Act (see paragraph 60 below).

26. Upon the expiry of the above-noted period of two years, on 16 February 1995 the applicant lodged a new application for Croatian citizenship with the Novska Police. He explained that he was a national of Albania and that he had been living in Croatia since 1979. He was asking for Croatian citizenship in order to obtain legal certainty of his position. He stressed that he was ready to renounce his current citizenship and that he had nowhere to go back to in Kosovo. He also explained that he was employed as a car mechanic.

27. Meanwhile, the applicant had obtained a permit for extended residence of a foreigner (he was considered to be an Albanian citizen) from the Novska police for the period between September 1993 and September

1994, which was first extended until September 1995 and then January 1996. He was also granted a driving licence on 14 April 1994 valid until 19 November 2027.

28. In February 1995 the intelligence agency informed the Novska police that there was no bar to the applicant's acquiring Croatian citizenship.

29. A report on the applicant's personal circumstances prepared by the Novska police on 8 March 1995 indicated that he had lived in Croatia since 1979. The report contains a statement that the applicant had an Albanian passport issued in Kosovo (then part of Serbia) and that he had allegedly disappeared from his place of residence during the war in Croatia. It also suggests that the applicant socialised with individuals of similar characteristics who were involved in trading of grey-market goods and repairing cars. Moreover, the report alleged that the applicant had never tried to regularise his status in Croatia. The report also indicated that the applicant's parents had died and that he had two sisters, who lived in Germany and Belgium.

30. On 28 March 1995 the Novska police informed the Ministry that the applicant had had a registered residence in Croatia since September 1993 (see paragraph 27 above).

31. On 3 August 1995 the Ministry dismissed the applicant's application for Croatian citizenship on the grounds that he did not have a registered residence in Croatia for an uninterrupted period of five years as required by section 8(1)(3) of the Croatian Citizenship Act (see paragraph 60 below).

32. The applicant challenged the above decision before the Administrative Court (*Upravni sud Republike Hrvatske*). He argued that he had had a registered residence in Novska since 1979 and that his personal circumstances had been well known to the Novska police. He also stressed that he was in employment and that he possessed an identity card and a driving licence issued by the Novska police.

33. On 29 May 1996 the Administrative Court dismissed the applicant's administrative action on the grounds that there was no evidence that he had had a registered residence in Croatia since 1979. In fact, according to the Novska police's report of 28 March 1995 (see paragraph 29 above), he had had a registered residence in Novska, as a foreigner with extended residence status, since 24 September 1993. In these circumstances, the Administrative Court considered that no available evidence suggested that the applicant had had an uninterrupted registered residence in Novska for a period of more than five years as required by section 8(1)(3) of the Croatian Citizenship Act.

C. The applicant's application for a permanent residence permit

34. On 13 November 2001 the applicant asked the Ministry to grant him a permanent residence permit. He argued that he was employed and had sufficient means of subsistence and a strong interest to live in Croatia. Together with his application, the applicant provided the birth certificate issued by the SFRY authorities in Kosovo on 23 December 1987 (see paragraph 24 above). He also provided his employment booklet according to which he had been employed in the periods between 1 July 1986 and 15 July 1987, 1 August 1987 and 1 December 1988, and 1 January 1989 and 31 December 1989 in the garage of M.R.

35. A report on the applicant's personal circumstances prepared by the Novska police on 24 April 2002 indicated that the applicant was a national of the Federal Republic of Yugoslavia (Serbia and Montenegro – hereinafter "the FRY"). According to the report, the applicant had settled in Novska in 1979 and had first worked in the garage of Z.A. until 1984; and then, between 1985 and 1990, in the garage of M.R. The report further indicated that the applicant was at that time unemployed and supported by his sisters in Germany and Belgium. He had lived in Novska for twenty-two years and had never left Croatia. The only document which he possessed was a driving licence. Up to that point he had been prosecuted only for a minor offence related to the status of aliens.

36. On 29 April 2002 the Ministry instructed the Novska police that the applicant should also be interviewed in connection with his application.

37. The applicant was interviewed by the Novska police on 10 June 2002. He explained that after he had been given an assurance of eligibility for Croatian citizenship (see paragraph 25 above) he had contacted the Albanian embassy several times. However, they had at first delayed their response and then dismissed his request. He had therefore been unable to obtain a certificate of renunciation of Albanian citizenship within the relevant period of two years. The applicant further explained how his second application for Croatian citizenship had been refused because he had not had a registered residence in Croatia for five years (see paragraphs 26-33 above).

38. In his interview the applicant also stated he did not have a travel document of any country. So far he had always relied on his Albanian citizenship but whenever he had tried to obtain Albanian travel documents, he had been orally refused. The same was true for his attempts to obtain travel documents from the FRY. The applicant further explained that he did not have a family and was not married. He wanted to stay in Novska because there he knew a lot of people and would be able to make a living there.

39. On 3 July 2003 the Ministry dismissed the applicant's application on the grounds that he did not meet the necessary statutory requirements under

section 29(1) of the Movement and Stay of Foreigners Act (see paragraph 61 below). In particular, he was not married to a Croatian national or an alien with a permanent residence in Croatia, and he did not have three years of uninterrupted employment in Croatia. The Ministry also held that there was no particular interest of Croatia in granting him residence under section 29(2) of the Movement and Stay of Foreigners Act. The Ministry considered the applicant to be a national of Serbia and Montenegro.

40. The applicant challenged this decision before the Administrative Court. He argued that the fact that he had previously been a national of Serbia and Montenegro and had resided in Croatia since 1979 qualified him for permanent residence in Croatia. The applicant also contended that it was difficult for him to find a formal employment as he did not have permanent residence permit for Croatia.

41. On 17 August 2006 the Administrative Court dismissed the applicant's administrative action as unfounded. The Administrative Court held that the Ministry had properly established that the applicant had failed to meet the statutory requirements under section 29(1) of the Movement and Stay of Foreigners Act as his employment booklet did not show that he had worked for an uninterrupted period of three years. Moreover, the Administrative Court considered that nothing in the circumstances of the case suggested that the applicant should be granted permanent residence under section 29(2) of that Act.

42. The applicant then lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), challenging the decisions of the lower bodies. He argued that he had continuously lived in Croatia since 1979 and that he had worked. He argued that he should have been granted permanent residence.

43. Meanwhile, the applicant obtained a note from M.R., for whom he had worked, attesting that he had been employed by M.R. in the period between 1986 and 1989 and that he had proved to be a hardworking and responsible employee. M.R. also promised to employ the applicant again and to secure him accommodation should he be granted permanent residence.

44. On 1 October 2008 the Constitutional Court dismissed the applicant's constitutional complaint as unfounded endorsing the reasoning of the Administrative Court.

D. The applicant's stay on humanitarian grounds

45. In the period between 26 July 2011 and 27 August 2013 the police three times temporarily extended the applicant's residence for periods of one year by reference to the humanitarian grounds under the Aliens Act (see paragraph 62 below). In the relevant decisions, the applicant was considered to be a national of Kosovo.

46. When extending his temporary residence permit on humanitarian grounds on 27 August 2013 for another year under section 65(1)(5) of the Aliens Act, the applicant was requested to provide a valid travel document as provided under section 52(4) of the Aliens Act (see paragraph 62 below).

47. On 10 June 2014 the applicant again applied for an extension of his temporary residence permit. He argued that he did not have a travel document of Kosovo as he had not been there nor did he have any interest in going there. He explained that he just wanted to regularise his status in Croatia.

48. In connection with his application for an extension of his temporary residence permit, in July 2014 the applicant was interviewed by the Novska police. A note on his interview indicated that the applicant was a national of Kosovo and that he had knowledge of the Albanian language. It also stated that the applicant had been employed by M.R. in the period between 1981 and 1991 and that during the war in Croatia he had worked for Z.A. repairing military and police vehicles until 1993. Since then he had been unemployed but had been earning money by helping out on the farms in the Novska area. His parents had died and the only close relative he had was a sister living in Belgium, with whom he had lost contact. The note further explained that the applicant's neighbours had been interviewed and that they confirmed that he had been a good and hardworking person. The note also indicated that the applicant had committed several minor offences for which he had been fined and a criminal complaint had been lodged against him in connection with a road accident in which he had been involved.

49. On 30 July 2014 the Ministry instructed the Novska police that there were no grounds to extend the applicant's residence since he had failed to provide a valid travel document.

50. The Novska police invited the applicant for an interview on 28 August 2014 at which he was informed of the Ministry's instruction. The applicant explained that he had come to Croatia in 1979 and had no connection to Kosovo. He had had the status of a refugee from Albania until he had reached the age of eighteen, since that status had been granted to his parents. He stressed that he had lived his whole life in Novska. He also promised to contact the embassy of Kosovo in order to obtain a travel document and asked the Novska police not to dismiss his request.

51. On 16 September 2014 the Novska police dismissed the applicant's application for the extension of his temporary residence on humanitarian grounds. It held that the applicant did not meet the requirements for granting further temporary residence status as he had failed to provide a valid travel document and the Ministry had not given its consent to an extension of his residence permit.

52. On 7 October 2014 the applicant challenged the decision of the Novska police before the Ministry, relying on Articles 8 and 14 of the Convention and Article 1 of Protocol No. 12. He argued that he had had

SFRY citizenship, which he had lost in unclear circumstances following the dissolution of that country. As he had come from Kosovo to Croatia, it was possible that he was considered to be a national of Kosovo by the Croatian authorities, but in reality he did not have citizenship of that territory. The applicant also argued that he was not a classic alien but an individual who found himself in the very specific circumstances of the dissolution of the SFRY in a situation whereby he was no longer able to provide a valid travel document. He also contended that he had been erased from the register of domicile and residence in Croatia without ever being informed thereof. He was therefore unable to regularise his residence status in Croatia and thus to find employment, to move freely without valid documents or to travel, which was neither a lawful nor a proportionate interference with his Article 8 rights. Moreover, the applicant contended that there was a gap in the relevant domestic law as the status of individuals who found themselves in his situation following the dissolution of the SFRY was not regulated. Accordingly, a strict formal application of the Aliens Act could not lead to a solution in his case.

53. On 30 January 2015 the Ministry dismissed the applicant's appeal. It referred to the applicant's previous attempts to regularise his status in Croatia, which had all been unsuccessful. According to the Ministry, this showed that he had not been erased from the relevant registers without being informed. The Ministry further stressed that the applicant had been invited several times to provide a valid travel document and he had promised to contact the embassy of Kosovo in this connection but had failed to do so. Accordingly, in the Ministry's view, his arguments that he had not been a typical alien and that the relevant authorities had formalistically applied the relevant law had been misplaced. Moreover, there was a possibility for him to obtain a temporary travel document in order to travel to his country of origin so as to obtain a valid travel document.

54. On 25 February 2015 the applicant challenged the Ministry's decision before the Zagreb Administrative Court. He contended that he had been a national of the SFRY and that he had had a registered residence in Novska since he had arrived there in 1979, which had been erased at a later stage. He also relied on his available birth certificate showing that he did not have any citizenship (see paragraph 58 below). He also reiterated his complaints of an unjustified infringement of his Article 8 rights by a decision of the administrative authorities and a breach of Article 14 of the Convention and Article 1 of Protocol No. 12. On 21 April 2017 the Zagreb Administrative Court dismissed the applicant's administrative action endorsing the reasoning of the Ministry's decision. The applicant challenged these findings before the High Administrative Court (*Visoki upravni sud Republike Hrvatske*) and the proceedings are still pending.

55. Meanwhile, on 4 September 2015 the Novska police granted the applicant temporary residence status on humanitarian grounds for a further

year inviting him to provide a valid travel document. The Novska police held that the applicant was a national of Kosovo whose parents had come from Albania to Kosovo and that they had had the status of refugees in the SFRY. It also stressed that the Ministry had given consent to the extension of the applicant's temporary residence irrespective of the fact that he had not provided a valid travel document.

56. On 4 October 2016 the Novska police extended the applicant's residence status on humanitarian grounds for a further year. It referred to the same reasons as cited above.

E. Other relevant facts

57. According to the applicant's handwritten statement to his representative of 7 July 2015, he never had Albanian citizenship. He explained that he had contacted the Albanian embassy after he had been given an assurance that he had qualified for Croatian citizenship but they had told him that he had not been a national of that State (see paragraphs 25 and 37 above). The applicant further stressed that in his contacts with the police concerning the regularisation of his residence status, the police officers had always suggested that he had been an Albanian national. He also explained that he had been born in Kosovo and that his parents had had SFRY citizenship. He had come to Croatia in 1979. He simply wanted to regularise his status in Croatia.

58. According to a birth certificate issued by the Kosovo authorities on 10 June 2009, the applicant's parents had had Kosovo nationality but the applicant did not have that nationality.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Croatia

59. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010 and 5/2014) read as follows:

Article 33

> "Foreign nationals and stateless persons may be given asylum in the Republic of Croatia, except if they are being prosecuted for non-political offences and acts contrary to the basic principles of international law.
>
> An alien residing lawfully in the territory of the Republic of Croatia cannot be expelled or extradited to another country save in the case of enforcement of a decision adopted in accordance with international law and [national] law."

Article 35

"Everyone has the right to respect for and legal protection of his or her private ... life ..."

B. Croatian Citizenship Act

60. The relevant provisions of the Croatian Citizenship Act (*Zakon o hrvatskom državljanstvu*, Official Gazette nos. 53/1991 and 28/1992), as applicable at the relevant time, read as follows:

Section 8

"(1) A foreigner may acquire Croatian citizenship by naturalisation if he or she has submitted an application [to that effect] and meets the following conditions:

1. he or she has reached the age of eighteen and has a capacity to act;

2. he or she has obtained a release from foreign citizenship or provided evidence that he or she would be released from foreign citizenship if given Croatian citizenship;

3. at the moment of the submission of the application he or she has had a registered residence for an uninterrupted period of at least five years in Croatia;

4. has proficiency in the Croatian language and Latin script;

5. his or her behaviour suggests that he or she respects the legal order and customs of Croatia and accepts Croatian culture.

(2) It shall be considered that the requirement under point 2 of paragraph 1 of this section is met if the application has been submitted by a stateless person or a person who will lose his or her nationality following naturalisation.

(3) If a foreign country does not allow release from its citizenship or if it sets conditions for release that are impossible to meet, a statement of the person who has submitted an application [for naturalisation] renouncing his or her citizenship if given Croatian citizenship shall be sufficient."

Section 8a

"(1) A foreigner who submitted an application for Croatian citizenship and who, at the moment of the submission of the application, does not have release from foreign citizenship or has no evidence that he or she would be released from foreign citizenship after acquiring Croatian citizenship, can be given an assurance that he or she qualifies for Croatian citizenship if he or she meets all the other requirements under section 8 paragraph 1 of this Act.

(2) The assurance is valid for two years."

C. Movement and Stay of Foreigners Act

61. The relevant provision of the Movement and Stay of Foreigners Act (*Zakon o kretanju i boravku stranaca*, Official Gazette no. 53/1991), applicable at the relevant time, provided:

Section 29

"(1) Permanent residence may be granted to a foreigner who is married at least for a year to a Croatian national or to an alien with a permanent residence permit in Croatia or who has at least three years of uninterrupted employment in Croatia.

(2) Exceptionally, permanent residence may be granted to other foreigners in view of the particular personal reasons or business-related reasons for which there is a particular economic interest of the Republic of Croatia or if other important interests of the Republic of Croatia exist."

Section 79

"(1) The status of a permanently settled alien shall be recognised, subject to the principle of reciprocity, to all persons who were considered to be Yugoslav citizens under the existing legislation and who, on the day of the coming into force of this Act, are domiciled in the Republic of Croatia.

(2) A Yugoslav national who obtains the status of a permanently settled alien within the meaning of paragraph 1 of this section shall be considered an alien with extended residence status.

(3) Aliens who, according to the existing legislation, obtained the status of permanently settled aliens, aliens with temporary residence status or refugees, on the day of the coming into force of this Act shall maintain their status in accordance with the provisions of this Act."

D. Aliens Act

62. The relevant provisions of the Aliens Act (*Zakon o strancima*, Official Gazette nos. 130/2011 and 74/2013) provide:

Section 44

"A foreigner may have in Croatia short-term, temporary or permanent residence."

Section 47

"(1) Temporary residence may be granted for the following purposes:

...

4. humanitarian reasons; ..."

Section 52

"(1) Temporary residence shall be granted for a period of one year.

(2) A [foreigner's] travel document must be valid for at least three months longer than the period for which the temporary residence is granted.

(3) A foreigner who has no valid travel document, and who submitted a request for temporary residence in Croatia, shall be granted temporary residence.

(4) The foreigner referred to in paragraph 3 of this section must provide a valid foreign travel document when submitting a request for extension of his or her temporary residence status."

Section 53

"(1) A request for the extension of temporary residence must be submitted at least sixty days before the expiry of the existing authorisation of temporary residence ...

(2) The foreigner who has submitted a request for extension of temporary residence before the expiry of the existing authorisation of temporary residence can stay in Croatia until the decision upon the request becomes final and enforceable."

Section 54

"The temporary residence shall be granted to a foreigner if he or she:

1. justifies the purpose of his or her temporary stay;
2. holds a valid travel document;
3. has sufficient means of subsistence;
4. has health insurance;
5. is not prohibited from entering and staying in Croatia;
6. poses no threat to public order, national security or public health."

Section 65

"(1) Temporary residence for humanitarian reasons shall be granted to a foreigner in the following cases:

...

5. serious justified grounds of a humanitarian nature.

(2) The foreigner referred to in paragraph 1 of this section does not have to meet the conditions under section 54 paragraph 1 points 3 and 4 of this Act.

(3) Before the granting of temporary residence under paragraph 1 point 5 of this section the police department or the police station shall seek the consent of the Ministry [of the Interior]."

Section 73

"(3) Without a [special] work permit ... [foreigners] may work in Croatia if [they have regularised their status] on the following grounds:

...

4. temporary residence status for humanitarian reasons; ..."

Section 92

"(1) Permanent residence may be granted to a foreigner who, at the moment of the submission of his or her request, has five years of uninterrupted lawful residence in Croatia, which includes the [period of] temporary residence ...

...

(3) At the moment of the decision on the request for permanent residence, the foreigner must have an authorised temporary residence in Croatia."

Section 93

"...

(4) Stateless persons ... do not have to meet the requirement under section 96 paragraph 1 point 1 of this Act."

Section 96

"(1) Permanent residence status shall be granted to a foreigner who, in addition to the requirements under section 92 of this Act, [meets the following conditions]:

1. has a valid travel document;

2. has sufficient means of subsistence;

3. has health insurance;

4. is proficient in the Croatian language and Latin script and has knowledge of Croatian culture and social order;

5. poses no threat to public order, national security or public health."

E. Administrative Procedure Act

63. The Administrative Procedure Act (*Zakon o općem upravnom postupku*, Official Gazette nos. 53/1991 and 103/1996), as applicable at the relevant time, in its relevant parts provided:

Section 136

"(1) The official conducting the proceedings can throughout the proceedings examine additional facts or take evidence also concerning the facts which have not been previously disclosed or determined.

(2) The official conducting the proceedings shall order *proprio motu* the taking of evidence if he or she finds that it is necessary for the determination of the matter."

Section 137

"(1) The party is required to present the facts in his or her application correctly, faithfully and precisely.

(2) If the matter does not concern well-known facts, the party shall suggest evidence to be taken concerning his or her arguments and shall, if possible, provide [such evidence]. If the party fails to do that, the official conducting the proceedings shall invite him or her to do so. The party shall not be required to collect and submit evidence which can be more speedily and easily obtained by the body conducting the proceedings ...

(3) If the party was unable to submit evidence [as requested], the body conducting the proceedings cannot reject the applications ... but shall continue with the proceedings and, in accordance with the relevant procedural rules and the substantive law, determine the administrative matter."

F. Relevant SFRY legislation

64. The Government provided a text of the relevant provisions of the SFRY Movement and Stay of Foreigners Act (Official Gazette of the SFRY no. 57/1980) according to which a one year temporary residence status could be granted to a foreigner by the relevant body in one of the republics or autonomous provinces of the SFRY where the foreigner had residence (section 33). The Act also recognised the status of refugees (section 50) and provided that the children of individuals who had recognised refugee status enjoyed the same rights as their parents. However, after reaching the age of eighteen, the children of refugees were considered as foreigners with temporary residence status in the SFRY (section 52).

III. RELEVANT INTERNATIONAL LAW

65. The relevant provisions of the Convention relating to the Status of Stateless Persons (United Nations, Treaty Series, vol. 360, p. 117), 26 April 1954 (to which Croatia acceded on 12 October 1992 by succession), provide as follows:

Article 1 – Definition of the term "stateless person"

"1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law."

Article 6 – The term "in the same circumstances"

"For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling."

Article 12 – Personal status

"1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence."

Article 25 – Administrative assistance

"1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities."

Article 32 – Naturalization

"The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to

expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

IV. OTHER RELEVANT MATERIALS

A. Albanian Citizenship Act of 16 December 1946

66. The Citizenship Act of the People's Republic of Albania of 16 December 1946, followed by a decree of 1954 (see paragraph 70 below) and 1961, which remained in force until the democratic changes in Albania and the adoption of further provisions on citizenship in 1992 and the new law on the matter in 1998 (see paragraph 71 below), provided in its section 3 that Albanian citizenship may be obtained by origin, birth in Albania, naturalisation and according to the applicable international treaties.

67. Section 4 specified that children obtain Albanian citizenship by origin if: parents were Albanian citizens; one of the parents was an Albanian citizen and the child had been born within a legal marriage concluded before the competent Albanian bodies; one of the parents was an Albanian citizen and lived together with the child in Albania permanently or had moved to Albania together with the child before the child had reached eighteen years of age; or if the child had moved to Albania permanently or to pursue studies. Citizenship could also be obtained when one of the parents was an Albanian citizen but the child had been born and lived with the parents abroad, if the parent who had Albanian citizenship had registered the child as an Albanian citizen in Albania within five years of the birth. If the child, based on the laws of the country where he or she had been born was considered an Albanian citizen, registration with the Albanian authorities was not a necessary condition to obtain Albanian citizenship. The provisions of this section applied even in cases where children had been born to a foreign citizen and it had been later proven that he or she had an Albanian father.

68. Section 13 provided:

A. Absence

"A citizen who resides continuously outside Albania loses Albanian citizenship if, within fifteen years of the day he or she reaches eighteen years of age, he or she has not fulfilled any public duty to the People's Republic of Albania and in the last five years has not appeared in an Albanian representative office [lit. representation] or has not notified the Ministry of the Interior of his or her situation.

The loss of citizenship because of absence is also extended to children who were born and have continuously lived outside the state, except when they have fulfilled the conditions provided by the first paragraph of this article.

The Ministry of the Interior issues the decision of the loss of citizenship. The decision can be contested within two years of the date of its announcement in the Official Gazette."

B. Albanian citizenship legislation in practice

69. Within the framework of a European Union Democracy Observatory on Citizenship (EUDO-Citizenship) research project "The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia", in 2010 Gëzim Krasniqi produced a report entitled "Citizenship in an emigration nation-state: the case of Albania" where he addressed various issues of Albanian citizenship and the position of individuals who had emigrated from Albania to other countries, in particular to the SFRY.

70. The report explains that section 13 of the Albanian Citizenship Act of 1946 was used as a tool of retaliation against the enemies of the regime (see paragraph 69 above). In addition, section 14 provided for a possibility of removal of citizenship for all those who were considered to be acting contrary to Albanian national interests. In 1954 a decree was enacted which vested wide discretionary powers in the hands of the President when dealing with the matters of removal of citizenship.

71. The report also explains that under the post-communist Albanian Citizenship Act enacted in 1998, citizenship may be acquired by birth to at least one parent with Albanian citizenship. It may also be acquired by naturalisation, which requires that individuals who apply have lived in Albania for a certain period of time. However, there is a possibility of "facilitated naturalisation", which applies to individuals who have renounced their Albanian citizenship in order to acquire the citizenship of another country. For such individuals it is sufficient to submit an application. However, in practice, they have faced many problems in re-acquiring citizenship.

72. According to the available information, in the period between 1991 and 2007 some 3,184 individuals, mostly ethnic Albanians from the former Yugoslavia, acquired Albanian citizenship. Nevertheless, on a political level, although ethnic Albanians from the former Yugoslavia are given various forms of social and cultural preferential treatments, there has not been a full extension of citizenship rights.

73. The procedure for acquiring Albanian citizenship starts by submitting an application to the relevant police directorate, which has two months to forward the application to the Ministry of the Interior. The latter should, within six months from the filing date of the application, decide whether to forward it to the Office of the President of the Republic. The President's Office should then, within three months of receipt of the application, decide upon the application for citizenship.

74. The report observes that, despite the above procedures, the implementation of the legislation still remains problematic in Albania. This in particular concerns the manner of registration of new-born children in the relevant registration offices; the fact that the civil register is not properly updated, so some individuals who have lost their citizenship are still

registered as Albanian nationals; and there is a lack of transparency of the relevant procedures.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

75. The applicant complained of the insecurity of his residence status in Croatia due to the fact that he had not had an effective possibility to regularise his residence status in Croatia. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The Government's request to strike out the application under Article 37 § 1 (b) of the Convention

76. The Government informed the Court, in their submission of 21 September 2015, that following the communication of the case by the Court, the applicant had requested and had been granted on 4 September 2015 temporary residence on humanitarian grounds for a further year (see paragraph 55 above). They considered that this had resolved the applicant's case and invited the Court to strike out the application in accordance with Article 37 § 1 (b) of the Convention.

77. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may "... at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...". In order to ascertain whether that provision applies to the present case, the Court must answer two questions in turn: firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I, and *H.P. v. Denmark* (dec.), no. 55607/09, § 66, 13 December 2016).

78. The Court notes that the case at issue concerns the specific circumstances related to the regularisation of the status of aliens residing in

a State following the break-up of a predecessor State. In such cases, the Court has accepted that the cases of applicants who, following the break-up of a predecessor State, were given unequivocal assurances by the relevant authorities that they would be granted permanent residence, which then required them to diligently comply with further arrangements related to the granting of that status, should be struck out from the Court's list of cases under Article 37 § 1 (b) of the Convention (see *Shevanova v. Latvia* (striking out) [GC], no. 58822/00, § 46, 7 December 2007; *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 49, 7 December 2007; and *Sisojeva and Others*, cited above, §§ 98-99; see also, concerning victim status, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 266, ECHR 2012 (extracts); and further compare *Khan v. Germany* [GC], no. 38030/12, § 33, 21 September 2016, concerning the regularisation of the status of failed asylum seekers in connection with a risk of expulsion).

79. In the present case the applicant, who has lived in Croatia for almost forty years, complained before the Court of the insecurity of his residence status in Croatia due to the fact that he was unable to regularise his residence status. He also complained that, in view of his particular personal circumstances and statelessness, the extension of the temporary residence on humanitarian grounds for a year had not provided him sufficient certainty to allow him to lead a normal life in Croatia.

80. The Court notes that following the communication of the case to the Government, the applicant's temporary residence status on humanitarian grounds, after first having been refused on the grounds that he had failed to provide a valid travel document from the authorities in Kosovo and that the Ministry had not given its consent to extend his residence permit (see paragraphs 47-53 above), was twice extended for a year because the Ministry had meanwhile given its consent. By these extensions of the temporary residence status on humanitarian grounds the applicant was also required to provide a valid travel document in order to regularise his further stay (see paragraphs 55-56 above). The applicant, however, considered that this was a requirement that would be impossible for him to meet as he was stateless and was unable to obtain a valid travel document at the time of application (see paragraphs 52 and 54 above).

81. Moreover, it follows from the above that the temporary residence status on humanitarian grounds is a faculty in the discretion of the Ministry who, it appears, has a possibility always to give or refuse its consent to authorise the extension of the applicant's residence in Croatia. In the present case the Ministry refused the extension of the applicant's temporary residence status on humanitarian grounds on 30 January 2015. It thereby interrupted the period of the applicant's regular residence status and thus put back the prospect of him permanently regularising his residence status as provided under section 92 of the Aliens Act (see paragraph 60 above). Such

a decision of the Ministry was also confirmed by the Zagreb Administrative Court (see paragraph 54 above).

82. In view of the above considerations, and having regard to the nature of the applicant's complaint, the Court finds that the effects of the temporary residence status on humanitarian grounds cannot be said to amount to a measure removing the uncertainty of the applicant's residence status of which he complains. Nor can the effects of the applicant's residence status on humanitarian grounds be compared to the other above-cited cases where the Court considered that the matter had been resolved within the meaning of Article 37 § 1 (b) of the Convention (see paragraph 78 above).

83. The Court therefore rejects the Government's request to strike the application out of its list of cases under Article 37 § 1 (b) of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

B. Admissibility

1. The Court's temporal jurisdiction

84. The Court notes that, although the parties have not raised the issue of its jurisdiction *ratione temporis*, in order to satisfy itself that it has temporal jurisdiction to examine all the circumstances of the applicant's case (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006‑III), the Court must take into account that the Convention entered into force in respect of Croatia on 5 November 1997 and that a number of events related to the applicant's residence status in Croatia occurred before that date. However, having regard to both parties' arguments in the present case, the Court finds that the applicant's alleged impossibility to regularise his residence status in Croatia may be regarded as a continuous situation. In any event, the current situation in which the applicant found himself cannot be assessed without an understanding of the facts of the case that occurred before the critical date.

85. In this connection, the Court reiterates that it can have regard to the facts which occurred prior to ratification inasmuch as they could be considered to have created a continuous situation extending beyond that date or might have been relevant for the understanding of facts occurring after that date (see *Kurić and Others*, cited above, § 240, with further references). Accordingly, in view of its case-law, the Court finds that it is not prevented from having regard to the facts of the case occurring prior to the date when the Convention entered into force in respect of Croatia.

2. Non-exhaustion of domestic remedies

(a) The parties' arguments

86. The Government contended that the applicant had not diligently pursued the relevant steps for regularising his residence status in Croatia. In particular, he was first required to properly obtain a temporary residence permit in order to apply for permanent residence and eventually, if applicable, Croatian citizenship. However, after first having regularised his temporary residence between 1993 and 1996, he failed to regularise his status in the subsequent period. In 2014 he had also failed to comply with all the requirements to be granted an extension of temporary residence as he had failed to provide a valid travel document. The Government also considered that the applicant's complaint was premature given that he had had an opportunity to challenge the Ministry's decision refusing the extension of his temporary residence status of 30 January 2015 before the Administrative Court and the Constitutional Court.

87. The applicant argued that he had duly attempted to regularise his status in Croatia and had brought his application to the Court when the last chance of his regular residence status in Croatia had been extinguished by the Ministry's decision refusing the extension of his temporary residence status on 30 January 2015. In any event, in his view, the temporary residence status on humanitarian grounds was not sufficient in itself as it was completely at the Ministry's discretion and would not be capable of regularising his status. He stressed that he was now in his fifties and that he could no longer live with uncertainty from one year to another without knowing whether his residence permit would be extended. Such uncertainty had prevented him from finding stable employment and regularising his health insurance. The applicant also relied on the UNHCR's submission according to which it was very burdensome to regularise residence status in Croatia for somebody without a valid biometric passport from his or her country of origin. The applicant stressed that the general legislation concerning the rights of aliens was insufficient concerning the individuals in his situation and that the impossibility for him to regularise his residence status was at the heart of the issue in the present case.

(b) The Court's assessment

88. The Court considers that the questions related to the exhaustion of domestic remedies should be joined to the merits, since they are linked to the substance of the applicant's complaint that he did not have an effective possibility to regularise his residence status in Croatia.

3. Abuse of the right of individual application

(a) The parties' arguments

89. The Government contended that the applicant had abused his right of individual application by submitting the erroneous arguments in his initial application to the Court. The first one concerned his arguments that he had had SFRY citizenship prior to 1989, the second that he had had a domicile in the then Socialist Republic of Croatia, and the third that he had been erased from the relevant registers of domicile in Croatia. In particular, the applicant had initially argued his case on the basis of the Court's case-law in *Kurić and Others* (cited above) arguing that he had been a SFRY national. However, the documents provided by the Government, specifically the record of the applicant's interview by the police in 1989 (see paragraph 13 above), clearly showed that this was incorrect information. In the Government's view, it was irrelevant whether the applicant and/or his lawyer had mislead the Court on this issue as in any case that should be treated as an abuse of individual application.

90. The applicant submitted that his citizenship and residence status in the SFRY had been unclear. He pointed out that he had been born in Kosovo, that a document issued by the authorities in Kosovo had showed that his parents had had "citizenship of Kosovo" and that he had been allowed to live and work in the SFRY and enjoy all other rights of its citizens. He therefore considered that the Government could not claim that he had been aware that he had been a foreigner with temporary residence in the SFRY, particularly because the ambiguity of his status was at the heart of the dispute in the case at issue. In any case, in the applicant's view, the important fact was that he had disappeared from the register of residence in Croatia in the period between 1993 and 1995, and that the problem of "erased persons" in Croatia had also been an issue raised by the UNHCR in its submission.

(b) The Court's assessment

91. The Court reiterates that an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. In any case, however, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

92. The Court has also already held that parties can submit arguments and counter-arguments related to their cases before it and the Court can accept or reject them, but such contentious submissions cannot in themselves be regarded as an abuse of the right of individual application (see *Udovičić v. Croatia*, no. 27310/09, § 125, 24 April 2014, and

Harakchiev and Tolumov v. Bulgaria, nos. 15018/11 and 61199/12, § 185, ECHR 2014 (extracts)).

93. The Court notes that in different official documents issued following the dissolution of the SFRY, the applicant's nationality is stated differently. For instance, the Ministry's documents of 1993 and 1995 indicate that the applicant was a national of Albania (see paragraphs 18-32 above) whereas a document from 2002 indicates that he was a national of the FRY (see paragraph 35 above). Further, a document of 2003 indicates that he was a national of Serbia and Montenegro (see paragraph 39 above) and the more recent documents that he was a citizen of Kosovo (see paragraphs 45-56 above). At the same time, there is no doubt that the applicant was born and lived in the SFRY until its break-up and that his parents were considered to have been citizens of Kosovo (see paragraph 57 above). Accordingly, given the complexity of the issues surrounding the applicant's citizenship, and in view of the explanations provided by the applicant as to the reasons why he had initially been considered an Albanian national (see paragraphs 37-38 and 57 above) as well as the contentious nature of the matter, the Court does not find that the applicant attempted to intentionally mislead it with regard to his citizenship.

94. Further, the Court notes that the applicant lived in Croatia at the moment of the dissolution of the SFRY and was assured in 1993 that he would be granted citizenship as he met all the other relevant requirements under the applicable law (see paragraph 25 above), one of which was a registered residence for an uninterrupted period of at least five years in Croatia (see paragraph 60 above). However, in 1996 his second application for Croatian citizenship was dismissed on the grounds that he had not had a registered residence for an uninterrupted period of at least five years in Croatia (see paragraph 31 above). In these circumstances, the Court considers that a reasonable doubt could have arisen on the part of the applicant as to the erasure of his residence in the relevant registers. It cannot therefore be held that the arguments related to the applicant's residence, which remains a matter of dispute between the parties, amount to an abuse of individual application.

95. In view of the above considerations, the Court rejects the Government's objection.

4. Conclusion

96. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' arguments

(a) The applicant

97. The applicant contended that he had been unlawfully erased from the register of residence in Croatia sometimes in the period between 1993 and 1995, which had created a continuous situation making it impossible for him to regularise his residence status. The "erasure" in question affected those persons who had had a registered domicile in the Socialist Republic of Croatia but had not acquired Croatian citizenship or obtained permanent residence in the new Croatian State due to the fact that they had failed to meet one of the necessary requirements (to have sufficient financial means; to have secured housing; to have health insurance; to provide documents that justify the purpose of the residence; and to have a valid passport). Those subjected to the erasure had never been informed thereof and the erasure had been carried out automatically and without prior notification. He had also not been informed of the erasure and had not had an opportunity to challenge it before the competent authorities. Nor had he been in a position to foresee the measure complained of to envisage its repercussions on his private or family life or both. In any event, the applicant stressed that there had been no legal basis for the application of the measure of erasure.

98. The applicant further argued, relying on the UNHCR's submission, that as a result of the erasure, he had been denied Croatian citizenship and had been left bereft of any legal status granting him a right of residence in Croatia. Moreover, 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, legislative or administrative, in order to regularise the situation of the "erased" and to regulate clearly the consequences of the "erasure", including the residence status of those who had been subjected to it.

99. The applicant also stressed that, prior to Croatia's independence, he had lawfully resided in that State for twelve years and had enjoyed a wide range of rights. However, owing to the "erasure", he had experienced a number of adverse consequences, such as 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. At the same time, Croatia had failed to enact provisions aimed at permitting persons in the same situation as the applicant to regularise their residence status if they had chosen not to become Croatian citizens or had failed to do so although, in

the applicant's view, such provisions would not have undermined the legitimate aims of controlling the residence of aliens or creating a profusion of new Croatian citizens, or both. In this connection, the applicant also stressed that he was a long-term migrant in Croatia. He contended that the absence of a legal mechanism that would enable persons who had lost their legal status owing to Croatian independence in spite of their long-term residence in Croatia and the prolonged impossibility of obtaining valid residence permits had been disproportionate and unjustified.

(b) The Government

100. The Government considered that it was important to note that the applicant was not a stateless person but a citizen of Albania. According to the Government, this was evident from the fact that during the proceedings in respect of his application for Croatian citizenship he had submitted that he had been an Albanian citizen. Moreover, in several documents issued by the SFRY authorities in Kosovo (an employment booklet and a certificate on completion of primary education) that applicant had been considered an Albanian citizen. In addition, the Government pointed out that, according to the legislation applicable in 1954 (see paragraphs 66 and 70 above), the applicant's Albanian citizenship had been acquired by birth as his parents had been Albanian citizens. The Government also stressed that the available information showed that the applicant had never been a citizen of the SFRY or any of its republics but had rather had the status of a refugee in the SFRY. On Croatia's declaration of independence, the applicant found himself in that State as an alien with a temporary residence granted in the SFRY.

101. The Government also argued that the applicant had not had a domicile in the then Socialist Republic of Croatia or the SFRY but had only had temporary residence in the SFRY, registered in Kosovo. Accordingly, the authorities in Kosovo had issued him a residence permit and he had regularised his status with those authorities. The only time when his residence had been registered in the then Socialist Republic of Croatia had been in the period between 4 January and 30 June 1988. Accordingly, he could not have been erased from the relevant register when Croatia declared its independence given that his residence status had already expired. In the Government's view, the case at hand had therefore no similarities with the *Kurić and Others* case (cited above).

102. The Government further explained that following Croatia's declaration of independence, the applicant had found himself on its territory as a foreign national without a regularised residence status. Thus, in 1993, the relevant Croatian authorities had taken into account the fact that he had already lived in the former country for a number of years as a refugee and also for a while had a temporary residence in Croatia and that he had expressed his wish to live in Croatia, and issued the applicant an assurance

that he would be eligible for Croatian citizenship if he obtained release from Albanian citizenship. The applicant had however remained passive and had never taken any action aimed at renouncing his Albanian citizenship or otherwise complying with the relevant requirements under the applicable Croatian Citizenship Act. In this connection, the Government considered that it had not been unreasonable to expect the applicant to renounce his Albanian citizenship in order to acquire Croatian citizenship as such a requirement had been aimed at avoiding dual nationality. Moreover, in the Government's view, it could not be considered that asking the applicant to contact the Albanian embassy in order to regulate the issue of release from its nationality had been an onerous administrative requirement.

103. The Government also pointed out that in the period between 1992 and 1995, after he had failed to obtain Croatian citizenship, the applicant had resided in Croatia without any legal basis. This had been why his second application for Croatian citizenship had been refused (see paragraphs 31-33 above). At the time of application, the applicant was unable to regularise his status as he had consistently failed to provide a valid travel document of Albania or to explain why that would be impossible for him to do so. 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. Lastly, the Government stressed that the Croatian authorities, in view of the applicant's specific situation, had consistently tolerated his stay in Croatia although it had not always been lawful. In fact, nothing had prevented the applicant from regularising his residence status; he had needed only to provide a valid travel document or a reason for which he had been unable to provide it. This would have allowed him to lawfully reside, work and secure health insurance in Croatia.

104. 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 under section 79 of the Movement and Stay of Foreigners Act (see paragraph 61 above). In any event, those persons had qualified for Croatian citizenship under section 8 of the Croatian Citizenship Act (see paragraph 60 above). Accordingly, there had never been an "erasure process" in Croatia following its declaration of independence.

(c) Third-party intervention

105. The UNHCR stressed the need for States to address the issues of statelessness and to confront the general phenomenon of statelessness in

accordance with the existing international mechanisms on the matter. The UNHCR submitted that following the disintegration of the SFRY, all successor States had used the principle of continuity of their internal (within each republic) citizenship in the creation of their new nationality laws. As a result, citizenship of a republic had become the central mechanism for the emerging States to grant nationality. The SFRY successor States, including Croatia, had chosen to grant nationality based upon the list of names in the nationality registers of those republics, which had had a number of consequences. In particular, although in principle statelessness should have been avoided for all former SFRY citizens because they had been presumed to be in possession of citizenship of at least one of the former republics of the SFRY, this approach had had serious repercussions for thousands of people. First of all, it had been incorrect to assume that all former SFRY citizens had possessed and could have proved citizenship of the republic in which they resided. One of the reasons for this is that some of them had not been registered as citizens in one of the republics of the SFRY to which they (or their parents) had moved. The UNHCR's experience in the region had showed that owing to variations in the registration of citizenship of each republic across the six republics since 1945, it had not always been possible to obtain confirmation of citizenship of a particular republic. Those people who had been unable to prove their citizenship of a republic were left stateless because they had not been able to acquire citizenship of any of the successor States of the SFRY.

106. The UNHCR further explained that after the disintegration of the SFRY, statelessness had affected mainly two groups of persons in Croatia. The first group was those who had had Federal citizenship and had moved to reside in Croatia from another Republic before the dissolution of the SFRY (mostly non-ethnic Croats). The second group comprised those who had been habitually residing in the former Socialist Republic of Croatia but whose residence had never been registered. The residence of the latter group of persons had not been registered notably owing to the lack of civil registration or identity documents that had been necessary to do so. Procedures to regularise residence and subsequently citizenship status for non-ethnic Croats had been introduced in 1991 but had proven ineffective owing to 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. Owing to the fact that they had been unable to meet onerous administrative burdens such as documentary requirements relating to proof of past residence, and had been unable to pay high application fees, many of these minorities had not been able to regularise their residence status in Croatia. Thus, many had been excluded from acquiring Croatian citizenship or that of another successor State of the SFRY and remained stateless.

107. 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. Erasure from the register of domicile and the lack of identity documents had led to the 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, they could have been subject to detention for up to eighteen months with a view to deportation to their countries of origin. The UNHCR's experience showed that even when it had not been possible to deport stateless persons and they had eventually been released from detention, they had remained unlawfully in Croatia.

108. The UNHCR further explained, with regard to the legal status of stateless persons, including stateless persons who had been erased from the domicile registers in Croatia, that under the current Aliens Act stateless persons could apply for temporary residence on humanitarian grounds. However, the UNHCR stressed that the renewal of temporary residence permits on humanitarian grounds was far from straightforward for stateless persons, including stateless persons who had been erased from the domicile registers, as it required a valid national biometric passport of the current country of nationality. Stateless persons could not however meet this requirement. 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.

2. The Court's assessment

(a) Preliminary remarks

109. The Court notes at the outset that the case at issue concerns a complex and very specific factual and legal situation related to the regularisation of the status of aliens residing in Croatia following the break-up of the former SFRY. In particular, the applicant, whose parents had come

to the former SFRY as political refugees from Albania in 1960, was born in Kosovo in 1962, which was at the time an autonomous province of Serbia, but already at a young age came to live to Novska in Croatia. During the existence of the former SFRY, which consisted of several republics including at the time Croatia, the applicant's residence status in Novska was regularised through the recognition of the effects of his domicile in Kosovo and the refugee status granted to his parents by the local authorities there. However, following the break-up of the former SFRY, although at the time he had resided in Novska for some twelve years and continued to reside there, the applicant's residence status passed through many stages and legal regimes and is at present covered by the temporary extension of his residence permit on humanitarian grounds. It should also be noted in this connection that the applicant's presence in Croatia, although in certain periods without any legal basis, was consistently tolerated by the local authorities.

110. Another distinctive feature of the case is the fact that, according to the available information, the applicant is at present stateless. As already noted above, a birth certificate issued by the SFRY authorities in Kosovo in 1987 indicated that the applicant had no nationality (see paragraph 24 above) and the same follows from a birth certificate issued by the current authorities in Kosovo in 2009 (see paragraph 58 above). Moreover, 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 (see paragraphs 37-38, 57 and 66-74 above).

111. The Court has also taken note of the applicant's and the third-party intervener's submissions concerning the alleged problem of erasure of persons from the registers of domicile in Croatia following the dissolution of the former SFRY; an issue which gave rise to a breach of Article 8 in the *Kurić and Others* case against Slovenia (cited above, §§ 360-62). However, the Court does not consider that the case at hand concerns the issue of erasure of the applicant's name from the registers of domicile or residence in Croatia following the dissolution of the former SFRY.

112. In this connection, the Court notes that the evidence available before it conclusively shows that at the moment when Croatia declared its independence from the former SFRY in June 1991, and severed its ties with that entity in October 1991, the applicant had neither SFRY nationality nor a registered domicile or residence in Croatia. In fact, the available records of the Novska police demonstrate that the applicant was granted, as an immigrant from Albania with a regularised residence status in Kosovo, a temporary residence permit in Novska in the period between 4 January and 30 June 1988 pending the determination of his application for permanent residence in the then Socialist Republic of Croatia (see paragraph 10 above). In the subsequent period, having failed to regularise his residence status in Croatia, the applicant informed the Novska police in 12 June 1990 of a

residence permit issued by the relevant authorities in Kosovo valid until 5 November 1991 on the basis of which he continued to *de facto* reside in Novska (see paragraph 15 above).

113. It is accordingly evident from the above that the applicant could not have been erased from the register of domicile or residence in Croatia in 1991 as after 1988 he had not resided in Croatia on the basis of any decision or residence permit issued by the Croatian authorities. It is true that a certain misgiving in this respect might arise from the decisions of the Croatian authorities in 1993 to issue the applicant with an assurance that he was eligible for Croatian citizenship, for which a regularised five-year uninterrupted residence in Croatia was needed, and then in 1995 dismissed his application for Croatian citizenship on the grounds that he had not had a registered residence in Croatia for an uninterrupted period of five years (see paragraphs 25 and 31 above). However, the 1995 decision appears to correspond to the reality of the situation arising from the relevant evidence, whereas the 1993 decision was either based on erroneous facts or, for reasons unknown to the Court, assumed that the five-year condition had been met. In any case, the latter decision is unable, in itself, to call into question the facts flowing from the evidence available to the Court.

114. The Court does not therefore find that the deficiencies in the legislation and practice alleged by the applicant and the third-party intervener concerning the erasure of domicile or residence of aliens residing in Croatia following the dissolution of the SFRY pertain in the applicant's case. Accordingly, reiterating that in proceedings originating in an individual application it is not called upon to review the legislation in the abstract, but has to confine itself, as far as possible, to an examination of the concrete case before it (see, amongst many other authorities, *Travaš v. Croatia*, no. 75581/13, § 83, 4 October 2016), the Court will not further deal with the alleged issue of erasure from the register of domicile in Croatia following the dissolution of the former SFRY.

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 (see, for instance, *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006‑XII; *Maslov v. Austria* [GC], no. 1638/03, ECHR 2008, and *Savasci v. Germany* (dec.), no. 45971/08, 19 March 2013; see also *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 104, 3 October 2014).

116. Likewise, the situation of the applicant, who has resided in Croatia already for almost forty years without ever leaving his place of residence in

Novska, and who found himself in a rather specific situation following the break-up of the former SFRY, which occurred outside either the applicant's control or individual choice, also cannot be fully equated to the situation of an alien seeking admission to a host country (see, amongst many others, *A.S. v. Switzerland*, no. 39350/13, § 46, 30 June 2015).

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.

118. Against the above background, the Court finds it appropriate, having in mind the circumstances of the applicant's case, to examine his complaint on the basis of its case-law related to the complaints of aliens who, irrespective of many years of actual residence in a host country, were not able to regularise their residence status and/or their regularisation of the residence status was unjustifiably protracted. In the Court's case-law, such cases, each of course within its particular factual circumstances, were found to involve an allegation of a failure on the part of the respondent State to comply with a positive obligation under Article 8 of the Convention to ensure an effective enjoyment of an applicant's private and/or family life (see *Kurić and Others*, cited above, §§ 357-58; *Jeunesse*, cited above, § 105; *B.A.C. v. Greece*, no. 11981/15, § 36, 13 October 2016; and *Abuhmaid v. Ukraine*, no. 31183/13, §§ 116-18, 12 January 2017). The relevant principles concerning the State's positive obligation in this respect will be summarised further below.

(b) General principles

119. At the outset, the Court reiterates that Article 8 protects, *inter alia*, the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity. Thus, the totality of social ties between a migrant and the community in which he or she lives constitutes part of the concept of private life under Article 8 (see, *mutatis mutandis*, *Maslov v. Austria* [GC], no. 1638/03, § 63, ECHR 2008, and *Abuhmaid*, cited above, § 102).

120. Nevertheless, according to the Court's case-law, the Convention does not guarantee the right of an alien to enter or to reside in a particular country and Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, amongst many other authorities, *Chahal v. the United Kingdom*,

15 November 1996, § 73, *Reports of Judgments and Decisons* 1996-V; *Üner*, cited above, § 54; *Slivenko*, cited above, § 115; *Kurić and Others*, cited above, § 355, and *Abuhmaid*, cited above, § 101).

121. Moreover, neither Article 8 nor any other provision of the Convention can be construed as guaranteeing, as such, the right to the granting of a particular type of residence permit, provided that a solution offered by the authorities allows the individual concerned to exercise without obstacles his or her right to respect for private and/or family life (see *Aristimuño Mendizabal v. France*, no. 51431/99, § 66, 17 January 2006, and *B.A.C v. Greece*., cited above, § 35). In particular, if a residence permit allows the holder to reside within the territory of the host country and to exercise freely there the right to respect for his or her private and family life, the granting of such a permit represents in principle a sufficient measure to meet the requirements of Article 8. In such cases, the Court is not empowered to rule on whether the individual concerned should be granted one particular legal status rather than another, that choice being a matter for the domestic authorities alone (see *Ramadan v. Malta*, no. 76136/12, § 91, ECHR 2016 (extracts), and cases cited therein).

122. Having said that, the Court reiterates that measures restricting the right to reside in a country may, in certain cases, entail a violation of Article 8 of the Convention if they create disproportionate repercussions on the private or family life, or both, of the individuals concerned (see *Maslov*, cited above, § 100, and *Kurić and Others*, cited above, § 355). Moreover, the Court has held that in some cases, such as in the case at issue, Article 8 may involve a positive obligation to ensure an effective enjoyment of the applicant's private and/or family life (see paragraphs 119-120 above). In this connection, it is helpful to reiterate that the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both instances regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see, amongst many other authorities, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 114, ECHR 2014 (extracts), and *B.A.C. v. Greece*, cited above, § 36).

123. The positive obligation under Article 8 may be read as imposing on States an obligation to provide an effective and accessible means of protecting the right to respect for private and/or family life (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 162, ECHR 2005‑X, and *Abuhmaid*, cited above, § 118, with further references; see also *Kurić and Others*, cited above, § 358). Article 8 requires, amongst other things, a domestic remedy allowing the competent national authority to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the

manner in which they conform to such an obligation (see *Abuhmaid*, cited above, § 118).

124. Accordingly, in view of the nature of the applicant's complaint and the fact that it is primarily for the domestic authorities to ensure compliance with the relevant Convention obligation, the Court considers that the principal question to be examined in the present case is whether, having regard to the circumstances as a whole, the Croatian authorities, pursuant to Article 8, provided 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 (see, *mutatis mutandis*, *Kurić and Others*, cited above, §§ 357-59; *Jeunesse*, cited above, § 105, and *Abuhmaid*, cited above, § 119).

(c) Application of these principles in the present case

125. The Court notes at the outset that there can be no doubt that the applicant enjoys private life in Croatia. He came to Novska at the age of seventeen and has lived there ever since, that is to say for almost forty years (see paragraph 7 above). He has worked at different jobs and accumulated social ties in the local community where he lives (see paragraphs 15, 17, 18, 21, 43 and 48 above, and compare *Abuhmaid*, cited above, § 103). At present, he is fifty-five years old and has no link with any other country or place of residence and has in the meantime lost contact with all his relatives (see paragraph 8 above).

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.

127. The Court further notes several important particular features of the present case. It first and foremost takes into consideration the above-observed fact that the applicant's position cannot simply be considered to be on a par with that of other potential immigrants seeking to

regularise their residence status in Croatia (see paragraph 116 above). The applicant was born in 1962 in the former SFRY as the child of an Albanian refugee couple that lawfully resided in that country. As Croatia was at the time part of the SFRY, the applicant came to live in Novska in 1979 where he settled and lived under the temporary residence regime provided by the authorities in Kosovo related to his status of an Albanian refugee which was recognised throughout the former SFRY. At the same time, according to a birth certificate issued in 1987, the applicant did not have any nationality (see paragraph 24 above). Although the applicant never changed his place of residence or any other feature of his personal status his already complex residence status was made even more convoluted by the break-up of the former SFRY, complex and disturbed succession process and the ensuing war. It was in these circumstances that the applicant, despite having lived in Croatia for almost forty years, found himself in the above-noted uncertainty of his residence status (see paragraph 126 above). In this sense, although the applicant was not subject to a process of erasure of his residence status (see paragraph 114 above), the applicant's case has some resemblance to the cases of applicants in *Kurić and Others* (cited above, §§ 357-59) who, following the succession of the republics of the former SFRY, found themselves in a situation in which they were unable to regularise their residence status.

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.

129. The Court lastly considers it important to note in this context that an important feature of the applicant's case is also the fact that his residence status in Croatia, although not always regularised, was tolerated by the Croatian authorities for a number of years. In particular, following the dissolution of the SFRY and the ensuing war, the applicant was recruited to perform a mandatory civil service in Novska. His residence status was afterwards regularised only in the period between 1993 and 1997 (see paragraph 27 above) and in the period between 2011 and 2014 (see paragraph 45 above) and then again since September 2015 until present (see paragraphs 55-56 above). At the same time, almost twenty-seven years have

passed since Croatia declared independence and the applicant has been living in the same place of residence ever since. Moreover, although he was prosecuted for minor offences related to the status of aliens (see paragraph 48 above), the domestic authorities never instituted any proceedings related to the removal of unlawful aliens as provided under the relevant domestic law.

130. In this context, the Court also notes that, although a criminal complaint was lodged against him for causing a road accident, there is no evidence or suggestion that the applicant has a criminal record (see paragraph 48 above) nor did the intelligence agency find that the applicant was involved in any suspicious activity (see paragraphs 23 and 28 above). The only observation in that connection was made in the Novska police report of 1995 suggesting that the applicant had been socialising with individuals of similar characteristics with a tendency to get involved in trading of grey-market goods (see paragraph 29 above). However, the Court observes that this observation is unsubstantiated in any respect and that the report at issue contains a number of contradictions. For instance, it indicates that the applicant never tried to regularise his residence status in Croatia, which is not true in view of the fact that for a while in 1988 he had a regularised residence in Croatia (see paragraph 10 above). It also suggests that the applicant disappeared from his place of residence during the war in Croatia, which contradicts evidence showing that the applicant was engaged in mandatory civilian service in that period (see paragraph 17 above). It is also not clear what was meant by the suggestion that the applicant had an Albanian passport issued in Kosovo as obviously the local authorities in Kosovo could not have issued him with an Albanian passport and in any event the birth certificates issued by those authorities in 1987 and 2009 do not indicate that the applicant had Albanian nationality, which would have been a precondition for him obtaining an Albanian passport. Lastly and most importantly, the Court notes that the contents of the 1995 report were never mentioned or supported by any of the police or intelligence agency's reports on the applicant's personal situation.

131. Furthermore, having regard to the circumstances related to the applicant's residence status as a whole (see paragraph 124 above), the Court notes several aspects of the proceedings related to the applicant's application for a permanent residence permit in Croatia (see paragraphs 34-44 above). In making that assessment, the Court finds it important to note that it cannot subscribe to the Government's arguments which rely on the proceedings concerning the applicant's applications for Croatian citizenship. As explained in the *Kurić and Others* case (cited above, § 357), an alien lawfully residing in a country may wish to continue living in that country without necessarily acquiring its citizenship. Indeed, the applicant's complaint does not concern the impossibility for him to obtain Croatian citizenship but the general impossibility to regularise his

residence status in Croatia. The Court is therefore not called upon to examine whether the applicant should be granted Croatian citizenship but rather whether, if he had chosen not to become Croatian citizen or had failed to do so, he would have an effective possibility to regularise his residence status allowing him to normally lead his private life in Croatia (compare *Kurić and Others*, cited above, §§ 357-59).

132. With regard to the proceedings related to the applicant's application for a permanent residence permit in Croatia, the Court notes that this request was essentially dismissed because the applicant did not have three years of uninterrupted employment in Croatia and there was no particular interest of Croatia, as provided under section 29(2) of the Movement and Stay of Foreigners Act, in granting him a residence permit (see paragraphs 39 and 41 above).

133. The Court notes, however, that the applicant's employment booklet, which was available in the proceedings in question, indicates that he had been in employment in the period between July 1986 and December 1989 (see paragraphs 34 and 41 above). This period of employment was interrupted only for a period of some fifteen days (between 15 July and 1 August 1987). Although it was not explicitly mentioned in the decisions of the domestic authorities, the Court considers that if this interruption of the applicant's employment had led to the consideration that he did not have an uninterrupted employment in Croatia for three years, such a position, although formally correct, in view of all the applicant's personal circumstances, appears to have been overly formalistic and not reflective of the reality of the situation. Moreover, it is noted that the applicant provided assurance that he would be employed by the same employer if he managed to regularise his residence status (see paragraph 43 above).

134. In this connection, the Court also notes that the domestic authorities, including the Constitutional Court, did not take into account any private-life considerations related to the applicant's particular situation although the above-noted special features of the applicant's case were well known to them (see paragraphs 124-27 above; and compare, by contrast, *Abuhmaid*, cited above, § 122). Moreover, section 29(2) of the Act on the Movement and Stay of Foreigners, which the domestic authorities mentioned, allowed them to grant permanent residence to foreigners "in view of the particular personal reasons" (see paragraph 61 above). However, the domestic authorities only found that there was no particular interest of Croatia in granting the applicant permanent residence without making any assessment of the applicant's "particular personal reasons", as provided in the cited provision.

135. Having in mind the above circumstances of the applicant's case, the Court will now turn to the current proceedings through which the applicant is trying to regularise his residence status in Croatia. As already discussed above, this concerns the applicant's residence status on humanitarian

grounds which is extended every year upon the applicant's request and which, if it were to reach a period of five years of uninterrupted residence, would qualify the applicant for applying for a permanent residence permit and thus regularising his residence status (see paragraph 62 above; section 92 of the Aliens Act). It has already been noted above that in order to prolong the stay on humanitarian grounds, the applicant needs either a valid travel document or the Ministry, upon its discretion, can give consent for the extension of the stay on humanitarian grounds even in the absence of a valid travel document (see paragraphs 81-82 above).

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 (see paragraph 110 above).

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 (see paragraph 62 above, and sections 93 and 96 of the Aliens Act). 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.

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 (see paragraphs 53 and 55-56 above). 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 (see paragraph 53 above). 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 (see paragraph 65 above; see also paragraph 63 above).

139. With regard to the extension of the applicant's temporary stay on humanitarian grounds on the basis of the Ministry's consent, the Court has already observed above that such consent is purely a discretionary facility of the Ministry (see paragraph 81 above). Indeed, without providing any reasons, the Ministry refused to allow the extension of the applicant's temporary residence in July 2014 (see paragraph 49 above) whereas, also without providing any reasons, the Ministry gave its consent for the extension of the applicant's temporary stay in September 2015 and October 2016 (see paragraphs 55-56 above). The situation was thus created in which the period of the applicant's regularised stay between July 2011 and August 2014 was interrupted. This therefore delays his prospect of applying for permanent residence permit for a future period in which he would need to have five years of uninterrupted residence on humanitarian grounds subject to the Ministry's discretion, which has not been exercised consistently and which appears to takes no account of the special features of the applicant's case and his private-life situation.

140. The Court also notes that the applicant challenged the 2014 decision of the Ministry refusing the extension of his temporary stay before the Zagreb Administrative Court. However, it took that court more than two years to examine the applicant's complaints only to dismiss them by endorsing the Ministry's refusal to extend the applicant's temporary stay on humanitarian grounds. It thereby made no assessment of the applicant's specific private life situation and the circumstances of his stay in Croatia from the perspective of Article 8 of the Convention (see paragraph 54 above). In any case, although the applicant has challenged that ruling before the High Administrative Court, it should be noted that, even in the event of a positive ruling, it is uncertain, in view of the above considerations related to the manner in which the Ministry exercised its discretion in the applicant's case, whether it would have any real effect on the applicant's prospect of effectively regularising his residence status in Croatia.

141. Having regard to all the above procedures and circumstances cumulatively, the Court does not consider that, in the particular circumstances of the applicant's case, the respondent State complied 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 of the Convention (compare *Kurić and Others*, cited above, § 359; and contrast *Abuhmaid*, cited above, § 126).

142. The Court therefore rejects the Government's objection it has previously joined to the merits (see paragraph 88 above).

143. It also finds that there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 12

144. The applicant complained of a violation of Article 14 taken in conjunction with Article 8 of the Convention, and of Article 1 of Protocol No. 12. He alleged that the manner in which the legislative context for regularisation of residence in Croatia functioned discriminated against former SFRY citizens vis-à-vis all other "real aliens".

145. The Government contested that argument.

146. The Court notes that it has already found above that there is no evidence that the applicant ever held SFRY citizenship (see paragraph 15 above). Accordingly, the alleged discrimination against former SFRY citizens vis-à-vis all other "real aliens" does not pertain in the applicant's case.

147. The Court therefore finds that the applicant's complaints are inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

149. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

150. The Government considered this claim excessive, unfounded and unsubstantiated.

151. The Court considers that the applicant must have sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation. Ruling on an equitable basis, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

152. The applicant also claimed EUR 4,000 for the costs and expenses incurred during the proceedings. Relying on an agreement on costs and

expenses of 24 June 2016, he asked the Court to order the payment of the awarded costs and expenses directly to his representative.

153. The Government considered the applicant's claim unfounded and unsubstantiated.

154. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 3,000 covering costs and expenses of the proceedings, which are to be paid into the representative's bank account, as identified by the applicant.

C. Default interest

155. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the issue of exhaustion of domestic remedies and rejects it;

2. *Declares* the complaints concerning the uncertainty of the applicant's residence status in Croatia related to the impossibility of regularising his residence status, under Article 8 of the Convention, admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*

(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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Linos-Alexandre Sicilianos President