



## Croatia has failed to regularise the residence status of a stateless migrant for many years, in breach of his right to private life

In today's **Chamber judgment**<sup>1</sup> in the case of **Hoti v. Croatia** (application no. 63311/14) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life and the home) of the European Convention on Human Rights.**

The case concerned a migrant in Croatia who complained that he had been unable to regularise his residence status since his arrival in the country in 1979. His parents fled Albania in 1960 as political refugees and settled in Kosovo; he was born there a few years later. He has since been told by the Albanian authorities that he is not Albanian; according to his birth certificate, he has no nationality. He has been living and intermittently working in Croatia for almost 40 years and has no link with any other country as he has, in the meantime, lost contact with all his relatives. Currently unemployed because he has no residence status, he survives by carrying out occasional work on farms.

The Court found in particular that the Croatian authorities had not taken into account the complexity of Mr Hoti's situation in the various procedures he had tried to use to regularise his residence status. He had therefore found himself, aged 55, in a precarious situation, with little prospect of finding employment or securing health insurance or pension rights. Indeed, instead of helping Mr Hoti to contact the authorities of another country in view of the fact that he has no nationality, the Croatian authorities have insisted on his being a Kosovo national.

### Principal facts

The applicant, Bedri Hoti, was born in Kosovo in 1962 to an Albanian couple who had fled their home country as political refugees. At the time Kosovo was an autonomous province of Serbia in the former Socialist Federal Republic of Yugoslavia ("the SFRY"). Aged 17, Mr Hoti left Kosovo and settled in Novska in Croatia, also a part of the SFRY at the time. He has been living there ever since. Although he has lived for a number of years under the temporary residence regime provided by the authorities in Kosovo related to his status as an Albanian refugee, a status which was recognised throughout the former SFRY, according to his birth certificate Mr Hoti actually has no nationality.

Throughout the years Mr Hoti has applied for Croatian citizenship and a permanent residence permit, without success. In particular, his application for a permanent residence permit was dismissed in 2003, essentially because he did not have three years of uninterrupted employment in Croatia.

Mr Hoti challenged these decisions by the Ministry of the Interior before the administrative courts, also without success. His constitutional complaint was dismissed in 2008.

He is currently trying to regularise his residence status in proceedings under the Aliens Act whereby it is possible to extend his stay every year on humanitarian grounds, either by providing a valid travel document or at the discretion of the Ministry. If he reaches a period of five years uninterrupted stay under this regime, he would qualify for a permanent residence permit. However, he has not so far

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

qualified as his residence, which was temporarily extended on humanitarian grounds between 2011 and 2013, was interrupted in 2014 when the Ministry refused to allow an extension because he had failed to provide a valid travel document. Most recently, in 2015 and 2016 the Ministry, considering Mr Hoti to be a national of Kosovo, gave its consent for an extension of his temporary stay.

Mr Hoti has no family in Croatia. His parents have died and he has lost contact over the years with two sisters who live in Germany and Belgium.

Throughout the 40 years he has lived in Croatia, he has worked intermittently, as a waiter and a car mechanic. He currently survives by helping out on farms in the Novska area.

## Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life and the home), Mr Hoti alleged that he had not had an effective possibility to regularise his residence status in Croatia, creating a situation of uncertainty for him, which had had an impact on his private life, namely difficulties in finding employment, contracting health insurance or regulating his pension rights.

The application was lodged with the European Court of Human Rights on 15 September 2014.

Third-party comments were submitted by the Office of the United Nations High Commissioner for Refugees (the UNHCR).

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Aleš **Pejchal** (the Czech Republic),  
Krzysztof **Wojtyczek** (Poland),  
Ksenija **Turković** (Croatia),  
Armen **Harutyunyan** (Armenia),  
Pauliine **Koskelo** (Finland),  
Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

First, the Court noted that there was no doubt that Mr Hoti had a private life in Croatia. He has been living and intermittently working in the country for almost 40 years and has no link with any other country as he has, in the meantime, lost contact with all his relatives. Currently unemployed because he has no residence status, he survives owing to farm work. He has therefore found himself, aged 55, in a precarious situation, with little prospect of finding employment or securing health insurance or pension rights.

Mr Hoti's situation was therefore complex and could not be considered to be on a par with other potential immigrants seeking admission to a host country. The complexity of his situation has further been compounded by the fact that he is stateless, and by the break-up of the SFRY, where his status as an Albanian refugee was previously recognised.

However, despite being aware of the special features of Mr Hoti's case and it being possible under the relevant legislation to grant permanent residence to foreigners "in view of particular personal reasons", the domestic authorities had not made any assessment of his personal circumstances and the situation in which he had found himself.

In particular, the authorities had refused his application for a permanent residence permit because he had not had three years of uninterrupted employment. According to records, he had in fact been

employed between July 1986 and December 1989 with a 15-day interruption. Given Mr Hoti's personal circumstances, the Court found that such a decision, although formally correct, had been overly formalistic.

Similarly, no account has been taken of Mr Hoti's particular circumstances in the current proceedings through which he is trying to regularise his residence status. The Ministry gave no reasons for refusing to extend his temporary stay in 2014 or for consenting to an extension in 2015 and 2016. Thus, his right of temporary stay has been exercised inconsistently and has further delayed the prospect of him applying for a permanent residence permit after five years uninterrupted residence on humanitarian grounds, subject to the Ministry's consent. Nor would it appear that he could ever attain the five years uninterrupted residence on humanitarian grounds subject to him providing a valid travel document, namely a valid national biometric passport of the current country of origin, as this is a requirement that Mr Hoti, a stateless person, could never meet.

Moreover, the Croatian authorities had never considered providing administrative assistance to facilitate Mr Hoti's contact with the authorities of another country, despite having been aware of the fact that he is stateless. On the contrary, the authorities insisted that he was a national of Kosovo.

Having looked at all the procedures and circumstances cumulatively, and also bearing in mind that Mr Hoti has no criminal record and that his residence has been tolerated in Croatia for more than 40 years, the Court considered that Croatia had failed to provide an effective and accessible procedure to enable him to have his further stay and status in the country determined with due regard to his private life, in breach of Article 8.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Croatia was to pay Mr Hoti 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.