Submission by the Office of the United Nations High Commissioner for Refugees in the Case of *Bedri HOTI. v. Croatia* (Application No.63311/14)

1. Introduction*

1.1. The Office of the United Nations High Commissioner for Refugees ("UNHCR") submits this written intervention as a third party in the case of *Bedri HOTI. v. Croatia* (Application No.63311/14), in accordance with Article 36§2 of the European Convention on Human Rights and Fundamental Freedoms ("ECHR") and Rule 44 §§ 3 and 4 Rules of Court and pursuant to the letter of 3 June 2015 from the European Court of Human Rights ("the Court"). UNHCR welcomes the opportunity to present its views, as the case raises a number of legal issues relating to statelessness, in particular, the link between residency status and nationality[1] in the context of statelessness resulting from State succession.

1.2. UNHCR has been mandated by the UN General Assembly to prevent and reduce statelessness around the world, as well as to protect the rights of stateless people. UN General Assembly resolutions 3274 (XXIV) and 31/36 designated UNHCR as the body to examine the cases of persons who claim the benefit of the 1961 Convention on the Reduction of Statelessness and to assist such persons in presenting their claims to the appropriate national authorities. In 1994, the UN General Assembly further entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons.[2] UNHCR has recognized expertise on statelessness issues.[3]

1.3. Part 2 of this submission examines the concept of statelessness as a worldwide phenomenon, as well as the international and regional legal frameworks established to address statelessness, both globally and in the context of State succession. Part 3 provides factual information on statelessness in the successor States of the former Socialist Federal Republic of Yugoslavia ("SFRY"), with a particular focus on the "erasure process" in Croatia which deprived those affected of their permanent residency status thereby preventing them from accessing procedures for the acquisition of citizenship. Part 4 outlines the significance of the international and European legal standards pertaining to the right to nationality in the context of assessing the situation of "erased persons" in Croatia.

2. General observations about statelessness

2.1. Statelessness as defined under international law

2.1.1. The 1954 Convention relating to the Status of Stateless Persons ("1954 Convention"), to which Croatia is a State party,[4] defines a "stateless person" as a person who is "not considered

[1] In this submission, the terms nationality and citizenship are used interchangeably to describe the 'legal bond' between a person (the national or citizen) and a State, as also defined in Article 2(a) of the European Convention on Nationality.

[2] UNGA resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. The latter endorses UNHCR's Executive Committee Conclusion No. 78 (XLVI) – 1995, Prevention and Reduction of Statelessness and the Protection of Stateless Persons, at: http://www.unhcr.org/refworld/docid/3ae68c443f.html

[3] In 2014, UNHCR published the Handbook on Protection of Stateless Persons, (UNHCR Handbook) available at http://www.refworld.org/docid/53b676aa4.html. The UNHCR Handbook is intended to guide government officials, judges and practitioners, as well as UNHCR staff and others involved in addressing statelessness and results from a series of expert consultations on the definition of a stateless person, procedures for determination of statelessness and the status of stateless persons under national law.

[4] UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, at: http://www.unhcr.org/refworld/docid/3ae6b3840.html. As of 11 June 2015, eighty six States were party to the 1954 Convention. The SFRY acceded to the 1954 Convention on 9 April 1959, and Croatia succeeded to the Convention on 12 October 1992. http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4c0f4b1f2

as a national by any State under the operation of its law," and is thus someone without any nationality or citizenship anywhere. This definition is considered to have achieved the status of customary international law.[5]

2.1.2. As described further below, in the context of the successor States of the SFRY, including Croatia, serious issues of statelessness occurred as a result of the process of State succession, rendering individuals stateless as per the international definition set out in article 1(1) of the 1954 Convention.

2.2. The global statelessness phenomenon

2.2.1. UNHCR estimates that there are at least 10 million stateless persons worldwide. Statelessness, however, is a phenomenon that often goes unrecorded. As such, UNHCR considers that there may actually be many more stateless persons worldwide. UNHCR reported around 600,000 stateless persons in Europe at the end of 2014.

2.2.2. Statelessness occurs for a variety of reasons, including discrimination on the basis of race, ethnicity or gender in nationality legislation, failure to include all residents in the body of citizens in cases of State succession and conflicts of laws between States. While some regions have larger stateless populations than others, every region of the world is affected by statelessness.

2.2.3. Statelessness can have serious consequences for the enjoyment of rights. Stateless persons are often denied access to a wide range of rights including, most commonly, the right to a nationality,[6] the right to birth registration, identity documentation, education, healthcare, legal employment, property ownership and freedom of movement. Stateless persons are also denied the right to vote and to participate in political and public life.

2.3. The international and regional legal framework relating to statelessness

2.3.1. Two treaties at the international level address statelessness. The 1954 Convention sets out the international legal definition of a stateless person and the rights of stateless persons. The 1954 Convention acknowledges the United Nations' profound concern for stateless persons and their particular vulnerabilities and calls on States to ensure the widest possible enjoyment of rights and freedoms. It contains provisions which, *inter alia*, oblige State Parties to extend administrative assistance to stateless persons and to issue them with identity papers[7] and travel documents,[8] as well as to facilitate their naturalization.[9]

2.3.2. The 1961 Convention on the Reduction of Statelessness ("1961 Convention"), to which Croatia is a State Party,[10] requires States Parties to establish safeguards in domestic legislation

[5] The International Law Commission's 2006 Commentary on the Draft Articles on Diplomatic Protection states that the 1954 Convention definition of a "stateless person" in article 1(1) can "no doubt be considered as having acquired a customary nature," under international law. The Council of Europe has endorsed this definition of a stateless person in article 1(c) of the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession, which establishes the following: "Statelessness' means the situation where a person is not considered as a national by any State under the operation of its internal law. See for further guidance on the definition of a stateless person, paragraphs 13 to 56 of the UNHCR Handbook.

[6] The right to a nationality is enshrined in a number of international treaties, including in Article 15 of the Universal Declaration of Human Rights. UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)..

[7] 1954 Convention, Articles 25 and 27.

[8] 1954 Convention, Article 28.

[9] 1954 Convention, Article 32.

[10] UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, at: http://www.unhcr.org/refworld/docid/3ae6b39620.html. As of 11 June 2015, sixty-three States were party to the 1961 Convention. Croatia became a party on 22 September 2011.

to address statelessness occurring at birth or later in life. There are four main areas in which the 1961 Convention provides measures to prevent and reduce statelessness: measures to avoid statelessness among children;[11] measures to avoid statelessness due to loss or renunciation of nationality;[12] measures to reduce statelessness due to deprivation of nationality;[13] and measures to avoid statelessness in the context of state succession.[14]

2.3.3. Whereas it is the prerogative of States to determine the rules for acquisition, change and loss of nationality, they are nonetheless required to comply with international law in doing so. Article 15 of the Universal Declaration of Human Rights provides that "everyone has the right to a nationality."[15] This right, albeit with varying formulations, is included in a number of international legal instruments, such as the International Covenant on Civil and Political Rights, [16] the International Convention on the Elimination of All Forms of Racial Discrimination,[17] the Convention on the Elimination of All Forms of Discrimination against Women,[18] and the Convention on the Rights of the Child.[19]

2.3.4. Following the increase in statelessness that arose from the process of State succession in Europe in the 1990s, notably as a result of the breakup of Czechoslovakia and the dissolution of the SFRY and the Soviet Union, a series of international and regional instruments were adopted to prevent statelessness from occurring in situations of State succession. In 1999, the International Law Commission adopted comprehensive draft articles on "Nationality of Natural Persons in Relation to the Succession of States" ("ILC Articles").[20] The ILC Articles reflect general principles of international law, existing treaty law and State practice. They also contain provisions that constitute the progressive development of international law. Of particular relevance in the present case are: articles 5 and 14 which deal with the rights to nationality of those habitually resident in the territory of a successor State; articles 6 and 7 concerning the enactment and implementation of legislation concerning the acquisition of nationality in a

[11] 1961 Convention, Articles 1 – 4.
[12] 1961 Convention, Articles 5 – 7.
[13] 1961 Convention, Articles 8 and 9.
[14] 1961 Convention, Article 10.
[15] Universal Declaration of Human Rights, Article 15(1).
[16] UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Article 24(3) of the International Covenant on Civil and Political Rights provides: "Every child has the right to acquire a nationality.'
[17] UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. Article 5 (d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination provides: "[…] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (…) the right to nationality;"
[18] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women* 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women provides: "States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. States Parties shall grant women equal rights with men with respect to the nationality of their children."
[19] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. Article 7 of the Convention on the Rights of the Child provides: "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless". Article 8 of the Convention on the Rights of the Child provides: "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."
[20] General Assembly resolution 55/153 of 12 December 2000, International Law Commission, Nationality of Natural Persons in relation to the Succession of States, 1999, http://www.refworld.org/docid/5582b7914.html

successor State; and articles 15 and 16, which respectively underline the importance of avoiding discrimination or arbitrariness in decisions concerning nationality issues. Article 22, which is concerned with the attribution of the nationality of successor States in the context of State dissolution, confirms the importance of habitual residence as the principal criterion for the grant of nationality in the context of State succession.[21]

2.3.5. The 1954 and 1961 Conventions are also complemented by standards contained in other regional treaties. In Europe, the 1997 European Convention on Nationality[22] ("European Convention on Nationality") is the principal Council of Europe treaty regulating nationality matters. Article 18 requires, *inter alia*, successor States to respect the principle of the avoidance of statelessness and to take into account a concerned person's habitual residence in, and links with, the State when granting nationality as well as their own views.[23] Subsequent to the European Convention on Nationality, the Council of Europe adopted more detailed standards on these issues in its 2006 Convention on the Avoidance of Statelessness in Relation to State Succession ("2006 State Succession Convention") which, like the ILC Articles, contains provisions to protect the right to nationality of those habitually resident on the territory of a successor State, or with another appropriate connection to a successor State, who would otherwise be stateless.[24] Article 11 of the 2006 State Succession Convention also aims to ensure the adequate dissemination of information about rules and procedures for the acquisition of nationality by the successor State to persons concerned. Although Croatia has signed but not acceded to the European Convention on Nationality and is not a party to the 2006 State Succession Convention, these instruments remain important in the resolution of situations of statelessness as they are consistent with and reflect the general state of international law. As noted by the Council of Europe's explanatory report of the 2006 State Succession Convention, the avoidance of statelessness forms a part of customary international law binding on Council of

[21] Article 22 provides that:

> "When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:
>
> (a) persons concerned having their habitual residence in its territory
>
> (…)"

[22] Council of Europe, *European Convention on Nationality*, 6 November 1997, ETS 166

[23] Article 18 of the European Convention on Nationality provides that:

> 1. In matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights and the principles contained in Articles 4 and 5 of this Convention and in paragraph 2 of this article, in particular in order to avoid statelessness.
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> 2 In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of:
>
> a) the genuine and effective link of the person concerned with the State;
>
> b) the habitual residence of the person concerned at the time of State succession;
>
> c) the will of the person concerned; d the territorial origin of the person concerned.
>
> 3 Where the acquisition of nationality is subject to the loss of a foreign nationality, the provisions of Article 16 of this Convention shall apply."

[24] Council of Europe, *Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession*, 15 March 2006, CETS 200. Article 5 of the 2006 State Succession Convention states:

> 1. A successor State shall grant its nationality to persons who, at the time of the State succession, had the nationality of the predecessor State, and who have or would become stateless as a result of the State succession if at that time: a. they were habitually resident in the territory which has become territory of the successor State, or b. they were not habitually resident in any State concerned but had an appropriate connection with the successor State.
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> 2. For the purpose of paragraph 1, sub-paragraph b, an appropriate connection includes inter alia: a. a legal bond to a territorial unit of a predecessor State which has become territory of the successor State; b. birth on the territory which has become territory of the successor State; c. last habitual residence on the territory of the predecessor State which has become territory of the successor State.

Europe Member States, and thus is applicable even should a Member State not have acceded to the 2006 treaty.[25]

2.3.6. Although the ECHR does not provide for a right to nationality, its provisions apply to stateless persons under the jurisdiction of the Contracting parties, within the meaning of its Article 1. The Court has accepted that it has jurisdiction to decide cases relating to statelessness or stateless persons, for example, in relation to Articles 3,[26] 5,[27] 8,[28] 13 and 14.[29] For instance, in an expulsion context, this Court noted that a stateless applicant had developed "a network of personal, social and economic relations that make up the private life of every human being'.[30] In a different judgment, it recognized that the "long period of insecurity and legal uncertainty" of another stateless applicant, who was unable to regularize his situation, had interfered with his private life.[31] In *Kurić and Others v. Slovenia,* a case raising similar circumstances to the case before the Court, found that failing to regularize persons affected by an erasure procedure and the prolonged impossibility of obtaining valid residence permits resulted in a violation of Article 8.[32]

3. Statelessness in successor States of the former Socialist Federal Republic of Yugoslavia

3.1. Statelessness in the former SFRY region

3.1.1. Citizenship under the former SFRY comprised two levels – a person was both a SFRY citizen (federal citizenship) and was also a citizen of one of the member republics (republican citizenship).[33] Federal citizenship was crucial for the purposes of obtaining a passport and accessing State rights such as freedom of religion, freedom of movement, freedom of speech, right to primary education[34] vis-à-vis the SFRY. Republican citizenship was important for a few specific issues, including the right to vote at the republican level. Due to the primacy of Federal citizenship, relatively few people changed their republican citizenship or that of their children, when they moved to reside in another constitutive republic of the SFRY.[35]

3.1.2. While there was no succession treaty regulating issues of citizenship following the disintegration of the SFRY, all successor States used the principle of continuity of internal (republican) citizenship in the creation of their new nationality laws.[36] As a result, republican citizenship took on a sudden new importance, as it became the central mechanism for the emerging States to grant nationality.[37] The SFRY successor States, including Croatia, chose to

[25] Council of Europe Convention on the avoidance of statelessness in relation to State succession - Explanatory Report - [2006] (19 May 2006), para. 1, http://conventions.coe.int/Treaty/EN/Reports/Html/200.htm.
[26] ECtHR, *Auad v. Bulgaria*, Appl. No. 46390/10, 11 October 2011, para. 103.
[27] ECtHR, *Kim v. Russia*, Appl. No. 44260/13, 17 July 2014, para. 54.
[28] ECtHR, *Slivenko v. Latvia*, Appl. No. 48321/99, 9 October 2003, para. 96; ECtHR, *Kurić and Others v Slovenia*, Appl. No. 26828/06, 26 June 2012, paras. 267-268.
[29] ECtHR, *Kurić and Others v Slovenia*, Appl. No. 26828/06, 26 June 2012, paras. 267-268.
[30] *Ibid., para. 336*.
[31] ECtHR, *Kaftailova v. Latvia*, Appl. No. 59643/00, 22 June 2006, paras. 50 and 60.
[32] ECtHR, *Kurić and Others v Slovenia*, Appl. No. 26828/06, 26 June 2012, paras. 359-362. The Court also found violations of Articles 13 and 14 in conjunction with Article 8.
[33] SFRY Constitution, Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 9/74.
[34] Ibid..
[35] European Series Volume 3, No.1, Citizenship and Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia, accessible at: http://www.unhcr.org/46e660582.html
[36] Any person who, on 8 October 1991, together with the citizenship of the SFRY, also had the citizenship of the Socialist Republic of Croatia, regardless of her/his domicile and regardless of her/his ethnicity, was considered to be a Croatian citizen (Article 30 Paragraph 1 of the Croatian Citizenship Act of 1991). Pursuant to this provision, citizens of the former Socialist Republic of Croatia who did not meet the prerequisite under Article 30 Para 1 of the Law, became foreigners in the Republic of Croatia by force of law.
[37] All the states that emerged from the SFRY have adopted new citizenship laws, but none of the new laws sufficiently acknowledge the dissolution of Yugoslavia or the previous dual citizenship regime.

grant nationality based upon the list of names in their republican nationality registers, which had a number of consequences.

3.1.3. In principle, statelessness should have been prevented for all former SFRY citizens because they were presumed to be in possession of citizenship of at least one of the former republics of the SFRY. However, this approach had serious repercussions for thousands of people. First of all, it was incorrect to presume that all former SFRY citizens possessed and could prove the republican citizenship in the republic in which they resided. Owing to the loss of personal documentation and/or the destruction of documentation in the context of the 1991-95 armed conflict, some individuals could not provide proof of republican citizenship. Moreover, others were not registered as citizens in one of the republics of the SFRY to which they (or their parents) had moved. UNHCR's experience in the region shows that due to variations in the registration of republican citizenship across the six republics since 1945, it was not always possible to obtain confirmation of one's republican citizenship. Those people who were unable to prove their republican citizenship were left stateless because they could not acquire citizenship of any of the successor States of the SFRY. Because of such problems, UNHCR has had large information and legal aid programmes in place to assist stateless persons in acquiring nationality in the successor States, including in Croatia.[38]

3.2 The situation of the stateless persons in Croatia

3.2.1. According to the Croatia Census of Population, Households and Dwellings 2011 (hereinafter 2011 Census), there were 2,886 stateless or persons of undetermined citizenship,[39] the majority of whom are Roma. To date, the stateless population in Croatia has not been accurately determined[40] and the problem of statelessness remains largely unaddressed despite the efforts undertaken in the National Strategy and Action Plan for the implementation of the national Roma inclusion strategy.[41]

3.2.2. After the disintegration of the SFRY, statelessness affected mainly two groups of persons in Croatia. The first group was those who 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 were habitually residing in the former Socialist Republic of Croatia but whose residence had never been registered.[42]

[38] At end October 2009, Croatia joined the Regional project funded by the European Union under the Instrument for Pre-Accession Assistance (IPA) framework entitled 'Social Inclusion: Regional Support to Marginalized Communities'. The project was implemented by UNHCR and the Croatian People's Ombudsman Office until 2011. As of 2012 up to date, project is implemented by UNHCR implementing partner NGO (Information and Legal Center from Sl. Brod).

[39] Persons of "undetermined nationality" are those who held Federal and republican citizenship at the time of the SFRY and who were not registered in any citizenship register of the successor states

[40] The authorities admitted in their National Roma Inclusion Strategy that the number of stateless persons cannot be precisely determined as no mapping of the stateless population had been conducted.

[41] These initiatives aim to regulate the status of Roma who have strong links with Croatia or the former Socialist Republic of Croatia by 2020. Other stateless minorities are not however included in the strategy.

[42] The residence of these persons was not registered notably due to the lack of civil registration or identity documents that were necessary to do so. Procedures to regularize residence and subsequently citizenship status for non-ethnic Croats were introduced in 1991 but proved ineffective due to a lack of adequate public information and legal advice about the administrative procedures. This disproportionately affected vulnerable groups, particularly minority groups from other republics as well as Roma, due to their social marginalisation, poverty, relatively low levels of civil registration and documentation, informal living arrangements and widespread prejudice among the majority population. Unable to meet onerous administrative burdens such as documentary requirements relating to proof of past residence, and unable to pay high application fees, many of these minorities were not able to regularize their stay in Croatia. Thus, many were excluded from accessing Croatian citizenship or that of another successor State of the SFRY and remain stateless.

3.2.3. Regarding the first group, under the laws and regulations[43] valid up to 8 October 1991,[44] these persons had identity documents, a SFRY passport and a personal citizen registration number provided by the Croatian authorities. However, although the Croatian identification document card served as proof of registered domicile[45] in the Former Socialist Republic of Croatia, it did not mean that holders of such cards had automatically acquired the nationality of the new State of Croatia.[46] In order to acquire the nationality of the new State of Croatia, ethnic Croats who had registered domicile in the Former Socialist Republic of Croatia had to exercise a "right of option".[47] Persons with registered domicile who were not ethnic Croats could acquire the status of permanently residing foreigner as per the Law on Movement and Stay of Foreigners in submitting application to the Ministry of the Interior with a proof of registered domicile. To apply for Croatian citizenship, Article 8 of the 1991 Law on Croatian Citizenship required 5 years of registered residence. This was amended in 2011 requiring 8 years of registered residence. Only non-ethnic Croats who were married to Croat nationals were able to exercise the right of option.

3.2.4. Those persons with registered domicile in the Former Socialist Republic of Croatia who did not acquire Croatian nationality through the right of option at the time of independence needed to regularize their stay in the new State of Croatia as foreigners. If they could not fulfill all of the requirements to obtain temporary or permanent residence in the new State of Croatia, they were erased from the register of domicile.[48] Among them were persons who did not acquire a nationality of another successor State of the SFRY and were thus stateless. As a result of the erasure, they were not only denied access to Croatian citizenship, they were also bereft of any legal status granting them a right of residence in Croatia. In most cases, the persons concerned were not informed about the erasure. Only when the person needed to apply for a new identity document would he or she be informed about the erasure and all personal documentation would be annulled. Erasure from the register of domicile and the lack of identity documents 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 be subject to detention for up to 18 months with a view to deportation to a country of origin. In UNHCR's experience

[43] Law on Citizenship of the Socialist Federal Republic of Yugoslavia, 1976; Law on Citizenship of the Socialist Republic of Croatia, 1977; Law on Domicile and Residence, 1974; and Law on Unique Personal Number, 1981 (with amendments in 1982 and 1988).

[44] Date of the independence of Croatia.

[45] Croatian legislation, as well as legislation of the SFRY, made a distinction between "domicile" and "residence". "Domicile" referred to the permanent place of stay and was attributed to citizens of the Former Socialist Republic of Croatia. "Residence" referred to the temporary place of stay and was attributed to temporary and permanently staying foreigners. Since Croatia joined the EU, this distinction is no longer valid; therefore both foreigners and citizens can have domicile (meaning permanent stay) and residence (temporary stay) in Croatia.

[46] Only those who had registered domicile and could prove that they are ethnic Croats (through birth certificate or any other public document where Croatian ethnicity was stated) were granted Croatian nationality.

[47] The Croatian Citizenship Act, 1991, Article 30 Paragraph 2, introduced the following option: Those ethnic Croats who were not considered to be citizens of Socialist Republic of Croatia but had a registered domicile on the territory of Croatia for at least 10 years (domicile registered on 8 October 1991) were given the option to acquire Croatian citizenship. This provision was amended in 1992 to remove the 10 year domicile requirement. Therefore, after 18 May 1992, the only requirement was Croatian ethnicity and registered domicile.

[48] The Foreigners Act stipulates in Article 38 the following requirements to obtain temporary or permanent residence:

- To have sufficient financial means;
- To have secured housing;
- To have health insurance;
- To provide documents that justify the purpose of one's residence;
- To provide a proof of a lack of a criminal record from the country of origin or country of habitual residence; and
- To have a valid passport (for temporary residence this could be waived in special circumstances but not for permanent residence).

of such cases, even when stateless persons cannot be deported and are eventually released from detention, they remain unlawfully in Croatia.

3.2.5. The legal status of stateless persons, including stateless persons who were erased from the domicile registers, is currently governed by the Foreigners Act since stateless persons are considered foreigners in Croatia.[49] Following amendments to the Foreigners Act in 2013, which waived certain requirements for stateless applicants that remain applicable to other foreigners, such as the requirements to provide proof of health insurance and a passport, stateless persons can apply for temporary residence on humanitarian grounds. However, the renewal of temporary residence permits on humanitarian grounds is far from straightforward for stateless persons, including Roma and stateless persons who were erased from the domicile registers, as it requires a valid national biometric passport of the current country of nationality. Stateless persons cannot meet this requirement. The possibilities under the current Foreigners Act and the Citizenship Act for stateless persons who were erased to be able to regularize their stay and to acquire Croatian citizenship do not take fully into account their particular situation, notably their vulnerabilities[50] and their close ties to the country through their long term residence.

3.2.6. Following the erasure, a number of stateless persons were denied access to Croatian citizenship and have continued to experience insecurity and legal uncertainty until today. Since 1991, the Government of Croatia has not undertaken measures to regularise the legal status or provide other remedies for those affected.

4. An assessment of the situation of those persons erased from the registers who are stateless in light of the relevant international and European standards

4.1. UNHCR shares this Court's assessment "that the principles underlying the Convention for the Protection of Human Rights and Fundamental Freedoms cannot be interpreted and applied in a vacuum,"[51] and that this instrument "should be interpreted as far as possible in harmony with other principles of international law of which it forms part."[52] Furthermore, this Court underlined that:

> in defining the meaning of terms and notions in the text of the Convention, [the Court] can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. The consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases. *In this context, it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned.*[53] [emphasis added]

[49] Article 2 of the Foreigners Act reads as follow: 'For the purposes of this Act, the particular terms have the meanings as follows: 1. Foreigner means a person who is not a Croatian national. 2. *Stateless person means a foreigner who is not considered as a national of any State under the operation of its law*.'[emphasis added]

[50] Persons without temporary or permanent residence cannot work, do not have health insurance and have no right to social benefits, which leaves them in a particularly vulnerable and marginalised situation.

[51] ECtHR, *Bankovic and others v. Belgium and 16 other Contracting States*, Appl. No. 52207/99, Grand Chamber, 12 December 2001, para. 57; ECtHR, *Rantsev v. Cyprus and Russia*, Appl. No. 25965/04, 7 January 2010, para. 273.

[52] European Court of Human Rights, *Al-Adsani v. the United Kingdom*, Appl. No. 35763/97, 21 November 2001, para. 60.

[53] ECtHR, *Demir and Baykara v. Turkey*, Appl. No. 34503/97, 12 November 2008, paras. 85 and 86.

4.2. The United Nations and Council of Europe instruments relating to the right to nationality and the avoidance and reduction of statelessness, outlined in section 2.3 above, are of particular relevance to this case. In the case of *Andrejeva v. Latvia*, the Court expressly held that:

> having a nationality makes a considerable difference compared to being stateless. In situations of disappearance of States, nationality acquires particular importance. This explains the numerous efforts by the Council of Europe and the United Nations to codify some international rules on nationality in situations of State succession. In these situations more than ever, nationality is a basis for a clear entitlement to a number of important rights.[54]

4.3. Firstly, these instruments demonstrate the existence of a broad consensus about the importance of the right to nationality, and its corollary principle that statelessness is to be avoided, including in situations of State succession. The application of this principle in the context of State succession was addressed in the 1961 Convention on the Reduction of Statelessness which provides in article 10:

> [e]very treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer.(…) In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

4.4. The principle that statelessness is to be avoided is also contained in article 4 of the European Convention on Nationality, the Explanatory Report of which indicates that "[t]he obligation to avoid statelessness has become part of customary international law…".[55] In addition, preambular paragraph 2 of the 2006 State Succession Convention provides that "the avoidance of statelessness is one of the main concerns of the international community in the field of nationality" and follows with article 2 which states that "[e]veryone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned…" and article 3 which states that "[t]he State concerned shall take all appropriate measures to prevent persons who, at the time of the State succession, had the nationality of the predecessor State, from becoming stateless as a result of the succession".

4.5. Secondly, these instruments, notably the 1954 Convention, highlight the specific vulnerability of stateless persons and the need to afford them special protection. UNHCR's Handbook on Protection of Stateless Persons, in acknowledging the special vulnerability of stateless persons,[56] also concluded that recognition of statelessness plays an important role in enhancing respect for the human rights of stateless persons, particularly through access to a secure legal status and the enjoyment of rights afforded to stateless persons under the 1954 Convention.[57] The granting of residence to stateless persons fulfills the object and purpose of the 1954 Convention and is found to be in line with State practice.[58] It is the most effective means of enabling stateless persons to live with dignity and in security.

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[54] ECtHR, *Andrejeva vs. Latvia*, Appl. No 55707/00, 18 February 2009, para. 24.
[55] Council of Europe Convention on Nationality – Explanatory Report, 1997, paras. 33 and 34. http://conventions.coe.int/Treaty/en/Reports/Html/166.htm
[56] UNHCR Handbook, Foreword and para 3.
[57] UNHCR Handbook, para. 9.
[58] UNHCR Handbook, para. 147.

4.6 In the case of *Kurić and Others v. Slovenia*, which dealt with the situation of individuals who were erased from the Slovenian register of domicile following the dissolution of the SFRY, the Grand Chamber found that the erased:

> had all spent a substantial part of their lives in Slovenia and had developed there the network of personal, social, cultural, linguistic and economic relations that made up the private life of every human being (…). Furthermore, the repercussions of the "erasure" and the prolonged refusal of the Slovenian authorities to *comprehensively regulate* the applicants' situation constituted an interference with the exercise of their rights under Article 8 of the Convention, *in particular in cases of statelessness* [emphasis added].[59]

4.7. Having acceded to the 1954 and the 1961 Conventions, Croatia has a number of specific obligations flowing from these treaties relating to the protection of those erased persons who are/were stateless, including regulating their status so they may acquire Croatian nationality so that they are not left in a legal vacuum or otherwise stateless, and ensuring standards of treatment consistent with those instruments.

5. Conclusion

5.1. In the light of the above, UNHCR reiterates that the deprivation of residence status resulting from the erasure process in Croatia had dramatic and prolonged consequences for the persons concerned, many of whom are/were left in legal limbo, without any prospect of regularising and improving their situation including in terms of acquiring Croatian nationality. UNHCR further emphasizes that the assessment of the situation of those erased should be informed by the international and European legal standards pertaining to the right to nationality and the reduction and avoidance of statelessness.

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[59] ECtHR, *Kurić and Others v Slovenia,* Appl. No. 26828/06, 26 June 2012, paras. 336, 337 and 339.