

The Civil Rights Project Sisak, Institute on Statelessness and Inclusion and European Network on Statelessness

Joint Submission to the Human Rights Council at the 36th Session of the Universal Periodic Review

Croatia

Introduction

1. The Civil Rights Project Sisak, Institute on Statelessness and Inclusion (ISI) and European Network on Statelessness make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in Croatia.
2. This submission focuses on the protection of stateless persons in Croatia, and the prevention and reduction of statelessness, particularly among ethnic minorities, including Roma.
3. Civil Rights Project Sisak (CRP Sisak) is a Croatian non-governmental organisation established in 2003 in Sisak. The main objective of CRP Sisak is protection and promotion of human and civil rights, and the main activity is providing free legal aid to socially vulnerable populations. CRP Sisak has been working with statelessness issues in Croatia since 2017. In June 2019, CRP formed the working group - Coordination for Statelessness in Croatia - which consists of all relevant stakeholders in Croatia and aims to work jointly to address statelessness in the country.¹
4. The Institute on Statelessness and Inclusion² is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 50 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 35th UPR Sessions.
5. The European Network on Statelessness (ENS)³ is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 145 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments.

1 For more information about CRP Sisak, see: <http://www.crpsisak.hr/2019/07/24/koordinacija-zabezdrzavljanstvo-u-rh/?lang=en>.

2 For more information about the Institute on Statelessness and Inclusion, see: www.institutesi.org.

3 For more information about the European Network on Statelessness, see: www.statelessness.eu

Previous UPR of Croatia under the First and Second Cycle

6. Croatia was previously reviewed during the 9th and 22nd sessions of the UPR, in 2010 and 2015 respectively. During the first cycle, Croatia received six recommendations, including one by Hungary to accede to the 1961 Convention on the Reduction of Statelessness (accepted) and five on citizenship of persons of non-Croat ethnic origin, including Roma, by Ecuador, Finland (two recommendations), Poland and the Republic of Korea (four accepted, one noted). During the second cycle, Croatia received and accepted one recommendation by Switzerland to:

“Protect the rights of minorities, in particular by providing access to basic services for the Roma minority, including the ability for stateless Roma to obtain Croatian nationality, in accordance with its human rights obligations”.

Croatia’s International obligations

7. Croatia acceded to the 1954 Convention on the Status of Stateless Persons as part of the former Yugoslavia in 1959 and acceded to the 1961 Convention on the Reduction of Statelessness in 2011, in line with the recommendation made by Hungary during the 9th UPR session. Croatia has further international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of international and regional treaties to which it is a party. These include, among others the International Covenant on Civil and Political Rights (ICCPR - article 24.3), the International Covenant on Economic, Social and Cultural Rights (ICESCR - articles 2.2 and article 3), the Convention of the Rights of the Child (CRC - articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW - article 9), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD - article 5(d)(iii)), the Convention on the Rights of Persons with Disabilities (CRPD - article 18), and the International Convention for the Protection of All persons from Enforced Disappearance (CED - article 25). In 2005, Croatia signed, but has not yet acceded to, the 1997 European Convention on Nationality. Furthermore, the right to a nationality is protected under Article 15 of the Universal Declaration on Human Rights.
8. In its 2015 review of Croatia, the Human Rights Committee stated its concern about:

“the number of stateless persons, mainly Roma, under the State party’s jurisdiction who face difficulties in meeting the requirements for obtaining Croatian citizenship because they often lack personal identity documents”,

especially in connection to the break-up of Yugoslavia. The Committee therefore recommended that Croatia:

*“should take all the measures necessary to ensure full enjoyment of Covenant rights by all residents, including stateless persons. It should establish and implement effective measures to address statelessness and regularise the status of the Roma, including by facilitating access to identification documentation”.*⁴

³ Human Rights Committee (CCPR/HRC), *Concluding observations on the third periodic report of Croatia*, CCPR/C/HRV/CO/3, paras 8 and 9.

9. In 2017, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Dainius Pūras, noted on his visit to Croatia that, by 2016, about 2,800 Roma were still without permanent or temporary residence and at risk of statelessness.⁵

National Law

10. Croatian nationality is regulated by the Croatian Citizenship Act of 1991.⁶ This Act does not provide any specific rights, such as facilitated naturalisation, to stateless persons based on their statelessness. Rather, it considers stateless persons on the same basis as third country nationals.
11. A new amendment to the Croatian Citizenship Act will come into force in October 2019. Positively, Article 5 para 2, introduces a provision stating that a child born abroad will acquire Croatian nationality if one parent is, at the time of birth, a Croatian citizen, and the child would otherwise be stateless. The amendment also prescribes that a stateless person is exempt from providing proof of renunciation of foreign nationality in order to acquire Croatian nationality.
12. The Croatian Foreigner's Act⁷, in its Article 2 para 1 item 2, defines a stateless person as '*a foreigner who is not considered as a national of any State under the operation of its law*', which is in line with the definition contained in Article 1(1) of the 1954 Convention on the Status of Stateless Persons. The Act also provides for a travel document for stateless persons in Article 2 para 1 item 8. The Act refers explicitly to stateless persons only four times, in the definition and in the context of travel documents. It does not set out a procedure for the identification and determination of statelessness.
13. In terms of other relevant national law, the Constitution of Croatia⁸ states that stateless persons may access shelter in the Republic of Croatia, but neither the Act on Free Legal Aid⁹ nor the Act on Obligatory Health Insurance and Protection of Foreigners provide for access to legal aid or healthcare for stateless persons. The Act on International and Temporary Protection¹⁰ mentions stateless persons in the context of the right to international protection, asylum or subsidiary protection.

4 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Croatia, A/HRC/35/21/Add.2. para 106.

5 Foreigner's Act: <https://www.zakon.hr/z/142/Zakon-o-strancima> (Official Gazette 130/11, 74/13, 69/17, 46/18).

6 Croatian Citizenship Act: <https://www.zakon.hr/z/446/Zakon-o-hrvatskom-dr%C5%BEavljanstvu> (Official Gazette 110/15). Available in English at: <https://www.refworld.org/docid/5ac3799f4.html>

7 Foreigner's Act: <https://www.zakon.hr/z/142/Zakon-o-strancima> (Official Gazette 130/11, 74/13, 69/17, 46/18).

8 Constitution of Croatia: <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske> (Official Gazette 05/14).

9 Act on Free Legal Aid: <https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i> (Official Gazette 143/13)

10 Act on International Protection and Temporary Protection: <https://www.zakon.hr/z/798/Zakon-o-me%C4%91unarodnoj-i-privremenoj-za%C5%A1titi> (Official Gazette 127/17)

Statelessness Determination and Protection Status

14. There is no dedicated statelessness determination procedure (SDP) nor stateless protection status in Croatia. This means that national authorities including the Ministry of Interior, Ministry of Administration, Ministry of Demography, Family, Youth and Social Policies, have no way to effectively identify who is stateless or at risk of statelessness in the country, nor take steps to solve these cases. The Croatian Government therefore has no legal mechanism by which to identify and grant stateless people protection, in order to implement its international obligations under the 1954 Convention on the Status of Stateless Persons.
15. The only procedure that regulates statelessness is the Rule Book for Regulation of Status and Work of Citizens of Third Countries in the Republic of Croatia, which regulates the travel document for stateless persons.¹¹ The recent case of *Hoti v. Croatia* before the European Court of Human Rights highlighted the impact of a lack of a dedicated procedure to determine statelessness and grant protection status to stateless persons on the territory.¹² Croatia is yet to amend its legislation to improve its national legal framework in response to the judgement.
16. In general, stateless people in Croatia do not have access to state funded legal aid and are often treated as third country nationals and presumed to hold another nationality. There is very little awareness among national authorities about statelessness, including the Police and Immigration authorities.

The Right to a Nationality - Prevention & Reduction of Statelessness

17. The Croatian Citizenship Act contains in its Article 7, a partial safeguard to prevent childhood statelessness in the case of children born on the territory who would otherwise be stateless, and foundlings.¹³ However, this does not fully meet international standards (including those set out under Articles 7, 2 and 3 of the CRC), as it applies only to children born in Croatia to parents who are also stateless or who are unknown (the case of foundlings). Furthermore, Article 7 also stipulates that the child's Croatian nationality will cease if it is confirmed that both the parents hold a foreign nationality before the child's 14th birthday. The law therefore does not prevent children being born stateless to parents who hold a nationality but may be unable to confer this to their child.
18. As a Successor State to the Socialist Federal Republic of Yugoslavia (SFRY), Croatia chose to grant Croatian nationality based on the former Yugoslav Registries of Republics Nationalities in which residents of the former Yugoslav Republics were registered as holding both Yugoslav citizenship and citizenship of one of the former Republics. However, many people who were presumed to hold the nationality of other former Yugoslav Republics did not actually hold another nationality. Many cases of statelessness

11 See: <http://uznr.mrms.hr/wp-content/uploads/propisi2/nacionalni/rsp027.pdf>

12 EctHR Application no. 63311/14, *Hoti v. Croatia*, 26 July 2018

<https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%22itemid%22:%5B%22001-182448%22%5D%7D>

13 Article 7, Croatian Citizenship Act: <https://www.zakon.hr/z/446/Zakon-o-hrvatskom-dr%C5%BEavljanstvu> (Official Gazette 110/15). Available in English at: <https://www.refworld.org/docid/5ac3799f4.html>

therefore arose from the formation of new States following the breakup of the SFRY (as illustrated in the case of Mr Hoti¹⁴).

19. In 1991 and 1992, Croatia provided an opportunity to foreigners residing on the territory to register their residence and acquire the status of foreigners with permanent residence. This process also assumed that this group held the nationality of another country (in most cases other Republics of the Former Yugoslavia). Many did not hold the nationality of another State, resulting in cases of statelessness.

Minorities disproportionately affected by risk of statelessness

20. The exclusion and discrimination faced by the Roma National Minority in Croatia is well documented.¹⁵ The national census in 2011 reported a population of 16,985 Roma in Croatia.¹⁶ However, the European Commission against Racism and Intolerance of the Council of Europe (ECRI) estimates the real number to be between 30,000 and 40,000.¹⁷
21. Many Romani families in Croatia have histories of migration and displacement, including from other former Yugoslav Republics, and many still lack identity documents. Although there is no accurate data, ECRI reports that it is estimated that there are at least 500 stateless Roma and at least 1000 Roma at risk of being stateless in Croatia.¹⁸
22. In 2019, in the framework of the European Union, Croatia presented its second Action Plan for Roma Inclusion (2019–2020,¹⁹ implementing the National Strategy for Roma Inclusion (2013–2020). The only strategic area in the Action Plan that has not been allocated any financial resources is “*Status rights regulations*”. Nevertheless, the Action Plan foresees under this theme the formation of mobile teams to solve the legal status issues facing undocumented Roma at risk of statelessness. However, as noted by ECRI in its report, these teams were actually formed by the Ministry of Interior in 2014 but have yet to be operationalised.²⁰ The Action Plan does not include any new, concrete, resourced measures to address the legal status issues still faced by many Roma in Croatia.

14 <https://www.statelessness.eu/blog/hoti-v-croatia-landmark-decision-european-court-human-rights-residence-rights-stateless-person>.

15 See for example, European Roma Rights Centre: <http://www.errc.org/what-we-do?country=53&code=croatia#country-results>

16 Census of Population, Households and Dwellings 2011, Population by Citizenship, Ethnicity, Religion and Mother Tongue: https://www.dzs.hr/Hrv_Eng/publication/2012/SI-1469.pdf

17 ECRI REPORT ON CROATIA (third monitoring cycle), 2018: <https://rm.coe.int/fifth-report-on-croatia/16808b57be>.

18 *ibid.*, para. 71

19 Action Plan for Roma Inclusion for period 2019 – 2020: <https://vlada.gov.hr/sjednice/176-sjednica-vlade-republike-hrvatske-26596/26596>.

20 ECRI REPORT ON CROATIA (third monitoring cycle), 2018: <https://rm.coe.int/fifth-report-on-croatia/16808b57be>, para. 71

Recommendations

23. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Croatia:

- I. Protect and advance the rights of minorities, in particular by tackling anti-Gypsyism and ensuring the swift resolution of remaining legal status issues, including to eliminate the risk of statelessness.
- II. Establish a dedicated statelessness determination procedure in line with UNHCR guidance and good practice and grant stateless people on the territory the rights due to them under the 1954 Convention on the Status of Stateless Persons.
- III. Amend the Law on Croatian Citizenship to introduce full safeguards to prevent childhood statelessness in all cases in line with international obligations under the 1961 Convention on the Reduction of Statelessness.
- IV. Amend the Act on Free Legal Aid to introduce stateless persons as beneficiaries of the Act, and ensure access to free legal aid for stateless persons in practice.
- V. Improve data collection on stateless persons and those at risk of statelessness in Croatia and publish reliable disaggregated data on the stateless population in the country.
- VI. Invest resources and capacity in operationalising mobile teams in order to provide administrative support for identifying and resolving cases of statelessness and risk of statelessness and to improve data on the affected population.
- VII. Implement the Zagreb Declaration 2011 in national legislation in order to encourage cooperation between the relevant institutions (i.e. Ministry of Interior, Ministry of Demography, Family, Youth and Social Policies) to address statelessness and the risk of statelessness.
- VIII. Establish bilateral agreements with the Republic of Serbia and Bosnia-Herzegovina (including the Republic of Srpska) on the effective exchange of information, data and documents for their citizens residing in other countries.
- IX. Accede to the 1997 European Convention on Nationality and the 2006 Convention on the Avoidance of Statelessness in relation to State Succession.