



[ECTHR - F.S. v. Croatia](#)

The applicant had renounced his Bosnian-Herzegovinian citizenship after having received an assurance that he would obtain Croatian citizenship, and became stateless. However, Croatia subsequently refused his citizenship application on national security grounds, without providing the reasons for this decision. He was issued an expulsion order and his permanent residence was terminated. While the applicant was in immigration detention, his Bosnian-Herzegovinian citizenship was restored and he left Croatia voluntarily. The Court found that the limitation in the applicant's procedural rights in his expulsion proceedings had not protected him against arbitrariness, and found a violation of Article 1 of Protocol n. 7. The remaining complaints were either found inadmissible or were not examined by the Court.

Case status: Decided

Case number: Application no. 8857/16

Citation: European Court of Human Rights, F.S. v. Croatia (application no. 8857/16), 5 December 2023

Date of decision: 05/12/2023

State: Croatia

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

Applicant's country of birth: Italy

Applicant's country of residence: Unknown

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Acquisition of nationality, Deportation and removal, Detention, Procedural safeguards, Voluntary renunciation of nationality

Relevant Legislative Provisions:

- ECHR Article 1 of Protocol No. 7
- Croatian Citizenship Act, no. 53/91
- Security Screening Act, nos. 85/08 and 86/12

- Republic of Croatia Security and Intelligence System Act, no. 79/06
- Aliens Act, nos. 130/11 and 74/13
- Administrative Disputes Act, no. 20/10
- Data Secrecy Act, nos. 79/2007 and 86/2012

Facts

The applicant had been a citizen of Bosnia of Herzegovina and resided in Croatia since 1998. He was granted temporary residence in Croatia in 2005, which became permanent in 2008. The applicant applied for Croatian citizenship in 2011 and received assurances from the Ministry of the Interior that he would obtain Croatian citizenship if he renounced his Bosnian-Herzegovinian citizenship within a period of two years, complying with Croatian law. The applicant became stateless in March 2013 after renouncing his citizenship.

In October 2014, after initial security screening, the applicant was summoned to meet with an agent of the Croatian national intelligence agency. The agent asked him to cooperate by providing information on individuals from his Muslim community. The applicant alleged that the agent threatened to provide a negative opinion on his citizenship application if he refused to cooperate. The agent also threatened to terminate the applicant's Croatian residence and ultimately expel him from the country. The applicant initially agreed to the request but subsequently informed the agent that the cooperation was contrary to his religious and moral convictions. In November 2014, the Croatian national intelligence agency informed the police that there were national security obstacles to the applicant acquiring Croatian citizenship, without providing further evidence.

Within the following four months, the Ministry of the Interior rejected the applicant's citizenship application, the police terminated his permanent residence, and his expulsion was ordered by the police upon receipt of a classified document from the national intelligence agency. The applicant's subsequent appeals were dismissed by both the Zagreb Administrative Court and the High Administrative Court, as were his requests for judicial reviews.

In October 2015, the applicant was arrested while attempting to irregularly cross the border from Croatia to Slovenia. The Croatian police issued another expulsion decision and ordered his detention in an immigration centre for a period of six months. The applicant noted that the centre had been overcrowded during his stay.

On an unspecified date while in the detention centre, the applicant's Bosnian-Herzegovinian citizenship was resorted. In July 2016, the applicant voluntarily left Croatia.

In October 2020, the Constitutional Court dismissed the applicant's complaint regarding his rights to a fair hearing for the decisions issued by the Ministry of the Interior and the police.

Legal arguments by the applicant

The applicant argued that his expulsion was arbitrary as it had been ordered without any reasons, nor was it subject to any checks as it was based on classified information. As a result, the applicant was unable to submit any reasons against his expulsion. In the applicant's view, he had known nothing about the threat he allegedly posed, even less than the applicants in *Muhammad and Muhammad v. Romania* (no. 80982/12, 15 October 2020). This complaint was filed under Article 1 of Protocol no. 7, regarding the rights to procedural safeguards relating to the expulsion of foreigners.

The applicant further argued that the security screening process had been abused due to his ethnicity and religion. His refusal to cooperate with the intelligence agency was portrayed as a security risk itself and ultimately caused the rejection of his citizenship application, the termination of his residence, and his expulsion. The security screening was also not subject to any checks and, according to the applicant, only the individual who undertook the screening had been aware of the basis on which the threat was identified.

Legal arguments by the opposing party

The Croatian Government argued that the rights of the applicant had been subject to counterbalances within domestic proceeding, thus preserving the essence of his rights under Article 1 of Protocol 7.

The Government also submitted that the applicant had been informed of the reasons for his expulsion to the extent provided for under domestic law, and that no obligation exists to clarify such reasons when related to national security. Moreover, the judges in the Administrative Court had examined the document submitted by the national intelligence agency in the proceedings concerning his acquisition of Croatian citizenship.

Decision & Reasoning

The Court relied on the summary of general principles for Article 1 of Protocol No. 7 provided in *Muhammad and Muhammad v. Romania* (cited above, §§ 125-157). This includes a requirement in Article 1 § 1 of Protocol No. 7 that foreigners be informed of the relevant factual elements relating to their expulsion, and that a relevant level of access to the content of the documents is provided.

In the event of limitations to these procedural rights, the Court has established that foreigners must be offered an effective opportunity to submit reason against their expulsion. These limitations also must not negate the procedural protection guaranteed by the very essence of Article 1 of Protocol 7. In this connection, the Court stressed that “the less stringent the examination by the national authorities of the need to place limitations on the alien’s procedural rights, the stricter the Court’s scrutiny of the counterbalancing factors will have to be” (§ 53).

The Court did not question the decision to refuse the applicant’s request for Croatian citizenship, noting that the Convention does not guarantee an individual the right to obtain citizenship of a particular country. The Court reiterated that domestic authorities have the discretion to screen for national security threats and that judicial reviews in such matters are limited.

However, the Court noted that the security screening applied in the context of a citizenship application seemed to have triggered further decisions relating to the applicant’s residence and expulsion. In the Court’s view, the failure to provide reasons to the applicant relating to his expulsion entailed “a significant limitation of the applicant’s right to be informed of the factual elements” regarding this decision (§ 61).

In assessing whether counterbalancing measures were put in place by the national authorities, the Court noted that domestic law did not allow national courts to declassify the information in question. Domestic courts were therefore unable to reassess how the national authorities’ decisions affected the applicant’s rights in his case. As a result, this Court established that it must exercise strict scrutiny regarding counterbalancing factors.

On the elements of the case, the Court noted that while the applicant was informed that expulsion proceedings had been initiated against him, he was given none of the factual elements that led to the decision. It therefore cannot be said that the applicant was able to adequately present his case against expulsion in the

subsequent judicial review. The counterbalances put in place by national authorities were therefore insufficiently effective.

Furthermore, the Court examined that despite holding the right to seek access to classified material in the judicial review proceedings, the administrative courts did not appear to have taken that opportunity, nor did they explain why confidentiality was preserved. In this Court's view, the domestic courts therefore failed to make use of the procedural mechanisms available to them, which could have given the applicant an effective opportunity to submit reasons against his expulsion.

Decision documents

[Judgment](#)

Outcome

The Court accordingly found that the applicant's procedural rights were not counterbalanced in domestic proceedings, thus resulting in arbitrary treatment. This amounted to a violation of Article 1 of Protocol No. 7.

The Court did not find it necessary to consider the applicant's further complaints under Articles 8 and 13, as well as Article 2 of Protocol No. 4. It also found complaints under Articles 3 and 5 of the Convention to be inadmissible based on non-exhaustion of domestic remedies.

Caselaw cited

Muhammad and Muhammad v. Romania, no. 80982/12, 15 October 2020

Karoussiotis v. Portugal, no. 23205/08, 1 February 2011

Şahin Alpay v. Turkey, no. 16538/17, 20 March 2018

Hassine v. Romania, no. 36328/13, 9 March 2021

Slivenko and Others v. Latvia (dec.), no. 48321/99, 23 January 2002

Regner v. the Czech Republic, no. 35289/11, 19 September 2017

Poklikayew v. Poland, no. 1103/16, 22 June 2023

Ljatifi v. the former Yugoslav Republic of Macedonia, no. 19017/16, 17 May 2018

Lupsa v. Romania, no. 10337/04, 8 June 2006

Kaya v. Romania, no. 33970/05, 12 October 2006

M.H. and Others v. Croatia, nos. 15670/18 and 43115/18, 18 November 2021

L.B. v. Hungary, no. 36345/16, 9 March 2023