Voir Notice
See Notes

Numéro de dossier 31149/12
File number

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

Requête
Application

Velimir Dabetić v. Italy

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme,
ainsi que des articles 45 et 47 du règlement de la Court

under Article 34 of the European Convention on Human Rights and Rules 45 and 47 of the Rules of the Court

CONTENTS

I. PARTIES

The Applicant

Surname:	Dabetić
First Names:	Velimir
Nationality:	Stateless
Gender:	Male
Date and Place of Birth:	22 September 1969; Koper, Slovenia
Address:	Via Mazzini, 16 - 47822 Santarcangelo di Romagna, Italy
Occupation:	Unemployed

Representatives:

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The High Contracting Party

Italian Republic.

II. SUMMARY OF THE CASE

i. Pursuant to Rule 47 and the relevant practice direction, the following summary of the case is provided for the benefit of the Court.

ii. Velimir Dabetić is a stateless person who has lived in Italy since 1989. Pursuant to its international commitments, Italy is obliged to avoid and reduce statelessness, chiefly through the prompt identification of stateless persons, and the provision of specific protections to them, including stable residency status. Instead, for seven years, Mr. Dabetić has struggled to regularize his status in Italy through prolonged statelessness status determination procedures that should take a matter of months. Pending the outcome of these proceedings, which may take several more years, Mr. Dabetić is effectively barred from any form of temporary residency status. This severely limits his ability to conduct a normal life. Under emergency laws introduced in 2009, Mr. Dabetić is subject to criminal prosecution and punishment for his mere presence in Italy as an undocumented alien. He has been arrested on at least six occasions and subjected to countless identity checks. Multiple deportation orders have been issued against him, although they are unenforceable, as he is stateless. Mr. Dabetić cannot work or receive any benefit or service beyond emergency health care. His ability to form and maintain connections with family members, his community and wider society are severely impaired. While authorities continue to delay determination of his status, Italy has already made official admissions as to Mr. Dabetić's statelessness outside the context of status determination procedures. There is no reasonable justification for the inordinate delay in granting him the protection he is due.

Victim Status

iii. The applicant is a direct victim of multiple violations of his Convention rights.

Facts of the Case

iv. Mr. Dabetić was born in Slovenia in 1969 and was registered as a permanent resident there in 1971. Mr. Dabetić moved to Italy in 1989. He was issued a regular work permit (*permesso di soggiorno*), and has lived in Italy ever since. He remained registered as a permanent resident in Koper (Slovenia) until 1992.

v. Mr. Dabetić was one of the applicants in *Kurić and others v. Slovenia*, who complained that they had been arbitrarily deprived of the possibility of acquiring Slovenian citizenship in 1991, and that as a result they lost their status as permanent residents when their names were erased from the Slovenian Register of Permanent Residents in 1992. Mr. Dabetić has been stateless since that time, and has faced almost 20 years of extreme hardship as one of the "erased".

vi. In its Judgment of 26 June 2012 in the *Kurić* case, the Grand Chamber ruled that Slovenia's failure to regulate comprehensively the applicants' legal status breached their fundamental rights to private and family life (Article 8) and non-discrimination (Article 14) under the European Convention. The Court ordered the government of Slovenia to enact appropriate legislation to regulate the situation of most of the erased and issue them with retroactive permanent residence permits. Mr. Dabetić's application, however, was declared inadmissible by the Grand Chamber (by a majority of 9 to 8) for failure to exhaust domestic remedies. Mr. Dabetić had not applied for a permanent residence permit in Slovenia after 1992, a remedy that the Grand Chamber ruled he should have pursued, although the Grand Chamber simultaneously held that the domestic remedies available were not effective and that other applicants were under no duty to exhaust them.

vii. Following the expiration of his former Socialist Federal Republic of Yugoslavia (SFRY) passport in 2002, Mr. Dabetić lost his permit to work and therefore to stay in

Italy. From November 2003 to November 2005, Mr. Dabetić repeatedly attempted to obtain Slovenian citizenship, but was denied.

viii. On 2 March 2006, following the failure of his attempts to obtain legal status in Slovenia, Mr. Dabetić applied for protection as a stateless person from the Italian Ministry of the Interior. He also applied, on 1 March 2006, to the police office of Pesaro and Urbino for a temporary permit of stay while the Ministry assessed his status. However, this administrative procedure is closed to anyone without preexisting legal residency status in Italy – a virtual impossibility for most stateless persons. Nor can individuals without permits of stay for other reasons be granted a temporary permit pending consideration of administrative statelessness status applications. Accordingly, Mr. Dabetić's request for a temporary stay permit was denied by the police on 31 May 2006. The Ministry of Interior rejected his application for statelessness status on 25 January 2008.

ix. Since the rejection of this initial attempt for statelessness status determination and pursuant protections, Mr. Dabetić has continued to be subject to arrest, detention, and unenforceable deportation orders. His status has become even more precarious since Italy criminalized both the act of entry into, and the status of being in, Italy without a valid permit as part of its 2009 "Security Package".

x. On 26 May 2011, Mr. Dabetić commenced a judicial procedure for determination of his statelessness status, filing an application with the Rome Ordinary Tribunal. While this application was pending without response, on 3 November 2011, he again applied for interim protection in the form of a temporary residency permit pending the outcome of proceedings. The Tribunal rejected this request on 11 November 2011. His substantive application for determination of statelessness status remains pending, despite the fact that the Italian authorities have twice recognized that Mr. Dabetić is stateless (he was acquitted of illegal stay in 2006 on the basis that he had no citizenship; and the temporary travel permit issued by the police in July 2011 to attend the *Kurić* hearing listed his nationality as "none"). His statelessness status has also been acknowledged by both the Grand Chamber of this Court and the Secretary General of the Council of Europe.

xi. The failure by the Italian authorities to provide Mr. Dabetić with appropriate protection while considering his requests for statelessness status, and their failure to determine that status within a reasonable period of time, have deprived Mr. Dabetić of the possibility to work legally or to obtain almost all public benefits and services, and have left him vulnerable to arrest, detention and attempted deportations. He is needlessly prevented from enjoying the basic attributes of a normal life in Italy.

Exhaustion of Domestic Remedies

xii. Mr. Dabetić has exhausted all domestic remedies which are available to him and potentially effective in respect of his claims.

Alleged Violations of the Convention

xiii. Through the acts and omissions of its agents, the Italian Republic has violated the Convention.

- *A. Right to Respect for Private Life: Article 8.* Italy's prolonged failure to regularize Mr. Dabetić's legal status, including by failing to grant him temporary protection pending the outcome of his claim for statelessness status in Italy, has had such an impact upon his private life as to amount to a violation of Article 8.

- *B. Discriminatory Treatment: Article 14*. Mr. Dabetić is legally barred from receiving any form of protection through administrative statelessness proceedings because of his irregular status; asylum seekers receive protection, including automatic permits of stay pending resolution of their claims, regardless of their

preexisting status in Italy – an unjustified difference in treatment. Italian authorities have also, without reasonable justification, failed to treat Mr. Dabetić differently on account of his vulnerable status as a stateless person and a victim of the "erasure" in Slovenia. These actions violate Article 14 in conjunction with Article 8.

- *C. Failure to Provide Redress: Article 13 and Article 6.* There is no effective domestic remedy by which Mr. Dabetić can challenge his denial of legal status and seek to assert his rights, contrary to the right to a remedy protected in Article 13 and the right to effective access to a court in the determination of his civil rights, protected under Article 6(1).

Object of the Application

xiv. Mr. Dabetić seeks a declaration from the Court that his rights have been violated under Article 6(1), Article 8, Article 13, and Article 14 of the Convention taken together with Article 8. Mr. Dabetić also seeks just satisfaction under Article 41 (pecuniary and non-pecuniary damages together with legal costs and expenses) as well as special measures directing the Italian authorities to regularize Mr. Dabetić's legal status in Italy, including the immediate grant of a permit of stay pending the resolution of statelessness status proceedings. Under the circumstances, the Court should direct Italy to grant Mr. Dabetić statelessness status on an expedited basis and to recognize his permanent residency retroactively, as from the initiation of status determination procedures on 2 March 2006, thereby facilitating the opportunity to naturalize within an appropriate period of time. He also seeks general measures in order to ensure that the violation is not repeated.

xv. The application requests prioritisation pursuant to Rule 41 as the application raises an important questions of general interest, with 600,000 stateless individuals in Europe, and it is important that this situation of statelessness is resolved promptly in order not to compound the violations of the Convention.

III. STATEMENT OF FACTS

1. Mr. Velimir Dabetić was born on 22 September 1969 in Koper, Slovenia. He is a stateless person. He was registered as a permanent resident in Slovenia from 29 September 1971 until 26 February 1992.

2. Mr. Dabetić was among the approximately 18,305 former Socialist Federal Republic of Yugoslavia (SFRY) citizens whose names were erased from the Register of Permanent Residents of the Republic of Slovenia in February 1992 (the "erased"). Following the Declaration of Independence of 25 June 1991, the citizens of the SFRY who failed to apply for Slovenian citizenship within the prescribed time-limit of 6 months were considered aliens and their names were secretly erased by the administrative authorities from the Register of Permanent Residents on or shortly after 26 February 1992.

3. At the time that his name was erased from the Register of Permanent Residents of the Republic of Slovenia, Mr. Dabetić was living in Italy, where he had worked on the basis of a regular work permit issued by the Italian authorities since 1989.[1]

Background: the Grand Chamber's Judgment in the *Kurić* Case

4. Mr. Dabetić was one of the applicants in the case *Kurić and others v. Slovenia*. In its Judgment delivered on 26 June 2012, the Grand Chamber ruled unanimously that Mr. Kurić and other applicants were victims of violations of Article 8, Article 13 in combination with Article 8, and Article 14 in combination with Article 8.

5. The Grand Chamber found that the unlawful erasure of the applicants from the Register of Permanent Residents interfered with their private or family life and continues to do so (at paras. 339-340). Furthermore, such interference was neither "prescribed by law" (because it lacked the requisite standards of foreseeability and accessibility) nor "necessary in a democratic society" to achieve the legitimate aim of the protection of national security (given the absence of any regulations of the applicants' residence status and the prolonged impossibility of obtaining valid residence permits).

6. The Grand Chamber also found that the applicants had no "adequate" and "effective" remedies by which to obtain redress, at the relevant time, for the infringement of their right to respect for their private and family lives, holding that there had been a violation of Article 13 in conjunction with Article 8 (at paras. 369-372).

7. In addition, the Grand Chamber found that Article 14 was applicable as there had been a difference in treatment after independence between two groups – as former SFRY citizens were treated differently from other foreigners – which were in a similar situation in respect of residence-related matters. Citizens of the former SFRY who were residing in Slovenia found themselves in a legal vacuum, whereas "real" aliens living in the country were able to keep their residence permits under the applicable provisions of the Aliens Act. According to the Court, the difference in treatment of which the applicants were victims had been based on national origin and had not pursued a legitimate aim (paras. 390-396).

8. However, by a majority of 9 to 8, the Grand Chamber declared inadmissible the complaints in respect of Mr. Dabetić on the ground of non-exhaustion of domestic remedies. Thus, the Court found that "the failure by Mr Dabetić […] to manifest in any manner [his] wish to reside in Slovenia, that is, to take any proper legal steps in order to regularize [his] residence status, shows that [he] did not have sufficient interest in the subject matter". Although the Court later established that the domestic remedies against a refusal to grant a residence permit were ineffective (paras. 295-313), it held that Mr. Dabetić could not be exempted from the obligation to apply formally for a residence permit in the first place (at para. 292).

[1] See Exhibit 2: Permits of stay issued by the Police Headquarters of Vicenza.

9. In their joint partly dissenting opinion, judges Bratza, Tulkens, Spielmann, Kovler, Kalaydjieva, Vučinić and Raimondi dissented from the decision to dismiss Mr. Dabetić's claim because of non-exhaustion of domestic remedies. They reasoned that, since the Court found that the applicants did not have at their disposal an "adequate" and "effective" remedy in breach of Article 13, the fact that Mr. Dabetić did not attempt to obtain a residence permit or take any other steps to regularise his residence status was of no relevance.[2] President Costa took the same view in his partly dissenting opinion, where he stated that:

> "the application, in so far as it was lodged by Mr. Dabetić […] should not, in my opinion, have been rejected for failure to exhaust domestic remedies. Since the Court found that the domestic remedies were not sufficiently effective, it should not have been necessary to exhaust them, and the reasoning in the judgment is contradictory in this respect".[3]

The "Erasure" of Mr. Dabetić and Attempts to Regain Legal Status in Slovenia

10. Mr. Dabetić moved to Italy in 1989. He was issued a regular work permit (*permesso di soggiorno*), and lived and worked in Italy. He remained registered as a permanent resident in Koper (Slovenia) until he was erased from the Register of Permanent Residents in 1992. He had therefore not been resident in Slovenia when it became independent.

11. In 2002, Mr. Dabetić's SFRY passport expired.[4] When he sought renewal of his work permit in 2002, the Italian authorities refused, on the basis that he was not lawfully in Italy as he did not have a valid passport. The Italian authorities ordered him to return to Slovenia. The authorities also confiscated his passport and driver's license, leaving him without any form of personal identification.

12. On 3 April 2003, the Slovenian Constitutional Court found the Slovenian Legal Status Act (version of 8 July 1999) unconstitutional for failure to adequately regulate the circumstances of the "erased", including by failing to grant retrospective permanent residence from the date of the "erasure".[5]

13. Mr. Dabetić first discovered that he had been erased from the Slovenian Register of Permanent Residents in 2002, immediately after his work permit and identity documents were declared invalid and confiscated by the Italian authorities. On 26 November 2003, he asked the Slovenian Ministry of Interior to issue a supplementary decision regulating his status in Slovenia retroactively following the delivery of the Constitutional Court's decision of 3 April 2003, as he had not submitted a request for a Slovenian permanent residence permit earlier. On 29 November 2003, Mr. Dabetić applied for Slovenian citizenship under Section 19 of the Citizenship Act, as amended in 2002.

14. On 14 November 2005, the Ministry of Interior dismissed his application for Slovenian citizenship because he had failed to prove that he had resided in Slovenia for ten years and had lived there uninterruptedly for five years prior to his application.[6]

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[2] *Kuric and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, Joint Partly Dissenting Opinion of Judges Bratza, Tulkens, Spielmann, Kovler, Kalaydjieva, Vucinic and Raimondi, at para. 4.
[3] *Ibid.*, Partly Dissenting Opinion of Judge Costa, at p. 96.
[4] Although the former Yugoslavia had in the meantime ceased to exist as a State, the Italian administrative authorities – upon recommendation of the Minister of Foreign Affairs – continued to consider valid the former Yugoslav passports. See, e.g., Exhibit 2: Permits of stay issued by the Police Headquarters of Vicenza (renewed regularly beyond the dissolution of the former Yugoslavia).
[5] See *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at paras. 58, 100-101.
[6] Exhibit 3: Decree of the Republic of Slovenia – 14 November 2005.

Attempts by Mr. Dabetić to Regularize his Status in Italy

15. From the time that his request to renew his work permit was refused in 2002, Mr. Dabetić's stay in Italy became irregular, although he did not have any country of nationality to lawfully return to. He could not return to Slovenia since he had been erased from the Register of Permanent Residents in 1992. As he was born and grew up in Slovenia and had lived continuously in Italy since moving there from Slovenia 1989, he did not have links to any other successor state of the former Yugoslavia.

16. Since 2006, Mr. Dabetić has sought to use both administrative and judicial procedures to regularize his status in Italy. These procedures are separate and distinct; the judicial procedure is not an appeal from the administrative determination.[7] Despite the infamous length of proceedings in Italy, Mr. Dabetić has been unable to obtain any interim protection to avoid being subject to criminal sanction as an undocumented alien.

17. A grant of statelessness status in Italy generally entails several vital forms of specific protection, including: the issuance of a residence permit valid for two years and renewable, the issuance of a stateless travel document and other identity documents, the right to work and access to social services and healthcare.[8] Recognized stateless persons who maintain regular residency in Italy for a period of five years become eligible to apply for naturalisation.[9]

Administrative Application for Statelessness Status and Interim Permit of Stay

18. On 2 March 2006, Mr. Dabetić applied to the Italian Ministry of Interior for protection as a stateless person pursuant to Article 17 of *Decreto del Presidente della Repubblica* (D.P.R.) No. 572/93.[10] On 1 March 2006, he also applied to the police office of Pesaro and Urbino for a temporary permit of stay pending the determination of his statelessness by the Ministry of Interior. However, his application for a temporary permit was dismissed by the police on 31May 2006 on the ground that, according to Article 11, section 1(c), of D.P.R. No. 394/1999, and subsequent amendments, such permits can be issued only an alien already in possession of a permit of stay for other reasons.[11]

19. On 25 January 2008, the Ministry of Interior dismissed his substantive application for recognition of his status as a stateless person because – according to the applicable domestic provisions – an alien who is unlawfully residing in the Italian territory is not entitled to receive statelessness status through the administrative procedure.[12]

Judicial Application for Statelessness Status

20. On 26 May 2011, Mr. Dabetić filed a judicial application for statelessness status determination with the Rome Civil Tribunal under Article 17 D.P.R. 572/1993, relying on the absence of any nationality.[13] The application was registered on 1 June 2011 (Case No. 35233/2011) and the initial hearing was scheduled for 22 December 2011.

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[7] See e.g. Gabor Gyulai, *Statelessness in the EU Framework for International Protection*, European Journal of Migration and Law 14 (2012) 279-295, 287 (judicial and administrative procedures are "parallel").

[8] This information is based on research conducted on behalf of the Open Society Justice Initiative in connection with a forthcoming report on Statelessness in the Global North.

[9] See Law no. 91 of 5 February 1992, Article 9(e). See also Exhibit 23: Dismissal of the request for interim measures – 30 November 2011 (*English version*) ("Stateless persons are also entitled to apply for Italian citizenship after five years' residence in the national territory").

[10] Exhibit 7: Application for stateless status to the Minister of Interior – 2 March 2006.

[11] Exhibit 8: Dismissal of the request for a permit of stay pending the administrative proceedings – 31 May 2006.

[12] Exhibit 9: Dismissal of the administrative request for stateless status – 25 January 2008.

[13] Exhibit 21: Application to the Rome Tribunal for recognition of stateless status – 1 June 2011.

21. However, the initial hearing was first adjourned *ex officio* to 26 April 2012. At the hearing on 26 April 2012, the Ministry of Interior failed to appear and the judge again adjourned the initial hearing, this time to 7 March 2013.

22. On 11 May 2012, Mr. Dabetić's representatives filed an application asking that the hearing be brought forward, as any further delay in regularizing his legal status seriously impinged upon his fundamental rights. On 14 May 2012, the judge re-scheduled the hearing for 17 January 2013.[14] The full proceedings are expected to take several years.

Judicial Request for Interim Protection Pending Determination of Status

23. On 3 November 2011, Mr. Dabetić submitted a request for provisional measures to the Rome Tribunal under Article 700 of the Code of Civil Procedure, asking that it adopt any interim measure that it may consider advisable in order to regulate his status in Italy pending a final decision on the recognition of his statelessness status.[15]

24. On 11 November 2011, the Rome Tribunal dismissed the request for interim relief.[16] While agreeing with Mr. Dabetić that, pending the proceedings, some of his fundamental human rights could be seriously impaired, the Tribunal held that it was not within its powers to order the Italian administrative authorities to issue "an instrument allowing [him] to lawfully stay in the national territory" because "the jurisdiction of standard courts of law is excluded in proceedings for the granting of a residence permit to an alien 'pending recognition of statelessness'" under Article 11 of D.P.R. No. 394/1999.[17] The only possible avenue of appeal from the interim decision would have been to challenge the constitutionality of the underlying presidential decree.

25. The availability of interim protection in the form a temporary permit of stay pending determination of status is different for asylum applications and statelessness applications. Article 11, section 1(c), of D.P.R. No. 349/1999, states that applicants for statelessness status will only be granted a temporary permit of stay pending the determination on their status if they already possess a regular permit of stay in the Italian territory for other reasons (see para. 18, above). However, the same article also provides that asylum applicants will be automatically granted a temporary permit of stay for the duration of asylum proceedings regardless of whether they already are in possession of a regular permit of stay.

Impact of the Failure to Regularize the Status of Mr. Dabetić

26. The denial of both efficient resolution of his statelessness status application and interim relief pending such resolution impacts severely upon the private life of Mr. Dabetić. He has no legal protection against arbitrary arrest and detention, further deportation orders or criminal proceedings. The lack of any legal status prevents him from enjoying his fundamental rights in Italy, even though the Italian authorities have already *de facto* acknowledged that he does not possess the nationality of any State (see decision of Tribunal of Mantua in June 2006, at para. 28, below; and travel document issued by the Police office of Macerata in July 2011, at para. 33, below). His statelessness status has also been "certified" by the European Court of Human Rights and by the Secretary General of the Council of Europe.[18]

Attempts to Deport Mr. Dabetić

27. On several occasions, Mr. Dabetić was served with deportation orders to Slovenia, a country where he lacked any legal status and to which he practically could not return. In

[14] Exhibit 25: Current status of the stateless proceedings before the Rome Tribunal.
[15] Exhibit 22: Request for interim measures – 3 November 2011.
[16] Exhibit 23: Dismissal of the request for interim measures – 30 November 2011.
[17] *Ibid.* (*English version*).
[18] Exhibit 17: Letter from the Secretary General of the Council of Europe – 23 June 2011.

most cases, his lawyers successfully challenged the deportation orders before the competent magistrate court. However, some of them lead to more substantive proceedings – and harm to Mr. Dabetić.

28. For example, on 16 June 2006, Mr. Dabetić was arrested and detained for three days in Mantua, before being tried for being in Italy illegally under Legislative Decree No. 286/1998 (as amended by Law No. 271/2004, the so-called "Bossi-Fini" law). On 22 June 2006, he was acquitted by the Tribunal of Mantua on the ground that *he had no citizenship*, could not be expected to leave the Italian territory voluntarily, and that he had justified reasons not to comply with deportation orders.[19]

29. On 15 July 2009, the Italian government adopted Law No. 94/2009 on Provisions Relating to Public Safety (the "Security Package"), which converted "illegal entry and stay" from an administrative offence into a criminal act. The new law imposed fines ranging from €5,000 to €10,000 for unauthorized stay in Italy, and stated that any failure to comply with expulsion orders was punishable by up to four years' imprisonment. The Italian Constitutional Court found a provision that barred irregular migrants from marrying to be in breach of the principles of equality, reasonableness and proportionality.[20] The Court of Justice of the European Union (CJEU) struck down a provision that required automatic imprisonment of undocumented migrants found in non-compliance with a removal order.[21]

30. On 22 August 2009, the Prefect of the Province of Teramo ordered that Mr. Dabetić be deported to Romania, although he had no link whatsoever with that country.[22] The deportation order was challenged and ultimately quashed by the Tribunal of Teramo on 13 October 2009.[23] Yet for two months Mr. Dabetić lived with the prospect of being deported to a country which was entirely foreign to him.

Other Impacts upon His Private Life

31. For the last seven years, as a result of the failure of the Italian authorities to grant him statelessness status, Mr. Dabetić has not had any personal identification document. Because of his lack of status, Mr. Dabetić has no fixed domicile. Without identification, he has been unable to access primary healthcare (beyond emergency services), open a bank account, obtain employment, buy a car, or move freely within Italy.

32. On 4 July 2011, Mr. Dabetić had a daughter with his partner. Without the ability to work legally, he cannot support his child. His lack of means has so encumbered his ability to care for his daughter and support a family that the child's mother will not consent to recognizing that Mr. Dabetić is the father.

33. Mr. Dabetić is not able to obtain a passport and travel abroad. An example of the impact that this has upon him is that in June 2011, Mr. Dabetić's lawyers had to apply for special permission for him to travel to Strasbourg to attend the Grand Chamber hearing on 6 July 2011 in the *Kurić* case, in which he was also an applicant. The lawyers relied on the provisions laid down in Article 4 of the 1996 Agreement relating to persons participating in the proceedings of the European Court of Human Rights. By a letter dated 23 June 2011, the President of the Court requested the full cooperation of the Italian Government in facilitating Mr. Dabetić's travel for the purposes of attending and returning from the hearing.[24] The Court's request attached a declaration of the Head of Protocol of the Secretary General of the Council of Europe stating that Mr. Dabetić

[19] Exhibit 12: Judgment of the Criminal Tribunal of Mantova acquitting the applicant from the charge of illegal stay – 22 June 2006.
[20] Constitutional Court Case No. 249/2010 and 245/2011.
[21] *El Dridi*, CJEU, judgment of 28 April 2011, Application no. C-61/11.
[22] Exhibit 14: Deportation decree issued by the authorities of Teramo – 22 August 2009.
[23] Exhibit 15: Judgment of the Tribunal of Teramo quashing the deportation decree – 13 October 2009.
[24] Exhibit 17: Letter from the Secretary General of the Council of Europe – 23 June 2011.

was stateless.[25] Based on this request, the Police office of Macerata issued Mr. Dabetić a limited duration permit of stay on humanitarian grounds and with a travel document (both valid until 31 July 2011) for the purpose of allowing him to attend the hearing. The travel document, issued by Italian authorities, listed his nationality as "NONE".[26]

34. These hardships are a direct consequence of the failure of the Italian authorities to promptly recognize Mr. Dabetić's status as a stateless person, and accordingly to provide him with a regular legal residency status in Italy and the possibility of applying for citizenship there (see paras. 17, above, and 39, below). These hardships continue to this day. The only protection against future arrest and expulsion that Mr. Dabetić has is a copy of the judgment issued by the Tribunal of Mantua stating that he has justified reasons not to comply with deportation orders.

IV. RELEVANT LEGAL STANDARDS

Italian Law and Regulations

Decreto del Presidente della Repubblica 572 of 1993

35. Article 17 (status determination) states:

> "*Certificazione della condizione d'apolidia. 1. Il Ministero dell'interno può certificare la condizione di apolidia, su istanza dell'interessato corredata della seguente documentazione: a) atto di nascita; b) documentazione relativa alla residenza in Italia; c) ogni documento idoneo a dimostrare lo stato di apolide. 2. E' facoltà del Ministero dell'interno di richiedere, a seconda dei casi, altri documenti.*"
>
> *English translation (unofficial)*: "Certification of the status of statelessness. 1. The Ministry of the Interior can certify statelessness status, upon request of the party concerned accompanied by the following documents: a) birth certificate; b) documentation concerning residence in Italy; c) any other document suitable to demonstrate statelessness status. 2. The Ministry of the Interior, depending on the case, may request other documents."

Decreto del Presidente della Repubblica 394 of 31/8/1999

36. Article 11 (temporary stay) states as follows:

> "*1. Il permesso di soggiorno è rilasciato, quando ne ricorrono i presupposti, per i motivi e la durata indicati nel visto d'ingresso o dal testo unico, ovvero per uno dei seguenti altri motivi: a) per richiesta di asilo, per la durata della procedura occorrente, e per asilo; b) per emigrazione in un altro Paese, per la durata delle procedure occorrenti; c) per acquisto della cittadinanza o dello stato di apolide, a favore dello straniero già in possesso, del permesso di soggiorno per altri motivi, per la durata del procedimento di concessione o di riconoscimento.*"
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> *English translation (unofficial)*: "1. The permit of stay is granted, when the conditions are met, for the reasons and the duration indicated in the entry visa or by the Consolidated Act (Legislative Decree No. 286/1998), or for the further following reasons: a) for asylum request, pending the required procedures, and for asylum; b) for emigration to another Country, pending the required procedures; c) for acquisition of either citizenship or statelessness status, in favor of aliens already in possession of a permit of stay for other reasons, for the duration of procedures for the granting or recognition."

Code of Civil Procedure

[25] *Ibid.*
[26] Exhibit 19: Travel document issued by the Municipality of Macerata – 30 June 2011.

37. Article 700 (interim protection) states:

> "*Fuori dei casi regolati nelle precedenti sezioni di questo capo, chi ha fondato motivo di temere che durante il tempo occorrente per far valere il suo diritto in via ordinaria, questo sia minacciato da un pregiudizio imminente e irreparabile, può chiedere con ricorso al giudice i provvedimenti d'urgenza, che appaiono, secondo le circostanze, più idonei ad assicurare provvisoriamente gli effetti della decisione sul merito.*"
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> *English translation (unofficial)*: "Beyond the cases regulated by the previous sections of this chapter, anyone who has reasonable grounds to fear that, during the period of time necessary to enforce his or her right in the principal proceedings, such right is threatened by an imminent and irreparable harm, can apply to the judge seeking the adoption of such emergency measures that, according to the circumstances, appear most suitable to ensure the effects of the substantive decision."

Security Package

38. Article 1, section 16, of Law No. 94/2009 of 15 July 2009 on Provisions Relating to Public Safety (the "Security Package") states as follows:

> "*16. Al testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, di cui al decreto legislativo 25 luglio 1998, n. 286, sono apportate le seguenti modificazioni:*
>
> *a) dopo l'articolo 10 è inserito il seguente:*
> *Art. 10-bis. - (Ingresso e soggiorno illegale nel territorio dello Stato). - 1. Salvo che il fatto costituisca più grave reato, lo straniero che fa ingresso ovvero si trattiene nel territorio dello Stato, in violazione delle disposizioni del presente testo unico nonché di quelle di cui all'articolo 1 della legge 28 maggio 2007, n. 68, è punito con l'ammenda da 5.000 a 10.000 euro. Al reato di cui al presente comma non si applica l'articolo 162 del codice penale.*"
>
> *English translation (unofficial)*:
>
> …a) After Article 10, the following article is inserted:
>
> Art. 10-bis (Illegal entry and stay in the territory of the State).-1. Save where the fact constitutes a more serious offence, the alien who enters or stays in the territory of the State, in violation of the provisions of this Consolidated Act, as well as of the provisions of the Article 1 of the Law of 28 May 2007, No. 68, is punished with a fine from 5.000 to 10.000 euro. Article 162 of the Criminal Code does not apply to the offence provided for by this paragraph."

Act No. 91 of 5 February 1992, Citizenship

39. Article 9(1)(e) states:

> 1. Italian citizenship may be granted by Order of the President of the Republic upon the recommendation of the Minister for the Interior, following consultation of the Council of State, to: (e) stateless persons who have been legally resident for at least five years in the territory of the Republic.[27]

International Instruments

40. The Convention is a "living instrument" which "must be interpreted in the light of present-day conditions" and the Court must take into account "evolving norms of

[27] See Law no. 91 of 5 February 1992, Citizenship, available at: http://www.unhcr.org/refworld/country,,NATLEGBOD,,ITA,,3ae6b4edc,0.html.

national and international law in its interpretation of the Convention provisions".[28] The Court has indicated that it will consider other relevant treaties, particularly where the Convention is silent or lacking in precision:

> "[T]he Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between Contracting Parties."[29]

41. Specifically, the Court will look to "intrinsically non-binding instruments of Council of Europe organs, in particular recommendations and resolutions of the Committee of Ministers and the Parliamentary Assembly". When common ground among various instruments and standards is found, the Court has shown that it will not distinguish between sources of law according to whether or not they have been signed or ratified by the respondent State.[30]

Council of Europe Standards

42. In articulating the meaning of the right to nationality as a function of an individual's private or family life under Article 8, the Court has often looked to other Council of Europe treaties, including the European Convention on Nationality (ECN) and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, and to recommendations of the Committee of Ministers.

European Convention on Nationality

43. Italy signed the ECN on 6 November 1997.[31] As a signatory to the ECN, Italy is obliged to uphold its object and purpose, as set out in the preamble and the principles of the treaty described in Article 4. Paragraph 7 of the preamble emphasizes that the object and purpose of developing legal principles concerning nationality and avoiding statelessness is based in part on the understanding that this is necessary to ensure "respect for family life as contained in Article 8 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms".[32] The principles of the treaty in Article 4 include that "everyone has a right to nationality," and "statelessness shall be avoided."

44. The Council of Europe's Explanatory Report to the ECN deems the obligation to avoid statelessness "part of customary international law", thus binding on Italy, and the Report identifies the 1961 UN Convention on the Reduction of Statelessness as setting out the rules for implementing this customary law obligation.[33]

45. Article 6(4)(g) states:

> "Each State Party shall facilitate in its internal law the acquisition of its nationality for […] stateless persons and recognized refugees lawfully and habitually resident on its territory."

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[28] *Soering v. the United Kingdom*, ECtHR, Judgment of 7 July 1989, at para. 102; *Vo v. France*, ECtHR [GC], Grand Chamber Judgment of 8 July 2004, at para. 82; *Mamatkulov and Askarov v. Turkey*, ECtHR [GC], Grand Chamber Judgment of 4 February 2005, at para. 121.
[29] *Demir and Baykara v. Turkey*, ECtHR [GC], Grand Chamber Judgment of 12 November 2008, para. 67.
[30] *Ibid*. at para. 78.
[31] Council of Europe, European Convention on Nationality, *entry into force* 30 January 2000.
[32] *Ibid.* at 7th Preamble ("Aware of the right to respect for family life as contained in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms").
[33] Council of Europe, Explanatory Report to the European Convention on Nationality, para. 33.

46. Article 18 sets out the guiding principles to be applied by states in cases of state succession, namely that "each State Party concerned shall respect the principles of the rule of law [and] the rules concerning human rights" (Article 18(1)).[34]

Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession

47. The Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession entered into force on 1 August 2010.[35] The second preamble reaffirms the importance of the duty to avoid statelessness: "Considering the avoidance of statelessness is one of the main concerns of the international community in the field of nationality".[36] The Convention is devised to set down specific rules for situations of state succession as it is "one of the major sources of cases of statelessness".[37]

Recommendation R (1999) 18 on Statelessness

48. As a member of the Committee of Ministers of the Council of Europe, Italy participated in the adoption of Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness, which reiterates and elaborates many of the provisions of the ECN. There, the Council of Europe further emphasized the pernicious effects of statelessness and the need to reduce and avoid it. The Recommendation requires judges to interpret legislation in order to avoid statelessness. Specifically, the Recommendation requires governments to uphold the following principles:

> "Access to the nationality of a State should be possible whenever a person has a genuine and effective link with that State, in particular through birth, descent or residence" (para. I.b).
>
> "The acquisition of nationality by stateless persons should be facilitated and not subject to unreasonable conditions" (para. I.d.).

United Nations Standards

United Nations Convention Relating to the Status of Stateless Persons (1954)

49. Italy ratified this Convention on 3 December 1962. Article 32 states:

> "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."[38]

UNHCR Guidelines on Statelessness

50. The UNHigh Commissioner for Refugees (UNHCR) has recently issued authoritative Guidelines on the definition of a stateless person, procedures for determining statelessness status and the status of stateless persons at the national level.[39]

51. In its *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, issued in April 2012, the UNHCR specified that in

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[34] ECN, Article 18(1). See also: ECN Article 4 (Principles) (States shall base rules on nationality on, inter alia, the principle that "statelessness shall be avoided").
[35] Council of Europe, Council of Europe Convention on the avoidance of statelessness in relation to State succession, *entry into force* 10 August 2010.
[36] *Ibid.* at 2nd preamble.
[37] *Ibid.*at 3rd preamble.
[38] UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, at Article 32.
[39] The complete UNHCR Guidelines on Statelessness are included in the document annex as Exhibits 26-28, for the convenience of the Court.

order "[f]or procedures to be fair and efficient, access to them must be ensured".[40] Specifically:

> "Everyone in a State's territory must have access to statelessness determination procedures. *There is no basis in the Convention for requiring that applicants for statelessness determination be lawfully within a State*. Such a requirement is particularly inequitable given that lack of nationality denies many stateless persons the very documentation that is necessary to enter or reside in any State lawfully."[41]

52. The UNHCR's *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level* also state:

> "As confirmed by the drafting history of the Convention, applicants for statelessness status who enter into a determination procedure are therefore 'lawfully in' the territory of a Contracting State."[42]

53. The UNHCR Guidelines also clarify the minimum protections that states must accord to persons "awaiting determination of statelessness" under the 1954 Convention:

> "Although the 1954 Convention does not explicitly address statelessness determination procedures, there is an implicit responsibility for States to identify stateless persons in order to accord them appropriate standards of treatment under the Convention. … In countries with a determination procedure, an individual awaiting a decision is entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as 'lawfully in' rights. *Thus, his or her status must guarantee, inter alia, identity papers, the right to self-employment, freedom of movement and protection against expulsion*. *… [I]t is recommended that individuals awaiting a determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered in the same State.*"[43]

54. The Guidelines also review the protections that must be accorded to individuals "determined to be stateless", including the right of residence:

> "Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with determination procedures."[44]

55. Other rights for individuals "determined to be stateless" are described in the 1954 Convention and summarized in the Guidelines under the following categories:

- Juridical status (including personal status, property rights, right of association, and access to courts).
- Gainful employment (including wage-earning employment, self-employment, and access to the liberal professions).

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[40] Exhibit 27: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, at para.16. The Guidelines are issued "pursuant to [UNHCR's] mandate responsibilities to address statelessness." They are "intended to provide interpretive legal guidance" on issues falling within UNHCR's mandate, including "the identification, prevention and reduction of statelessness and the protection of stateless persons." *Ibid.* at p. 1.

[41] *Ibid.* at para. 17.

[42] Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/03, 17 July 2012, at para.16 (emphasis added).

[43] *Ibid.* at paras. 25-26.

[44] *Ibid*. at para. 28.

- Welfare (including rationing, housing, public education, public relief, labour legislation, and social security).
- Administrative measures (including administrative assistance, freedom of movement, identity papers, travel documents, fiscal charges, transfers of assets, expulsion, and naturalization).[45]

United Nations Committee on the Elimination of Racial Discrimination

56. In its recent consideration of Italy's compliance with the UN Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination made the following conclusions relating to treatment of stateless persons in Italy:

> "The Committee recommends that the State party take measures to facilitate access to citizenship of stateless Roma, Sinti and non-citizens who have lived in Italy for many years, and to pay due attention to and remove existing barriers."[46]

Other Relevant Standards

International Law Commission: Draft Articles on Nationality of Natural Persons in relation to the Succession of States (1999)

57. The International Law Commission's Draft Articles on Nationality of Natural Persons in relation to Succession of States with Commentaries ("ILC Draft Articles") reflect existing treaty law, general principles of law, and State practice.[47] The ILC Draft Articles were commissioned by the General Assembly, adopted by the ILC at its 51st Session in 1999.[48]

58. Article 19(2) (Other States) is of particular relevance because it is addressed to states other than predecessor or successor states in a situation of state succession:

> "2. Nothing in the present draft articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons."[49]

59. The commentary elaborating Article 19 clarifies the purpose of paragraph 2:

> "*Paragraph 2* deals with the problem that arises when a State concerned denies a person concerned the right to retain or acquire its nationality by means of discriminatory legislation or an arbitrary decision and, as a consequence, such person becomes stateless. . . . [I]nternational law cannot correct the deficiencies of internal acts of a State concerned, even if they result in statelessness. This, however, *does not mean that other States are simply condemned to a passive role*.[50]

[45] *Ibid.* at para. 10 (summarizing Articles 12-32 of the 1954 Convention).
[46] UN Committee on the Elimination of Racial Discrimination, *Concluding observations: Italy*, CERD/C/ITA/CO/16-18, 9 March 2012, at para. 24.
[47] International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries* (1999). Some provisions of the ILC Draft Articles are considered to constitute progressive development of existing international law. The General Assembly has yet to consider whether it will transform the ILC Draft Articles into a convention or declaration.
[48] *Ibid*. Preliminary *Commentary*, at para. 1.
[49] *Ibid.*, at Article 19(2).
[50] *Ibid*., Article 19 *Commentary*, at paras. 6-8.

V. ALLEGED VIOLATIONS OF THE CONVENTION

60. Through the acts and omissions of its agents, the Italian Republic has violated the Convention by its treatment of Velimir Dabetić.

- *A. Right to Respect for Private Life: Article 8.* Italy's prolonged failure to regularize Mr. Dabetić's legal status, including by failing to grant him temporary protection pending the outcome of his claim for statelessness status in Italy has had such an impact upon his private life as to amount to a violation of Article 8.
- *B. Discriminatory Treatment: Article 14*. Mr. Dabetić is legally barred from receiving any form of protection through administrative statelessness proceedings because of his irregular status; asylum seekers receive protection, including automatic permits of stay pending resolution of their claims, regardless of their preexisting status in Italy – an unjustified difference in treatment. Italian authorities have also, without reasonable justification, failed to treat Mr. Dabetić differently on account of his vulnerable status as a stateless person and a victim of the "erasure" in Slovenia. These actions violate Article 14 taken in conjunction with Article 8.
- *C. Failure to Provide Redress: Article 13 and Article 6.* There is no effective domestic remedy by which Mr. Dabetić can challenge his denial of legal status and seek to assert his rights, contrary to the right to a remedy protected in Article 13 and the right to effective access to a court in the determination of his civil rights, protected under Article 6(1).

A. VIOLATION OF THE RIGHT TO RESPECT FOR PRIVATE LIFE: ARTICLE 8

61. For more than seven years, Mr. Dabetić has waited for a determination of his statelessness status by Italian authorities, even though Italy has recognized him as stateless on more than one occasion outside the formal proceedings. He is barred from the administrative statelessness status determination procedure because he does not already possess a valid permit of stay, and he cannot obtain interim protection through a temporary permit of stay pending the outcome of judicial proceedings. This failure has such an impact on his private life – his legal identity, personal autonomy and human dignity – as to violate Article 8. As an individual without legal status and thus legal identity in Italy, Mr. Dabetić is unable to conduct a normal life there: to work, to establish a secure residence, to form family and other relationships. Recent developments in Italian law have made his very existence on Italian soil a criminal act.

62. There is no justification for this interference beyond the state of the Italian legal system. Italy's failure to establish an accessible, functional legal regime for granting Mr. Dabetić a legal status based on his statelessness is not in accordance with the law and results in a disproportionate impact on Mr. Dabetić's Article 8 rights.

63. Only through official recognition of his status as a stateless person can Mr. Dabetić be put on the path to remedy his situation – ultimately by becoming eligible to apply for and to acquire a citizenship.

1. Interference with Article 8

64. The impact of the failure to determine Mr. Dabetić's legal status and to provide for interim protection has such an impact upon his private life as to engage Article 8.

65. The Court has accorded an expansive meaning to "private life" under the Convention to include aspects of juridical personality, personal identity, individual autonomy and human dignity. Respect for private life is of "fundamental importance [for ensuring] the development of every human being's personality," which "extends beyond the private family circle to include a social dimension."

"[T]he concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person […] It can sometimes embrace aspects of an individual's physical and social identity. […] Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world."[51]

66. Italy's mistreatment of Mr. Dabetić interferes with several of the rights which the Court has identified as falling within the scope of Article 8:

- A. Legal identity. Arbitrary denial of legal identity can raise an issue under the Convention, particularly where such a denial leaves the individual in a protracted situation of statelessness.
- B. Personal autonomy, identity and development. Maintaining individuals in a situation of uncertain legal identity has a profound impact on their ability to establish personal identity and develop basic ties to society, a facet of personal autonomy protected under Article 8.
- C. Dignity. The fundamental impact of Italy's failure to grant protection to Mr. Dabetić has been his prolonged inability to establish a secure existence as a subject of rights – to live a life in dignity. Instead, Italy's position has been to vigorously apply punitive measures against Mr. Dabetić based on his uncertain status, while ignoring the obligation to accord him rights associated with that status. He is treated as falling outside the protections of the law.

A. Legal Identity

67. In order for a state to protect stateless persons, a functioning identification mechanism must be established.[52] The legal status that derives from recognition as a stateless person provides legal identity to the person concerned as well as the right to an identity document[53] and legal residency.[54] Italy's denial of these basic protections interferes with Mr. Dabetić's Article 8 right to legal identity.

68. The Court has recognized that the arbitrary denial of legal identity can raise an issue under Article 8 of the Convention, because of the impact of such a denial on the private life of the individual.[55] In *Kurić and others v. Slovenia*, in which Mr. Dabetić was an applicant (see para. 4-9, above), the Grand Chamber stated:

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[51] *Pretty v. the United Kingdom*, ECtHR, Judgment of 29 July 2002, at para. 61.

[52] See Exhibit 27: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, at para.1 ("[I]t is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment to comply with their Convention commitments."); Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/03, 17 July 2012, para. 28-29, 31.

[53] UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, Article 24.

[54] Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/03, 17 July 2012, para. 28-29, 31.

[55] *East African Asians v the United Kingdom*, ECmHR, Decision of 14 December 1973, at para. 229-232 (finding a violation of Article 14 with Article 8 through legislation which "prevented, against their will, the reunion in the United Kingdom of the members of the applicants' families, who were all citizens of the United Kingdom and the Colonies)"; *Karassev v Finland*, ECmHR, Decision of 25 September 1998, at p. 9 (noting "that the Court does not exclude that an arbitrary denial of citizenship might, in certain circumstances, raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual," concluding that the denial of citizenship was not sufficiently arbitrary to raise an issue under Article 8 of the Convention); *Kafkasli v Turkey*, ECmHR, Report of 1 July 1997, at paras. 33-34 (finding that a requirement to report to the police every three months to renew stateless residence card could give rise to an interference with private life, but determining that the justification for the interference was in accordance with domestic law, necessary

> "Owing to the 'erasure', [the applicants] experienced a number of adverse consequences, such as the destruction of identity documents, loss of job opportunities, loss of health insurance, the impossibility of renewing identity documents or driving licenses, and difficulties in regulating pension rights. Indeed, the legal vacuum in the independence legislation … deprived the applicants of the legal status, which had previously given them access to a wide range of rights."[56]

69. Judge Vučinić expanded upon the Court's reasoning in his separate opinion concurring in part, dissenting in part with the judgment:

> "[T]he right to legal personality is very well founded in universal and customary international human-rights law. The right is a fundamental precondition for the enjoyment not only of the basic human rights and freedoms, but also of the whole range of different substantive and procedural rights."[57]

70. As a party to the 1954 Convention Relating to the Status of Stateless Persons, Italy is obliged to identify and protect stateless persons. The presence of an effective and accessible status determination procedure is vital to fulfilling these obligations. UNHCR's authoritative Guidelines on status determination procedures under the 1954 Convention unequivocally call upon states to open procedures to "[e]veryone in a State's territory" whether or not they are "lawfully within a State".[58] Procedures should be "conducted as expeditiously as possible," and "[i]n applications where the immediately available evidence is clear and the statelessness claim is manifestly well-founded, fair and efficient procedures may only require a few months."[59]

71. UNHCR has also clarified that persons awaiting determination of status should be treated as "lawfully in" a state and therefore should receive basic protections such as "identity papers, the right to self-employment, freedom of movement and protection against expulsion".[60] These rights emanating from the 1954 Convention, to which Italy is a party, are formulated almost identically to those in the 1951 Refugee Convention, leading UNHCR to recommend that individuals awaiting determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered by the same state (see also paras. 106-114, below).[61]

72. The European Convention on Nationality (ECN), signed by Italy on 6 November 1997, establishes a legal obligation to avoid statelessness and requires states to create principles and rules to achieve that objective. The Council of Europe's Explanatory Report to the ECN identifies the duty to avoid statelessness as a part of customary international law, binding on Italy, and recognizes the interconnection between the right to nationality and the duty to avoid statelessness:

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and proportionate, and fell within the margin of appreciation left to the states because the interference was not so severe as to be disproportionate); *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para. 355 ("[M]easures 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 also: *Savoia and Bounegru v Italy*, ECtHR Decision of 11 June 2006, at para. 2 (recalling that "the arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the individual"); *Slivenko v Latvia*, ECtHR Judgment of 9 October 2003, at paras. 94-95, 114, 122-129.

[56] *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para. 356.

[57] *Ibid.*, Partly Concurring, Partly Dissenting Opinion of Judge Vučinić.

[58] UNHCR, Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, HCR/GS/12/02, 5 April 2012, at para. 17.

[59] *Ibid.* at para. 22.

[60] Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/03, 17 July 2012, at para. 26.

[61] *Ibid.*

> "The principle of a right to a nationality is included in the Convention because it provides the inspiration for the substantive provisions of the [ECN] which follow, in particular those concerning the avoidance of statelessness. This right can be seen as a positive formulation of the duty to avoid statelessness."[62]

73. The ECHR likewise obliges Contracting Parties to undertake positive obligations with respect to vulnerable persons, including "positive obligations inherent in effective respect for private or family life" under Article 8, "in particular in the case of long-term migrants".[63] Timely identification and provision of basic protections to stateless persons, legal status being foremost among these, falls within the scope of states' Article 8 obligations.

74. Mr. Dabetić has been awaiting the outcome of status determination proceedings in Italy for seven years. During that time, and until his status is determined, he is entitled to be treated as "lawfully in" Italy. Above all, he should have been granted an identity document and temporary permit of stay years ago, which would have spared him the repeated arrests, criminal charges and deportation proceedings described above (see paras. 26-30, above). Statelessness status determination proceedings should have resolved his legal status quickly, especially given his identity as an applicant in the *Kurić* case, placing him in a position to begin reestablishing the semblance of a normal life in the country where he has lived for over 20 years.

B. Personal Autonomy, Identity and Development

75. By failing to provide the protection that Mr. Dabetić is due as a stateless person, Italy has interfered with his right to personal autonomy as embodied in his ability to form and develop his personal identity.

76. The Court has called personal autonomy "an important principle underlying the interpretation" of Convention guarantees.[64] In developing the notion of personal autonomy as a principle coming within the scope of Article 8, the Court has included individual identity within a cluster of interrelated rights attached to personal autonomy: "[U]nder Article 8 of the Convention … protection is given to the personal sphere of each individual, including the right to establish details of their identity as individual human beings."[65] The right to respect for private life also includes "a right to personal development" as an element of personal autonomy: "Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world."[66]

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[62] Council of Europe, European Convention on Nationality, Explanatory Report, *entry into force* 30 January 2000, at para. 32. It should be noted that although the ECN limits its provisions for acquisition of nationality to stateless persons "lawfully resident" on the territory of a State Party, it cannot be presumed that this limitation extends to those who find themselves perpetually unable to access status determination proceedings in the first place; that is: where the only avenue toward establishing lawful residence is foreclosed to the very category of vulnerable individuals the treaty is designed to protect, it is submitted that the object and purpose of the treaty is undermined. *See* UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, at para.17.

[63] *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para. 353 (citing authorities), 358. *See also Sisojeva and others v. Latvia*, ECtHR [GC], Grand Chamber Judgment of 16 June 2005, at para. 104 ("[I]t is not enough for the host State to refrain from deporting the person concerned; it must also, by means of positive measures if necessary, afford him or her the opportunity to exercise the rights in question without interference.").

[64] *Pretty v. the United Kingdom*, ECtHR, Judgment of 29 July 2002, at para. 61.

[65] *Goodwin v. the United Kingdom*, ECtHR Judgment of 11 July 2002, at para. 90.

[66] *Pretty v. the United Kingdom*, Judgment of 29 July 2002, at para. 61 (emphasis added); *Nada v Switzerland*, ECtHR [GC], Grand Chamber Judgment of 12 September 2012, at para. 151.

77. Statelessness status determination is a key step toward guaranteeing the right to personal autonomy of stateless persons because it is the *first* step toward facilitating access to citizenship.[67] UNHCR has commented that "the ability of people to realize the rights associated with nationality provides an indispensable element of stability of life, whether at the personal, societal or international levels."[68] This Court has likewise recognized the consequences that statelessness can have upon the personal autonomy rights of the individual reflected in Article 8, and the same desire to place stateless persons on a pathway to legal certainty, ultimately through access to citizenship.[69]

78. As described above, Italy has failed to provide an appropriate level of protection pending the determination of Mr. Dabetić's status – he should at a minimum be treated as "lawfully in" Italy under the 1954 Convention, allowing him to exercise basic rights and receive assistance necessary to meet basic needs. Italy has furthermore failed to provide a functional procedure for statelessness status determination, leaving Mr. Dabetić trapped in legal limbo as to his status and unable to move on with his life. Italy has thus severely limited Mr. Dabetić's ability to define and develop his personal identity during his lengthy struggle to acquire protection. He cannot work or travel easily, open a bank account, established a fixed domicile, access proper healthcare or provide for his infant daughter.

79. A grant of interim protection would go some way toward alleviating these constraints on his personal autonomy, but if Italy had met its obligations Mr. Dabetić should have been granted statelessness status seven years ago. He might have already become a naturalised Italian citizen.[70] At least he would have had the opportunity and liberty to apply for citizenship, which is what he is due under the international legal framework addressed to avoiding statelessness and protecting every person's right to nationality.

C. Dignity

80. The Court has held that, in connection with Article 8, the respect for human dignity and human freedom is the "very essence of the Convention."[71] Judge Vučinić reflected the fundamental connection between legal status and human dignity in his separate opinion in the *Kurić* Grand Chamber judgment, calling the right to legal personality an "**absolutely fundamental**" right emanating from the principle of inherent human dignity protected under Article 8 (emphasis in original):

> "[T]he right to legal personality is a normal, natural and logical consequence of human personality and inherent human dignity; it is a natural and inherent part of every human being and his or her human personality. The broad, non-exhaustive and flexible nature of Article 8 of the Convention obviously means that this right is included within its comprehensive ambit. This right is tacitly, but very clearly, included and deeply rooted in the concept of individual personality and inherent human dignity embraced by Article 8 of the Convention."[72]

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[67] Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/03, 17 July 2012, at para. 29 (recalling that states have an obligation under Article 32 of the 1954 Convention to facilitate naturalisation); see also legal standards cited at paras. 45-49, above.

[68] UNHCR, The State of the World's Refugees: A Humanitarian Agenda, ch. 6, p. 20, available at: http://www.unhcr.org/4a4c72719.html.

[69] See e.g. authorities cited in n. 54 above. The applicant does not assert a present right to nationality in Italy and accepts that states exercise discretion, limited by international law including international human rights law, in regulating access to nationality. See, e.g., *Yean and Bosico v. the Dominican Republic*, IACtHR, Judgment of 8 September 2005, at para. 138.

[70] See paras. 17 and 39, above.

[71] *I v. the United Kingdom*, ECtHR, Judgment of 11 July 2002, at para. 70.

[72] *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment, Partly Concurring, Partly Dissenting Opinion of Judge Vučinić, 26 June 2012.

81. The Inter-American Court of Human Rights (IACtHR) has also recognized that "the failure to recognize juridical personality harms human dignity, because it "denies absolutely an individual's condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals."[73]

82. To continuously deny access to legal status as a stateless person and the protection that status would afford in Mr. Dabetić's case, offends this bedrock principle of human rights. That Italy has gone further, to subject Mr. Dabetić to criminal charges attached to his status and round after round of futile deportation proceedings, demonstrates a clear abuse of Mr. Dabetić as a person possessed of inherent dignity and inalienable rights.

83. Even as Mr. Dabetić is in the process of seeking protection in the form of statelessness status, Italy denies him access to a temporary permit so that he can await the outcome of status determination proceedings without further risk of arrest. He is reduced to using a copy of a document stating that deportation orders entered against him are unenforceable as his only defence against future police action. For years, Mr. Dabetić has been treated as a "disposable object[]" and not as a "subject[] of the law".[74]

84. These actions and omissions offend dignity, interfering with his most fundamental rights under Article 8.

2. Interference Not in Accordance with Law

85. Italy's actions were not in accordance with law within the meaning of the Convention, as there is inadequate legal protection against arbitrary use of discretion by courts considering interim protection, and the protracted proceedings mean that it is not clear when an application may be decided.

86. The Court has established that the phrase "in accordance with the law" requires that the impugned measure should have some basis in domestic law, and also refers to the quality of the law in question, requiring that it should be accessible to the individual concerned and foreseeable in its effects.[75] To be accessible, the individual "must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to a given case."[76] Where the law grants discretion to national authorities, the Court has held that it must also provide legal protection against arbitrary use of that discretion.[77] The Court has also considered that where a domestic legal system fails to regulate matters such as residence status in a reasonably timely manner, applicants may not be in a position to foresee the impact on their private or family life.[78] Beyond the Article 8 context, proceedings of indeterminate length have regularly been found to lack sufficient safeguards against arbitrariness.[79]

87. *Inaccessibility*. The mechanisms for according protection to stateless persons in Italy are insufficiently elaborated to be considered accessible. The administrative procedure is recognized as "dysfunctional" and is literally inaccessible to most stateless persons, who, apart from exceptional cases, will not be able to enter the procedure because they

[73] *Yean and Bosico v the Dominican Republic*, IACtHR, Judgment of 8 September 2005, at para. 179.
[74] *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment Partly Concurring, Partly Dissenting Opinion of Judge Vučinić, 26 June 2012.
[75] *Amann v. Switzerland*, Judgment of 16 February 2000, at para. 50.
[76] *Silver and others v. United Kingdom*, Judgment of 25 March 1983, at para. 87.
[77] *Malone . United Kingdom*, ECtHR, Judgment of 2 August 1984, at para. 67; *Gillan and Quinton v. United Kingdom*, Judgment of 12 January 2010, at para. 77.
[78] *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para. 347-48.
[79] See, e.g. *Louled Massoud v. Malta*, ECtHR, Judgment of 27 July 2010, at para. 71; *Ismoilov and others v. Russia*, ECtHR, Judgment of 24 April 2008, at para. 140; *Centro Europa 7 Srl and another v. Italy*, ECtHR [GC], Grand Chamber Judgment of 7 June 2012, at para. 154.

will lack a residency status in Italy.[80] The judicial procedure is largely unregulated, including with respect to the power of ordinary courts to issue interim relief.

88. Although in Mr. Dabetić's case the Rome Tribunal declared itself without jurisdiction to issue interim relief, this decision is itself a product of the unregulated nature of the judicial statelessness status determination procedures in Italy, leading to marked inconsistencies in decision-making. In fact, ordinary courts in Italy have issued interim relief to statelessness status applicants; Article 700 of the Code of Civil procedure empowers courts to do so. But Italian law offers judges no guidance on granting interim relief pending the outcome of judicial statelessness status determination proceedings for persons not already in possession of another form of legal residence permit in Italy. Given the complex nature of statelessness status determination, Italy is required to establish some reasonable and uniform guidance on how applications are to be handled.

89. *Unpredictable length of proceedings.* Both the administrative and the judicial procedures for granting statelessness status in Italy are unduly protracted such that applicants cannot reasonably predict when, if ever, their application may be decided. No effective safeguards exist to limit the length of time it can take for statelessness status applications to be adjudicated. Mr. Dabetić has waited seven years and he is yet to attend the "initial hearing" in his judicial application.[81] UNHCR has clarified that status determination procedures should be conducted "as expeditiously as possible", noting that where applications are well-founded, the procedures could last only a matter of months.[82]

90. Mr. Dabetić's application for statelessness status is undeniably well-founded; Italy has admitted that he is stateless[83] and his statelessness has been well documented on the international stage in the case of *Kurić and others v. Slovenia*.[84] That he has no way of predicting how long he must await the final outcome of his application is not in accordance with law within the meaning of the Convention.

3. Interference Not "Necessary in a Democratic Society"

91. To be considered "necessary in a democratic society" a measure interfering with rights guaranteed by Article 8(1) must respond to a pressing social need, and the means employed must be proportionate to the aims pursued. Here, Italy's treatment of Mr. Dabetić serves no legitimate purpose and would in any case be disproportionate to any proffered aim. Given the vulnerability of the applicant, a narrow margin of appreciation should apply.

No Legitimate Purpose

92. There is no legitimate purpose to the denial of effective status determination proceedings or in refusing an expeditious grant of protection in Mr. Dabetić's case. Italy is obliged to protect stateless persons and has already acknowledged that Mr. Dabetić is stateless outside the context of status determination procedures (see above, paras. 28 and 33).

Lack of Proportionality to Any Proffered Aim

[80] See Gabor Gyulai, *Statelessness in the EU Framework for International Protection*, European Journal of Migration and Law 14 (2012) 279-295, 287 ("Italy offers two parallel routes to protection: a rather dysfunctional administrative, and a functioning, but unregulated judicial determination framework.").
[81] See paras. 21-22, above.
[82] Exhibit 27: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, at para. 22.
[83] See paras. 18 and 33, above.
[84] See e.g. *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para. 97.

93. Italy's treatment of Mr. Dabetić would not, in any event, be proportionate to any purported legitimate purpose as (a) the interference concerns core Convention rights, (b) a grant of statelessness status would not burden Italy in any way, and (c) a narrow margin of appreciation applies in cases involving vulnerable individuals such as stateless persons.

a) The interference causes a severe impact upon core rights

94. The interference with Article 8 rights is disproportionate because of the gravity of the consequences Italy's actions pose for Mr. Dabetić. He is and has been for seven years needlessly forced to remain in a situation of statelessness without the protection of a recognized legal status and, ultimately, the ability to apply for citizenship. Had he been duly recognized as a stateless person at the time he first applied, he might today be a naturalized Italian citizen.[85]

95. Failure to protect the most vulnerable members of society undermines one of the founding principles of the European Convention: "the inherent dignity and worth, and the equal and inalienable rights of all members of the human family."[86] Statelessness is widely recognized as a "condition of extreme vulnerability."[87] Mr. Dabetić's experiences living as a stateless person unable to acquire the protection to which he is entitled vividly underscore this penetrating vulnerability.

96. The chief practical impact of Italy's actions in the applicant's case has been the intersection between Italy's failure to grant him protection as a stateless person (or interim protection during status determination) and the harsh measures enacted in recent years to crack down on migrants, criminalizing, indiscriminately, presence in Italy without a residence permit.[88] For years, Mr. Dabetić has also been needlessly unable to exercise his right to personal autonomy and related identity rights, as described above.

97. This order of interference with Mr. Dabetić's Article 8 rights cannot be proportionate to any proffered aim. These actions instead betray a level of carelessness with respect to the individual that should never prevail in a democratic society that respects the rule of law.

b) No burden on the state

98. Italy would face no burden in granting Mr. Dabetić temporary protection pending the outcome of his statelessness status application. Nor would the ultimate grant of the status pose any burden in this case, as Italy has already undertaken to identify, protect and facilitate the possibility of naturalisation for all stateless persons living in its territory. The actions of Italian authorities with respect to Mr. Dabetić may have rendered its commitments hollow, but requiring Italy to live up to its own international obligations cannot be considered a "burden" in balancing the interests at stake here. Moreover, Italy has – outside the context of status determination proceedings – already recognized that the applicant has no nationality, giving the lie to any suggestion that rendering a decision in Mr. Dabetić's case poses more than a negligible burden.

99. Italy's commitment to abiding by its obligations is reflected in the decision to establish status determination procedures, but these procedures fail to meet basic standards of due process, including interim protection for individuals awaiting status determination and reasonably timely consideration of applications. Statelessness status determination proceedings are intended to assist some of the most vulnerable individuals present in

[85] See paras. 17 and 39, above.
[86] Universal Declaration on Human Rights, GA Res. 217(III), UN Doc. A/811, at preamble, section 1; see also: European Convention of Human Rights, at preamble.
[87] *Yean and Bosico v. the Dominican Republic*, IACtHR, H.R. Judgment of 8 September 2005, at para. 142.
[88] See para. 29, above.

the state to regularize their status and place them on a pathway to citizenship. That procedure is meaningless where, after seven years, Mr. Dabetić remains without any legal status or even temporary protection while his application is considered.

100. In fact, the burden on Italy is higher as things stand than it would have been had Italy promptly granted Mr. Dabetić statelessness status. Failing to resolve his status has imposed, and will continue to impose, inevitable costs associated with successive unresolvable proceedings related to Mr. Dabetić's current irregular status in Italy. Adjudicating deportation orders which are unenforceable and criminal prosecutions which have no foundation because he is unable to change his irregular status or to leave pose significant costs to the state. When these costs are contrasted against the potential gains for the state in terms of human security that a grant of statelessness status could effect,[89] it is difficult to see how a fair balance has been struck in this case between any proffered purpose and the interference with Mr. Dabetić's rights.

c) Narrow margin of appreciation for vulnerable groups

101. A narrow margin of appreciation should apply in this case. The Court has established that in considering whether an interference is "necessary in a democratic society", the margin of appreciation afforded to states "will vary according to the nature of the Convention right in issue, its importance for the individual and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions".[90] The Court has held that "the margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate key rights".[91] The Court's jurisprudence also suggests that the margin will be narrower when applied to rights of vulnerable groups.[92]

102. The Inter-American Court considers that the vulnerability of stateless persons together with the clear international obligation to prevent statelessness, has significantly reduced the margin of appreciation afforded to states.[93] Similarly, the UNHCR has stated that "considering the grave consequences of statelessness and the principle that statelessness

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[89] See para. 28, above. See also Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/03, 17 July 2012, at para. 27 ("Allowing individuals awaiting statelessness determination to engage in wage-earning employment, even on a limited basis, may reduce the pressure on State resources and contributes to the dignity and self-sufficiency of the individuals concerned.").

[90] *Eberhard and M. v Slovania*, ECtHR Judgment of 1 December 2009, at para. 82.

[91] *Ibid*.

[92] See e.g. *Connors v. the United Kingdom*, ECtHR, Judgment of 27 May 2004, at para.84 (citing *Buckley v. the United Kingdom* for the proposition that "[t]he vulnerable position of the Roma means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases"); *Alojos Kiss v. Hungary*, ECtHR, Judgment of 20 May 2010, at para. 42 ("If a restriction on fundamental rights applies to a particularly vulnerable group in society . . . then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question."); *C.A.S. and C.S. v. Romania*, ECtHR, Judgment of 20 March 2012, at para. 71("[e]ffective deterrence against serious acts . . . , where fundamental values and essential aspects of private life are at stake requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection.").

[93] *Yean and Bosico v. the Dominican Republic*, IACtHR, H.R. Judgment of 8 September 2005, at para. 140 (stating that "[t]he determination of who has a right to be a national continues to fall within a State's domestic jurisdiction. However, its discretional authority in this regard is gradually being restricted with the evolution of international law, in order to ensure a better protection of the individual in the face of arbitrary acts of States. Thus, at the current stage of the development of international human rights law, this authority of the States is limited, on the one hand, by their obligation to provide individuals with the equal and effective protection of the law and, on the other hand, by their obligation to prevent, avoid and reduce statelessness.").

shall be avoided, any deprivation that results in statelessness must live up to particularly high standards in order to fulfil the proportionality requirement".[94]

103. As a stateless person who has been awaiting the protection he is due for many years, Mr. Dabetić has lived in a situation of extreme vulnerability, with his most fundamental rights at stake, including the right to legal identity and to human dignity. Italy has a duty to put an end to these circumstances; its actions only serve to prolong them. A narrow margin of appreciation should apply in assessing whether such actions are "necessary in a democratic society".

B. DISCRIMINATORY TREATMENT: ARTICLE 14 WITH ARTICLE 8

104. By denying the applicant the right to seek and obtain prompt determination of his statelessness status as well as a temporary permit of stay pending status determination, the Italian authorities have treated the applicant (a stateless person who lost his regular legal status in Italy before recognition of his statelessness) differently from asylum seekers, without such a difference in treatment being objectively and reasonably justified. Moreover, the Italian authorities have failed to treat the applicant differently on account of his vulnerable status as a stateless person and a victim of the "erasure" in Slovenia (see paras. 4-14, above).

105. These factors fall within "other status" under Article 14 of the Convention, a ground which the Court has defined as "personal characteristic[s] by which persons or groups of persons are distinguishable from each other".[95] The prolonged failure by Italian authorities to regulate Mr. Dabetić's legal status falls within the scope of Article 8 (see paras. 66-84, above). There will therefore be a breach of Article 14 where that denial of Article 8 rights is discriminatory, and results from an unjustified difference in treatment or a failure to treat differently.[96]

1. Unjustified Difference in Treatment of Comparable Situations

106. There is a violation of Article 14 when a difference in treatment "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" and/or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised.[97]

Difference in Treatment Compared to Asylum Seekers

107. Mr. Dabetić's situation is comparable to that of asylum seekers who are entitled to the recognition of their refugee status under the 1951 Geneva Convention.[98] This is signaled, inter alia, by the substantial similarity of the legal treatment provided for by the 1951 Convention and by the 1954 Convention Relating to the Status of Stateless

[94] UNHCR, 25 November 2008, at para. 13.
[95] *Kjeldsen, Busk, Madsen and Pedersen v. Denmark*, ECtHR, Judgment of 7 December 1976, at para. 56; see also *Sidabras and Dziautas v. Lithuania*, ECtHR, Judgment of 27 October 2004, at para. 41.
[96] *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, ECtHR, Judgment of 28 May 1985, at para. 71-73; *Weller v Hungary*, ECtHR, Judgment of 3 June 2009, at paras. 26-39.
[97] *D.H. and others v. the Czech Republic*, ECtHR [GC], Grand Chamber Judgment of 13 November 2007, at para. 196; *Larkos v. Cyprus*, ECtHR [GC], Grand Chamber Judgment of 18 February 1999, at para. 29; *Stec and Others v. the United Kingdom*, ECtHR Judgment of 12 April 2006, at para. 51.
[98] General Assembly, Convention Relating to the Status of Refugees (1951), *date of signature*, 9 December 1948, *entry into force*, 12 January 1951, 78 UNTS 277. The 1951 Refugee Convention was intended to include stateless persons as well; only during the drafting process, due to the urgency of resolving the massive refugee problems that were the legacy of World War II, was it decided to deal with the non-refugee stateless in a separate treaty.

Persons.[99] Stateless persons and refugees are both vulnerable persons because they cannot rely on the protection of any state.

108. The relevant Italian legislation treats stateless persons differently from asylum seekers and refugees in at least two respects. First, eligible persons cannot apply for administrative determination of statelessness status if they do not hold a regular permit of stay or entry in Italy, while asylum seekers can apply to the competent administrative authority irrespective of the lawfulness of their stay or entry.[100] Second, stateless persons are entitled to a temporary permit of stay pending determination of their status only if they already hold a valid permit of stay for other reasons, while asylum seekers are entitled to a regularized status "for the time necessary to complete the determination procedure" (see Article 11, section 1, lett. a) and b), of D.P.R. No. 394/1999).

Lack of Objective and Reasonable Justification

109. The different treatment of Mr. Dabetić does not pursue a "legitimate aim" and, in any case, there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised.[101]

110. Distinguishing between asylum seekers and stateless persons has no justification under the relevant international law provisions regulating their status. As pointed out above, the 1951 Refugee Convention and the 1954 Convention Relating to the Status of Stateless Persons are guided by the same rationale, that is to offer a comparable degree of legal safeguards to those individuals who are unable to avail themselves of the protection of the state of their nationality or who do not enjoy the nationality of any state.

111. The right of an asylum seeker to have access to Italy's administrative determination procedure even if he or she entered illegally in the territory should also be extended to applicants for statelessness status in Italy.[102] To prevent a stateless person from seeking administrative determination of his status when, as will almost always be the case, he is otherwise unable to regularize his position in Italy, and to compel him to undertake cumbersome and lengthy judicial litigation in order to have his status determined, does not serve any purpose of general interest.

112. The same holds true with respect to the right to seek and obtain a provisional permit of stay pending such proceedings. Both categories of persons (asylum seekers and stateless persons) should be protected against the lack of any legal status while awaiting a final determination on their claims both at the administrative or judicial level. There is no general interest in preventing stateless persons from being temporarily regularized.

113. On the contrary, such a situation runs against the public order insofar as it leaves the person concerned in a sort of limbo with no legal status for a long period of time that may adversely affect the community: how is this person going to eat, where he is going to live, who is going to provide him with necessary medical care? The interest of the state in such cases should be to regularize as soon as possible the situation of the

[99] See Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/03, 17 July 2012, at para. 6 ("Comparison of the texts of the two treaties shows that numerous provisions of the 1954 Convention were taken literally, or with minimal changes, from the corresponding provisions of the 1951 Convention.").
[100] D.P.R. 394 of 1999 (see paras. 18 and 36, above).
[101] *D.H. and others v. the Czech Republic*, ECtHR [GC], Grand Chamber Judgment of 13 November 2007, at para. 196; *Larkos v. Cyprus*, ECtHR [GC], Grand Chamber Judgment of 18 February 1999, at para. 29; *Stec and others v. the United Kingdom*, ECtHR Judgment of 12 April 2006, at para. 51.
[102] See Exhibit 27: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, at para. 17.

stateless person and certainly not to create legal phantoms with no identity, no rights and no duties.[103]

114. In any case, denying Mr. Dabetić the same treatment afforded to asylum seekers or to stateless persons holding a valid permit of stay when applying for determination of their status cannot be considered as reasonably proportionate to any aim sought to be realized.

2. Failure to Treat Differently Situations That Are Significantly Different

115. A violation of Article 14 will occur when states, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different.[104] Here, the authorities failed to treat Mr. Dabetić differently on account of his acutely vulnerable status as a stateless person and as one of the "erased".

Failure to Treat Mr. Dabetić Differently

116. The applicant should have been treated differently from applicants for citizenship who are not in the precarious situation of statelessness. Under the relevant domestic law provisions currently in force, those seeking statelessness status determination are treated in the same way as those seeking access to citizenship (see Article 11 of D.P.R. No. 394/1999), although the situation of the latter is profoundly different in that they do have the nationality of another state and they can therefore easily regularize their status within Italy.

117. The applicant's extraordinary individual circumstances also mandate differential treatment from that of other persons seeking statelessness status or citizenship without holding a valid permit of stay in Italy. Mr. Dabetić entered Italy lawfully and worked there legally for many years and he did not become aware of his statelessness until he was denied renewal of his work permit due to the expiration of his old SFRY passport. This exceptional situation prevented him from applying for Italian citizenship or statelessness status determination when he was a "regular alien". In such circumstances, particularly where Italian authorities have already acknowledged the fact that Mr. Dabetić is stateless as a result of the "erasure", Italy should have accorded an appropriate level of protection, including the immediate issuance of a temporary stay permit.[105]

Lack of Objective and Reasonable Justification

118. The duty to afford special protection to vulnerable groups and therefore to treat them differently is rooted in the importance the Court attaches to pluralism, tolerance and broadmindedness – the "hallmarks of democracy".[106] Accordingly, the failure to protect the most vulnerable groups in society undermines the principles of equality and human dignity that form the very essence of the democratic principles of the European public order. Failure to treat Mr. Dabetić differently under the circumstances cannot therefore be objectively and reasonably justified.

119. International law makes clear the duty to treat the stateless differently on account of their vulnerability.[107] Mr. Dabetić has no alternative nationality, his only "genuine and

[103] *Kuric and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para 357.
[104] *Thlimmenos v. Greece*, ECtHR, Judgment of 6 April 2000, at para. 44.
[105] See Exhibit 27: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, at para. 22 (indicating that where evidence shows application for stateless status is "manifestly well-founded," fair and efficient procedures may only require a few months to reach a final determination).
[106] *Gorzelik & others v. Poland*, ECtHR [GC], Grand Chamber Judgment of 17 February 2005, at para. 90.
[107] See, e.g. 1954 Convention, Article 32 (states should "as far as possible facilitate the assimilation and naturalisation of stateless persons"); ECN, Article 6(4)(g) (calling for each State Party to "facilitate in

effective link" such as to lead to state protection is with Italy. The inherent vulnerability associated with statelessness is further aggravated by the inherent lack of alternative nationalities available to such persons other than their country of habitual residence.

120. Mr. Dabetić also should have been treated differently on account of the fact that he was a victim of a violation of Article 8, 13 and 14 of the Convention for the reasons set out by the Grand Chamber in *Kurić and others v. Slovenia*. Although the Court (by a majority of 9 against 8) rejected Mr. Dabetić's claim on the ground that he had not applied for permanent residence in Slovenia, the unlawfulness and discriminatory character of the "erasure" remains unchanged as well as the lack of any effective remedies against it. There can be no objective or reasonable justification for the failure to treat Mr. Dabetić differently in his application for statelessness status in Italy due to the disproportionately prejudicial effects of the "erasure", which violated core principles of international law.

121. As discussed above, arbitrary denial of legal status in Italy subjects Mr. Dabetić to systematic disadvantage, denying him the political and legal bond that connects him to a specific state and is a requirement for the full protection of human rights, interferes with human dignity, autonomy and identity, and has a significant impact on daily life (see paras. 66-84, above).

122. Granting Mr. Dabetić a provisional permit of stay and allowing him to have access to prompt determination of his statelessness status would pose no undue burden on Italy. There is no legitimate aim that would be sufficient to justify such a failure to treat Mr. Dabetić differently in this case: the applicant has already lived in Italy since 1989, so there are no financial or national security reasons to deny his application, and as a stateless person the decision can have no effect on general immigration matters.

123. The Court has recognized that, while states generally enjoy a wide a margin of appreciation in immigration matters, the right to a private life under Article 8 is nevertheless entitled to affirmative protection on the part of the state in such cases.[108] More importantly, this case cannot be appropriately categorized as an immigration matter: Mr. Dabetić entered Italy legally and has remained there under exceptional circumstances that this Court has recognized to be in violation of Article 8 rights. Thus, there should be a narrow margin of appreciation when it comes to the treatment of a long term resident that leaves him without legal status, in violation of well-established domestic and international law and subject to treaty obligations.

C. FAILURE TO PROVIDE REDRESS

124. Mr. Dabetić's statelessness has been acknowledged by the European Court of Human Rights, the Secretary General of the Council of Europe, and by different organs of the Italian Republic. However, he has been unable to have that status recognized in Italy, whether administratively, bureaucratically, or judicially, due to the poor quality of Italian law relating to statelessness and the infamous delays of the Italian courts. As described above, this failure has had a profound impact upon his life. This failure further violates the Convention as (1) there is no redress for the unjustified and

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its internal law the acquisition of its nationality for […] stateless persons and recognized refugees lawfully and habitually resident on its territory"). The Council of Europe has considered that this means treating stateless persons differently, as the Explanatory Report to the ECN specifically calls for the reduction of the length of required residence for stateless persons, and that they should only be required to have "adequate" knowledge of the language.

[108] See e.g. *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at para. 358; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, ECtHR, Judgment of 28 May 1985, at paras. 68-69; *Y v. Russia*, ECtHR, Judgment of 4 December 2008, at paras. 103-107; *Kamaliyevy v. Russia*, ECtHR, Judgment of 3 June 2010, at paras. 59-65.

discriminatory interference in his private life, contrary to Article 13, and (2) there is no effective access to justice as guaranteed by Article 6(1). The Rome Tribunal concluded that it was not able to consider interim measures, effectively determining the issue and leaving him for many years without basic rights and subject to criminal arrest.

1. Failure to Provide an Effective Remedy: Article 13

125. Mr. Dabetić has no effective remedy for the unjustified interference in his private life or the discriminatory procedure used against him. The administrative procedure of the Ministry of Interior is not accessible to him as he has no lawful residence permit. There is no possibility of interim relief within judicial proceedings where, in the absence of specific legal provisions relating to the determination of statelessness status, the judges follow the administrative rules that require prior legal residence. The failure to provide redress and to consider the unjustified interference with his Convention rights violates Article 13.

Legal Standards: Effective Remedy

126. The Court has defined the right to an effective remedy as follows:

> "Article 13 […] guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article … is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief […] the remedy required by Article 13 […] must be 'effective' in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State." [109]

127. Article 13 applies whenever there is an arguable claim to a violation of another right.[110] The scope of the obligation under Article 13 varies according to the nature of the applicant's complaint under the Convention.[111] For a remedy to be effective in practice, the competent national authority providing the remedy must be sufficiently independent of the national body that is being challenged,[112] must have sufficient power to provide adequate redress for any violation that has already occurred,[113] must have powers that are not merely advisory but able to grant relief,[114] and must be able to consider the Convention rights of the individual.[115] The Court has stated that:

> "The 'effectiveness' of a 'remedy' within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the 'authority' referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective".[116]

128. The abstract existence of a remedy is not sufficient to satisfy the requirements of Article 13. The remedy must be capable of providing concrete relief to the applicant, which in some instances entails the prevention of irreparable damages pending a final decision on the merits of the complaint. For instance, in cases of expulsion or extradition, the Court has repeatedly stated that "the notion of an effective remedy

[109] *Aksoy v. Turkey*, ECtHR, Judgment of 26 November 1996, at para. 95.
[110] *Silver v. United Kingdom*, ECtHR, Judgment of 25 March 1983, at para. 113.
[111] *Al-Nashif v Bulgaria*, ECtHR Judgment of 20 September 2002, at para. 136 (citing *Kudła v Poland*, ECtHR Judgment of 26 October 2000, at para. 157)
[112] *Ibid.* at para. 116.
[113] *Kudla v. Poland*, ECtHR, Judgment of 26 October 2000, at para. 157-8.
[114] *Chahal v. United Kingdom*, ECtHR, Judgment of 15 November 1996 (GC), at para. 145.
[115] *Soering v. United Kingdom*, ECtHR, Judgment of 7 July 1989, at para. 120.
[116] *Al-Nashif v. Bulgaria*, ECtHR Judgment of 20 September 2002, at para. 132

under Article 13 requires that the remedy may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible".[117]

Lack of an Effective Remedy

129. Here, despite the arguable claim presented to the Italian authorities of a significant impact upon the Article 8 rights of Mr. Dabetić, he was not able to obtain redress. The administrative and judicial bodies either had no power to grant redress or refused to do so.

130. Mr. Dabetić first applied to the Ministry of Interior for the determination of his statelessness status, but was rejected as he did not hold a valid permit of stay. He then sought a judicial determination of his statelessness, seeking an interim relief order for the purpose of avoiding further irreparable harm as a result of the lack of any legal status. On 11 November 2011 the Rome Tribunal rejected the application for interim relief. The Tribunal recognized that the failure to regularize Mr. Dabetić's situation pending a final decision on his status might impair the exercise of his fundamental rights, but concluded that the ordinary courts could not provide interim protection as an alternative to administrative proceedings.

131. The Court has recognized the significance of interim decisions in cases involving statelessness, due to the long periods of uncertainty in which applicants might find themselves. In the *Kurić* case, the Court concluded that domestic remedies in Slovenia were not effective in light of the fact that the applicants, who did not have any Slovenian identity documents, were left for several years in a state of legal limbo, and therefore in a situation of vulnerability and legal insecurity. Having regard to the overall duration of the administrative proceedings brought by the applicants and to the feelings of helplessness and frustration which inevitably derived from the prolonged inaction of the authorities, the Court found that the applicants were dispensed from having to lodge any individual judicial remedy (notably, a constitutional appeal).[118]

132. The fact that the applicant might eventually obtain a judgment from the Rome Tribunal regularizing his legal status at the conclusion of the proceedings (which are still at their initial stage and presumably will last for the next three or four years) would not affect his victim status under Article 34. In this respect, the Court has emphasized that the regularization *ex post facto* of the applicant's legal status, for instance, by issuing a residence permit, does not constitute "appropriate" and "sufficient" redress at the national level where there has been a lengthy period of insecurity and legal uncertainty adversely affecting private and family life.[119]

133. If Italy were to issue a temporary permit of stay or other equivalent document, there would no appreciable burden upon the state (see paras. 98-100, above).

134. The applicant is therefore left with no effective means of challenging the State's acts and omissions in relation to his arguable claim of a violation of his rights under Article 8 and Article 14 of the Convention.

2. Violation of the Right of Effective Access to a Court: Article 6(1)

135. The judicial proceedings have also failed to provide Mr. Dabetić with effective access to a court capable of determining the rights at issue, as guaranteed by Article 6(1). The

[117] *Hirsi and Others v. Italy*, ECtHR Judgment 23 February 2012, at para. 199, and *M.S.S. v Belgium and Greece*, ECtHR Judgment 21 January 2012, at para. 293.
[118] *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, at paras. 295-304.
[119] *Ibid.* at para. 267. See also, *mutatis mutandis*, *Aristimuño Mendizabal v. France*, ECtHR Judgment 17 January 2006, at paras. 67-69 and 70-72; *Mengesha Kimfe v. Switzerland*, ECtHR Judgment 29 July 2010, at paras. 41-47 and 67-72; and *Agraw v. Switzerland*, ECtHR Judgment 29 July 2010, at paras. 30-32 and 50-55.

Italian courts recognize that his status determination is subject to judicial review, and the situation has sufficient impact upon his private life as to engage Article 8. The Grand Chamber has recognized that interim proceedings are covered by Article 6(1). The extreme delays in the substantive proceedings mean that the violation will not be subsequently cured.

136. *Application of Article 6(1).* The determination of Mr. Dabetić's status is currently the subject of judicial proceedings in Italy, and is considered to determine his civil rights under domestic law.[120] Unlike immigration matters, where the Court has excluded the applicability of Article 6,[121] judicial proceedings aimed at establishing statelessness fall within the scope of the civil head of Article 6(1),[122] considering the impact that such determination has for the applicant's private life.[123]

137. *Interim proceedings.* Recently, the Court has adopted a "new approach" whereby Article 6 will apply to interim measures where certain conditions are fulfilled. In *Micallef v. Malta,* the Grand Chamber recognized that interim measures would often be tantamount to a decision on the merits of the claim for a substantial period of time, and that there was widespread consensus across Council of Europe member States that the Article 6 guarantees should apply to interim measures. The Court held that where the interim measure could be considered "effectively to determine the civil right or obligation at stake," then Article 6 is applicable.[124] Here, the interim proceedings determined that Mr. Dabetić would not receive any interim protection, leaving him without legal status and acutely vulnerable for several years until the substantive proceedings might be concluded.

138. *Right of effective access to a court.* Article 6 guarantees in the first place the right to access to justice, i.e. to effective judicial protection.[125] While the right of access to a court may be subject to limitation, such limitations may not impair the very essence of the right.[126] This right includes a right to obtain a determination of a dispute, not just a right to initiate proceedings.[127]

139. The effectiveness of the right of access to a court is impaired if the judicial authorities are not able to grant interim relief that is determinative of the rights at issue. As outlined above, the applicant's request for interim relief was rejected by the Rome Tribunal despite the substantial likelihood of significant impact upon his right to respect for private life as a result of the continuing lack of any legal status or identity document. The Tribunal applied the restrictive provisions of Article 11 of D.P.R. No.

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[120] See e.g. Exhibit 23: Dismissal of the request for interim measures – 30 November 2011 ("acknowledging and sharing the petitioner's claim whereby some fundamental human rights vested in him might be undermined pending the final decision on the case"); see also paras. 31-33, above (describing Mr. Dabetić's inability to exercise private law rights without access to a legal status or legal identity documents in Italy).

[121] *Maaouia v. France*, ECtHR Judgment of 5 October 2000, at paras. 35-38.

[122] *Ibid*. at para. 35. The concept of "civil rights and obligations" is an "autonomous concept" under the Convention, not to be derived solely by reference to domestic law. Article 6(1) therefore "applies irrespective of the parties' status, the character of the legislation which governs how the dispute is to be determined and the character of the authority which has jurisdiction in the matter". *Georgiadis v. Greece*, Judgment of 29 May 1997, at para. 34. See also *Ferrazzini v. Italy*, ECtHR [GC], Grand Chamber Judgment, at para. 26 (procedures fall within the "'civil' head" of Article 6 "if the outcome was decisive for private rights and obligations" particularly given "the State's increasing intervention in the individual's day-to-day life").

[123] See Section V.A, above.

[124] *Micallef v. Malta*, ECtHR (GC), Judgment of 15 October 2009, at para. 85.

[125] *Golder v. United Kingdom*, ECtHR Judgment 21 February 1975, at para. 35.

[126] *Winterwerp v. Netherlands*, ECtHR, Judgment of 24 October 1979.

[127] *Hornsby v. Greece*, ECtHR, Judgment of 19 March 1997, at para. 40 (finding that the right of access to a court would be illusory if a state's domestic legal system allowed final, binding judicial decisions to remain unimplemented).

394/1999 and refused to issue interim measures in the absence of valid documentation. As a result, Mr. Dabetić has been left for years in a legal vacuum, without the "right to have rights".

140. *Delay*. The fact that the interim proceedings do not satisfy the standards of Article 6 will not be cured by the subsequent resolution of his underlying substantive request for statelessness status. The excessive length of judicial proceedings before Italian courts means that Mr. Dabetić has had no opportunity to secure a prompt judicial determination of his status, compounding the impact of his lack of any effective interim relief. The UNCHR *Guidelines on Statelessness No. 2* state that "it is undesirable for a first instance decision to be issued more than six months from the submission of an application as this prolongs the period spent by an applicant in an insecure position."[128] Nevertheless, the first hearing before the Rome Tribunal was held 11 months after the submission of the application and the second hearing was scheduled for 17 January 2013 (adding a further delay of 9 months). The proceedings are not expected to last less than four years in first instance.

Conclusion

141. In the present case, Mr. Dabetić's statelessness status application is manifestly well-founded, as he has already been acknowledged to be stateless by this Court in the *Kurić* case and also by the Italian governmental authorities when issuing the travel document for attending the hearing in Strasbourg, in which Mr. Dabetić is indicated as having no nationality. Moreover, the applicant belongs to a group of individuals (the "erased") who, as this Court has found, were systematically and arbitrarily denied access to Slovenian citizenship.

142. The UNHCR Guidelines emphasize that "in applications where the immediately available evidence is clear and the statelessness claim is manifestly well-founded, fair and efficient procedures may only require a few months to reach a final determination".[129] Moreover, according to UNCHR, it is possible to grant stateless person status to individuals within a group on a *prima facie* basis, when there is readily apparent, objective information about the lack of nationality of members of a group such that they would prima facie meet the stateless person definition in Article 1 of the 1954 Convention.[130]

143. It follows that Mr. Dabetić should have been entitled to a prompt judicial determination of his statelessness status and that the lack of any interim relief pending a final decision on the merits has deprived him of effective access to a court and deprived him of an effective remedy, contrary to Article 6(1) and Article 13.

VI. STATEMENT RELATIVE TO ARTICLE 35(1) OF THE CONVENTION

144. The application should be declared admissible.

Victim Status

145. Mr. Dabetić has been the direct victim of the violation of his rights, as set out above, as the result of the failure of the Italian authorities to provide him with access to a prompt and effective mechanism for determining that he is stateless and regularizing his status, and by failing to provide him with protection in the form of an temporary permit to legally stay in Italy while that determination is made.

Six-Month Rule

[128] Exhibit 27: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, at para. 23.
[129] *Ibid.* at para. 22.
[130] *Ibid.* at para. 56.

146. Article 35(1) requires that applicants submit their complaint within six months of the final decision that represents the exhaustion of domestic remedies. On 11 November 2011, the Rome Tribunal rejected Mr. Dabetić's request for interim protection while it considered his application for statelessness status, leaving him without legal protection and without any legal status in Italy.

147. This case was introduced by letter dated 11 May 2012, within six months from the date of that decision of the Rome Tribunal. On 19 October 2012, the Court confirmed registration of the case, and informed the applicant that the full application must be submitted by 14 December 2012. This application has therefore been submitted in compliance with the six-month rule set out in Article 35(1).

Exhaustion of Domestic Remedies

148. Mr. Dabetić has exhausted all domestic remedies which are available to him and potentially effective in respect of his claims. He has exhausted all available remedies to obtain a temporary legal status. Any remaining remedies are not effective. Mr. Dabetić has done all that can be expected of him, and to compel him to remain vulnerable to arrest, detention, and attempted deportation, seven years after his initial application to the domestic authorities and despite their recognition that he is indeed stateless, would be excessively formalistic, would ignore the personal circumstance of Mr. Dabetić, and would run counter to the Court's mission of protecting human rights.

Legal Standards: Exhaustion

149. Article 35(1) provides that this Court may only deal with a matter after all domestic remedies have been exhausted. This requirement only applies to those domestic remedies that are available, effective and sufficient. A remedy is effective only if it offers a reasonable prospect of success and it is sufficient if it is capable of redressing the complaint.[131]

150. The purpose of the exhaustion of domestic remedies is that the domestic authorities must be given an opportunity to remedy the violation, and is based on the assumption that the domestic legal order will provide an effective remedy.[132] In assessing whether an applicant is required to exhaust additional remedies, the Court has stated that it must look not only at the formal remedies, but also at the legal and political context in which they operate as well as the personal circumstances of the applicant.[133] Given the context of protecting human rights, the rule may be applied flexibly rather than with excessive formalism,[134] and the ultimate question is whether the application did everything that could reasonably be expected of him.[135]

Domestic Remedies Exhausted

151. Mr. Dabetić has exhausted all domestic remedies in his attempt to obtain a temporary permit granting him legal status in Italy while the authorities consider his statelessness application. He applied for interim protection during his administrative application on 1

[131] See e.g. *Sejdovic v. Italy* [GC], ECtHR, Grand Chamber Judgment of 1 March 2006, at para. 46; *Akdivar and Others v Turkey*, ECtHR Judgment of 30 August 1996, at para. 66-68; *Aksoy v Turkey*, ECtHR Judgment of 26 November 1996, at para. 51-52.
[132] See e.g. *Selmouni v. France* [GC], ECtHR, Grand Chamber Judgment of 28 JULY 1999, at para. 74; *Kudła v. Poland* [GC], ECtHR, Grand Chamber Judgment of 26 October 2000, at para. 152.
[133] See e.g. *Akdivar and Others v. Turkey*, ECtHR [GC], Grand Chamber Judgment of 30 August 1996, paras. 68-69; *Khashiyev and Akayeva v. Russia*, ECtHR, Judgment of 24 February 2005, at paras. 116-17.
[134] *Ringeisen v. Austria*, ECtHR, Judgment (Merits) of 16 July 1971, at para. 89; *Lehtinen v. Finland*, ECtHR, Decision (admissibility) of 14 October 1999.
[135] *D.H. and Others v. the Czech Republic* ECtHR [GC], Grand Chamber Judgment of 13 November 2007, at paras. 116-22.

March 2006, and this was denied on 31 May 2006.[136] Mr. Dabetić made a similar request for interim protection from the Rome Tribunal while it considered his judicial application for statelessness status on 3 November 2011, and which was rejected on 11 November 2011. There is no reasonable prospect of a successful appeal against this decision, as the only mechanism available would be a constitutional challenge to the underlying presidential decree. This Court has repeatedly held that questions of constitutionality do not constitute an accessible remedy for the purposes of exhaustion in Italy.[137]

152. The Rome Tribunal's decision of 11 November 2011 left Mr. Dabetić without legal protection or any form of legal status in Italy – nearly six years after he made his first application, even though the Rome Tribunal recognized that his fundamental rights could be seriously impaired, and without any prospect of a prompt resolution of this status. In view of the foregoing, Mr. Dabetić had no obligation to exhaust any further remedies or to wait for a final determination by the court on his judicial application. Furthermore, as explained above (see para. 137), the Court accepts that interim measures are reviewable by the Court without the need for the conclusion of the substantive proceedings.

Further Remedies Excessively Delayed

153. In this case, the Italian authorities have had ample opportunity to resolve the issues raised by this application, but have failed to do so. In contrast, Mr. Dabetić has done everything that could have been expected of him: the remedies that he has availed himself of over seven years have proven ineffective, and he has remained without any legal protection for a significant period of time.

154. Following the rejection of the administrative application, Mr. Dabetić filed a judicial application for statelessness status in May 2011, and again applied for a temporary permit to give him legal status while the courts assessed his application. This request for interim protection was again denied in November 2011. Following this denial, over one year ago, no progress has been made. The courts have twice adjourned his hearing: once without offering any reasons; and a second time when the Ministry of Interior failed to attend. It was only after the Ministry of Interior failed to appear for his hearing, almost a year after he filed his application, that Mr. Dabetić filed his application with this Court.

155. At that point, Mr. Dabetić had remained without any legal status or protection in Italy for over six years since his initial application. The UNHCR Guidelines suggest that in cases such as this, where an individual's statelessness claim is manifestly well-founded, fair and efficient procedures should require only a few months to reach a final determination. Under these circumstances, Mr. Dabetić, as one of the "erased", has done all that could be expected of him to exhaust domestic remedies. His case is therefore admissible before this Court.

VII. OBJECT OF THE APPLICATION

156. Mr. Dabetić seeks a declaration from the Court that his rights have been violated under Article 6(1), Article 8, Article 13, and Article 14 of the Convention taken in conjunction with Article 8.

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[136] See Exhibit 8: Dismissal of the request for a permit of stay pending the administrative proceedings for determination of statelessness status – 31 May 2006.

[137] See e.g. *Brozicek v. Italy*, ECtHR, Judgment of 19 December 1989, at para. 34; *Padovani v. Italy*, ECtHR, Judgment of 26 February 1993, at para. 20; *Immobiliare Saffi v. Italy*, ECtHR [GC], Grand Chamber Judgment of 28 July 1999, at para. 42.

157. Mr. Dabetić also seeks just satisfaction under Article 41 (pecuniary and non-pecuniary damages together with legal costs and expenses) as well as special measures directing the Italian authorities to regularize Mr. Dabetić's legal status in Italy, including the immediate grant of a permit of stay pending the final resolution of statelessness status proceedings. Under the circumstances, the Court should direct Italy to grant Mr. Dabetić statelessness status on an expedited basis and to credit him with permanent residency retroactive to the initiation of status determination procedures on 2 March 2006, thereby facilitating the opportunity to naturalize within an appropriate period of time. He also seeks general measures in order to ensure that the violation is not repeated.

VIII. STATEMENT CONCERNING OTHER INTERNATIONAL APPLICATIONS

158. The same matter has not been submitted to any other international procedure (Article 35.2(b)).

IX. REQUEST FOR PRIORITY PURSUANT TO RULE 41 OF THE RULES OF COURT

159. The applicant requests that the Court give priority to this case pursuant to Rule 41. Rule 41 of the Rules of Court, as amended in June 2009, provides that "[i]n determining the order in which cases are to be dealt with, the Court shall have regard to the importance and urgency of the issues raised on the basis of criteria fixed by it. The Chamber, or its President, may, however, derogate from these criteria so as to give priority to a particular application". In 2010, the Court published criteria for prioritizing cases, setting out seven categories from highest to lowest priority. As set out below, prioritisation is warranted because the application raises an important question of general interest, with 600,000 stateless individuals in Europe, and it is important that this situation of statelessness is resolved promptly in order not to compound the violations of the Convention.

Basic Fairness in Statelessness status Determination Proceedings: An Important Question of General Interest (Category II)

160. This Court's priority policy states that "applications raising an important question of general interest" will receive priority as Category II claims.

161. Category II includes cases which raise important questions of general interest, in particular those capable of having major implications for domestic legal systems or the European system.

162. As discussed throughout this application, status determination procedures are a necessary prerequisite to identifying and protecting stateless persons. Europe is at the forefront in this regard, with a number of states, including Italy, having developed dedicated procedures for granting statelessness status. However, such procedures must comply with international law and guidance on basic procedural fairness. The Court should grant priority to address this important question that will have an impact throughout Europe and beyond.

Statelessness: An Endemic Situation in Europe (Category II)

163. The scale of the problem of statelessness in Europe, a phenomenon affecting over 600,000 individuals, provides a further and separate basis on which this case should be granted priority under Category II.

164. Category II also includes cases raising questions concerning structural or endemic situations that impact the effectiveness of the Convention system. Although Member

States are granted wide discretion to determine who are their nationals, the application seeks the Court's intervention on the endemic issue of statelessness in Europe, and whether States are obligated under the Convention to ensure that solutions are fairly and effectively implemented.

165. There are over 600,000 stateless persons in Europe. This alarming number persists despite the pledge by the Council of Europe's former Commissioner for Human Rights, Thomas Hammarberg, that "no one should have to be stateless in today's Europe".[138] Antonio Guterres, United Nations High Commissioner for Refugees, on the occasion of the opening of the 2011 ECHR judicial year, stated: "The [European Court of Human Rights] may be called upon in the future also to examine, under the Convention, the responsibility of the State for deprivation of nationality or for failing to resolve situations of statelessness".[139]

166. Statelessness is a problem with a solution. The international community has recognized statelessness as intolerable and created mechanisms to ensure its eradication. This case asks the Court to elaborate the rights of stateless persons under the Convention, to recognize and give effect to their inherent dignity and the need to develop a sensible regime for providing them with basic protections. It is accordingly addressed to a persistent, endemic and entirely *solvable* problem in Europe today.

167. For these reasons, the Court is invited to give priority to this case pursuant to Rule 41.

X. DECLARATION AND SIGNATURE

168. I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

New York, Rome, 14 December 2012

[138] See Thomas Hammarberg, Council of Europe Commissioner for Human Rights, "Viewpoint: No one should be stateless in today's Europe", 9 June 2008, available at: http://www.coe.int/t/commissioner/Viewpoints/080609_en.asp.

[139] See António Guterres, United Nations High Commissioner for Refugees, *Remarks at the opening of the judicial year of the European Court of Human Rights*, Strasbourg, 28 January 2011, available at: http://www.unhcr.org/4d4693259.pdf.

ANNEX 1: LIST OF DOCUMENTS

Exhibit 1	Letter from the Consulate of Slovenia – 24 August 2005
Exhibit 2	Permits of stay issued by the Police Headquarters of Vicenza
Exhibit 3	Decree of the Republic of Slovenia – 14 November 2005 (*Italian and Slovenian versions*)
Exhibit 4	Request to the Consulate of Macedonia – 8 March 2006
Exhibit 5	Letter from the Consulate of Bosnia and Herzegovina – 22 March 2006
Exhibit 6	Letter from the Embassy of Croatia – 6 March 2006
Exhibit 7	Application for statelessness status to the Minister of Interior – 2 March 2006 (*Italian and English versions*)
Exhibit 8	Dismissal of the request for a permit of stay pending the administrative proceedings for the determination of statelessness status – 31 May 2006 (*Italian and English versions*)
Exhibit 9	Dismissal of the administrative request for statelessness status – 25 January 2008
Exhibit 10	Order to leave the country issued by the Police Headquarters of Pesaro-Urbino – 20 April 2006
Exhibit 11	Decision of the magistrate of Bologna dismissing the complaint against the deportation decree issued on 23 November 2005 – 11 May 2006
Exhibit 12	Judgment of the Criminal Tribunal of Mantova acquitting the applicant from the charge of illegal stay – 22 June 2006 (*Italian and English versions*)
Exhibit 13	Letter of the Republic of Slovenia – 23 January 2008 (*in Slovenian*)
Exhibit 14	Deportation decree issued by the authorities of Teramo – 22 August 2009
Exhibit 15	Judgment of the Tribunal of Teramo quashing the deportation decree – 13 October 2009
Exhibit 16	Residence certificates of the Municipalities of Creazzo and Verona – 11 May 2006
Exhibit 17	Letter from the Secretary General of the Council of Europe – 23 June 2011
Exhibit 18	Letter from the Co-agent of the Italian Government before the ECHR – 4 July 2011 (*Italian and English versions*)
Exhibit 19	Travel document issued by the Municipality of Macerata – 30 June 2011
Exhibit 20	Birth certificate issued by the Republic of Slovenia – 21 November 2011
Exhibit 21	Application to the Rome Tribunal for recognition of statelessness status – 1 June 2011
Exhibit 22	Request for interim measures – 3 November 2011 (*Italian and English versions*)
Exhibit 23	Dismissal of the request for interim measures – 30 November 2011 (*Italian and English versions*)
Exhibit 24	Request for anticipation of the hearing and decision of the judge – 11 May 2012
Exhibit 25	Current status of the statelessness proceedings before the Rome Tribunal

Exhibit 26	UN High Commissioner for Refugees, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012
Exhibit 27	UN High Commissioner for Refugees, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012
Exhibit 28	UN High Commissioner for Refugees, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, HCR/GS/12/03, 17 July 2012