EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe
Strasbourg, France

APPLICATION NO. 31149/12

VELIMIR DABETIĆ V. ITALY

OBSERVATIONS IN REPLY ON ADMISSIBILITY AND MERITS AND CLAIMS FOR JUST SATISFACTION

SACCUCCI & PARTNERS
STUDIO LEGALE INTERNAZIONALE

OPEN SOCIETY
JUSTICE INITIATIVE

CONTENTS

SUMMARY OF THE OBSERVATIONS IN REPLY

pursuant to § 12 of the Court's Practical Directions on Written Pleadings

A. PROCEDURAL HISTORY

1. On **11 May 2012**, Mr. Velimir Dabetić lodged, in the form on an interlocutory letter, an application under Article 34 ECHR complaining of multiple breaches of Articles 6, 8, 13 and 14 ECHR in relation to the failure by the Italian authorities to regularize his legal status in a timely manner and to offer interim relief pending such regularization. Subsequently, on **14 December 2012**, Mr. Dabetić sent a completed application form.

2. Following a preliminary examination of the admissibility on **6 July 2021**, the President of the First Section of the Court decided to give notice of the application to the Government of Italy pursuant to Rule 54 § 2 *b*) of the Rules of the Court.

3. On **6 January 2022**, the Italian Government filed its Observations on the admissibility and merits of the application.

B. FACTUAL BACKGROUND OF THE CASE

4. 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. The applicant was among the approximately 18,305 former citizens of the Socialist Federal Republic of Yugoslavia (SFRY) whose names were erased from the Register of Permanent Residents of the Republic of Slovenia in February 1992, following the Slovenia's adoption of its Declaration of Independence on 25 June 1991.

5. At the time that his name was erased, Mr. Dabetić was living in Italy, where he had lived and worked on a regular work permit issued by the Italian authorities since 1989. The applicant first discovered of his name erasure in 2002, immediately after his work permit and identity documents were declared invalid and confiscated by the Italian authorities. Since then, Mr. Dabetić has tried in every way to regularize his status, at first by contacting the Slovenian authorities and then the Italian ones.

6. After the Slovenian Ministry of Interior dismissed his application for citizenship, on 2 March 2006, Mr. Dabetić applied to the Italian Ministry of Interior for protection as a stateless person. On 1 March 2006, he also applied to the police office of Pesaro and Urbino for a temporary permit of stay. B oth applications were dismissed.

7. On 26 May 2011, Mr. Dabetić filed a judicial application for statelessness status determination with the Rome Civil Tribunal. The Tribunal granted him statelessness status in Italy only on 25 January 2013, after repeated postponements of the hearing. On November 2011 Mr. Dabetić submitted a request for provisional measures to the Rome Tribunal, that was dismissed on 11 November 2011.

8. Mr. Dabetić had no legal protection against arbitrary arrest and detention, further deportation orders or criminal proceedings. The lack of any legal status prevented him from enjoying his fundamental rights in Italy. For over seven years, the applicant did not have any personal identification documents and, consequently, he had no fixed domicile and he was unable to access primary healthcare, open a bank account, obtain employment, buy a car and move freely within Italy, obtain a passport and travel abroad, or to recognize his paternity status (his daughter was born in 2011).

C. THE INADMISSIBILITY OBJECTIONS RAISED BY THE GOVERNMENT

9. The respondent Government raises two objections of inadmissibility related to: ***a***) the alleged lack of victim status under Article 34 ECHR; and ***b***) the purported failure to exhaust

domestic remedies pursuant to Article 35 § 1 ECHR.

C.1 The alleged lack of victim status under Article 34 ECHR

10. The Government claims that Mr. Dabetić has allegedly lost his victim status under Article 34 ECHR as a result of the judicial recognition of his statelessness status by the Tribunal of Rome with judgment No. 3089/2013. To avoid unnecessary repetitions, the applicant shall rebut this objection in the context of sub-section E.1 below.

C.2 The purported failure to exhaust domestic remedies pursuant to Article 35 § 1 ECHR

11. First, the claim of inadmissibility due to judicial proceedings still pending at the time the complaint was lodged is completely unfounded. However, it is the Court's well-established case-law that the last stage of a particular remedy may be reached after the application has been lodged but before its admissibility has been determined (*Molla Sali v Greece* [GC], ECtHR, 19 December 2018, §§ 90-91), which is the case here.

12. Second, the Government argues that the applicant should have filed an appeal (*reclamo*) against the decision issued by the Tribunal of Rome, which had dismissed his request for interim measures. This objection is without merit since the Tribunal declared that it did not have jurisdiction to issue interim measures in the applicant's case on the grounds that a legal residence permit for statelessness applicants may be issued solely within the context of an administrative procedure. This would have remained unchanged in appellate proceedings since the appellate judge would also have been bound by the relevant law. This is a condition that Mr. Dabetić simply did not meet. The Government did not submit any evidence that this supposed remedy could be regarded, with a sufficient degree of certainty, as constituting an effective remedy for the applicant's complaint and, in particular, that it offered reasonable prospects of success (*Sejdovic v Italy* [GC], ECtHR, 1 March 2016, § 46).

13. Third, the Government contends that "*the applicant could have brought his claim before the national administrative judge*". However, the Government failed to explain on which grounds the administrative court would have had competence to entertain a request for a temporary residence permit and it was also unable to submit any relevant ruling by administrative courts in favor of an appellant in a situation comparable with that of the applicant (*Mikolajová v. Slovakia*, ECtHR, 18 January 2011, § 34). The respondent's failure to discharge its burden of proof under Article 35 § 1 ECHR is sufficient in itself to dismiss the Government's claim.

14. Fourth, the Government suggests that Mr. Dabetić could have requested "*any other form of protection available according to the domestic law: the refugee protection, the subsidiary protection and the humanitarian protection*". By simply filing a request for international protection, Mr. Dabetić would have automatically obtained a temporary residence permit. However, not only Mr. Dabetić did not meet any of the statutory requirements to seek international protection in Italy, but even if he had submitted the request, the law in force at the material time provided that asylum seekers who did not have travel or identity documents were to be held in detention centers pending the assessment of the asylum request.

D. INTERNATIONAL FRAMEWORK GOVERNING STATELESSNESS

15. The character and application of Italy's nationality laws must conform to the limits defined by international law, including international human rights law. Mr. Dabetić's inability to secure statelessness status, regularize his stay, and find a path towards Italian citizenship for over seven years is a violation of Italy's obligations under international and European law. Under Article 53 of the ECHR, in order to carry out its obligations under the Convention, Italy is bound by the standards established in international instruments to which it is a party.

16. In response to question no. 5 of the Court to the parties, this Section of the observations in reply is devoted to set out the applicable international standards that serve as framework for this case, with special attention to the ECHR and European Standards, the United Nations Instruments ratified by Italy, UNHCR Guidelines on Statelessness and other relevant standards.

E. QUESTIONS POSED BY THE COURT TO THE PARTIES

E.1 The applicant's victim status under Article 34 ECHR (Question no. 1)

17. This Court has underscored that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' for the purposes of Article 34 ECHR unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention. The Court must also examine the quality of the relief afforded by any favorable measure. Where violations extend over a lengthy period of time, such as unduly prolonged proceedings or persistent failure to regulate the legal status of a person, the Court has emphasized that remedies should entail a compensatory effect in order to be considered effective.

18. In the present case, there has been no acknowledgment of a violation of the applicant's rights. While Mr. Dabetić is no longer at risk of criminal sanction or expulsion following the recognition of his statelessness status, no compensatory measures have been undertaken (*Kurić and Others v Slovenia* [GC], ECtHR, 26 June 2012, § 259; *Puchstein v Austria*, ECtHR, 28 January 2010, § 31). Further, Italy has failed to address the inherently and unjustifiably discriminatory nature of its policies in respect of access to temporary permits of stay pending status determination proceedings for stateless persons versus asylum seekers.

19. Mr. Dabetić fully retains his victim status for the purposes of Article 34 ECHR in connection with the complaints raised in the application. Similarly, the matter has not been resolved within the meaning of Article 37 § 1 (*b*) ECHR. At any rate, even if the Court were to deem that the matter had been resolved (which it has not) as a mere consequence of the regularization of the applicant's legal status, respect for human rights would require the Court to continue the examination of the application pursuant to Article 37 § 1 ECHR on account of the persistent deficiencies in Italian legislation governing the determination of statelessness status.

E.2 The interference with the applicant's right to private life under Article 8 ECHR (Question no. 2)

20. Italy failed to put forward any defense in relation to the interference of Article 8. Evading its responsibility that by its failure to recognize Mr. Dabetić as stateless in a timely manner, and grant him a temporary permit of stay, directly impacted his private life, his legal identity, personal autonomy and human dignity.

21. Italy arbitrarily denied Mr. Dabetić's legal identity, rendering him in a protracted situation of statelessness. International norms call for states to protect stateless persons through a functioning identification mechanism, which Italy lacks. The Court has recognized that the arbitrary denial of legal identity can raise an issue under Article 8 ECHR, because of the impact of such a denial on the private life of the individual. The ECHR creates positive obligations with respect to vulnerable persons, where statelessness is widely recognized as a condition of extreme vulnerability (*Sisojeva and Others v Latvia*, ECtHR [GC], 16 June 2005, § 104).

22. By an unduly prolonged failure to provide the protection that Mr. Dabetić was due as a stateless person, Italy interfered with his right to personal autonomy as embodied in his ability to form and develop his personal identity. (*Hoti v Croatia*, 26 April 2018, § 126).

23. Italy failed to provide an appropriate level of protection pending the determination of Mr. Dabetić's status.

    That Italy has gone further, subjecting Mr. Dabetić to criminal charges attached to his status and several rounds of futile deportation proceedings, demonstrates a clear abuse contrary to his inherent dignity and inalienable rights. Italy's prolonged delays unnecessarily placed Mr. Dabetic at further risk of arbitrary detention or arrest.

24. Italy's actions were **not in accordance with law** within the meaning of the Convention, and they created disproportionate repercussions for Mr. Dabetić's private life. Proceedings

of indeterminate length have regularly been found to lack sufficient safeguards against arbitrariness.

The mechanisms for according protection to stateless persons in Italy are insufficiently elaborated to be considered accessible. The judicial procedure is largely unregulated, , and both the administrative and judicial procedures for granting statelessness status in Italy are unduly protracted. No effective safeguards exist to limit the length of time it can take for statelessness status applications to be adjudicated.

25. The violation of numerous international standards cannot be justified by the need to control immigration. 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, failing to be a measure *"necessary in a democratic society*

26. The interference with Article 8 rights is disproportionate and Italy faced no burden in granting Mr. Dabetić a temporary protection pending the outcome of his statelessness status application, nor a burden now, in setting lawful residency retroactively to the time he initiated proceedings.

27. A narrow margin of appreciation should apply in this case, as the right at stake is crucial to the individual's effective enjoyment of intimate key rights.

E.3 The breach of the principle of non-discrimination under Article 14 ECHR (Question no. 3)

28. The applicant claimed a violation of Article 14 ECHR, read in conjunction to Article 8 ECHR, on the grounds that, by denying him 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 him 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.

29. These factors fall within "other status" under Article 14 ECHR. The Court found that refugee status certainly amounts to "other status" because, unlike immigration status, it does not entail an element of choice. The same naturally applies to the status of statelessness.

30. Mr. Dabetić's situation was **comparable** to that of asylum seekers. This is signaled, in particular, by the substantial similarity of the legal treatment provided for by the 1951 Convention and the 1954 Convention relating to the Status of Stateless Persons. Stateless persons and refugees are both vulnerable persons because they cannot rely on the protection of any State.

31. Italian legislation, treats stateless persons differently from asylum seekers and refugees in at least three respects. First, eligible persons cannot apply for administrative determination of statelessness status if they do not already hold a regular permit of stay in Italy, while asylum seekers can apply to the competent administrative authorities irrespective of the lawfulness of their entry or stay. 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. Third, asylum seekers are entitled to free healthcare and, if they do not have sufficient means of subsistence, to accommodation in reception centers, while no reception or assistance measures whatsoever are envisaged for stateless persons seeking status determination.

32. This difference in treatment 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 realized.

33. The failure to treat Mr. Dabetić differently on account of his acutely vulnerable status as a stateless person and as one of the "erased", violated Article 14.

He should have been treated differently from applicants for citizenship who are not statelessness. Domestic law treats those seeking statelessness determination the same way as those seeking citizenship.

34. Mr. Dabetic's extraordinary individual circumstances 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 and worked in Italy lawfully for many years; he did not become aware of his statelessness until he was denied renewal of his work permit. This exceptional situation prevented him from applying for Italian citizenship or statelessness status determination when he was a "regular alien".

35. Mr. Dabetić also should have been treated differently because he was a victim of a violation of Article 8, 13 and 14 ECHR for the reasons set out by the Grand Chamber in *Kurić and Others v Slovenia*. **E.4 The breach of the right to an effective remedy under Article 13 ECHR (Question no. 4)**

36. Mr. Dabetić did not have available to him an effective remedy for his complaints under Articles 8 and 14 ECHR. There was no effective domestic remedy by which Mr. Dabetić could challenge his denial of legal status and seek to assert his rights or seek redress for the unjustified and discriminatory interference in his private life. This runs contrary to the right to an effective remedy under Article 13 ECHR.

37. The question whether the applicant had at his disposal an effective remedy is strictly linked to the question of whether there were accessible and effective remedies of which he could have made use in the Italian legal system in accordance with Article 35 § 1 ECHR. To avoid unnecessary repetitions, we refer to the arguments put forward in the rebuttal to the Government's objection of alleged non-exhaustion of domestic remedies.

38. It is nonetheless appropriate to dispel any possible doubts surrounding a recurring position in the Government's submissions, in which the respondent contends that the delays in regularizing the applicant's legal status were attributable to the applicant and him alone.

39. First, according to the Government, Mr. Dabetić should have instituted legal proceedings for recognition of statelessness status straight away, without submitting a prior administrative request. Italian legislation sets out two alternative paths to recognition of statelessness status (administrative and judicial). This Court's case law has shown that, in the event of there being a number of alternative domestic remedies, an applicant is entitled to choose a remedy which addresses his or her essential grievance. When one of those remedies has been exhausted, there is no need to use of another remedy of similar objective. In the present case, , Mr. Dabetić chose the administrative path; the simplest avenue to recognition of statelessness status, entirely cost-free, and not requiring mandatory legal representation.

40. Second, the Government contends that, despite losing his Slovenian permanent residence in 2002, the applicant waited until 2006 to file an administrative request for statelessness status and, again, after that request was denied in 2008, he waited until 2011 to institute legal proceedings. However, Mr. Dabetić did not apply for recognition of statelessness status until 2006 simply because he had been waiting for the Slovenian Ministry of Interior to decide on his application for Slovenian citizenship. His application was dismissed on 14 November 2005 and just a few months later, on 2 March 2006, he applied to the Italian Ministry of Interior for statelessness status.

41. In any case, special consideration must be given to the extreme vulnerability of the applicant, he lived on the streets for years as an undocumented stateless person. The Court has acknowledged an applicant's vulnerability as an acceptable explanation for a delay in lodging a complaint at the domestic level.

42. The effectiveness of a remedy shall be evaluated with due consideration for the applicant's circumstances. Placing requirements of lawful residence on statelessness status determination proceedings make it practically impossible for a person to be recognized as

stateless unless they have previously acquired lawful residence through other means. The remedy available is thus neither effective, sufficient nor accessible for Mr. Dabetić.

43. The fact that Mr. Dabetić's legal status was eventually regularized does not constitute an effective remedy under Article 13 ECHR. This Court has emphasized that the regularization *ex post facto* of the applicant's legal status, 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.

F. CLAIMS IN RESPECT OF THE ADOPTION OF GENERAL MEASURES UNDER ARTICLE 46 ECHR AND CLAIMS FOR JUST SATISFACTION UNDER ARTICLE 41 ECHR

F.1 Preliminary remarks

44. In determining the legal consequences of a ECHR's violation, the Court usually relies on the standards of reparation laid down in the *Chorzów Factory* case, where the Permanent Court of International Justice stated that "**reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that [illegal] act had not been committed**" (*Germany v. Poland*, *Case concerning the factory at Chorzow (Claim for indemnity) (the Merits)*, 13 September 1982, p. 47).

45. Namely, although **Article 41 ECHR** only provides that the Court shall, if necessary, afford "just satisfaction" to the injured party "*if the internal law of the High Contracting Party concerned allows only partial reparation to be made,*" the Court has interpreted the States' undertaking to abide by its final judgments laid down in **Article 46 § 1 ECHR** as implying an obligation for the responsible State to provide **adequate measures of restitution in kind** depending on the nature of the violation.

46. Based on the above standards of reparation, the applicant claims the below outlined measures of restitution and compensation under Article 46 § 1 ECHR and Article 41 ECHR, respectively.

F.2 Request for general measures under Article 46 § 1 ECHR

47. The applicant calls on the Court to invite the Italian Government: ***i)*** to adopt a comprehensive law aimed at improving the statelessness determination procedure, fostering rationalization, efficiency and transparency; ***ii)*** to protect undocumented stateless persons from the risk of being subject to expulsion or unfair immigration detention; ***iii)*** to grant access to information concerning statelessness determination procedures; and ***iv)*** to automatically grant a specific residence permit pending the administrative and/or judicial procedure to undocumented stateless persons who are seeking to have their status recognized.

F.3 Claims of just satisfaction under Article 41 ECHR

a) Award for non-pecuniary damages

48. Mr. Dabetić has suffered extensive emotional and moral damage as a result of the violations of his rights. He has suffered the uncertainty of statelessness and deep frustration in the years when he was unable to engage in gainful employment, receive social benefits, or participate in society on equal footing with his peers and without being stigmatized. Italy has not acknowledged that a violation of the applicant's rights has occurred. While Mr. Dabetić is no longer at risk of criminal sanctions due to his irregular status in Italy, no compensatory measures have been undertaken, including any attempt to facilitate his access to naturalization.

49. In light of these severe hardships, Mr. Dabetić requests the Court, on an equitable basis, to award the applicant an amount of € 20.000 in respect of non-pecuniary damages.

b) Costs and expenses

50. In relation to the proceedings before the Court, the applicant claims the reimbursement of an amount of € 10.000,00 in respect of costs and expenses, plus 4% CPA (compulsory contribution to the Lawyers' Pension Fund), 15% for general expenses and 22% VAT, for an overall amount of € 14.591,20.

c) Default interests

51. According to the settled case law of the Court (See, for instance, *Giorgioni v. Italy*, 15 September 2016, § 91, and *D.A. and Others v. Italy*, 14 January 2016, § 219), the applicant asks that simple interest shall be payable until settlement on the total amount awarded by the Court in respect of just satisfaction at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

G. CONCLUSIONS

A. PROCEDURAL HISTORY

52. On **11 May 2012**, Mr. Velimir Dabetić lodged, in the form on an interlocutory letter, an application under Article 34 ECHR complaining of multiple breaches of Articles 6, 8, 13 and 14 ECHR in relation to the failure by the Italian authorities to regularize his legal status in a timely manner and to offer interim relief pending such regularization.

53. Upon receipt of the letter of introduction, registered under no. 31149/12, the Registry of the Court invited the applicant to complete the application by returning the forms prescribed under the Rules of Court, which were appended to the letter, together with copies of supporting documents.

54. On **14 December 2012**, Mr. Dabetić sent a completed application form, along with the power of authority in original and copies of the supporting documents.

55. Following a preliminary examination of the admissibility on **6 July 2021**, the President of the First Section of the Court decided to give notice of the application to the Government of Italy pursuant to Rule 54 § 2 *b*) of the Rules of the Court.

56. On **6 January 2022**, the Italian Government filed its Observations on the admissibility and merits of the application ("**Gvt. Observations**").

57. In accordance with the instructions received by the Registry, these submissions will address the questions posed by the Court to the parties and the Government's observations.

B. FACTUAL BACKGROUND OF THE CASE

58. 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.

59. Mr. Dabetić was among the approximately 18,305 former citizens of the Socialist Federal Republic of Yugoslavia (SFRY) whose names were erased from the Register of Permanent Residents of the Republic of Slovenia in February 1992 (the "erased"). Following Slovenia's adoption of its Declaration of Independence on 25 June 1991, those 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.

60. 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 lived and worked on a regular work permit issued by the Italian authorities since 1989.[1]

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

61. 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.

62. 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.[2] It further held that the 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).[3]

63. The Grand Chamber found that the applicants had no *"adequate"* and *"effective"* remedies by which to obtain redress for the infringement of their right to respect for their private and family lives, in violation of Article 13 in conjunction with Article 8.[4]

64. The Grand Chamber also found that Article 14 was applicable as there had been a difference in treatment after independence between two groups: 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.[5]

65. 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. Particularly, the Court found that "*the failure by Mr Dabetić […] to manifest in any manner [his]*

[1] See Exhibit 2: Permits of stay issued by the Police Headquarters of Vicenza.
[2] *Kurić and Others v Slovenia,* Judgment of the Grand Chamber of the ECtHR of 26 June 2012, paras. 339-340.
[3] *Ibid.* paras. 341-359.
[4] *Ibid.* paras. 369-372.
[5] *Ibid.* paras. 390-396.

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."[6] Although the Court later established that the domestic remedies against a refusal to grant a residence permit were ineffective,[7] it held that Mr. Dabetić could not be exempted from the obligation to apply formally for a residence permit in the first place.[8]

66. 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 regularize his residence status was of no relevance.[9] Judge 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.*"[10]

The "erasure" of Mr. Dabetić and attempts to regain legal status in Slovenia

67. 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 did not reside in Slovenia at the time of independence.

68. In 2002, Mr. Dabetić's SFRY passport expired.[11] 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.

---

[6] *Ibid.* para. 292.
[7] *Ibid.* paras. 295-313.
[8] *Ibid.* para. 292.
[9] *Kurić and Others v Slovenia*, Joint Partly Dissenting Opinion of Judges Bratza, Tulkens, Spielmann, Kovler, Kalaydjieva,Vučinić and Raimondi, para. 4.
[10] *Kurić and Others v Slovenia*, Partly Dissenting Opinion of Judge Costa.
[11] 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).

69. 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."[12]

70. Mr. Dabetić first discovered that he had been erased from the Slovenian Register of Permanent Residents in 2002, shortly after which 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.

71. 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.[13]

Attempts by Mr. Dabetić to regularize his status in Italy

72. 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 in 1989, he did not have links to any other successor state of the former Yugoslavia.

73. 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.[14] Despite the infamous length of proceedings in Italy, Mr. Dabetić was unable to obtain any interim protection to avoid being subject to criminal sanction as an undocumented alien.

74. A grant of statelessness status in Italy generally entails several vital forms of specific

[12] See *Kurić and Others v Slovenia,* Judgment of the Grand Chamber of the ECtHR of 26 June 2012, paras. 58 and 100-101.
[13] Exhibit 4: Decree of the Republic of Slovenia – 14 November 2005.
[14] See e.g. Gabor Gyulai, *Statelessness in the EU Framework for International Protection*, in European Journal of Migration and Law 14 (2012) pp. 279-295, p. 287 (judicial and administrative procedures are "parallel").

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, as well as the right to access social services and healthcare. Recognized stateless persons who maintain regular residency in Italy for a period of five years become eligible to apply for naturalization.[15]

Administrative application for statelessness status and interim permit of stay

75. On 2 March 2006, Mr. Dabetić applied to the Italian Ministry of Interior for protection as a stateless person pursuant to Article 17 of D.P.R. No. 572/93.[16] 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 31 May 2006 on the ground that, according to Article 11, section 1, lett. (c), of D.P.R. No. 394/1999, and subsequent amendments, such permits can be issued only to an alien already in possession of a permit of stay for other reasons.[17]

76. 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.[18]

Judicial application for statelessness status

77. On 26 May 2011, Mr. Dabetić filed a judicial application for statelessness status determination with the Rome Civil Tribunal under Article 17 of D.P.R. No. 572/1993, relying on the absence of any nationality.[19] The application was registered on 1 June 2011 (Case No. 35233/2011) and the initial hearing was scheduled for 22 December 2011.

78. The initial hearing was first adjourned ex officio to 26 April 2012. At that hearing, the Ministry of Interior failed to appear and the judge again adjourned the initial hearing, to 7 March 2013.

[15] See Law no. 91 of 5 February 1992, Article 9, lett. (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*").
[16] Exhibit 8: Application for stateless status to the Minister of Interior – 2 March 2006.
[17] Exhibit 9: Dismissal of the request for a permit of stay pending the administrative proceedings – 31 May 2006.
[18] Exhibit 9-bis: Dismissal of the administrative request for stateless status – 25 January 2008.
[19] Exhibit 21: Application to the Rome Tribunal for recognition of stateless status – 1 June 2011.

79. On 11 May 2012, Mr. Dabetić's 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.[20]

80. After the lodging of the present application, the Tribunal of Rome eventually granted Mr. Dabetić statelessness status in Italy on 25 January 2013.[21]

Judicial request for interim protection pending determination of status

81. 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 measures that it may consider advisable in order to regulate his status in Italy pending a final decision on the recognition of his statelessness status.[22]

82. On 11 November 2011, the Rome Tribunal dismissed the request for interim relief.[23] 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.[24] The only possible avenue of appeal from the interim decision would have been to challenge the constitutionality of the underlying presidential decree.

83. The availability of interim protection in the form of a temporary permit of stay pending determination of status is different for asylum applications and statelessness applications. Article 11(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. 24, 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

[20] Exhibit 25: Current status of the stateless proceedings before the Rome Tribunal.
[21] This decision was enclosed to a letter sent to the Court by Mr. Dabetić's representatives in November 2013.
[22] Exhibit 22: Request for interim measures – 3 November 2011.
[23] Exhibit 23: Dismissal of the request for interim measures – 30 November 2011.
[24] *Ibid.* (English translation).

84. The denial of both efficient resolution of his statelessness status application and interim relief pending such resolution had a severe impact upon the private life of Mr. Dabetić. He had no legal protection against arbitrary arrest and detention, further deportation orders or criminal proceedings. The lack of any legal status prevented him from enjoying his fundamental rights in Italy, even though the Italian authorities had already *de facto* acknowledged that he did not possess the nationality of any State (see decision of Tribunal of Mantua in June 2006, at para. 35, below; and travel document issued by the Police office of Macerata in July 2011, at para. 40, below). His statelessness status had also been "certified" by the European Court of Human Rights and by the Secretary General of the Council of Europe.[25]

Attempts to deport Mr. Dabetić

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

86. 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.[26]

87. 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 imposes fines ranging from € 5,000 to € 10,000 for unauthorized stay in Italy, and states that any failure to comply with expulsion orders was punishable by up to four years' imprisonment.[27] 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.[28] The Court of Justice of the European Union (CJEU) held that a provision that required the automatic imprisonment of

[25] Exhibit 17: Letter from the Secretary General of the Council of Europe – 23 June 2011.
[26] Exhibit 12: Judgment of the Criminal Tribunal of Mantua acquitting the applicant from the charge of illegal stay – 22 June 2006.
[27] Article 10-*bis* of Law No. 286/1998.
[28] Constitutional Court Judgments Nos. 249/2010 and 245/2011.

undocumented migrants found in non-compliance with a removal order was contrary to EU law.[29]

88. 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.[30] The deportation order was challenged and ultimately quashed by the Tribunal of Teramo on 13 October 2009.[31] 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

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

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

91. Mr. Dabetić was not able to obtain a passport and travel abroad. An example of the impact that this had 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.[32] 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 was stateless. Based on this request, the Police office of Macerata issued Mr. Dabetić a limited permit of stay on humanitarian grounds and a travel document (both valid until 31 July 2011) for the purpose

[29] *Hassen El Dridi*, Judgment of the First Chamber of the Court of Justice of the European Union of 28 April 2011.
[30] Exhibit 14: Deportation decree issued by the authorities of Teramo – 22 August 2009.
[31] Exhibit 15: Judgment of the Tribunal of Teramo quashing the deportation decree – 13 October 2009.
[32] Exhibit 17: Letter from the Secretary General of the Council of Europe – 23 June 2011.

of allowing him to attend the hearing. The travel document, issued by Italian authorities, listed his nationality as "NONE."[33]

92. These hardships were 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.

C. THE INADMISSIBILITY OBJECTIONS RAISED BY THE GOVERNMENT

93. The respondent Government raises two objections of inadmissibility related to: ***a***) the alleged lack of victim status under Article 34 ECHR; and ***b***) the purported failure to exhaust domestic remedies pursuant to Article 35 § 1 ECHR.

C.1 The applicant retains victim status under Article 34 ECHR

94. The Government claims that Mr. Dabetić has allegedly lost his victim status under Article 34 ECHR as a result of the judicial recognition of his statelessness status by the Tribunal of Rome with judgment No. 3089/2013.

95. This objection forms the subject of a specific question posed by the Court to the parties. To avoid unnecessary repetitions, the applicant shall rebut this objection in the context of sub-section E.1 below.

C.2 Mr. Dabetić exhausted domestic remedies under Article 35 § 1 ECHR

96. The respondent's objection that the applicant allegedly failed to exhaust domestic remedies is based on multiple grounds. These grounds shall be addressed separately below.

97. First, the Government claims that the application should be declared inadmissible because the judicial proceedings for the recognition of statelessness status were still pending when the applicant lodged his application before the Court.

98. This objection is completely unfounded.

99. It is the Court's well-established case law that the last stage of a particular remedy may be reached after the application has been lodged but before its admissibility has been determined,[34] which is the case here. The judgment of the Tribunal of Rome, which

[33] Exhibit 19: Travel document issued by the Municipality of Macerata – 30 June 2011.
[34] See *Molla Sali v Greece,* Judgment of the Grand Chamber of the ECtHR of 19 December 2018, paras. 90-91; *Mehmet Hasan Altan v Turkey*, Judgment of the ECtHR of 20 March 2018, para. 107; *Şahin Alpay v Turkey*, Judgment of the ECtHR of 20 March 2018, para. 86.

recognized the applicant's statelessness status, was delivered on 25 January 2013. This is well before any decision on the admissibility of the present application has been taken by the Court.

100. Moreover, the way in which this objection is framed discloses the Government's misconstruction of the gist of the application. The issue is not so much – or at least not just – the fact that Mr. Dabetić had not been granted statelessness status at the time of the filing of the application, but rather the failure by the Italian authorities to provide him with appropriate interim protection while considering his request for legal status and the failure to determine that status within a reasonable period of time.

101. Second, the Government argues that the applicant should have filed an appeal (*reclamo*) pursuant to Article 669-*terdecies* of the Italian Code of Civil Procedure against the decision issued by the Tribunal of Rome on 9 November 2011, which had dismissed his request for interim measures.

102. This objection is equally without merit.

103. The Tribunal of Rome declared that it did not have jurisdiction to issue interim measures in the applicant's case on the grounds that a legal residence permit for statelessness applicants may be issued solely within the context of an administrative procedure. This state of affairs would have remained unchanged in appellate proceedings. The appellate judge would also have been bound by Article 11, section 1, lett. c), of D.P.R. No. 394/1999, which stipulates that such residence permits can be issued only if the alien is already in possession of a permit of stay for other reasons. This is a condition that Mr. Dabetić simply did not meet.

104. The Government did not submit any evidence that this supposed remedy "*could be regarded, with a sufficient degree of certainty, as constituting an effective remedy for the applicant's complaint*"[35] and, in particular, that it offered "*reasonable prospects of success.*"[36]

105. The domestic case law provided by the Government in support of the objection is immaterial to that end. It may very well be that, in a handful of cases, domestic judges issued interim relief to statelessness status applicants;[37] however, the fact remains that **Italian law did not (and still does not) offer any guidance to Italian judges on granting interim relief** pending the outcome of judicial statelessness status determination proceedings for persons

[35] See, for all, *Gjonbocari and Others v Albania*, Judgment of the ECtHR of 23 October 2007, paras. 78-81.
[36] *Sejdovic v Italy,* Judgment of the Grand Chamber of the ECtHR of 1 March 2016, para. 46.
[37] The Government submitted three domestic decisions, one of which was issued in 2012, whereas the other two were adopted in 2020, some ten years after the facts of the present case.

not already in possession of another form of legal residence permit in Italy. Therefore, far from proving that the appellate remedy offered any *"reasonable prospects of success"* the precedents submitted by the Government seemingly confirm that the decisions of the domestic courts in this area of law were (and still are) **the product of the unregulated nature** of the judicial statelessness status determination procedures in Italy, which led (and still leads) to **marked inconsistencies in decision-making**.

106. In addition, **for every decision that granted interim relief pending determination of statelessness status there are as many negative decisions issued by domestic courts.**[38] This shows that the matter is still far from being solved at the judicial level, as the Government has claimed.

107. In the present case, Mr. Dabetić did everything he could reasonably be expected to do in his attempt to obtain a temporary permit of stay in Italy while the authorities considered his statelessness application. He applied for interim protection during his administrative application on 1 March 2006 and this was denied on 31 May 2006. Mr. Dabetić made a similar request for interim protection before the Rome Tribunal while it considered his judicial application for statelessness status on 3 November 2011, which was rejected on 11 November 2011. In these circumstances, it could not be asked of Mr. Dabetić to reiterate his request for interim measures and/or to pursue appellate proceedings only in the unlikely event that he would encounter a more progressive judge who could perhaps offer relief.[39]

108. Third, the Government contends that "*the applicant could have brought his claim before the national administrative judge.*"[40]

109. This objection is equally unfounded and unsubstantiated.

110. Where the Government claims non-exhaustion of domestic remedies, it bears the burden of proving that the applicant has not used a remedy that was available, adequate, and effective.[41] The availability of any such remedy must be sufficiently certain in law and in practice.[42] The development and availability of a remedy said to exist, including its scope and application,

[38] See, for example, Exhibit 26: Judgment No. 2242 issued by the Tribunal of Salerno - 7 September 2013 and Exhibit 27: Judgment No. 20182 issued by the Tribunal of Rome - 21 October 2019. Both judgments denied requests for temporary residence permits for stateless persons.
[39] See, *e.g.*, *Matijašević v Serbia*, Judgment of the ECtHR of 19 September 2006, para. 32.
[40] Gvt. Observations, para. 4.16.
[41] *Mocanu and Others v Romania,* Judgment of the Grand Chamber of the ECtHR of 17 September 2014, para. 225.
[42] *Tănase v Moldova,* Judgment of the Grand Chamber of the ECtHR of 27 April 2010, para. 120.

must be clearly set out and confirmed or complemented by practice or case law.[43]

111. In the present case, the Government failed to explain on which grounds the administrative court would have had competence to entertain a request for a temporary residence permit. It was also unable to submit any relevant ruling by administrative courts in favor of an appellant in a situation comparable with that of the applicant. The respondent's failure to discharge its burden of proof under Article 35 § 1 ECHR is sufficient in itself to dismiss the Government's claim.

112. Fourth, the Government suggests that Mr. Dabetić could have requested "*any other form of protection available according to the domestic law: the refugee protection, the subsidiary protection and the humanitarian protection.*"[44] By simply filing a request for international protection – the Government further argues – Mr. Dabetić would have automatically obtained a temporary residence permit.[45]

113. Quite surprisingly, the respondent's alleged solution to the inadequate legislation governing the recognition of statelessness status in Italy as well as the stark difference in treatment between asylum seekers and stateless persons is to simply take advantage of the more favorable legislation applicable to asylum seekers, irrespective of whether the individual actually qualifies for international protection.

114. With all due respect, this is unconscionable.

115. Stateless persons are entitled to recognition of statelessness status, nothing less or different. **They should not be asked to resort to seek protection via a different legislation, and apply for refugee protection to obtain legal protection while a determination on their status is being made**. Rather, Italy should make all the necessary amendments to its legislation to ensure that stateless persons enjoy an appropriate level of interim protection, including the immediate issuance of a temporary permit of stay.

116. **Mr. Dabetić did not meet any of the statutory requirements to seek international protection in Italy**.

117. The recognition of the need for international protection is premised upon the existence of a serious risk of violation of human rights that asylum seekers might face in the event of a

[43] *Mikolajová v Slovakia*, Judgment of the ECtHR of 18 January 2011, para. 34; *Muradverdiyev v Azerbaijan*, Judgment of the ECtHR of 9 December 2010, para. 98.
[44] Gvt. Observations, para. 4.17.
[45] Gvt. Observations, para. 4.19.

return to their country of origin.

118. While it may occur that an individual is simultaneously a stateless person and a refugee, statelessness and international protection are not mutually interchangeable legal statuses and must be considered independently of each other. This is reflected in the development of separate legal instruments: the 1951 Refugee Convention and the 1954 Statelessness Convention. While stateless persons and refugees share similar positions of vulnerability, the two statuses rest upon completely different requirements and pursue different objectives.

119. Rather tellingly, the Government is perfectly aware of the difference between refugee and statelessness status when it argues that "*the powers of the administrative authority are wider where the applicant, in addition to being stateless, is subjected to persecution in the country of origin or can suffer serious damage if he or she returns to it […].*"[46] It is precisely that individuals may qualify for both statelessness status and international protection only if, in addition to being stateless, they also face serious risks for their life and limb in their country of origin.[47]

120. Mr. Dabetić did not face any such risk. He is stateless, which is an entirely separate status. This is the whole point of recognizing statelessness as separate from refugee status. Moreover, in the applicant's case, the absence of a country to which he could return was also the reason why multiple expulsion orders issued against him could not be enforced. Hence, any such request by the applicant for international protection would have been speedily dismissed as being manifestly ill-founded.

121. On a separate note, for the sake of argument, the Government's repeated contention that Mr. Dabetić would have "automatically" obtained a temporary residence permit upon filing a request for international protection is inaccurate.

122. At the time of the events (i.e. 2002-2011), the issuance of temporary residence permits for asylum seekers was governed by **Article 1, section 5, of Law-Decree No. 416/1989, as amended by Article 31 of Law No. 189/2002.**[48] According to this provision, asylum seekers were in principle entitled to a three-month[49] renewable temporary residence permit,

[46] Gvt. Observations, para. 5.7; emphasis added.
[47] The UNHCR stated as much in its *Handbook on Protection of Stateless Persons under the 1954 Convention relating to the Status of Stateless Persons*, 2014, at para. 128: "A stateless person may simultaneously be a refugee. Where this is the case, it is important that each claim is assessed and that both statelessness and refugee status are explicitly recognized."
[48] This provision was in force until the approval of Legislative Decree No. 25/2008.
[49] The Government contends that asylum seekers were entitled to 6-months renewable residence permits, but this is evidently erroneous. The Government relies on a provision (Article 4 of Legislative Decree No. 142 of 8 August 2015), which was not in force at the material time. Instead, until 2015, asylum seekers were entitled to a 3-months renewable permit (Article 2, section 4, of DPR No. 303 of 16 September 2004).

provided however that none of the conditions envisaged by Articles 1-*bis* and 1-*ter* of Law-Decree No. 416/1989 applied.[50]

123. Notably, according to Article 1-*bis,*[51] **asylum seekers who did not have travel or identity documents were not entitled to such three-month permit**. They were instead **held in detention centers** pending the assessment of the asylum request (Article 1-*bis*) and were subject to a simplified and accelerated procedure (Article 1-*ter*), which would lead to a final determination on the merits within 18 days. Asylum seekers held in detention would receive a special permit for the simple purpose of legalizing their presence in the detention centers, which was valid until the conclusion of the simplified procedure (Article 1-*bis*).

124. In these circumstances, for the sake of argument, if Mr. Dabetić had filed a specious request for international protection only for the purposes of obtaining a temporary residence permit, as the Government has suggested, he would not only *not* have obtained such a permit but he would have, paradoxically, faced an even worse situation than the one he was already in. Being an undocumented alien, he would have been deprived of his personal liberty and detained in dire living conditions pending the determination on his asylum request.

125. In light of all the above considerations, the applicant respectfully requests the Court to dismiss the Government's objection of inadmissibility for failure to exhaust domestic remedies under Article 35 § 1 ECHR.

D. INTERNATIONAL FRAMEWORK GOVERNING STATELESSNESS

126. The character and application of Italy's nationality laws must conform to the limits defined by international law, including international human rights law.[52] Mr. Dabetić's inability to secure statelessness status, regularize his stay, and find a path towards Italian citizenship for over seven years is a violation of Italy's obligations under international and European law. Under Article 53 of the ECHR, in order to carry out its obligations under the Convention, Italy is bound by the standards established in international instruments to which it is a party.

---

[50] Article 1, section 5, of Law-Decree No. 416/1989 prescribed: "*The territorially competent Questore, when the cases provided for in Articles 1-bis and 1-ter do not occur, issues, upon request, a temporary residence permit valid until the end of the recognition procedure.*"

[51] Article 1-*bis*, section a, of Law-Decree No. 416/1989, as amended by Law No. 189/2002, stated that: "*The asylum seeker may […] be detained […] in the following cases: (a) to verify or determine his nationality or identity, if he does not have travel or identity documents […]*".

[52] See, e.g., International Law Commission, *Report of the International Law Commission on the work of its fifty-first session 3 May-23 July 1999 (A/54/10)*, "Chapter IV: Nationality in Relation to the Succession of States," Commentary [3], Commentary [5] on the Preamble; European Convention on Nationality, Article 3(1).

127. In response to question No. 5 of the Court to the parties, the following paragraphs set out the applicable international standards that serve as framework for this case.

D.1 European Convention on Human Rights and European Standards

128. 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 national and international law in its interpretation of the Convention provisions.*"[53] The Court has indicated that it will consider other relevant treaties, particularly where the Convention is silent or lacking in precision,[54] which is the case when it comes to addressing the matter of statelessness. This includes the Court's consideration of "*intrinsically non-binding instruments of Council of Europe organs, in particular recommendations and resolutions of the Committee of Ministers and the Parliamentary Assembly.*"[55]

129. When looking at the right to nationality as a function of an individual's private or family life under Article 8 ECHR, the Court has 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 Cases of State Succession, as well as to recommendations of the Committee of Ministers.

130. Italy signed the ECN on 6 November 1997.[56] The principles of the ECN in Article 4 state that *"everyone has a right to nationality"* and *"statelessness shall be avoided."* This last principle, the obligation to avoid statelessness, has been considered by the Council of Europe as *"part of customary international law,"* thus binding on Italy. Article 6(4)(g) of the ECN also states that *"[e]ach 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."*

131. Relatedly, the Council of Europe's Convention on the Avoidance of Statelessness in Relation to State Succession[57] reaffirms the importance of the duty to avoid statelessness, considering

---

[53] *Soering v the United Kingdom*, Judgment of the ECtHR of 7 July 1989, para. 102; *Vo v France*, Judgment of the Grand Chamber of the ECtHR of 8 July 2004, para. 82; *Mamatkulov and Askarov v Turkey,* Judgment of the ECtHR of 4 February 2005, para. 121.

[54] "*The 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.*" See *Demir and Baykara v Turkey*, Judgment of the Grand Chamber of the ECtHR of 12 November 2008, para. 67.

[55] *Ibid.* para. 74.

[56] Council of Europe, *European Convention on Nationality*, entry into force 1 March 2000.

[57] Council of Europe, *Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession*, entry into force 1 May 2009.

it one *"of the main concerns of the international community in the field of nationality."*[58] The Convention was devised precisely in consideration of situations of state succession, *"one of the major sources of cases of statelessness."*[59]

132. Italy has endorsed the promulgation of Recommendation R (1999) 18 of the Committee of Ministers on the Avoidance and Reduction of Statelessness, which reiterates and elaborates many of the provisions of the ECN. The Recommendation calls on governments to uphold that *"[t]he acquisition of nationality by stateless persons should be facilitated and not subject to unreasonable conditions;"*[60] and that *"[i]n the application and interpretation of nationality legislation, account should be taken of the consequences of the relevant corresponding provisions of the legislation and of the practice of other states concerned, in order to avoid statelessness."*[61]

D.2 United Nations Instruments ratified by Italy

United Nations Convention Relating to the Status of Stateless Persons 1954

133. 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."

United Nations Convention on the Reduction of Statelessness 1961

134. This Convention was adopted by Italy in 2015. The ECN identifies the 1961 Convention as the instrument that sets the rules for implementing the customary law obligation of the reduction of statelessness.[62]

> Article 1(2)(b) states:
>
> "A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions:
>
> (a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

[58] *Ibid.* at 2nd preamble.
[59] *Ibid.* at 3rd preamble.
[60] Council of Europe, *Recommendation R (1999) 18 of the Committee of Ministers on the Avoidance and Reduction of Statelessness*, adopted 15 September 1999, para. I.d.
[61] *Ibid.* para. I.f.
[62] Council of Europe, Explanatory Report to the European Convention on Nationality, para. 33.

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all."[63]

Article 8(4) states:

"A Contracting State shall not exercise a power of deprivation […] except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body."[64]

D.3 UNHCR Guidelines on Statelessness

135. The United Nations High Commissioner for Refugees (UNHCR) has issued authoritative Guidelines on the definition of statelessness, procedures for determining stateless status and the minimum standards of treatment accorded to stateless persons under international law. In its *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, the UNHCR specified that in order *"[f]or procedures to be fair and efficient, access to them must be ensured."*[65] 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."[66]

136. 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."[67]

137. The UNHCR Guidelines 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

---

[63] *UN Convention on the Reduction of Statelessness*, entry into force 13 December 1975, 989 UNTS 175.
[64] *Ibid.*
[65] Exhibit 28: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, 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.* p. 1.
[66] *Ibid.* para. 17.
[67] Exhibit 29: UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, HCR/GS/12/03, 17 July 2012, para. 16.

> 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."[68]

138. 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."[69]

139. Other standards of treatment for individuals "determined to be stateless" are summarized in the Guidelines as follows:

- 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).
- 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).[70]

D.4 Other relevant standards

140. The principle of the right to a nationality is established in Article 15 of the 1948 Universal Declaration of Human Rights, which states that *"everyone has the right to a nationality."* This provision was incorporated into the United Nations International Covenant on Civil and Political Rights, which was ratified by Italy on 15 September 1978 (Law No. 881 of 25 October 1977).

[68] *Ibid.* paras. 25-26.
[69] *Ibid.* para. 28.
[70] *Ibid.* para. 10 (summarizing Articles 12-32 of the 1954 Convention).

E. THE MERITS OF THE APPLICATION

E.1 The applicant's victim status under Article 34 ECHR (Question no. 1)

Having regard to the determination of statelessness by the Tribunal of Rome on 13 February 2013, can the applicant claim to be a victim of a violation of Articles 8, 13 or 14 of the Convention, within the meaning of Article 34?

141. The Government claims that Mr. Dabetić has allegedly lost his victim status for the purposes of Article 34 ECHR as a consequence of the judicial recognition of his statelessness status by the Tribunal of Rome with judgment No. 3089/2013.

142. The respondent's defense is devoid of substance.

143. Mr. Dabetić withstood years of criminalization of his status, without justification, when it is clear from the facts of his case (paras. 7-41) – including his role as an applicant in *Kurić and Others v Slovenia* – that the Italian authorities were aware that he was a stateless person in need of protection. He had no effective remedy to challenge the prolonged denial of temporary permission to remain in the territory pending recognition of his statelessness status or the unduly prolonged nature of those status determination proceedings stretching out over seven long years.

144. This Court has underscored that "*a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention.*"[71]

145. The Court must also examine the quality of the relief afforded by any favorable measure, particularly whether the relief is appropriate and sufficient under the circumstances of the case and in light of the nature of the Convention violation at stake.[72] Where violations extend over a lengthy period of time, such as unduly prolonged proceedings or persistent failure to regulate the legal status of a person, the Court has emphasized that remedies should entail a compensatory effect in order to be considered effective.[73]

146. In the present case, there has been no acknowledgment of a violation of the applicant's

[71] See, for example, *Kurić and Others v Slovenia,* Judgment of the Grand Chamber of the ECtHR of 26 June 2012, para. 259; *Konstantin Markin v Russia,* Judgment of the Grand Chamber of the ECtHR of 22 March 2012, para. 82; *Gäfgen v Germany,* Judgment of the Grand Chamber of the ECtHR of 1 June 2010, para. 115.
[72] See *Gäfgen v Germany*, Judgment of the Grand Chamber of the ECtHR of 1 June 2010, para. 116.
[73] *Puchstein v Austria*, Judgment of the ECtHR of 28 January 2010, para. 31; *Kurić and Others v Slovenia,* Judgment of the Grand Chamber of the ECtHR of 26 June 2012, paras. 267-269.

rights. While Mr. Dabetić is no longer at risk of criminal sanction or expulsion following the recognition of his statelessness status, no compensatory measures have been undertaken. This might have included attempts to facilitate his access to naturalization in light of the years of delay he suffered in his efforts to place himself on a pathway to citizenship. Further, Italy has failed to address the inherently and unjustifiably discriminatory nature of its policies in respect of access to temporary permits of stay pending status determination proceedings for stateless persons versus asylum seekers.

147. Therefore, Mr. Dabetić fully retains his victim status for the purposes of Article 34 ECHR in connection with the complaints raised in the application. For the same reasons, the matter has not been resolved within the meaning of Article 37 § 1 (b) ECHR.

148. In any event, even if the Court were to deem that the matter had been resolved (which it has not) as a mere consequence of the regularization of the applicant's legal status, respect for human rights would require the Court to continue the examination of the application pursuant to Article 37 § 1 ECHR on account of the serious and persistent deficiencies in Italian legislation governing the determination of statelessness status.

E.2 The interference with the applicant's right to private life under Article 8 ECHR (Question no. 2)

Has there been an interference with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention, on account of his inability to have his personal status regularised for several years, and of his difficulties arising from that situation, in particular:

– his inability to obtain any form of temporary residency status,

– the fact that he was subject to criminal prosecution and punishment for his mere presence in Italy as an undocumented alien under Article 10-bis and Article 14, section 5-bis, 5-ter, 5-quinquies, of Legislative Decree 25 July 1998, no. 286, as amended by Law 12 November 2004, no. 271, and Law 15 July 2009, no. 94,

– the fact that he was arrested on multiple occasions and subjected to recurrent identity checks and deportation orders,

– his inability to work, travel and obtain any benefit or service beyond emergency health care?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see Sudita Keita v. Hungary, no. 42321/15, 12 May 2020, and, mutatis mutandis, B.A.C. v. Greece, no. 11981/15, 13 October 2016)?

In answering the above questions, the Government are requested to specify, with reference to the situation at the relevant time and at present, whether the domestic courts and administrative authorities apply the criterion of lawful residence as a requirement for recognition of statelessness status.

149. Italy failed to put forward any defense in relation to the interference of Article 8 ECHR. Italy's failure to recognize Mr. Dabetić as stateless in a timely manner and to grant him a temporary permit of stay directly impacted his private life, his legal identity, personal autonomy and human dignity – in violation of Article 8 ECHR. For the prolonged period of time he lived as an individual without legal status and a legal identity in Italy, Mr. Dabetić was unable to conduct a normal life there; and the effects of not granting legal residency retroactively to the beginning of the proceedings, continue to play an impact in his private life today.

150. An account of the serious impact that the prolonged failure by the Italian authorities to regularize the applicant's legal status is contained in a statement provided by the applicant himself, which is enclosed to these submissions.[74]

151. For the reasons set out below, 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 timely recognition of his 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.

a) Interference with Article 8 ECHR

152. As argued in the application (paras. 61-84) and this submission (paras 38-41, above) the impact of the prolonged failure to determine Mr. Dabetić's legal status and the lack of an interim protection impacted his private life, in accordance with the expansive meaning the Court has given to this right, including his juridical personality, personal identity, individual autonomy and human dignity, as to violate Article 8.[75] Respect for private life is of "*fundamental importance [for ensuring] the development of every human being's personality*"[76] which "*extends beyond the private family circle"*[77] and *"can sometimes embrace aspects of an individual's social identity.*"[78]

[74] Exhibit 30: Statement from Velimir Dabetić - 9 March 2022.

[75] "*[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*". See *Pretty v the United Kingdom*, Judgment of the ECtHR of 29 April 2002, para. 61.

[76] *Armonienė v Lithuania*, Judgment of the ECtHR of 25 February 2008, para. 39.

[77] *Ibid.*; *see also Pretty v United Kingdom*, Judgment of the ECtHR of 29 April 2002, para. 61 (*"Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees*") (internal citations omitted).

[78] *Hoti v Croatia*, Judgment of the ECtHR of 26 April 2018, para. 119.

Inability to have a legally recognized status effectively denying the right to a legal identity

153. Italy arbitrarily denied Mr. Dabetić's legal identity, rendering him in a protracted situation of statelessness. International norms call for states to protect stateless persons through a functioning identification mechanism, which Italy lacks. The recognition of legal status as a stateless person provides legal identity to the person concerned as well as the right to an identity document and legal residency. Italy's denial of these basic protections interfered with Mr. Dabetić's Article 8 right to legal identity.

154. 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.[79] In *Kurić and Others v Slovenia*, in which Mr. Dabetić was an applicant, the Grand Chamber stated:

> "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."[80]

155. As a party to the 1954 Convention Relating to the Status of Stateless Persons, Italy is obliged to identify and protect stateless persons, for which an effective and accessible status determination procedure is vital. The UNHCR's authoritative Guidelines unequivocally call upon states to open procedures to everyone in a State's territory, regardless of their legal

[79] *Karassev v Finland,* Decision of the ECtHR on Admissibility of 12 January 1999, p. 10 (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 ECHR); *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, 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,* Decision of the ECtHR on Admissibility of July 2006, 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,* Judgment of the ECtHR of 9 October 2003, paras. 94-95, 114, 122-129.

[80] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, paras. 356. 41. See more: Partly Concurring, Partly Dissenting Opinion of Judge Vučinić: "*[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.*"

status,[81] and receive basic protections as outlined in para. 86.[82] Procedures should be as expeditious as possible, and when evidence is easily available and clear for a well-founded claim, an efficient procedure should require only a few months.[83]

156. 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.*"[84] 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. In *Hoti v Croatia,* this Court recognized the positive obligation under Article 8 to provide effective and accessible procedures that enable persons to have their status determined.[85]

157. During the years that Mr. Dabetić awaited the outcome of his status determination, and until his status was determined, he was entitled to be treated as "lawfully in" Italy, granted an identity document and temporary permit of stay, which would have spared him the repeated arrests, criminal charges and deportation proceedings.[86] 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.

158. Furthermore, once his statelessness status was granted many years later, his legal residency should have been recognized retroactively to the beginning of the proceedings.

Personal autonomy, identity and development

159. By an unduly prolonged failure to provide the protection that Mr. Dabetić was due as a stateless person, Italy interfered with his right to personal autonomy as embodied in his ability to form and develop his personal identity.

---

[81] Exhibit 28: UNHCR, G*uidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, para. 17.
[82] Exhibit 29: UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, HCR/GS/12/03, 17 July 2012, para. 26.
[83] Exhibit 28: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, para. 22.
[84] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, para. 353 (citing authorities), 358. *See also Sisojeva and Others v Latvia*, Judgment by the Grand Chamber of the ECtHR of 16 June 2005, 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.*")
[85] *Hoti v Croatia*, Judgment of the ECtHR of 26 April 2018, paras. 120-123; see *also Sudita Keita v Hungary*, Judgment of the ECtHR of 12 May 2020, para. 41.
[86] See paras. 33-37 above.

160. Personal autonomy is "*an important principle underlying the interpretation" of Convention guarantees.*[87] In the scope of Article 8, the Court has included individual identity within a cluster of interrelated rights attached to personal autonomy.[88] The right to respect for private life also includes "a right to personal development," an element of personal autonomy, and "the right to establish and develop relationships with other human beings and the outside world."[89]

161. As described in paras. 33-41 above, Italy failed to provide an appropriate level of protection pending the determination of Mr. Dabetić's status. While Mr. Dabetić is no longer at risk of criminal sanction due to his irregular status in Italy, no compensatory measures have been undertaken, including any attempt to facilitate his access to naturalization in light of the years of delay he suffered in his efforts to place himself on a pathway to citizenship.

162. While the 1954 Convention prohibits the deportation of stateless persons, such as Mr. Dabetić, the reality is that he was deprived for a very long time of vital forms of specific protection and had the continued concern that he would be subjected to futile deportation procedures, which was well-founded in light of the repeated expulsion orders adopted by Italian authorities against him despite their knowledge of his situation as a stateless person.

163. Mr. Dabetić was trapped in a legal limbo as to his status, unable to move on with his life. This Court in *Hoti* found that such failures in regularizing an individual's status hamper their ability to find employment and adversely affect the prospect of securing access to health insurance or pension rights.[90] Italy has severely limited Mr. Dabetić's ability to define and develop his personal identity during his lengthy struggle to acquire protection. As detailed in his personal statement, he could not work or travel easily, open a bank account, establish a fixed domicile, access proper healthcare or provide for his daughter.

164. 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.[91] The 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*

[87] *Pretty v the United Kingdom*, Judgment of the ECtHR of 29 April 2002, para. 61.
[88] *Goodwin v the United Kingdom,* Judgment of the ECtHR of 11 July 2002, para. 90.
[89] *Pretty v the United Kingdom*, Judgment of the ECtHR of 29 April 2002, para. 61 (emphasis added); *Nada v Switzerland*, Judgment of the Grand Chamber of the ECtHR of 12 September 2012, para. 151.
[90] *Hoti v Croatia*, Judgment of the ECtHR of 26 April 2018, para. 126.
[91] Exhibit 29: UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 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 naturalization); see also legal standards cited at paras. 75-89, above.

international levels."[92] This Court has likewise recognized the impact 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.[93]

165. If Italy had met its obligations, Mr. Dabetić would not have awaited the granting of statelessness status for seven years and might have already become a naturalized Italian citizen by now.[94]

Dignity

166. 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.*"[95] 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.[96]

167. 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.*"[97] The African Committee of Experts on the Rights and Welfare of the Child found that by the discriminatory denial of the right to nationality and the violation of the recognition of juridical personality constituted an affront to dignity.[98]

168. That Italy has gone further, subjecting Mr. Dabetić to criminal charges attached to his status and several rounds of futile deportation proceedings, demonstrates a clear abuse contrary to his inherent dignity and inalienable rights. Italy's prolonged delays unnecessarily placed

[92] UNHCR, *The State of the World's Refugees 1997: A Humanitarian Agenda*, 1 January 1997, ch. 6, p. 20.
[93] 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*, Judgment of the Inter-American Court of Human Rights of 8 September 2015, para. 138.
[94] See para. 23, above.
[95] *I v the United Kingdom*, Judgment of the Grand Chamber of the ECtHR of 11 July 2002, para. 70.
[96] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, Partly Concurring, Partly Dissenting Opinion of Judge Vučinić.
[97] *Yean and Bosico v the Dominican Republic*, Judgment of the Inter-American Court of Human Rights of 8 September 2015, para. 179.
[98] *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on Behalf Of Children Of Nubian Descent in Kenya) v Government of Kenya,* Decision by the African Committee of Experts on the Rights and Welfare of the Child of 22 March 2011, para. 57.

Mr. Dabetic at further risk of arbitrary detention or arrest.[99] For years, he was reduced to using a copy of a document stating that deportation orders entered against him were unenforceable as his only defense against future police action. For years, Mr. Dabetić was treated as a "*disposable object […]*" and not as a "*subject […] of the law.*"[100]

b) Interference not in accordance with law

169. Italy's actions were not in accordance with law within the meaning of the Convention, and they created *"disproportionate repercussions"*[101] for Mr. Dabetić's private life. 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.[102] 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.*"[103] 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.[104] 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.[105] Beyond the Article 8 context, proceedings of indeterminate length have regularly been found to lack sufficient safeguards against arbitrariness.[106]

Lawful residence as a requirement makes statelessness status inaccessible to most affected individuals

170. 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 will lack a residency

[99] *See more* European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change,* 11 April 2017.
[100] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, Partly Concurring, Partly Dissenting Opinion of Judge Vučinić.
[101] *Hoti v Croatia*, Judgment of the ECtHR of 26 July 2018, para. 122.
[102] *Amann v Switzerland*, Judgment of the ECtHR of 16 February 2000, para. 50.
[103] *Silver and Others v United Kingdom*, Judgment of the ECtHR of 25 March 1983, para. 87.
[104] *Malone v United Kingdom*, Judgment of the ECtHR of 2 August 1984, para. 67; *Gillan and Quinton v United Kingdom*, Judgment of the ECtHR of 12 January 2010, para. 77.
[105] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, paras. 347-348.
[106] See, e.g., *Louled Massoud v Malta*, Judgment of the ECtHR of 27 July 2010, para. 71; *Ismoilov and Others v Russia*, Judgment of the ECtHR of 24 April 2008, para. 140; *Centro Europa 7 S.R.L. and Di Stefano v Italy*, Judgment of the Grand Chamber of the ECtHR of 7 June 2012, para. 154.

status in Italy.[107] The judicial procedure is largely unregulated, including with respect to the power of ordinary courts to issue interim relief.

171. 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.

Unpredictable length of proceedings

172. Both the administrative and 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. The UNHCR has clarified that status determination procedures should be conducted "*as expeditiously as possible",* as outlined in para. 104.[108]

173. Mr. Dabetić's application for statelessness status was undeniably well-founded; Italy had admitted that he is stateless[109] and his statelessness had been well documented on the international stage in the case of *Kurić and Others v Slovenia.*[110] That he waited for years, with no way of predicting how long it would take for a final outcome is not in accordance with law within the meaning of the Convention.

c) Interference not "necessary in a democratic society"

174. Italy has failed to act diligently and expeditiously,[111] and the unduly prolonged process denying Mr. Dabetić's recognition as a stateless person is a disproportionate interference with his Article 8 rights. The violation of numerous international standards cannot be justified by the need to control immigration; nor is imputing to the individual the prolonged delays in an unreasonably complex administrative procedure.

[107] 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.").
[108] Exhibit 28: 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.
[109] See para. 33, above.
[110] See e.g., *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, para. 97.
[111] *Ramadan v Malta*, Judgment of the ECtHR of 21 June 2016, paras. 86-88.

175. To be considered *"necessary in a democratic society,"* a measure must respond to a pressing social need, and the means employed must be proportionate to the aims pursued. 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.

176. 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 timely grant of statelessness status would not have burden Italy in any way, and (*c*) a narrow margin of appreciation applies in cases involving vulnerable individuals such as stateless persons.

The interference causes a severe impact upon core rights

177. The interference with Article 8 rights is disproportionate due to the gravity of the consequences Italy's actions pose for Mr. Dabetić. For more than seven years he was 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. As mentioned before, had he been duly recognized as a stateless person at the time he first applied, or his legal residency recognized retroactively to that time, he might today be a naturalized Italian citizen.[112]

178. The impact of Italy's actions in the applicant's case has been the intersection between Italy's unduly prolonged failure in granting protection as a stateless person (or interim protection during status determination) and the harsh measures enacted to crack down on migrants, criminalizing, indiscriminately, presence in Italy without a residence permit.[113]

No burden on the State

179. Italy faced no burden in granting Mr. Dabetić a temporary protection pending the outcome of his statelessness status application. Nor does it face such a burden now, having recognized Mr. Dabetić's statelessness status, in setting lawful residency retroactively to the time he initiated proceedings.

180. Requiring Italy to live up to its own international obligations under the ECHR and the Statelessness Conventions cannot be considered a "burden" in balancing the interests at stake here.

[112] See para. 23, above.
[113] See para. 36, above.

181. 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.

182. 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 burdened Mr. Dabetic with successive unresolvable proceedings related to his irregular status in Italy. Adjudicating deportation orders which are unenforceable and criminal prosecutions which have no foundation because he was unable to change his irregular status or to leave also posed significant costs to the State. When these costs are contrasted against the potential gains for the State in terms of human security that a timely grant of statelessness status could effect,[114] 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.

Narrow margin of appreciation for vulnerable groups

183. A narrow margin of appreciation should apply in this case.[115] 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."*[116] The Court's jurisprudence also suggests that the margin will be narrower when applied to rights of vulnerable groups.[117]

184. Failure to protect the most vulnerable members of society undermines *"the inherent dignity and worth, and the equal and inalienable rights of all members of the human family."*[118] Statelessness is widely recognized as a "*condition of extreme vulnerability."*[119] Mr. Dabetić's experiences living

[114] See para. 35, above. See also Exhibit 28: UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 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.").

[115] *Connors v the United Kingdom*, Judgment of the ECtHR of 27 May 2004, para. 82.

[116] *Ibid.*

[117] See *Ibid.* para. 84 (citing *Buckley v the United Kingdom,* Judgment of the ECtHR of 29 September 1996 for the proposition that "*[t]he vulnerable position of gypsies as a minority 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*"); *Alajos Kiss v Hungary,* Judgment of the ECtHR of 20 May 2010, 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,* Judgment of the ECtHR of 20 March 2012, 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*").

[118] General Assembly, *Universal Declaration on Human Rights*, 10 December 1948, at preamble, section 1; see also: Council of Europe, *European Convention of Human Rights*, entry into force 3 September 1953, at preamble.

[119] *Yean and Bosico v the Dominican Republic*, Judgment of the Inter-American Court of Human Rights of 8 September 2015, para. 142.

as a stateless person, being unable to acquire the protection to which he is entitled vividly underscore this penetrating vulnerability.

185. 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.[120]

186. Mr. Dabetić was forced to live in a situation of extreme vulnerability, a narrow margin of appreciation should apply in assessing whether such actions were *"necessary in a democratic society."*

E.3 The breach of the principle of non-discrimination under Article 14 ECHR (Question no. 3)

Having regard to his vulnerability as a stateless person and, in particular, as a former Socialist Federal Republic of Yugoslavia citizen who had lost permanent residence status as a result of his "erasure" by Slovenian authorities from the Register of Permanent Residents (see Kurić and Others v. Slovenia [GC], no. no. 26828/06, ECHR 2012 (extracts)):

3.a) has the applicant received the same protection as available to asylum seekers, particularly in relation to the possibility – irrespective of the lawfulness of his residence – of applying to the competent administrative authority for statelessness determination and of obtaining a temporary residence permit pending the determination procedure? In the negative, did this treatment amount to a violation of Article 14 of the Convention, read in conjunction with Article 8 of the Convention?

3.b) has the applicant received the same legal treatment – in relation to the precondition of lawful residence for obtaining a temporary residence permit – as foreign nationals seeking access to Italian citizenship? In the affirmative, did this treatment amount to a failure to treat differently persons whose situations are different, in breach of Article 14 of the Convention, read in conjunction with Article 8 of the Convention?

187. At the outset, it should be pointed out that the respondent Government failed to put forward any defense in relation to the complaint raised by Mr. Dabetić under Article 14 ECHR. Apart from the assertive and unsubstantiated statement that the difference in treatment between stateless persons and asylum seekers envisaged by the Italian legislation "*appears reasonable*"[121] no other argument whatsoever may be found in the respondent's submissions.

[120] *Ibid.* 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*".).
[121] Gvt. Observations, para. 5.3.

188. Accordingly, the applicant shall reiterate in the following paragraphs the main arguments grounding his complaint.

189. The applicant claimed a violation of Article 14 ECHR, read in conjunction to Article 8 ECHR, on the grounds that, by denying him 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 him 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.

190. These factors fall within "other status" under Article 14 ECHR, a ground which the Court has defined as "*a personal characteristic ("status") by which persons or groups of persons are distinguishable from each other.*"[122] According to the Court, the words "other status" in the text of this provision have generally been given a wide meaning, and "*their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent.*"[123] The Court also found that refugee status certainly amounts to "other status" because, unlike immigration status, it does not entail an element of choice.[124] The same naturally applies to the status of statelessness.

191. The prolonged failure by the Italian authorities to regulate Mr. Dabetić's legal status falls within the scope of Article 8 ECHR. There will therefore be a breach of Article 14 ECHR where the denial of those Article 8 rights is discriminatory, and results from an unjustified difference in treatment or a failure to treat differently.[125]

a) Unjustified difference in treatment of comparable situations

192. Mr. Dabetić's situation was comparable to that of asylum seekers who are entitled to the recognition of their refugee status under the 1951 Geneva Convention.[126] This is signaled, in particular, by the substantial similarity of the legal treatment provided for by the 1951

[122] *Kjeldsen, Busk, Madsen and Pedersen v Denmark*, Judgment of the ECtHR of 7 December 1976, para. 56; see also *Sidabras and Džiautas v Lithuania*, Judgment of the ECtHR of 27 July 2004, para. 41.
[123] *Aleksandr Aleksandrov v Russia*, Judgment of the ECtHR of 27 March 2018, para. 18.
[124] *Hode and Abdi v the United Kingdom*, Judgment of the ECtHR of 6 November 2012, para. 47.
[125] *Abdulaziz, Cabales and Balkandali v the United Kingdom*, Judgment of the ECtHR of 28 May 1985, paras. 71-73; *Weller v Hungary*, Judgment of the ECtHR of 31 March 2009, paras. 26-39.
[126] General Assembly, *Convention Relating to the Status of Refugees 1951*, entry into force on 22 April 1954, 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.

Convention and the 1954 Convention relating to the Status of Stateless Persons.[127] Stateless persons and refugees are both vulnerable persons because they cannot rely on the protection of any State.

193. **The relevant Italian legislation, at the time of the facts and still today, treats stateless persons differently from asylum seekers and refugees in at least three respects**. First, eligible persons cannot apply for administrative determination of statelessness status if they do not already hold a regular permit of stay in Italy, while asylum seekers can apply to the competent administrative authorities irrespective of the lawfulness of their entry or stay. 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*" (Article 11, section 1, lett. *a*) and *b*), of D.P.R. No. 394/1999). Third, asylum seekers are entitled to free healthcare[128] and, if they do not have sufficient means of subsistence, to accommodation in reception centers (where they receive personal care items, food, clothing, and a daily allowance).[129] No reception or assistance measures whatsoever are envisaged for individuals seeking statelessness determination.

194. This difference in treatment 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 realized.

195. Distinguishing between asylum seekers and stateless persons has no justification under the relevant international law provisions regulating their status. As pointed out above (see para. 141 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.

---

[127] See Exhibit 29: UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 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.").

[128] See Article 10, section 1, of Legislative Decree No. 140 of 30 May 2005, which was in force at the relevant time, and Articles 8, section 3, and 14 of Legislative Decree No. 142 of 18 August 2015, as subsequently amended, which is in force today. At the time of the facts, if no place was available in reception centers, asylum seekers with no means of subsistence would receive a "first assistance" allowance (*contributo di prima assistenza*). Article 5, section 2, of Legislative Decree No. 140/2005.

[129] Article 5, section 2, of Legislative Decree No. 140/2005, which was in force at the material time. Asylum seekers are entitled to reception measures pending the determination of their status.

196. The Government argues that this difference in treatment "*appears reasonable*" because "*it is intended to prevent any stateless person, even those are not resident in Italy and have no connection with Italy, from being able to apply to the Italian administrative authority and request recognition of the status of statelessness and, pending the definition of that procedure, obtain a temporary residence permit.*"[130]

197. The respondent's argument unveils the true nature and purpose of the Italian legislation, which is to intentionally hinder the protection of stateless persons.

198. The right of asylum seekers to access Italy's administrative determination procedure even if they entered illegally in the territory should also be extended to applicants for statelessness status in Italy.[131] 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, expensive and lengthy judicial litigation in order to have his status determined, does not serve any purpose of general interest.

199. 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.

200. 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 stateless person and certainly not to create legal phantoms with no identity, no rights and no duties.[132]

201. 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, nor did the Government argue differently.

---

[130] Gvt. Observations, para. 5.3.
[131] See Exhibit 28: 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.
[132] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, paras. 356-357.

b) Failure to treat differently situations that are different

202. 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.[133] In the present case, 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."

203. 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.

204. 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.[134]

205. 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 a 'democratic society.'"*[135] 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.

---

[133] *Thlimmenos v Greece*, Judgment of the Grand Chamber of the ECtHR of 6 April 2000, para. 44.

[134] See Exhibit 28: 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).

[135] *Gorzelik and Others v Poland*, Judgment of the Grand Chamber of the ECtHR of 17 February 2004, para. 90.

206. International law makes clear the duty to treat the stateless differently on account of their vulnerability.[136] Mr. Dabetić had no alternative nationality, his only *"genuine and effective link"* such as to lead to State protection was (and 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.

207. 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 ECHR 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.

208. 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. 33-41 and 101-117, above).

209. 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.

210. 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

[136] See, e.g., 1954 Convention, Article 32 (states should "as far as possible facilitate the assimilation and naturalization of stateless persons"); ECN, Article 6(4)(g) (calling for each State Party to "facilitate in 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.

affirmative protection on the part of the state in such cases.[137] 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.

E.4 The breach of the right to an effective remedy under Article 13 ECHR (Question no. 4)

Did the applicant have available to him an effective domestic remedy for his complaints under Articles 8 and 14 of the Convention, as required by Article 13 of the Convention?

211. Mr. Dabetić did not have available to him an effective remedy for his complaints under Articles 8 and 14 ECHR: There was no effective domestic remedy by which Mr. Dabetić could challenge his denial of legal status and seek to assert his rights or seek redress for the unjustified and discriminatory interference in his private life. This runs contrary to the right to an effective remedy under Article 13 ECHR.

The right to an effective remedy

212. Italy has a positive obligation to ensure access to an effective remedy for arguable violations of the Convention under Article 13 ECHR. As set out in detail in the application (paras. 126-128), this Court has stipulated that a remedy must be available if the applicant has an *"arguable claim"* of a violation under the Convention.[138] Such a remedy shall be *"'effective' in practice as well as in law,"*[139] sufficient and accessible,[140] fulfilling the obligation of promptness,[141] and not unjustifiably hindered by acts or omissions of the respondent

[137] See e.g., *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, para. 358; *Abdulaziz, Cabales and Balkandali v the United Kingdom*, Judgment of the ECtHR of 28 May 1985, paras. 67-69; *Y v Russia*, Judgment of the ECtHR of 4 December 2008, paras. 103-107; *Kamaliyevy v Russia*, Judgment of the ECtHR of 3 June 2010, paras. 59-65.
[138] *Boyle and Rice v the United Kingdom*, Judgment of the ECtHR of 27 April 1988, para. 52; *Maurice v France,* Judgment of the Grand Chamber of the ECtHR of 6 October 2005, para. 106.
[139] *Aksoy v Turkey*, Judgment of the ECtHR of 18 December 1996, para. 95.
[140] *Paulino Tomás v Portugal*, Decision of the ECtHR on Admissibility of 27 March 2003.
[141] *Çelik and Imret v Turkey*, Judgment of the ECtHR of 26 October 2004, para. 55.

State.[142] The existence of such a remedy must be sufficiently certain, in theory and practice.[143]

Effective remedy

213. The question whether the applicant had at his disposal an effective remedy is strictly linked to the question of whether there were accessible and effective remedies of which he could have made use in the Italian legal system in accordance with Article 35 § 1 ECHR.

214. The matter has already been addressed in the submissions. Therefore, to avoid unnecessary repetitions, we refer to the arguments put forward in the rebuttal to the Government's objection of alleged non-exhaustion of domestic remedies (see *supra* section C.2).

215. It is nonetheless appropriate to dispel any possible doubts surrounding a recurring position in the Government's submissions, in which the respondent contends that the delays in regularizing the applicant's legal status were attributable to the applicant and him alone. This position rests on two arguments.

216. First, according to the Government, Mr. Dabetić should have instituted legal proceedings for recognition of statelessness status straight away, without submitting a prior administrative request. In this regard, the Government claims that the applicant should have known that the administrative authorities would restrictively construe and apply Article 17 of D.P.R. No. 572/1993, which makes recognition of statelessness status conditional upon the possession of a prior valid residence permit, whereas the domestic courts could grant legal status regardless of that statutory impediment.

217. This argument is fundamentally flawed.

218. Italian legislation sets out two alternative paths to recognition of statelessness status (administrative and judicial), which are premised on the same legal framework, namely Article 17 of D.P.R. No. 572/1993.

219. This Court's case law has shown that, in the event of there being a number of alternative domestic remedies which an individual can pursue, an applicant is entitled to choose a remedy which addresses his or her essential grievance. When one of the available remedies

[142] *Aksoy v Turkey*, Judgment of the ECtHR of 18 December 1996, para. 95
[143] *McFarlane v Ireland*, Judgment of the Grand Chamber of the ECtHR of 10 September 2010, para. 107.

has been exhausted, the use of another remedy having a similar objective and no more chances of success is not required.[144]

220. In the present case, between the two avenues made available under Italian legislation, Mr. Dabetić chose the administrative path. It was the simplest avenue to recognition of statelessness status, which was entirely cost-free, and did not require mandatory legal representation. Stateless persons are, by definition, vulnerable; they should not be required to know the latest trends in jurisprudence. Therefore, it is submitted that, if the domestic legislation offers an administrative path to recognition of statelessness status in the alternative to judicial proceedings, it is the State's precise responsibility to render that legal avenue truly effective, not hinder legal protection by imposing unreasonable requirements which have been deemed inapplicable by domestic courts.

221. Moreover, contrary to the Government's contention that "*the judicial procedure only requires the payment of a minimum contribution, except for legal expenses, which can also be covered by legal aid, where the conditions are met,*"[145] initiating judicial proceedings would have been particularly burdensome for Mr. Dabetić, given that he would not have been able to benefit from legal aid to cover costs and expenses.

222. Article 119 of D.P.R. No. 115/2002 prescribes that legal aid is granted "*[…] to the alien legally residing on the national territory at the time of the relationship or the fact object of the process to be initiated and to the stateless person, as well as to entities or associations that pursue non-profit purposes and do not exercise economic activity.*" Mr. Dabetić was neither a legal resident of Italy nor did he hold a formal determination of his status as a stateless person at the time.

223. Moreover, Article 79, section 2, of D.P.R. No. 115/2002 stipulates that an applicant for legal aid must enclose to the standard request form "*a certification from the competent consular authority, which certifies the truth of what is affirmed therein*" with respect to the income gained abroad by him.[146] Mr. Dabetić was not in a position to obtain such a certification. That this was (and still is) one of the main obstacles for stateless persons to obtain legal aid has been recently confirmed by the UNHCR, according to which "*while the judicial statelessness*

[144] See, for example, *Moreira Barbosa v Portugal*, Decision of the ECtHR on Admissibility of 29 April 2004; *Ruža Jeličić v Bosnia and Herzegovina*, Decision of the ECtHR on Admissibility of 15 November 2005; *Karakó v Hungary*, Judgment of the ECtHR of 28 April 2009, para. 14; *Aquilina v Malta,* Judgment of the Grand Chamber of the ECtHR of 29 April 1999, para. 39.

[145] See Gvt. Observations, para. 3.10.

[146] This provision was declared constitutionally unlawful by the Constitutional Court only with judgment No. 157 of 10 June 2021.

determination procedure is open to undocumented persons, applicants may be denied state-funded legal aid because they cannot obtain a waiver of the requirement to submit certification of their financial situation by the consulate of their country of origin."[147]

224. In these circumstances, Mr. Dabetić could not benefit from legal aid to institute judicial proceedings. Since he could not afford the costs and expenses associated with legal action, the only viable option he had was to pursue the cost-free administrative procedure for statelessness status before the Ministry of Interior.

225. Second, the Government further contends that, despite losing his Slovenian permanent residence in 2002, the applicant waited until 2006 to file an administrative request for statelessness status and, again, after that request was denied in 2008, he waited until 2011 to institute legal proceedings.

226. The argument is manifestly ill-founded in law and also reflects an incomplete account of the relevant facts.

227. Mr. Dabetić did not apply for recognition of statelessness status until 2006 not because of his own inactivity but simply because he had been waiting for the Slovenian Ministry of Interior to decide on his application for Slovenian citizenship which he had filed on 29 November 2003. His request was eventually dismissed on 14 November 2005 and just a few months later, on 2 March 2006, he applied to the Italian Ministry of Interior for statelessness status.

228. In any case, special consideration must be given to the extreme vulnerability of the applicant, who lived on the streets for years as an undocumented stateless person. In this regard, the Court has acknowledged an applicant's vulnerability and feeling of powerlessness as an acceptable explanation for a delay in lodging a complaint at the domestic level.[148]

229. The effectiveness of a remedy shall be evaluated with due consideration for the applicant's circumstances. Italy's failure to regularize Mr. Dabetić's legal status had a profound impact on his life, leaving him in a situation of vulnerability and legal insecurity for a prolonged period of time. Placing requirements of lawful residence on statelessness status determination proceedings make it practically impossible for a person to be recognized as

[147] UNHCR Representation for Italy, The Holy See and San Marino, *Recommendations on the Relevant Aspects of the Protection of Stateless Persons in Italy*, November 2021, p. 3.
[148] *Mocanu and Others v. Romania,* Judgment of the Grand Chamber of the ECtHR of 17 September 2014, paras. 265 and 273-275.

stateless unless they have previously acquired lawful residence through other means. The remedy available is thus neither effective, sufficient nor accessible for Mr. Dabetić.

230. 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.[149] Having regard to the overall duration of the administrative proceedings brought by the applicants in *Kurić* 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).[150]

231. The fact that Mr. Dabetić's legal status was eventually regularized by the Rome Tribunal at the conclusion of the proceedings does not constitute an effective remedy under Article 13 ECHR. This 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.[151] Mr. Dabetić had already suffered a violation of his rights under Articles 8 and 13 ECHR as a result of the prolonged delay in redress.

232. In conclusion, Mr. Dabetić was left with no effective means to challenge the State's acts and omissions in relation to his arguable claim of a violation of his rights under Article 8 and Article 14 ECHR. Hence, the applicant respectfully requests the Court to find a breach of Article 13 ECHR.

[149] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, para. 302
[150] *Ibid.* para. 303.
[151] *Kurić and Others v Slovenia*, Judgment of the Grand Chamber of the ECtHR of 26 June 2012, para. 267. See also, *mutatis mutandis*, *Aristimuño Mendizabal v France*, Judgment of the ECtHR of 17 January 2006, paras. 67-69 and 70-72; *Mengesha Kimfe v Switzerland*, Judgment of the ECtHR of 29 July 2010, paras. 41-47 and 67-72; and *Agraw v Switzerland*, Judgment of the ECtHR of 29 July 2010, paras. 30-32 and 50-55.

F. CLAIMS IN RESPECT OF THE ADOPTION OF GENERAL MEASURES UNDER ARTICLE 46 ECHR AND CLAIMS FOR JUST SATISFACTION UNDER ARTICLE 41 ECHR

F.1 Preliminary remarks

233. In determining the legal consequences of a ECHR's violation, the Court usually relies on the standards of reparation laid down in the *Chorzów Factory* case, where the Permanent Court of International Justice stated that "**reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that [illegal] act had not been committed.**"[152]

234. The *Factory at Chorzów* standard is universally accepted as the prevailing reparation standard for breaches of international obligations under general international law. It is codified in **Article 31 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts** adopted in 2001 by the International Law Commission (ILC), which stipulates that the responsible State is under an obligation to make full reparation for any injury (including material and moral damages) caused by the internationally wrongful act.[153]

235. Full reparation for the injury caused by an internationally wrongful act may take the form of **restitution** or **compensation**, either **singly** or **in combination** (see Article 34 of the Draft Articles).

236. A State responsible for an internationally wrongful act is first of all under an obligation to make **restitution**, that is to re-establish the situation which existed before the wrongful act was committed, provided that restitution *a*) is not materially impossible and *b*) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation (see Article 35 of the Draft Articles).

237. Given the general rule of the irrelevance of internal law embodied in Article 32 of the Draft Articles, according to which the responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligation to provide reparation, **a legal obstacle to restitution** (for instance, the absence of an appropriate domestic legal framework) is not regarded as a valid justification for the failure to provide reparation in the form of restitution instead of compensation. As pointed out by the ILC, "**restitution**

[152] Permanent Court of International Justice, *Germany v Poland*, *Case concerning the factory at Chorzów (Claim for indemnity) (the Merits)*, 13 September 1928, para. 125.
[153] International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries*, in *Yearbook of the International Law Commission*, vol. II, Part Two, 2001, p. 91.

is not impossible merely on grounds of legal or practical difficulties, even though the responsible State may have to make special efforts to overcome these."[154]

238. The irrelevance of internal law also applies to the so called "juridical restitution", that is in such cases where restitution requires or involves the **modification of a legal situation** within the legal system of the responsible State, such as for instance the "**rescinding or reconsideration of […] judicial measure unlawfully adopted.**"[155]

239. If restitution is not possible or it is only partially possible, then the responsible State must pay **monetary compensation**, which "*shall cover any financially assessable damage including loss of profits insofar as it is established*" (Article 36 § 2 of the Draft Articles). As noted by the ILC, the heads of compensable damage and the principles to be applied in quantification "*will vary, depending upon the content of particular primary obligations, an evaluation of the respective behavior of the parties and, more generally, a concern to reach an equitable and acceptable outcome.*"[156]

240. These standards of reparation are also generally applied by the case law of this Court in order to determine the legal consequences of a breach of an ECHR's obligation by a contracting State. Namely, although **Article 41 ECHR** only provides that the Court shall, if necessary, afford "just satisfaction" to the injured party "*if the internal law of the High Contracting Party concerned allows only partial reparation to be made,*" the Court has interpreted the States' undertaking to abide by its final judgments laid down in **Article 46 § 1 ECHR** as implying an obligation for the responsible State to provide **adequate measures of restitution in kind** depending on the nature of the violation.

241. As pointed out in ***Scozzari and Giunta v. Italy***, a judgment in which the Court finds a breach *"imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction [i.e. pecuniary compensation for material and moral damages under Article 41 ECHR], but also to choose, subject to the supervision of the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects.*"[157]

242. Based on the above standards of reparation, the applicant claims the below outlined measures of restitution and compensation under Article 46 § 1 ECHR and Article 41 ECHR, respectively.

---

[154] *Ibid.* p. 98, para. 8.
[155] *Ibid.* p. 97, para. 5.
[156] *Ibid.* p. 100, para. 7.
[157] *Scozzari and Giunta v Italy,* Judgment of the Grand Chamber of the ECtHR of 13 July 2000, para. 249.

F.2 Request for general measures under Article 46 § 1 ECHR

243. The present case discloses a systemic problem calling for the implementation of measures of a general character.

244. The nature of the violations complained of suggests that for the proper execution of the present judgment the respondent State would be required to take a number of general measures aimed at profoundly reforming the legislation governing statelessness determination procedures. Therefore, the applicant calls upon the Court to order that the respondent Government adopt all the necessary legal reforms having due regard to the contents of the judgment delivered in the present case.

245. Specifically, the applicant calls on the Court to invite the Italian Government: ***i***) to adopt a comprehensive law aimed at improving the statelessness determination procedure, fostering rationalization, efficiency and transparency; ***ii***) to protect undocumented stateless persons from the risk of being subject to expulsion or unfair immigration detention; ***iii***) to grant access to information concerning statelessness determination procedures; and ***iv***) to automatically grant a specific residence permit pending the administrative and/or judicial procedure to undocumented stateless persons who are seeking to have their status recognized.

F.3 Claims of just satisfaction under Article 41 ECHR

246. Mr. Dabetić suffered significant damages, both pecuniary and non-pecuniary, as a result of the violations of his rights, such that declaratory relief alone would not provide sufficient relief in order to return him as near as possible to the situation existing before the breach.[158]

a) Award for non-pecuniary damages

247. The Court has constantly reiterated that Article 41 ECHR empowers it to afford the injured party the satisfaction which appears to be the most appropriate in relation to the circumstances of the case. Notably, if the Court finds a violation of a right guaranteed by the Convention, it may award a sum in respect of non-pecuniary damages.[159]

[158] *Kurić and Others v Slovenia (Just satisfaction)*, Judgment of the Grand Chamber of the ECtHR of 12 March 2014, para. 79.
[159] See, for example, *El Masri v the former Yugoslav Republic of Macedonia,* Judgment of the Grand Chamber of the ECtHR of 13 December 2012, para. 269.

248. Non-pecuniary damages may be related to distress and suffering,[160] trauma, anxiety and upset,[161] feelings of frustration and uncertainty flowing therefrom[162] and loss of real opportunities[163] resulting from the violation ascertained by the Court.

249. In general, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment or determine the amount of non-pecuniary damages on an equitable basis.[164]

250. Mr. Dabetić has suffered extensive emotional and moral damage as a result of the violations of his rights. He has suffered the uncertainty of statelessness and deep frustration in the years when he was unable to engage in gainful employment, receive social benefits, or participate in society on equal footing with his peers and without being stigmatized. Italy has not acknowledged that a violation of the applicant's rights has occurred. While Mr. Dabetić is no longer at risk of criminal sanctions due to his irregular status in Italy, no compensatory measures have been undertaken, including any attempt to facilitate his access to naturalization in light of the years of delay he suffered in his efforts to place himself on a pathway to citizenship.

251. In light of these severe hardships, Mr. Dabetić requests the Court, on an equitable basis, to award the applicant an amount of € 20,000 in respect of non-pecuniary damages.

b) Costs and expenses

252. Under Article 41 ECHR, an applicant is entitled to reimbursement of costs and expenses in so far as it is established that they were actually and necessarily incurred in order to *prevent* or *obtain redress* for the matter found to constitute a violation of the Convention and are also reasonable as to quantum.[165]

253. **In relation to the proceedings before the Court**, the applicant claims the reimbursement of an amount of € 10,000 in respect of costs and expenses, plus 4% CPA (compulsory contribution to the Lawyer pension fund), 15% for general expenses and 22% VAT, for an **overall gross amount of € 14,591.20**.

[160] *K.A. v Finland*, Judgment of the ECtHR of 14 January 2003, para. 151.
[161] *Jeunesse v the Netherlands*, Judgment of the Grand Chamber of the ECtHR of 3 October 2014, para. 132.
[162] *Oldham v the United Kingdom*, Judgment of the ECtHR of 26 September 2000, para. 42.
[163] *Sadak and Others v Turkey*, Judgment of the ECtHR of 17 July 2001, para. 77.
[164] *Agrokompleks v Ukraine (Just satisfaction)*, Judgment of the ECtHR of 25 July 2013, paras. 79-80.
[165] *Sahin v Germany,* Judgment of the Grand Chamber of the ECtHR of 8 July 2003, para. 105.

254. The applicant entered into a binding agreement with counsel that the fees should be determined as above.[166] Moreover, given the particular circumstances of the case and the applicant's lack of financial resources, counsel has agreed to be paid only in case of a successful outcome of the application without charging the applicant the fees and costs incurred during the proceedings.

255. This amount includes all costs and expenses related to the analysis of the case, the introduction of the application on the merits, the filing of additional pleadings, the examination of the respondent's pleadings and documents, the exchange of observations and replies, the statement of claims of just satisfaction, the analysis of the Court's ruling and its consequences, the correspondence with the Court, the meetings and correspondence with the applicant, the general costs of translations, photocopies and telephone/telefax calls.

256. The applicant has thus provided the Court with all the necessary information to establish the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred (or will be actually incurred), but also to whether they are reasonable.[167]

c) Default interests

257. According to the settled case law of the Court,[168] the applicant asks that simple interest shall be payable until settlement on the total amount awarded by the Court in respect of just satisfaction at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

G. CONCLUSIONS

In light of the above, we respectfully request the Court:

A) to dismiss the Italian Government's preliminary objections and to declare the application admissible;

B) to find that there has been a violation of Articles 6, 8, 13 and 14 ECHR, read in conjunction with Article 8 ECHR;

[166] Exhibit 31: Agreement on Legal Fees.
[167] *Iatridis v Greece* (Article 41), Judgment of the Grand Chamber of the ECtHR of 19 October 2000, para. 55.
[168] See, for instance, *Giorgioni v Italy*, Judgment of the ECtHR of 15 September 2016, para. 91; *D.A. and Others v Italy*, Judgment of the ECtHR of 14 January 2016, para. 219.

C) under Article 46 § 1 ECHR, to hold that the respondent State is to take all general measures necessary to ensure that individuals seeking statelessness status are afforded all necessary protection;

D) under Article 41 ECHR, to hold that the respondent Government is to pay the applicant the following amounts:

- in respect of non-pecuniary damages, € 20,000, plus any tax that may be chargeable to the applicant;
- in respect of costs and expenses, € 14,591.20, for the legal fees incurred in the proceedings before this Court to be paid directly into the bank account of the legal representatives.

Rome-New York, 14 March 2022

Exhibit 26: judgment No. 2242 issued by the Tribunal of Salerno in 2013 on 7 September 2013

Exhibit 27: judgment No. 20182 issued by the Tribunal of Rome on 21 October 2019

Exhibit 28: UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012

Exhibit 29: UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, HCR/GS/12/03, 17 July 2012

Exhibit 30: statement by Mr. Velimir Dabetić dated 9 March 2022

Exhibit 31: Agreement on Legal Fees dated 9 August 2021