

DECISION ON ADMISSIBILITY

30 March 2009

Centre on Housing Rights and Evictions (COHRE)
v. Croatia

Complaint No. 52/2008

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 235th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI
Colm O'CONNOR
Jean-Michel BELORGEY
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmila HARUTYUNYAN
Mssrs Rüchan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA QUESADA
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 26 August 2008, registered on 8 September 2008 as number 52/2008, lodged by the Centre on Housing Rights and Evictions (hereafter referred to as "COHRE") v. Croatia and signed by Mr Claude Cahn, Head of Advocacy Unit, requesting the Committee to find that Croatia is in breach of its

obligation to satisfactorily apply Article 16 of the 1961 European Social Charter ("the Charter"), in the light of the non-discrimination clause in the Preamble to the Charter.

Having regard to the documents appended to the complaint;

Having regard to the Charter and, in particular, to Article 16 and the Preamble which read as follows:

Article 16 - The right of the family to social, legal and economic protection

Part I: "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development"

Part II: "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means".

Preamble (Extract)

.....

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

.....

Having regard to the observations of the Government of Croatia ("the Government") on admissibility of 28 October 2008;

Having regard to the response of COHRE to the observations of the Government, of 8 January 2009;

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session and on 20 February 2009 at its 234th session ("the Rules");

Having deliberated on 30 March 2009;

Delivers the following decision, adopted on the above date:

1. The COHRE alleges that Croatia violates Article 16 of the Charter (the right of the family to social, legal and economic protection), read alone or in the light of the non-discrimination clause of the Preamble to the Charter, on the grounds that the "ethnic Serb" population displaced during the conflict in the former Yugoslavia has been subjected to disproportionate discriminatory treatment regarding their housing needs, as the families, belonging to this category of persons, have not been allowed to reoccupy their former dwellings inhabited prior to the conflict, nor have they been

granted financial compensation for the loss of their homes. The ongoing denial of adequate restitution or compensation is a violation of their housing and human rights.

2. The Government, in its observations, has raised three objections to the admissibility of the complaint.

3. Firstly, the Government denies the competence of the person who signed the complaint to represent the applicant organization.

4. Secondly, the Government submits that the complaint should be declared inadmissible *ratione materiae*. According to the Government, COHRE failed to specify the subject matter of the complaint and its relation to Article 16 of the Charter. In particular, it is impossible to identify the victims of the alleged violations and to assess whether they concern the category of persons Article 16 of the Charter refers to. The complaint also fails to demonstrate the “family prospective” of the victims as well as to establish “any connection between the allegations and rights of families to an adequate supply of housing.” It therefore falls outside the scope of application of Article 16 of the Charter, which – unlike Article 31 of the Revised European Social Charter – “guarantees a right to decent housing only from the family prospective.” Moreover, in the Government’s view, COHRE failed to establish “any connection between their allegations and any act of destruction, forced evacuation or similar act which occurred after the ratification of the Charter which should be remedied”. Finally, the Government deems that the Preamble of the Charter may not be invoked as a separate legal ground for the complaint.

5. Thirdly, the Government argues that the cancellation of occupancy rights or specially protected rights that existed in the former Socialist Republic of Croatia and are at the origin of the complaint, took place prior to the entry into force of the Additional Protocol with respect to Croatia. It is inconceivable to interpret Article 16 so as to provide the “right to a remedy of instantaneous acts which took place before the Additional Protocol of the Charter entered into force”. The Government further contends that legislation and programmes enacted and implemented after 1 March 2003, that regulate the right to housing of former specially protected tenancy holders, do not *per se* bring within the Committee’s competence a complaint “the source or real cause of which is to be found in the period prior the ratification”. Therefore the complaint is also inadmissible *ratione temporis*.

6. In its response COHRE contests the Government’s three objections.

7. Firstly, regarding the competence of the person who signed the complaint, COHRE contends that Mr Claude Cahn is entitled to represent the organization in matters concerning collective complaints under the Charter as part of his remit as Head of Advocacy Unit. Moreover, a letter dated 8 January 2009, attached to the complainant’s response to the Government’s observations on admissibility and signed by the Executive Director of COHRE, affirms that Mr Cahn was delegated to bring the complaint before the Committee and represent the organisation in this matter during 2008.

8. Secondly, COHRE states that the complaint is sufficiently specific, as it refers to ethnic Serbian former occupancy rights holders in Croatia. Moreover, questions of scope pertain to the merits, not to admissibility. The complaint, however, makes clear reference to problems concerning the supply of adequate housing to ethnic Serbs. As to the Government's contention that the complaint does not demonstrate the family perspective of the victims, COHRE states that the definition of family under Article 16 should be construed broadly and that the complaint makes numerous references to families. Moreover, while the specific identification of all victims of a violation is not required to demonstrate the family perspective under Article 16, the sheer number of persons and families at issue attests to the collective nature of the complaint. COHRE further submits that Articles 16 and 31 partially overlap and are identical in so far as the notions of adequate housing and forced eviction are concerned. It restates, however, the principle that questions concerning the material scope of application of the invoked provisions pertain to the merits and therefore should not be dealt with at the admissibility stage. Finally, COHRE makes it clear that the Preamble is not invoked as a separate legal ground but invites, instead, the Committee to read Article 16 in the light of the Preamble.

9. Thirdly, as regards the Government's exception of inadmissibility *ratione temporis* of the complaint, COHRE contends that Croatia's ongoing acts and omissions result in continuing violations of the Charter and therefore imply a proper remedy under the latter.

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee's Rules of Procedure and the Government's first objection

10. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Croatia on 26 February 2003 and entered into force for this state on 1 April 2003, the complaint has been submitted in writing and concerns Article 16 in the light of the Preamble to the Charter, a provision accepted by Croatia when it ratified this treaty on 26 February 2003 and to which it is bound since its entry into force on 28 March 2003.

11. The Committee finds that the identification of the alleged victims and of the situations in respect of which the complainant organisation contends that the Government has not ensured the satisfactory application of Article 16 of the Charter, are sufficiently clear. The complaint concerns ethnic Serbs in Croatia who lost their occupancy rights. The grounds for the complaint therefore are duly indicated.

12. The Committee further notes that, in accordance with Articles 1 b) and 3 of the Protocol, COHRE is an international non-governmental organisation with consultative status with the Council of Europe. It is included in the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee.

13. COHRE is a human rights organisation campaigning for the protection of housing rights and the prevention of forced evictions. Therefore, the Committee considers that the complaint was submitted in a field in which COHRE has particular competence within the meaning of Article 3 of the Protocol.

14. The complaint is signed by Mr Claude Cahn, Head of Advocacy Unit. The Committee notes that Mr Booker, Executive Director of COHRE, confirmed in a letter of 8 January 2009 that Mr Cahn was delegated to represent the organization in respect of the complaint in 2008. The Committee considers that Mr Cahn was duly authorized to represent COHRE when submitting the complaint. Therefore the formal requirement of Rule 23 of the Rules of Procedure has been met. Mr Booker has also informed the Committee that Mr Bret Thiele is delegated to represent the organization in this matter as of 2009.

As to the Government's second and third objections

15. In relation to the Government's objection concerning admissibility *ratione materiae* of the complaint, the Committee restates that COHRE has sufficiently indicated the subject matter as well as the alleged victims of the complaint in relation to Article 16 of the Charter (see *supra*, para. 11).

16. The Committee also recalls that whereas Article 16 guarantees a right to decent housing from the family perspective only and focuses on the right of families to an adequate supply of housing as well as ensuring that existing housing be of an adequate standard and include essential services (*European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, Decision on admissibility of 10 October 2005, § 9), the complaint affirms that among the victims of the impugned practices are also families, which leads the Committee to conclude that this complaint falls within the material scope of application of Article 16 of the Charter.

17. Moreover, as the Government itself acknowledges (Observations of the Government of the Republic of Croatia on Admissibility, § 10), COHRE complains under Article 16 of the Charter "alone and taken in conjunction with the Preamble". Thus there is no question of the complainant organisation invoking the Preamble of the Charter as a separate legal ground for the complaint only. Without prejudice to the Committee's assessment of the merits, therefore, this point does not require further consideration at the present stage.

18. As regards the Government's objection that the complaint is inadmissible *ratione temporis*, the Committee notes that even if several allegations of violations in the complaint (namely, the cancellation of occupancy rights or specially protected rights of ethnic Serbs) have their origin in decisions taken before – or situations that existed prior to – 1 April 2003, the date on which the Protocol entered into force for Croatia, at the heart of the complaint is an alleged violation which has had continuing and persistent effects even at the time it was lodged. The Committee concludes that it is irrelevant to speculate on the date when the violation first occurred and the date of the entry into force of the Protocol.

19. For these reasons, the Committee, on the basis of the report presented by Mr Jean-Michel BELORGEY and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the defending state of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 29 May 2009.

Invites the COHRE to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 29 May 2009 should they so wish.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to make observations by 29 May 2009.

Jean-Michel BELORGEY
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary