

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



28 November 2008

**Case document No. 2**

**Centre on Housing Rights and Evictions (COHRE) v. Croatia**  
Complaint n° 52/2008

**OBSERVATIONS OF THE GOVERNMENT ON  
ADMISSIBILITY**

**registered at the Secretariat on 31 October 2008**



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## **INTRODUCTION**

1. The Government of the Republic of Croatia received the information that the Centre on Housing Rights and Evictions (COHRE) has submitted a complaint against Croatia under Article 5 of the Additional Protocol to the European Social Charter providing for a system of collective complaints. The complaint was registered under the reference number 52/2008.
2. The Executive Secretary of the European Committee of Social Rights (hereinafter: the Committee) informed the Government of the Republic of Croatia that the Committee wished to receive written observations from Croatia on the admissibility of the complaint.
3. Accordingly, the Government of the Republic of Croatia is presenting its Observations below. These Observations are limited to the questions on the admissibility.

## **I. ADMISSIBILITY OF THE COMPLAINT**

### ***1. Standing of the Centre on Housing Rights and Evictions to submit complaint***

4. Under Article 1 b of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (hereinafter: the Additional Protocol) the Contracting Parties recognised the right of international non-governmental organisations, other than international organisations of employers and trade unions, which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee to submit complaints to the Committee.
5. The Government does not contest that the applicant organisation is on the List of International Non-Governmental Organisations (INGOs) entitled to submit collective complaints.
6. Under Article 3 of the Additional Protocol the international non-governmental organisations may submit complaints only in respect of those matters regarding which they have been recognised as having particular competence. The Government does not

contest that the applicant organisation has general competence in the field of housing rights.

7. However, the Government contests competence of the person who signed the complaint in this case.
8. Rule 23 Rules of Procedure of the Committee prescribes that complaints shall be signed by person(s) with the competence to represent the applicant organisation.<sup>1</sup> Present complaint has been signed by Head of Advocacy Unit. The Government would like to point out that his competence for taking such actions is not clearly established. According to the applicant organisation's web page and information provided therein, it is governed by the five members Board of Directors and by the Executive Director.
9. Therefore, given the lack of clarity concerning the competence to represent the applicant organisation the Government deems that this complaint should be declared inadmissible.

## ***2. Ratione materiae of the subject matter of the complaint***

10. The applicant organisation complains under Article 16 of the European Social Charter (hereinafter: the Charter) alone and taken in conjunction with the Preamble of the Charter.
11. The Article 16 of the Charter provides in general term for obligation of the Contracting Parties to promote the economic, legal, and social protection of family life by such means as, *inter alia*, provision of family housing. The relevant part of the Preamble of the Charter indicates 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.
12. The Government emphasises (i) that the applicant organisation failed to specify the subject matter of the complaint and its relation to the Article 16 of the Charter; (ii) that the subject matter is in any case outside of the scope of Article 16 of the Charter.

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<sup>1</sup> See also Decision on Admissibility, complaint No. 2/1999, European Federation of Employees in Public Services v. France, § 7

13. The applicant organisation made in §§ 11.1 to 11.6 a number of incoherent and inconsistent allegations. It is impossible to deduce from these allegations what would be the exact subject matter of the complaint and who are the alleged victims of the complaint.
14. The applicant organisation alleges that "at issue in this Collective Complaint is the ongoing failure to resolve and remedy in a manner consistent with the rule of law and Croatia's international human rights obligations, the arbitrary frustration of the right to adequate housing and related rights for ethnic Serbs and other minorities."
15. The applicant organisation thus implies that the Committee has a general competence to rule upon the Croatia's respect of international human rights obligations. Such understanding is contrary to the general principles of international law. The Government reminds that the competence of the Committee is limited solely to the examination of the complaints alleging unsatisfactory application of the Charter. It is not for the Committee to rule upon general question of the application of international human rights obligations.
16. As regards the alleged victims of the violation, the applicant organisation does not specify whether the victims are all members of the Serbian minority and other (unspecified) minorities currently living in Croatia (11.1), or displaced members of the Serbian minority currently residing outside Croatia (11.2), or specific category of refugees belonging to the Serbian minority who lost heir occupancy rights (11.3) or some other group of persons. It is, thus, impossible to identify the alleged victims and to assess whether they belong to the category of persons to whom the Article 16 of the Charter refers to.
17. The Government notes that following principles are established in the case law of the Committee as regards the scope of the Article 16 in the field of housing<sup>2</sup>. Firstly, Article 16 guarantees a right to decent housing only from the family prospective. By failing to specify the alleged victims of the violation, the applicant organization obviously failed to demonstrate the family prospective of victims.

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<sup>2</sup> See Digest of the case law of the European Committee of Social Rights, page 115

18. On the other hand, Article 31 of the Revised European Social Charter prescribes the right to housing as a general principle, with a view of ensuring an effective exercise of housing rights without specifying the profile of victims.
19. The applicant organisation in its complaint states as follows: “At the core of this complaint is the disproportionate discriminatory impact that continuing housing rights violations have on Croatia’s ethnic Serb population...” (II.6). From the above stated it is clear that the applicant organisation refers to the alleged violation of housing rights of entire part of Croatian (minority) population, which is broader than the family prospective from Article 16. These alleged violations clearly fall under the scope of Article 31 of the Revised European Social Charter, which is not signed or ratified by the Republic of Croatia.
20. Secondly, the Committee held that the substance of Article 16 in the field of housing focuses on the right of families to an adequate supply of housing, on the obligation to take into account their needs in framing and implementing housing policies and ensuring that existing housing be of an adequate standard and includes essential services. Further, the destruction of housing or forced evacuation of villages is contrary to Article 16. In that situation, States must provide effective remedies to the victims and must take measures in order to rehouse families in decent accommodation or to provide financial assistance.<sup>3</sup>
21. The applicant organization did not establish any connection between their allegations and rights of families to an adequate supply of housing.
22. Also, the applicant organization 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 that should be remedied.
23. Finally, the Government deems that the Preamble of the Charter may not be invoked as a separate legal ground for the complaint.

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<sup>3</sup> Ibid.

24. Therefore, the Government concludes that the present complaint is inadmissible *ratione materiae*. Accordingly, the Government invites the Committee to declare the complaint inadmissible.

25. Notwithstanding the preliminary objection as to the inadmissibility *ratione materiae* of the present complaint, the Government points out that the international jurisdiction may only examine specific legal and factual questions. Therefore, if the Committee decides not to declare the present complaint inadmissible, the proper examination of the merits would require specification of the relevant facts and legal issues that should be addressed by the parties in the next stage of the proceedings.

### **3. Ratione temporis admissibility of the complaint**

26. In accordance with the general rules of international law, the provisions of the Charter do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Charter with respect to that Party<sup>4</sup>.

27. "The aim of the *ratione temporis* principle in international law is not only to avoid the revival of old disputes between States, but also to preclude the submission to international courts of facts and situations dating from a period when the State whose action is impugned was not in a position to foresee the legal proceedings to which these facts and situations might give rise."<sup>5</sup>

28. The Republic of Croatia ratified on 8 March 1999 the Additional Protocol to the Charter, and it entered into the force in respect to Croatia on 1 March 2003.<sup>6</sup> The Republic of Croatia states that it is not responsible for the complaints which relate to the period before 1 March 2003. Accordingly, the Government of the Republic of Croatia deems that the present complaint should be considered *ratione temporis*, i.e. the application only in relation to the acts, decisions and events, which occurred after 1 March 2003.

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<sup>4</sup> See Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969

<sup>5</sup> Nina Vajić, Ratione Temporis Jurisdiction of the (New) EurCourtHR, Liber Amicorum Luzius Wildhaber, Separatum, N.P.Engel, 2007., p. 486

<sup>6</sup> See Official Gazette of the Republic of Croatia "Narodne novine-Međunarodni ugovori" No. 8/03, Announcement on the entry into the force of the European Social Charter and of the Additional Protocol to the European Social Charter



29. The applicant organization grounds its complaint on the so-called "occupancy rights" or "specially protected tenancy rights" which existed in former Socialist Republic of Croatia, which was part of the former SFRY, and which ceased to exist in the Republic of Croatia in 1996<sup>7</sup>. The applicant organization asserts that the "Croatian courts permitted massive cancellation of occupancy rights to take place, mainly in absentia without notifying the occupancy right holders, and shortly thereafter, another round of cancellation took place *ex lege* with entry into force of legislation cancelling the existence and concept of occupancy right."(11.2)
30. The alleged "massive cancellation of occupancy rights" took place, as the applicant organization claims, in the 1991. The applicant organization claims that in 1995 the Republic of Croatia enacted legislation which "nullified the concept of occupancy rights in Croatia and created another round of cancellations"(III.A.3.,4.). Without commenting the correctness of these allegations, the Government points out that these facts obviously relate to the instantaneous acts which occurred before the Additional Protocol entered into the force in respect to Croatia. Therefore the acts, decisions and events invoked by the applicant organization are falling outside the Committee's competence *ratione temporis*.
31. Furthermore, it would be inconceivable to interpret Article 16 of the Charter in a way that it gives right to a remedy of instantaneous acts which took place before the Additional Protocol of the Charter entered into the force. Such interpretation would be contrary to the general rule of non-retroactivity of treaties.
32. As regards legislation and programmes, enacted and implemented after 1 March 2003, which regulate rights of the former "specially protected tenancy" holders to a housing, the Government points out that a case law of the international jurisdictions such as the Permanent Court of International Justice, the International Court of Justice and the European Court of Human Rights established clear principles as to the application of the *ratione temporis* rule in these situations.

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<sup>7</sup> The Flats Lease Act (*Zakon o najmu stanova*, Official Gazette no. 91/1996 of 28 October 1996), which entered into force on 5 November 1996, abolished the specially protected tenancy as such (Article 30 paragraph 1), see in this respect also the European Court of Human Rights Decision No. 43389/02, Gaćeša v. Croatia

33. The Permanent Court of International Justice held in the case *Phosphates in Morocco*: "The situations and the facts which form the subject of the limitation *ratione temporis* have to be considered from the point of view both of their date in relation to the date of ratification and of their connection with the birth of the dispute. Situations or facts subsequent to the ratification could serve to found the Court's compulsory jurisdiction only if it was with regard to them that the dispute arose."<sup>8</sup>
34. The International Court of Justice concluded in the case *Certain Property (Liechtenstein v. Germany)*<sup>9</sup> that, "although these proceedings were instituted by Liechtenstein as a result of decisions by German courts regarding a painting (...), these events have their source in specific measures taken by Czechoslovakia in 1945, which led to the confiscation of property owned by some Liechtenstein nationals (...), as well as in the special régime created by the Settlement Convention. The decisions of the German courts in the 1990s dismissing the claim filed by Prince Hans-Adam II of Liechtenstein for the return of the painting to him were taken on the basis of Article 3, Chapter Six, of the Settlement Convention. While these decisions triggered the dispute between Liechtenstein and Germany, the source or real cause of the dispute is to be found in the Settlement Convention and the Beneš Decrees. In light of the provisions of Article 27 (a) of the European Convention for the Peaceful Settlement of Disputes, Germany's preliminary objection must therefore be upheld."
35. The European Court of Human Rights held in *Blečić v. Croatia* case that "the Court's temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction".<sup>10</sup>
36. As it can be seen from the principles established by the relevant international jurisdictions, *ratione temporis* rule prevents the examination of the complaint when the source or real cause of the complaint is to be found in the period prior the ratification. In this case, even if the legislation and programs for the housing of the former holders of the "specially protected tenancy rights" were enacted after 1 March 2003, the source

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<sup>8</sup> P.C.I.J., Series A/B, No. 74, page 23.

<sup>9</sup> International Court of Justice, *Certain Property (Liechtenstein v. Germany)*, Judgment of 10 February 2005, § 52

<sup>10</sup> European Court of Human Rights, *Blečić v. Croatia*, GC No. 59532/00 of 8 March 2006, § 77

of the complaint relates to the facts prior to the ratification of the Additional Protocol. Therefore, their examination falls outside of the Committee's competence.

37. Therefore, the Government deems that the present complaint is inadmissible *ratione temporis*.

## **CONCLUSION**

38. In the light of the above mentioned arguments the Government of the Republic of Croatia proposes to the Committee do declare the present complaint inadmissible.