

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



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

16 January 2009

Case document No. 3

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

**RESPONSE TO OBSERVATIONS OF THE GOVERNMENT
OF CROATIA ON ADMISSIBILITY**

registered at the Secretariat on 9 January 2009

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INTRODUCTION

1. The Centre on Housing Rights and Evictions (COHRE) submits this response to the observations of the the Republic of Croatia on the Collective Complaint (the Complaint) brought by COHRE against the Republic of Croatia under Article 5 of the Additional Protocol to the European Social Charter (the Charter), now listed as Collective Complaint reference number 52/2008.
2. The responses below are limited to questions concerning the admissibility of the Complaint.

I. THE COMPLAINT IS ADMISSIBLE

A. COHRE has standing to submit the Complaint; Claude Cahn is entitled to represent the organization in matters concerning Collective Complaints under the European Social Charter, as part of his remit as Head of Advocacy Unit. He has also been specifically delegated in regard to this particular Collective Complaint.

3. The Republic of Croatia concedes that COHRE has general competence regarding housing rights (6). However, the Republic of Croatia contests the competence of Claude Cahn, as the individual who signed the Complaint (8).
4. “[P]ersons with competence to represent the complainant organization” must sign Complaints under Rule 23 of Procedure of the European Committee of Social Rights (the Committee). The Committee has found that this rule is satisfied when an organization demonstrates that an individual is properly empowered by submitting proof of empowerment.¹
5. COHRE submits the attached letter, attachment A, signed by the Executive Director, noting Mr. Cahn’s authority to bring the Complaint before the Committee in 2008, as a competent staff person in COHRE for undertaking legal advocacy petitions of this kind.
6. This letter removes the alleged lack of clarity complained of by the Republic of Croatia. COHRE urges the Committee to find the Complaint admissible.

¹ See *European Roma Rights Center v. Bulgaria*. European Committee of Social Rights. Complaint No. 31/2005. Decision on the admissibility. Strasbourg, 10 October 2005; as cited in *Collective Complaints Procedure Summaries of Decisions on Admissibility 1998 – 2008*, p. 65.

B. The Committee is competent *ratione materiae* to consider the Complaint because: the Complaint is sufficiently specific; questions of scope pertain to the merits, not to admissibility; housing rights under Article 16 are construed broadly and the Complaint draws a link between ethnic Serbs and concerns of supply of adequate housing; the Complaint is within the notion of family as defined under Charter law; the Complaint is – appropriately, due to the nature of the procedure at issue -- collective; and notions of housing rights and forced eviction are in many aspects identical under Articles 16 and 31.

i. The Complaint is admissible because it specifies that it concerns Croatia's ongoing violation of Article 16 requirements where ethnic Serbian former occupancy rights holders are concerned.

7. The Republic of Croatia challenges the Complaint by arguing that “the exact subject matter of the complaint” is unclear (13) and insisting that the Complaint does not specify who the victims in the Complaint are (16).
8. Citing only generally to paragraphs II.1 to II.6 of the Complaint, and without providing specific examples, the Republic of Croatia argues that the Complaint is inconsistent (13).
9. Paragraph II.6 states clearly that “in particular where the ethnic Serbs are concerned, as comprising the majority of affected internally displaced persons or returning refugees, the Charter’s Article 16 requirements are not upheld at present in Croatia.” The paragraph goes on to state that these issues arise from Croatia’s ongoing violation of former occupancy holder’s housing rights. The subject of the Complaint could hardly be clearer.
10. Paragraph II.1 provides a general introduction to the section while paragraph II.2 provides background on the issues surrounding the Complaint. The other paragraphs in section II provide elaborations on the larger issue of Croatia’s ongoing violation of Article 16 requirements.
11. The Complaint concerns ethnic Serbs in Croatia who lost their occupancy rights and suffer continuing harm at the hands of the Republic of Croatia. This is explicitly stated in the Complaint in paragraph II.6 and repeated again in paragraph IV.B.11.
12. The Complaint is sufficiently specific because it identifies the harm as ongoing violations of Article 16 requirements against former Serbian occupancy holders in Croatia. The Committee should disregard the Republic of Croatia’s objections here and find the Complaint admissible.

ii. The Complaint is admissible because questions of scope pertain to the merits of the Complaint, not to its admissibility.

13. The Republic of Croatia argues that Article 16 concerns housing only in relation to families and the supply of adequate housing and forced evictions, and that the Complaint did not specify harm to families, a lack of supply and forced evictions, so the Complaint, it contends, is inadmissible (17, 19, 21, 22).

14. The Republic of Croatia focuses much of its argument here on the scope of Article 16 (17, 18, 19, 21, 22). In *Quaker Council for European Affairs v. Greece*², however, the Committee dismissed a similar argument, noting that questions of scope relate to the merits of the Complaint, not to admissibility. Also, in the case of *European Roma Rights Centre v. Bulgaria*,³ the Committee decided an analogous question -- the degree of overlap between Article 16 and Article 31 -- in a decision on the merits, not in a decision on admissibility. The Republic of Croatia's argument here speaks more to the merits than to admissibility, because debating the scope of Article 16 goes to the heart of the issue, and such a decision would be better informed once all of the issues involved herein have been fully articulated.

15. COHRE urges the Committee to follow its own precedent and decide this question of scope in a decision on the merits, not at the admissibility stage.

iii. The Complaint is admissible because the Republic of Croatia misunderstands or otherwise at least partially mischaracterizes housing rights as they have been established in the context of Article 16, and, regardless, the Complaint makes clear reference to problems concerning the supply of adequate housing.

16. The Republic of Croatia argues that the Complaint should be found inadmissible because it does not establish an adequate connection to issues surrounding the adequate supply of housing or forced evictions (21, 22).

17. As noted in section (ii) above, questions of scope, such as this one, pertain to the merits, not to admissibility. Without waiving these objections, COHRE notes that the Republic of Croatia does not appear to understand the requirements of Article 16 as concerns family housing, or at minimum has at least partially mischaracterized them.

18. The Republic of Croatia recites the requirements of Article 16 housing rights for families in paragraph 20 of their observations, noting that
[T]he 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 accommodations or to provide financial assistance.

However, in its assessment beginning at paragraph 21, the Republic of Croatia departs from these criteria.

19. In the first place, the Republic of Croatia attempts to frame Article 16 as requiring the existence of both (i) an inadequate supply of housing and (ii) forced evictions before a Charter remedy could be made available (21, 22).

20. By contrast, in *European Roma Rights Center v. Greece*, the Committee stated that:

² European Committee of Social Rights. Complaint No. 8/2000. Decision on the admissibility. Strasbourg, 10 March 2000; as cited in *Collective Complaints Procedure Summaries of Decisions on Admissibility 1998 – 2008*, p. 19.

³ European Committee of Social Rights, Complaint No. 31/2005. Decision on the merits. Strasbourg, 18 October 2006.

in order satisfy Article 16 states must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). The Committee has stated that adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.⁴

The Committee presents the provision of a sufficient supply of adequate housing and preventing unlawful eviction as affirmative duties flowing to States under the Charter. To allow for remedy only where there is both an inadequate supply of adequate housing and there are forced evictions, would be to diminish the protections available under the Charter, and thereby to enshrine a cramped or anemic understanding of the Charter right to housing in its Article 16 aspects. Under such a flawed standard, States would apparently be free *either* to engage in unlawful evictions *or* to provide an inadequate supply of adequate housing, since, under the Republic of Croatia's apparent interpretation in the comments to the admissibility, only when both wrongs are present could there be redress. The Committee should take a dim view of such an effort to arbitrarily narrow the protections available under the European Social Charter in the field of housing rights.

21. The Republic of Croatia's attempt to narrow the protections provided under Article 16 should therefore be rejected because it is inconsistent with Committee and Charter jurisprudence in this area.
22. Without waiving the foregoing objections, COHRE notes that the Complaint does in fact detail concerns surrounding the supply of adequate housing. The Complaint notes in paragraph II.6 that Croatia's

Charter Article 16 and related commitments are not respected as a result of the Croatian government's continuing violation of former occupancy rights holder's housing rights through the adoption and/or toleration of a number of policies and practices... and other discrimination constituting the foundation for the successful realization of fundamental human rights, including but not limited to the right of adequate housing.

Paragraph III.A.1 also notes that the ethnic Serbs in Croatia face ongoing challenges including "limited access to housing due to on-going discrimination" (see also III.B.2). The Complaint further emphasizes this point by noting that the collective centres, where internally displaced refugees have been provided shelter are inadequate, where "whole families live in single rooms, sharing kitchens and bathrooms often in states of disrepair... (III.B.5).

23. The Complaint makes numerous references to ethnic Serbs and their lack of a sufficient supply of adequate housing, drawing a tight nexus between the two.
24. For all of the reasons set out above, the Republic of Croatia's objections should be dismissed and the Complaint should be deemed admissible.

⁴ Ibid at ¶ 24.

iv. The Complaint is admissible because (a) under Article 16 the definition of family is construed broadly and (b) the Complaint makes numerous references to families.

25. The Republic of Croatia insists that the Complaint does not “demonstrate the family perspective of the victims” properly before the Committee under Article 16 (17). COHRE welcomes the Republic of Croatia’s initiative to further discuss the definition of family under the Charter. However, the Complaint is within the scope of Article 16 because of the broad construction of family.

26. The Committee has held that, for Charter purposes, “family” is not an autonomous concept:

Since "family" can mean different things in different places and at different times, the Charter refers to the definitions used in national law. No distinction is made between the various models of family and, in keeping with the case law of the European Court of Human Rights in relation to Article 8 of the Convention; the scope of Article 16 is not restricted to family based on marriage. Consequently, every constellation defined as “family” by national law falls under the protection of Article 16.⁵

27. The definition of family has also been construed broadly by the European Court of Human Rights. Article 16 of the European Social Charter, like Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), includes protections of “family life”. “[F]amily life’ in Article 8 (art. 8) is not confined solely to families based on marriage and may encompass other de facto relationships...”⁶

28. The Committee has on a number of occasions been guided by aspects of decisions of the European Court of Human Rights, where the Court has interpreted language, concepts or other normative material in the Convention which is similar to that in the Charter.⁷ COHRE encourages the Committee to follow its own precedent and apply, as a minimum core basis, the Court’s evolving understanding of Article 8 family life to the definition of family under Article 16, although not necessarily to confine its definition to the Article 8 understanding of family.

29. The Complaint falls properly within the scope of Article 16. The Complaint avers in paragraph II.4 that the issues arising out of the Complaint “give rise to violations by the Croatian state of the right of the family to social, legal and economic protection as stipulated by Article 16 of the Charter...” In paragraph II.6, the Complaint notes that “Croatia’s Charter Article 16 and related commitments are not respected as a result of the Republic of Croatia’s continuing violation of former occupancy rights holder’s housing rights through the adoption and/or toleration of a number of policies and practices that strike at the fundamental basis of family existence...”

⁵ Digest of the case law of the European Committee of Social Rights, page 115.

⁶ *X, Y, and Z v. the United Kingdom*, European Court of Human Rights, Case No. 75/1995/581/667, ¶ 36. Strasbourg, 22 April 1997.

⁷ See e.g. *International Association Autism – Europe v. France*, European Committee of Social Rights, Complaint No. 13/2002. Decision on the merits. Strasbourg, 4 November 2003 (giving weight to a decision of the European Court of Human Rights in interpreting article E of the Charter); see also *Mental Disability Advocacy Centre v. Bulgaria*, European Committee of Social Rights, Complaint No. 41/2007. Decision on the merits. Strasbourg, 3 June 2008; *International Movement ATD Fourth World v. France*, European Committee of Social Rights, Complaint No. 33/2006. Decision on the merits. Strasbourg, 4 February 2008.

30. The nature of Croatia's acts and omissions places the matters at issue in the Complaint squarely within the scope of Article 16. As the Complaint notes in paragraph III.A.4, "[s]ome thousands of families, primarily of the Serb minority, had their specially protected tenancies terminated in this manner within the three-month period following 'Operation Storm'". The Complaint emphasizes in paragraph III.A.5 that the stripping of property rights by Croatia against ethnic Serbs was applied "to whole families, rather than solely to the persons concerned." Also noted is that the ongoing situation for ethnic Serb families is problematic – "whole families live in single rooms, sharing kitchens and bathrooms often in states of disrepair with irregular supplies of gas, electricity and water" (III.B.5).
31. Because the definition of family should be considered broadly and because the Complaint makes numerous references to families, the Republic of Croatia's objections here should be dismissed and the Complaint should be ruled admissible.

v. The Complaint is admissible because it is brought on behalf of many individuals and their families. Additionally, Collective Complaints are, by definition, collective.

32. The Republic of Croatia argues that because the complaint does not "specify the alleged victims of the violation" the complaint is inadmissible because it does not demonstrate the family perspective of victims (17).
33. This argument is unusual because the nature of the Charter's complaint procedure makes clear that it is collective. The rules of Procedure of the Committee make no mention of any requirement that specific individuals be mentioned. Additionally, the Committee has never required specific identification of all victims of a violation in order to demonstrate the family perspective under Article 16.
34. The Collective Complaint procedure is based upon the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, which was ratified by Croatia on 26 February 2003.⁸ The Explanatory Report to the Additional Protocol states that "because of their 'collective' nature, complaints may only raise questions concerning non-compliance of a state's law or practice with one of the provisions of the Charter. Individual situations may not be submitted."⁹
35. While the present Complaint makes clear that it is collective, as discussed in paragraph 11 above, it also discusses a number of specific examples in paragraphs III.D.2 through III.D.5. These examples make numerous references to families and detail their specific situations, *inter alia* to illustrate the types of systemic abuses arising as a result of the policies and practices described. They further serve the purpose of providing an opportunity for the Committee to draw inferences as to the workings of the domestic administrative and judicial machinery in such cases.

⁸ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints CETS No.: 158, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=158&CM=7&DF=26/10/2008&CL=ENG>, last accessed 18 December 2008.

⁹ Additional Protocol to the European Social Charter providing for a system of collective complaints, Explanatory Report; Article 4 ¶ 31, available at <http://conventions.coe.int/Treaty/en/Reports/Html/158.htm>, last accessed 17 December 2008.

36. The sheer number of persons and families at issue in the policies and practices addressed in the present Complaint indicates a systemic assault on the basis of family life on the basis of ethnicity, and the Complaint is therefore, in essence, a matter for the Collective Complaint procedure under the Charter.
37. As a result of the foregoing, the Republic of Croatia's argument is based on a misinterpretation of the Charter's Collective Complaints procedure. It should be rejected and the Complaint should be ruled admissible.

vi. The Complaint is admissible because notions of adequate housing and forced eviction are similar under Articles 16 and 31.

38. The Republic of Croatia contends that the matters at issue in the Complaint fall rightly under Article 31 of the Charter – a provision which Croatia has not ratified – rather than Article 16 (19). In so contending, the Republic of Croatia may be laboring under a mistaken understanding of the requirements of Article 16.

39. COHRE again asserts that questions of scope are for proceedings on the merits, not on admissibility. Without waiving this objection, COHRE notes the following:

40. In *Mental Disability Advocacy Centre v. Bulgaria*,¹⁰ where Bulgaria raised a similar assertion, arguing against admissibility; the Committee noted that “[t]he Charter was conceived as a whole and all its provisions complement each other and overlap in part. It is impossible to draw watertight divisions between the material scope of each article or paragraph.” The Committee ultimately rejected Bulgaria's argument and found that case admissible.

41. With particular reference to the Charter articles at issue here, in *European Roma Rights Centre v. Bulgaria*, the Committee stated that “as many other provisions of the Charter, Articles 16 and 31, though different in personal and material scope, partially overlap with respect to several aspects of the right to housing. In this respect, the notions of adequate housing and forced eviction are identical under Articles 16 and 31.”¹¹ (emphasis added)

42. The current case, which addresses adequate housing and forced evictions – recognized by the Committee as one of several right to housing issues which are “identical” under Article 16 and 31 – as well as several related matters not yet addressed by the Committee in its jurisprudence, fulfills a minimum basis for admissibility.

C. Because the Charter prohibits discrimination under Article 16 and the Complaint sets out documentation of such discrimination in detail, the complaint is admissible.

43. The Republic of Croatia attempts to frame COHRE's citation to the preamble of the Charter as using a separate ground for Complaint and thereby endeavors to avoid the discussion of discrimination (23).

¹⁰ European Committee of Social Rights, Complaint No. 41/2007. Decision on the admissibility. Strasbourg, 20 February 2007; as cited in *Collective Complaints Procedure Summaries of Decisions on Admissibility 1998 – 2008*, p. 85.

¹¹ European Committee of Social Rights, Complaint No. 31/2005. Decision on the merits, ¶ 17. Strasbourg, 18 October 2006.

44. COHRE invokes the preamble not as a separate legal ground for Complaint, but instead urges the Committee to read Article 16 in light of the preamble. The preamble states, in relevant part, “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...”
45. In *European Roma Rights Centre v. Greece*,¹² the Committee found a reading of Article 16 in light of the preamble’s proscription against discrimination as important. “One of the underlying purposes of the social rights protected by the Charter is to express solidarity and promote social inclusion. It follows that States must respect difference and ensure that social arrangements are not such as would effectively lead to or reinforce social exclusion.”¹³
46. The Committee further stated, in the same decision, that “the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble.”¹⁴ (emphasis added). The Committee has thus read equality and non-discrimination directly into the raw face of Article 16, as a result of the pre-ambulatory provisions of the Charter.
47. The Committee’s decision in *European Roma Rights Centre v. Greece* to require non-discrimination under Article 16 is consistent with the precedent of the European Court of Human Rights. In *Connors v. United Kingdom*,¹⁵ the Court deemed that under Article 8 of the Convention “[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.”¹⁶
48. The Complaint sets out clearly that ethnic Serbs suffer ongoing discrimination (see generally section III of the Complaint).
49. Because Article 16 should be read to proscribe discrimination and the Complaint notes that ethnic Serbs in Croatia suffer ongoing discrimination, the Committee should find the Complaint admissible.

D. The Committee is competent *ratione temporis* to consider the Complaint because the Complaint concerns continuous and ongoing acts and omissions.

50. The Republic of Croatia argues that, because the Complaint includes elements related to the conflict in the former Yugoslavia, which occurred before Croatia signed or ratified the Charter, the Republic of Croatia has no responsibility under the Charter for its subsequent acts and omissions concerning issues related to the Complaint.
51. COHRE contends, however, that Croatia’s continuous and ongoing acts and omissions result in Charter violations and consequently lend to a situation that requires a proper remedy under the Charter that the Committee should provide.

¹² European Committee of Social Rights. Complaint No. 15/2003. Decision on the merits. Strasbourg, 8 December 2004.

¹³ Ibid at ¶ 19.

¹⁴ Ibid at ¶ 26.

¹⁵ European Court of Human Rights, Application No. 66746/01, ¶ 84. Strasbourg, 27 May 2004.

¹⁶ Ibid.

52. The Committee recently issued a decision considering *ratione temporis* in *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*. Noteworthy, *inter alia*, is the fact that the Committee considered the question of *ratione temporis* in the proceeding on the merits, not in the proceeding on the admissibility.¹⁷ During proceedings on the merits, the Greece argued that the distinction between acts and omissions, the failure to prevent pollution in this case, before the treaty was ratified, and ongoing acts, was too unclear to impugn responsibility under the Charter. The Committee stated:

[T]here may be a breach of the obligation to prevent damage arising from air pollution for as long as the pollution continues and the breach may even be progressively compounded if sufficient measures are not taken to put an end to it. Consequently, the Committee considers that it is competent *ratione temporis* to consider all the facts raised in this Complaint.¹⁸

53. The European Court of Human Rights has reviewed a number of cases where the alleged violations pre-date the State's ratification. The Court has permitted these cases when there have been demonstrations that the violations, although beginning prior to ratification, have in fact continued past ratification, and are therefore continuing violations. Underlying this precept, is the accepted understanding, expressed by former president of the Court Max Sorensen, that the European Court is competent *ratione temporis* to consider an application if a provision in the Convention guarantees the enjoyment of a certain situation and if the applicant claims that he has been deprived of this benefit during a period of time that continued after the Convention's entry into force.¹⁹

54. For instance, in relation to the right to peaceful enjoyment of possessions, as secured under Article 1 of Protocol 1, a continuing situation may arise where a state of affairs is characterized by ongoing activities undertaken by or on behalf of the authorities, provided that victims can show that they have been personally and directly affected. For example, in *Papamichalopoulos and others v. Greece*, the Court found jurisdiction where a seizure of property not involving formal expropriation occurred eight years before Greece recognized the Court's competence.²⁰ The Court held that there was a continuing breach of the right to peaceful enjoyment of property under Article 1 of Protocol 1, which continued after the ratification, and it accordingly upheld its jurisdiction over the claim.²¹

55. The Court also found jurisdiction in cases where the issue of continuing violations was very similar to the issues in the case at hand. In *Loizidou v. Turkey* the Court found that it had jurisdiction despite the fact that the property was lost before 22 January

¹⁷ European Committee of Social Rights, Complaint No. 30/2005. Decision on the admissibility. Strasbourg, 10 October 2005; as cited in *Collective Complaints Procedure Summaries of Decisions on Admissibility 1998 – 2008*, p. 63.

¹⁸ European Committee of Social Rights, Complaint No. 30/2005. Decision on the merits, ¶ 193. Strasbourg, 6 December 2006.

¹⁹ Sorensen, Max, *Le problème inter-temporel dans l'application de la Convention Européenne des Droits de l'Homme*, in: *Problèmes de droits de l'homme et de l'unification Européenne (Mélanges Modinos)*, Paris, 1968, p.315.

²⁰ *Papamichalopoulos and others v. Greece*, European Court of Human Rights, Application No. 14556/89. Strasbourg, 24 June 1993.

²¹ *Ibid.*

1990, when the Convention had entered into force for Turkey.²² The Court concluded that while the applicant had retained ownership of her property, she was prevented from exercising her rights of ownership on a continuing basis because she could not get access to her property, both prior to and following the entry into force of the Convention.²³

56. Similarly, in *Agrotexim Hellas S.A. and others v. Greece*, the court found a continuing violation where state measures to expropriate property began prior to ratification of the Convention;²⁴ these expropriation measures initiated by Greece continued after ratification. The Court emphasized, "...that the applicants do not complain of any 'instant' effect of these measures on their rights but of a continuing situation created by the said measures and still existing."²⁵ (emphasis added) Consequently, the Court found that "successive measures affecting the applicants' property can be seen as a series of steps amounting to a continuing situation."²⁶
57. Similarly, in *Moldovan and Others v. Romania*, a case pertaining to the impact of massive racially motivated violence occurring prior to the entry into force of the Convention, the Court held that, notwithstanding the fact that the anti-Romani pogrom at issue occurred many months before the Convention entered into force, the fact that the applicants continued to live in degrading living conditions, combined with evident racial discrimination, indicated a continuing violation that *inter alia* rose to the level of Convention Article 3 harms.²⁷
58. In *Sovtransavto Holding v. Ukraine*,²⁸ the Court dismissed Ukraine's objection to the Court's jurisdiction *ratione temporis*. The case had proceeded in three stages and only the last one had taken place following the ratification of the Convention by Ukraine. The Court however, deemed that the three stages had to be taken as a continuing situation for which the state was responsible as the applicants had yet to receive compensation for the reduction in shareholdings:

The reduction in the applicant company's shareholding was a three-stage process that ended with Sovtransavto-Lugansk's liquidation ... [T]he first two stages took place before September 11, 1997 and the third after that date. At the end of the third stage, the applicant company's shareholding was reduced to 20.7% ... [T]hat sequence of events taken as a whole created a continuing situation with which it still has to contend, as it has yet to receive adequate compensation. In these circumstances, the Court finds that the mere fact that some of the events material to

²² *Loizidou v. Turkey*, European Court of Human Rights, Application No. 15318/89. Strasbourg, 18 December 1996.

²³ "Tackling Political Disputes Through Individual Applications," European Human Rights Law Review, E.H.R.L.R. 1998, 1, 61-72.

²⁴ *Agrotexim and others v. Greece*, European Court of Human Rights, Application No. 14807/89. Strasbourg, 12 February 1992.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Moldovan and Others v. Romania*, European Court of Human Rights, Application Nos. 41138/98 and 64320/01. Strasbourg, Judgment No. 2, 12 July 2005, ¶ 113. The Court held that Romania had violated multiple provisions of the Convention. The Court ruled that there had been violations of Article 6(1) (right to a fair hearing) on account of the length of the proceedings, and Article 8. Reviewing arguments that the Convention's non-discrimination provisions had been infringed with respect to the right to a fair hearing and right to respect for private and family life, the Court agreed, and accordingly found a violation of Article 14 of the Convention in conjunction with Articles 6(1) and 8.

²⁸ *Sovtransavto Holding v. Ukraine*, European Court of Human Rights Series A, No. 260. Strasbourg, 24 June 1993..

the case occurred prior to the relevant date does not render the complaint under Art.1 of Protocol No.1 incompatible *ratione temporis*. Nevertheless, the Court considers that it may only exercise jurisdiction *ratione temporis* to examine the applicant company's complaint under Art.1 of Protocol No.1 in respect of the third stage of the process whereby its shareholding was reduced. However, it will take the events prior to September 11, 1997 into account when examining the complaint as a whole. Consequently, the Government's preliminary objection must be dismissed.²⁹ (emphasis added)

59. The Court also criticized the judicial proceedings in *Sovtransavto* prior and subsequent to the ratification, as containing several irregularities in breach of the applicants' rights under the Convention. In particular, it held as follows:

“In such circumstances, the State cannot simply remain passive and ‘there is ... no room to distinguish between acts and omissions’ ... This means ... that the States are under an obligation to domestic Courts and tribunals to adjudicate effectively and fairly any disputes between private persons ... In that regard, the Court can but point to the serious procedural shortcomings it noted when examining the complaint under Art.6 (1).”³⁰ (emphasis added)

60. Furthermore, in the context of Article 6, the Court has made clear that when facts consist of a series of legal proceedings, the entry into force of the Convention with respect to the state may divide the period in two and the subsequent proceedings come under the Court's jurisdiction for examination on the merits.³¹ In such cases, the Court will take into account those proceedings and events that took place before the entry into force of the Convention to determine either the length of proceedings or any substantive or procedural issue. The focus however, will be on ensuring that the proceedings taken as a whole have complied with the obligations of the state under the Convention.

61. Of particular importance, the Court has stated that proceedings in domestic courts that encompass a period of time that spans from before to after the acceptance of jurisdiction under former Articles 25 and 46 of the Convention, the Court can assess the period prior to the ratification in order to examine the reasonableness of the total length of time.³²

62. In accordance with this principle, the Court declared in *Avis Enterprises v. Greece* that it was competent to examine a claim begun in 1978 and ending in 1995, even though Greece became party to the Convention in 1985.³³ *Avis Enterprises* concerned the deprivation of property without just compensation; the Complaint alleged the right to a fair hearing within a reasonable time.

63. Additionally, the Strasbourg organs have repeatedly opined that there will be a continuing breach where, for example, the applicant complains of the continued

²⁹ Ibid at ¶ 58.

³⁰ Ibid at ¶ 96.

³¹ Zwart, Tom. The Admissibility of Human Rights Petitions, 1994, p.124, quoting Application no. 323/557, Yearbook 1, p.247; Application no. 7211/72 D.R.7 p.107.

³² *Philis (No. 2) v. Greece*, European Court of Human Rights, Application No. 19773/92, ¶ 36. Strasbourg, 27 June 1997.

³³ *Avis Entreprises v. Greece*, European Court of Human Rights, 26 E.H.R.R. CD 21. Strasbourg, 30 July 1998.

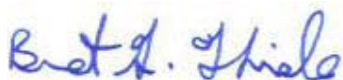
existence of particular laws. In *Dudgeon v. the United Kingdom*, the issue was the continuing existence of Northern Ireland laws that criminalized homosexual acts between consenting adult males.³⁴

64. The Court's finding of jurisdiction in cases of continuing violations occurring before and after the entry of force of the Convention demonstrates the accepted understanding that where continuing violations are found, the Court is obligated to review the history of violations that have led to the existing continuing violation.
65. The present Complaint notes that the legislative endeavours cancelling occupancy rights, which began in 1991, continue to this day as many ethnic Serbs in Croatia have not been given access to an effective remedy and continue to have their housing rights violated.
66. COHRE encourages the Committee to follow the weight of authority, and its own jurisprudence, and find that its jurisdiction is competent in this case because Croatia's violations under Article 16 are continuous and ongoing. The Complaint provides numerous examples of how Croatia's acts and omissions are ongoing (see generally II.6), thus the Complaint should be found to be admissible.

CONCLUSION

67. For these reasons, COHRE respectfully requests that the Committee dismiss the Republic of Croatia's objections and find the Complaint admissible.

Respectively submitted



8 January 2009

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³⁴ *Dudgeon v. the United Kingdom*, European Court of Human Rights, Application No. 7525/76. Strasbourg, 22 October 1981. See also *De Becker v. Belgium*, European Court of Human Rights, Application No. 215/5. Strasbourg, 27 March 1962 (concerning a statutory provision which created a continuing restriction on the applicant journalist's freedom of expression by preventing him from publishing).