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

WRITTEN SUBMISSIONS ON THE MERITS

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EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Centre on Housing Rights and Evictions (COHRE)

v. Croatia

Complaint no. 52/2008

OBSERVATIONS BY THE GOVERNMENT OF THE REPUBLIC OF CROATIA ON THE MERITS OF THE COMPLAINT

Zagreb, 26 June 2009

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INTRODUCTION

1. On 30 March 2009, the European Committee of Social Rights (hereinafter: the Committee) rendered a Decision declaring admissible complaint no. 52/2008, which the *Centre on Housing Rights and Evictions* (COHRE) filed against the Republic of Croatia due to the alleged failure to ensure the satisfactory application of Article 16 of the European Social Charter (hereinafter: the Charter) in the light of the clause on the prohibition of discrimination from the Preamble of the Charter.

2. The Committee invited the Government of the Republic of Croatia to furnish its observations by 29 May 2009 on the merits of the complaint. Upon the Government's request the deadline was extended till 27 June 2009. In paragraph 11 of the Decision on Admissibility the Committee stated that the complaint was sufficiently clear, that is, it concerns members of the Serb ethnic minority in Croatia who have lost their occupancy rights.

In relation to this statement by the Committee, the Government limits its observations on the merits to the question of the application of Article 16 of the Charter to members of the Serb ethnic minority in Croatia, who have lost their occupancy rights. The Government points out that the Committee thereby clearly defined that this is a complaint by ethnic Serbs living in Croatia who have lost their occupancy rights, not ethnic Serbs who reside outside Croatia and have lost their occupancy rights. Although, the Government of the Republic of Croatia has also enabled the return of this later category of population, of whom some have and some do not have the refugee status and provided housing to those who have filed an application, under certain conditions.

3. At the same time, the Government presents the political and legal facts which are relevant for an assessment of the acts undertaken by the Republic of Croatia in meeting its obligations from Article 16 in the circumstances of an armed conflict and aggression against the Republic of Croatia, during which the population of the Republic of Croatia was subject to killing and wounding, and at one time 1/3 of its territory was occupied, from which the Croatian population was expelled, and in which many housing units – houses and flats were demolished, and entire infrastructures and entire towns were destroyed (for example Vukovar) and there was a large number of displaced persons and refugees. Although the Government of the Republic of Croatia is aware that the war and the post-war situation are not the subject of

this complaint, it still deems it necessary to consider the complaint in the context of the place and time in which massive displacement of the population took place, war crimes and suffering of civilians occurred as well as the destruction and loss of houses and flats. The loss of occupancy rights of those who left socially owned flats also took place and included members of the army who was at war against the RoC as well as those who left by their own choice of the country they wished to live in.[1] The loss of occupancy rights in Croatia was founded on the law and conducted in each specific case according to a procedure established by law, and therefore the procedure was lawful and free of discrimination on an ethnic basis, including the alleged discrimination of an unspecified number of members of the Serb ethnic minority.

4. The Serb ethnic minority in the Republic of Croatia, during the war and after it, cannot be treated as a homogenous ethnic group, which as such lost its occupancy rights, since many members of the Serb ethnic minority remained in the Republic of Croatia and continued using socially owned flats, which they later bought off, and many members of other ethnic groups also lost their occupancy rights under the same legal conditions. The Government furthermore, argues that the war certainly had a negative effect on the entire population of the Republic of Croatia and that important historical facts, including the responsibility of individuals, but also the states, for serious violations of human rights and international humanitarian law, will be established by international courts, such as; the International Criminal Tribunal for the Former Yugoslavia (ICTY) before which proceedings are being conducted for war crimes committed during the war in the Republic of Croatia and the International Court of Justice (ICJ) before which the Republic of Croatia has filed a complaint against the Republic of Serbia for the crime of genocide.

5. In the entire post war period, the Republic of Croatia has invested significant economic resources to restore the war-affected areas and enabling return and reintegration of the population. It has adopted several housing and reconstruction programmes. In this

[1] The European Court of Human Rights in decision no. 34162/06 of 6 November 2008, in the case of *Trifunović v. Croatia* (former JNA officer convicted of war crimes, who was deprived of occupancy rights, and whose wife complained of a violation of her right to a home to the Court) stated: *"The rationale behind section 102a (1) of the Housing Act was to terminate the occupancy rights of those persons who during the war in Croatia had served in the enemy's army"*. The European Court concluded that *"the interference was necessary in a democratic society as it pursued a legitimate aim and was proportionate to it."*

framework it also adopted a special Programme for Housing of Former Holders of Occupancy rights which also includes refugees from the Republic of Croatia in Serbia who have filed an application for return and housing in the Republic of Croatia. For humanitarian reasons, they were enabled to participate in adequate housing through the allocation of flats within the scheme of "protected lease" on flats under very favourable conditions, in places in Croatia where they wish to return or where they wish to live, under the condition that they return to the Republic of Croatia and that they were former holders of occupancy rights, and that they do not own or co-own (or have not sold) another family house or flat in the Republic of Croatia or the territory of the former SFRY.

6. The Government of the Republic of Croatia deems that the Committee should consider this complaint in the light of the present legal status of the persons it relates to, and in the light of the application of the *Appendix to the Social Charter* and the provisions stating that each contracting party guarantees favourable treatment to refugees, as defined by the Geneva Convention of 28 July 1951 and who are lawfully in its territory, when that is possible, but no less favourable than that which stems from that Convention and international law applicable to refugees. Since this complaint relates in part to refugees from the Republic of Croatia who are in Serbia and who have already not been living in the Republic of Croatia for 15 to 18 years, the obligation of caring for them in a suitable manner should be taken on by the state in which they live, just as the Republic of Croatia has provided for many refugees, displaced persons and returnees, and offered financial assistance for housing of refugees from Bosnia and Herzegovina who were in Croatia, as well as for their return to Bosnia and Herzegovina. The Republic of Croatia, up to 31 March 2009, provided for the return of a total of 144,030 persons from other countries, and 244,043 persons who were displaced within the Republic of Croatia, that is, a total of 388,073 returnees, of which 131,899 were members of national minorities[2].

7. Furthermore, the Government states that between the Republic of Croatia and the Republic of Serbia (then the FRY) an international agreement was signed – the Agreement on Normalisation of 1996, which was ratified by both states (the Croatian Parliament on 20 September 1996). According to Article 7 of the Agreement, it was established: *"The Contracting Parties shall provide the conditions for the free and safe return of refugees and*

[2] Figures from the UNHCR representative office in the Republic of Croatia on 31 March 2009

displaced persons to the places where they had permanent residence or other places of their free choice. The Contracting Parties shall ensure those persons the return of possession of their property, or fair compensation. The Contracting Parties shall ensure the complete safety of refugees and displaced persons who return. The Contracting Parties shall help these persons in providing the necessary conditions for a normal and secure life. Within six months of the day this Agreement comes into force, the Contracting Parties shall conclude an Agreement on compensation for all destroyed, damaged or missing property. This Agreement shall establish the procedure for realisation of the right to fair compensation, which will not include court proceedings. In order to implement the obligations from this Article, a joint commission shall be founded within 30 days of the day this Agreement is signed, consisting of three representatives of each of the Contracting Parties."

8. According to this Agreement, each side was obliged to provide for the free and safe return of refugees and displaced persons to the places where they had permanent residence or other places of their free choice, and since 1996 the conditions have been created for the free choice of return or choice of another location for refugees and displaced persons to live.

9. The Contracting Parties have never concluded an Agreement on compensation for all destroyed, damaged or missing property. All the costs of reconstruction of all damaged and destroyed property was exclusively borne by the Republic of Croatia, in which that property is located. War reparations, which should include compensation to victims for serious violations of human rights and international humanitarian law, for now, remain an unresolved issue between the RoC and the Republic of Serbia.

I. THE RELEVANT FACTS

A) THE BACKGROUND TO THE CASE

10. In the background to this case there is an erroneous understanding of the legal nature of occupancy rights, which existed in the period before the independence of the Republic of Croatia, and inaccurate and deficient facts on individual proceedings conducted for the cancellation of occupancy rights during the armed aggression against the Republic of Croatia, that is before the Republic of Croatia ratified the Charter and recognised the competence of the Committee for collective complaints.

11. Regardless of the position of the Government of the RoC concerning the scope of this case in relation to Article 16 of the Charter, about which the Government states its view in the part of these Observations relating to the law, the Committee should also be informed about facts, from which it clearly stems:

(i) that occupancy rights by their legal nature were not ownership, nor any other form of *in rem* right which would guarantee the holders the right of return or any form of compensation in the case of cancellation;

(ii) that the Republic of Croatia and other owners of flats had a legitimate right to redistribute the flats to persons in need, especially in the circumstances of war which caused a major inflow of refugees and displaced persons;

(iii) that court proceedings for cancellation of occupancy rights were individual in nature, founded on the law and conducted with respect for all standards of fair trial, without discrimination on the basis of ethnic origin.

12. The background to the case also relates to facts about the regulations and the legal nature of occupancy rights before the independence of the Republic of Croatia, to the application of regulations in the period of the armed aggression against the Republic of Croatia by then Federal Republic of Yugoslavia (FRY) and by the Yugoslav National Army and rebel Serbs from the RoC (1991-1995), and the circumstances which contributed to a continuing inflow of refugees due to destruction caused by war in the surrounding area.

13. Although the Government points out that events before 2003 are not within the competence of the Committee *ratione temporis*, it presents these to the Committee for an easier understanding of the context of the case and the continuing influence of individual events related to the war and the post-war situation, and the actions taken by the Republic of Croatia in these circumstances in which it found itself even after 2003, that is, the ratification of the (unrevised) European Social Charter and the obligations it has pursuant to Article 16 of the Charter.

14. Although all the facts of the war will be established in the foreseeable future, it is important to mention the uncontested sources of objective data, which describe the events of the war relevant to a consideration of this complaint in the historical and legal context.

15. The United Nations, and especially the UN Commission on Human Rights, has adopted a large number of resolutions on the status of human rights in the states of the former SFRY, in which it recorded serious violations of human rights in the Republic of Croatia. In August 1992 the UN Commission on Human Rights appointed Mr Tadeusz Mazowiecki as Special Rapporteur for Human Rights in the former Yugoslavia. In an annex to these Observations examples are given of the relevant UN resolutions in which ethnic cleansing in the occupied territories of the Republic of Croatia is mentioned and condemned, and a call is made for an end to this kind of policy, with the protection of refugees and displaced persons and their right to return to their homes.[3]

16. For example, in the Fifth Periodic Report on the situation of human rights in the Former Yugoslavia filed by Mr. Tadeusz Mazowiecki (17 November 1993) it is stated that "in the period between 1991 and 1993 an estimated 210,000 buildings outside the UNPA zones (the occupied area) were severely damaged or destroyed, mainly as the result of shelling".[4]

17. The UN General Assembly resolution on the situation in the occupied territories of the Republic of Croatia[5] confirmed that the Republic of Croatia was the victim of occupation and did not have jurisdiction over 1/3 of its territory or the population in the occupied territory in the period from 1991 to 1995 (in Eastern Slavonia the UNTAES – the UN peace operation was established which lasted until 1998). In above mentioned period there were serious violations of human rights and international humanitarian law as well as the destruction of houses and towns. This contributed to the realisation of economic and social rights, including the application of Article 16 (after 2003) for the entire population of the Republic of Croatia in the post-war period, including members of the Serb minority.

1. Occupancy rights in Croatia before independence

18. Before independence, in the then Socialist Republic of Croatia (SRC) there were 1,457,370 households. The majority of the population, i.e. households lived in privately

[3] 1992/S-2 of 1 December 1992, Resolution A7RES/47/147 of 26 April 1993, A/RES/49/196 of 9 March 1995, in which in paragraph 10 it states: "Expresses its serious concern at the prevalence of lawlessness in the Serbian-controlled territories of Croatia and the lack of adequate protection for Croatian and non-Serb populations remaining in the Serb-controlled municipalities where these populations continue to experience physical violence and insecurity, as reported by the Special Rapporteur";

[4] E7CN.4/1997/47 of 17 November 1993.

[5] OS UN A/RES/49/43 of 9 February 1995: The situation in the occupied territories of Croatia

owned property (932,182 households), and under the regime of social ownership there were 366,182 households[6].

Flats in social ownership were: (i) flats which the State nationalised and confiscated from private owners after the Second World War, and (ii) flats which were built in the period up to the independence of the Republic of Croatia.

Either bodies of state authority such as the army or the police, or bodies of local government such as cities and municipalities, or public enterprises or institutions, had the right to dispose of these flats. Flats were built with funds withheld from the salaries of all employed citizens.

19. Each republic of the former SFRY (the Socialist Federative Republic of Yugoslavia) independently adopted laws to regulate the giving of socially owned flats for use and the obligations of the tenants and providers of flats. In Croatia, the relevant law was the Housing Act (*Zakon o stambenim odnosima*).[7]

20. Occupancy rights in the SRC – even when we take into account the specific nature of the institution of social ownership – primarily had the character of lease in classical civil law, as the leading legal theoreticians agree[8].

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[6] See Enclosure 1, Table of Statistical Census of 1991.

[7] Official Gazette (51/85, 42/86, 22/92 and 70/93)

[8] See Dr. Tanja Tumbri, "Occupancy rights in Legislation, Practice and Theory" (*Stanarsko pravo u zakonodavstvu, praksi i teoriji*), Zagreb 1991, p 198: "Although occupancy rights developed or are developing in significantly different social and economic relations that they were once and are today regulated by civil law, there are rules in occupancy rights and the entire legal concepts taken over from civil law (…) **All this confirms our introductory statement that today's occupancy rights developed from the institution of lease of flats, but also leads to the conclusion that, notwithstanding all its specific nature and special characteristics, it has not moved far away from civil law until today."** Similarly on the same in the book "Occupancy Relations" (*Stambeni odnosi*), Tomaš Pavličić and Čedomir Bogičević, Belgrade 1986: "There are many points of view on the legal nature of occupancy rights. According to one view, occupancy rights, despite the fact that they include certain *in rem* elements, pertain to the area of the law of obligations. According to this point of view, occupancy rights are closest to the rights of a lessee, and consequently like lessee rights pertain to the law of obligations. In determining the obligationary nature of occupancy rights, the starting point is that in the legal structure of occupancy right some important characteristics of rights *in rem* are lacking (…) **That is to say, in consideration of occupancy rights it cannot be said that the holder of occupancy rights is able to freely dispose of the flat, and moreover it is not foreseen that occupancy rights as such may be registered in the land registry. Bearing in mind that by the Housing Acts of the republics and provinces, occupancy rights are defined as the right of long-term and undisturbed use of a flat and that they do not depend on the existence of ownership or any other rights which may at the same time exist on the flat or housing block as a whole, we consider that occupancy rights pertain to the area of the law of obligations"**; the same topic is discussed in the book "Giving Flats and Assignment of Housing Loans" (*Davanje stanova i raspodjela stambenih kredita*), Ivica Crnić and Zdravko Momčinović, Zagreb 1987: "In Article 164 of the Constitution (of the SFRY) citizens are guaranteed that when they gain occupancy rights on a socially

21. This conclusion is also reached by an analysis of the rights and obligations of tenants. The basic right of tenants was the right to use the flat to satisfy their housing needs[9]. The tenant, therefore, was not free to choose the way in which he or she would use the flat, in contrast to an owner of a house, flat or other property. Alongside the right to use the flat as accommodation, the possibility existed for the tenant to exchange the flat with another holder of occupancy rights, to give part of the flat for use to sub-tenants or to rent out part of the flat to travellers or tourists. However, for all these activities, the tenant was obliged to seek the approval of the provider of the flat. (Articles 68-74 of the Housing Act).

22. The obligations of the tenant consisted of paying a preferential rent and other expenses related to the regular use of the flat, and careful use of the flat. In connection with these obligations of the tenant, the provider of the flat had all the rights of an owner in an otherwise classical lease relationship. The tenant was obliged to enable the provider of the flat to examine the flat, the provider of the flat had right of lien on the tenant's things for failure to pay the rent, and finally, when the tenant moved out, the provider had the right to require the tenant to hand the flat over in the condition in which he found it (Articles 75-78 of the Housing Act).

23. It is clear, therefore that the tenant did not have any right that could be characterised as ownership. He could not sell the flat or his occupancy rights, the flat or occupancy rights were not the subject of inheritance[10], and the tenant could not decide independently on how the flat was to be used.

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owned flat, they are entitled, under the conditions prescribed by law, to use this flat in social ownership for an unlimited period in order to satisfy their personal and family housing needs. **Occupancy rights are specific rights without the attributes of ownership,** and they consist of the right to long-term use of a flat in order to satisfy the personal and family housing needs, under the conditions established by law, and the rights and obligations of the holder of occupancy rights to take part in the management of the housing block. **Since there are no ownership attributes, occupancy rights are not hereditary** but, under the conditions established by law, they may be passed on to members of the tenant's family household.

[9] Exceptionally, the tenant or a member of his family household could carry out a commercial activity in a part of the flat, however that right was conditioned by the prior approval of the tenants' assembly, which depended on an assessment of whether that activity would disturb the other tenants or the lessees of commercial premises (Article 72 of the Housing Act).

[10] The European Court of Human Rights in its decision *Rašeta v. Croatia* clearly stated (decision of 10 July 2007, application no. 125/05): "The Court notes that at the time of her death the applicant's mother was not the owner of the flat in question and that therefore the applicant could not have inherited the flat. Furthermore, since under domestic law the rights of a holder of a occupancy rights were personal rights, the applicant had no legitimate expectation for the purposes of Article 1 of Protocol No. 1 to purchase the flat in question".

24. The full authority of ownership was held by the provider of the flat. Firstly, he could cancel occupancy rights under the conditions prescribed by law. The reasons for cancellation did not differ from those in a classical relationship of leaser and lessee. So for example the provider of the flat could cancel occupancy rights for failure to use the flat for designated purposes or for careless use of the flat, for failure to pay rent, or for subletting part of the flat without the provider's consent, which are all reasons known to classical leasing (Article 97 of the Housing Act).

25. The provider of the flat could also change the purpose of the property and transform the flat into commercial premises. In this case, the provider could cancel the occupancy rights under the condition that he provided a similar, habitable flat for the tenant in the same location (Article 104 of the Housing Act) to meet his housing needs.

26. From the above it is clear that, under the regime of social ownership, when a tenant attained the status of holder of occupancy rights, he did not obtain authority of ownership of the flat. Occupancy rights only gave their holder the **authority to satisfy his housing needs** by using a suitable flat, that is to say, the tenant was granted a preferential lease (low rent, secure tenure) his housing problem is resolved in another way.

27. Due to the favourable conditions of the housing, the tenant could not retain occupancy rights if he did not use the flat for a long period of time without a justified reason, or if he attained occupancy rights on another flat, or if he attained ownership of another habitable flat or house. In other words, the legislation provided for the possibility for the provider of the flat to cancel the rights of a tenant who did not make use of the flat consistently over a period of time determined by law, since the basic purpose of their contractual relationship was precisely to satisfy housing needs of those who were unable to satisfy these needs in another way. The fact that the tenant did not make use of the flat for no justified reason consistently over a long period of time, would indicate that that flat was no longer needed by the tenant to meet his housing needs.

28. The legislator protected tenants from arbitrary cancellation by the providers of flats, prescribing by law that cancellation could only be sought by filing a lawsuit with the competent court. In the same way, the law prescribed that there could be no cancellation if the

tenant had not made use of the flat because he was "undergoing treatment, on military duty or for other justified reasons" (Article 99, paragraph 2 of the Housing Act). This legal formulation made it possible for the courts to take a stance in each individual case depending on the specific circumstances of the individual case, and to develop a body of case law on the basis of which they could assess similar cases.

2. The aggression against Croatia and cancellation of occupancy rights

29. The Republic of Croatia proclaimed independence from the former SFRY in June 1991[11]. Soon after the declaration of independence armed aggression followed, initiated by the former JNA (the Yugoslav National Army) with the aim of separating a large part of territory and annexing that territory to the then Yugoslavia, that is Serbia.[12]

30. By the end of 1991, Croatia had lost control of almost 1/3 of its territory, which was occupied by the former JNA and rebels, over which they established unlawful authority.[13] The occupied territory remained beyond the control of the Croatian authorities up until 1995.

31. In a systematic campaign of terror, the entire non-Serb population, Croats and members of other national minorities, were driven from the occupied areas of the Republic of Croatia.[14] At the end of 1991, 250,000 displaced persons were driven from the then occupied

[11] See the Declaration on the Establishment of the Sovereign and Independent Republic of Croatia and the Constitutional Decision on the Sovereignty and Independency of the Republic of Croatia of 25 June 1991 (Official Gazette, no. 31/1991).

[12] See the judgment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in the case against Milan Babić, case no. IT-03-72-S, of 29 June 2004, in particular §§ 14 and 15: "In the period of the Indictment, from about 1 August 1991 to 15 February 1992, Serb forces comprised of JNA units, local Serb TO units, TO units from Serbia and Montenegro, local MUP police units, MUP police units from Serbia, and paramilitary units attacked and took control of towns, villages, and settlements in the SAO Krajina. After the take-over, in co-operation with the local Serb authorities, the Serb forces established a regime of persecutions designed to drive the Croat and other non-Serb civilian populations from these territories. (...) These acts were intended to permanently and forcibly remove the majority of the Croat and other non-Serb populations from approximately one-third of Croatia in order to transform that territory into a Serb-dominated state."

[13] Ibid, see also Indictment by ICTY in the case against Goran Hadžić, no. IT-04-75-I, § 6: "The purpose of this joint criminal enterprise was the permanent forcible removal of a majority of the Croat and other non-Serb population from approximately one-third of the territory of the Republic of Croatia ("Croatia") in order to make them part of a new Serb-dominated state through the commission of crimes in violation of Articles 3 and 5 of the Statute of the Tribunal. These areas included those regions that were referred to by Serb authorities as the "SAO Krajina," the "SAO Western Slavonia," the "SAO SBWS" (...)

[14] See judgement of ICTY in case against Milan Martić, case no. IT-95-11-T, of 12 June 2007, in particular §§ 428 and 431: "The Trial Chamber considers the evidence to establish beyond reasonable doubt that the systematic acts of violence and intimidation carried out, *inter alia*, by the JNA, the TO

areas into parts of Croatia which remained under its control, and the State had to provide them with accommodation. In 1993, the number of refugees and displaced persons[15] increased due to the aggression against Bosnia and Herzegovina, and at one point the total number of refugees and displaced persons exceeded 500,000.

32. Only a limited number of ethnic Serbs who lived outside the occupied areas left the territory of the Republic of Croatia under Government control during the war. In most cases these were members of the former JNA and their families who left the Republic of Croatia voluntarily with the withdrawal of the JNA, and not refugees who were forced to leave their property, as the complainant tries to imply. Moreover, some of them were later actively involved in the armed aggression against the Republic of Croatia.[16] In this connection, it should be emphasised that all members of the JNA and their families, who wished to stay in Croatia, were guaranteed safety and peaceful enjoyment of acquired rights, including the use of flats.[17]

33. The territory of the Republic of Croatia under Government control was also left by some Croats who went abroad due to the circumstances of the war. In the territory under the control of the Croatian authorities there was never any campaign of terror or expulsion of members of the Serb ethnic minority.[18]

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and the *Milicija Krajine* against the non-Serb population in the villages created a coercive atmosphere in which the non-Serb population did not have a genuine choice in their displacement. Based on this evidence, the Trial Chamber concludes that the intention behind these acts was to drive out the non-Serb population from the territory of the SAO Krajina.(...) Based on the substantial evidence referred to above, the Trial Chamber finds that due to the coercive atmosphere in the RSK from 1992 through 1995, almost the entire non-Serb population was forcibly removed to territories under the control of Croatia. The elements of the crime of deportation (Count 10) have therefore been met".

[15] According to the Act on the Status of Displaced Persons and Refugees, a **displaced** person is one who fled from one area of the Republic of Croatia into another part of the Republic of Croatia, and a **refugee** is a person who has fled from the Republic of Croatia abroad.

[16] Ibid, footnotes 6, 7, and 8; It should be mentioned that most of the members of the JNA and their families who lived in the territory under Government control remained in the Republic of Croatia. They retained their occupancy rights on the flats in which they were living, and in most cases they later bought off their flats.

[17] The withdrawal of JNA units from Croatia was regulated by agreements concluded between the JNA and Croatian authorities (see Enclosure no. 2, Agreement between the Government of the Republic of Croatia and Rijeka Corps of the JNA of 8 November 1991).

[18] Before the International Criminal Tribunal for the Former Yugoslavia (ICTY) there has not been a single indictment filed which in any way would indicate systematic persecution or seizure of property or the homes of members of the Serb ethnic minority during the war in the area under Government control.

34. Some of those who left the Republic of Croatia lived in socially owned flats, under the regime of occupancy rights. The rights and obligations from that relationship were well known to each tenant. That is to say, a prerequisite of entering into possession of such a flat was signing a contract on use of the flat with the provider of the flat, in which all the relevant provisions were stated for use of the flat. Cancellation of occupancy rights presupposed the loss of all rights in relationship to that flat, and all those who decided to leave the Republic of Croatia voluntarily were aware of this, regardless of their ethnic background.

35. In view of the large number of refugees and displaced persons in Croatia and the meagre supply of accommodation, which was additionally reduced by war destructions, in the circumstances in which Croatia found itself, humanitarian reasons made it necessary to redistribute the empty flats to those in need[19]. So, proceedings for cancellation of occupancy rights were instituted against people who did not use those flats without justified reasons, regardless of their ethnic background, pursuant to the same law which had been applied since 1984. As part of proceedings for cancellation of occupancy rights, which were by nature civil proceedings, the courts did not determine the ethnic background of persons against whom they were instituted.

36. In the area of the Republic of Croatia under Government control, 13,617 proceedings were conducted for cancellation of occupancy rights, of which the request for cancellation was granted in 10,212 cases. Of that number 8,256 cases are accounted for by former members of the JNA who lived in so-called "army flats"[20], of which 7,324 were granted. Since the parties' ethnic background was not determined, it cannot be established how many proceedings involved only members of the Serb ethnic minority. However, it can be definitely stated that those whose occupancy rights were cancelled were not only Serbs, but also Croats.[21]

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[19] In the judgement *Blečić v. Croatia*, the European Court of Human Rights stated: "It is not in dispute that, in pursuit of those aims, the Croatian legislature was entitled, by enacting section 99 of the Housing Act, to prescribe the cancellation of specially protected tenancies held by individuals who no longer lived in the publicly-owned flats allocated to them and the subsequent redistribution of such flats to those in need".

[20] The military housing stock in the Socialist Republic of Croatia included 36,812 flats.

[21] For instance, in the case Gž-370/04, occupancy rights of I.B. from Split were cancelled because he had let the flat to subtenants, instead of using it to meet his housing needs (see Enclosure no. 3). Subsequent checks revealed that this person was of Croat ethnic background. Similarly, in the case P-3665/95, occupancy rights of J.J. from Rijeka, a member of the Croatian Army, were also cancelled,

37. The laws and practice of the Republic of Croatia guaranteed fair proceedings in each case of cancellation of occupancy rights.

38. Fair proceedings implied: (i) mandatory legal representation by a qualified counsel in the case of proceedings in the absence of the respondent; (ii) examination of all relevant factors, (iii) recognition of justified reasons for non-occupation of the flat.

39. The Croatian courts had a very strict practice regarding the representation of absent respondents in proceedings for cancellation of occupancy rights. All respondents in these proceedings were represented by qualified attorneys as "guardians *ad litem*". The attorneys appointed represented the interests of the respondents and used all available legal means to protect their rights. According to the Supreme Court of the RoC, each respondent had to have a separate guardian, even if they were a married couple. The procedural failure to appoint a counsel for some of the respondents was a substantial procedural violation causing the judgement to be quashed in relation to all the respondents.[22]

40. Regarding the circumstances which justify absence from the flat, it is necessary to emphasise that according to the established case law of the Croatian courts, the circumstances of the war did not *per se* justify absence from the flat. Otherwise, this would have been unfair towards all citizens who remained living and working in the territory of the Republic of Croatia, regardless of their ethnic background. The Government again points out that most members of the Serb ethnic minority, who lived outside the occupied areas remained in their homes. This also includes members of the former JNA and their families who decided to stay in the Republic of Croatia. For the sake of comparison, the JNA had a housing stock of 36,812 flats in which their members and their families lived. A total of 28,045 flats were sold to members of the former JNA and their families, whilst occupancy rights were cancelled in only 7,324 cases.

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on the ground that he had given the flat for use to his friend, instead of using it to satisfy his own housing needs (Enclosure no. 4).

[22] The case conducted before the Supreme Court of the RoC under no. Rev 1182/95 (see Enclosure no. 5) involved proceedings for cancellation of occupancy rights against the married couple N.G. and M.G. of Karlovac. Mr. N.G. was represented by the attorney D.Č. of Karlovac as guardian, whilst Mrs M.G. did not have an attorney appointed. The first instance court granted the request for cancellation. The attorney lodged an appeal and then filed a request for revision on points of law before the Supreme Court. The Supreme Court quashed the first and second instance judgements in relation to both the husband and wife because the counsel was only appointed for Mr. N.G. and not for his wife.

41. However, the special circumstances of individual cases in relation to the war could justify the non-use of the flat, and the courts took them into account in line with the regulations in force.[23]

42. Furthermore, the Croatian courts deemed that the conditions had not been met for cancellation of occupancy rights when the tenants did not make use of the flat because a third person had moved into it unlawfully, if legal steps had been taken to protect their rights and evict the third person.[24]

43. Although Article 102a of the Housing Act made cancellation possible due to participation in hostile activities, in the case law of the Croatian courts it was clearly established that this kind of cancellation could only be imposed on a person against whom a final judgement existed, and that appropriate accommodation had to be found for members of the family household of that person[25], whereby a satisfactory level of protection was achieved against arbitrary cancellation.

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[23] In the case P-1625/98 (see Enclosure no. 6) the request was rejected for cancellation of occupancy rights because the court accepted that the respondent, Mrs. J.M. could not return to Zadar from Montenegro (although she tried to do so) because she had lost her personal documents; in the case P-182/94 (see Enclosure no. 7) the request for cancellation of occupancy rights was rejected because Mrs. N.R. left the flat in Nova Gradiška due to illness, following a traffic accident, and due to her difficulty in moving about and the fact that she had no one to take care of her; in the case Ps-2976/97 (Enclosure no. 8) the request for cancellation of occupancy rights was rejected because Mr. B.J. left the flat and moved in with his common law wife due to multiple sclerosis; in the case P-571/96 the request for cancellation of occupancy rights was rejected because Mrs. M.I. left the flat in Zadar for treatment for cancer (Enclosure no. 9).

[24] This stance is visible from the case law of the Supreme Court of the RoC in, for example, the cases Rev 155/1994-2, Rev-998/03-2 (see Enclosures nos. 10 and 11). Moreover the Supreme Court did not take a formalist approach regarding the legal steps tenants had to take to protect their rights. It is clear that they recognised as legal steps the widest range of actions, such as correspondence with the competent bodies. It was important that the tenant did not remain passive regarding the fact of the unlawful occupation of the flat by a third person.

[25] See the above cited decision by the European Court of Human Rights (no. 34162/06) of 6 November 2008 in the case of *Trifunović v. Croatia* stated: *The rationale behind section 102a (1) of the Housing Act was to cancel the specially protected occupancy of those persons who during the war in Croatia had served in the enemy's army as the State authorities could not have tolerated a situation in which such persons would be allowed to continue using flats which had been owned by the State (or other public authorities) they had fought against. That provision was therefore enacted in the interests of national security. (...) Against that background and having in mind in particular the State's obligation, stemming from section 102a (2) of the Housing Act, to secure other appropriate lodging for the applicant and her daughter in case of eviction, the Court considers that it cannot be argued that in the present case the domestic authorities failed to discharge their obligation to strike a fair balance between the general interest involved and the protection of the applicant's right to respect for her home. Consequently, the interference was necessary in a democratic society as it pursued a legitimate aim and was proportionate to it ".*

44. Moreover, the fact that many proceedings to cancel occupancy rights which were instituted from 1991-1994 were still being conducted up to the end of the 1990's, and even longer, clearly refutes the allegation that these were "pro-forma" proceedings, as implied by the complainant.

45. Even from the examples given for illustration in the complainant's complaint (III.D. Examples) it is visible that the proceedings conducted for cancellation of occupancy rights complied with the fair trial standards.[26] In the example described under III.D.3, the request to cancel J.M.'s occupancy rights was granted because he had not taken any of the legal actions that were available to him against the family which had allegedly broke into the flat on which he had occupancy rights, which is in full compliance with the established case law of Croatian courts and international legal standards. Moreover, J.M. was actually residing in his family house in a nearby village, and visited the flat on which he had occupancy rights only occasionally. [27]

46. In the case described under III.D.5, the request to cancel occupancy rights of Đ.Š. and his wife was granted after a detailed presentation of evidence, as part of which the court interrogated the respondent and the relevant witnesses, and examined all the evidence to establish whether Đ.Š. was objectively able to return during the war from the village of Kolarin to the city of Split and, if yes, since when. The judgement was also reviewed by the second instance court and by the Constitutional Court of the RoC.[28]

47. Finally, the Government wishes to point out that several cases related to proceedings to cancel occupancy rights have been examined before the European Court of Human Rights. All objections relating to violations of the right to a fair trial have been rejected by the European Court of Human Rights as manifestly ill-founded.[29]

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[26] The Government identified these two cases on the basis of the information regarding court reference numbers.
[27] See Enclosure no. 12, Judgement by the Zadar County Court Gž-229/97
[28] See Enclosure no. 13, Judgement by the Split Municipal Court P-750/99
[29] In the partial decision on the admissibility no. 59532/00 of 6 December 2001, in the Blečić case, the European Court of Human Rights declared manifestly ill-founded the complaint relating to the unfairness of the proceedings for cancellation of occupancy rights. The Court established: "*The Court finds that there is nothing to indicate that the national courts' evaluation of the facts and evidence presented in the applicant's case was contrary to Article 6 of the Convention. The applicant was fully able to state her case and challenge the evidence; all essential evidence was presented; there had been*

48. Pursuant to Croatian laws, occupancy rights ceased to exist on 5 November 1996. The cessation of that right is established in Article 30 of the Act on Lease of Flats.[30]

B) PROVISION OF ACCOMMODATION FOR REFUGEES, DISPLACED PERSONS AND RETURNEES

1. Liberation of the occupied territory in 1995 and the situation after liberation

49. The areas of the Republic of Croatia that were occupied were returned to the control of the Croatian authorities after military actions in May and August 1995, and in the case of Croatian Podunavlje (Danube Valley) in 1998 after peaceful reintegration[31]. These areas were marked as "areas of special state concern" (hereinafter: ASSC) by the Act on Areas of Special State Concern of 1996, precisely with the aim of reconstructing these areas and creating conditions for sustainable return of the population as soon as possible. Although the ASSC areas covered almost 1/3 of the Croatian territory, the data (1991 Population Census, before the aggression against Croatia) show that in those areas there was a total of 542,650 people, of which 214,621 were Croats, 270,756 Serbs and 56,910 members of other ethnic groups.[32]

50. The ASSC areas were mainly rural areas, in which people lived mostly in private houses. There were only 20,000 flats for which occupancy rights existed up to 1991 or the beginning of the aggression against Croatia. Of these, about 6,300 flats were in the area of

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a public hearing at first instance and the courts' decisions were satisfactorily reasoned. The European Court made a similar statement in the decision on admissibility no. 125/05 of 10 July 2007 in the case of *Rašeta v. Croatia*: "*In the present case the Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings he was able to submit the arguments he considered relevant to his case. The factual and legal reasons for the first-instance decision dismissing his claim were set out at length. In the judgment at the appeal stage the Karlovac County Court endorsed the statement of the facts and the legal reasoning set out in the judgment at first instance in so far as they did not conflict with its own findings. The Court finds no reason to conclude that the domestic courts overlooked important aspects of the case or in any arbitrary manner disregarded evidence presented by the applicant. Furthermore, in so far as the applicant's complaint may be understood to concern an alleged lack of adequate reasoning in the national courts' judgments, the Court, having regard to the reasoning set out above, does not find that the national courts obligation in this respect was set aside. In these circumstances, the Court finds that this case does not disclose any appearance of a violation of the applicant's right to a fair hearing as guaranteed under Article 6 of the Convention*." In the decision on admissibility no. 34162/06 of 6 November 2008 in the case of *Trifunović v. Croatia*, the complaint of a violation of the right to a fair trial was also rejected by the Court as manifestly ill-founded.

[30] "Official Gazette", no. 91/96.

[31] See Enclosure no. 14, Maps of the occupied and liberated areas of the Republic of Croatia

[32] See Enclosure no. 15, Total population and their ethnic composition in the occupied areas (UNPA zones), according to the 1991 Population Census.

Croatian Podunavlje, mainly in the town of Vukovar. In the remainder of the ASSC area there were only 13,700 flats.

51. During the time of the aggression and occupation (from 1991 to 1995, or to 1998 in respect of Croatian Podunavlje), the entire non-Serb population, almost 250,000 people, was expelled from the ASSC areas. In this period, a large number of flats were completely destroyed or damaged. The destruction of flats was especially devastating in the area of Croatian Podunavlje, where at the time of the fierce attacks undertaken by the JNA and its allies against Vukovar, more than 6,000 flats were damaged or destroyed.

52. Most of the Serb population left the ASSC areas (with the exception of Croatian Podunavlje) in an organised manner and voluntarily immediately before the liberation, i.e. before the arrival of the Croatian army[33], and went to the territory of the Republic of Croatia which was still under occupation, to the FR Yugoslavia (Serbia and Montenegro) or to the occupied territory of the Republic of Bosnia and Herzegovina. Members of the Serb ethnic minority living in Podunavlje mainly remained in that area, where they awaited the peaceful reintegration of that part of the country and continued to live in the Republic of Croatia.

53. Due to the fact that a large number of persons left the ASSC areas, leaving behind property while the State had to economically reconstruct and integrate this territory as quickly as possible, after the liberation of the ASSC areas, the Act on the Lease of Flats in the Liberated Territory (OG 73/95) was adopted. This Act ended occupancy rights *ex lege* for all previous holders, regardless of their ethnic origin, who did not return to their deserted flats within ninety days from the day that Act came into force. This Act did not relate to the area of Croatian Podunavlje, since at the time it came into force the process of peaceful reintegration was underway, and Croatian legislation was not being fully applied in that area.

54. Occupancy rights in the ASSC definitely ceased to exist with the adoption of the Act on Lease of Flats on 5 November 1996, at the same time as in the remainder of Croatia. The

[33] See the testimony of Mr. Peter Galbraith in the proceedings before the ICTY against Gotovina, Čermak and Markač, br. IT-06-90, transcript of 23 June 2008: "In my view, the Croatian -- Croatia did not do this in Operation Storm, because when the Croatian forces arrived, the Serbs were already gone. So you couldn't ethnically cleanse somebody who was not there. This is it not to say that they wouldn't have done it had the population been there, but the fact is the population was not there when the Croatian forces actually arrived."

deadlines for sales of flats in the ASSC areas were extended in relation to the rest of Croatia, since those areas had been beyond the application of Croatian law during the occupation. Applications for purchase of flats in the ASSC could be filed by 16 October 1996, and in Croatian Podunavlje up to 7 November 1997.[34] After the sale of flats, a total of 14,000 flats remained in state ownership, including about 7,000 damaged or destroyed flats, most of which were in Croatian Podunavlje. Since most of the flats in Croatian Podunavlje were destroyed or severely damaged, the former holders of occupancy rights did not file applications to buy them off, although they were able to do so. The situation in Podunavlje affected equally ethnic Croats and ethnic Serbs who returned to that area or who had remained in it.

55. The return of displaced persons and refugees to the ASSC was a demanding, sensitive and complex process. It has included: (i) the return of 250,000 persons expelled during the aggression in the period from 1991 to 1995, the majority of which were ethnic Croats, (ii) the return of 126,000 persons who left mainly in 1995, mostly ethnic Serbs,[35] and (iii) provision of accommodation to refugees from other countries, mainly from Bosnia and Herzegovina, who could not or did not want to return to their home country – about 50,000 refugees were accommodated in the ASSC areas from 1995. Parallel with the process of return, the State invested enormous amounts of money to provide minimal living conditions in that area, including reconstruction of damaged and destroyed housing accommodation – about 196,000 houses and flats, restoration of infrastructure and roads, and de-mining housing plots and agricultural land.

56. Up to the end of 1997, 118,000 displaced persons and refugees had returned to their homes, of which the majority were ethnic Croats and about 30,000 ethnic Serbs. In order to speed up the process of return, in 1998 the Croatian Government undertook further measures, i.e. it adopted the Programme of Return and Care for Displaced Persons, Refugees and Resettled Persons, which included provision of accommodation for former holders of occupancy rights. In defining this programme, the Government closely co-operated with the international community.

[34] The deadline for purchase of flats in Croatian Podunavlje was extended because Croatian law in that area began to be applied later, during the time of the transitional administration of UNTAES in that area.

[35] These are registered returnees who after their return to the Republic of Croatia registered with the competent Ministry.

2. Provision of accommodation for returnees to the ASSC

57. Most of the displaced persons and refugees from the ASSC were owners of private houses. The houses of displaced Croats and other non-Serb population were mostly destroyed during the occupation. Therefore, after their return to the ASSC they were accommodated in the houses of Serbs who had fled just before the liberation. In order to speed up the process of return, the Government worked in parallel to reconstruct the demolished houses of displaced Croats, and at the same time returned houses to Serbs returning to the Republic of Croatia. Therefore, return of private property to its owners, reconstruction of demolished houses and provision of accommodation for people who lived in private houses were the priority tasks in the process of return to the ASSC areas.

58. During the process of return, the Government also enacted legal provisions governing the provision of housing in the ASSC areas. These provisions were contained in 2000 amendments to the Act on Areas of Special State Concern. The next amendments to that Act in 2002 **defined former holders of occupancy rights (hereinafter: FHOR) as one of the priority groups for provision of housing**. The Act prescribed the following models of housing provision by the State: (i) leasing family houses or flats in state ownership, (ii) leasing damaged family houses in state ownership and allocation of building materials; (iii) gifting of construction land in state ownership and building materials to build family houses (iv) gifting of building materials for repair, reconstruction and extension of family houses or flats, or building family houses on construction land owned by the applicant, (v) gifting of construction land in state ownership and building materials for construction of housing blocks with several housing units.

59. The right to provision of housing was exercised by FHORs and all other persons who: (i) did not own or co-own another habitable family house or flat in the territory of the Republic of Croatia, or if they had not sold, gifted or in any other way disposed of such a house or flat since 8 October 1991, or if they had not attained the legal status of a protected lessee; and if (ii) they did not own or co-own another habitable family house or flat in the area of the states arising from the break-up of the SFRY or other states in which they resided or if they had not sold, gifted or in any other way disposed of one after 8 October 1991, or if they had not attained the legal status of a protected lessee.

60. FHORs had priority in provision of accommodation by the lease of state-owned flats from the end of 2002, pursuant to the Ordinance on the order of priority for provision of housing in the areas of special state concern.[36] The Action Plan for Accelerating the Implementation of Provision of Accommodation in and outside the ASSC, adopted in June 2008, expressly gave priority in provision of housing to FHORs. The Action Plan establishes the deadline as the end of 2009 for the completion of the programme of return, which is a shorter time limit than given in previous Government documents (the earlier limit was 2011). Precisely by shortening the time limit in this way, the Croatian Government wishes to show its determination to resolve the question of refugees as soon as possible and provide flats and housing blocks for beneficiaries of housing provision.

61. Of the aforesaid forms of provision of housing, most FHORs have been provided with flats in state ownership. As mentioned above, the State had available a total of 14,000 of these flats, of which about 7,000 were destroyed or damaged. Initially these flats were used to accommodate mainly refugees from Bosnia and Herzegovina, and partially displaced persons whose houses were then being reconstructed. With the completion of reconstruction and construction of new houses, those flats were gradually vacated and became available to FHORs. Today about 5,300 FHORs and their families are using state-owned flats, of which the majority are ethnic Serb returnees[37]. There are still about 2,000 damaged and uninhabitable flats. They are now being restored, after which they will be available to FHORs.

62. In total in the ASSC areas 8,943 applications for housing have been filed by FHORs of which 7,022 have been positively resolved. Most applications were filed by members of the Serb ethnic minority. On the basis of positively resolved applications, so far 5,319 families, or 20,896 persons, have been accommodated having been provided with housing, the majority of which are ethnic Serbs. For a further 1,686 families of FHORs, housing accommodation (an appropriate flat or house) is being provided in 2009. About 700 applications are awaiting

[36] "Official Gazette", no. 116/02

[37] Of a total of 5,300 FHORs who were provided with accommodation up to the end of 2008, 54% were Serbs, 40% Croats and 6% members of other ethnic groups. Regarding the Vukovar-Srijem County, where the most FHORs have been dealt with so far, 3,191 families have been provided with flats, 49% are Serbs and 46% Croats.

resolution since the applicants have still not completed their applications, although they were invited to do so on several occasions[38]. Only 1,190 applications were solved negatively.

63. The State has provided housing to all FHORs who expressed a desire to return, in the places where they were formerly resident, except in cases where they expressly requested housing in other locations.

64. All beneficiaries of provision of housing in the ASSC, who lease state property, have been provided with housing by the State at the exceptionally favourable rate ("protected rent") of 2.61 kunas (about 35 euro cents) per m^2 of flat. Taking into account the fact that the average size of the flats given to the beneficiaries is 51.97 m^2, the users of these flats pay monthly rent of 135.64 kunas (about 18.42 euros). Moreover, all beneficiaries who are leasing state property are able to buy off the flat or house under very favourable conditions[39].

65. The implementation of the process of sales of state-owned houses and flats in the ASSC under favourable conditions began at the end of 2007 in Vukovar and Beli Manistir, when the commissions for assessment of the construction status of registered state-owned houses and flats began its work.

66. The first flats and houses in state ownership were sold to beneficiaries of provision of housing accommodation in 2008. By the end of April 2009, 687 beneficiaries of provision of housing accommodation, of which about 50% were former holders of occupancy rights, living in leased state-owned houses and flats, had filed applications to buy-off state-owned flats and houses in the ASSC. Of these 582 applications to buy-off the flat were for flats in Croatian Podunavlje, whose users were mainly former holders of occupancy rights.

67. Up to the end of April 2009, a total 500 flats had been sold. In the ASSC, the State will offer for sale a total of 10,000 pieces of state-owned property to beneficiaries of provision of housing, of which 6,000 are flats and 4,000 houses.

[38] The competent ministry works closely with various NGOs in order to complete incomplete applications and resolve them.
[39] Regulation on conditions for purchase of a family house or flat in state ownership in the areas of special state concern "Official Gazette" no. 48/03, 68/07.

68. The process of the sale of state-owned flats to former holders of occupancy rights and other beneficiaries of provision of housing depends on the pace of registration of state-owned flats.[40] The registration is in progress of about 14,000 flats owned by the Republic of Croatia and about 6,500 flats have been registered so far. Of the total of 14,000 state-owned flats, about 2,000 are still destroyed or damaged.

69. The programme of provision of housing in the ASSC is being implemented in accordance with the principles of international humanitarian law, with real, possible and long-term goals, in reasonable time limits and according to the financial means available.

3. Provision of housing to returnees outside the ASSC areas

70. The Government in paragraph 32 of these Observations stated that 10,212 holders lost their occupancy rights in court proceedings conducted for the cancellation of occupancy rights during the aggression against Croatia, in the part of Croatia under Government control, that is to say, outside the ASSC areas.

72. Regardless of the fact that the occupancy rights were cancelled in court proceedings, conducted on the basis of the law, which had a legitimate goal, and with respect for the guarantee of a fair trial, the Republic of Croatia has taken the view in the process of return of displaced persons and refugees that this category of persons should also be given the possibility of obtaining housing, respecting their desire to return to the Republic of Croatia.

73. To this end, in June 2003 the Government established a legal framework for resolution of their housing provision. On 12 June 2003 the Government adopted a *Conclusion on the manner of provision of housing for returnees who do not own a house or flat, and who lived in socially owned flats (FHORs) in the areas of the Republic of Croatia which are outside the ASSC areas*[41] (hereinafter: Conclusion on provision of housing to FHORs). By the *Decision on the implementation of provision of housing for returnees – former holders of occupancy rights on flats outside the areas of special state concern* of 2008[42] the manner of implementation was amended, by obtaining flats through purchase on the property market.

[40] In the Republic of Croatia, ownership is acquired by registering the property in the land registry of the competent court (Article 119 of the Act on Ownership and Other Rights *In Rem*).
[41] "Official Gazette", nos. 100/03, 179/04, 79/05
[42] "Official Gazette", no. 63/08

74. Through this legal framework, the Government found a solution within the existing legislative system and regulations in force in the Republic of Croatia, being led by the humanitarian aspect of the situation in which refugees from Croatia and returnees found themselves, as former holders of occupancy rights.

75. Preparations began immediately to implement the Government's Conclusion and the Implementation Plan of the Ministry. The Implementation Plan was also sent to representatives of the international community in Zagreb, who were consulted about its content, in order to ensure the transparency of the programme from the start.

76. The general conditions for realising the right to housing are the same as for housing in the ASSC areas. They rest on the principle that all returnees, who wish to return and live permanently in the Republic of Croatia, are provided with housing, regardless whether they are currently outside or within the Republic of Croatia, under the condition that they do not own or co-own a habitable house or flat in the Republic of Croatia, or that they have not sold, gifted or in any other way disposed of one since 8 October 1991, or that they have not attained the legal status of protected lessee.

77. Applications for housing outside the ASSC could be filed until 30 September 2005. This deadline was extended on two occasions. The first deadline for filing an application was 31 December 2004. This deadline was first extended until 30 June 2005 and then again until 30 September 2005.

78. In addition, at the end of 2003 the media campaign and the filing of applications began in Croatia for provision of housing for former holders of occupancy rights. The campaign was then continued abroad. The media campaign abroad intensified from October 2004 in Serbia and Montenegro and Bosnia and Herzegovina, where a large number of refugees live who are potential beneficiaries of the programme. The media campaign and the collection of applications abroad were organised by the competent Ministry in co-operation with the UNHCR, with whom a Memorandum on Co-operation was signed in May 2004. In the media campaign NGOs were included from the beginning of 2005 who worked to provide legal aid to returnees in the Republic of Croatia and Serbia and B&H (SDF abroad and in Croatia, Altruist and a group of Croatian NGOs in Croatia).

79. The second extension of the deadline to 30 September 2005 was related to a joint campaign to raise public awareness by the Government of the Republic of Croatia and the OSCE, to encourage return to the Republic of Croatia. The campaign began in October 2004 and was widely broadcast by the media in B&H, Serbia and Montenegro as well as in the Republic of Croatia, under the title *Croatia is Home to All its Citizens*.

80. By the deadline for housing outside the ASSC, 4,562 applications had been filed by former holders of occupancy rights. Of these, 1,505 were positively resolved, and by the end of 2008, 845 families had been provided with housing, for whom flats were purchased outside the ASSC (urban centres) and for 660 families housing is being provided in 2009. Regarding the remaining applications, 1,296 were rejected in the first instance. About 1,700 applications are pending as the applicants have not yet completed their applications. Namely, the applications cannot be resolved without co-operation with the applicants, of whom a large number live abroad.

81. In order to establish contact with applicants for provision of housing who live in Serbia, and in order to complete incomplete applications, in June 2008 the Ministry signed a contract with two NGOs in Serbia who provide legal aid to refugees. The co-operation with these two NGOs proved to be successful and they succeeded in locating and helping more than 400 applicants in Serbia to complete their applications. For this reason their contracts were extended at the end of 2008 onwards. Help was sought from NGOs since the official institutions of the Government of Serbia did not provide the help requested in contacting and helping applicants who mostly live in Serbia, and as a result a large number of applications were incomplete.

82. Provision of flats is ensured through purchasing on the property market. The flats are given to the users under a "protected lease" arrangement. **Their status and rights are identical in essence to the status they had as former holders of occupancy rights according to the earlier Housing Act of the former state, including the rights of the members of their families.**

II. THE LAW

A) ARTICLE 16 OF THE CHARTER DOES NOT GUARANTEE THE RIGHT OF OWNERSHIP NOR THE RIGHT OF COMPENSATION FOR DEPRIVATION OR LIMITATION OF OWNERSHIP, NOR THE RIGHT TO A SPECIFIC HOME

83. In its decision on admissibility of 30 March 2009, the Committee states that the authors of the complaint complain, on the basis of "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."[43]

84. The Government of the Republic of Croatia deems that in this case it is necessary to clearly establish the difference between the obligations under Article 16 and those arising from Article 31 of the Revised Charter, which the Republic of Croatia did not accept. It is also necessary to establish the difference in scope of the provisions on non-discrimination from the Preamble, in relation to the application of Article 16, and the differences in relation to the scope of Article E of the Revised Charter, which the Republic of Croatia did not accept. In doing this, special attention should be paid to the circumstances of this specific case, which is inseparable from the context of the war and post-war situation, reflected in the obligations and possibility of the state party to provide for the reconstruction of property, houses and infrastructure destroyed in the war.

85. In making its observations on the *ratione materiae* objection by the Government, the Committee stated that the complaint comes within the framework of Article 16 since there are families amongst the alleged victims. In this the Committee clearly states that Article 16 guarantees the right to decent housing as an element of the right of the family to social, economic and legal protection, and that it focuses on the obligation of states: *"States must promote the provisions of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that adequate housing be of an adequate standard and include essential services"*.[44]

[43] Decision on admissibility, §1
[44] Decision on admissibility, §16

86. Therefore the scope of Article 16 only covers the obligation whereby it is necessary to take into account the needs of the family in establishing and implementing housing policies.[45] According to the interpretation by the Committee, within the framework of this Article, consideration is made of the availability of flats of a suitable size for a family in public buildings and programmes of social flats, and whether there are special benefits for families, including support and other forms of financial assistance for purchasing or building family housing units, tax incentives in relation to payments of housing loans, subsidised loans for those who are buying their first flat, subsidised rent for families, and housing benefits.

87. From the case law of the Committee quoted, and from the wording of Article 16, it does not in any way follow that Article 16 could be interpreted as a guarantee of the right of ownership, that is, that it guarantees compensation for destroyed property or the lawful deprivation or limitation of ownership. In the same way, Article 16 cannot be interpreted to mean that it guarantees the right to a specific home. Moreover, even in extreme cases such as the destruction of housing or forced evacuation of villages, from the case law of the Committee it stems that States must provide effective remedies to the victims, and must "take measures in order to re-house families in decent accommodation or to provide financial assistance", so it cannot be concluded that the State would have the obligation under Article 16 to return specific homes or pay compensation.[46] The Republic of Croatia has taken numerous measures to provide suitable accommodation for families of refugees and displaced persons, for which at one time all the hotel accommodation in the Republic of Croatia was being used, and to offer them financial assistance. Members of the Serb ethnic minority who remained in the Republic of Croatia were included in these programmes of provision of housing on an equal footing with everyone else.

88. Therefore, the demands of the authors of the complaint, relating to return to precisely defined homes, on which members of the Serb ethnic minority had occupancy rights, or demands relating to financial compensation for the loss of those flats, unquestionably go beyond the framework of Article 16 of the Charter, and cannot be considered within the scope of this complaint. At the same time, they are also *ratione temporis* outside the competence of the Committee, because in line with international law, the loss of those rights was an instantaneous act which did not produce a continuing situation.

[45] See "Digest of the Case Law of the European Committee of Social Rights", p. 115
[46] Ibid

Therefore, the Government deems that this complaint is outside the competence of the Committee[47]. The question of compensation of victims of gross violations of human rights and serious violations of international humanitarian law is not regulated by binding international legal instruments, but according to the basic principles of international law, for gross violations of human rights and serious violations of international humanitarian law compensation should be paid by the perpetrators of those violations, that is, by the individuals who committed those acts, or the state which led to gross violations of international human rights law and serious violations of international humanitarian law.[48] According to paragraph 20 of the *Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* compensation to victims must be provided for all economically assessable damage proportional to the gravity of the violation and the circumstances of "each case" resulting from gross violations of international human rights law and serious violations of international humanitarian law.[49] This means that compensation for victims must be individualised depending on each specific case and its circumstances.

89. Furthermore, the Republic of Croatia and the Republic of Serbia and Montenegro (the legal successor is the Republic of Serbia) concluded an international agreement in 1996, which states; *"The Contracting Parties shall conclude an Agreement on compensation for all destroyed, damaged or missing property. This Agreement shall establish the procedure for realisation of the right to fair compensation, which will not include court proceedings."* These provisions of the Agreement have not yet been implemented, so the Republic of Croatia itself, independently of the obligations of the Republic of Serbia, and in order to realise the rights from Article 16 of the Charter, financed the reconstruction and construction of destroyed and demolished flats, and the construction of flats for former holders of occupancy rights who filed an application for return and provision of housing in the Republic of Croatia. To date, about 145,640 family houses and flats have been rebuilt.

90. In this sense, the complainant's objection relating to the alleged lack of effective legal remedies goes beyond the framework of Article 16, that is to say, it may be interpreted only

[47] See European Court of Human Rights judgment of 28 September 2004 *Kopecky v. Slovakia*, §35
[48] UN Resolution (RES 60/147) of 21 March 2006: Basic Principles and Guidelines on the Right to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
[49] Ibid, paragraph 20.

within the framework of the obligations which exist within the framework of Article 16. It would be completely in opposition to the accepted principles of international law if Article 16 was interpreted to guarantee legal remedies in relation to rights that are beyond its scope.

91. However, regardless of the scope of Article 16, it is certain that the holders of occupancy rights had effective legal remedies available for the protection of their rights. The facts of the case clearly show that holders of occupancy rights were not arbitrarily or unlawfully deprived of their housing accommodation. They left the flats voluntarily, and cancellations of occupancy rights were conducted in court proceedings with respect for all procedural guarantees, to which the case law of the European Court of Human Rights clearly testifies.

92. Furthermore, provision of housing for former holders of occupancy rights is performed in that each applicant is provided with legal remedies in the form of an appeal and a lawsuit to the administrative court against a decision rendered in relation to the adoption or rejection of his or her application for accommodation, and the allocation of an appropriate flat. Therefore, in the Republic of Croatia effective legal remedies exist for the protection of the rights of former holders of occupancy rights, pursuant to Article 16 of the Charter.

B) THE STATE IS ENTITLED TO A MARGIN OF APPRECIATION IN EXECUTION OF ITS POSITIVE OBLIGATIONS UNDER ARTICLE 16 OF THE CHARTER

93. In its case law dealing with the interpretation of Article 16, the Committee has clearly established that states enjoy a margin of appreciation to choose the means in their endeavour to ensure the social, legal and economic protection of various types of family that can be found in the population."[50]

94. In its case law the Committee has explained that states enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interests of a specific group and the choices which must be made in terms of priorities and resources. Nonetheless, "when the achievement of one of the rights in question is exceptionally complex and

[50] See "Digest of the Case Law of the European Committee of Social Rights", p. 115

particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources"[51]

95. As a result, from the case law of the Committee it clearly stems that states enjoy a margin of appreciation in choosing measures which will ensure provision of housing for individual categories of families. The Republic of Croatia also enjoys this margin of appreciation regarding the provision of housing for former holders of occupancy rights, regardless of their ethnic affiliation. The margin of appreciation implies respect for the legal tradition, law and legally effective court decisions of a specific country. It also implies striking the balance between the general interest and the interests of individual groups, within which the State has the right to set priorities and allocate resources.

96. According to the margin of appreciation enjoyed by each state, the Republic of Croatia had the right to choose measures by which it would ensure housing for former holders of occupancy rights. The Republic of Croatia founded its programmes on the regulations in force, but also on general, international humanitarian and social principles. The programmes have been aimed at beneficiaries who really want to return and remain living in the Republic of Croatia. Here it is necessary to take into account that: (i) the legal concept of occupancy rights no longer exists, so therefore it could not be returned by these programmes retroactively; (ii) cancellations of occupancy rights based on the law or legally effective court decisions could not be annulled in the interests of legal certainty and the protection of the rights of third parties.

97. In contrast to the assertions by the complainant, the Government believes it necessary to point out that in the Republic of Croatia the provision of housing for former holders of occupancy rights does not only relate to members of the Serb ethnic minority or persons who, regardless of their ethnic affiliation, left the Republic of Croatia. The end of the existence of the legal concept of occupancy rights also affected a large group of people who held occupancy rights on private flats.[52] Since, due to the protection of the right of owners of flats,

[51] Decision on merits of the complaint of *ERRC v. Bulgaria* no. 31/2005, §35

[52] In the decision *Sorić v. Croatia* no. 43447/98 the European Court of Human Rights established that the protection of persons in the applicant's position (protected tenant, op cit) under the contested Act is quite broad. The Leases Act invests in persons in the applicant's position the right to rent a flat for an unlimited period of time, thus protecting the applicant from being arbitrarily evicted by a decision of

those people were not able to buy them off, the state had to find a fair model of provision of housing for them too.

98. This model was found in the Croatian legal system within the legal concept of "protected lease", which replaced occupancy rights[53]. The legal concept of protected lease guarantees its holder secure housing and offers him or her an effective remedies against arbitrary cancellation. The level of the rent is extremely favourable and limited to cover the minimal costs of maintenance. According to statistics from 2001, there are 49,195 households in the protected lease scheme[54].

99. The Republic of Croatia founded its programme for provision of housing for former holders of occupancy rights, in essence, on the same model of housing, that is, "protected lease". The programme makes it possible to attain the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

C) THE PROGRAMME OF PROVISION OF HOUSING FOR FORMER HOLDERS OF OCCUPANCY RIGHTS IS IN LINE WITH THE OBLIGATION FROM ARTICLE 16 OF THE CHARTER

1. The programme of provision of housing is part of the successful process of return of refugees, displaced and resettled persons to the Republic of Croatia

100. The housing programme for former holders of occupancy rights, alongside with other programmes of reconstruction of houses which are also available to members of the Serb ethnic group as to others, should be seen as part of the complex process of return of refugees, returnees and resettled persons to the Republic of Croatia. That process is closely linked to the reconstruction of destroyed buildings, the restoration of economic activity in the areas affected by the war, and care for refugees who wish to remain in the Republic of Croatia.

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the owner. The owner has a right to terminate the lease only for limited reasons, each of which involves a severe breach of the lessee's obligations or a necessity for the owner himself to live in the flat in question. However, the Act does not authorise an owner directly to seek the eviction of a person in the applicant's position from a flat. In cases where the owner has a right to occupy the flat himself or to let it to members of his family, a person in the applicant's position is entitled to ask the municipality for another flat of the same quality. Therefore, there is no indication that the respect for home and family life of a person in the applicant's position is violated by the Act in question *per se*.

[53] The Act on the Lease of Flats (OG 91/96)

[54] See the Journal of Social Policy, volume 11, no. 2(2004), pp. 267-279

101. Throughout the entire process of return, the Republic of Croatia worked in close co-operation with the international community and followed the recommendations of the Council of Europe experts.

102. The Republic of Croatia, in the years after its reception into full membership of the Council of Europe (hereinafter: CoE) in 1996, met almost all the accession obligations. As a result, in September 2000 the Parliamentary Assembly of the CoE adopted a resolution to close the special "monitoring" procedure.[55] The so-called "post-monitoring dialogue" with the RoC over some still open questions, including the return of displaced persons and refugees, was halted in September 2003, when the Bureau of the PA of the CoE, following the positive report and recommendation of the Monitoring Committee (the rapporteur was Ms. Josette Durieux) decided to conclude the post-monitoring dialogue[56]. This confirmed that in the area of return of refugees too the RoC had implemented all the recommendations of the Parliamentary Assembly, that is, it had met the standards of the CoE.

103. From the outset of the implementation of the Programme of Return in 1998, the Government of the RoC established consultative mechanisms with the relevant international partners (the Council of Europe, OSCE, UNHCR and later the European Commission) and adopted and implemented legislative, administrative and other measures, which to date have provided the conditions for the sustainable return of all refugees, resettled and displaced persons.

104. So far, about 350,000 people have returned to the Republic of Croatia, of which more than 126,000 are members of the Serb ethnic minority[57]. According to the UNHCR figures, 88% of returnees have returned to their former homes; 73% of them assess their life after return as better or much better.[58] The Republic of Croatia has so far invested 38 billion kunas (5 billion euro) from the State Budget in programmes of return of displaced persons and refugees, which includes reconstruction of houses/flats and infrastructure, return of property,

[55]Resolution 1223 (2000), available on http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=10141)
[56] The Secretariat of the PA, Synopsis No 2003/109, 27.09.2003.
[57] See the address by the Deputy Prime Minister Mrs. Jadranka Kosor at the round table "The Return of Refugees and Displaced Person – Reconstruction as a Precondition of Return", held in Banja Luka, 3 March 2009.
[58] Data from UNHCR www.unhcr.hr.

provision of housing and care for displaced persons and refugees. So far, more than 145,000 houses and flats have been rebuilt.[59]

105. This all shows the success of the process of return to the Republic of Croatia, and the significant material resources which the State has been setting aside for this. In this context, the programme of provision of housing for former holders of occupancy rights cannot be considered in isolation. Former holders of occupancy rights are only one category of people who are returning to the Republic of Croatia, whose return the State supports.

2. The programme of provision of housing for former holders of occupancy rights is in line with the requirements of Article 16 of the Charter

106. In its case law[60] the Committee established the requirements which adequate housing should meet in the sense of Article 16, which include: (i) a dwelling which is structurally secure and possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; (ii) is of a suitable size considering the composition of the family in residence; and (iii) with secure tenure supported by the law.

107. The Government first of all deems that it is not disputed that the programme of provision of housing meets the requirements of Article 16 of the Charter relating to the structural security and equipping of the building used to provide housing. In the areas of special state concern, accommodation is provided in rebuilt or newly built housing units. Outside the ASSC area, accommodation is provided in housing blocks which completely meet the requirements which the Committee considered relevant within the framework of Article 16 of the Charter.

108. Regarding the other condition, relating to secure tenure, the Government points out that the beneficiaries of provision of housing are ensured permanent lease of the house or flat, for which they pay protected rent. The rent for a flat of 50 m^2 is less than 20 euros a month. The other rights of protected lessees are prescribed by the provisions of the Act on the Lease of Flats. These provisions ensure a high standard of protection of protected lessees from cancellation of the Lease Contract, which has also been confirmed by the European Court of

[59] Ibid 45
[60] Decision on merits *ERRC v. Bulgaria* 31/2005, § 34.

Human Rights[61], and offer appropriate protection of the right to a home, within the meaning of Article 8 of the Convention, to persons who have the status of protected lessees.

109. The Government especially points out that in the ASSC areas it is also possible to buy off flats or houses which were given to beneficiaries of housing to lease, under very favourable terms. In this way, the beneficiaries are in fact encouraged to make permanent use of the properties given to them, and in the long-term they are offered a realistic and feasible opportunity to attain ownership of the property they are using.

110. Furthermore, the Government deems that the programme of housing for former holders of occupancy rights is set up in such a way to enable gradual progress in meeting the goals set, and that statistical monitoring is provided of needs, resources available and results. Regular supervision of implementation is also ensured.

111. The Action Plan of 2008 set clear deadlines by which a former holder of occupancy rights, whose application was granted by October 2008, had to be provided with housing by October 2009.

112. It may therefore be concluded that by the system established by the Government housing programmes, users of flats were enabled to use flats under similar conditions to which they used the flats as holders of occupancy rights, with the additional benefit for users in the areas of special state concern who may buy, or already have bought off the flats they are using.

3. The programme of provision of housing and its implementation has received positive assessments by the relevant international organisations and political representatives of the Serb community in Croatia

113. Just as the international community carefully monitored the creation and adoption of the programme of provision of housing for former holders of occupancy rights, it is monitoring its realisation with equal care.

114. Thus, the 2008 Croatia Progress Report of the European Commission contains a favourable assessment of provision of housing for former holders of occupancy rights[62]

[61] Ibid 41

115. In the report which the OSCE Zagreb Office presented to the Permanent Council of the OSCE in Vienna on 26 March 2009[63], the Office gave its assessment of the implementation of the programme of provision of housing for former holders of occupancy rights in Croatia.

116. From the report it is clear that the OSCE believes that the goals for the 2007 programme were met and even more than was agreed, for 2008 they were mostly met (in that in the end more would be fulfilled than was agreed) and the Plan for Provision of Housing has been completely feasible. Furthermore, in view of the fact that the programmes and plans of the Government of the RoC for housing for former holders of occupancy rights were created and drawn up in close co-operation with the OSCE and other representatives of the international community (EC, UNHCR, the US Ambassador), which were involved through a consultative mechanism on the highest level (Platform), as such they provide **an internationally recognised and functional solution to the housing problems of refugees from this group, insofar as they really want to return to the Republic of Croatia.** This is also supported by the continuous joint supervision of the implementation which takes place both on a professional and on a high political level within regular meetings between the Deputy Prime Minister responsible for regional development, reconstruction and return and representatives of the international community in Croatia and state officials from all the relevant ministries.

117. The Government also considers it necessary to point out that members of the Serb minority in Croatia, through their political representatives, have been continuously actively involved in executive power since 2004. They have accepted the existing programmes as appropriate, and its implementation is an integral part of the political agreement on the government coalition.[64]

118. In the light of all the above, the Government deems that the programme of provision of housing for former holders of occupancy rights meets the requirements of Article 16 of the

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[62] http://www.delhrv.ec.europa.eu/images/article/File/Progress%20report%202008_final_hrv.pdf , pp. 4-15

[63] OSCE report (see Enclosure no. 16)

[64] See Enclosure no. 17, Agreement between the HDZ and SDSS on Co-operation in the Government of the RoC and the Croatian Parliament

Charter, and that the State has provided an adequate and feasible legal and political framework for the realisation of the rights of former holders of occupancy rights pursuant to Article 16, and for its effective implementation.

4. The programme of provision of housing for returnees is not discriminatory against former holders of occupancy rights who are members of the Serb ethnic minority

119. The complainants particularly point out a violation of Article 16 of the Charter in relation to the principle of non-discrimination from the Preamble to the Charter. They believe that returnees to the Republic of Croatia are treated differently in terms of whether they lived in private property or were holders of occupancy rights.

120. In its case law the Committee has considered complaints in the light of the principle of non-discrimination. In the case *ERRC v. Greece*[65] the Committee established that the principle of equality and non-discrimination form an integral part of Article 16 as a result of the Preamble. However, in this case, the Committee did not give an answer to the question whether the principle of non-discrimination from the Preamble could be considered equal to Article E of the Revised Charter, which explicitly binds states who have ratified it to prohibit discrimination in relation to the rights guaranteed by the Revised Charter. The Government deems that a difference must be made between the principle of equality inherent in Article 16 and the obligation from Article E of the Revised Charter, which at this moment is not binding for the Republic of Croatia.

121. In any case, from the case law of the Committee based on Article E, it stems that the Committee believes that non-discrimination does not exist as an independent right, but must be related to the content of one of the rights guaranteed by the Charter[66]. In this context, the Government points out that consideration of alleged discrimination in this case **must be strictly limited to rights guaranteed by Article 16, within the framework of the Committee's competence *ratione temporis*.**

122. In its case law the Committee has considered that the guarantee of non-discrimination contained in the Charter is in terms of content identical to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, in its interpretation of

[65] Decision on merits, *ERRC v. Greece*, no. 15/2003, § 26
[66] Decision on merits, *Autisam – Europa v. France*, no. 13/2002, § 51

non-discrimination the Committee relies on the case law of the European Court of Human Rights in that respect.[67]

123. The European Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations[68]. A difference in treatment exists when persons in substantially similar situations are treated differently. In the sense of this case law, the Government points out that **it is completely clear that the situation of owners of property is essentially different from the situation of holders of occupancy rights.**

124. The Government in the factual part of its Observations explained in detail the difference in the legal character of ownership and occupancy rights. There is absolutely no foundation on which occupancy rights could be equalised with ownership of specific property. Occupancy rights guaranteed housing under favourable conditions, with broad protection, but under one key condition, which is the **use of the flat to meet housing needs.**

125. In contrast to tenants, owners of property had the legitimate right to use their property as they wished. They, amongst other things, could leave their property permanently or temporarily, and retain the legitimate expectation that their right of ownership would remain untouched, or that in the case of expropriation they would be paid compensation of the market value of their property.

126. Therefore, the Republic of Croatia was obliged to ensure the return of possession of property to owners who had left that property. The return of possession included, in parallel, the reconstruction of demolished and damaged houses, which was an exceptional financial burden on the State.

127. Whatever the case of former holders of occupancy rights there is no such obligation. Occupancy rights were closely linked with use of the flat. With the end of use of the flat, occupancy rights also came to an end. Accordingly, the obligation of the Republic of Croatia regarding former holders of occupancy rights does not consist in return of possession of a

[67] Ibid, § 52
[68] See judgment of European Court of Human Rights of 13 November 2007, *D.H. v. Czech Republic*, § 175

specific flat, but in providing adequate housing for persons who wish to return and live in the Republic of Croatia, so as to avoid abuse in the form of multiple use of the right to provision of housing in different states. [69]

128. **In any case the difference in treatment between owners and holders of occupancy rights has absolutely nothing to do with ethnic or racial affiliation, but exclusively with the legal character of those different rights.** Moreover, statistical data clearly show that most people in Croatia lived in privately owned property. This is particularly true of members of the Serb ethnic minority in Croatia, who mainly lived in less urbanised areas, where privately owned houses were predominant. Therefore, the allegation of the authors of the complaint is completely without any foundation that the difference in treatment between owners of private property and holders of occupancy rights is ethnically motivated.

129. Furthermore, the very discussion of the difference in treatment between returnees who are owners of property and former holders of occupancy rights goes beyond the framework of Article 16 of the Charter. As the Government has already pointed out, nothing from the wording of Article 16 of the Charter or from the case law of the Committee indicates that this provision in any way deals with ownership or similar rights.

130. The Government further points out that holders of occupancy rights who are members of the Serb ethnic minority have never been treated differently from holders of occupancy rights who are of Croatian ethnic origin. All regulations, adopted both before independence and after the declaration of independence of the Republic of Croatia, relating to the status of holders of occupancy rights, the termination of occupancy rights and the legal concept of protected lease, were applied equally for all, without establishing ethnic affiliation. All proceedings conducted for cancellation of occupancy rights were conducted without any knowledge of the ethnic affiliation of the parties. The courts in the RoC did not establish nor did they know the ethnic affiliation of the parties.

131. Finally, even under the assumption that the principle of non-discrimination from the Preamble could be interpreted to require the taking of positive measures in certain cases, the

[69] A certain number of people try to realise the right to provision of housing in several states. In this sense, the bodies of the Republic of Serbia request data from the bodies of the Republic of Croatia on the right to provision of housing (see Enclosure no. 18), the Letter by the Embassy of the Republic of Serbia of 1 April 2009.

Government points out that the **Republic of Croatia took the appropriate special measures in relation to provision of housing for former holders of occupancy rights (FHOR) who had abandoned the flats in which they lived.** Here, the Government wishes to point out that the issue of FHORs cannot be considered exclusively in the context of members of the Serb minority, as the complainants erroneously seek to present. In the category of FHOR there are equally persons of Croatian and other ethnic origins, who abandoned flats in the areas of special state concern and outside them, and therefore lost occupancy rights. This especially relates to the area of the Croatian Podunavlje where there is an equal number of FHORs of Serb and non-Serb ethnic origin.

132. Regardless of the ethnic affiliation of the FHORs, the Republic of Croatia **recognises that the provision of housing for them is a priority** in the process of return to the Republic of Croatia.

133. Furthermore, the FHOR returnees **are guaranteed the privileged status of protected lessees,** which enables them to lease a flat for an unlimited period, with a monthly rent for a flat of 50 m^2 which does not exceed 20 euros. Moreover, in the ASSC areas, they are able to buy off the flats on very favourable terms.

134. In addition, the Republic of Croatia **has undertaken special public campaigns in other states, such as the Republic of Serbia and Bosnia and Herzegovina to acquaint FHORs with the possibility of provision of housing** and made it possible to file an application within the prescribed time limit.

135. **The Republic of Croatia finances the work of NGOs abroad which help FHORs to collect the necessary documentation and complete their applications.**

136. From the above it clearly stems that the objection of discrimination pursuant to Article 16 in the context of the Preamble of the Charter is clearly unfounded.

CONCLUSION

137. Bearing the above in mind, the Government deems that in the light of the scope of this case it has presented convincing arguments on the basis of which the Committee may

conclude that the provision of housing for members of the Serb ethnic minority in Croatia, who are former holders of occupancy rights, is in line with the positive obligations contained in Article 16 of the Charter.

138. The Government therefore respectfully invites the Committee to establish that the Republic of Croatia did not violate its obligations in the application of Article 16 of the Charter, whether independently or in the light of the clause on non-discrimination contained in the Preamble of the Charter.

For the Government