



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2068/2011

Decision adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Milan Vojnović (not represented by counsel)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Croatia
<i>Date of communication:</i>	21 March 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 4 July 2011 (not issued in document form)
<i>Date of adoption of views:</i>	30 October 2014
<i>Subject matter:</i>	Ill-treatment based on ethnic origin
<i>Substantive issues:</i>	Effective remedy; torture; ill-treatment; liberty and security; right to enter one's own country; fair trial; interference with home; discrimination
<i>Procedural issues:</i>	Same matter having been examined under another procedure of international investigation or settlement
<i>Articles of the Covenant:</i>	2, paras. 1 and 3 (b); 7; 9, para. 1; 12, para. 4; 14, para. 1; 17 and 26
<i>Article of the Optional Protocol:</i>	5, para. 2 (a)



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (112th session)

concerning

Communication No. 2068/2011*

Submitted by: Milan Vojnović
Alleged victims: The author
State party: Croatia
Date of communications: 21 March 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 October 2014,

Having concluded its consideration of communication No. 2068/2011, submitted to the Human Rights Committee by Milan Vojnović under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Decision on admissibility

1. The author of the communication is Milan Vojnović, a Croatian citizen of Serb origin, born in 1968. He claims to be a victim of violations by Croatia of his rights under article 2, paragraphs 1 and 3 (b); article 7; article 9, paragraph 1; article 12, paragraph 4; article 14, paragraph 1; article 17; and article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 12 January 1996. The author is not represented by counsel.

The facts as submitted by the author

2.1 On 14 May 1991, the author was stopped on the street in Zagreb by two police officers and a member of the paramilitary forces, Zbor Narodne Garde. They asked him for his identity card and addressed him in an impolite manner. After showing his identity card, he was hit on the head while being escorted to a police car and was brought to a police

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmed Amin Fathalla, Yuji Iwasawa, Walter Kälin, Gerald L. Neuman, Sir Nigel Rodley, Fabían Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardelashvili, Margo Waterval and Andrei Paul Zlătescu.

station, without any charge being presented to him. At the police station, he was dragged by his hands, face down on the ground, while police officers hit and kicked him. On 20 May 1991, the same events took place and the author was again dragged from a police car to the police station, where he was questioned without any charge. On 27 May 1991, he was again arrested and taken to the police station, without explanation. Upon arrival, he was dragged by his hair and was forced to run along a corridor, with police officers positioned on either side of the corridor to trip him up. Thereafter, he was kicked, beaten and questioned. One police officer showed him his knife, saying "I am Ustaše¹ and I will slaughter you. What do you wait for? You must leave your apartment and the Republic of Croatia!"

2.2 On 5 June 1991, the author was apprehended by two police officers and a member of Zbor Narodne Grade. Upon showing his identity card, he was dragged by his hands to the police station where he was questioned without any charge. On 13 June 1991, he was stopped at the market by three members of the paramilitary forces, Ustaše, in black uniforms. He was asked to show his identity card and one of them asked him "Are you Serbian? You have a Serbian name! We will slaughter all Serbs!" The author replied that he was born in Zagreb but the paramilitary officer hit and kicked him. Similar events took place on 7 July 1991, on 20 July 1991 and on 1 August 1991. On 5 August 1991, he was stopped by three police officers. After he had shown his identity card, one of the policemen hit him on the head with a truncheon and then dragged him to the police station where he was beaten and questioned.

2.3 On several occasions, police and military officers entered the family apartment without the author's consent or knowledge.² On 22 August 1991, the author was assaulted in his apartment by a police officer who broke his wrist by hitting him with his rifle stock. At the time, the author was told that this was part of regular police activity, because he had been identified as a person inclined to illegal political activity. When the author pointed out that there must be a mistake with regard to his identity, the aforementioned acts intensified and he was threatened with death by a member of the Croatian secret police.

2.4 The author claims that he and his family were forced to leave the family apartment after receiving death threats during the author's temporary absence from Zagreb. The author and his parents feared for their lives as Croatian Serbs. Before fleeing Croatia, on 12 August 1991, the author was dismissed from his job as a liquidator-cashier at Zagreb Bank, because of his allegedly unjustified absence from work for a week. The author contests the alleged absence and asserts that he was at work during the period in question.

2.5 From 1991 to 1997, the Croatian authorities refused to issue new identification documents to the author and his old documents were not valid for return to the State party.³ Once he was able to re-enter Croatia, he discovered that the apartment previously occupied by his family had been sold.⁴ On 16 March 1995, the office of the Government of the Republic of Croatia in Belgrade turned down the author's request for assistance and aid regarding the violations of his human rights. As a refugee in the Republic of Serbia, he was unable to take a permanent job and was not eligible for social and health care there.

¹ Croatian nationalist movement.

² It appears from the file that the tenancy rights belonged to the author's parents who submitted claims in court, see communication No. 1510/2006, *Dušan Vojnović v. Croatia*, Views adopted on 30 March 2009, paragraphs 2.3 and 2.5.

³ According to information provided by the author, he received a certificate of citizenship in 1998 and a passport on 23 November 2001. He also claims that after the Croatian military operation "Storm" in 1995, it was not possible to enter Croatia without a valid passport.

⁴ The author mentions in the submission that he "got the ability to return to the place where he had a home" on 23 November 2001, but does not specify when exactly he re-entered Croatia.

2.6 On 28 July 2003, the author submitted a complaint before the Municipal Court in Zagreb against both Croatia and Zagreb Bank, claiming to be a victim of torture and discrimination.⁵ On 1 September 2003, the Municipal Court decided that the author should correct or amend his application within a period of 30 days.⁶ On 19 February 2004, the author made the corrections requested. On 19 May 2006, the Municipal Court rejected his application stating that it was “unsuitable for discussion”. On 31 August 2006, the author appealed that decision. On 12 February 2008, the County Court dismissed the decision of the Municipal Court of 19 May 2006 and returned the case to the first instance court for re-examination.⁷ On 8 September 2009, the Municipal Court requested the author to correct his application in accordance with the Civil Procedure Act within 30 days. On 10 December 2009, the author submitted his corrected application to the Municipal Court.

2.7 On 20 November 2009, the author filed a special constitutional complaint with the Constitutional Court on the ground of the violation of his right to a hearing within a reasonable time before the Municipal Court. On 30 December 2009, the Constitutional Court rejected his complaint.⁸

2.8 On 17 June 2010, the Municipal Court in Zagreb re-opened proceedings and requested the author to provide it with the name and address of his representative, given that he lived abroad,⁹ and with proof that he had acted in accordance with article 83 of the Law on Fundamental Rights at Work..

2.9 On 17 December 2010, the County Court in Zagreb found a violation of the author’s right to a trial within a reasonable time, owing to the overall length of the proceedings in the Municipal Court.¹⁰

The complaint

3.1 The author claims that “armed and police officers” used physical force to injure him and force him to leave the country. Furthermore, he states that he was the victim of repeated inspections, arrests and serious bodily injuries, in violation of his rights under articles 7; 9, paragraph 1; and 17 of the Covenant. That claim is to be read in conjunction with article 26 of the Covenant, owing to his ethnic origin.

3.2 The author asserts that, since he was unable to obtain any identification documents between 22 August 1991 and 23 November 2001, he could not enter his own country, in violation of his right under article 12, paragraph 4, of the Covenant.

3.3 The author further claims that that the proceedings before the Croatian courts were not conducted within a reasonable time and no explanation was provided by the State party to justify the overall length of the proceedings. He also invokes a violation of his procedural rights, such as the fact that the court proceedings were not conducted by a

⁵ It seems that the complaint submitted against Zagreb Bank related to the author’s dismissal from his job.

⁶ The author only received the decision on 6 February 2004.

⁷ The author only received the decision on 13 June 2008.

⁸ According to the letter of the Secretary of the Constitutional Court of 30 December 2009, the complaint was rejected as inadmissible under the Constitutional Act of the Constitutional Court. According to the Law on Courts of 29 December 2005, claims concerning protection of the right to trial within a reasonable time should be submitted to a court which is directly superior to the one where the case is pending at the moment of the complaint.

⁹ Article 146 of the Civil Procedure Act.

¹⁰ The County Court decision awarded the author compensation of 3,000 HRK (approximately 415 euros at the time) to be paid within three months, starting from the date of submission of his request to the Ministry of Finance for payment of compensation.

competent judicial authority and that he could not take an active part and submit evidence during the proceedings, and thus his guarantees of a fair trial have been violated.¹¹ The author also claims that the violations complained of are clearly connected to his ethnic background and because he is a member of a minority. Thus, his rights under article 2, paragraph 1 and 3 (b); article 14, paragraph 1; and article 26 of the Covenant have been violated.

3.4 The author also claims that Zagreb Bank terminated his employment contract without legal grounds on a discriminatory basis, contrary to articles 9, paragraph 1; and 26 of the Covenant.

3.5 Referring to his father's communication,¹² the author claims that the efforts of the State party to compensate him were not satisfactory. He also claims an arbitrary deprivation of tenancy rights, referring to the issues claimed in his father's communication.

State party's observations on admissibility and merits

4.1 On 4 January 2012, the State party challenged the admissibility and merits of the communication. It submits, *inter alia*, that the communication repeats most of the arguments already presented before the Human Rights Committee in the context of communication No. 1510/2006 concerning the author's father. It adds that the Committee has examined the follow-up information concerning case No. 1510/2006 and decided, despite the dissatisfaction of the author's father with the remedy provided, that the efforts made by the State party to compensate him were satisfactory, and also decided to close the dialogue under the follow-up procedure.

4.2 The State party argues that the author's father has rejected all the apartments allocated to him and his family by the authorities. The author and his father still have a right to housing, as they fulfil the required conditions set out in the Government's conclusions on the housing of returnees who are former tenancy rights holders. However, the author's father had specified that the only remedy that he would consider adequate was either full ownership of the apartment over which he had a tenancy right before the war, or monetary compensation.

4.3 The State party further argues that the programme for housing for former tenancy rights holders was available to the author's father and the author. The author's father voluntarily applied for an apartment under that programme and obtained a positive decision, by which his right to housing was clearly established and an apartment in Zagreb was allocated to him and his family. The contract on the lease has not been signed only because the author's father has refused to take over the apartment.

4.4 With respect to the author's allegations that he has not received a decision or compensation with respect to his claim that the court proceedings were not conducted in a reasonable time, the State party maintains that, on 17 December 2010, the Zagreb County Court passed a decision allocating compensation for a lengthy trial to the author.

4.5 The State party asserts that the author had not exhausted domestic remedies, since he still had a case at the Municipal Court in Zagreb. Concerning his claim that he was released from his job at Zagreb Bank on discriminatory grounds, on 12 August 1991, the State party maintains that he was released owing to his absence from the office for more than five consecutive days. According to that decision, the author had an opportunity to file a complaint within two weeks. Instead of availing himself of that opportunity, however, the

¹¹ The author does not provide further substantiation in relation to this.

¹² *Dušan Vojnović v. Croatia* (note 2 above).

author only made a complaint against the bank 12 years later, on 28 July 2003. Since the decision of 17 June 2010, the suit was still pending before the Municipal Court in Zagreb, awaiting the author's action in the matter.

4.6 The State party contests as unsubstantiated the author's claims that the views of the Croatian courts were the result of arbitrary interpretation and wilfully erroneous application of the relevant law, constituting a violation of the principle of equality before the law, and that all judicial decisions that were not in his favour were owing to the fact that he belongs to the Serb minority.

4.7 The State party further refutes the author's allegations that there is a system of parallel regulations applied exclusively to the Serb national minority in Croatia. It states that the provisions applied in the author's legal proceedings are part of the ordinary legislation applicable equally to everyone under the jurisdiction of the courts in the State party.

Author's comments on the State party's observations

5.1 On 30 January and 20 February 2012, the author submitted comments on the State party's observations. In response to the assertion by the State party that his submission repeats most of the arguments already submitted to the Committee in his father's communication (No. 1510/2006), he maintains that his claims are different, since he requests individual compensation from the State party and his communication relates to proceedings that he initiated before the Municipal Court in Zagreb. He asserts that the Committee found that his father did not have the standing to act on his (the author's) behalf and declared that part of the communication inadmissible under article 1 of the Optional Protocol.¹³ He reiterates his allegations that the system of parallel regulations applied exclusively to the Serb national minority in Croatia is discriminatory.

5.2 With respect to the length of proceedings before the Municipal Court in Zagreb, the author points out that the State party had not provided any explanation, justifying the overall length of the proceedings of almost eight years. He reiterates that there were many procedural violations during the court proceedings, as they were not conducted by the competent judicial authority; he was not able to take an active part in the proceedings; and could not submit evidence. He contends that he received no notification of the termination of the proceedings. He also asserts that the Croatian courts delayed the resolution of his case on a discriminatory basis, owing to his ethnic origins.

5.3 The author contests the contention of the State party that he had not exhausted domestic remedies. He maintains that his claims against Croatia and Zagreb Bank concerning torture and discrimination, submitted by him to the court system, including to the Constitutional Court, were all rejected. He claims that he took several actions with respect to the decision of the Municipal Court in Zagreb of 16 June 2010, namely on 15 September 2010, 3 November 2010, 31 January 2011, 18 February 2011, 28 May 2011, 29 July 2011 and 6 August 2011, without however specifying the content and nature of those actions.¹⁴ He also denies the statement by the State party that he could have complained against dismissal from his job within two weeks of the event, noting that he had been forcefully expelled from his apartment at that time.

5.4 The author further rejects the statement by the State party that his father received compensation from the State party with respect to his tenancy rights, and that efforts to compensate him were satisfactory, providing the author's father and his family with an

¹³ See *Dušan Vojnović v. Croatia* (note 2 above), para. 7.4.

¹⁴ The file contains only copies of the postal receipts.

effective remedy. On 19 January 2011, the author's father received a "consent" notice that he would be provided with housing and stipulating that he had the right to an apartment of 70 square metres, but that it would remain in the ownership of the Republic of Croatia and he would not acquire the right to own or exchange the said apartment.¹⁵ The author and his parents were not provided with an apartment that corresponded to their pre-war accommodation. The author maintains that the consent is a punishment for the author and his family and represents a new injustice. He also contests the observation by the State party that his father rejected all the apartments allocated to him and his family. He maintains that his father has not received any contract or any decision for the use of the apartment and that he cannot acquire such an apartment. He can be arbitrarily deprived of his tenancy rights at any moment, which puts him in a vulnerable position. On 20 January 2011, the author's father lodged a complaint against the consent to the Ministry of Regional Development.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 In accordance with article 5, paragraph 2 (a), of the Optional Protocol, the Committee must ascertain whether the same matter is being examined under another procedure of international investigation or settlement. The Committee recalls that when acceding to the Optional Protocol, the State party entered a reservation to article 5, paragraph 2 (a), of the Protocol, specifying that the Committee "shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of the international investigation or settlement". The Committee recalls that the concept of "the same matter" has to be understood as including the same author, the same facts and the same substantive rights.¹⁶ The Committee notes that the author has filed an application against Croatia, raising issues similar to those included in the present communication, before the European Court of Human Rights. That application, primarily concerning the length of civil proceedings, but also all the other claims included in the present communication was stricken out of the list of cases by the European Court on 18 June 2013, given that a friendly settlement had been reached by the parties.¹⁷ Prior to discontinuing the application, the European Court determined that the settlement was based on respect for human rights, as defined in the European Convention on Human Rights, and found no reasons to justify a continued examination of the application, in accordance with article 39 of the Convention. The Committee considers that, in the particular circumstances of the case, the author's claims were "examined" by the European Court, for the purposes of article 5, paragraph 2 (a), of the Optional Protocol.¹⁸ Accordingly, the Committee concludes that it is precluded by

¹⁵ This is stipulated in the Decision on the sale of apartments owned by the Republic of Croatia, published in the Official Gazette No. 109 on 20 September 2010.

¹⁶ See, inter alia, communications No. 1115/2002, *Petersen v. Germany*, Views adopted on 1 April 2004, para. 6.3; and No. 998/2001, *Althammer v. Austria*, Views adopted on 8 August 2003, para. 8.4.

¹⁷ According to the decision of the European Court on application No. 1286/10, on 7 February 2013 and 27 February 2013, the Court received friendly settlement declarations signed by the parties, whereby the applicant agreed to waive any further claims against Croatia in respect of the facts giving rise to the application before the Court, against an undertaking by the Government to pay him 3,750 euros to cover any non-pecuniary damage, as well as costs and expenses.

¹⁸ See communication No. 1384/2005, *Petit v. France*, Views adopted on 24 July 2007, para. 6.3.

virtue of the application of article 5, paragraph 2 (a), of the Optional Protocol from examining the present communication.

7. The Committee therefore decides that:

(a) The communication is inadmissible under article 5, paragraph 2 (a), of the Optional Protocol;

(b) This decision shall be transmitted to the State party and to the author.
