United Nations

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/95/D/1510/2006
28 April 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Ninety-fifth session
16 March to 3 April 2009

VIEWS

Communication No. 1510/2006

Submitted by:	Dušan Vojnović (not represented by counsel)
Alleged victims:	The author, his wife Dragica Vojnović and his son Milan Vojnović
State party:	Croatia
Date of communication:	23 January 2006 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 November 2006 (not issued in document form)
Date of adoption of decision:	30 March 2009

* Made public by decision of the Human Rights Committee.

Subject matter: Proceedings in relation with the termination of specially protected tenancy.

Procedural issue: Same matter having been examined under another procedure of international investigation or settlement; exhaustion of domestic remedies; inadmissibility ratione personae; inadmissibility ratione temporis.

Substantive issues: Fair trial; trial in reasonable time; interference with the home; discrimination on the grounds of national origin.

Articles of the Covenant: 2, paragraphs 1 and 3 (b); 7; 9; 12; 14, paragraph 1; 17; 18 and 26.

Articles of the Optional Protocol: 1; 2; 3; 5, paragraph 2 (a) and (b).

On 30 March 2009 the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1510/2006.

[Annex]

ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninety-fifth session

concerning

Communication No. 1510/2006[**]

Submitted by:	Mr. Dušan Vojnović (not represented by counsel)
Alleged victims:	The author, his wife Dragica Vojnović and his son Milan Vojnović
State party:	Croatia
Date of communication:	23 January 2006 (initial submission)

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

Meeting on 30 March 2009,

Having concluded its consideration of communication No. 1510/2006, submitted to the Human Rights Committee on behalf of Mr. Dušan Vojnović, Ms. Dragica Vojnović and Mr. 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:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Dušan Vojnović, born in 1935, a Croatian citizen of Serb national origin. He claims that together with his wife Dragica Vojnović (born in 1946) and his son Milan Vojnović (born in 1968), he is a victim of violations by Croatia of article 2, paragraphs 1 and 3 (b); article 7; article 9; article 12; article 14, paragraph 1; article 17; article 18

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmad Amin Fathalla, Mr. Yuji Iwasawa, Ms. Helen Keller, Mr. Lazhari Bouzid, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

and article 26, of the International Covenant on Civil and Political Rights[1]. The author is not represented by counsel.

Facts as presented by the author

2.1 From 1986 to 1992, the author and his family lived in a state-owned apartment in Zagreb (32/IV Lastovska Street). Under domestic legislation, they held tenancy rights which in most aspects amounted to ownership[2], except that the State could terminate that right in certain circumstances. Article 99 of the Housing Relations Act[3] reads as follows:

> "1. A specially protected tenancy may be terminated if the tenant [...] ceases to occupy the flat for an uninterrupted period exceeding six months.
>
> 2. A specially protected tenancy shall not be terminated under the provisions of paragraph 1 of this section in respect of a person who does not use the flat on account of undergoing medical treatment, performance of military service or other justified reasons."

2.2 In June 1991, the author and his son moved to Serbia, while his wife remained in the apartment until 2 October 1992. The author claims that his family was forced to leave the apartment in Zagreb because they had received death threats from unknown people and feared for their lives as Croatian Serbs. The author claims that he did not inform the authorities of the threats, as other inhabitants of the apartment building in the same situation had experienced forced evictions following their reports to the police.

2.3 On 15 November 1995, the Zagreb Municipal Court, applying article 99 of the Housing Relations Act, decided that the author and his wife who were represented by an appointed trustee (*guardian at litem*) were deprived of their tenants' rights since they had not used the apartment for longer than six months without "justified reasons". The author claims that 44 days before this decision, the apartment had been taken over by another person, allegedly for free. The author claims to have been unaware of the 15 November 1995 Zagreb Municipal Court decision until November 1998. Despite the authorities' knowledge of his temporary address in Belgrade, they did not convoke him to participate in the proceedings.

2.4 On 9 October 1998, the repatriation section of UNHCR Belgrade certified that the Croatian government had confirmed that the author and his family were able to return to Croatia however indicating that "their possessions were in use". In November 1998, the author and his family submitted a request to buy the apartment in Zagreb, which was refused.

2.5 On 13 November 2000, the Municipal Court of Zagreb allowed a review of the court proceedings - which had been requested by the author on 7 December 1998 -, and revoked its

[1] The Optional Protocol to the International Covenant on Civil and Political Rights (Optional Protocol) entered into force for Croatia on 12 January 1996.
[2] I.e. the tenant was entitled to use the apartment during his lifetime.
[3] The law was in force until 1996. However, in 1991, Croatia initiated a process of privatization and adopted the Specially Protected Tenancies Act (Sale to Occupier) which allowed tenants of publicly owned apartments to purchase under favourable conditions the apartment they lived in.

previous decision of 15 November 1995. The Zagreb Municipal Court conducted proceedings, which according to the author were carried out in a discriminatory manner, in particular as two key witnesses - neighbours who were acquainted with the circumstances that led to the author's and his family's departure - were summoned but not heard, as a confrontation between the author's wife and the witness Veselinka Zelenika who currently occupies the apartment was rejected, and as information regarding similar situations of other Serbs in the same apartment building was not taken into consideration as it was judged not being part of the debate. On 12 April 2002, the Zagreb Municipal Court decided that the author's tenancy rights were terminated. The case was then referred to the Zagreb County Court, sitting as a Court of Appeal, which dismissed it on 25 November 2003. On 17 July 2003, the author filed a complaint with the Constitutional Court, alleging a violation of his constitutional right to proceedings in a reasonable period of time. The Constitutional Court dismissed the complaint on 9 November 2005 arguing that the proceedings started on the date of the rehearing (13 November 2000) and therefore the lawsuit lasted two years, three months and twenty-seven days. The case was then brought to the European Court of Human Rights which, on 18 November 2005, declared it inadmissible *ratione temporis,* since the alleged facts occurred prior to the entry into force of the European Convention on Human Rights for Croatia.

2.6 On 4 June 2004, the Zagreb Municipal Court rejected a review request on procedural grounds ruling that the value of the disputed object was inferior to the legal limit above which that Court had jurisdiction to consider the case. The author objects to the assessment of the value of the apartment, which was determined on the basis of the yearly legal rent at the time of the complaint. The dismissal was confirmed on 16 November 2004 by the Zagreb County Court. On 17 February 2004, the author lodged a constitutional complaint[45].

2.7 The author further claims that in 1991, before leaving Croatia, his son Milan Vojnović was victim of repeated inspections, arrests and serious body injuries by members of the Croatian Police *"Zbor Narodne Garde"*. In August 1991, the author's son was dismissed from his job at the "Zagrebačka banka" for alleged uncertified absence, which the author contests. In February 2004, the Zagreb Municipal Court ruled that the incidents of 1991 perpetrated by members of the Ministry of Interior against the author's son Milan Vojnović amounted to inhuman and humiliating treatment and that his dismissal was unjustified. The court awarded compensation.

2.8 Finally, the author claims that the dismissal of his wife, Dragica Vojnović, from her job at the "Auto-Market-Zagreb" on 30 September 1992 after 25 years of service was discriminatory highlighting that ethnic Croat employees received severance allowance, while she did not.

The complaint

3. The author invokes a violation of article 2, paragraph 1 and 3 (b); article 7; article 9; article 12; article 14, paragraph 1; article 17; article 18 and article 26, of the Covenant.

[4] See paragraph 4.7 below.
[5]

State party's observations on admissibility and merits

4.1 By submissions of 16 January 2007 and 12 March 2007, the State party challenged the admissibility of the communication on the grounds that the same matter has been brought before another international body, that domestic remedies have not been exhausted and that the complaints by the author on behalf of his son Milan Vojnović are inadmissible *ratione temporis* and *ratione personae*.

4.2 The State party maintains that the communication should be declared inadmissible on the grounds of its declaration with regard to article 5, paragraph 2 (a), of the Optional Protocol stating 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 examined under another international procedure[6]. The State party argues that on 27 January 2004, the author filed to the European Court of Human Rights (ECHR) an identical application based on the same facts. It is not clear which articles of the European Convention on Human Rights were invoked in the author's application, however it appears that the author in essence complains about the outcome of the domestic proceedings conducted for the termination of his tenancy rights on a flat in Zagreb, as well as the dismissal of his son Milan Vojnović from work in 1991. On 18 November 2005, the ECHR declared the application inadmissible *ratione temporis*.

4.3 The State party asserts that the author has failed to exhaust all domestic remedies. Only civil proceedings regarding the termination of the specially protected tenancy were conducted and the author's constitutional complaint under article 62 of the Constitutional Act lodged on 17 February 2004 for violations of his rights protected in articles 14 and 17, of the Covenant remains pending.

4.4 The State party further argues that the duration of the proceedings, which as determined by the Constitutional Court in its 9 November 2005 decision lasted two years, three months and twenty-seven days, cannot be considered as unreasonably long according to article 5, paragraph 2 (b), of the Optional Protocol. The State party highlights the special role of the Constitutional Court, which allows it to take into consideration other aspects than only the chronological order of the case.

4.5 The State party contests the alleged violation of article 9, of the Covenant as it has not deprived the author of his liberty. It holds that this part of the communication should be dismissed. The State party further argues that the author failed to invoke violations of the rights protected in article 12, paragraph 4; article 18, paragraph 1 and article 26, of the Covenant before domestic courts and that the communication should be declared inadmissible in these respects.

4.6 With regard to the complaints lodged on behalf of the author's son Milan Vojnović, the State party argues that they are inadmissible *ratione temporis* as the events took place in August 1991 and thus before the State party's ratification of the Optional Protocol. The State party also argues that the complaints should be held inadmissible *ratione personae* given that the author

[6] "With regard to article 5, paragraph 2 (a) of the Protocol, the Republic of Croatia specifies that the Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been examined under another procedure of international investigation or settlement."

does not provide any authorization to file a communication on behalf of his son and does not substantiate why his son would have been prevented from filing his own communication.

4.7 By submission of 18 May 2007, the State party filed observations on the merits. It informed the Committee that the author's constitutional complaint had been dismissed on the merits on 7 February 2007. In relation to the alleged violation of the right to equality before the law, the Constitutional Court held that the competent court's views were not the result of arbitrary interpretation or self-willed application of the relevant substantive law. With regard to the alleged violation of the right to a fair trial, the Constitutional Court ruled that there have not been any procedural violations in the court proceedings given that they were conducted by the competent judicial authority, that the participants were able to take active part in the proceedings and could propose evidence and remedies and thus the guarantees of fair trial were not violated. The Constitutional Court ruled further that in a case pertaining to the termination of specially protected tenancy, a violation of the right to prohibition of torture, inhuman and degrading treatment was not relevant and that the alleged violation of the right to prohibition of discrimination was not sufficiently substantiated. It further ruled that in relation to the alleged violation of the right to home, the evidence before the courts proved that the author and alleged victims had left their residence voluntarily; as it appears that the author's wife handed over the keys to of the flat in October 1992 and signed the minutes of handover as per regular procedure. Finally, it held that the right to domestic remedy was not violated given that the author took an active part in the proceedings on the termination of the specially protected tenancy and made use of available domestic remedies.

4.8 Regarding the alleged violation of article 2, paragraphs 1 and 3 (b), of the Covenant, the State party maintains that the author did indeed have remedies available, which he also used, including some of them successfully. The State party argues that in the proceedings, the author was treated without discrimination.

4.9 The State party maintains that the author's rights to equality before courts and fair trial in the proceedings for termination of specially protected tenancy were not violated (article 14, paragraph 1, of the Covenant). It states that in the first court proceedings in 1995, the author was represented by an appointed trustee who protected his interests, and that subsequently, on 13 November 2000, the author succeeded with his request for review of the 1995 lawsuit on the grounds that the court had unjustifiably determined that the author's whereabouts were unknown. In the review proceedings, the author and his wife were represented by an attorney of their choice, and they were allowed to present relevant facts and evidence, including by oral testimony.

4.10 Regarding article 17, of the Covenant, the State party argues that the termination of the specially protected tenancy was based on valid domestic law (article 99 of the Housing Relations Act), that it pursued a legitimate aim - offer apartments for use under favourable conditions to meet the housing needs of the user and his family -, and that the termination for unjustified absence served to combat the shortage of housing space. The State party argues further that the principle of proportionality was respected and refers to the fact that in the domestic court proceedings the author did not succeed proving the existence of duress which had allegedly led to the family's departure from the flat. It also underlines that the author and his wife did not request any protection from, or report the alleged threats to the competent authorities.

Additionally, the domestic courts assessed that the author and his wife had left the flat in a planned manner, given that the author moved out in June 1991, while his wife remained in the apartment until October 1992. Even if the author had left the flat due to threats that remained unreported for justified reasons, he neglected, until 1995, to make use of available remedies to protect his specially protected tenancy[7]. In relation to the legitimacy of the institute of termination of specially protected tenancy, the State party argues that according to case law of international judicial bodies, a wide margin of appreciation should be given to States when regulating sensitive social issues[8].

4.11 Finally, the State party argues that independent of the fact that the author's specially protected tenancy had been terminated, he had the possibility to participate in a program for housing accommodation which was provided for persons who had left Croatia and wanted to return. It was not clear from the author's communication, whether he submitted an application under that programme.

Author's comments on the State party's observations

5.1 On 10 September 2007 and 18 December 2008, the author submitted comments on the State party's observations. In response to the State party's assertion that he did not undertake any steps to prevent the termination of his tenancy, the author clarifies that, due to the armed conflict in the State party, he was not able to enter Croatia without a passport, which was only issued in 1997 during the UNTAES[9] mandate. From 1991 to 1997, the authorities did not issue new identification documents and the old documents were not valid for return, thus his and his family's right to enter their own country was violated (article 12, paragraph 4, of the Covenant). Upon arrival in Belgrade, the author sought protection from the Government of the Socialist Federal Republic of Yugoslavia in relation with the threats received prior to his departure from the flat, however his request remained unanswered. On 16 March 1995, the office of the Government of Croatia in Belgrade provided the author with a negative reply to his request for assistance with regard to the apartment in Zagreb.

5.2 The author refutes the State party's claims that he and his family left the apartment voluntarily and in a planned manner pointing out that it would not be logical to leave an apartment in which the author had lived for 36 years and for which he was the holder of tenancy rights.

5.3 The author underlines that he and his family are part of a pattern of discrimination against the Serb national minority. It was discriminatory and degrading to assign an appointed trustee in the first proceedings before the Zagreb Municipal Court (decision of 15 November 1995), as he was neither juvenile, nor deprived of his legal capacities as per the Civil Procedure Code. The

[7] See judgement of the Supreme Court of the Republic of Croatia, Rev-155/94.
[8] See for example European Court of Human Rights judgements *James and Others v. The United Kingdom* of 21 February 1986, Series A no. 98, p. 32, § 46; *Mellacher and Others v. Austria* of 19 December 1986, Series A no. 169, p. 25, § 45.
[9] Acting under Chapter VII of the UN Charter, the UN Security Council adopted resolution 1037(1996), creating the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), in force from January 1996 to January 1998.

designation of an appointed trustee despite the authorities' knowledge of his temporary address in Belgrade deprived him of his right to equality before a court.

5.4 With regard to the violations of articles 2 and 14, of the Covenant, the author notes that in the review proceedings before the Zagreb Municipal Court, the witnesses proposed by himself and his wife to illustrate the situation in which they had to flee the apartment, were summoned but not heard, and that the information he provided on the number of persons with Serb nationality living in the same apartment building, who had to flee in the same circumstances was not taken into consideration.

5.5 The author furthermore claims that in his complaint regarding his right to proceedings within reasonable time, the Constitutional Court did not assess the time lapse correctly, as thirteen years, one month and seven days had passed between the author's forced departure and its decision. Counting from the 15 November 1995 Zagreb Municipal Court decision to the Constitutional Court decision, nine years, eleven months and twenty-four days elapsed. Starting from the date of his application for review of the 1995 proceedings until the Constitutional Court decision, six years, eleven months and two days had passed.

5.6 On 17 November 2008, the author's request for housing accommodation under the Program of Housing Accommodation for former holders of specially protected tenancy[10] was rejected on the grounds that the author sold property in Glina town at the address of 6 Prečac and that he was currently co-owner of a property at the address of 5 Balinac in the county of Glina. The author specifies that for the property in Glina town, the State Agency only reimbursed him of a third of the total price and that the owner of the property on 5 Balinac was his son Milan Vojnović. The author reiterates his claim to be victim of discrimination as a member of the Serb national minority.

5.7 Regarding the decision by the Constitutional Court of 7 February 2007, the author claims to have never been notified of this decision.

5.8 Regarding the complaint lodged with the European Court of Human Rights, the author specifies that he claimed violations of articles 6 (1); 8 (1); 13; 14 and 17, of the European Convention on Human Rights. The author claims, without further substantiation, that the proceedings before the ECHR were different.

Additional comments by the State party on the author's submission

6. On 17 March 2008, the State party presented further observations. It confirmed that the author indeed lodged a request for housing under the Housing Program and that the competent Ministry had replied on 21 February 2007 requesting further information, which the author

[10] The right to housing under the Housing Program outside of the Area of Special State Concern is conferred upon persons or members of a family who are not owners or co-owners of a house or apartment on the territory of the Republic of Croatia or on the territory of other states created after the dissolve of the former SFRY, or that they did not sell or offer or otherwise alienate their house or apartment after 8 October 1991, or that they did not acquire the legal status of protected tenant (Official Gazette 63/03).

provided in October 2007. The State party submits that the author's request is pending before the competent domestic authorities.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 In accordance with article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that a complaint filed by the author (complaint No. 11791/04) was found inadmissible by the European Court of Human Rights on 23 November 2005 because the facts related to the period prior to the entry into force for the State party of the European Convention on Human Rights. The Committee recalls that on acceding to the Optional Protocol, the State party entered a reservation to article 5, paragraph 2 (a), of that 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 international investigation or settlement". The Committee notes, however, that the European Court did not "examine" the case in the sense of article 5, paragraph 2 (a), of the Optional Protocol, inasmuch as its decision pertained only to an issue of procedure[11]. There is thus no impediment arising out of article 5, paragraph 2 (a), of the Optional Protocol regarding the admissibility.

7.3 The Committee takes note of the State party's contention that domestic remedies have not been exhausted, as a constitutional complaint was pending. The Committee notes that on the date of submission of the communication – 23 January 2006 – a constitutional complaint was pending before the Constitutional Court. However, in its submission on the merits, the State party informed the Committee that the author's application was rejected on 7 February 2007. The Committee recalls its jurisprudence that, save in exceptional circumstances, the date used for determining whether remedies may be deemed exhausted is the date of the Committee's consideration of the communication[12].

7.4 As to the State party's argument that the author does not have any authorisation to represent his son Milan Vojnović and that his son could have submitted the communication himself, the Committee finds that the author does not have standing to act on his adult son's

[11] See Communication No. 1389/2005, *Bertelli Gálvez v. Spain*, inadmissibility decision adopted on 25 July 2005, para. 4.3; and Communication No. 1446/2006, *Wdowiak v. Poland*, inadmissibility decision adopted on 31 October 2006, para. 6.2.

[12] Communication No. 1228/2003, *Lemercier and another v. France*, inadmissibility decision adopted on 27 March 2006, para. 6.4.

behalf[13] and declares this part of the communication inadmissible under article 1, of the Optional Protocol.

7.5 With respect to the alleged violation of article 2, paragraph 3; article 7 and article 9, of the Covenant and with respect to the claims the author presented concerning the dismissal of his wife Dragica Vojnović, the Committee considers that the author failed to sufficiently substantiate these claims for purposes of admissibility, and that these parts of the communication are therefore inadmissible under article 2, of the Optional Protocol.

7.6 As to the author's claim under article 14, paragraph 1, of the Covenant relating to the court proceedings in 1995 including the appointment of a trustee to represent him before the Zagreb Municipal Court, the Committee notes that the facts took place before the entry into force of the Optional Protocol for the State party. Accordingly, it considers this claim incompatible *ratione temporis* with the provisions of the Covenant and declares it inadmissible under article 3, of the Optional Protocol.

7.7 With respect to the alleged violations of articles 12 and 18, of the Covenant, the Committee notes the State party's argument that the author did not raise these claims before the domestic courts. The Committee recalls its jurisprudence, according to which the requirement of exhaustion of domestic remedies, which allows the State party to remedy an alleged violation before the same issue is raised before the Committee, oblige the author to raise the substance of the issues submitted to the Committee before domestic courts. Noting that the author has failed to raise issues related to articles 12 and 18, of the Covenant before domestic courts, the Committee concludes that this part of the communication is inadmissible pursuant to article 2, and article 5, paragraph 2 (b), of the Optional Protocol.

7.8 With regard to the author claim that the determination of the value of the apartment undertaken to establish the Zagreb Municipal Court's jurisdiction in the author's review request (rejected on 4 June 2004), relied on outdated figures, the Committee recalls that its jurisdiction is limited to the examination of arbitrariness, manifest error or denial of justice[14] in the proceedings before the domestic courts and concludes that the author has failed to sufficiently substantiate that the evaluation of the value of the apartment based on the yearly rent at the time the review complaint was lodged, was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality. This part of the communication is therefore inadmissible, under article 2, of the Optional Protocol, for lack of substantiation.

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[13] See Communication No. 946/2000, *L.P. v. Czech Republic*, views adopted on 25 July 2002, para. 6.5; Communication No. 397/1990, *P.S. v. Denmark*, inadmissibility decision adopted on 22 July 1992, para. 5.2.

[14] See General Comment No. 32, CCPR/C/GC/32, para. 26; and Communication No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, inadmissibility decision adopted on 2 November 2004, para. 7.3; Communication No. 886/1999, *Bondarenko v. Belarus*, Views adopted on 3 April 2003, para. 9.3; Communication No. 1138/2002, *Arenz et al. v. Germany*, inadmissibility decision adopted on 24 March 2004, para. 8.6.

7.9 The Committee further notes the State party's argument that the author failed to claim a violation of article 26, of the Covenant before domestic courts. However, it considers that the author raised the issue of discrimination in his individual constitutional complaint before the Constitutional Court, and so may be considered to have exhausted domestic remedies for purposes of article 5, paragraph 2 (b), of the Optional Protocol.

7.10 For the above reasons, the Committee concludes that the communication is admissible, in as far as it raises issues under article 2, paragraph 1; article 14, paragraph 1; article 17 and article 26, of the Covenant.

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

8.2 With regard to the alleged violation of article 14, paragraph 1, of the Covenant, the Committee takes note of the author's claims that his rights to a fair trial in the review proceedings before the Zagreb Municipal Court were violated as two key witnesses - neighbours who were acquainted with the circumstances that led to the author's departure - were summoned but not heard; that a confrontation between the author's wife and the witness Veselinka Zelenika, who currently occupies the apartment, was rejected; and that information regarding similar situations of other Serbs in the same apartment building was not taken into consideration. The Committee further notes the State party's arguments stating that in the said proceedings, the author was represented by an attorney of his choice; that he and his wife were able to participate in the proceedings and give oral testimony; and that witness statements were examined.

8.3 The Committee recalls that the concept of a "suit at law" under article 14, paragraph 1, of the Covenant is based on the nature of the right in question rather than on the status of one of the parties or the particular forum provided by domestic legal systems for the determination of particular rights[15]. In the present case, the proceedings relate to the determination of rights and obligations pertaining to specially protected tenancy in the area of civil law and they therefore fall under the concept of a suit at law. With regard to the alleged violation of the right to a fair trial, the Committee notes that it is a fundamental duty of the domestic courts to ensure equality between the parties, including the ability to contest all the arguments and evidence adduced by the other party[16]. In its 12 April 2002 decision, the Zagreb Municipal Court evaluated that the case was sufficiently debated following the hearing of the author and his wife and three witnesses, including the current owner of the apartment. The Committee observes that, in addition to refusing to hear witnesses summoned to testify on the author's departure, as noted in 8.2, the Court also rejected the reception of additional information on other persons of Serb nationality who abandoned their apartments in similar circumstances, stating that this

[15] See General Comment No. 32, CCPR/C/GC/32, para. 16.
[16] See General Comment No. 32, CCPR/C/GC/32, para. 13; and Communication No. 846/1999, *Jansen-Gielen v. The Netherlands*, Views adopted on 3 April 2001, para. 8.2; Communication No. 779/1997, *Äärelä and Näkkäläjärvi v. Finland*, Views adopted on 24 October 2001, para. 7.4.

information was not part of the debate. The Committee recalls that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice. However, given the circumstances in the State party when the facts occurred, as noted by the author, and the conditions in which the family had to leave the apartment and relocate to Belgrade, the Committee considers that the decision of the Court not to hear witnesses proposed by the author was arbitrary and violated the principles of fair trial and equality before courts contained in article 14, paragraph 1, in conjunction with article 2, paragraph 1, of the Covenant.

8.4 The Committee notes the author's claim that the proceedings to determine the termination of his specially protected tenancy were not conducted in reasonable time. The Committee observes that the State party has not provided any explanation justifying the overall length of the proceedings of almost seven years, starting from the date of the author's application for review on 7 December 1998, to the decision by the Constitutional Court on 9 November 2005. The Committee recalls that the right to a fair hearing under article 14, paragraph 1, of the Covenant entails a number of requirements, including the condition that the procedure before the national tribunals must be conducted expeditiously[17]. This guarantee relates to all stages of the proceedings, including the time until the final appeal decision. Whether a delay is unreasonable must be assessed in the light of the circumstances of each case, taking into account, *inter alia*, the complexity of the case, the conduct of the parties, the manner in which the case was dealt with by the administrative and judicial authorities, and any detrimental effects that the delay may have had on the legal position of the complainant. The Committee thus finds that in light of the author's diligent conduct and of the negative effects the delay has on the author's and his family's return to Croatia, as well as in absence of an explanation by the State party justifying the delay, the overall length in the proceedings for the determination of the author's specially protected tenancy was unreasonable and in breach of article 14, paragraph 1 in conjunction with article 2, paragraph 1, of the Covenant.

8.5 The Committee must determine whether the termination of the author's specially protected tenancy constituted a violation of article 17, of the Covenant. It recalls that, under article 17, of the Covenant, it is necessary for any interference with the home not only to be lawful, but also not to be arbitrary. The Committee considers, in accordance with its General Comment No. 16[18], that the concept of arbitrariness in article 17, of the Covenant is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.

8.6 The Committee observes that the termination of the author's specially protected tenancy was in accordance with Croatian law, article 99 of the Housing Relations Act. The issue for the Committee to decide is therefore whether the termination was arbitrary. The Committee notes the author's claims that he and his family left the apartment due to threats they had received because they belong to the Serb national minority; that for fear of reprisals they did not seek any protection from the authorities in Croatia but upon arrival in Belgrade, the author informed the Government of the Socialist Federal Republic of Yugoslavia of the threats and requested

[17] See General Comment No. 32, CCPR/C/GC/32, para. 27.
[18] See General Comment No. 16, CCPR/C/GC/16, para. 4.

protection; that this request remained unanswered; and that on 16 March 1995 he received a negative reply from the representative of the Government of the State party in Belgrade regarding his request for assistance with respect to his appartment. The author further claims that as he did not have valid identification documents from 1991 to 1997, he was not able to travel to Zagreb to take the necessary measures to protect his tenancy rights and that despite the authorities' knowledge of the author's temporary address in Belgrade, they did not convoke him to participate in the first court proceedings before the Zagreb Municipal Court. The Committee also notes the State party's arguments that the termination of the author's specially protected tenancy relied on a legal basis (the Housing Relations Act) and pursued a legitimate aim - liberating housing space to provide accommodation for other citizens in need. It also respected the principle of proportionality, given that in domestic proceedings the author did not succeed in proving that his and his family's departure from the flat was due to threats received and that even if such threats had occurred and that they were not reported for justified reasons; the author should have taken steps to ensure the protection of his tenancy as according to domestic case law.

8.7 Taking note of the fact that the author and his family belong to the Serb minority, and that the threats, intimidation and unjustified dismissal experienced by the author's son in 1991 were confirmed by a domestic court, the Committee concludes that it appears that the departure of the author and his family from the State party was caused by duress and related to discrimination. The Committee notes that despite the author's inability to travel to Croatia for lack of personal identification documents, he informed the State party of the reasons of his departure from the apartment in question. Furthermore, as ascertained by the Zagreb Municipal Court, the author was unjustifiably not convoked to participate in the 1995 court proceedings before the latter. The Committee therefore concludes that the deprivation of the author's tenancy rights was arbitrary and amounts to a violation of article 17 in conjunction with article 2, paragraph 1, of the Covenant.

8.8 Having reached the conclusion that there was a violation of the above mentioned articles, the Committee does not need to consider the question of a separate violation of article 26 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 14, paragraph 1 in conjunction with article 2, paragraph 1; and article 17 also in conjunction with article 2, paragraph 1, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognised in the Covenant and to provide an effective and enforceable remedy in case that a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
