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Background Report

Blečić v. Croatia: ECHR articulates further limitations on the review of judicially terminated occupancy-tenancy rights

On 8 March, with a majority of 11 votes to six, the Grand Chamber of the European Court of Human Rights (ECHR) determined that it could not review Croatia's termination of Krstina Blečić's occupancy/tenancy rights (OTR) because the case lies outside its temporal jurisdiction¹. In so doing, it reversed two prior decisions of the ECHR First Section Chamber; the first a decision on the merits of the case issued in July 2004, which held that Blečić's rights to respect for home and enjoyment of possessions had not been violated²; the second an admissibility decision issued -- in January 2003, admitting the case for review. It is noteworthy that the Croatian Government's complaint about the ECHR's lack of temporal jurisdiction was raised for the first time during the Grand Chamber proceeding.

In tandem with the ECHR decision in *Rudan v. Croatia*³, *Blečić* articulates the ECHR's temporal and procedural requirements in relation to judicial OTR terminations. The combined effect of this is to shield the vast majority of Croatia's 24,000 judicial OTR terminations from ECHR review. Most of these OTR terminations, which occurred during the conflict in the early to mid-1990s, are deemed to pre-date 5 November 1997 when the European Convention on Human Rights (Convention) became applicable to Croatia.

However, as noted by one of the dissenting judges in the *Blečić case*, "as far as the merits of [OTR termination] are concerned this is not the end of the matter. ... [T]here are indications that there may be thousands of similar cases. Sooner or later they will reach this Court"⁴. The Grand Chamber ruling on *Blečić* discussed both procedure and jurisdiction but did not address the substantive Convention rights implicated by OTR termination. Whether Croatia's

¹ The Grand Chamber comprised of 17 judges is convened only in exceptional cases which raise either a serious question affecting the interpretation or application of the European Convention on Human Rights or a serious issue of general importance. The ECHR referred *Blečić v. Croatia* for a Grand Chamber in December 2004.

² Reviewing the case on the merits, the ECHR held that the judicial termination of Blečić's OTR due to her "unjustified absence" from Zadar for six months during the armed conflict in 1991-1992, did not violate the Convention-guaranteed rights to respect for home and enjoyment of possessions [see Background Report: Ruling by the European Court of Human Rights on the *Blečić v. Croatia* case, 19 August 2004].

³ In the 2001 ruling in the *Rudan* case, the ECHR determined that a request to re-consider a final judicial decision terminating OTR was inadmissible due to a lack of temporal jurisdiction. In addition, they ruled that a request to re-consider a civil case was an extraordinary remedy not subject to the Convention's fair trial guarantee.

⁴ The dissenting opinion of Judge Zupancic.

termination of OTR in any individual case violated the substance of the matter covered by the Convention remains an open question⁵.

Criteria for determining what OTR termination cases are reviewable by the ECHR

Croatia became subject to ECHR jurisdiction as of 5 November 1997, after ratifying the Convention. The issue on which the *Blečić* majority and dissent disagreed was determining the final date of Blečić's OTR termination in relation to the date of ratification. In Convention terms, this means when state "interference" with Convention-protected rights occurred.

The majority determined that Blečić's OTR was terminated as of February 1996, when the Croatian Supreme Court issued its decision terminating the OTR. Since this date preceded, by more than one year, the date on which complaints from Croatia became subject to ECHR jurisdiction, the majority found the case inadmissible. The majority further explained that OTR termination is an "instantaneous act" that occurred at the time of the 1996 Supreme Court decision. The majority held that, for the purposes of the Convention, the subsequent decision by the Constitutional Court in 1999 confirming the Supreme Court's 1996 judgment, did not constitute continuous interference. Rather it simply allowed the 1996 Supreme Court interference to stand.

In contrast, the six dissenting judges found that Croatia's interference with the OTR was only complete in 1999 when the Constitutional Court issued its decision, arguing that this date should be used as the basis on which to establish jurisdiction. In so doing, the ECHR's temporal jurisdiction requirement would be satisfied. This echoes the decision of the ECHR's First Section Chamber back in January 2003, when it originally admitted the case for review.

Based on the majority judgment in the *Blečić* case, it appears that an OTR termination from Croatia is reviewable by the ECHR only when a termination decision was issued after 5 November 1997 and was not reversed by a higher court⁶. While the vast majority of OTR terminations are excluded by this rule, numerous cases, particularly from Zagreb and Split, can likely satisfy it. In the majority of such cases, termination was sought on behalf of the Republic of Croatia, primarily the Ministry of Defence, local self-government units and various state owned companies on the basis of unjustified absence. Currently, the state also continues termination proceedings against persons who have never left their OTR flat on the grounds of "participation in enemy activity."

Availability of housing for former OTR holders

Former OTR holders are the largest remaining category of refugees and internally displaced persons still without a viable housing option in Croatia. Approximately three years ago, the Government adopted a housing programme for those who had had their OTR judicially terminated. While not designed as a legal remedy, it appeared to be a 'good will' initiative on the part of the Government, enabling former tenants wishing to return to Croatia to apply for

⁵ Notably, all parties in the case agreed that Blečić's flat was her home, which is protected by the Convention. In addition, it is worth noting that in a recent *Teteriny v. Russia* case the ECHR acknowledged that a 'social tenancy agreement' similar to the OTR in former Yugoslavia is protected as a 'possession' by the Convention.

⁶ For example, if OTR was terminated by a municipal court in 1994, and the termination was confirmed by the appellate court, such a case would not be reviewable. In contrast, if OTR was terminated by a municipal court in 1994, reversed by the appellate court in 1996, and in 1998, the municipal court terminated the OTR again; it seems likely that this case would be reviewable.

substitute housing.

This programme pertains to parts of Croatia, primarily major cities, located *outside* the areas most heavily devastated by the conflict. So far, some 8,000 or so applications for housing care have been filed. As noted by the European Commission, more than two years after its adoption, the programme remains “at a very early stage of implementation”⁷. As of mid-March, housing had been provided to 18 households under this programme. However, approximately 800 out of 4,425 applications are due to be approved by the responsible administrative body during April.

A long awaited implementation plan related to both the war-affected and non-war affected areas covered by the programme was presented to IC Principals in Zagreb on 14 March. The document outlines a financial commitment of roughly two billion HKN (roughly €270,000,000), to be funded from both the State budget and international loans. These funds will be devoted to the purchase or construction of approx. 7,000 apartments nationwide over a four year period. If implemented in a timely and transparent manner by the Government, taking into consideration the necessary legal refinements, the programme would represent a qualitative solution for former OTR holders who wish to return to Croatia. The Government ceased accepting applications for housing as of 30 September 2005⁸.

Practically speaking, although the ECHR may in future review other terminated OTR cases which meet the temporal requirements, the *Blečić* case was the only case on which the ECHR was expected to rule within the time frame of the Sarajevo process.

Reactions to the ECHR decision

According to the Croatian media, Croatian Serb refugees currently residing in Serbia are calling on the Serbian Government to react to the *Blečić* ruling. The President of the Regional Committee for Refugee Assistance in Serbia announced that Croatian Serb refugees were ready to protest if the Serbian authorities refused to act.

⁷ Id.; Proposal for a Council Decision on the Principles, Priorities and Conditions contained in the Accession Partnership with Croatia, European Commission, 9 November 2005 COM (2005) 556, p. 6.

⁸ After this date, those whose OTR was judicially terminated are no longer eligible for Government-sponsored conflict-related housing assistance.