

Croatia: Ruling Hinders Refugee Returns

European Court of Human Rights Should Reconsider Tenancy Rights Case

(Brussels, November 17, 2004) The European Court of Human Rights should reconsider a landmark case on housing rights in Croatia, Human Rights Watch said today. The case concerns the wartime termination of the right to occupy socially-owned property (so-called “tenancy rights”)—a continuing obstacle to the return of Serb refugees to Croatia. In July this year, the Court held that a refugee would have had to return to a war zone in Croatia to preserve her tenancy rights there—a ruling that runs counter to international humanitarian and refugee law.

In the assessment of Human Rights Watch, the Grand Chamber (appeals chamber) of the European Court should accept the request for referral in the case of *Blecic v. Croatia*, lodged by the applicant on October 25, 2004. The referral request follows a July 29 decision by the first-instance chamber of the court that Croatia did not violate the applicant’s right to a home and the peaceful enjoyment of her property when it stripped Krstina Blecic, a refugee from Croatia, of her tenancy rights to an apartment.

The European Court ruled that Croatia’s courts had been right to accept that Blecic’s absence from the apartment for more than six months justified the termination of her rights to her “socially owned” apartment. Blecic left Zadar in July 1991, two months before the constant shelling of the town by Serb-Montenegrin forces began. She returned to the town in May 1992.

Until the mid-1990s, the right to use a socially owned apartment in Croatia—frequently referred to as the right of tenancy—was a real property right, comparable to private ownership in most respects. The state could terminate the right in certain narrow

circumstances, including when the occupant was absent from the apartment for longer than six months without a justified reason.

“Lost tenancy rights continue to prevent Serb refugees from returning to Croatia, yet the European Court affirmed the discriminatory policy that terminated those rights,” said Holly Cartner, Executive Director of Human Rights Watch’s Europe and Central Asia division. “The consequences of the Blečić decision are too important for the European Court not to reconsider the case.”

The Croatian authorities regard the European Court’s decision as a vindication of its refusal to acknowledge that the tenancy rights were wrongfully terminated. In August the Croatian Minister of Justice, Vesna Skare-Ozbolt, stated that “there can no longer be any pressure exerted on Croatia regarding tenancy rights.”

Background

During the 1991-1995 war in Croatia and immediately afterward, the government terminated tens of thousands of tenancy rights belonging to displaced ethnic Serbs and Montenegrins on the grounds of the tenants’ absence. Since then it has been virtually impossible for them to repossess their apartments, get other homes as a substitute, or receive compensation. The failure to resolve the issue of lost tenancy rights is widely acknowledged to have substantially hampered the process of refugee return to Croatia, particularly to urban areas.

In Croatia, the court decisions terminating tenancy rights were in most cases both substantively and procedurally flawed, which strongly suggests that their purpose was to facilitate the forcible displacement of minorities seen as disloyal to the country. Moreover, in September 1995, Croatia adopted a law reducing the permissible time of absence from the apartment to only three months—a measure clearly devised to facilitate the cancellation of tenancy rights of Serbs who had just fled the territories previously

controlled by Serb rebels.

In contrast, the state enabled ethnic Croats who had left their apartments to preserve their tenancy rights. In eviction cases initiated by Croats displaced from the former United Nations-administered region in eastern Croatia, Croatian courts have implicitly recognized tenants' rights without explanation, in effect accepting the argument that the armed conflict is a justified reason for absence.

The Blecic case

Krstina Blecic's tenancy rights to her apartment in the town of Zadar were terminated in October 1992 by the town's municipal court. Blecic left Zadar in July 1991, two months before the town came under daily shelling. She returned to Zadar in May 1992. The court held that Blecic had no justified reason not to return to Zadar and her apartment within six months. The Supreme Court of Croatia, and the Constitutional Court, upheld the decision, in 1996 and 1999 respectively.

In the July 2004 decision, the European Court of Human Rights supported this interpretation, concluding that the cancellation of Blecic's occupancy right was a legitimate tool to penalize her for non-use of the apartment. The court also reasoned that the government pursued a legitimate aim—the promotion of the economic well-being of the country—by moving a Croat family in need of housing into Blecic's apartment.

Despite clear evidence submitted by the Organization for Security and Cooperation in Europe in an amicus brief that the wartime termination of tenancy rights was executed in a discriminatory manner, the court saw “no reason to assume that [the government] pursued any other purpose.”

The European Court can only consider cases after all possible

avenues of appeal have been pursued domestically. Applications to the court must be made within six months of a final decision in the domestic courts. Because most tenancy rights were terminated before 1996, it is unlikely that another case involving lost tenancy rights in Croatia will come before the court.

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