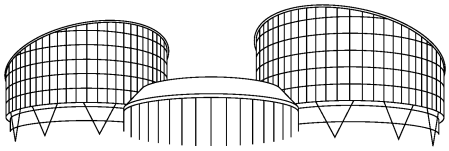

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 819/08
CROATIAN CHAMBER OF ECONOMY
against Serbia

The European Court of Human Rights (Third Section), sitting on 25 April 2017 as a Chamber composed of:

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Georgios A. Serghides,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 4 December 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, the Croatian Chamber of Economy ("the applicant organisation"), is based in Zagreb, Croatia. It is represented before the Court by Mr P. Fellner, a lawyer practising in Zagreb.

2. The Serbian Government ("the Government") were represented by their Agent at the time, Ms V. Rodić.

3. On 23 December 2014 the Croatian Government, having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), indicated that they did not wish to exercise their right to do so.

A. The circumstances of the case

4. Prior to the dissolution of the Socialist Federal Republic of Yugoslavia ("the SFRY") there were a Chamber of Commerce of the SFRY and chambers of commerce for each of the various federal units (that is to say in each of the Republics – Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia – and in the Autonomous Provinces of Serbia, Kosovo and Vojvodina). The said republican chambers of commerce were functionally and commercially independent of each other and chambers of commerce of the federal units had no property stake in the Chamber of Commerce of the SFRY.

5. After the dissolution of the SFRY, the Federal Republic of Yugoslavia (which consisted of Serbia and Montenegro) enacted a law on 29 December 1992 by which the Chamber of Commerce of the SFRY ceased to exist and a Chamber of Commerce of Yugoslavia was established. On 27 May 2003 the Serbian parliament enacted a law by which the Chamber of Commerce of Yugoslavia ceased to exist and all of its assets were divided between the Serbian Chamber of Commerce and Industry and the Montenegrin Chamber of Economy (see paragraph 13 below).

6. On 26 November 2004 the applicant lodged a civil claim with the Belgrade Commercial Court against the Serbian Chamber of Commerce and Industry and the Montenegrin Chamber of Economy. In its claim, the applicant argued that by enacting the legislation of 27 May 2003 the Serbian Parliament had deprived it of its share of the property of the former Yugoslav Chamber of Commerce. The applicant organisation sought, *inter alia*, a judicial declaration to the effect that it was the rightful owner of 23% of a number of parcels of real estate then co-owned by the respondents.

7. Between 11 February 2005 and 20 October 2006 the Belgrade Commercial Court held eight hearings on the matter.

8. On 3 November 2006 the court adjourned the proceedings, stating that the entire matter needed to be regulated between Serbia and Croatia by means of a bilateral treaty, which it deemed to constitute a preliminary legal issue (see paragraph 12 below). The court referred to Articles 4 and 7 of Annex G to the Agreement on Succession Issues (see paragraphs 19-21 below).

9. On 29 December 2006 the applicant organisation lodged an appeal.

10. On 9 February 2007 the appeal was supplemented with an opinion by the Croatian Ministry of Justice attesting that the applicant organisation was not a State body and that the real estate in question was consequently not a succession-related issue.

11. On 26 April 2007 the High Commercial Court upheld the adjournment decision of 3 November 2006. The court stated, *inter alia*, that the successor States would conclude bilateral agreements with a view to stipulating the appropriate procedures and the bodies to be entrusted with the processing of claims such as the plaintiff's. However, should claims of this sort be rejected

within the said procedure, it would ultimately be up to the courts of law to adjudicate on the matter. The applicant organisation received a copy of the High Commercial Court's decision of 6 June 2007.

B. Relevant Serbian domestic law and practice

12. Article 215, read in conjunction with Article 12 of the Civil Proceedings Act (*Zakon o parničnom postupku*, published in the Official Gazette of the Republic of Serbia no. 125/04) provides, *inter alia*, that a court may suspend ongoing civil proceedings if it decides not to rule on a preliminary legal issue (*prethodno pitanje*).

13. The relevant provisions of the Termination Act of 27 May 2003 (*Zakon o prestanku važenja zakona o Privrednoj komori Jugoslavije*, Official Gazette of Serbia no. 55/2003) read as follows:

Article 1

"From the date of the entry into force of this Act, the Chamber of Commerce of Yugoslavia Act ("Official Gazette of FRY" 53/92) is repealed.

Article 2

All the assets, liabilities, business affairs and archives of the Chamber of Commerce of Yugoslavia shall be taken over by the Chamber of Commerce of Serbia and the Chamber of Commerce of Montenegro.

The assets and liabilities mentioned in the first paragraph of this article shall be divided in proportion to the financial contributions of the Chamber of Commerce of Serbia and the Chamber of Commerce of Montenegro to the Chamber of Commerce of Yugoslavia ... in accordance with the agreement which shall be concluded between the Chamber of Commerce of Serbia and the Chamber of Commerce of Montenegro subject to prior approval of the Governments of Serbia and Montenegro."

14. In decision no. Pž. 6029/2004 of 29 December 2004 the Belgrade High Commercial Court held as follows:

"It is the opinion of this court that Articles 4 and 7 of Annex G point to the intention of the Contracting Parties – the successor States – to conclude bilateral agreements with a view to regulating the procedure for deciding the claims and which would establish the state organs to decide on the mentioned claims, applying the provisions of the Agreement, and to decide on property claims in respect of movable and immovable assets. Only upon the conclusion of the procedure established by the bilateral agreement and ... before the relevant state organs set up by the [bilateral] agreement, in the event that claims are contested, will the court decide on them. Therefore, the mentioned provisions of the Agreement do not exclude the court's jurisdiction in respect of property-based claims but, in the chamber's view, this jurisdiction is conditional on [the holding of] prior proceedings before state bodies set up by bilateral treaties and in accordance with the procedure set up by the said treaties, in accordance with Article 4 of Annex G. Consequently, the conclusion of a bilateral treaty and the completion of the proceedings set up by it ... [constitute] preliminary legal issues and the further actions of the court depend on their being resolved ..."

C. Relevant Croatian law and practice

15. The relevant provisions of the Croatian Chamber of Economy Act (*Zakon o Hrvatskoj gospodarskoj komori*, published in the Official Gazette of the Republic of Croatia nos. 66/91, 73/91 and 77/93) read as follows:

Article 1

"The Croatian Chamber of Economy is an independent ... business-related organisation which promotes, represents and co-ordinates the common interests of its members before governmental bodies and other authorities, inside the country and abroad."

The Croatian Chamber of Economy has the status of a legal person."

Article 2 § 1

"Members of the Croatian Chamber of Economy are all legal and physical persons who carry out economic activities [and whose] headquarters [are] on the territory of the Republic of Croatia."

Article 8

"The manner of election for the bodies of the Croatian Chamber of Economy, and their structure and responsibilities shall be determined by the Statute of the Croatian Chamber of Economy."

Article 11

"The Croatian Chamber of Economy shall perform specific public functions, as determined by law.

Attestations, certificates and other documents issued by the Croatian Chamber of Economy in the execution of public functions shall have the character and significance of official documents."

Article 16

"The Croatian Chamber of Economy may establish representative offices abroad, subject to approval from the Government of the Republic of Croatia."

Article 20 § 1

"The funds necessary for the work of the Croatian Chamber of Economy shall be secured through the contributions made or the membership fees paid by ... [its] ... members, through compensation received for any services rendered, and through other sources."

16. The Croatian Chamber of Economy (hereinafter "the CCE") would currently appear to be carrying out a number of lawfully delegated functions related to, *inter alia*, the following: (a) issuing various import, export and transport certificates; (b) harmonising road transport costs and schedules; (c) recording details of property which could be sold in enforcement and insolvency proceedings; (d) conducting the public sale of movable property; (e) organising specialist exams for real estate agents and for persons

providing public road transport services; (f) keeping a register of all printed media; and (g) offering mediation services in consumer protection lawsuits.

17. On 27 February 2004 the Constitutional Court of the Republic of Croatia adopted decision U‑III-3055/2003 by which it declared inadmissible a constitutional complaint lodged against the judgment of the Court of Honour (*Sud časti)* of the CCE due to the failure of the complainant to exhaust other available remedies, that is to say to lodge a request for the protection of his constitutional rights with the Administrative Court of the Republic of Croatia.

18. The decisions on financing of the CCE's work for the last two years contain membership fees and revenue from the exercise of the public functions as main sources of funding (see www.hgk.hr/financiranje-hgk-i-nacin-ispunjavanja-uplatnice, as accessed on 25 April 2017).

D. Agreement on Succession Issues

19. This Agreement was the result of nearly ten years of negotiations. It was signed on 29 June 2001 and entered into force between Bosnia and Herzegovina, Croatia, Serbia and Montenegro (later succeeded by Serbia), Slovenia and the former Yugoslav Republic of Macedonia on 2 June 2004.

20. Annex G to this Agreement deals with "private property and acquired rights".

21. Article 4 of Annex G reads as follows:

> "The successor States shall take such action as may be required by the general principles of law and are otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities."

22. At the meetings of the joint standing committee established under Article 4 of the Succession Agreement held on 17-18 September 2009 and 11-12 November 2015, the committee adopted recommendations concerning, *inter alia*, Annex G to the Agreement. The committee noted that the application of the provisions of Annex G had not been effective enough, and recommended that the successor States conclude bilateral agreements for the purpose of the effective implementation of those provisions. It also advised them to refrain from passing any legislation or undertaking any steps contrary to the provisions of Annex G, and to adopt, should they deem it necessary, measures intended to enable the effective application of the standards set out in Annex G.

E. Other relevant information

23. On the official website of the CCE, the CCE is described as a public institution which represents Croatian economic interests, belonging to the so-

called continental chamber system, with compulsory membership. The website further states that the CCE pays special attention to the execution of public power entrusted to it to carry out successfully its role of providing a service to its members as well as a link between the State authorities and the business community (see www.hgk.hr/english/about-us, as accessed on 25 April 2017).

24. The continental or public-law system of chambers – which are established and regulated by national legislation and whereby one of the areas of activity of the chamber is the execution of public functions – has been adopted by many of the EU Member States, such as Austria, France, Germany, Italy, the Netherlands, Slovenia and Spain (see iccwbo.org/chamber-services/world-chambers-federation/history-chamber-movement/ and www.eurofound.europa.eu/observatories/eurwork/articles/government-wants-voluntary-membership-of-chamber-of-commerce-and-industry, as accessed on 25 April 2017).

COMPLAINTS

25. The applicant organisation complains, under Article 6 § 1 of the Convention, that it was denied access to a court in respect of its civil claims concerning the statutory deprivation of its property. It also complains of the length of the suspended civil proceedings in its respective case.

THE LAW

26. The relevant part of Article 6 § 1 of the Convention provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

27. The Government claimed that the applicant organisation's complaints were inadmissible on various grounds. Notably, they contended that the application was incompatible *ratione personae*, since the applicant organisation was under governmental control. Specifically, they noted that the CCE had been established by law, exercised public duties and required the approval of the Croatian Government for the establishment of representative offices abroad. The Government submitted that the application was also incompatible *ratione temporis* and manifestly ill-founded.

28. The applicant organisation argued that under Serbian law and international law it had the right to have its claims adjudicated. It relied on Annex G to the Succession Agreement, which in its view explicitly guaranteed its right of access to a court.

B. The Court's assessment

29. The Court does not have to address all issues raised by the parties since the application is in any event inadmissible on the following grounds.

30. The Court observes that, under Article 34 of the Convention, it may receive applications from "any person, non-governmental organisation or group of individuals claiming to be the victim of a violation ... of the rights set forth in the Convention or the protocols thereto". That means that public bodies, such as central organs of the State, local and regional authorities, as well as legal (that is to say public-law) entities, other than territorial authorities, which participate in the exercise of governmental powers or operate a public service under government control cannot make applications to the Court (see *Consejo General de Colegios Oficiales de Economistas de España v. Spain*, nos. 26114/95 and 26455/95, Commission decision of 28 June 1995, DR 82-B, and *RENFE v. Spain*, no. 35216/97, Commission decision of 8 September 1997, DR 90-B, and contrast to, for example, *Radio France and Others v. France*, no. 53984/00, ECHR 2004-II, and *Österreichischer Rundfunk v. Austria*, no. 35841/02, 7 December 2006). When determining whether any given legal entity falls within that category, the Court has regard to its legal status, the nature and context of the activity it carries out, and the degree of its independence from the political authorities (see *The Holy Monasteries v. Greece*, 9 December 1994, Series A no. 301-A, and *Chamber of Commerce, Industry and Agriculture of Timişoara (no. 2) v. Romania*, nos. 23520/05 and others, §§ 14-17, 16 July 2009).

31. Turning to the applicant in the present case and its legal status, the Court firstly notes that the CCE was established by a law and it consists of twenty-one county chambers which were set up in accordance with the official division of Croatia into counties. The opening of representative offices of the CCE abroad is subject to the approval of the Croatian Government (see paragraph 15 above).

32. Secondly, the CCE belongs to a public-law system of chambers which has been adopted by many of the EU Member States, including the Netherlands (see paragraph 24 above), against which an application was lodged with the Court by, among other applicants, the Dutch Chamber of Commerce and Industry for the province of South-west Gelderland (*Kamer van Koophandel en Fabrieken voor Zuid-West Gelderland*). The Court found the application from this chamber of commerce inadmissible as incompatible *ratione personae* because it was subordinated to the Government, set up by law and invested with authority to implement the law (see *Smits, Kleyn,*

MettlerToledo B.V. et al., *Raymakers, Vereniging Landelijk Overleg Betuweroute and Van Helden v. the Netherlands* (dec.), nos. 30392/97, 39343/98, 39651/98, 43147/98, 46664/99, and 61707/00, 3 May 2001).

33. Thirdly, membership of the CCE for all entities carrying out economic activities in the territory of the Republic of Croatia is compulsory, which means that all those entities are required by law to join a chamber (see paragraphs 15 and 23 above).

34. Fourthly, the CCE defines itself as a public institution which pays special attention to the execution of public power entrusted to it (see paragraph 23 above).

35. Fifthly, the judgments of the Court of Honour (*Sud časti)* of the CCE can be subject of examination by the Administrative Court of the Republic of Croatia (see paragraph 17 above and compare and contrast *Islamic Republic of Iran Shipping Lines v. Turkey*, no. 40998/98, § 81, ECHR 2007-V).

36. Sixthly, in respect of the nature of the CCE's activity, the Court notes that it carries out a number of lawfully delegated public functions, and documents that it issues in the execution of its public functions have the character and significance of official documents which are eligible for judicial scrutiny (see paragraphs 16-17 above). Therefore, this case should be distinguished from *Chamber of Commerce, Industry and Agriculture of Timişoara (no. 2)*, where the Court found that the national chamber and departmental chamber do not exercise public authority and are not placed under the State control (see *Chamber of Commerce, Industry and Agriculture of Timişoara (no. 2)*, cited above, § 15).

37. Lastly, the CCE's work is mainly funded from compulsory membership fees and revenue from the exercise of the public functions (see paragraph 18 above).

38. Having regard to all the material in its possession the Court finds that the Croatian Chamber of Economy does not enjoy a sufficient degree of autonomy from the Croatian Government for it to be considered a non-governmental organisation within the meaning of Article 34 of the Convention. There is nothing in the text of Article 34 of the Convention to suggest that the term "non-governmental organisation" could be construed so as to exclude only those governmental organisations which could be regarded as a part of the respondent State (see *Ljubljanska banka D.D. v. Croatia* (dec.), no. 29003/07, 12 May 2015).

39. Therefore, the application is incompatible *ratione personae* and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 May 2017.

Stephen Phillips
Registrar

Helena Jäderblom
President