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Date: 16/06/2017

DH-DD(2017)670

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1294th meeting (September 2017) (DH)

Communication from an organisation (Association of Ownership and Possession of Apartment Owners with Protected Tenants) (20/05/2017) and a NGO (Proljeće) (01/06/2017) in the case of STATILEO v. Croatia (Application No. 12027/10) and reply from the authorities (12/06/2017)

Information made available under Rules 9.2, 9.4 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1294^e réunion (septembre 2017) (DH)

Communication d'une organisation (Association of Ownership and Possession of Apartment Owners with Protected Tenants) (20/05/2017) et d'une ONG (Proljeće) (01/06/2017) dans l'affaire STATILEO c. Croatie (Requête n° 12027/10) et réponse des autorités (12/06/2017) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2, 9.4 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DH-DD(2017)670: Rules 9.2, 9.4 & 9.6 (NGO, Organisation and authorities) in Statileo v. Croatia.
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DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE ECHR

Dgi – Directorate General of Human Rights and Rule of Law
Secretariat of the Committee of Ministers
Human Right Treaties and meetings
F-67075 STRASBOURG CEDEX, FRANCE

May 18, 2017

Pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments, we hereby submit this communication on the general measures in the

Case Statileo v. Croatia
Application number 12027/10
Judgment of 10 July 2014
Final on 10 October 2014

Subject: Application of the Association of Ownership and Possession for the 1288th meeting of the Deputy Council of Ministers of the EU (June 2017) - Review of the Action Plan of the Government of the Republic of Croatia from April 03, 2017 in the case of enforcement of the judgment of the European Court of Human Rights in the case of Statileo v. Croatia (Application No. 12027/10), as well as a review of the Law on Amendments to the Law on Lease of Apartments proposed by the Ministry of Construction and Physical Planning of the Republic of Croatia

DH-DD(2017)670: Rules 9.2, 9.4 & 9.6 (NGO, Organisation and authorities) in Statileo v. Croatia.

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With this application, the Association of Ownership and Possession, which represents the interests of the owners of apartments that are by force of law occupied by the so-called 'protected tenants', wants to point out to the EU Council of Ministers to an unbearable situation in the process of enforcing the judgment of the European Court of Human Rights in the case Statileo vs. Croatia, which is supervised by the Council of Ministers, as well as other judgments related to the aforementioned. We also want to use this Application to point out to the irresponsible attitude of the Government of the Republic of Croatia towards the conclusions of the meetings of the Deputy Ministers of the Council of Ministers, as well as towards the legislative process that is being held in Croatia based on the judgment in the case Statileo vs. Croatia.

We would like to point out to several important facts: After the Statileo judgment, the European Court of Human Rights issued three further judgments (Mirošević-Anzulović, Bego and others and Gošović), for which the Republic of Croatia has been convicted of a violation of Article 1 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Although the Statileo judgment imposes very precise demands on the Republic of Croatia with regards to systematic measures that must be taken to stop the violations of Article 1, Protocol 1 of the Convention, to date, more than two and a half years after the judgment has been passed, the Apartment Lease Act has not been amended and the final version of the Act On Amendments to the Apartment Lease Act was not presented to the public.

After the passing of the judgment in the case Statileo vs. Croatia started the process of its execution, and the Ministry of Construction and Physical Planning drafted the Act on Amendments to the Apartment Lease Act for which Public Consultations were held in the period from 02 May to 01 June 2016. Almost one year after the end of the public consultation, the Final Proposal of the Act is not yet known, and according to the Government of the Republic of Croatia's latest Action Plan under Point 21, the results of public consultations have led to further amendments to the Draft of the Act. Association of Ownership and Possession has the text of an amended version of the draft law sent to the ministries for a statement, from which it is apparent that subsequent alterations were made to the detriment of owners as we will document in this Application.

Association of Ownership and Possession has filed a letter to the Council of Ministers on 01 August 2016 stating the shortcomings of the initially proposed Amendments to the Apartment Lease Act in relation to the requirements of the Statileo judgment and the reasons why it is unacceptable to the apartment owners as such. Since the law has remained the same after the public consultations have taken place, the Association of Ownership and Possession stands entirely by its comments given in the above-mentioned application.

Furthermore, we want to point out to the Council of Ministers that after the elections in September 2016, the current government began its mandate on 19 October 2016, while the Croatian Parliament as a legislative body was constituted on 14 October 2016. Therefore, in seven months, when there were no obstacles for the legislative procedure, not only did the

amendments to the Apartment Lease Act not enter the procedure, but until today no final version of the Act has been presented to the public. Moreover, at the explicit request of the Council of Ministers to submit the current version of the Act (1280th meeting of Deputy Ministers, in March 2017, Item 4 of the Decision), Croatian Government through the Office of the Representative of the Republic of Croatia to the European Court of Human Rights only submitted a new version of the action plan (received on 07 April 2017), which contains multiple times repeated and well-known facts, the provisions of the Act are presented incomplete and fragmentary. Thus, the Government of the Republic of Croatia has again failed to comply with the requirements and terms set by this Decision.

In order to provide a precise overview of the current situation and point out the omissions of the current proposal of the Act in the precise implementation of the Statileo judgment, we would like to point out the following facts:

1. **Financial effects**

The Act on Amendments to the Apartment Lease Act published on the website of the Ministry of Construction, about which the Council of Ministers is informed, has foreseen the increase of the protected rent in such a way that the protected rent increases annually by a fixed amount of 1.2 times the rent valid on 31 May 2017, i.e. the initial rent. This would mean that, if the rent for the apartment on 31 May 2017 amounts to 150 kn per month, it would increase in the first year by 150 kn + a fixed amount of 150 kn x 1.2, which means that in that and every following year it would increase by a fixed amount of 180 kn and in the fifth year it would amount to 1,050 kn (140 Eur), which is still far from market rent. The market rent for such an apartment would be about 2.5 to 3 times higher. **However, the Draft Law on Apartment Lease Act submitted to the Opinion of the Ministries does not even contain such a provision that is mentioned in the Action Plan** but has been significantly changed so that this draft omits the word "initial", and it is envisaged that the rent each year increases by 1.2 times, which leads to a completely different calculation provided by the Government and about which it did not inform the Council of Ministers. This means that the rent in the first year would amount to 180 kn, and would increase each year by 20%, which means that in the fifth year it would amount only to about 300 kn (40 Eur). This amount is totally inappropriate with regard to market rent, and it is significantly different from the one provided for in the draft law submitted to the Council of Ministers. Thus the market amount was not reached even in the first draft of the law, and in the latest version it is even more distant from that amount. It should also be noted that the Government has given to public debate the law with the first solution, while this amendment was subsequently introduced. The public is not even familiar with this significant change, although it makes a significant difference in the calculation. It is clear from this type of approach that the Government of the Republic of Croatia has no intention of really addressing this problem, but is seeking legal solutions to avoid its international obligations. From all of the aforementioned, we ask the Council to request from the Government of the Republic of Croatia once again the submission of the draft law sent to the ministries, and to

condition the Government of the Republic of Croatia to submit it to the Council of Ministers before submitting it to the legal procedure.

2. Possibility of terminating the contract

With regard to the possibility of termination of the lease agreement, the Government of the Republic of Croatia **did not make it easier for the lessors in any way**, but by this legal solution **they have been brought to the situation that in the following five years it will be almost impossible for them to terminate the lease agreement** because in order to do that they would have to **secure a second equivalent apartment for the lessee under the same conditions with the guaranteed rent, which is in the market realistically impossible**. Therefore it is not at all clear why the Government of the Republic of Croatia considers that this solution has met the criteria of the Statileo judgment in order to facilitate the termination of the lease agreement.

3. Limit on the duration of the lease

The Government of the Republic of Croatia has foreseen in the Draft Law that the lease ceases **after a period of five years**, but the owners of the apartments consider that period to be unjustifiably and significantly too long. In reality the problem could be solved within a year if there was a political will for it. It is necessary to warn that **this problem in the Republic of Croatia has not been solved for 25 years**, the owners of apartments are unable to come into their possession for several generations, and that the political will to address this problem still does not exist. **The Government of the Republic of Croatia has already drafted several draft laws, none of which has come to the legislative procedure, nor has it been adopted.** We would like to point out that the Government adopted the Bill of the Law, which was submitted to the Council of Ministers in 2013 in which it foresees eviction within 10 years, and for those apartment owners who have not resolved their own housing problem within 3 years. **That law remained only in the form of a draft and was never adopted, and since then 4 years have past without any solution. The Government of the Republic of Croatia treats the following draft the same, although they had the opportunity, regardless of the political situation, to be in the legislative process at the beginning of this year, but even though the Government has announced it, the law has never been adopted.** We urge the Council of Ministers to take into account that this legal solution exists for years only in the form of various drafts and proposals that the Government of the Republic of Croatia uses as an argument that it has been working on resolving the problem, but the relevant drafts after going through the counseling never go into legal proceedings nor are the ever adopted. Please note that the former Minister, under whose mandate the 2013 Law Bill was drafted but never adopted, on a radio broadcast after a question from a caller stated that it was abandoned because "there was not enough interest to resolve the issue in question". After countless letters addressed to the Ministry of Construction by associations and other interested citizens, the Ministry continues to send the same template responses in which it claims that the law is in procedure, and the Minister repeatedly declares that it will be adopted "next month", but without any results.

For this reason, we ask the Council of Ministers to do everything possible in terms of forcing the Government of the Republic of Croatia to execute the judgments of the ECHR because more than two and a half years have passed since the Statileo judgment without any concrete result. Drafts and draft laws that can never be adopted can not solve anything. Moreover, it is more than evident from the solution offered by the Government of the Republic of Croatia, which is partly inadequate, that there is no real political will in the Republic of Croatia to execute the ECHR judgment and that a powerful tenant lobby has a decisive influence on the legal formulation and dynamics of the whole process, which has in this way been securing its private interests successfully since the collapse of the communist system and the establishment of the independent state of Croatia until today.

4. Measures aimed at providing compensation to apartment owners

As can be seen from the action plan, **the Government of the Republic of Croatia did not take any measures in this regard**. The Government states that a number of owners have filed a lawsuit and that they are in the process, but that it does not represent any measure, but describes the existing situation. The Council of Ministers should certainly be warned of the following:

- All apartment owners who applied for compensation to domestic courts in accordance with the Statileo judgment and those who followed them first filed a request for conciliation with the Republic of Croatia (because they must do so before filing a lawsuit against the Republic of Croatia), and **Republic of Croatia has not adopted such a request, but has challenged the claims of all the owners and continues to dispute them before the courts, arguing in their submissions inter alia, we quote: "Contrary to the plaintiff's view, the final ECHR Judgment can not and can not in itself constitute the basis for a domestic court judgment which would allow compensation to the owners in a case of similar factual or legal grounds."**The Republic of Croatia disputes the owners' right to compensation, is not ready for settlement, and the owners who's right under the Convention have been violated have been subject to expensive adjudication. It is therefore completely inexcusable for the Republic of Croatia to mention in its action plan remedial measures for the injured parties, **as such measures do not exist**. In its submissions, **Republic of Croatia denies the importance of the Convention as an overarching legal act and the significance of ECHR judgment**. At the same time, domestic courts generally reject such claims and ultimately impose on prosecutors that, after settling significant court costs, their claims arise before ECHR, for which many ultimately lack the means and lifespan.**If the Government wanted to take measures to compensate the injured party, it would acknowledge the merits of the claims that have the same factual and legal basis as in the Statileo case, and settle with the plaintiffs, but notwithstanding a large number of claims, the Government of the Republic of Croatia did not take any stand on the subject of compensation, and continues to be challenge the claims in question before the courts, as it did in the Statileo case and in other cases that in the meantime came before the ECHR.**

- The Republic of Croatia states that there is still no relevant case law since no Supreme Court judgment has been issued, but it should be pointed out that the **relevant practice that is being created at lower courts goes in the direction of rejecting the plaintiff's request (inter alia because the judges have no experience with the Convention, and generally are not inclined to judge against Republic of Croatia)**, and proceedings before the Supreme Court can be extremely lengthy.

- Also, the Republic of Croatia **has not provided any compensation measures for the injured party in its Bill**, so we come to a very clear conclusion: **no compensation measures for the injured do exist**.

Conclusion:

Although the Government of the Republic of Croatia states in its action plan that it is "committed to the execution of the judgment", it is entirely clear that the Government of the Republic of Croatia did not do anything about it:

1. **No adequate legal solution has been adopted** which would "pro futuro" solve the problem in accordance with the goals of Statileo v. Croatia

2. Existing Bill of Law:

- **offers solutions that for the above reasons do not achieve the goals determined by the Statileo judgment**,

-The proposal that the Government of the Republic of Croatia mentions in the Action Plan and the resolutions that are mentioned differ significantly from the final draft submitted to the Ministries in November 2016 and substantial changes have been made in relation to the draft given to public consultation, and the Government of the Republic of Croatia, through the modifications it subsequently introduced into the text, attempts to save on funds that it would have to pay on the basis of the legal provisions in the form of differences between protected and elevated rent for the social categories of citizens. Thus, **through small changes in the text, it introduces major changes in the rental fee for the next five years, which again reduces to the minimum amount in relation to the real market value**.

- **The only concrete measure taken by the Government on the basis of the ECHR judgment is the payment of the amounts awarded to the plaintiffs**.

3. **For almost five years, this legal solution exists only in the form of legal drafts and proposals, which are abandoned before adoption "because there is insufficient interest"**, and the government has used it as an argument that it is "committed to addressing this problem" but always without any concrete legal solution, or a concrete result.

4. There are no planned measures to compensate the owners of apartments for the past period

- **The Government of the Republic of Croatia refuses the requests for conciliation** and forces the owners of apartments to court proceedings and
- **In the proceedings before the courts it challenges the claims, challenging the importance of the Convention and the ECHR judgment.**

5. **Judicial practice at domestic courts goes in the direction of refusing claims**, and there are already two dismissive judgments of the county court in Split and Zagreb (among other things the County judges point the defendants to seek justice before ECHR, which is a complete absurdity).

The Association of Ownership and Possession, based on all the facts presented, expresses its deepest concern about the fair implementation of the Statileo judgment and draws the attention of the Council of Ministers to the latest crisis faced by the Government of the Republic of Croatia, ultimately resulting in new early elections, which would again delay the adoption of the Law indefinitely. Therefore, we ask the Council of Ministers to take all measures available to it to force the Government of the Republic of Croatia to make the necessary changes, and ultimately to adopt the Law on Amendments to the Law on Apartment Lease and thus to fulfill the internationally accepted obligations to respect the Convention And the judgment of the European Court of Human Rights.

Sincerely,

Association of Ownership and Possession

Igor Leskovar, LLB.

President

Dražen Gržan

Vice President



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Associaton Proljeće
Kralja Zvonimira 17
21000 Split, Croatia



Split, 23.05.2017.



Council of Europe – Ministers' Deputies

Avenue de l'Europe F-67075 Strasbourg Cedex, France

Excellency

Association „Proljeće“ – real estate owner association that is directly interested in final judgement Statileo that has been held 10.10.2014. (Application No. 12027 / 10)

Unfortunately we have to let you know that to this date nothing has been made about realization of conclusions from that judgement. (!?) Even the date of the amendment of the existing law is not known, and especially when it will be adopted, when it will come into force, and will it be consistent with the verdict Statileo.

Statements held out in action plan (!!!!) are not correct. According to publicly available draft amendments of the law (<https://esavjetovanja.gov.hr/Econ/MainScreen?entityId=3181>), not even one of the conclusions from the Statileo judgement has been fulfilled.

According to the draft amendments of the law, protected rent will increase over a transitional period of 5 years based on a scheme by which it will never approach to market rent.

Also, conditions for protective rent cancellation are still restrictive because during that transitional period, rent can be cancelled only in the case that the owner secures appropriate replacement accomodation for protected tenants !!!

After that transitional period, owner has to request from the State to assure other accomodation for protected tenants which will certainly lead to new court proceedings with new problems for apartment owners, with unknown dates for realizing the final settlement.

Also, 5-year transitional period is too long because the State has enough of its own flats, who can solve this problem immediately by assigning them to tenants.

Note that the State still hasn't pointed out draft amendments to the Council of the European Union.

Proposition of gradual increase in protected rent leaves doubt that the owner will receive approximate market rent, especially during the transitional period. We want market rent immediately, and termination of the lease within a year.

It is time that Croatian Government finally reveals amendments of the Law on renting flats (Zakon o najmu stanova), consistent with the judgements of the European court for human rights in Strasbourg and sends it to adoption to Croatian parliament, and finally secures by Law implementation of European Community, and judgements of European court for human rights in Strasbourg, especially Statileo judgement...

Sincerely

president of the association Proljeće , Ivan Matetić

UDRUGA PROLJEĆE
SPLIT

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GOVERNMENT OF THE REPUBLIC OF CROATIA
OFFICE OF THE REPRESENTATIVE OF
THE REPUBLIC OF CROATIA BEFORE
THE EUROPEAN COURT OF HUMAN RIGHTS

Class: 004-02/17-05/01
Reg. no: 50447-03/1-17-27
Zagreb, 12 June 2017

DGI

12 JUIN 2017

SERVICE DE L'EXECUTION
DES ARRÊTS DE LA CEDH

Mr Özgür Derman

Head of Division
DEPARTMENT FOR THE EXECUTION
OF JUDGMENTS OF THE EUROPEAN
COURT OF HUMAN RIGHTS
DIRECTORATE GENERAL I - **DG I**
HUMAN RIGHTS AND RULE OF LAW
SECRETARIAT GENERAL
COUNCIL OF EUROPE
F-67075 Strasbourg Cedex
France

Re: *Statileo v. Croatia*
Application no: 12027/10

Dear Sir,

With reference to your letters of 2 June 2017 and 6 June 2017, bringing to the attention of Croatian authorities communications submitted by the Association of Ownership and Possession of Apartment Owners with Protected Tenants and Association Proljeće, relating to the abovementioned case, the Government of the Republic of Croatia submit herewith their comments.

As the Government has already informed the Committee of Ministers, the legislative process of drafting the Amendments to the Lease of Flats Act is still underway.

In that regard, the Government hereby emphasizes that the Draft Proposal for the Amendments to the Lease of Flats Act has been drafted and the public debate regarding its content was conducted in June 2016. Following the constituting of new Government after the parliamentary elections, and further work on the Draft Proposal, the Ministry of Construction and Physical Planning has submitted the Draft Proposal to the relevant authorities in order to obtain their opinion thereon. Following the obtainment of relevant opinions, the Draft Proposal has been further edited and is at this point prepared for submission to the Government for legislative procedure.

Amendments to the Lease of Flats Act have been included into the Normative Activities Plan, and are scheduled to be directed into the legislative procedure before the Government in the second quarter of 2017. The Draft Proposal shall be referred to the legislative procedure accordingly.

The Draft Proposal sets out to regulate the three main issues identified by the Court in the *Statileo* judgment (i.e. inappropriate amount of protected rent, conditions for termination of lease and limitation of further duration of the protected tenancy scheme to a maximum of 5 years). The Draft Proposal also envisages mechanisms to ensure that the owners, by way of gradual increase of the protected rent, achieve full market rent within the specified time period. Previous action plans submitted by the Government contain framework information on the draft legislative amendments providing solutions to the said issues. It is very important to note that in the preparation of the Draft Proposal the authorities have relied strongly on the Court's findings in the *Statileo* case, but also on other relevant sources in that regard (similar judgments against other member states) in order to ensure that new legislative solutions are fully aligned with the Convention requirements.

With particular regard to the content of the communications submitted by the respective associations to the Committee of Ministers, it is important to note that the Draft Proposal of legislative amendments is by its very nature a working paper defining the text of the future legislative amendments. Once the content of the amendments is fully defined (by the competent authority, relying also on the results of the public debate conducted in the legislative process), the final text of the Draft Proposal is submitted to the Government. Once the Government accepts the text, it is forwarded to the legislative procedure before the Parliament. At that point the Draft Proposal becomes a Proposal of legislative amendments, to


be discussed further before the legislative authority until the final text of the amendments is adopted.

Thus, discussion as to the content of the draft proposal to legislative amendments may constructively be conducted only in proceedings designed specifically for that purpose, before the relevant domestic authorities. The Committee of Ministers as an international body with a mandate to supervise the execution of the Court's judgments might not be an appropriate forum for discussing the content of the draft proposal to legislative amendments. Thus, in cases warranting legislative measures, final conclusions within the supervision process as to the appropriateness of the measures undertaken may be reached only once the legislative amendments have been made.

On the other hand, the Government would like to emphasize that the interested persons, including the associations which filed their submissions to the Committee, have had the possibility to voice their concerns and proposals regarding the content of the Draft Proposal directly to the relevant authorities, within the legislative process.

The Government once again reiterates its position on full dedication to respecting its obligations under Article 46 of the Convention, and is committed to ensuring effective execution of the Court's judgments in the *Statileo* group of cases. We shall keep the Committee of Ministers regularly informed on all relevant developments in the legislative process underway.

Sincerely yours,


Štefica Stazić
Representative