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Date: 05/04/2018

**DH-DD(2018)357**

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Meeting: 1318<sup>th</sup> meeting (June 2018) (DH)

Item reference: Action plan (27/03/2018)

Communication from Croatia concerning the case of RAMLJAK v. Croatia (Application No. 5856/13)

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Réunion : 1318<sup>e</sup> réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de la Croatie concernant l'affaire RAMLJAK c. Croatie (Requête n° 5856/13)  
**(anglais uniquement)**

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DGI

27 MARS 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**GOVERNMENT OF THE REPUBLIC OF CROATIA**

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

Class: 004-02/17-02/21  
Reg. No: 50447-03/04-18-41  
Zagreb, 26 March 2018

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**ACTION PLAN**

***Ramljak v. Croatia***

App. No. 5856/13  
Judgment of 27 June 2017  
Final on 13 November 2017

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The Office of the Representative of the Republic of Croatia before the European  
Court of Human Rights

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## I. CASE DESCRIPTION

1. This case concerns a violation of the applicant's right to a fair trial on account of a lack of impartiality of the appellate court: the presiding judge's son was a trainee at the law firm representing the applicant's opponent in the impugned civil proceedings (a violation of Article 6 § 1).
2. The European Court found that although the Supreme Court and the Constitutional Court had the power to quash the impugned judgment on the ground that it appeared that the presiding judge of the appeal panel had not been impartial, they declined to do so and upheld the judgment (*Ramljak*, §40). The impugned proceedings took place between 2009 and 2012.

## II. INDIVIDUAL MEASURES

3. In response to the Court's judgment, the authorities have taken measures aimed at bringing the violation to an end and providing redress to the applicant.
4. At the outset, the Government indicates that on 28 November 2017, following the Court's judgment, the applicant requested reopening of the impugned proceedings. The applicant's request is currently pending before the Split Municipal Court.
5. Secondly, the Government recalls that the applicant claimed non-pecuniary damage in respect of just satisfaction. The Court awarded the applicant just satisfaction under this head.
6. Lastly, it is recalled that the applicant made no claim in respect of pecuniary damage.

## III. GENERAL MEASURES

7. In response to the Court's judgment, the measures aimed at preventing similar violations have been taken as outlined below.

### A. Change of the domestic court's case-law

8. At the outset, the Government highlights that the European Court noted that the Supreme Court's practice was aligned with Convention standards on this point. To this end, the European Court noted that "the practice of the Supreme Court, ***both before and after the applicant's case***, shows that it was inclined to quash judgments delivered by judges whose close relatives worked in the law offices of parties' representatives, whether or not they had been directly involved in the case at issue" (*Ramljak*, § 35).
9. In reaching such a conclusion, the European Court made reference to a relevant Supreme Court's decision of 26 March 2013 (Rev 1643/11-2). This decision was thus adopted following the facts of the present case. The relevant part of this decision reads as follows:

“... the appeal on points of law alleges that the first-instance judgment was adopted by a judge whose spouse is employed as a legal trainee in the law office of the plaintiff’s representative ...

...

The participation of the judge in the adoption of the first-instance judgment, even though the judge should have been disqualified for the reasons stated, led to a violation of procedural rules ...” (*Ramljak* § 20).

10. The above position is now well-established case-law of the Supreme Court. As an illustration, in the decision of 10 June 2015 (Rev-x 19/13-2), the Supreme Court applied the subjective and objective test when assessing the impartiality of the appellate court bench and quashed its decision of 28 June 2011. The Supreme Court found that one of the judges of the bench had been involved in the lower-instance proceedings in the same case (the decision is available at [www.vsrh.hr](http://www.vsrh.hr)).
11. In response to the European Court’s case-law, the Constitutional Court has operated a change of its case-law to prevent similar violations. Pursuant to the changed case-law, the Constitutional Court now applies both subjective and objective tests when assessing tribunals’ impartiality. In particular, in a decision of 7 April 2016 (U-III-3327/2013) the Constitutional Court quashed a decision of an appeal court on account that one of the judges sitting in the bench had been involved in the lower-instance criminal proceedings. Furthermore, in a decision of 21 September 2016 (U-III-4737/2013) the Constitutional Court, relying on a decision mentioned above, quashed a decision of the Supreme Court on account that a member of the appellate bench had been representing the State as one of the parties in the lower-instance civil proceedings. In its decision of 4 May 2017 (U-III-4781/2016) the Constitutional Court quashed the Supreme Court’s decision on account that one of the judges sitting in the bench had been involved in the lower-instance civil proceedings (the decisions are available at [www.usud.hr](http://www.usud.hr)).
12. In the above decisions, the Constitutional Court highlighted that the existence of impartiality must be determined according to a subjective test and also according to an objective test. As to the subjective test, it is necessary to ascertain whether a judge had a personal reason to be partial in a given case or a personal bias. As to the objective test, it must be determined whether a tribunal as such or its bench provides adequate safeguards to exclude any legitimate doubt with respect to its impartiality. The Constitutional Court highlighted that the tribunals’ impartiality is a key to enhance the confidence of the public in the judiciary system which is an imperative in a democratic society.
13. The Government considers that the above-mentioned change of the case-law of the highest courts in Croatia will be capable of preventing similar violations.

## **B. IT developments in the domestic judiciary system**

14. In 2013, the Ministry of Justice introduced a search engine (*e-predmet*) aimed at ensuring public access to information on domestic proceedings. It functions as a genuine database available not only to the parties of proceedings but general public as well. The database entails relevant information on civil, criminal and commercial proceedings including information on the bench sitting in the case. This particular feature enables a party to the proceedings to lodge a complaint before the competent court if they deem that their

proceedings are conducted by a bias tribunal. The Ministry of Justice ensures that the database is updated daily so that the developments in domestic proceedings are available to the interested public in a timely manner. This also provides interest parties an opportunity to promptly act if they consider that the development in proceedings may be to the detriment of their rights established by Convention. The search engine is available on the webpage of the Ministry of Justice (<http://e-predmet.pravosudje.hr/>).

### **C. Awareness raising measures**

15. In response to the Court's judgment, the Government adopted awareness raising measures aimed at domestic judicial authorities.
16. The Supreme Court informed in writing judges of its Civil Department and judges of other domestic courts on the Court's findings. These judges have therefore been made aware of the Court's findings and the need to adhere to the Convention standards in respect of impartiality of tribunals.
17. In response to the Court's judgment, the Judicial Academy organized training activities for domestic judges and court administrators throughout the country focusing on the Convention standards in respect of impartiality of tribunals and other aspects of fair trial. In particular, in 2017, 6 workshops for 152 attendants were held. These workshops, *inter alia*, clarified the Court's findings in the present case. From April 2018, the Judicial Academy begins a new set of training activities for members of the judiciary in respect of the right to a fair trial. In particular, 6 more workshops are planned to be organized in 2018.
18. In a view of the above, the Government considers that the implemented measures are capable of preventing similar violations.

### **D. Publication and dissemination measures**

19. The Government ensured publication and dissemination of the Court's judgment with a view to drawing the domestic authorities' attention to the Court's findings.
20. To this end, the Government ensured that the Court's judgment was translated into Croatian. The translation was published on the webpage of the Office of the Representative of Croatia before the European Court of Human Rights (hereinafter: the Office of the Representative) (<https://uredzastupnika.gov.hr>) and at the webpage the Constitutional Court ([www.usud.hr](http://www.usud.hr)).
21. With a view to facilitating dissemination of the judgment, the Office of the Representative prepared an analysis of this judgment and highlighted the Court's findings. The analysis has been disseminated to the relevant domestic authorities including the domestic courts involved in this case.
22. Members of the Council of Experts for the Execution of the Court's judgments have also been made aware of the Court's findings through the analysis of this case prepared and transmitted by the Office of the Representative.

#### IV. JUST SATISFACTION

23. The Government ensured that just satisfaction awarded to the applicant was paid on 19 December 2017. The payment has therefore been paid within the time-frame imparted by the Court.

#### V. CONCLUSION

24. With regard to individual measures, the Government would like to recall that the just satisfaction awarded to the applicant was paid in full and the applicant has exercised the right for the reopening of the impugned proceedings. With regard to the latter, the Government will keep the Committee of Ministers informed of the further relevant developments.
25. With regard to general measures, the Government deems that the general measures taken are capable of preventing similar violations.

Štefica Stažnik

Representative