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Communication from Croatia concerning the group of cases of STATILEO v. Croatia (Application No. 12027/10)

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Communication de la Croatie concernant le groupe d'affaires STATILEO c. Croatie (requête n° 12027/10)
(anglais uniquement)



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
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DGI

25 JUIN 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

REVISED ACTION PLAN

Statileo group v. Croatia

Statileo, app. no. 12027/10, leading judgment of 10 July 2014, final on 10 October 2014

Mirošević – Anzulović, app. no. 25815/14, judgment of 4 October 2016, final on 4 October 2016

Bego and Others, app. no. 35444/12, judgment of 15 November 2016, final on 15 November 2016

Gošović, app. no. 37006/13, judgment of 4 April 2017, final on 4 April 2017

I. CASE DESCRIPTION

1. These cases concern violations of the applicants' right to peaceful enjoyment of their property between 1997 and 2013 on account of statutory limitations on the use of private flats by landlords, including through the rent control scheme for flats subject to protected leases (violations of Article 1, Protocol No. 1).
2. Following the introduction of the communist regime in the former Yugoslavia, the authorities seized privately owned properties and allocated them to certain individuals to occupy them as specially protected tenants. Owners thus formally retained their property rights but were not able to freely use their properties, derive profit from it or vacate tenants. Tenants were not under an obligation to pay market rent but a significantly lower protected rent covering predominantly maintenance costs.
3. In 1991 the Republic of Croatia became independent. The special tenancy scheme was transformed through the introduction of the 1996 Lease of Flats Act. Pursuant to its provisions, the special protected tenancy rights were transformed into a mandatory contractual lease. The Act furthermore enabled the protected lessees to benefit from several protective measures such as: (i) indefinite duration of the lease, (ii) protected rent significantly below the market rent, (iii) restrictive conditions for termination of the lease.
4. In *Statileo*, *Mirošević-Anzulović* and *Gošović* the applicants refused to enter into lease contracts with the protected lessees who occupied their flats. Between 1997 and 2007 the protected lessees therefore instituted civil proceedings against them. The domestic courts ordered the applicants to conclude lease contracts stipulating the protected rent significantly below the market rent. Between 2009 and 2013 the Constitutional Court dismissed their constitutional complaints.
5. In 2005, the applicants in *Bego and Others* instituted civil proceedings against the State seeking payment of difference between the protected and the market rent that they could have obtained if their flats had not been subject to the protected lease scheme. The domestic courts dismissed their civil actions. Between 2011 and 2012 the Constitutional Court dismissed their constitutional complaints.
6. In *Statileo*, the European Court indicated under Article 46 that the problem underlying the violation concerned shortcomings in the legislation itself, namely: (i) the inadequate level of the protected rent, (ii) the restrictive conditions for the termination of protected leases, (iii) the absence of any temporal limitation to the protected lease scheme.
7. The European Court particularly highlighted that a landlord who intends to move into the flat or install his or her children, parents or dependents in it, is entitled to terminate the lease contract only if: (i) the landlord does not have other accommodation and is either entitled to permanent social assistance or is over 60 years of age, or (ii) the lessee owns a suitable habitable flat in the same municipality or township (*Statileo*, §§ 46, 126, 127). As a result, the restrictions could in many cases last for two or sometimes even three generations (*Statileo*, § 132).
8. The European Court therefore considered that the Croatian authorities "should take appropriate legislative and/or other general measures to secure a rather delicate balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less well-off" (*Statileo*, § 165). In this connection the European Court noted that the legislative reform was under way at that time (*Statileo*, §§ 77-80).

II. INDIVIDUAL MEASURES

9. At the outset, the authorities would like to indicate that the last examination of this group of cases by the Committee of Ministers ("Committee") took place in December 2018 at the 1331st DH meeting ([CM/Del/Dec\(2018\)1331/H46-8](#)). As regards the individual measures, the Committee noted that the applicants would be able to regain possession of their flats by 1 September 2023 at the latest. It furthermore invited the authorities to provide information on the outcome of the reopened proceedings in the cases of *Bego and Others* and *Gošović* that were pending at that time.

10. In response, the Government would like to indicate that the following steps were taken to complete the reopened proceedings in these cases.

A. Reopened proceedings in *Bego and Others*

11. The Government reiterates that the case of *Bego and Others* concerns five applicants (*Ante Bego, Jakica Bulić, Doris Knego, Ingrid Knego* and *Ivo Matas*) whose civil claims for damages against the State seeking the difference between the protected and the market rent was dismissed by domestic courts. Following the European Court's findings, they requested reopening of the impugned proceedings before the Split Municipal Court. Information in respect of each of these applicants is set out below.

1. *Ante Bego*

12. On 14 December 2016 the applicant requested reopening of the impugned proceedings before the Split Municipal Court. His request was granted and the impugned judgments were quashed. Shortly afterwards, the applicant passed away and his heirs took over the reopened proceedings in 2019. On 24 May 2019, the Split Municipal Court rejected the civil claim. The Split Municipal Court found that the applicant failed to bring an adequate civil action aimed at obtaining damages covering the difference between the protected and the market rent. Notably, the applicant lodged the civil action for unjust enrichment instead of a civil action for damages. The Split Municipal Court was therefore legally prevented from deciding on the damages as indicated by the European Court. The applicant's heirs appealed against the judgment. On 1 October 2019, the Slavonski Brod County Court dismissed the appeal and upheld the first-instance judgment. This judgment thus became final and the reopened proceedings were brought to an end.

2. *Jakica Bulić*

13. The applicant passed away in 2012 (*Bego and Others, §4*). The applicant's heirs requested reopening of the impugned proceedings before the Split Municipal Court on 14 December 2016. It granted reopening while quashing the impugned judgments. On 13 May 2019 the Split Municipal Court partially accepted the civil claim seeking the difference between the protected and the market rent. Following the appeal lodged by both parties, on 27 January 2020, the Zagreb County Court rendered its decision, and partially upheld the first – instance judgment, and reversed the remaining part. In doing so, the Zagreb County Court adjusted the compensation amount pursuant to the newly developed practice of the Supreme Court (see below). The judgment ordering the compensation covering the difference between the market and the protected rent therefore became final and the reopened proceedings were brought to an end.

3. *Ivo Matas*

14. On 14 December 2016 the applicant requested reopening of the impugned proceedings before the Split Municipal Court. It granted reopening while quashing the impugned judgments. On 10 May 2019 the Split Municipal Court partially accepted the civil claim ordering the State to compensate the difference between the protected and the market rent. Following the appeal lodged by both parties, on 13 December 2019, the Šibenik County Court upheld the first-instance judgment in part regarding compensation and remitted the proceedings in part regarding the costs of the proceedings. The part of the judgment ordering the compensation thereby became final.

15. In addition, the Government would like to indicate that on 23 February 2018 the applicant in *Ivo Matas* lodged a civil action requesting the issuance of a judgment substituting the addendum of the protected lease contract. The applicant indicated that the protected tenant's daughter is also living in the apartment and that she should be indicated in the contract as a member of the household. On 21 November 2018, the Split Municipal Court accepted the civil claim. Following the appeal, the proceedings are currently pending before the Varaždin County Court.

4. *Doris and Iris Knego*

16. On 15 December 2016 the applicants requested reopening of the impugned proceedings before the Split Municipal Court. Their request was granted and the impugned judgments quashed. On 22

November 2018 the Split Municipal Court rendered the first-instance judgment accepting the applicants' civil claims and awarding them damages covering the difference between the protected and the market rent. Both parties appealed against the judgment. The appellate proceedings are still pending before the Zadar County Court.

17. On 17 May 2019, the applicants moreover sought eviction of the protected tenants before the Split Municipal Court. These proceedings are currently pending.

B. Reopened proceedings in *Gošović*

18. It is recalled that in *Gošović* the applicant refused to enter into a lease contract with the protected tenant who therefore instituted civil proceedings against him. As a result, the domestic courts ordered the applicant to conclude a lease contract stipulating the protected rent significantly below the market rent (*Gošović*, §§ 9-14). In response to the European Court's findings, on 28 April 2017 the applicant in *Gošović* requested reopening of the impugned proceedings (in which he was ordered to conclude a lease contract) before the Split Municipal Court. On 11 July 2019, the applicants' request was dismissed. The Split Municipal Court indicated that the reopened proceedings relate to the conclusion of the protected lease contract, not damages against the State. It noted that if the applicant wished to seek damages against the State covering the difference between the market and the protected rent, he should lodge a civil action in this respect. The applicant appeal and the proceedings are currently pending.

C. Redress for the applicants

19. It is recalled that the applicants claimed just satisfaction before the European Court in respect of pecuniary and non-pecuniary damage. As regards the pecuniary damage, the European Court found that the applicants must have suffered pecuniary damage as a result of their inability to charge adequate rent for leasing their flats. Apart in *Bego and Others*, the European Court awarded the applicants pecuniary damage covering the difference between the protected rent and the market rent. In *Bego and Others* the European Court indicated that the applicants may file a request for reopening of the impugned proceedings against the State for damages (see above).

20. Along these lines, the European Court awarded just satisfaction in respect of pecuniary damage as follows:

- in *Statileo* from 2 September 2009 (when the first-instance judgment ordering the applicant to conclude the lease contract was rendered) to 6 February 2011 (the applicant's death);
- in *Mirošević – Anzulović* from 1 January 2012 (as requested by the applicant) up to the date of the European Court's judgment;
- in *Gošović* from November 2005 (as requested by the applicant) until the date of the European Court's judgment.

21. The Government furthermore notes that the European Court awarded just satisfaction in respect of non-pecuniary damage to the applicants as well.

D. Assessment of the individual measures

22. The Government deems that the impact assessment of the individual measures is intertwined with the general measures. In particular, pursuant to the legislative changes the landlords will be able to regain possession of their flats by 1 September 2023. General measures taken to meet the said deadline are described below (see §§ 36-48 below).

23. Furthermore, during the transitional period, the Supreme Court developed its practice enabling the landlords to obtain the difference between the protected and the market rent as indicated below (see §§ 31-35 below). Notably, recent developments of the domestic jurisprudence show that the domestic courts, unlike in the *Statileo group*, started accepting landlords' claims for damages seeking the difference between the protected and the market rent, fully or partially awarding them compensation. Along these lines, the domestic courts accepted the applicants' claims (*Jakica Bulić*,

Ivo Matas and Doris and Iris Knego) for damages covering the difference between the protected and the market rent in the reopened proceedings in line with the Supreme Court's stance. As regards the reopened proceedings brought by the applicants *Ante Bego* and *Gojko Gošović*, the domestic court indicated that they failed to lodge an adequate civil claim requesting the damages from the State and highlighted that this legal avenue remains open for the applicants to pursue should they wish to do so. To the Government's best knowledge, they did not lodge such civil claim, nor did the other applicants in *Statileo and Mirošević-Anzulović*.

24. In addition, the Government notes that by awarding the pecuniary damage in *Statileo, Mirošević-Anzulović* and *Gošović*, the European Court compensated for the difference between the market and the protected rent for the period requested by the applicants, notably before this possibility was ensured for the transitional period pursuant to the domestic jurisprudence.
25. The Government shall keep the Committee informed on the outcome of the pending individual measures as soon as they become available.

III. GENERAL MEASURES

26. It is recalled that in its above-mentioned decision, the Committee positively assessed the introduction of the 2018 amendments to the Lease of Flats Act aimed at addressing the main shortcomings identified by the European Court. It noted further that these amendments appeared capable of securing a global solution to the issue of protected leases, while also responding to the Committee's call to alleviate the financial burden placed on landlords.
27. At this point the Government deems useful to reiterate that the 2018 amendments introduced the following changes: (i) the abolishment of the protected tenancy scheme as of 1 September 2023 when the protected tenants will have to vacate the flats; (ii) the gradual increase of the protected rent during the transitional period enabling the landlords to charge the full market rent.
28. In addition, the 2018 amendments provided for special obligations on the part of the Ministry of Croatian Veterans and local self-government units to provide financial assistance to those tenants in need who are: (i) family members of deceased or missing Homeland War veterans and have no alternative housings; (ii) beneficiaries of the guaranteed minimum social benefits; (iii) over 70 years. Financial assistance may also include providing an alternative housing to those individuals and helping them to obtain accommodation in retirement homes.
29. Turning back to the above last Committee's decision, it is further noted that the authorities were invited to provide additional information on the Supreme Court's practice ensuring a well-functioning compensatory remedy during the transitional period and on the application of the amended protected tenancy-related legislation.
30. In response, the authorities would like to furnish the Committee with the following information aimed at ensuring a full and effective compliance with the European Court's judgments.

A. Development of the Supreme Court's practice ensuring a compensatory remedy

31. The Government recalls that in its above mentioned decision, the Committee stressed that it would now be essential for the Supreme Court to ensure a well-functioning compensatory remedy during the transitional period until the full market rent is reached and invited the authorities to provide further information in this respect. In response, the Government would like to indicate that the Supreme Court developed its practice on this point as follows.
32. In its decision of 19 December 2018 ([Rev 2364/2016-3](#)) the Supreme Court adopted the stance that the landlords are entitled to compensation covering the difference between the protected and the market rent. It found that the lower courts misinterpreted the relevant national legislation, Article 1 of Protocol 1 of the Convention and the European Court's standards laid down in the *Statileo* judgment when they dismissed the civil claim for damages requesting the said difference.

33. In doing so, the Supreme Court highlighted that the protected tenancy scheme restricted the landlords' property rights placing an excessive and disproportionate individual burden on them. The State was therefore under an obligation to compensate the financial loss suffered by the landlords covering the difference between the protected and the market rent. The Supreme Court highlighted that the landlords are not requested to submit proof that under different circumstance they would have rented out the flats and received market rents. On the contrary, they merely must indicate the amount that they would have received pursuant to the market values applicable at the relevant time for the property on the same or similar location. The Supreme Court therefore quashed the lower courts' decisions and remitted the case. In this respect, the authorities would like to highlight that the Supreme Court adopted this decision only two weeks following the last decision of the Committee.
34. Furthermore, by its decision of 22 January 2019 ([Rev 1104/2018-3](#)), the Supreme Court upheld the reasoning of the lower court allowing a civil claim for damages and awarding the plaintiff (the landlord) compensation covering the difference between the protected and the market rent. As regards the deadline for filing such civil action, the Supreme Court found that the regular prescription period envisaged for civil actions for damages by the Civil Obligations Act is applicable to the situation at hand. Pursuant to its provisions the landlords are entitled to file such actions within three years starting from the day when they became aware of the damage and the person that caused it. In any event the right to seek damages becomes time-barred five years after the damage occurred. The Supreme Court therefore found that the lower courts correctly established the prescription period and rejected the appeal on the points of law in that respect.
35. The Supreme Court's decisions therefore unequivocally introduced the landlords' right to seek damages covering the difference between the protected and the market rent during the transitional period until the full market rent is reached and fixed the deadline for filing civil actions in this respect. Along these lines, the Government deems that the Supreme Court, as the highest regular court in Croatia, ensured an adequate compensatory remedy rectifying the European Court's findings. In particular, the possibility to seek and gain damages provides the landlords with a practical solution to alleviate the financial burden placed on them until the abolishment of the protected tenancy scheme in September 2023.

B. Measures ensuring the application of the 2018 amendments to the Lease of Flats Act

36. The Government recalls that the Committee noted with interest that the introduction of the 2018 amendments to the Lease of Flats Act appear capable of securing a global solution to the issue of protected leases and invited the authorities to provide information on the application of these amendments showing full and effective compliance with the European Court's judgments. At this juncture it is useful to recall that the 2018 Amendments envisaged that by 1 September 2023 the protected tenancy scheme will be abolished.
37. In response to the Committee's last decision, the Government would like to present the efforts taken so far to put in practice the 2018 amendments to the Lease of Flats Act aimed at enabling landlords the repossession of their flats and providing adequate housing solutions to the tenants.
38. At the outset, the Government designated the Ministry of Construction and Spatial Planning ("the Ministry") as the focal point in charge of overseeing the application of the 2018 Amendments. Due to the complexity of the matter at hand the Ministry envisaged a multi-phased course of action to be followed by the authorities during the transitional period ending on 1 September 2023.
- (i) *1st phase: public call for landlords and tenants to apply for housing solutions*
39. Pursuant to the 2018 Amendments, on 5 November 2018 the Ministry enacted the [Rules](#) regulating how the exact number of flats and tenants under the protected tenancy scheme will be established. They entered into force on 24 November 2018. The Rules envisaged the Agency for State Property Management ("APN") as the central authority for gathering and compiling data in this respect.
40. As a result, on 8 December 2018 the Agency opened a public call for landlords and tenants intended to achieve a dual purpose. On the one hand, it was aimed at establishing the exact number of flats, landlords and tenants within the protected tenancy scheme. On the other hand, it was aimed at

enabling those individuals to express their preferences on how they wanted to resolve their situation before the scheme is abolished.

41. The public call was published on the [Agency's webpage](#) along with two forms, one for the landlords and the other for tenants. In the form, the tenants were invited to opt for one of several housing possibilities for the tenants envisaged by the 2018 amendment. In particular, they had a possibility to: (i) purchase or rent the flat currently in the protected tenancy scheme or another real estate pursuant to the market value through the State-supported property management program, (ii) obtain a partially State funded loan for purchasing or constructing a real estate through the State-supported property management program; (iii) obtain social housing or alternative housing in a retirement home funded by the State or administrative units. The public call was open for six months, notably until 8 June 2019.

(ii) 2nd phase: introducing the implementation program for the 2018 amendments

42. Pursuant to the 2018 Amendments, on 27 December 2019 the Government issued a decision introducing the implementation program for the 2018 Amendments. It was made publicly available on the [Ministry's official website](#). The program aims at: (i) compiling data gathered through the above public call, (ii) data analysis of the flats, landlords and tenants under the protected tenancy scheme and (iii) setting out preparatory steps for enabling housing solutions to the tenants.

(iii) 3rd phase: establishing the number of protected tenants and their housing needs

43. As a result of the above public call, the Agency recorded a total of 1,030 applications, out of which 983 were valid, while one of the tenants withdrew his application indicating that he found alternative accommodation. The Agency therefore pinned down the total number of protected tenants to 982.

44. The majority of the protected tenants (approx. 60%) opted for the possibility of purchasing an alternative property through the State-supported property management program. In addition, around 5% opted for social housing or alternative housing in a retirement home, while the remaining ones showed no interest in obtaining housing solutions provided by the 2018 Amendments.

45. The Agency furthermore established that most of the flats housing protected tenants are located in the State capital, Zagreb (approx. 47%) and in two largest cities on the Croatian coast, Split (approx. 26%) and Dubrovnik (approx. 8,5%).

46. Pursuant to the data gathered by the Agency, the Ministry established the exact number of landlords, tenants and flats under the protected tenancy scheme as well as the manner in which they wished to resolve their housing situation. The Ministry was therefore able to plan further steps in line with the gathered data with a view to enabling the protected tenants targeted housing solutions for which they opted for.

(iv) 4th phase: preparatory works ensuring housing solutions to protected tenants

47. It is recalled that the majority of the protected tenants (approx. 60%) decided to apply for the possibility of purchasing an alternative property through the State-supported property management program. The above analysis of the open call furthermore showed that these tenants lived in 34 municipalities throughout the State. The Ministry therefore engaged in multi-lateral consultations with these municipalities to discern their practical abilities to construct or allocate alternative housing solutions.

48. As a result, the Ministry established that 20 municipalities had financial or technical capacities to provide for alternative housing. To this end, the Government highlights that some of the municipalities have already started with the construction planning to ensure an adequate number of housing units until 1 September 2023. In addition, the Ministry reverted to the State funded retirement homes for those protected tenants who opted for this solution to establish their availability. Further consultations are currently underway.

C. Enhancing the cooperation with the Council of Europe

49. Being attached to the efforts to provide a sustainable solution to the issue stemming from the protected tenancy scheme in line with the European Court's standards and the practice of the Committee of Ministers, in 2018 the Government deemed necessary to draw on the Council of Europe's expertise in this area. In particular, in November 2018 the authorities welcomed the delegation from the Department for the Execution, notably Mr Nikolaos Sitaropoulos, Head of Division and Mrs Katarina Nedeljković, Head of Section.
50. The purpose of this mission amongst other was targeted to ensuring an effective execution of the *Statileo group*. The mission brought together relevant stakeholders dealing with the issue of the protected tenancy scheme at a national level, namely the Supreme Court and Ministry of Construction and Spatial Planning.
51. The participants were able to discuss the pressing issues and obtain the necessary expertise from the delegation of the Department for the Execution on how to ensure that the execution of the *Statileo group* is done promptly in a Convention compliant manner.
52. The Government would like to make use of this opportunity to thank the delegation of the Department for the Execution for their efforts to clarify execution requirements in this group during the visit. The Government moreover deems that this visit was conducive in ensuring adequate implementation of the European Court's standards expressed in its respective judgments.

D. Assessment of the general measures

53. The Government deems that the authorities have shown significant efforts in resolving the issue of the protected tenancy scheme. They have introduced legislative changes setting a fixed deadline for the abolishment of the scheme while ensuring adequate steps to achieve a rather delicate balance between the proprietary interests of the landlords and the housing needs of the tenants. In doing that, the authorities took into account the Committee of Ministers' practice in a similar group of cases against Poland which was closed following, *inter alia*, presentation of measures taken to ensure financial assistance from the State for the construction of buildings or dwellings designated for social housing of tenants (see final Resolution [CM/ResDH\(2016\)259](#) in *Hutten-Czapska v. Poland*).
54. In particular, the authorities have established the exact number of flats and tenants within the protected tenancy scheme and engaged in multilateral consultations with the relevant municipalities to ensure adequate housing best suited to the needs of the tenants. The majority of the municipalities have already allocated funds to provide housing and the State has provided for supported loans to alleviate the financial burden of the tenants. On the other hand, the Supreme Court has introduced a Convention compliant case law to enable the landlords to obtain the difference between the protected and the market rent during the transitional period.
55. In view of the efforts taken by the authorities, the Government respectfully request the Committee to consider transferring the *Statileo group* from the enhanced to the standard supervision. The Government corroborates its argument by the fact that on 5 March 2020 at its 1369th meeting, the Committee decided to close the supervision in the similar case of *Bitto v. Slovakia* ([CM/ResDH\(2020\)40](#)) even though the authorities did not introduce a compensatory remedy at the national level but decided to resolve this issue by concluding friendly settlements or unilateral declarations before the European Court should further applications be brought.
56. Along these lines the Government considers that since the Committee already found that the legislative measures seem capable of providing a global solution to the issue and hand and the fact that in line to the Committee's last decision the authorities put in place the compensatory remedy at a national level and invested financial and technical resources to apply the legislative measures in a Convention compliant manner, the execution of the *Statileo group* has met the criteria necessary for the transfer from the enhanced to the standard procedure.

IV. JUST SATISFACTION

57. The Government ensured that the just satisfaction awarded was disbursed to the applicants as follows: in *Statileo* on 19 November 2014, in *Bego and Others* on 31 December 2016, in *Gošović* on 25 May 2017 and in *Mirošević – Anzulović* on 24 November 2016. The payments have therefore been made within the deadline imparted by the European Court.

V. CONCLUSION

58. At the outset the Government considers that the individual measures are linked to the general measures adopted. As regards the pending reopened proceedings the Government shall furnish the Committee with fresh information as soon as they become available.
59. The Government furthermore respectfully suggest to the Committee to transfer the *Statileo group* from enhanced to standard supervision since the authorities introduced the compensatory remedy and demonstrated efforts to apply the legislative amendments within the fixed time-frame. The Government moreover remains committed to executing the present judgments and undertakes to keep the Committee informed on further developments on the ground.

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Representative