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Meeting: 1383rd meeting (29 September - 1 October 2020) (DH)

Communication from an NGO (No Pasaran, Skopje) (18/08/2020) concerning the case of Strezovski and Others v. North Macedonia (Application No. 14460/16).

Information made available under Rule 9.2 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 : 1383^e réunion (29 septembre – 1^{er} octobre 2020) (DH)

Communication d'une ONG (No Pasaran, Skopje) (18/08/2020) concernant l'affaire Strezovski et autres c. Macédoine du Nord (Requête n° 14460/16) **[anglais uniquement]**

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

Зависност од заштита на граѓанските права
"Но Пасаран" Скопје
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The slavery is not over. Only the format is different.

Judgment no. 14460/16

To
Department for the Execution of
Judgments of the ECHR
DGI Directorate General of Human
Rights and Rule of Law
Council of Europe
67075 Strasbourg Cedex
France

DGI

18 AOUT 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

From
Association for protection of civil rights
NO PASARAN Skopje
Boulevard 11-ti Oktomvri 2/3-6
1000 Skopje
North Macedonia

Communications to the Committee of Ministers of the Council of Europe

Dear Sir/Madam,

On 27 February 2020, the European Courts of Human Rights (ECtHR) adopted judgment no. 14460/16, which became final on 27 June 2020 (the judgment). The ECtHR held that there has been a violation of Article 1 of Protocol No. 1 to the Convention. The violation found was the payment of the standing charge by all flat owners to private heat suppliers, irregardless of the personal circumstances of each flat owner and irregardless of the flat's characteristics. The ECtHR established that the state had imposed a disproportionate and excessive burden to the owners, which enabled the private heat suppliers to make unjustified profits.

As an NGO, the Association for protection of civil rights NO PASARAN Skopje has been directly involved in the processes for ensuring respect for human rights in the cases for the payment of the standing charge to the private heat suppliers.

Therefore, NO PASARAN Skopje would like to use the possibility provided by Rule 9 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and submit these Communications for consideration by the Committee of Ministers. The aim of these Communications is to comment on procedural issues, such as that the case should be classified

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and supervised under the enhanced procedure, as well as to comment on the measures which need to be taken in order to properly execute the judgment.

1) Classification of the case under enhanced supervision

There are currently many ongoing cases before the national courts, concerning the payment of the standing charge (national cases number PL1-P-1467/18, PL1-P-29/20, PL1-P-780/19 and others). Proper execution of the judgment requires that all these cases are resolved by applying the principles established by the ECtHR and by respecting the right to property. The enhanced supervision of the judgment shall prompt all national institutions involved to use their powers to ensure that the principles established by the ECtHR are respected in these cases.

There are also around 120 identical cases pending before the ECtHR. Having in mind that the case 14460/16 is a leading case, on the basis of which all the remaining pending cases shall be resolved, enhanced supervision of the judgment shall ensure that the right to property is respected in the pending cases as well.

The applicants in the case 14460/16, as well as other affected parties, have initiated a procedure before the national courts to reopen the proceedings. The outcomes of these proceedings are directly linked to the proper execution of the judgment, and classification of the case 14460/16 under the enhanced procedure shall induce the Bureau for representation of the country before the ECtHR and other national institutions to appropriately supervise and report on the outcome of the cases.

The ECtHR had itself noted in paragraph 49 of the judgment that there are **12,000 units affected** on the basis that they have discontinued district heating, and their owners have been required to pay the standing charge in question.

Having in mind that the case 14460/16 identifies a systemic problem and violation of the right to property, which requires the adoption of general measures, it fulfills the criteria for enhanced supervision.

2) Measures which need to be taken in order to properly execute the judgment

It should be noted that the Energy Regulatory Commission has on 28 March 2019 adopted new Heat Energy Supply Regulations and has further amended them on 1 August 2019. Article 13 (dealing with newly-build flats) and Article 54 (dealing with existing flats), which prescribes when the owners of flats are not required to pay the standing charge, still imposes a disproportionate and excessive burden to the owners.

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The new 2019 Heat Energy Supply Regulations prescribe a unnecessarily complex procedure and require the flat owners to submit an Energy efficiency report. Apart from hiring an engineer with authorization in the field of energy efficiency to prepare the report, the flat owners must hire an energy inspector who should confirm that the alternative heating system is operational. The whole procedure may last up to 6 months and cost more than 200 EUR, which has a highly dissuasive effect on the flat owners, who often decide not to go through the procedure and instead pay the standing charge.

The 2019 Heat Energy Supply Regulations also include other dissuasive requirements, such as the consent of the majority of flat owners in the building.

Article 54 has been additionally amended on 1 August 2019, and now requires the owners to show electricity consumption of 1000kWh or more, in order to be released from the obligation to pay.

Contrary to the 2019 Heat Energy Supply Regulations, the respect for human rights requires that **the burden to prove energy (in)efficiency falls on the private heat suppliers**. In the moment, the private heat suppliers have virtually no obligations in the procedure for proving energy (in)efficiency, but instead have the power to reject the request for not paying the standing charge, even when all the requirements have been fulfilled by the flat owner.

Therefore, the state cannot discharge its obligations for adopting general measures, simply by stating that the adoption of 2019 Heat Energy Supply Regulations is sufficient in this regard. The 2019 Heat Energy Supply Regulations do not respect the principles established by the ECtHR in the judgment and new Regulations must be adopted in order to properly execute the judgment.

Other measures which need to be taken by the state include restitution towards damaged parties, properly conducting the reopened proceedings and enhanced supervision of the Energy Regulatory Commission and of the private heat suppliers.

Having in mind the previous two points of these Communications, proper execution of the judgment requires that the case 14460/16 is classified under the enhanced supervisory procedures, and that the Action plan contains all of the measures proposed in these Communications.

As an NGO dedicated to the promotion of human rights, we sincerely hope that the Committee of Ministers and the Department for the Execution of Judgments of the ECHR consider this Communications and act upon it.

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We are at your disposal for further comments and suggestions.

Yours faithfully,

Skopje,
August 17, 2020

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Member of Management Board



For Association NO PASARAN

Spaso Markovski
By authorization from the president
Mr. Spaso Markovski
Member of Management Board