



Croatia should reform its legislation on rented flats formerly part of a special tenancy scheme under the Socialist regime

In today's Chamber judgment in the case of [Statileo v. Croatia](#) (application no. 12027/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

The case concerned legislation introduced in 1996 to reform the housing sector in Croatia. The applicant, Mr Statileo, who was the landlord of a flat which was formerly part of a specially protected tenancy scheme under the Socialist regime, complained in particular that, under the new legislation, he was unable to use his flat, rent it to the person of his choice or charge the market rent for its lease.

The Court identified three main shortcomings in the new housing legislation, namely: the inadequate level of rent set against the statutory duties of landlords to pay maintenance fees; the restrictive conditions for the termination of such leases; and, the lack of a statutory time-limit on the new protected lease scheme or on any of the related restrictions on landlords' rights. As a result, a disproportionate and excessive individual burden had been placed on Mr Statileo as a landlord, and he had been obliged to bear most of the social and financial costs of providing housing for another family. The Court therefore held that the Croatian authorities had failed to strike the requisite balance between the general interests of the community, which included providing sufficient accommodation for the less well-off, and the interests of landlords in gaining profit from their property. Given that this finding extended beyond purely Mr Statileo's interests, the underlying problem being the housing legislation itself, the Court considered that Croatia should take appropriate measures to redress that balance.

Principal facts

The applicant, Sergej Statileo, now deceased, was a Croatian national who was born in 1952 and lived in Split (Croatia). He died in February 2011 and his heir, Boris Filičić, has pursued the application.

Mr Statileo owned a flat in Split which was occupied from 1955 by a tenant, P.A., and then from 1973 by another tenant, I.T., who had both been awarded the right to live there by the Communist authorities under a specially protected tenancy scheme.

Following the entry into force in November 1996 of the Lease of Flats Act, every specially protected tenancy awarded in respect of a privately owned flat was transformed into a contractual lease of indefinite duration.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Mr Statileo refused to enter into a lease contract with I.T. who therefore brought civil proceedings against him in May 1997 to obtain a judgment which would stipulate the amount of protected rent. In September 2002 the Split Municipal Court ordered Mr Statileo to conclude a lease contract with I.T. stipulating rent at 102.14 Croatian kunas (approximately 14 euros at the time) per month. Mr Statileo's appeal and subsequent constitutional complaint were both dismissed.

Given that Mr Statileo continued to refuse to collect the protected rent for the flat even after those decisions, I.T. had to deposit the rent payment for the flat with a court.

Complaints, procedure and composition of the Court

Relying in particular on Article 1 of Protocol No. 1 (protection of property), Mr Statileo complained that he was unable to use his flat, rent it to the person of his choice or charge the market rent for its lease, submitting evidence to the effect that the protected rent for the flat was 25 times lower than the market value.

The application was lodged with the European Court of Human Rights on 27 January 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Khanlar **Hajiyev** (Azerbaijan), *President*,
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Dmitry **Dedov** (Russia),

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

[Article 1 of Protocol No. 1 \(protection of property\)](#)

The Court was of the view that there had indisputably been an interference with Mr Statileo's property rights, given the restrictions that the protected lease scheme entailed, including the inability to physically possess his flat as it remained indefinitely occupied by the tenants, to collect the market rent for it or to terminate the lease. Those restrictions had a legal basis, namely the Lease of Flats Act of 1996, which pursued the legitimate aim of the social protection of tenants and the protection of the economic well-being of the country during the country's transition to the free-market system.

Furthermore, the Court recognised that the Croatian authorities had faced, in the context of the fundamental reform of the country's political, legal and economic system during the transition from the Socialist regime to a democratic state, an exceptionally difficult task in balancing the rights of landlords against those of tenants who had occupied flats for a long time under the former specially protected tenancy scheme.

However, the Court identified three main shortcomings in the new legislation on rented flats such as the one owned by Mr Statileo: primarily, the extremely low rent Mr Statileo was entitled to collect compounded by his statutory duty as a landlord to pay maintenance fees, meaning that he was only able to obtain a minimal profit – ranging between zero and about ten euros per month – from renting out his flat; the restrictive conditions for the termination of the lease (under which Mr Statileo could only move into his flat if he did not have any other alternative for himself or his family and was entitled to social assistance or was over 60, or if the tenant owned a suitable flat in the

same area); and, the lack of a statutory time-limit on the protected lease scheme or on any of the related restrictions on Mr Statileo's rights, resulting in his flat being occupied for some 55 years, of which more than 13 years after the entry into force of the European Convention in respect of Croatia, without him, or indeed his heir, being able to recover possession of it or rent it out at market conditions during their lifetime. Moreover, the evidence submitted by Mr Statileo (to the effect that the protected rent for the flat was 25 times lower than the market value), which was not contested by the Government, showed that the rent he had been entitled to was disproportionately lower than the market rent.

The Court could see no demands of general interest to justify such comprehensive restrictions on Mr Statileo's property rights and found that the social and financial burden of reforming the housing sector had been unfairly distributed. On the contrary, a disproportionate and excessive individual burden had been placed on Mr Statileo as a landlord, as he had been obliged to bear most of the social and financial costs of providing housing for I.T. and her family. It followed that the Croatian authorities, notwithstanding their room for manoeuvre ("wide margin of appreciation") to decide on such matters as levels of rent, had failed to strike the requisite balance between the general interests of the community and the protection of Mr Statileo's property rights, in violation of Article 1 of Protocol No. 1.

Article 41 (just satisfaction)

The Court held that Croatia was to pay Mr Statileo's heir 8,200 euros (EUR) in respect of pecuniary damage, EUR 1,500 in respect of non-pecuniary damage and EUR 850 for costs and expenses.

Article 46 (binding force and implementation)

Given that the Court's findings extended beyond purely Mr Statileo's interests, the underlying problem being the housing legislation itself, the Court considered that Croatia should take appropriate measures, bearing in mind the main shortcomings it had identified, to redress the balance between, on the one hand, the interests of landlords in gaining profit from their property, and, on the other hand, the general interest of the community, including the availability of sufficient accommodation for the less well-off.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.