



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF BITTÓ AND OTHERS v. SLOVAKIA**

*(Application no. 30255/09)*

JUDGMENT  
(Merits)

STRASBOURG

28 January 2014

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Bittó and Others v. Slovakia,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 7 January 2014,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 30255/09) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twenty-one Slovakian nationals on 28 May 2009. On 16 January 2011, one of the applicants, Ms H. Vojtášová, (see point 17 of Appendix 1) died. Mr B. Vojtáš (see point 18 of Appendix 1), her son and sole heir, expressed the wish to pursue the application in his late mother’s stead.

2. The applicants were represented by Mr J. Brichta, a lawyer practising in Bratislava, and Mr M. Siman of EL Partners s.r.o. in Bratislava. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicants complained under Article 1 of Protocol No. 1, both taken alone and in conjunction with Article 14 of the Convention, about restrictions which the rules governing rent control imposed on their right to peacefully enjoy their possessions.

4. By a decision of 4 January 2012 the Court declared the application partly admissible.

5. The applicants and the Government each filed further written observations (Rule 59 § 1) on the merits. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The particulars of the applicants appear in Appendix 1.

#### **A. Background information on rent control**

7. After 1948, when the communist regime had been installed in the former Czechoslovakia, the housing policy was based on a doctrine aimed at the restriction and abolition of private ownership.

8. Some residential houses were confiscated and some owners of residential houses were compelled to transfer their property to the State for no or inadequate compensation. Those owners who were not formally deprived of the ownership of their residential housing were subjected to restrictions in the exercise of their property rights.

9. As regards flats in residential houses, tenancies were replaced by the “right of lasting use”.

10. The Flats Management Act 1964, which was in force until 1 January 1992, entitled public authorities to decide on the right of use of flats. Special regulations governed the sums which the users had to pay. On 1 January 1992 “the right of lasting use” was transformed into a tenancy with regulated rent.

11. After 1991 some residential houses were restored to their former owners; however, flats in these houses were mostly occupied by tenants with regulated rent.

12. Under the relevant law (for details see “Relevant domestic law and practice” below), owners of residential houses in a position similar to that of the applicants in the present case have been obliged to accept that all or some of their flats are occupied by tenants while charging no more than the maximum amount of rent fixed by the State (“the rent-control scheme”). Despite repeated increases in the maximum rent which the domestic law entitles house owners in this position to charge, that amount has remained below the level of rent chargeable for similar housing let on the principles of a free-market economy.

13. In situations similar to that of the applicants, the owners of residential houses had practically no means of terminating tenancies and evicting tenants without providing them with “housing compensation”. Furthermore, owners were not allowed to transfer ownership of a flat rented by an individual to any third person other than the tenant.

14. The Government of the Slovak Republic have dealt with the issue of rent control on several occasions as indicated below.

15. Documents of the Ministry of Construction and Regional Development indicate that, by 20 January 2009, registration forms had been

submitted by tenants in respect of 923 flats where rent control was applied. 2,311 persons lived in those flats, the average surface area of which was 71.38 square metres. The documents indicate that it was envisaged that substitute accommodation would be made available to the persons concerned by the planned reform so long as this was justified by their social situation. 76.5% of the tenants thus registered lived in flats located in Bratislava.

16. On the basis of those data, the authorities estimated that the rent-control scheme concerned approximately 1,000 flats, that is, 0.24% of rented flats in houses that existed in 1991 and 0.06% of the inhabited housing facilities which were available in Slovakia in 2001.

### **B. Particular circumstances of the applicants' cases**

17. The applicants are owners or co-owners of residential buildings in Bratislava and Trnava to which the rent-control scheme applies, or has applied, (further details are set out in Appendix 2). They obtained the ownership of the flats by various means, such as restitution, donation or inheritance from their relatives to whom the flats had been restored in the early 1990s. In two cases the applicants purchased further shares of ownership from the other co-owner, the Bratislava Municipality. Mr Dobšovič and Ms Dobšovičová (applicants listed in points 6 and 7 of Appendix 1) purchased the flats from individuals in 2005. The majority of the other applicants acquired ownership in the course of the 1990s.

In the meantime, the rent-control scheme has ceased to be applicable to several of the flats concerned.

18. The applicants maintained that the rent to which they are, or were, entitled for letting their property is far below the maintenance costs for their houses and disproportionately low compared with similar flats to which the rent-control scheme does not apply.

19. The parties submitted the following information as regards the impact of the rent-control scheme on the applicants.

#### *1. Documents submitted by the applicants*

20. Initially, and by way of example, the applicants pointed out that the controlled rent in respect of a flat with a surface area of 72.56 square metres was 71.50 euros (EUR) per month, which corresponds to EUR 0.99 per square metre. However, the monthly free-market rent in respect of such a flat was approximately EUR 830, that is EUR 11.40 per square metre.

21. The applicants further relied on the opinion of an expert provided at their request on 19 July 2010. It set out the difference between the free-market rent and the controlled rent in respect of a residential house located at Trenčianska St. in Bratislava-Nivy for the period from 1993 to 2010 (for further details see Appendix 3).

22. Following the Court's decision to declare the application admissible, the applicants submitted voluminous opinions of experts concerning their properties.

23. The opinion of expert I. no. 51/2012 of 26 April 2012, which the applicants relied on by way of example, concerns a residential house where rent control applied to five out of the eight flats. It was situated on Tallerova St. in Bratislava – in the Staré Mesto district – and several applicants are co-owners of the flats concerned (see also Appendix 4). The opinion indicated that the relevant legislation allowed for regulated rent which corresponded, on average, to 0.69% of the acquisition value of a flat in 1994. That ratio was 0.79% in 2001 and 1.96% in 2011.

24. According to expert opinion no. 51/2012, the regulated rent amounted to 2.2% of the free-market rent in 1993. In 2002 it corresponded, on average, to 4.5% of the free-market rent, and in 2011 the average regulated rent corresponded to 14.3% of the free-market rent. The applicants submitted that the other opinions concerning their properties were in line with that conclusion. The above opinion contains the following valuation of the flats concerned for the period from 1 January to 31 March 2012:

Flat no.	Monthly market rent EUR/m <sup>2</sup>	Monthly controlled rent EUR/m <sup>2</sup>	Percentage controlled/market rent
1	8.28	1.58	19%
2		N/A in 2012	
5	8.28	1.55	18.7%
6	7.92	1.11	14%
7	8.16	1.12	13.7%

25. As regards the maintenance costs of their properties, the applicants submitted that most of them did not have sufficient means to ensure renovation and maintenance of the houses because of low incomes under the rent-control scheme. They relied on the expert opinions which determined the “cost-based rent” in respect of the houses owned by them, namely, the rent calculated on the basis of the current technical value of the buildings and on the costs necessary for their ordinary and adequate periodic maintenance, while taking into account the gradual wear and tear of the buildings. Thus according to expert opinion no. 51/2012, the regulated rent amounted to 3.3% of the “cost-based rent” in 1993. In 2002 it corresponded, on average, to 5.3% of the “cost-based rent”, and in 2011 the average regulated rent corresponded to 26.4% of the “cost-based rent”.

26. With reference to the experts' conclusions, the applicants maintained that they had suffered pecuniary damage on account of the application of the rent-control scheme to their property. This was determined as the difference between the free-market rent applicable to similar dwellings and the controlled rent which the applicants were allowed to charge throughout the period of ownership and application of the rent-control scheme. The damage which the individual applicants claimed to have suffered is specified in Appendix 5.

## *2. Documents submitted by the Government*

27. The Government initially submitted the opinion of a different expert, drawn up in 2010, according to which the average free-market monthly rent for flats comparable to those of the applicants in the municipality of Bratislava-Staré Mesto was between EUR 6.13 and 6.48 per square metre. In the broader centre of Trnava the free-market rent was between EUR 3.37 and EUR 3.87 per square metre at that time.

28. In response to the detailed expert opinions submitted by the applicants, the Government first submitted an opinion by the Forensic Engineering Institute in Žilina. It pointed to errors in several of the expert opinions, challenged the methods applied by the experts and their standing to determine the amount of profit lost by the applicants. The view was expressed that direct comparison with dwellings where the rent-control scheme did not apply was the most appropriate method for determining the damage suffered by the applicants.

29. Subsequently, the Government submitted an opinion drawn up by the Forensic Engineering Institute in Žilina on 15 November 2012. It indicated that lack of statistical data for the overall period of rent control prevented the flat owners' lost profit from being determined in an objective manner. In order to establish appropriate compensation for the applicants, it was therefore appropriate to use a methodology similar to determination of compensation for tolerating an easement over the property. Among other data, the opinion indicated that, under the regulation in force between 1964 and the end of June 1992, the rent in respect of a three-room flat corresponded to EUR 0.08 per square metre. As from 1 July 1992 a 100% increase was applied.

30. By means of comparison, the opinion established that, in 2012, the monthly market rental value of flats in Bratislava varied between EUR 4.71 and EUR 5.97 per square metre depending on the location, number of rooms and equipment. It amounted to EUR 4.51/4.52 in respect of one/two-room flats in Trnava.

At the same time, the rental value of the applicants' flats under the rent-control scheme was between EUR 1.20 and 1.60 in most cases, the extreme and exceptional values being EUR 0.45 and EUR 2.21 in Bratislava. In Trnava the controlled rent of the applicants' flats varied

between EUR 1.24 and EUR 1.60 in 2012. In determining the rental value of the applicants' flats in 2012 a 40% increase was applied (as provided for by Law no. 260/2011 in 2011 and 2012).

The relevant data are set out in Appendix 4 (columns A – F).

31. According to the expert opinion, appropriate compensation payable to the applicants should be calculated as the difference between the net monthly income (profit) which they were able to obtain for renting their flats under the rent-control scheme and the net monthly income (profit) which could be drawn from letting comparable flats at the market price. The calculation is based on (i) the technical value of the flats in 2012, (ii) their rental value (both on the free market and under the rent-control scheme) in 2012; (iii) duration of application of the rent-control scheme; (iv) the ownership share of individual applicants; and (v) the marginal interest rate of the European Central Bank.

The amounts of compensation to which the individual applicants are entitled in accordance with the above method of calculation for the period covered by the opinion are set out in Appendix 4 (column G).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitution

32. Pursuant to Article 20 § 1, the ownership right of all persons has the same legal content and enjoys the same protection.

### B. Civil Code

33. Article 124 guarantees the same rights and obligations to all owners. Equal legal protection is to be granted to all owners.

34. Provisions concerning the lease of flats are set out in Articles 685 to 716 of the Civil Code.

35. Pursuant to Article 687, a landlord is obliged to put a flat at a tenant's disposal in a fit state for normal use and to secure to the tenant the full and uninterrupted enjoyment of rights in connection with the use of the flat.

36. Article 696 § 1 provides, *inter alia*, that the method of calculating the rent, the service charges related to the use of the flat, the method of paying the rent and service charges, and the conditions under which a landlord is entitled to unilaterally increase the rent and service charges and amend other terms of the lease are governed by special legislation.

37. Under Article 706, after a tenant's death the right to the lease passes to the tenant's relatives if they can prove that they were living with the tenant in a shared household on the day of his or her death and do not have

their own flat. The same right is to be enjoyed by persons who have taken care of a shared household and lived with the tenant in a shared household for at least three years and do not have their own flat.

38. Article 707 § 1 entitles the surviving spouse to become the sole tenant of a jointly leased flat upon the other spouse's death.

39. The provisions of Article 706 and Article 707 § 1 are also applicable in the event that a tenant permanently leaves a shared household.

40. Pursuant to Article 871 § 1, enacted with effect from 1 January 1992, "the right of lasting use" of flats and other premises under the law previously in force and subsisting on that date was transformed into a tenancy with regulated rent.

### **C. The Flats (and other Premises) Ownership of Act (Law no. 182/1993)**

41. Section 16(1) governs the transfer of ownership of a flat. Where a flat is rented by an individual, unless the right to rent the flat was agreed for a fixed period, a landlord can transfer ownership of it only to the tenant. This provision does not affect the co-owner's pre-emption right.

### **D. The Price Act 1996 (Law no. 18/1996)**

42. As a general rule, the price of goods, including the amount of rent, is determined on the basis of an agreement between the seller and the buyer (sections 1-3).

43. Part Three of the Price Act 1996 allows State measures to be taken in response to undesired price developments. They include regulation of prices and a prohibition on agreeing a price which is inappropriate.

44. Under section 4a (formerly section 4), price regulation is permissible where, *inter alia*, an extraordinary market situation arises, where there is a threat to the market as a result of an insufficiently developed competitive environment, or where it is required for the purpose of protecting consumers or on grounds of another public interest.

45. Price regulation can be achieved through the fixing of prices by the authorities, the setting of conditions for agreements on prices or a combination of those two methods (section 5).

46. Section 8, enacted with effect from 1 November 2008, provides that, when regulating prices, the authorities must take into account justified costs and an appropriate profit.

47. Pursuant to section 20(1) and (2), the Ministry of Finance sets conditions for price regulation and decides on related matters. Until 1 March 2005 the Ministry of Construction and Regional Development was authorised to regulate rent. The scope of regulation is to be determined by a generally binding legal rule (section 11).

48. Law no. 68/2005 of 3 February 2005 introduced a number of amendments to the Price Act 1996. Pursuant to section 1(12) of Law no. 68/2005, the 2003 Ordinance (see below) was repealed. Law no. 68/2005 came into force on 1 March 2005 with the exception of section 1(12), which took effect on 1 July 2007.

49. Another amendment to the Price Act 1996 was introduced by Law no. 200/2007 of 29 March 2009, with effect from 1 July 2007. Pursuant to that amendment, the date when the 2003 Ordinance would cease to have effect was postponed until 31 December 2008.

#### **E. Law no. 260/2011**

50. On 15 September 2011, the Termination and Settlement of Tenancy (Certain Apartments) Act (Law no. 260/2011) came into force. It was enacted with a view to eliminating rent restrictions concerning individual owners.

51. Its provisions are applicable, in particular, to apartments of individuals whose rent has so far been regulated. In those cases, landlords were entitled to give notice of termination of a tenancy contract by 31 March 2012. Such termination of tenancy takes effect after a twelve-month notice period. However, if a tenant is exposed to material hardship, he or she will be able to continue to use the apartment with regulated rent, even after expiry of the notice period, until a new tenancy contract with a municipality has been set up. Law no. 260/2011 further entitles landlords to increase the rent by 20% once a year until 2015.

52. Municipalities are obliged to provide a person exposed to material hardship with a municipal apartment with regulated rent. If a municipality does not comply with that obligation by 31 December 2016 in a given case, the landlord can claim the difference between the free-market and the regulated rent.

#### **F. Housing Development State Fund Act 2013**

53. Law no. 150/2013 amends the earlier legislation on the Housing Development State Fund. It will take effect on 1 January 2014. Among other things, with reference to Law no. 260/2011 it entitles owners of houses or flats which had been restored to the original owners to apply for a preferential loan for the purpose of modernisation of such buildings.

#### **G. Subordinate legal rules governing rent**

54. Decree no. 60/1964 of the Central Authority for the Development of Local Economy on payment for the use of flats and related services was in

force from 1964 until the end of 1999. It divided flats into four categories according to their status and fixed the yearly price for their use.

55. On 12 March 1996 the Ministry of Finance issued Regulations no. 87/1996 implementing the Price Act 1996. They became operative on 1 April 1996. Regulation 3(1) and 3(2) requires economically justified costs and appropriate profit to be taken into account in the context of price regulation.

56. In 1992, 2000 and 2001 and on 1 March 2003 the Ministry of Finance issued four instruments of subordinate legislation providing for an increase in controlled rent by 100%, 70%, 45% and 95% respectively.

57. On 22 December 2003 the Ministry of Construction and Regional Development issued the 2003 Ordinance (Ordinance (*výnos*) no. V-1/2003 on Control of Rent for Lease of Flats). It fixes the maximum permissible amount of rent for a flat according to its surface area and category, without distinction as to its location. The ordinance ceased to have effect on 1 May 2008.

58. On 23 April 2008 the Ministry of Finance issued Measure (*opatrenie*) no. 01/R/2008 on Control of Rent for Flats with reference to sections 11 and 20 of the Price Act 1996. It entered into force on 1 May 2008.

59. Similarly to the previous rules, it fixes the maximum amount of rent per square metre of inhabitable space and annexes (section 1). An increase or reduction is possible depending on the furnishings available. In respect of flats built from public funds after 1 February 2001 the maximum rent is fixed at 5% of their acquisition value (section 2(1)).

60. Section 3 allows an increase of the maximum rent by 15% in houses built without public funding or those which were restored to owners or their successors by way of redress for past wrongs.

61. Pursuant to section 4, rent control does not apply to, *inter alia*, vacant flats in houses built without public funding or in houses restored to owners by way of redress for past wrongs, with the exception of cases which concern the transfer of a lease or the exchange of a flat (Articles 706-08 of the Civil Code). Similarly, rent control does not apply to houses built without any public funding where construction officially ended after 1 February 2001.

62. Lastly, section 5 of the Measure repeals the 2003 Ordinance.

63. On 25 September 2008 the Ministry of Finance issued Measure no. 02/R/2008 amending the above Measure of 23 April 2008 on rent control. It entered into force on 1 October 2008. It does not affect the amount of permissible rent but specifies the conditions under which such rent can be charged after 31 December 2011.

64. In particular, the newly introduced section 4a(1) allows the rent-control scheme to continue to apply after the above date where, on 1 October 2008, (i) tenants or persons sharing their household did not own

or co-own a comparable flat or inhabitable real property in the same municipality or within 50 kilometres of its boundaries; (ii) the landlord and the tenant have not reached a different agreement on rent before 1 January 2012; and (iii) the tenants concerned have submitted a registration form to the Ministry of Construction and Regional Development before 31 December 2008.

#### **H. Government policy and planning documents**

65. The Government's plan on housing policy and construction of flats for the period between 1994 and 2000, drawn up in 1994, envisaged that rent in respect of flats owned by individuals should be increased with a view to covering the owners' costs as from 1 January 1995. It further envisaged the introduction of rent levels based on market prices as from 1 January 1996.

66. The Government Manifesto of November 2002 indicated that the Government would take measures for deregulation of rent before the envisaged accession of Slovakia to the European Union. Any regulatory measures thereafter were to be exclusively linked to the real increase of costs.

67. Further plans on housing policy and construction of flats, drawn up in 2000 and 2005, also envisaged the introduction of market-level rent in the private sector. Housing capacity in municipal flats was to be increased so that substitute accommodation could be provided to indigent persons who would be affected by such liberalisation of rent.

68. The need for elimination of rent control was confirmed in the most recent plan of 2010, which covers the period until 2015. The document indicates that the private sector of rented housing is underdeveloped, particularly because of the past system of rent control and the excessive protection of tenants.

69. In decision no. 357/2008 the Ministry of Construction and Regional Development was instructed to prepare a plan for settling relations between landlords and tenants in flats where rent control had been applied. The plan was approved on 16 September 2009 (decision no. 640/2009). That decision instructed the ministers concerned to prepare, before 31 December 2010, Bills on termination and settlement of certain landlord/tenant relationships and on rent control in the public sector, as well as regulations on housing allowances, to offer substitute housing facilities to the tenants concerned and to lay down the scope, conditions and manner of their acquisition. In addition, compensation of a structural nature was envisaged for owners of residential houses.

70. Subsequently, the Minister of Construction and Regional Development asked the Mayor of Bratislava to identify suitable plots on which substitute housing facilities could be built for persons in need.

## I. Proceedings before the Constitutional Court

71. In an application to the Constitutional Court, lodged on 29 March 2007, the General Prosecutor challenged, *inter alia*, the 2003 Ordinance as being contrary to the Constitution. The application expressed the view that the Price Act 1996 did not entitle the Ministry of Construction and Regional Development to issue an ordinance on rent control; that the Ordinance was discriminatory and restricted the right of flat owners; that it was questionable whether such a restriction was in the public interest and necessary; and that the Ordinance should have ceased to have effect as from 1 March 2005. The absence of any compensation for landlords to whom the rent-control scheme applied was also criticised. On 7 June 2007 the General Prosecutor supplemented the application by also challenging Law no. 200/2007 amending the Price Act 1996.

72. On 8 April 2009 the Constitutional Court discontinued the proceedings without examination of the merits, on the ground that the application had been withdrawn. It noted that the Price Act 1996 had been amended and that the 2003 Ordinance had ceased to have effect.

## THE LAW

### I. *LOCUS STANDI* OF THE SON OF THE DECEASED APPLICANT

73. One of the applicants, Ms H. Vojtášová, died on 16 January 2011. Mr B. Vojtáš, her son and sole heir, who also lodged an application in respect of property which he had co-owned with his mother, expressed the wish to pursue the application in his late mother's stead.

74. The Court notes that the present application concerns a property right which is, in principle, transferable to the next of kin of the deceased person. Mr B. Vojtáš was a co-owner of the flats in question and inherited the ownership share of the deceased applicant. In these circumstances the Court considers that he has standing to continue the present proceedings in his mother's stead (see *Sharenok v. Ukraine*, no. 35087/02, § 12, 22 February 2005).

### II. COMPLIANCE WITH THE TIME-LIMIT OF SIX MONTHS

75. Under Article 35 § 1 of the Convention, the Court may only deal with the matter "within a period of six months from the date on which the final decision was taken". Where the alleged violation constitutes a continuing situation against which no domestic remedy is available, such as application of rent-control scheme under the relevant legislation in the

present case, the six-month period starts to run from the end of the situation concerned (see, among other authorities, *Mosendz v. Ukraine*, no. 52013/08, § 68, 17 January 2013).

Pursuant to Article 35 § 4 of the Convention, the Court shall reject any application which it considers inadmissible under that Article. It may do so at any stage of the proceedings.

76. Following the Court's decision to declare the application admissible, the parties submitted further relevant information. It comprised expert opinions which specified the periods of application of the rent-control scheme in respect of the individual flats concerned.

77. The documents submitted indicate (see Appendix 2) that rent control had ceased to apply in respect of the flats owned by the following applicants more than six months before the introduction of the application on 28 May 2009:

- Mr M. Bittó: flats nos. 3, 5, 6, 7 and 14 in the house at Zámočnícka 11 St. in Bratislava and flats nos. 5, 9, 10, 13 and 14 in the house at Dunajská 38 St. in Bratislava;

- Mr J. Zemko: flats nos. 3 and 6 in the house at Kalinčiakova 31 St. in Trnava;

- Mr F. Spišák and Ms V. Spišáková: flats nos. 12, 15, 19 and 23 in the house at Štefánikova 31 St. in Bratislava;

- Mr V. Dobšovič and Ms M. Dobšovičová: flats no. 3, 8 and 9 in the house at Jelenia 7 St. in Bratislava;

- Mr J. Bíreš: flats nos. 1, 3, 5, 6 and 7 in the house at Trenčianska 6 St. in Bratislava; and

- Ms Z. Studencová: flat no. 1 in the house at Šancová 30 St. in Bratislava.

78. To the extent that those applicants allege a breach of their rights as a result of rent control in respect of the flats indicated in the preceding paragraph, they failed to respect the time-limit of six months laid down in Article 35 § 1 of the Convention.

It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

79. The applicants complained that their right to peaceful enjoyment of their possessions had been breached as a result of the implementation of the rules governing rent control in respect of their property. They relied on Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

## **A. The arguments of the parties**

### *1. The applicants*

80. The applicants alleged that the successive ministerial ordinances and measures governing rent control ran contrary to the Price Act 1996 and Regulations no. 87/1996 on the implementation of that Act. In particular, the subordinate legislation on rent control disregarded the requirement, laid down in Regulation 3(1) and 3(2) of Regulations no. 87/1996, that economically justified costs and appropriate profit should be taken into account in the context of price regulation.

81. The limitations imposed on the use of their property, over a period of nearly twenty years, were excessive. A disproportionate and unjustified burden had been thereby imposed on the applicants. The controlled rent corresponded to some 10 to 20% of the free-market rent during the period from 1993 to 2010. Despite an increase which had been permissible as from 2011, controlled rent remained several times lower than free-market rent. The amounts in question did not even suffice to cover the maintenance costs inherently associated with the houses to which the rent-control scheme applied. The figures put forward by the Government did not allow a different conclusion to be reached.

82. The aim pursued, namely to ensure housing for persons in need, could have been achieved by different means, such as providing housing allowances for those persons. Continued implementation of the rent-control scheme ran contrary to the general interest, as it hampered the development of a free market in the area of rented housing including appropriate maintenance of the existing housing facilities and the construction of new ones.

83. Expert opinion no. 51/2012 of 26 April 2012 (see paragraph 23 above) indicated that in Slovakia the relevant legislation allowed for regulated rent which had corresponded, on average, to 0.69% of the acquisition value of a flat in 1994. That percentage had been 0.79% in 2001 and 1.96% in 2011.

In contrast, section 2(1) of the Ministry of Finance Measure 1/R/2008 provided that the maximum permissible annual rent for flats which were built from public funds from 2001 onwards was 5% of their acquisition value (see paragraph 59 above). The State thus shifted a heavier burden onto private owners of the flats, including the applicants.

84. Furthermore, the amendments as regards the maximum controlled rent did not automatically entitle the applicants to charge the corresponding amounts as, in accordance with the domestic courts' practice, any increase of rent had to be the subject of an agreement between the landlords and tenants.

85. The applicants also argued that, unlike in social flats built from public funds, there was no reliable system to check whether their tenants' current situation justified their benefitting from regulated rent. As a result, the applicants were obliged to let their flats to the original users or their descendants regardless of their current financial or social situation.

86. Slovak legislation foresaw no compensation for owners of residential houses in the applicants' position and the rules enacted in 2011 unnecessarily prolonged the rent-control scheme until the end of 2016.

## *2. The Government*

87. The Government conceded that the rent-control scheme had resulted in a restriction on the use of the applicants' property. Such a measure was in accordance with the relevant domestic law.

88. The interference pursued a legitimate aim, namely, to protect tenants against unaffordable increases in rent. The Government argued that the national authorities had, in principle, more direct knowledge of the general interest, and that areas such as housing, as a prime social need, often called for some form of regulation by the State.

89. As to the requirement of proportionality, the Government maintained that a swift deregulation of rent would have had unfavourable social implications. For that reason, the rights of tenants which had been established in the earlier non-market environment had to be protected while the State found a means of gradually resolving the issue. The rent-control scheme was therefore compatible with the general interest within the meaning of Article 1 of Protocol No. 1. The levels of regulated rent had been repeatedly increased and other measures had been taken with a view to reducing the burden imposed on flat owners.

90. The Government further pointed to the fact that many of the tenants were elderly and that the municipalities concerned did not have enough housing stock for those socially dependent on regulated rent schemes.

91. With respect to the amount of rent chargeable under the rent-control scheme, maintenance costs would also have had to be borne by the owners if their flats had not been rented out at all. Thus, the amount of rent and the allegedly higher costs of maintaining the property could not automatically be associated.

92. The Government objected to the applicants' estimation of the amount of rent they could have obtained had the rent-control scheme not applied to their flats. They also disagreed with the argument that the applicants were not able to automatically charge the maximum amount of

controlled rent. Such situations could occur only in cases where they had made different arrangements with the tenants.

93. The Government concluded that the rent-control scheme met the general interest of society and was compatible with the interests of house and flat owners as (i) the maximum level of rent chargeable had been regularly increased, (ii) the number of houses to which the rent-control scheme was applicable after 2011 had been reduced, (iii) a legal framework for resolving the housing shortage and ending the rent-control system had been devised, and (iv) the legislation were amended to support modernisation of houses including those which are owned by the applicants.

## **B. The Court's assessment**

### *1. Recapitulation of the relevant principles*

94. The relevant case-law of the Court is summed up in, for example, *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 160-68 and *Edwards v. Malta*, no. 17647/04, §§ 52-78, 24 October 2006; both with further references. It can be summarised as follows.

95. In some previous cases where the Court has examined similar complaints of a continuing violation of one's property rights created by the implementation of laws imposing tenancy agreements on the landlords and setting an allegedly inadequate level of rent, it has held that this constituted a means of State control of the use of property. They fell to be examined under the second paragraph of Article 1 of Protocol No. 1. Such interference must be compatible with the principles of (i) lawfulness, (ii) legitimate aim in the general interest, and (iii) "fair balance" (along with cases cited in the preceding paragraph see, for example, *Nobel and Others v. the Netherlands*, (dec.), no. 27126/11, § 31, 2 July 2013).

96. In particular, the Court has acknowledged that areas such as housing may often call for some form of regulation by the State. Decisions as to whether, and if so when, it may fully be left to the play of free-market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues. Acknowledging that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation. Those principles apply equally, if not *a fortiori*, to measures adopted in the course of the fundamental reform of a country's political, legal and economic system in the transition from a totalitarian regime to a democratic State.

97. Nevertheless, there must be a reasonable relation of proportionality between the means employed and the aim sought to be realised by measures applied by the State to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In that context the Court must make an overall examination of the various interests and ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden.

98. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the rental market, but also the existence of procedural safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time and in an appropriate and consistent manner.

99. Thus in *Hutten-Czapska* (cited above, § 224 and point 4 of the operative provisions) the Court found a violation of the right of property which consisted in the combined effect of defective provisions on the determination of rent and various restrictions on landlords' rights in respect of the termination of leases, the statutory financial burdens imposed on them and the absence of any legal ways and means making it possible for them either to offset or mitigate the losses incurred in connection with the maintenance of property or to have the necessary repairs subsidised by the State in justified cases.

100. In the cases of *Edwards* (cited above, § 78) and *Ghigo v. Malta* (no. 31122/05, § 69, 26 September 2006), the Court found that a disproportionate and excessive burden had been imposed on the applicants who had been requested to bear most of the social and financial costs of supplying housing accommodation to other individuals. In reaching that conclusion, the Court had regard, in particular, to the extremely low amount of rent, due to the fact that the applicants' premises had been requisitioned for more than two and three decades respectively and a number of restrictions of the landlords' rights.

## 2. *Application of the relevant principles to the present case*

101. The Court notes, and it has not been disputed between the parties, that the rent control-scheme amounts to an interference with the applicants' rights under Article 1 of Protocol No. 1 as it prevents, or has prevented, them from freely negotiating a level of rent for their flats and has made the

termination of the lease of their flats conditional to providing the tenants with adequate alternative accommodation. That interference constitutes a means of State control of the use of property. The application should therefore be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Hutten-Czapska*, cited above, §§ 160-61).

102. The rent-control scheme was based on the Price Act 1996, the Regulations no. 87/1996 implementing that Act, and a successive series of ministerial ordinances and measures. Law no. 260/2011 re-defined the conditions of implementation of the rent-control scheme and set the limits on its maximum duration.

Thus the interference in question has a basis in Slovak law. There is no indication that the relevant provisions do not meet the requirements of sufficient accessibility, precision and foreseeability.

103. The applicants argued that the subordinate legislation on rent control disregarded the requirement, laid down in Regulations no. 87/1996, that economically justified costs and appropriate profit should be taken into account in the context of price regulation. The Court considers that in substance that argument pertains to the effect on the applicant's rights under the rent-control scheme. As such, it will be best addressed below in the context of examination of the proportionality of the interference complained of.

104. Thus the interference in issue was "lawful" within the meaning of Article 1 of Protocol No. 1. In view of the information before it, and considering the wide margin of appreciation reserved to national authorities in areas such as housing of the population, the Court further accepts that the relevant legislation governing the rent-control scheme has pursued a legitimate social policy aim (see also *Hutten-Czapska*, cited above, §§ 165-66). The control of use of the applicants' property has therefore been "in accordance with the general interest" as required by the second paragraph of Article 1 of Protocol No. 1.

105. For the Court, the following facts are of particular relevance when assessing whether the interference has satisfied the requirement of proportionality.

106. On the one hand, rent control has been maintained in Slovakia following the fall of the communist regime, establishment of an independent State, and in the context of the country's transition to a market-oriented economy. It has been aimed at protecting the tenants of flats in houses which had been restored to the original owners or their successors in the context of remedying the wrongs which had been committed earlier. The decision as to how best to reconcile the competing interests at stake undoubtedly involved complex social, economic and political issues which domestic authorities are best placed to know and assess.

107. Furthermore, the Court has noted that both governmental policy and legislative amendments pursued the aim of alleviating the burden put on

owners of flats to which rent-control applies by gradually increasing the maximum rent chargeable and, at a later stage, setting a framework and time-limit for its termination. In legislation enacted with effect from 1 January 2014 measures have been taken with a view to facilitating the modernisation of residential houses (see paragraph 53 above).

108. On the other hand, the rent-control scheme has been applied throughout the period during which Slovakia has been bound by the Convention and which started running on 18 March 1992 (the date of ratification of the Convention by the Czech and Slovak Federal Republic, to which Slovakia is one of the successor States). Under Law no. 260/2011, the owners' loss resulting from regulated rent should be entirely eliminated by the end of 2016 at the latest (see paragraphs 51-52 above).

The above period of more than twenty years of implementation of the rent-control scheme does not coincide with the period during which it actually has been or was applicable in respect of individual flats owned by the applicants in the present case. The Court has noted, nevertheless, that in a majority of the cases the applicants acquired ownership of the flats in the course of the 1990s and that the rent-control scheme is still applicable in respect of a considerable number of their flats (see Appendix 2).

109. It is further relevant that the Government's housing policy plans of 1994, 2000 and 2005 envisaged the introduction of market-level rent in the private sector. The Government Manifesto of 2002 indicated that the Government would take measures for deregulation of rent before the accession of Slovakia to the European Union which took effect on 1 May 2004 (see paragraphs 65-67 above). Moreover, it appears from the Government's plan on housing policy and construction of flats of 2010 that the rental market in Slovakia has remained underdeveloped, particularly because of the system of rent control and protection of tenants (see paragraph 68 above). Thus the Governmental documents concede that there have been shortcomings in pursuing the proclaimed policy aimed at putting an end to the rent-control scheme.

110. The documents before the Court do not indicate, in respect of the period prior to 2008, the number of flats to which rent control applied and any steps taken with a view to ensuring that regulated rent be justified by each tenant's situation. Such steps are contained in the Ministry of Finance Measure no. 02/R/2008 (see paragraphs 63-64 above). The registration forms submitted by tenants indicate that, by 20 January 2009, the rent-control scheme concerned 923 flats, corresponding to 0.24% of rented flats in houses that had existed in 1991. Nevertheless, it is foreseen that, where a municipality has not provided housing to tenants exposed to material hardship, the rent-control scheme will continue to apply until the end of 2016.

111. The actual impact of the rent-control scheme is a particularly important factor in determining whether a fair balance has been struck

between the interests at stake. The Court has not been provided with information permitting to assess the actual effects of the rent control on the applicants' ability to properly maintain their property. It will have regard to the difference between the maximum rent permissible under the rent-control scheme and the market rental value of the flats.

112. In that connection, each party submitted opinions prepared by experts which were based on different valuation methods and the conclusions of which vary. Notwithstanding such difference, and without taking any stand as regards the methods used by the experts, the Court notes that

(i) as from 2000 the relevant rules repeatedly allowed for substantial increase of the maximum amount of controlled rent (see paragraphs 51, 56 and 60 above);

(ii) according to expert opinions submitted by the applicants in 2010, the monthly controlled rent for similar flats corresponded to approximately 14% of the market rent, and that percentage was lower in the preceding period (see Appendix 3);

(iii) in 2012, after a further increase for which Law no. 260/2011 provided, the expert opinion to which the applicants referred by way of example established that the controlled rent corresponded to some 14 to 19% of the market rent of the individual flats concerned (see paragraph 24);

(iv) according to expert opinions submitted by the Government in 2012, and after application of a 40% increase which Law no. 260/2011 allowed for, the controlled rent corresponded, in the case of most of the applicants, to some 20-26% of the market rent, and, in respect of a limited number of cases, the extreme limits of that percentage varied between 7.6% and 36.9% (see Appendix 4);

(v) there is no indication/argument that the controlled rent/market rent ratio was higher during the preceding period (see also Appendix 3); and

(vi) the expert opinions submitted by both the applicants and the Government indicate that the individual applicants' loss resulting from the fact that they were not allowed to let out their flats at the market price has amounted to several tens or even hundreds of thousands of euros (see Appendix 4, columns G and H).

113. Thus, regardless of the difference between the opinions on which the parties relied, the information before the Court indicates that, even after a number of increases after 2000, the amount of controlled rent which the applicants are entitled to charge has remained considerably lower than the rent for similar housing in respect of which the rent control scheme does not apply. The Court is not convinced that the interests of the applicants, "including their entitlement to derive profit from their property" (see *Hutten-Czapska*, cited above, § 239; *Ghigo*, cited above, § 66; and also paragraphs 46, 55 and 99 above), have been met by restricting the owners to such low returns. It is true that Law no. 260/2011 has provided for a yearly

20% increase in regulated rent as from the end of 2011. However, this measure was taken into account in the expert opinions submitted by the Government. It does not address the situation that preceded the enactment of the above law which, as the documents available indicate, was even more detrimental to the applicants.

114. The Court accepts that the shortage of flats available for rent at an affordable level after the fall of the communist regime called for a reconciliation of the conflicting interests of landlords and tenants, especially in respect of flats which had been restored to the original owners. The State authorities had, on the one hand, to secure the protection of the property rights of the former and, on the other, to respect the social rights of the latter, often vulnerable individuals.

115. Nevertheless, the legitimate interests of the community in such situations call for a fair distribution of the social and financial burden involved in the transformation and reform of the country's housing supply. This burden cannot be placed on one particular social group, however important the interests of the other group or the community as a whole (see *Hutten-Czapska*, cited above, § 225).

This is all the more relevant in situations as in the present case where (i) the number of flats in respect of which the rent-control scheme applied has not been shown to be particularly high (see paragraph 16 above), and (ii) it has been conceded that shortcomings in the housing planning and policy prevented the rent-control scheme from being terminated at an earlier date in accordance with the proclaimed aim (see paragraphs 68 and 109 above).

116. The above considerations are sufficient for the Court to conclude that the Slovak authorities failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants' right of property.

117. In reaching that conclusion the Court does not consider it appropriate at this stage to make any distinction as regards the manner and time of acquisition by the applicants of the individual flats. Admittedly, the two applicants who had bought the flats in 2005 (see paragraph 17 above) were aware of the restrictions under the rent-control scheme and they should have included that fact in the price negotiations with the vendor. On the other hand, in view of the Government's declarations and plans, they could reasonably expect that the rent-control scheme would be dismantled shortly after the purchase. Therefore such issues should be addressed, if appropriate, in the context of determination of the applicants' claims under Article 41 of the Convention.

118. The applicants also argued that, in accordance with domestic practice they could only charge the maximum rent permissible under the rent-control scheme, subject to the tenants' agreement. However, the Court notes that they submitted no further details as regards the situation in

respect of their individual flats, and that they based the calculation of the damage suffered on the amounts of controlled rent permissible under the rent-control scheme. In these circumstances, and in view of the conclusion reached in paragraph 113 above, the Court does not consider it necessary to pursue this issue.

119. There has accordingly been a violation of Article 1 of Protocol No. 1.

#### IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL No. 1

120. The applicants maintained that the restrictions imposed by the rent-control scheme amounted to discriminatory treatment. They alleged a breach of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1. Article 14 reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

121. The applicants argued, in particular, that the Constitution guaranteed equal rights and protection to all owners. The mere fact that the property had been restored to the applicants by the State did not imply that their position was different from other house owners and it did not justify their different treatment as to the scope of their ownership rights.

122. The applicants referred to the reasons for the General Prosecutor’s application to the Constitutional Court (see paragraph 71 above). They argued that persons falling under section 1 of the 2003 Ordinance were subjected to broader restrictions than the owners who had acquired the property by other means than restitution.

123. Lastly, the applicants argued that they were discriminated against in that the relevant law fixed the rent for flats whose construction had been financed by public funds at 5% of the acquisition value. However, in the other houses, including those of the applicants, the rent-control scheme allowed for a maximum rent of approximately 2% of the acquisition value.

124. The Government maintained that the applicants’ situation was not relevantly similar to that of other house owners to whose property the rent-control scheme did not apply. In particular, persons like the applicants, to whom the houses had been restored at the beginning of the 1990s, had been aware that the persons living in the flats concerned would retain the right to use them. Unlike in the case of publicly owned flats, those inhabitants had had no right to purchase the flats in houses which had been restored to the original owners. There was therefore a requirement to provide legal protection to those persons by means of the rent-control scheme.

125. In view of its conclusion that there has been a breach of the applicants' rights under Article 1 of Protocol No. 1, the Court finds that no separate issue arises under Article 14 of the Convention and that, accordingly, it is unnecessary to examine the matter under these provisions taken together.

## V. ARTICLE 46 OF THE CONVENTION

126. The Court considers it appropriate to address this case under Article 46 of the Convention which provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

### A. The parties' submissions

127. The applicants maintained that the continued implementation of the rent-control scheme raised a systemic problem under the Convention which affected a high number of persons. The situation was similar to that in *Hutten-Czapska* (cited above). They called for measures to be taken, in particular since the gradual deregulation of rent did not involve compensation for the low amounts of controlled rent which they had been allowed to charge in the past.

128. The Government pointed out that the rent-control scheme currently affected only about 1,000 dwellings, amounting to 0.06% of the overall number of permanently inhabited housing facilities. It was therefore questionable whether the situation in question was “systemic”.

### B. The Court's assessment

#### 1. General principles

129. The general principles related to Article 46 are set out, for example, in *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 406-07, ECHR 2012 (extracts); *Lukenda v. Slovenia*, no. 23032/02, §§ 94-97, ECHR 2005-X; and *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 60, 3 November 2009; all with further references). They may be summed up as follows.

130. By becoming High Contracting Parties to the European Convention on Human Rights, the respondent States assumed the obligation to secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of the Convention. In fact, the States have a general obligation to resolve the problems that have led to the Court finding a violation of the

Convention. Should violations of Convention rights still occur, the respondent States must set up mechanisms within their respective legal systems for the effective redress of violations of those rights.

131. Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment.

132. However, in exceptional cases, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court will seek to indicate the type of measure that might be taken in order to put an end to a situation it has found to exist.

## *2. Application of these principles to the present case*

133. The Court's conclusion above, as regards the effects of the rent-control scheme on the applicants' right to peaceful enjoyment of their possessions, suggests that the violation found originated in a problem arising out of the state of the Slovakian legislation and practice, which has affected a number of flat owners to whom the rent-control scheme has applied (see also paragraph 16 above). The Court further notes that 13 other applications concerning the same issue are pending before it which concern some 170 persons.

134. It is true that measures have been taken with a view to gradually improving the situation of landlords. Thus, as a result of the introduction of Law no. 216/2011, the controlled rent could be increased by 20% every year as from the end of 2011. Where a municipality has not provided tenants exposed to material hardship with a dwelling by the end of 2016, the landlords will have the right to claim the difference between the free-market rent and the controlled rent (see paragraph 52 above). Thus those measures provide for a complete elimination of the effects on flat owners of rent-control only as from 2017, and they do not address the situation existing prior to their adoption.

135. The Court considers that further measures should be taken in order to achieve compliance with Article 1 of Protocol No. 1. To prevent future findings of infringement of that provision, the respondent State should introduce, as soon as possible, a specific and clearly regulated compensatory remedy in order to provide genuine effective relief for the breach found.

## VI. ARTICLE 41 OF THE CONVENTION

136. Article 41 provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

137. The applicants claimed compensation for pecuniary damage which they suffered as a result of the obligation to let their flats under the rent-control scheme.

For the period between 18 March 1992 (date of entry into force of the Convention in respect of the former Czech and Slovak Federal Republic, of which Slovakia is one of the successor States) and 31 March 2012 the amounts claimed were based on opinions prepared by experts and they were increased by default interest applicable under Slovak law. The individual applicants' claims are set out in Appendix 5 (columns C - E).

The applicants reserved the right to specify the damage sustained during the period starting on 1 April 2012 which could not be covered by the opinions prepared by experts. In the alternative, they claimed the sums indicated in Appendix 5 (column F) in respect of each day since 1 April 2012. Those sums corresponded to the average daily loss determined by experts for the period from 1 January 2012 to 31 March 2012. The applicants further claimed interest on both the damage determined by experts in respect of the period up to 31 March 2012 and the sums claimed in respect of the period starting on 1 April 2012, payable as from the latter date, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus eight percentage points.

Lastly, the applicants claimed EUR 50,000 each in respect of non-pecuniary damage.

138. The Government contested as non-objective the method by which the experts hired by the applicants had determined the alleged pecuniary damage. They also pointed to certain mathematical mistakes in those opinions. They argued that the Court should base its decision on the opinion submitted by the Forensic Engineering Institute in Žilina on 15 November 2012.

In their submission, the applicants who had purchased the flats must have been aware that the rent-control scheme applied to those flats as reflected in the purchase price. The claims of those applicants should therefore be rejected.

The applicants' claim in respect of non-pecuniary damage was excessive.

Lastly, the Government proposed that the Court adjourn its decision under Article 41 while indicating in its judgment the period during which the application of the rent-control scheme could be regarded as acceptable in Slovakia for the purpose of achieving the legitimate aim pursued. Such indication was relevant for the purpose of determining the actual damage suffered by the applicants.

139. The Court considers that the question of the application of Article 41 in respect of the applicants' claim for compensation for damage is not yet ready for decision and should be reserved, due regard being had to the possibility that a friendly settlement may be reached on this point between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

### **B. Costs and expenses**

140. The applicants claimed the global sum of EUR 217,106.99. It comprised the following items:

(i) EUR 8,325 in respect of legal assistance at domestic level in the context of pleadings to and negotiations with public authorities and presentation to the media;

(ii) EUR 95,793.93 for legal representation of the applicants in proceedings before the Court on the basis of an hourly fee of EUR 150;

(iii) EUR 1,605 in respect of translation costs;

(iv) EUR 4,284 in respect of the expert opinion submitted in 2010; and

(v) EUR 107,099.06 for preparation of expert opinions submitted in 2012.

As to the last mentioned item, the experts' costs were determined in accordance with the relevant regulations. Documents attached to two of the reports indicate that the applicants concerned were liable to pay an advance to the experts. This corresponded to EUR 100 for the opinion in respect of the first flat in a given house and EUR 50 in respect of the other flats valued and situated in the same house. Any further sums were payable by the applicants only in the event that they were successful and the Court made an award under Article 41 in respect of costs and expenses. The sums due were to be determined in accordance with the agreement depending on the Court's actual award.

141. The Government challenged the legal costs claimed by the applicants as being excessive. As to the experts' fees, the Government argued that the Court should award only the sums actually incurred and disregard the agreement between the applicants and the experts on further amounts being payable depending on the outcome of the Convention proceedings.

142. The Court considers that this part of the applicants' Article 41 claim is also not ready for decision. It therefore reserves its determination

thereof, due regard being had to the possibility that on this point also a friendly settlement may be reached between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Holds* that Mr B. Vojtáš has standing to continue the present proceedings in Ms H. Vojtášová's stead;
2. *Declares* the application inadmissible to the extent that it concerns application of rent-control scheme to flats indicated in paragraph 77;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* that it is not necessary to examine the applicants' complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;
5. *Holds* that the question of the application of Article 41 is not ready for decision;  
accordingly,
  - (a) *reserves* the said question in whole;
  - (b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
  - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 28 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court

Santiago Quesada  
Registrar

Josep Casadevall  
President

## Appendix 1

### List of applicants

1. Ms Mária Bittó, who was born in 1945 and lives in Kráľová pri Senci.
2. Mr Ján Bíreš, who was born in 1943 and lives in Banská Bystrica.
3. Ms Zuzana Studencová, who was born in 1963 and lives in Bratislava.
4. Mr František Spišák, who was born in 1934 and lives in Nitra.
5. Ms Vlasta Spišáková, who was born in 1946 and lives in Nitra.
6. Mr Viktor Dobšovič, who was born in 1970 and lives in Bratislava.
7. Ms Martina Dobšovičová, who was born in 1945 and lives in Bratislava.
8. Mr Marian Fridrichovský, who was born in 1970 and lives in Bratislava.
9. Ms Eva Barányiová, who was born in 1944 and lives in Brno, the Czech Republic.
10. Mr Juraj Fridrichovský, who was born in 1973 and lives in Bratislava.
11. Ms Kamila Getlíková, who was born in 1923 and lives in Bratislava.
12. Mr Alexander Suchal, who was born in 1959 and lives in Bratislava.
13. Ms Emília Suchalová, who was born in 1960 and lives in Bratislava.
14. Mr Samuel Babjak, who was born in 1965 and lives in Bratislava.
15. Ms Jana Babjaková, who was born in 1971 and lives in Bratislava.
16. Mr Jozef Zemko, who was born in 1968 and lives in Komárno.
17. Ms Hildegarda Vojtášová, who was born in 1924 and lived in Bratislava. She died on 16 January 2011.
18. Mr Boris Vojtáš, who was born in 1959 and lives in Bratislava.
19. Ms Lucia Ščasná, who was born in 1977 and lives in Bratislava.
20. Ms Lucia Motešická, who was born in 1938 and lives in Bratislava.
21. Mr Juraj Motešický, who was born in 1934 and lives in Bratislava.

The applicants listed respectively under points 6 and 7, 12 and 13 as well as 14 and 15 are spouses.

**Appendix 2 – rent control application period**

A. Property identification and location	B. Flats owners or co-owners	C. Flat no.	D. Period of application of rent control
House no. 100399 Zámočnicka 11, Bratislava – Staré Mesto	M. Bittó	1 3 5 6 7 10 11 12 14	14/03/1995 – 31/12/2008 14/03/1995 – 31/12/2000 14/03/1995 – 31/05/2006 14/03/1995 – 31/12/2000 14/03/1995 – 31/12/2004 Since 14/03/1995 Since 14/03/1995 Since 14/03/1995 14/03/1995 – 28/02/2007
House no. 102320 Dunajská 38, Bratislava - Staré Mesto	M. Bittó	5 7 9 10 11 13 14	09/01/1995 – 31/12/1995 Since 09/01/1995 09/01/1995 – 15/06/2000 09/01/1995 – 30/11/2006 Since 09/01/1995 09/01/1995 – 30/09/2004 09/01/1995 – 31/03/2004
House no. 3344 Kalinčiakova 1 Trnava	J. Zemko	3 4 5 6 7	05/12/2001 – 31/12/2007 Since 05/12/2001 Since 05/12/2001 05/12/2001 – 30/04/2008 Since 05/12/2001
House no. 889 Štefánikova 31, Bratislava – Staré Mesto	F. Spišák V. Spišáková	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	10/11/1997 – 23/01/2009 Since 10/11/1997 Since 10/11/1997 10/11/1997 – 30/09/2011 Since 10/11/1997 Since 10/11/1997 Since 10/11/1997 Since 10/11/1997 Since 10/11/1997 Since 10/11/1997 10/11/1997 – 11/01/2012 10/11/1997 – 26/11/2001 Since 10/11/1997 Since 10/11/1997 10/11/1997 – 28/09/2005 10/11/1997 – 28/03/2011 Since 10/11/1997 Since 10/11/1997 10/11/1997 – 26/05/2006 Since 10/11/1997 Since 10/11/1997 10/11/1997 – 09/11/2009 10/11/1997 – 04/07/2006

House no. 3141 Jelenia 7, Bratislava - Staré Mesto	V. Dobšovič M. Dobšovičová	2	Since 14/06/2005		
		3	14/06/2005 – 02/03/2006		
		4	14/06/2005 – 29/03/2011		
		6	Since 14/06/2005		
		7	14/06/2005 – 23/03/2009		
		8	14/06/2005 – 21/04/2006		
		9	14/06/2005 – 05/01/2007		
		10	14/06/2005 – 30/04/2010		
		House no. 9 Tallerova 9, Bratislava - Staré Mesto	M. Fridrichovský E. Barányiová J. Fridrichovský K. Getlíková	1	In respect of all flats the applicants were or have been owners
				2	and rent control applied as follows:
5	M. Fridrichovský: since 05/10/2004				
6	E. Barányiová: since 04/09/1997				
7	J. Fridrichovský: since 05/10/2004				
	K. Getlíková: 03/05/1993 – 27/01/2010				
House no. 165 Paulíniho 7, Bratislava - Staré Mesto	A. Suchal E. Suchalová S. Babjak J. Babjaková	1	A. Suchal and E. Suchalová:		
		2	Flat no. 1: since 02/12/1992		
		3	Flats nos. 2, 3, 4, 5: 02/12/1992 – 31/12/2010		
		4	S. Babjak and J. Babjaková:		
		5	Flat no. 1: since 27/02/2006 Flats nos. 2, 3, 4, 5: 27/02/1996 – 31/12/2010		
House no. 672 Trenčianska 6, Bratislava - Ružinov	J. Bíreš	1	07/06/1992 – 15/12/2001		
		3	07/06/1992 – 17/07/1996		
		5	07/06/1992 – 17/07/1996		
		6	07/06/1992 – 01/08/1996		
		7	07/06/1992 – 17/07/1996		
		8	Since 07/06/1992		
House no. 103998 Šancová 30, Bratislava – Staré Mesto	Z. Studencová	1	17/03/1999 – 01/05/2008		
		2	17/03/1999 – 18/03/2010		
		3	17/03/1999 – 18/03/2010		
House no. 112 Medená 35, Bratislava - Staré Mesto	L. Ščasná B. Vojtáš H. Vojtášová L. Motešická J. Motešický	Flats nos. 1 to 21			
		In respect of all 21 flats the applicants were or have been owners and rent control applied as follows:			
		L. Ščasná: since 11/02/2006			
		B. Vojtáš (the share of H. Vojtášová included): since 01/04/1993			
		L. Motešická: 18/03/1992 – 30/06/2010 J. Motešický: 06/02/1992 – 18/03/2010			

**Appendix 3**

Difference between the free-market rent and controlled rent as established by an expert at the applicants' request in 2010

<b>Period</b>	<b>Free-market rent (monthly price in euros per square metre)</b>	<b>Controlled rent (monthly price in euros per square metre)</b>
1993	3.18	0.06
1994	4.18	0.06
1995	4.72	0.06
1996	4.90	0.06
1997	4.75	0.06
1998	5.14	0.06
1999	5.90	0.06
2000	6.78	0.20
Until 31 January 2001	7.61	0.20
As from 1 February 2001	7.61	0.28
2002	7.60	0.28
Until 28 February 2003	7.40	0.28
As from 1 March 2003	7.40	0.54
Until 9 January 2004	8.12	0.54
As from 10 January 2004	8.12	0.86
2005	7.20	0.86
2006	6.98	0.86
2007	9.02	0.86
Until 30 April 2008	9.07	0.86
As from 1 May 2008	9.07	0.86
2009	7.02	0.86
2010	5.99	0.86

## Appendix 4

A. Property identification and location	B. Flats owners or co-owners	C. Flat no.	D. Monthly market rent per m2 in 2012 [€]	E. Monthly controlled rent per m2 in 2012 [€]	F. Controlled rent/free-market rent ratio in 2012 [%]	G. Adequate compensation for the period up to 2012 - Government's expert opinions [€]	H. Pecuniary damage for the period up to 2012 – applicants' expert opinions [€]
House no. 100399 Zámočnícka 11, Bratislava – Staré Mesto	M. Bittó	1	5.78	1.73	30.0	113,838.96	380,099.19
		3	5.65	1.67	24.5		
		5	5.97	1.67	28.0		
		6	5.97	1.61	27.0		
		7	5.97	1.63	27.4		
		10	5.97	1.67	28.0		
		11	5.97	1.62	27.1		
		12	5.97	1.65	27.6		
House no. 102320 Dunajská 38, Bratislava - Staré Mesto	M. Bittó	5	5.78	1.06	18.3	176,143.86	394,403.92
		7	5.65	1.19	21.0		
		9	5.65	1.17	20.7		
		10	5.65	1.19	21.0		
		11	5.78	1.06	18.3		
		13	5.65	1.19	21.0		
House no. 3344 Kalinčiakova 1 Trnava	J. Zemko	3	4.51	1.24	27.4	45,002.90	90,067.65
		4	4.52	1.60	35.6		
		5	4.51	1.24	27.4		
		6	4.52	1.60	35.6		
		7	4.51	1.24	27.4		
House no. 889 Štefánikova 31, Bratislava - Staré Mesto	F. Spišák V. Spišáková	1	5.65	1.05	18.6	215,002.46	660,384.3
		2	5.97	1.41	23.6		
		3	4.71	1.03	21.8		
		4	4.71	1.05	22.3		
		5	4.71	1.05	22.3		
		6	4.71	1.10	23.3		
		7	4.71	1.04	22.1		
		8	4.71	1.09	23.0		
		9	4.71	1.10	23.5		
		10	5.97	1.08	18.1		
		11	4.71	1.05	22.2		
		12	5.78	1.13	19.5		
		13	5.78	1.18	20.5		
		14	4.71	1.08	22.9		
		15	5.97	1.13	19.0		
		16	5.78	1.06	18.3		
		17	5.78	0.98	17.0		
		18	5.78	1.15	19.8		
		19	5.65	1.30	23.0		
		20	5.65	1.25	22.2		
		21	5.78	1.33	23.0		
		22	5.78	1.31	22.7		
		23	5.65	1.19	21.0		

House no. 3141 Jelenia 7, Bratislava - Staré Mesto	V. Dobšovič M. Dobšovičová	2	5.65	1.19	21.1	107,656.22	210,807.08				
		3	5.65	1.11	19.7						
		4	5.78	1.15	20.1						
		6	5.78	1.10	19.0						
		7	5.78	0.57	9.9						
		8	5.97	1.70	28.5						
		9	5.65	1.23	21.8						
		10	5.78	0.57	9.9						
		House no. 9 Tallerova 9, Bratislava - Staré Mesto	M. Fridrichovský E. Barányiová J. Fridrichovský K. Getlíková	1	4.71			1.59	33.7	248,194.72	690,866.77
				2	4.71			1.57	33.4		
5	4.71			1.56	33.1						
6	4.71			1.16	24.5						
7	5.78			1.15	19.9						
House no. 165 Paulíniho 7, Bratislava - Staré Mesto	A. Suchal E. Suchalová S. Babjak J. Babjaková	1	5.78	1.20	20.8	242,206.15	584,978.59				
		2	5.78	1.21	20.8						
		3	5.97	0.45	7.6						
		4	5.65	1.52	26.9						
		5	5.65	1.14	20.2						
House no. 672 Trenčianska 6, Bratislava - Ružinov	J. Bíreš	1	5.41	1.21	22.4	113,861.02	255,101.76				
		3	5.41	1.12	20.7						
		5	5.41	1.12	20.7						
		6	5.41	1.12	20.7						
		7	5.41	1.12	20.7						
		8	5.41	1.12	20.7						
		7	5.41	1.12	20.7						
		8	5.41	1.20	22.2						
House no. 103998 Šancová 30, Bratislava – Staré Mesto	Z. Studencová	1	4.71	1.30	27.8	35,564.83	115,906.59				
		2	4.71	1.46	30.9						
		3	5.78	1.03	17.8						
House no. 112 Medená 35, Bratislava - Staré Mesto	L. Ščasná B. Vojtáš H. Vojtášová L. Motešická J. Motešický	1	5.65	1.6	28.4	463,860.67	1,117,028.79				
		2	5.65	1.52	26.9						
		3	5.78	1.50	26.0						
		4	5.78	1.47	25.5						
		5	5.65	1.52	26.9						
		6	5.65	1.78	26.8						
		7	5.97	2.21	37.1						
		8	5.78	1.51	26.1						
		9	5.65	1.52	27.0						
		10	5.65	1.52	27.0						
		11	5.78	1.50	26.0						
		12	5.65	1.52	27.0						
		13	5.97	2.18	36.5						
		14	5.65	1.52	26.9						
		15	5.97	2.20	36.9						
		16	5.78	1.50	26.0						
		17	5.78	1.43	24.7						
		18	4.71	1.26	26.7						
		19	5.97	2.20	36.9						
		20	5.78	1.50	26.0						
		21	5.65	1.51	26.7						



**Appendix 5 - Pecuniary damage claimed by the applicants**

A.	B. Applicants	C. Actual damage (period up to 31 March 2012)	D. Default interest (period up to 31 March 2012)	E. Pecuniary damage claimed (C+D)	F. Amount claimed per day as from 1 April 2012
1.	Bittó Mária	774,503.09	776,708.53	1,551,211.62	70.21
2.	Bíreš Ján	255,101.76	230,684.84	485,786.60	11.78
3.	Studencová Zuzana	115,906.59	72,083.59	187,990.18	0.00
4.	Spišák František	330,192.15	215,198.98	545,391.13	41.16
5.	Spišáková Vlasta	330,192.15	215,198.98	545,391.13	41.16
6.	Dobšovič Viktor	210,713.85	66,033.47	276,747.32	38.69
7.	Dobšovičová Martina				
8.	Fridrichovský Marian	99,483.79	22,803.48	122,287.27	49.25
9.	Barányiová Eva	251,328.50	158,662.88	409,991.38	32.83
10.	Fridrichovský Juraj	68,966.92	20,825.87	89,792.79	16.42
11.	Getlíková Kamila	271,087.56	258,774.65	529,862.21	0.00
12.	Suchal Alexander	205,251.55	223,484.32	428,735.87	5.01
13.	Suchalová Emília				
14.	Babjak Samuel	379,727.04	251,862.04	631,589.08	11.02
15.	Babjaková Jana				
16.	Zemko Jozef	90,067.64	38,369.47	128,437.11	4.42
17.	Vojtášová Hildegarda	416,128.20	364,362.75	780,490.95	53.59
18.	Vojtáš Boris				
19.	Ščasná Lucia	144,160.52	32,246.21	176,406.73	53.59
20.	Motešická Lucia	280,273.24	266,644.36	546,917.60	0.00
21.	Motešický Juraj	275,967.79	266,149.53	542,117.32	0.00