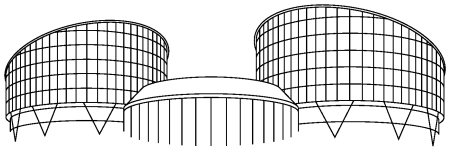

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BUKOVČANOVÁ AND OTHERS v. SLOVAKIA

(Application no. 23785/07)

JUDGMENT

STRASBOURG

5 July 2016

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 Bukovčanová and Others v. Slovakia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 14 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 23785/07) 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 four Slovak nationals, Ms Margita Bukovčanová ("the first applicant"), Mr Jozef Fedeleš ("the second applicant"), Ms Viera Šefčíková ("the third applicant"), and Mr Jozef Fedeleš junior ("the fourth applicant"), on 1 June 2007.

2. The applicants were represented by Mr R. Procházka, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms. M. Pirošíková.

3. The applicants alleged that the rent-control scheme had imposed restrictions on their right to peaceful enjoyment of their possessions, in breach of Article 1 of Protocol No. 1 to the Convention.

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

5. The applicants and the Government each submitted further written observations (Rule 59 § 1) on the merits and just satisfaction, and replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1952, 1947, 1973 and 1980 respectively and live in Bratislava.

7. They are co-owners of a residential house located in the Bratislava-Staré Mesto municipality. The house was built in 1929 by their familial predecessors, who during the previous regime donated it to the State under circumstances that would later be accepted as constituting duress. The ownership of the house was restored to the first and second applicants on 10 December 1991 under special legislation on restitution. Consequently, each of them acquired a 4/12 share of the ownership of the house. The third and fourth applicants each acquired a 2/12 share of the ownership of the house on 25 January 1995 and 29 March 1999 respectively.

8. At the time the applicants acquired the ownership of the house five flats were inhabited by tenants with regulated rent. Under the relevant legislation this meant that (i) the applicants had to accept that their flats were occupied by these tenants, (ii) they could charge them no more than the maximum amount of rent fixed by the State, (iii) they could not unilaterally terminate the leases, and (iv) they could not sell the flats other than to the tenants ("the rent-control scheme").

9. The rent-control scheme applies, or has applied, to the flats in question, as follows: a four-room flat with a surface area of 129 sq. m which had been subject to rent control until January 2006 ("the first flat"); a four-room flat with a surface area of 130 sq. m which had been subject to rent control until September 2008 ("the second flat"); a two-room flat with a surface area of 87 sq. m and two four-room flats measuring 126 sq. m each ("the third, fourth and fifth flats"), to which rent control still applies.

10. The monthly rent chargeable for the flats under the applicable legislation was equivalent to some 10 to 17.5 euros (EUR) between 1992 and 1999. After several increases in the regulated rent, in June 2007 the applicants were able to charge some EUR 73.5 monthly in respect of the two-room flat and approximately EUR 125 monthly in respect of the four-room flats. According to the Government's calculations the regulated rent reached EUR 236 and EUR 400 respectively in 2014.

11. The parties provided differing figures as to the market rent.

The applicants relied on data from the National Association of Real Estate Agencies ("the NAREA") and claimed that the monthly market rent for comparable two-room flats in the area reached around EUR 662 and for comparable four-room flats some EUR 1,296 between 2004 and 2007.

The Government submitted an expert valuation according to which the monthly market rent for the applicants' flats in 2010 amounted to EUR 561 and EUR 772 to EUR 797 respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice governing the rent-control scheme in Slovakia and its historical background are set out in the case of *Bittó and Others v. Slovakia* ((merits), no. 30255/09, §§ 7-16, 32-72, 28 January 2014).

13. 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.

14. Its provisions are applicable, in particular, to individual apartments 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 the 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.

15. 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 rent and the regulated rent.

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

III. IMPLEMENTATION OF THE COURT'S JUDGMENT IN THE CASE OF BITTÓ AND OTHERS

17. In *Bittó and Others* ((merits), cited above), the Court found that the application of the rent-control scheme in respect of the applicants' property constituted a violation of Article 1 of Protocol No. 1 to the Convention. In the relevant part of its judgment under Article 46 of the Convention it held that:

> "133. [Its] conclusion ... 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 .... 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 ... 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."

18. Implementation of the judgment in *Bittó and Others* is still pending.

THE LAW

I. COMPLIANCE WITH THE SIX-MONTH TIME-LIMIT

19. 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 the application of a rent-control scheme in the present case, the six-month period starts to run from the end of the situation concerned (see *Bittó and Others*, cited above, § 75). 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.

20. Following the Court's decision to declare the present application admissible the parties submitted further information, which specified the periods of application of the rent-control scheme in respect of the flats concerned. According to the information submitted by the applicants the rent control had ceased to apply in respect of the first flat in January 2006 (see paragraph 9 above), that is more than six months before the introduction of the application on 1 June 2007.

21. Consequently, to the extent that the applicants allege a violation of their rights as a result of the application of rent control to the first flat, they failed to respect the six-month time-limit laid down in Article 35 § 1 of the Convention (see *Bittó and Others*, cited above, §§ 75-78). It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. SCOPE OF THE APPLICATION

22. The Court notes that the present application is concerned with rent control in relation to the second flat from the date the applicants acquired title (see paragraph 7 above), until the rent-control scheme ceased to apply in respect of this flat in September 2008. It is thus concerned with rent control over the second flat of almost seventeen years in respect of the first and second applicants, almost fourteen years in respect of the third applicant, and almost ten years in respect of the fourth applicant.

23. The remaining three flats are still subject to rent control. The application is thus concerned with the rent control in relation to these flats for twenty-five years in respect of the first and second applicants, twenty-one years in respect of the third applicant, and seventeen years in respect of the fourth applicant.

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

24. The applicants complained that their right to peaceful enjoyment of their possessions had been breached as a result of the adoption and implementation of the rules governing the rent control which applied to their property. They relied on Article 1 of Protocol No. 1 to the Convention, 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

25. The applicants argued that the rent-control scheme had constituted an interference with their right to peaceful enjoyment of property. They claimed that the statutory basis regulating the rent-control scheme lacked consistency, and that the scheme had constituted a disproportionate burden on their ownership rights. They argued that the regulated rent was substantially lower than the market prices for similar flats in the area. They submitted that the level of regulated rent was as low as 5-13% of the market rent. As a result they had been forced to satisfy the housing needs of other people at their own expense. In this connection they argued that the rent they had been entitled to charge for their flats under the rent-control scheme

had not even covered the costs of their maintenance. They argued that owing to the repeated delays in deregulation of rents they were in a permanent state of uncertainty.

26. According to the applicants, Law no. 260/2011 had not provided any substantial relief of their situation, because a yearly 20% increase in regulated rent envisaged by the law was not sufficient to close the gap between the regulated and the market rent. Moreover, it did not address the situation that preceded the enactment of the above law.

2. The Government

27. In their submissions in reply, the Government admitted that the rent-control scheme had resulted in a limitation on the use of the applicants' property. However, the measure had been in accordance with the relevant domestic law, which met the requirements of accessibility and clarity and was sufficiently foreseeable in effect; it had also pursued a legitimate aim.

28. As to the requirement of proportionality, they challenged the figures provided by the applicants in respect of the market rent for their property, and provided different figures on the basis of their own expert evidence (see paragraph 11 above).

29. In their additional observations the Government argued that the applicants had not provided updated figures as regards the amount of the regulated rent for their flats after 2007. The Government referred to the 15% increase in regulated rent in 2008 and the gradual increases in regulated rent envisaged by Law no. 260/2011. They considered that after all these increases in the regulated rent the applicants could have charged EUR 236 a month for the two-room flat and around EUR 400 for the four-room flats in 2014.

30. Relying on these numbers and the expert evidence mentioned above, they contended that in the present case the regulated rent had reached 42-52% of the market rent in 2014, and therefore the situation in the present case was different from that in *Bittó and Others*, where the regulated rent had corresponded to 20-26% of the market rent. They considered that that difference distinguished the present case from *Bittó and Others*, in that the burden created by the rent-control scheme in relation to the applicants in the present case had been justified by the legitimate aim it had pursued, namely social policy in the field of housing, and had not been disproportionate.

31. In addition, they submitted that the relationship between the regulated rent and the market rent was not the only relevant criterion, and that the Court should assess the case on the basis of the relationship between the rent the applicants had been entitled to and the expenses they had actually incurred for the maintenance of his property. However, they pointed out that the applicants had failed to substantiate their claims in that respect.

32. Finally, the Government pointed out that the situation of legal uncertainty had been resolved by the adoption of Law no. 260/2011, because by the end of 2016 the regulated rent should reach the market rent. The Government also referred to the possibility of applying for a preferential loan to modernise their property (see paragraphs 13-16 above).

B. The Court's assessment

33. The relevant case-law of the Court is summarised in *Bittó and Others* ((merits), cited above, §§ 94-100, with further references).

34. In that case, the Court found (i) that the rent-control scheme had amounted to an interference with the applicants' property, (ii) that that interference had constituted a means of State control of the use of their property to be examined under the second paragraph of Article 1 of Protocol No. 1, (iii) that it had been "lawful" within the meaning of that Article, (iv) that it had pursued a legitimate social policy aim, and (v) that it had been "in accordance with the general interest" as required by the second paragraph of that Article (ibid., §§ 101-04). The Court has no reason to reach different conclusions on these points in the present case.

35. In addition, in *Bittó and Others* the Court found that in the implementation of the rent-control scheme the authorities had failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants' right of property, as a result of which there had been a violation of their rights under Article 1 of Protocol No. 1 (ibid., §§ 105-19).

36. Turning to the facts of the present case, the Court observes that it follows the pattern of *Bittó and Others* entirely, both structurally and contextually. Nevertheless, the Government sought to distinguish it from that case, arguing that the restrictions placed on the applicants' property rights in the present case had been smaller than those in *Bittó and Others.*

37. In particular, the Government argued that in *Bittó and Others* the regulated rent had corresponded to 20-26% of the market rent, whereas in the present case it had corresponded to 42-52% of the market rent. In addition, they objected that the applicants failed to substantiate their claims in respect of the expenses actually incurred for the maintenance of their property.

38. The Court notes at the outset that it has not been provided with information permitting it to assess the actual effects of the rent control on the applicants' ability to maintain their property. Therefore, and in view of the scope of the case as established above (see paragraphs 22-23), it will base its assessment on the difference between the maximum rent permissible under the rent-control scheme and the market rental value of the

flats. It must accordingly establish first the regulated rent the applicants were entitled to under the rent control in the present case.

39. The applicants submitted evidence showing that from 1992 until 1999 the regulated rent for the their flats ranged between the equivalent of EUR 10 and EUR 17.5, and it had increased to some EUR 73.5 and EUR 125 respectively by 2007.

The Government submitted calculations, according to which in 2014 the regulated rent for the applicants' flats reached EUR 236 and EUR 400 respectively (see paragraph 10 above).

40. As to the market rent, the Court notes the following disagreements in the parties' submissions. According to the applicants, between 2004 and 2007 the monthly market rent for flats similar to theirs was EUR 662 for two-room flats and EUR 1,296 for four-room flats, whereas according to the Government, in 2010 the market rent was EUR 561 and EUR 772 to EUR 797 respectively (see paragraph 11 above).

41. This disagreement translates into the parties' submissions as regards the proportion of the market rent that the regulated rent represented.

The Government submitted that the regulated rent in respect of the applicants' flats had corresponded to some 42-52% of the market rent. The Government based their calculations on the market prices in 2010 and the regulated rent figures from 2014.

The applicants submitted that the difference between the regulated and market rent had been as low as 5-13%. They based their calculations on information from NAREA about market prices between 2004 and 2007 and the regulated rent they were able to charge during these periods.

42. The Court observes that under the applicable legislation the level of regulated rent gradually increased over the years (see *Bittó and Others* (merits), cited above, §§ 56-57, and paragraph 14 above), which naturally had an impact on the difference between the regulated rent and the market rent. In this connection the Court observes that the Government made no submissions in respect of the difference between the regulated rent and the market rent in the period preceding the gradual increases in regulated rent (see paragraph 29 above), that they submitted nothing to rebut the applicants' claim in that respect, and that there is no indication that the gradual increases in the regulated rent referred to above may serve as a basis for obtaining compensation for use of the property under the rent-control scheme with any retrospective effect.

43. In view of the above, and in so far as the Government's arguments have been substantiated, the Court finds nothing to justify a different conclusion on the merits of the applicants' complaint in the present case than that reached in *Bittó and Others*.

44. The Court thus cannot but conclude that the Slovakian authorities failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants' right of property.

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

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

45. The Court notes that nineteen other applications are currently pending before it concerning similar matters to those obtaining in the present case, and that they involve 239 applicants. As in *Bittó and Others* ((merits), cited above, §§ 129-35), and for the same reasons, it considers that further measures should be taken in order to achieve compliance with Article 1 of Protocol No. 1. To prevent future findings of infringements 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention 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

47. The applicants claimed jointly EUR 468,174 in respect of pecuniary damage, calculated as the difference between the regulated rent and market rent since 1992 until 2011. In addition, the first and second applicants each claimed EUR 25,000 and the third and fourth applicants each requested EUR 5,000 in respect of non-pecuniary damage.

48. The Government challenged the claim in respect of pecuniary damage arguing that, in so far as it was based on the material from the NAREA, it was speculative and in any event excessive, as was the amount in respect of non-pecuniary damage.

49. The Court has summarised the applicable case-law principles and has applied them in relation to claims for compensation in respect of pecuniary and non-pecuniary damage in a context similar to that in the present case in *Bittó and Others* ((just satisfaction), cited above, §§ 20-29).

50. In line with its findings in that case, the Court acknowledges that the applicants must have sustained damage which is to be compensated by an aggregate sum covering all heads of damage.

51. In determining the scope of the award, the Court takes into account all the circumstances, including (i) the purpose and the context of the rent control and the level of the awards in *Bittó and Others*, (ii) the size of the property in question (see paragraph 9 above), (iii) the duration of the

application of the rent-control scheme in relation to each individual part of the property (see paragraphs 22 and 23 above), (iv) its location, and (v) the ownership shares of the respective applications in the property (see paragraph 7 above).

52. In sum, the Court finds it appropriate to award the following aggregate sums covering all heads of damage, plus any tax that may be chargeable on those amounts: EUR 66,250 to Ms Margita Bukovčanová, EUR 66,250 to Mr Jozef Fedeleš, EUR 27,700 to Ms Viera Šefčíková, and EUR 21,900 to Mr Jozef Fedeleš junior.

B. Costs and expenses

53. The applicants claimed jointly EUR 2,323.57 in respect of legal fees incurred before the Court.

54. The Government challenged the fees as excessive.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the applicants jointly the sum of EUR 2,000, plus any tax that may be chargeable to them, in respect of their expenses for legal assistance before the Court.

C. Default interest

56. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application inadmissible to the extent that it concerns application of the rent-control scheme to the first flat;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:

(i) EUR 182,100 (one hundred eighty-two thousand one hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage (paragraph 52);

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President