



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

## FIFTH SECTION

### CASE OF PAŘÍZEK v. THE CZECH REPUBLIC

*(Application no. 76286/14)*

#### JUDGMENT

Art 1 P1 • Control of the use of property • Domestic courts' order that applicant, a private tenant, pay increased rent for the occupation of a flat initially rented under the State rent-control scheme • Interference lawful despite absence of special legislation, in so far as based on the Constitutional Court's leading case-law • Legitimate aim of ending discrimination against certain categories of owners as a result of State rent-control scheme • Increased amount of rent not excessive in relation to the applicant's financial situation • Margin of appreciation not exceeded in distributing social and financial burden entailed by housing reform  
Art 6 § 1 (civil) • Domestic courts' application of the gradually evolving Constitutional Court's case-law not in breach of fair hearing requirements • Ruling made on basis of established facts with reasons provided

STRASBOURG

12 January 2023

**FINAL**

**22/05/2023**

*This judgment has become final under Article 44 § 2 of the Convention.  
It may be subject to editorial revision.*



**In the case of Pařízek v. the Czech Republic,**

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

Georges Ravarani, *President*,  
Stéphanie Mourou-Vikström,  
Lado Chanturia,  
María Elósegui,  
Mattias Guyomar,  
Kateřina Šimáčková,  
Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 76286/14) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Josef Pařízek (“the applicant”), on 28 November 2014;

the decision to give notice to the Czech Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 29 November 2022,

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

## INTRODUCTION

1. The application concerns complaints mainly under Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 of the Convention in respect of an increase in the amount of rent paid by the applicant for the occupation of a flat initially rented under the rent-control scheme.

## THE FACTS

2. The applicant was born in 1975 and lives in Olešnice. He was represented by Mr P. Černý and Mr T. Kliegr, lawyers practising in Brno and Sezemice.

3. The Government were represented by their former Agent, Mr V.A. Schorm, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. On 13 October 1995 the applicant became the tenant of a flat in a tenement house owned at that time by Prague Building Administration Ltd. (*Pražská správa nemovitostí, s.r.o.*). The monthly rent, calculated under a rent-control scheme, was set at 297 Czech korunas (CZK) (approximately 11 euros (EUR) at the relevant time). The tenancy agreement stated, *inter alia*:

“The tenant undertakes to pay to the landlord a monthly rent and make advance payment for services ... , which may be modified on the basis of valid decrees and in line with an increase in prices for services related to the maintenance of the building.”

6. On 12 November 1999 Prague Building Administration Ltd. sold the building to a new landlord.

7. On 1 July 2002 the controlled rent was increased to CZK 900 (EUR 31 at the relevant time).

8. On 5 August 2003 the landlord brought a claim against the applicant, seeking to have the above stipulation in the tenancy agreement declared null and void and to obtain a court order for the applicant to pay a monthly rent of CZK 4,500 (EUR 139 at the relevant time) starting from 1 April 2003. In support of his claim, the landlord submitted an expert opinion which, in respect of the landlord’s costs for the maintenance and repair of the building, stated that the average amount of expenses was in principle 0.5% to 1.5% of the market value of the building. However, in the present case, taking into account the poor state of the building, the expert used a value at the maximum limit of 1.5%. Having started from the market value of the flat concerned of CZK 801,960 (EUR 25 035,8 at the relevant time), he calculated that the costs for its maintenance amounted to CZK 12,029.40 (EUR 376).

9. In a judgment of 17 March 2004 the Pardubice District Court (*okresní soud*) dismissed the landlord’s claim.

10. On 5 October 2004 the Hradec Králové Regional Court (*krajský soud*) upheld that judgment and the reasoning of the lower court.

11. In a decision of 22 September 2005 the Supreme Court (*Nejvyšší soud*) dismissed an appeal on points of law (*dovolání*) by the landlord.

12. In a judgment (*nález*) of 21 March 2006 (I. ÚS 717/05), the Constitutional Court (*Ústavní soud*), ruling on a constitutional complaint by the landlord, quashed the decision of the Supreme Court, referring to the plenary judgment of 28 February 2006 (Pl. ÚS 20/05 – hereinafter “the plenary judgment”). The Constitutional Court stated, in particular:

“... the question of the constitutional conformity of Article 696 § 1 of the Civil Code was examined by the plenary of the Constitutional Court in its judgment no. Pl. ÚS 20/05 of 28 February 2006 ... In that judgment, [the court] found ... that it was unconstitutional that the legislature had not reacted to the successive repeals of regulations which had governed the rent-control scheme and had allowed an unconstitutional situation to persist ...

...

The plenary of the Constitutional Court set out an obligation for the ordinary courts ... ‘to decide on rent increases, depending on local conditions, while avoiding ... any discrimination’.

[Moreover], in judgment no. IV. ÚS 611/05 ... the Constitutional Court imposed an even clearer obligation on the courts to protect the fundamental rights of individuals through judicial law-making.

The Constitutional Court held in that judgment that rent control [restricted] property rights would only be permitted if it was provided for by law, pursued a legitimate aim in the form of a concrete, constitutionally approved public interest and satisfied the principle of proportionality. ‘A property right may be restricted ... by law but, in respect of setting rents, no such law exists, as the normative regulations for rent control were successively repealed by the Constitutional Court.’ ...

It is impossible to accept such an interpretation of previous judgments by which the Constitutional Court found the content and form of rent controls to be unconstitutional and repealed the relevant regulations ... The objective of [those] judgments ... was to eliminate ... unconstitutional restrictions on the property rights of landlords and not to *de facto* freeze ... the unconstitutional violations of those property rights. ...

The Constitutional Court therefore concluded that ‘the ordinary courts should fulfil the condition laid down in Article 4 § 2 [of the Charter of Fundamental Rights and Freedoms] by which any restriction of fundamental rights must be provided for by law; when the legislature remains inactive, the courts should fill the lacuna in the legal system by developing their case-law. In those circumstances, it is possible to consider such a law to be [an actual] law in the material sense. The ordinary courts cannot deny the protection of fundamental rights by referring to the lacuna in the legal system. On the contrary, they are obliged to provide such protection.’ ...

...

Undoubtedly, in the present case, the ordinary courts ... did not fulfil their obligation to ensure the protection of rights, or, more precisely, fundamental rights ... and, therefore, breached Article 36 § 1 and Article 11 § 1 of the Charter [of Fundamental Rights and Freedoms].”

13. Subsequently, on 31 October 2006, the Supreme Court quashed the lower courts’ judgments.

14. On 21 December 2006 the applicant became the owner of the flat concerned, purchasing it for CZK 900,000 (EUR 32,604 at the relevant time).

15. In the ensuing proceedings before the District Court, the landlord amended his claim, seeking to order the applicant to pay a monthly rent of CZK 4,500 (EUR 140 at that time) for the period from 1 April 2003 to 21 December 2006. However, the District Court dismissed his claim on 27 June 2007 and on 25 October 2007 the Regional Court upheld that judgment.

16. On 2 March 2011 the Constitutional Court (in judgment no. II. ÚS 115/08), acting on a constitutional complaint lodged by the landlord on 15 January 2008, quashed the Regional Court’s judgment in respect of the rent payment for the period from 6 August 2003 to 21 December 2006. It referred to the opinion of the Constitutional Court’s plenary session of 28 April 2009 (opinion no. Pl. ÚS-st. 27/09 – hereinafter “the plenary opinion”) in which the Constitutional Court concluded that the ordinary courts could not decide on unilateral rent increases retroactively, that is, for the period before the bringing of an action. According to the Constitutional Court, the ordinary courts had therefore not made a mistake when they had rejected the claim in the applicant’s case in so far as it concerned the period before the claim was lodged, that is, from 1 April to

5 August 2003. However, with regard to the period from 6 August 2003 to 21 December 2006, the ordinary courts had violated the landlords' ownership rights in that they had wrongly held that unilateral rent increases could only be granted as of the date on which the judgment had become final. The Constitutional Court added that it was not possible to grant claims for rent increases to take effect after 1 January 2007, because, as of that date, Act no. 107/2006 on Unilateral Rent Increases had entered into force (see *R & L, s.r.o. and Others v. the Czech Republic*, nos. 37926/05 and 4 others, § 136 of Annex II, 3 July 2014).

17. On 28 April 2011 the Regional Court quashed the relevant part of the District Court's judgment of 27 June 2007 and returned the case to the District Court, ordering it to appoint an expert to establish the usual rent and to decide on the landlord's claim by determining the market rent in respect of the flat in issue for the period from 6 August 2003 to 21 December 2006. The Regional Court referred to the jurisprudence of the Constitutional Court on the basis of which the rent could be increased from the bringing of an action in court until 31 December 2006.

18. The landlord later amended his claim again, seeking to be paid a monthly rent of CZK 4,494 (EUR 174 at the relevant time) for the period from 6 August to 31 December 2003, CZK 5,248 (EUR 204) for the period from 1 January to 31 December 2004, CZK 5,036 (EUR 195) for the period from 1 January to 31 December 2005 and CZK 5,543 (EUR 215) for the period from 1 January to 20 December 2006.

19. In a judgment of 31 July 2012 the District Court granted the landlord's claim and ordered the applicant to pay the outstanding rent, as amended by the landlord (see paragraph 18 above), referring to Constitutional Court opinion no. Pl. ÚS-st. 27/09 of 28 April 2009 ("the plenary opinion"). It noted that the expert report submitted by the landlord had stated that the usual rent in that area in 2004 was CZK 4,500 (EUR 175), an amount which did not cover legitimate maintenance costs. The court also took into account the amendment to that report and a statement by the court-appointed economic expert. It found it established that during the period from 6 August to 31 December 2003 the market monthly rent payable for the flat in question was CZK 4,494 (EUR 175); in 2004 it was CZK 5,248 (EUR 204); in 2005 it was CZK 5,036 (EUR 196), and from 1 January to 21 December 2006 it was CZK 5,543 (EUR 215). The court-appointed economic expert explained to the court the comparative method he had used in drawing up his report: he had compared the flat in question with others of its type and had taken account of the number of rooms, the total surface area and the fittings contained in it, as well as its location and type of heating. In reply to objections by the applicant to the latter expert report, including its assertion that the controlled rent was sufficient to cover the landlord's maintenance costs and to make a profit, the court noted, *inter alia*, that the conclusions of the court-appointed expert corresponded to those in the expert report submitted by the landlord;

it therefore rejected a request by the applicant for an expert auditor's report. Developing its reasoning further, the court lastly noted that its decision did not divert from the case-law of the Constitutional Court and that it complied with the well-established practice of the ordinary courts.

In respect of the necessity, as emphasised by the applicant, to ensure equality between tenants and landlords in determining a fair rent and also to avoid an automatic presumption of violations of the constitutional rights of landlords, the court held as follows:

“... it is not possible to mix the rights and obligations arising from a tenant's use of a flat and the funds so obtained by the landlord, with the funds that the landlord acquires in realising his ownership right by way of selling his real estate. In the [applicant]'s case, when he purchased the flat from the claimant in 2006, he was realising his own free will, while at the same time being sufficiently aware that from 2003 he had been in a dispute with the claimant concerning the amount of rent owed for the period from 2003 to 2006.”

20. On 10 September 2012 the applicant appealed against that judgment, criticising, in particular, the calculation method used and the conclusions of the expert opinion. He also noted that his intention had always been to reach an agreement with the claimant concerning a fair and reasonable amount of rent for the flat concerned.

21. On 20 December 2012 the Regional upheld the District Court's judgment.

22. On 27 March 2013 the applicant appealed on points of law, arguing, in particular, that the lower courts had incorrectly considered his case in that they had erroneously interpreted the legal opinion of the Constitutional Court in the present case. Although he shared the opinion of the landlord that the rent for the period from 6 August 2003 to 21 December 2006 should be determined by the court, he had not agreed to raise the rent from the controlled amount to the market sum. In his view, the court was not empowered to determine the rent for the entire relevant period on the basis of an amount which corresponded to the usual rent.

23. Alternatively, the applicant argued that his appeal on points of law had been admissible under Article 237 § 1 (c) of the Code of Civil Procedure then in force, which permitted an appeal on points of law which was not admissible under Article 237 § 1 (b) if a higher court found that the impugned decision raised a question of crucial legal importance. According to the applicant, such a question had been raised before the Supreme Court, which had been called on to specify which criteria should be applied by the ordinary courts, and to what extent, when they had to determine rent increases. The applicant maintained that the Supreme Court, having examined that question and its different aspects, had not followed its own case-law (citing judgments no. 26 Cdo 4403/2011 of 20 February 2013, no. 22 Cdo 367/2012 of 23 April 2013 and no. 22 Cdo 3188/2012 of 23 October 2013 – see paragraphs 29 and 30 below).

24. On 19 September 2013 the Supreme Court rejected an appeal on points of law by the applicant. It held, in particular:

“In the reasoning of judgment no. Pl. 20/05 of 28 February 2006, published under no. 252/2006, the Constitutional Court held, *inter alia*, that the ordinary courts, despite the absence of concrete legal regulations, had to decide on rent increases depending on local conditions in such a way [as to avoid] discrimination ... The [Constitutional Court] did not offer a concrete decision-making method ... but reiterated that it was necessary to avoid arbitrariness and that decisions had to be based on rational reasoning and on a thorough assessment of all the circumstances of the case, ... applying the established judicial practice which complied with the Constitution. The Constitutional Court delivered a similar legal opinion in judgment no. IV. ÚS 611/05 of 8 February 2006 as well as in judgment no. I. ÚS 717/05 of 21 March 2006, which was referred to by [the applicant]. Those legal conclusions were also shared by the Supreme Court, for example in judgments no. 26 Cdo 32/2006 of 7 July 2006, no. 26 Cdo 1039/2006 of 31 August 2006, no. 26 Cdo 1924/2006 of 10 October 2006 and no. 26 Cdo 3663/2007 of 29 October 2008. The appellate court agreed with the opinion of the court of first instance which, when assessing the rent on the basis of the expert opinion (which had set the amount of the so-called usual rent), had properly dealt with the objections of [the applicant], weighed all the circumstances of the case and sufficiently justified its [findings]. ...”

25. On 12 December 2013 the applicant lodged a constitutional complaint in which he alleged that his right to judicial protection and his property rights had been violated. He complained, *inter alia*, that the Supreme Court had wrongly rejected his appeal on points of law. He argued that his appeal had satisfied the admissibility criteria under Article 237 § 1 (b) of the Code of Civil Procedure then in force, which had allowed an appeal on points of law against an appellate court’s judgment. The applicant objected to the expert report ordered by the District Court and asserted that the controlled rent amount had been sufficient to cover the landlord’s maintenance costs and to make a profit.

26. In a decision (*usnesení*) of 30 May 2014 the Constitutional Court dismissed the applicant’s constitutional complaint as being manifestly ill-founded (judgment no. III. ÚS 3772/13). It held, in particular:

“... the applicant challenges ... the judgments of the District Court and the Regional Court which, in his submission, are in contradiction with the basic principles which emerged from the case-law of the Constitutional Court regarding the rent-control issue, which [involves] the determination of an amount of rent which would respect the requirement of a fair balance between the rights of the applicant and [the landlord] and their proportional protection.

The Constitutional Court reiterates in this connection that if a constitutional complaint is directed against a decision delivered in court proceedings, it is not ... important whether its material inaccuracy is challenged.

The Constitutional Court finds ... that both courts dealt with the applicant’s complaints in an entirely relevant manner and gave adequate reasons for their ... legal opinions ... It is therefore possible to rely on them; it is nonetheless valid – and important in a constitutional review – that decisive legal opinions issued by the ordinary courts are

defensible and, in contrast, it is not important that they can be challenged, as the applicant does at length in his constitutional complaint. ...”

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

27. The relevant domestic law and practice are described in *Vomočil and Art 38, a.s. v. the Czech Republic* ((dec.), nos. 38817/04 and 1458/07, §§ 21-26, 5 March 2013) and in the judgment in *R & L, s.r.o. and Others* (cited above, § 42 and Annex II, 3 July 2014).

28. In addition, in judgment no. Cdo 26 4403/2011 of 20 February 2013, which concerned decision-making by the courts regarding rent increases, the Supreme Court established that during the period until 31 December 2006, when there had been no regulation permitting unilateral rent increases, the ordinary courts could intervene in the content of a tenancy agreement and decide on a rent increase for the period only from the introduction of a legal action. It also stated that the amount of the increased rent did not have to correspond to the usual rent in the given locality (the market rent). In this respect, the Supreme Court referred to the Constitutional Court’s judgments (no. Pl. ÚS 20/05 of 28 February 2006 and no. I. ÚS 489/05 of 6 April 2006) in which that court stated, *inter alia*, that the amount of rent should correspond to the local conditions in order to avoid any discrimination between landlords (and tenants) of flats under the rent-control scheme and landlords (and tenants) of flats subject to the market rent. Moreover, when determining the amount of the rent, the courts had to avoid any arbitrariness and their decisions had to be based on a rational line of reasoning and a thorough weighing of all circumstances.

29. In judgment no. 22 Cdo 3188/2012 of 23 October 2013, the Supreme Court examined the question of the creation of the right to compensation for limitations on property rights. It held, in particular, that this right did not come into existence for a landlord when a court decision established the State’s duty to pay such compensation, but rather as a consequence of unconstitutional rent control and, therefore, as a result of the impossibility of collecting adequate rents. The Supreme Court also noted that compensation could only be awarded if landlords were unable to cover the costs of the maintenance and repair of their tenement houses and to receive a reasonable profit allowing a return on their investments within a reasonable time.

30. The Supreme Court further dealt with the matter concerning rent deregulation in decisions nos. 22 Cdo 367/2012 of 23 April 2013 and 22 Cdo 2344/2012 of 29 October 2014.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

31. The applicant complained that as a result of the court decisions adopted in his case, by which the rent had been increased retroactively and contrary to the principle of proportionality, he had been deprived of a considerable sum of money (his property). By deciding in his favour on several occasions, the national courts had created a legitimate expectation for the purposes of 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. Admissibility

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### B. Merits

##### 1. *The parties' observations*

###### (a) **The Government**

33. The Government did not dispute that the domestic courts' decisions on unilateral rent increase had interfered with the applicant's possessions within the meaning of Article 1 of Protocol No. 1, to be examined under the second paragraph of that provision. They further submitted that the interference had been lawful, stating that while Act no. 107/2006 on Unilateral Rent Increases had entered into force on 31 March 2006, rents could be unilaterally increased only from 1 January 2007 as indicated by the Constitutional Court in its plenary judgment no. Pl. ÚS 20/05 of 28 February 2006 (see paragraph 27 above), to which the domestic courts had also referred in the present case (see paragraphs 12, 17, 24 and 28 above). Moreover, the interference had pursued legitimate aims in the general interest, in particular the protection of the rights of owners of tenement houses affected by unconstitutional rent control and, at the same time, a reduction in the unjustified differences in rents in respect of comparable properties.

34. The Government further argued that the State had struck a fair balance between the general interests of society and the protection of the applicant's

right to the peaceful enjoyment of his possessions, so that he had not been compelled to bear a disproportionate burden. They noted in this connection that the former flat owner had proceeded in the manner envisaged by the Constitutional Court in its plenary opinion (see paragraphs 16, 17 and 21 above) and the applicant must have been objectively aware, and must have anticipated, that he had benefited from an unconstitutionally restricted ownership right. Moreover, he did not submit that the increased rent had constituted a disproportionately excessive burden, but only disagreed in general with the sudden increase from a controlled rent to a usual rent, and with the conclusions of the expert opinion. In addition, he had ultimately resolved the situation by purchasing the flat (see paragraph 14 above).

35. Lastly, according to the Government, the applicant had been provided with procedural guarantees affording him a reasonable opportunity of presenting his case before the domestic courts. In this connection, the Government noted that the courts had repeatedly decided on the landlord's claim for protection of his ownership right in respect of the flat, consisting in the right to collect uncontrolled rent. They had based their carefully substantiated decisions on the existing regulations, case-law and, in particular, the binding legal opinions of the higher courts – the supreme courts and the Constitutional Court.

The Government admitted that for some time, the legal situation had been unclear, but the plenary judgment and plenary opinion had effectively responded to the ordinary courts' ill-defined case-law. The issue of the determination of the rent amount had repeatedly been the subject of several consistent decisions by the Constitutional Court and the Supreme Court and the applicant had therefore not been in a situation of legal uncertainty caused by challenges to previous final decisions (see, by contrast, *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

**(b) The applicant**

36. The applicant maintained that he had been subjected to the domestic courts' intervention in his tenancy agreement on the basis of a presumption that the landlord had not made sufficient profit or had even suffered a loss. However, as the Government had argued in *Vomočil and Art 38, a.s. v. the Czech Republic* ((dec), nos. 38817/04 and 1458/07, §§ 32-43, 5 March 2013), landlords had acquired their properties voluntarily, in full knowledge of the income that would be derived from tenancy agreements under the rent-control scheme.

37. The applicant criticised the decisions of the Constitutional Court and the Supreme Court as well as their respective rent-control case-law, which obliged the ordinary courts to intervene in existing tenancy agreements, to the detriment of tenants and without providing for compensation. Moreover, both of the courts had been inconsistent in their opinions.

38. The applicant maintained that the increase in rent approved by the domestic courts in his case had imposed an unbearable financial burden on him. In this connection, he contested the argument raised by the Government regarding his financial situation. He submitted that his monthly income had been CZK 8,602 (EUR 320) at the relevant time. After deducting a monthly mortgage payment of CZK 4,318 (EUR 160), his net monthly income was CZK 4,300 (EUR 160). Accordingly, the payment of CZK 320,000 (EUR 11,905) in respect of the outstanding rent ordered by the domestic courts had deprived him of about six years' worth of net earnings and had therefore imposed an excessive burden.

39. The applicant acknowledged that he owned a house in Olešnice v Orlických horách but stated that this property was subject to easement for use by his parents. In so far as the house was still occupied by his father, the applicant could not sell or lease it. Moreover, he had bought a plot of land in 2004 for CZK 4,590 (EUR 150) in order to retain access to that house. Accordingly, the applicant concluded that he could not be considered a rich man who would have been unaffected by the interference with his property rights.

40. Lastly, the applicant argued that the decisions of the ordinary courts to increase the rent to the market level had been in contradiction with the case-law of the Constitutional Court, since those decisions to use the market rent had been taken without considering the specific circumstances of the case in order to maintain a fair balance. In this connection, he had submitted substantial evidence that would have enabled the courts to engage in law-making so as to respect the fair balance in a qualified manner. However, the courts had ignored the submitted evidence and increased the rent, contrary to the principles of a fair balance and proportionality and in breach of the applicant's legitimate expectation.

## 2. The Court's assessment

### (a) Whether there was an interference with the applicant's possessions

41. The Court first reiterates that a lease may be considered a proprietary interest attracting the protection of Article 1 of Protocol No. 1 (see *Stretch v. the United Kingdom*, no. 44277/98, §§ 32-35, 24 June 2003; *Bruncrona v. Finland*, no. 41673/98, § 79, 16 November 2004; and *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 140, ECHR 2005-VI).

It considers that the interference in the present case constituted a control of the use of property to be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Berger-Krall and Others v. Slovenia*, no. 14717/04, § 184, 12 June 2014).

**(b) Whether the interference was justified**

42. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (see, for example, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these three steps in turn.

*(i) Whether the interference was “lawful”*

43. The Court has always understood the term “law” in its “substantive” sense, not its “formal” one; it has included both “written law”, encompassing enactments of lower ranking statutes and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament, and unwritten law. “Law” must be understood to include both statutory law and judge-made law. In sum, the “law” is the provision in force as the competent courts have interpreted it (see *R & L, s.r.o. and Others*, cited above, § 114).

44. The Court summarised the legal situation concerning the rent-control scheme and deregulation in *R & L, s.r.o. and Others* (cited above). It observed, in particular, that a legal vacuum had existed between at least 1 January 2002 and 30 March 2006. The State did not provide sufficient protection to landlords, a situation which was repeatedly criticised by the Constitutional Court and later confirmed by the Court. Moreover, relying on the Constitutional Court’s case-law urging the ordinary courts to decide on applications for rent increases despite the absence of special legislation for the period up to 31 December 2006, the Court found that the interference with the applicants’ (landlords’) property rights had lacked a legal basis even in the period from 31 March to 31 December 2006 (*ibid.*, §§ 117-27).

In respect of the decision-making of the Czech courts on the matter of rent deregulation, the Court held as follows (*ibid.*, § 125):

“The Constitutional Court has made it clear in its case-law that it considered the situation unconstitutional up to the date when the owners were able to unilaterally increase the rent, that is, up to 1 January 2007. This is clear from the combination of its judgment no. Pl. ÚS 20/05 and subsequent application thereof, clarified in its opinion no. Pl. ÚS-st. 27/09. The Constitutional Court urged the ordinary courts to decide applications for rent increase despite the absence of special legislation (which was a declared unconstitutional situation) for the period up to 31 December 2006, notwithstanding the fact that the required legislation had been passed and had already taken effect on 31 March 2006. It also ruled that owners could sue the State for damages for the unconstitutional situation even after the enactment of Act no. 107/2006, because restrictions on property rights had started to be progressively removed only from 1 January 2007 (see paragraphs 147, 155 and 158 of Annex II).”

45. In the present case, the national courts proceeded in compliance with the instructions indicated in the above-mentioned case-law of the Constitutional Court and examined the landlord's claim on the merits, despite the absence of special legislation, and ordered the applicant to pay the outstanding rent, which corresponded to the difference between the controlled rent and the market rent in the given locality for the period from 6 August 2003 to 20 December 2006 (see paragraph 18, 19 and 21 above).

46. The Court considers that in the absence of special legislation, the Constitutional Court's leading case-law constituted the "law" within the meaning of Article 1 of Protocol No. 1. The question arises whether that case-law, which was publicly accessible, also satisfied the other requirements concerning the term "law", that is, foreseeability and clarity.

47. It notes in this connection that the Constitutional Court did not indicate in its plenary judgment or plenary opinion a specific method that the ordinary courts were to apply in the calculation of rents. Nevertheless, it made clear that the courts had to consider local conditions when deciding on rent increases; that their decisions had to avoid arbitrariness and be based on rational arguments through an assessment of all the circumstances of the case, having regard to common principles and civic practices, the work of legal academics and the courts' established case-law that was in conformity with the Constitution (see *R & L, s.r.o. and Others*, cited above, §§ 106 and 136 of Annex II). As the ordinary courts did not always comply with those directions and their approaches were, to some extent, inconsistent, the Constitutional Court later specified that they could grant rent increases for the period from the date of the bringing of an action until 31 December 2006, but not for the period preceding the bringing of the action or after 1 January 2007, from which date unilateral rent increases were authorised by Act no. 107/2006 (*ibid.*, § 136 of Annex II).

48. These considerations enable the Court to conclude that the interference with the applicant's rights was "lawful" within the meaning of Article 1 of Protocol No. 1.

*(ii) Whether the interference was "in accordance with the general interest"*

49. The Court reiterates that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than an international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. The notion of "general interest" is necessarily extensive. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies, especially in the context of a change of political and economic regime, should be a wide one, and will respect the legislature's judgment as

to what is “in the general interest” unless that judgment is manifestly without reasonable foundation (see *Berger-Krall and Others*, cited above, § 192, with further references).

50. In the present case, the Court sees no reason to depart from the Constitutional Court’s assessment that the interference, which was a consequence of the process of the deregulation of rents, pursued a legitimate aim, namely to put an end to discrimination against certain categories of owners so as to restore their right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 (see *R & L, s.r.o. and Others*, cited above, § 90 of Annex II).

(iii) *Whether the interference was proportionate*

51. It remains to be ascertained whether in implementing the process of the deregulation of rents the State managed to strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of individuals’ fundamental rights (see *Berger-Krall and Others*, cited above, § 196, with further references).

52. The Court reiterates that in respect of interferences which fall under the second paragraph of Article 1 of Protocol No. 1, there must exist a reasonable relationship of proportionality between the means employed and the aim to be achieved. Thus, the balance to be maintained between the demands of the general interest of the community and the requirements of fundamental rights is upset if the person concerned has had to bear a “disproportionate burden”. Moreover, the principle of “good governance” requires that where an issue in the general interest is at stake it is incumbent on the public authorities to act in an appropriate manner and with the utmost consistency (see *Bērziņš and Others v. Latvia*, no. 73105/12, § 90, 21 September 2021).

53. A reform of the housing system in the context of the gradual transition from State-controlled rents to fully negotiated contractual rents during the fundamental reforms of the country following the collapse of the communist regime was examined by the Court in *Bittó and Others v. Slovakia* (no. 30255/09, 28 January 2014), a case brought by landlords complaining about the low amount of rent they were receiving under a rent-control scheme. The Court found the scheme to be incompatible with Article 1 of Protocol No. 1, as it made it impossible for landlords to receive an income from rent or at least to cover their maintenance costs.

54. The Court further notes that *Hutten-Czapska v. Poland* ([GC], no. 35014/97, ECHR 2006-VIII) and other rent-control-related cases (see, for example, *Ghigo v. Malta*, no. 31122/05, 26 September 2006; *Amato Gauci v. Malta*, no. 47045/06, 15 September 2009; *Bittó and Others*, cited above; and *R & L, s.r.o. and Others*, cited above) mirror the present case, in which the tenant alleged, *inter alia*, that the increase in rent to which he was

subjected as a consequence of the housing reform was in breach of Article 1 of Protocol No. 1.

55. In adjudicating the substance of the applicant's complaint, the Court has regard to one of the main principles that should be respected in the area of housing reform, namely, that while balancing the exceptionally difficult and socially sensitive issues involved in reconciling the conflicting interests of landlords and tenants, the State should ensure a "fair distribution of the social and financial burden involved in the transformation and reform of the country's housing supply" (see *Hutten-Czapska*, cited above, § 225, and *Bittó and Others*, cited above, §§ 114-15).

56. In the above-mentioned rent-control cases, the respondent State was found to have violated this principle because it placed the burden almost exclusively on one particular social group, namely the landlords. In the present case, the Court will examine whether a similar burden was placed on tenants, such as the applicant. In considering whether this was so, it must bear in mind the particular context in which the issue arose, namely that of reform of the housing system, which inevitably reflected, at least in part, society's concern for the social protection of tenants.

57. The Court notes that as a result of the deregulation of rents in the Czech Republic, tenants (such as the applicant) in the flats concerned had to pay a deregulated rent which was substantially higher than the rent that they had paid over the preceding years, and which some of the tenants could barely afford. The Court can accept, however, that these were unavoidable consequences of the decision of the Czech authorities to re-establish the traditional relationship between landlords and tenants which had been destroyed during the communist regime.

58. Moreover, it is worth noting that the applicant enjoyed a number of years of advantageous treatment from the rent-control scheme. In particular, he did not have to pay a full market rent, but only an administratively determined, non-profit rent (see paragraphs 5 and 7 above). It appears from the documents submitted to the Court that the non-profit rent required from the applicant was significantly lower than the rents charged on the free market, and that the applicant was ordered to pay back to the landlord the amount of outstanding rent based on the expert opinion, which had established that the market monthly rent was CZK 4,494 in the period from 6 August to 31 December 2003, CZK 5,248 in 2004, CZK 5,036 in 2005 and CZK 5,543 from 1 January to 21 December 2006, as indicated in the judgment of the District Court of 31 July 2012 (see paragraph 19 above). Thus, the transition to a market-oriented economy was also reflected in the area of housing.

In addition, the applicant, who himself became the owner of the flat in December 2006, failed to convincingly show that the amount of the market rent that he was ordered to pay had been excessive in relation to his financial situation.

59. The Court further notes that the process of deregulation began in June 2000 by the Constitutional Court's decision finding Decree no. 176/1993 to be contrary to Article 1 of Protocol No. 1 to the Convention and Article 11 § 1 of the Charter of Fundamental Rights and Freedoms (see *R & L and Others*, cited above, § 90 of Annex II); the Constitutional Court further developed its case-law on the matter of rent deregulation in December 2002, March 2003, September 2004 and June 2005 (*ibid.*, §§ 92-102, 103-04, 107-8 and 109 of Annex II). Accordingly, when the landlord brought a claim against the applicant in August 2003 (see paragraph 8 above), the judicial practice of the Constitutional Court in this regard was well established. The domestic courts involved in the decision-making process in the present case were bound by the legal opinions successively developed by the Constitutional Court regarding the various legal avenues open to landlords in order to collect deregulated rents.

60. In the light of these circumstances, the Court considers that in balancing the exceptionally difficult and socially sensitive issues involved in reconciling the conflicting interests of landlords and tenants, the respondent State has not exceeded its wide margin of appreciation in distributing the social and financial burden entailed by the process of housing reform.

61. Accordingly, the Court finds that there has been no violation of Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

62. The applicant further complained that the Constitutional Court had not addressed his argument concerning the inconsistency in the established practice of the Supreme Court in similar cases. He also submitted that he had been subjected to unequal treatment before the law, especially in the proceedings before the Supreme Court and the Constitutional Court, which had failed to address most of his arguments. He relied on Article 6 § 1 and Article 14 of the Convention.

63. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers it appropriate to examine them solely under Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

### A. Admissibility

64. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' observations*

#### **(a) The Government**

65. The Government maintained that in the present case there had not been any profound or long-standing differences in the relevant case-law contrary to the principle of legal certainty (see, by contrast, *Vrabec and Others v. Slovakia*, no. 31312/08, § 27, 26 March 2013). On the contrary, it was evident that through its plenary decisions the Constitutional Court had tried to bring some order to the issue of controlled rent and the same effort had been made by the Supreme Court, which also had a mechanism for unifying the ordinary courts' case-law.

66. Referring to a number of different decisions adopted by the Supreme Court in the matter of rent deregulation (see paragraphs 28, 29 and 30 above), including the two decisions cited by the applicant, the Government stated that those decisions had been based on the same premises as those set out by the Constitutional Court's plenary judgment, and they contested the applicant's assertion that the courts could retroactively increase rent only if there had been evidence of actual maintenance costs. The Government added that although the domestic case-law allowed for different methods of calculating rent increases, the case-law of the Constitutional Court and the Supreme Court had not indicated that rent could not be increased to the market level, as had been done in the applicant's case.

67. The Government concluded that the proceedings before the domestic courts, considered as a whole, had satisfied the requirement of fairness within the meaning of Article 6 § 1 of the Convention.

#### **(b) The applicant**

68. The applicant maintained that the Constitutional Court had not respected a previously established principle to the effect that the rent level under Act no. 107/2006 was to stay below a "limit that could not be exceeded". It had repeatedly quashed the judgments of the ordinary courts, which had been in his favour, without giving them any guidance on how they should proceed when increasing the rent. Moreover, the courts involved in his case had not followed the principles contained in the plenary judgment, nor had they reflected those contained in Act no. 107/2006.

69. According to the applicant, the long-standing differences between the legal opinions of the ordinary courts and those of the Constitutional Court had explained why the proceedings in his case had lasted eleven years: the ordinary courts had been directed by the Constitutional Court's case-law, adopted during the period from 2006 until 2010, to decide against the applicant (see paragraphs 12 and 16 above).

70. Referring to the relevant constitutional case-law (see *R & L and Others*, cited above, §§ 90 and 118-22 of Annex II), the applicant had expected the courts to re-impose the pricing regulations repealed by the Constitutional Court to cover the landlord's costs and to provide a reasonable return on his investment. However, they had ignored this argument in the applicant's case.

71. The applicant concluded that the differences in the court decisions which had had an impact on his situation had clearly been of long-standing character.

## 2. The Court's assessment

72. The Court reiterates at the outset that it is not for it to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

73. Moreover, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, and *Deryan v. Turkey*, no. 41721/04, §§ 30-33, 21 July 2015, with further references).

74. The Court also notes that it set out the principles applicable to cases concerning conflicting decisions in the domestic case-law in its judgment in *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58 and 61, 20 October 2011) and consolidated them in its judgment in *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, §§ 119-28, 29 November 2016). It follows from those judgments that domestic case-law development is not, in itself, contrary to the proper administration of justice, since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement and that the divergence in case-law between domestic courts or within the same court cannot, in itself, be considered contrary to the Convention (see *Nejdet Şahin and Perihan Şahin*, cited above, §§ 51 and 58, and *Lupeni Greek Catholic Parish and Others*, cited above, § 116). At the same time, the Court has emphasised the importance of putting mechanisms in place to ensure consistency in court practice and uniformity of the courts' case-law (see *Svilengačanin v. Serbia and Others*, no. 50104/10 and 9 others, § 82, 12 January 2021).

75. The Court has already held that that in the absence of special legislation, the Constitutional Court's leading case-law satisfied the

requirements of public accessibility, foreseeability and clarity to constitute the “law” within the meaning of Article 1 of Protocol No. 1 (see paragraphs 47-49 above). It observes that the court proceedings in the present case were carried out in the course of the ongoing process of rent deregulation, which constituted at the relevant time an important part of housing sector reform in the Czech Republic. The ordinary courts, including the Supreme Court, were required to adjudicate in the case on three occasions mainly because of the successively evolving case-law of the Constitutional Court, which played a crucial role in establishing binding rules for the ordinary courts to use in deciding various cases regarding rent increases, as in the applicant’s case (see paragraph 59 above), and because the relevant legislation did not exist. From this perspective, and bearing in mind that it is not its task to compare different decisions delivered by national courts, the Court considers that the developments in the Constitutional Court’s case-law and, consequently, in the Supreme Court’s law-making practice, constituted a necessary or even inevitable element in the efficient implementation of the process of rent deregulation.

76. The Court acknowledges that this approach to decision making by the domestic courts was rather unusual. It considers, nevertheless, that the courts at all levels of jurisdiction applied the binding and gradually evolving legal opinions of the Constitutional Court. They took their decisions on the basis of the established facts, including expert reports, and they provided reasons for their decisions in order to comply with the relevant principles established by the Court.

77. In the light of the foregoing considerations, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1;
3. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 12 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller  
Deputy Registrar

Georges Ravarani  
President