



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

FORMER FIFTH SECTION

**CASE OF R & L, S.R.O. AND OTHERS v. THE CZECH REPUBLIC**

*(Applications nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09)*

JUDGMENT  
*(merits)*

*This version was rectified on 25 August 2014 under Rule 81 of the Rules of Court.*

STRASBOURG

3 July 2014

**FINAL**

**03/10/2014**

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



**In the case of R & L, s.r.o. and Others v. the Czech Republic,**

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

Mark Villiger, *President*,

Angelika Nußberger,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Helena Jäderblom, *judges*,

Zdeněk Kühn, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 June 2014,

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

**PROCEDURE**

1. The case originated in five applications (nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09) 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”). The applicants are Czech four natural persons and one corporation whose particulars are specified in Annex I.

2. The names of the applicants’ representatives are also listed in Annex I. The Czech Government (“the Government”) were represented by their Agent, Mr Vít A. Schorm, of the Ministry of Justice.

3. The applicants alleged, in particular, that their right to property had been breached as a result of the rent-control legislation.

4. On 29 November 2011 the applications were communicated to the Government.

5. Mr Karel Jungwiert, the judge elected in respect of the Czech Republic, was unable to sit in the case (Rule 28). Accordingly, the President of the Chamber decided to appoint Mr Zdeněk Kühn to sit as an *ad hoc* judge (Rule 29 § 1(b)).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Application no. 37926/05 lodged by R & L, s.r.o.

6. The first applicant is a limited liability company with its registered seat in Brno. It owns a five-storey tenement house in Brno, which it bought in 1994 for 1,450,000 Czech korunas (CZK 52,920<sup>1</sup> euros (EUR)). There is a shop on the ground floor and one flat on each remaining floor. In three of these four flats the rent was regulated. The rent in those three flats was CZK 2,037 (EUR 74), CZK 2,007 (EUR 73) and CZK 1,392 (EUR 50.80) respectively per month. The monthly rent for the fourth flat was fixed at CZK 5,200 (EUR 190).

7. On 10 February 2004 the first applicant sued the State for damages in the amount of CZK 229,563 (EUR 8,378) corresponding to the difference between the regulated rent and the usual rent in the given area as estimated by the first applicant for the period between February 2002 and end of January 2004.

8. On 22 December 2004 the Prague 1 District Court (*obvodní soud*) dismissed the first applicant's action. It held that it was not possible to award damages under the State Liability Act since failure to enact deregulating legislation could not be qualified as an "incorrect official procedure" within the meaning of the Act. Moreover, the adoption by the Ministry of Finance of decrees nos. 01/2002 and 06/2002 could not be qualified as an incorrect official procedure either.

9. On 28 February 2006 the Prague Municipal Court (*městský soud*) dismissed an appeal by the first applicant. It held that the impossibility of reaching an agreement on deregulating legislation in Parliament could not be qualified as an "incorrect official procedure" within the meaning of the State Liability Act. The court added that in respect of the period from February 2002 to 20 March 2003 rents had been regulated by Government Decree no. 567/2002.<sup>2</sup> Although that decree had subsequently been repealed by the Constitutional Court, the latter's judgments were not of retroactive effect and thus previous contractual relationships remained unchanged. Accordingly, there was no legal basis for compensation for that period.

10. On 24 October 2007 the Supreme Court (*Nejvyšší soud*) dismissed an appeal on points of law lodged by the first applicant. It found that the legislative procedure in Parliament could not be described as an "administrative procedure" under the State Liability Act and that it was

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<sup>1</sup> 1 EUR = 27.40 CZK

<sup>2</sup> Rectified on 25 August 2014: the text was "Decree no. 567/2002 issued by the Ministry of Finance" in the previous version.

impossible to engage liability on the part of the State for the result of voting in Parliament.

11. On 27 November 2008 the Constitutional Court (*Ústavní soud*) dismissed a constitutional appeal lodged by the first applicant as manifestly ill-founded, holding that actions for damages against the State had a subsidiary character and that the applicant company should have started by bringing an action for rent increase.

### **B. Application no. 25784/09 lodged by Mr Čapský**

12. The applicant owns a tenement house in Prague consisting of eleven flats and three non-residential premises. The application concerns seven of these flats for which the applicant collected regulated rent in the total amount of CZK 398,196 (EUR 14,533) for the period between 1 January 2002 and 31 December 2004 while the usual rent in the given locality would have amounted to CZK 1,757,160 (EUR 64,130) according to an expert report commissioned by the applicant. The applicant and his sister acquired the house under the restitution law in 1992. The applicant's sister later transferred her share to the applicant.

13. On 4 January 2005 the applicant sued the State for damages in the amount of CZK 1,358,964 (EUR 49,597) corresponding to the difference between the regulated rent and the usual rent in the given locality for the period between 1 January 2002 and 31 December 2004.

14. On 12 October 2005 the Prague 1 District Court dismissed the applicant's action. It held that it was not possible to qualify the failure by Parliament to enact deregulating legislation as an "incorrect official procedure". While the previous regulations had been repealed by the Constitutional Court, this did not produce a retroactive effect and thus no damages could be awarded for the period of time during which they were in force. The applicant should have brought an action against the tenant requesting the court to determine the amount of rent according to the local and material conditions (*nahrazení projevu vůle nájemců k určení výše nájemného, které by odpovídalo všem místním i věcným podmínkám*).

15. On 2 February 2006 the Prague Municipal Court dismissed an appeal by the applicant. It held that the impossibility of reaching an agreement on deregulating legislation in Parliament could not be qualified as an "incorrect official procedure" within the meaning of the State Liability Act. As regards the period until 20 March 2003, the court added that rents had been regulated by Government Decree no. 567/2002. Although it had subsequently been repealed by the Constitutional Court, the latter's judgments did not have retroactive effect and thus the previous contractual relationships remained unchanged. Accordingly, there was no legal basis for compensation for that period.

16. On 28 February 2008 the Supreme Court declared inadmissible an appeal on points of law lodged by the applicant.

17. On 30 October 2008 the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded, holding that actions for damages against the State had a subsidiary character and that the applicant should have started by bringing an action for rent increase.

### **C. Application no. 36002/09 lodged by Ms Jeschkeová**

18. The applicant owns a tenement house in Brno consisting of seven flats and two non-residential premises. She became the sole owner of the house on 11 July 2004 as a result of restitution (in March 1992), gifts (in October 1994), inheritance (in September 1997) and purchases from five other family members (July 2004). She collected regulated rent for three of those flats in the total amount of CZK 251,484 (EUR 9,178) for the period between 1 July 2002 and 31 August 2005 while the usual rent in the given locality would have amounted to CZK 1,158,059 (EUR 42,265) according to an expert report commissioned by the applicant. The applicant occupied one flat and let two flats to her son and daughter.

19. On 14 October 2005 the applicant sued the State for damages in the amount of CZK 906,575 (EUR 33,087) corresponding to the difference between the regulated rent and the usual rent in the given locality for the period between 1 July 2002 and 31 August 2005. On 19 January 2006 she withdrew her claim in respect of an amount of CZK 166,077 (EUR 6,061).

20. On 9 May 2006 the Prague 1 District Court dismissed the applicant's action. It held that it was not possible to qualify the failure by Parliament to enact deregulating legislation as an "incorrect official procedure". The applicant should have brought an action against the tenant requesting the court to determine the amount of rent according to the local and material conditions.

21. On 24 January 2007 the Prague Municipal Court upheld that decision. In respect of the period up to 20 March 2003, it held that rents had been regulated by several regulations. Although these had subsequently been repealed by the Constitutional Court, its judgments were not of retroactive effect and thus the previous contractual relationships remained unchanged. As a result, no compensation could be awarded for that period. As regards the subsequent period, the court held that the impossibility of reaching an agreement on deregulating legislation by Parliament could not be qualified as an "incorrect official procedure" within the meaning of the State Liability Act. State responsibility could however flow from general liability under civil law. Yet, it would be very difficult to establish a causal link between the damage and an unconstitutional failure on the part of the State to enact deregulating legislation. Referring to the Constitutional Court's judgments nos. Pl. ÚS 20/05 and I. ÚS 489/05 (see paragraphs 105

and 118 of Annex II), the court held that as of 2 June 2006 at the latest the applicant could have brought an action *pro futuro*. As regards the period between 20 March 2003 and 2 June 2006 the Municipal Court stated that the applicant should have brought an action against the tenants for forfeiture of the proceeds of unjust enrichment. Given that the litigation stemmed from an unlawful situation which was to a substantial extent caused by the State's inactivity, and the persisting evolution of the case-law, which had not yet been settled, the applicant was exempted from payment of the costs of the proceedings incurred by the State both for the first-instance and the appellate proceedings.

22. On 26 March 2008 the Supreme Court declared inadmissible the applicant's appeal on points of law. It found that the legislative procedure in Parliament could not be described as an "administrative procedure" within the meaning of the State Liability Act and that it was impossible to engage liability on the part of the State for the result of voting in Parliament.

23. On 21 April 2008 the applicant lodged a constitutional appeal. She explained, *inter alia*, that an action against the State was the only avenue she could use. It was not possible to bring an action against the tenants. First of all, the lower courts had been dismissing such actions between 1 July 2002 and 31 August 2005, which was the period to which her claim related. Moreover, that judicial practice corresponded to the established case-law of the Supreme Court (see paragraph 167 of Annex II) and the result of any action against the tenant was thus fully foreseeable. Further, the possibility of bringing an action for rent increase had been created by the Constitutional Court only in its landmark judgment no. Pl. ÚS 20/05 of 2 June 2006. In any event, contrary to the opinion of the Municipal Court, it was not possible to use that avenue in the applicant's case. Referring to the Constitutional Court's judgment no. I. ÚS 489/05 (see paragraph 118 of Annex II), the applicant argued that her only option was to bring actions against the tenant *pro futuro* whereas her action concerned the past.

24. On 18 December 2008 the Constitutional Court dismissed a constitutional appeal by the applicant as manifestly ill-founded, holding that actions for damages against the State had a subsidiary character, and the applicant should have started by bringing an action for rent increase.

#### **D. Application no. 44410/09 lodged by Mr Šumbera**

25. On 15 May 2003 the applicant bought a tenement house in Domašov nad Bystřicí at public auction. The rent was regulated in nine out of the twelve flats. The rent in one of the flats was set at CZK 1,081 (EUR 39) per month. The non-regulated rent for a smaller flat was CZK 2,000 (EUR 73). Had there been no rent regulation, then rent in a flat affected by the control would be CZK 2,541 (EUR 93) a month (calculation based by comparing yield per sq. m. of regulated and non-regulated flat).

26. On 26 April 2006 the Olomouc District Court (*okresní soud*) ordered the tenant of that flat to vacate it. On 30 August 2006 the applicant filed a request for enforcement of that decision.

27. On 9 October 2007 he lodged an action for payment of CZK 14,650 (EUR 530) corresponding to the outstanding rent for the period between 1 July 2006 and 30 April 2007. On 14 December 2007 the District Court dismissed that action on the ground that the tenant had actually vacated the flat on 30 June 2006.

28. In 2008 the applicant lodged an action for payment of CZK 14,514 (EUR 530) for the period between 1 February and 31 July 2006 corresponding to the difference between the regulated rent and the rent that he considered usual in the given locality.

29. On 28 April 2008 the District Court dismissed the applicant's claim. It referred to the case-law of the Constitutional Court and the Supreme Court and held that rent could be increased only *pro futuro*. Moreover, the applicant's action could not be granted on the basis of forfeiture of the proceeds of unjust enrichment either because the parties had concluded a valid tenancy agreement.

30. On 4 December 2008 the Ostrava Regional Court (*krajský soud*) upheld the District Court's analysis and dismissed an appeal by the applicant.

31. On 21 May 2009 the Constitutional Court dismissed a constitutional appeal lodged by the applicant, holding that landlords were not entitled to claim retroactively from tenants the difference between the regulated rent and the usual rent in the given locality. It noted that previous opinions to the effect that it was possible to lodge retroactive claims against tenants had been overruled by its Opinion no. 27/09 of 28 April 2009.

32. The applicant owns numerous other tenement houses where the rent was regulated. He introduced separate domestic proceedings regarding those houses and ultimately lodged eleven other applications (nos. 25463/05, 32090/06, 36658/09, 36687/09, 38720/09, 39868/09, 43750/09, 46064/09, 53957/09, 3968/10, 8463/10) before the Court where he complains of the rent regulation scheme in the Czech Republic.

#### **E. Application no. 65546/09 lodged by Mr and Ms Heldenburg**

33. The applicants own a tenement house in Prague consisting of six flats, one of which was rented under the rent-control scheme. The rent was set at CZK 2,396 (EUR 87) per month. The applicants bought the house in May 2001 for CZK 4,000,000 (EUR 145,985).

34. On 17 July 2003 the applicants informed the tenants of an increase in rent that would newly be CZK 9,000 (EUR 328) monthly, which the tenants refused to pay. On 22 September 2003 they sent a letter of reminder to the tenants, who, on 5 October 2003, again refused to pay the increased rent.

35. On an unspecified date the applicants brought the case before the Prague 8 District Office, which was empowered to determine the level of the rent according to the rent agreement (*dohoda o užívání bytu*). On an unspecified date the District Office had declined jurisdiction and informed the applicants that they should bring an action before the courts. The final reminder before the court action was sent to the tenants by the applicants on 19 June 2005.

36. On 30 June 2005 the applicants thus lodged an action for payment of the increase in rent for the period from July 2003 to December 2004 amounting to CZK 118,874 (EUR 4,338).

37. On 22 February 2006 the Prague 8 District Court dismissed their action.

38. On 25 October 2006 the Prague Municipal Court upheld the first-instance judgment. Referring to the case-law of the Constitutional Court, and especially its judgment no. I. ÚS 489/05 of 6 April 2006 (see paragraph 118 of Annex II), it held that rent could not be increased retroactively.

39. On 8 April 2009 the Supreme Court declared inadmissible an appeal on points of law lodged by the applicants.

40. On 16 July 2009 the Constitutional Court, referring to its Opinion no. 27/09 of 28 April 2009, dismissed a constitutional appeal lodged by the applicants, holding that a rent increase could be claimed only *pro futuro* from the date of lodging the action against the tenants.

41. On 2 January 2008 the applicants also lodged a claim for damages against the State under the State Liability Act for the period from July 2004 to December 2006. The proceedings are pending before the Prague 1 District Court.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

42. The relevant domestic law and practice are described in the decision in the case of *Vomočil and Art 38, a.s. v. Czech Republic* (dec.), nos. 38817/04 and 1458/07, paragraphs 21-26, 5 March 2013 and in Annex II.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

43. The Court considers that, given their common factual and legal background, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

## II. SCOPE OF THE CASE

44. The Court considers it necessary to determine first the scope of the case, in particular the period to which the applicants' complaints of rent control relate.

45. The first applicant did not state clearly in its application form a specific period to which its complaint related. It referred, however, to the proceedings brought before the domestic courts, which concerned the period from February 2002 to January 2004. In their subsequent submissions, including those of 9 March 2007, the applicant company stated that its complaint concerned the period until the end of 2006. In its submissions of 8 August 2012 it explicitly stated that its complaint concerned rent control in the period from 1 February 2002 to 31 December 2006. The Court will therefore consider this to be the period to which the applicant company's complaint relates.

46. Mr Čapský's complaint concerned the period from 1 January 2002 to 31 December 2004.

47. Ms Jeschkeová's complaint concerned the period from 1 July 2002 to 31 August 2005.

48. Mr Šumbera submitted in his observations of 26 November 2012 that his application concerned the period from 1 June 2003 to 31 December 2006.

49. Mr and Ms Heldenburg did not specify in their application form the period in respect of which they were lodging their complaint. However, in their claim for just satisfaction of 27 September 2012 they claimed a sum in respect of pecuniary damage for the period from July 2003 to December 2004. This also corresponds to the period in respect of which they brought domestic proceedings. Accordingly, the Court will proceed on the basis that this is the period to which their complaint relates.

50. The Court considers that the formulation of the complaints by the applicants determines the scope of the case. It will not therefore examine any period before 1 January 2002 or after 31 December 2006.

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

51. The applicants complained that the rent-control scheme had violated their right to property as provided for in 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.”

52. The Government contested that argument.

## A. Admissibility

### 1. *Non-exhaustion*

#### (a) Arguments of the parties

53. The Government raised an objection on the ground that the applications were inadmissible for non-exhaustion of domestic remedies.

54. They argued that, in general, the landlords had had the opportunity to use remedies of both a preventive nature (action against the tenant for rent increase and application for repeal of certain provisions of the Civil Code) and a compensatory nature (action for damages against the State). In particular, and with reference to the opinion of the Constitutional Court no. Pl. ÚS-st. 27/09 of 28 April 2009, an action for compensation for forcible restriction of ownership rights within the meaning of Article 11 § 4 of the Charter of Fundamental Rights and Freedoms (hereinafter “the Charter”) against the State was an effective remedy for the purposes of Article 1 of Protocol No. 1 for violations of the right to protection of ownership as a result of rent control or the absence of constitutionally compliant regulations on rent control.

55. As regards, specifically, the applicants who had brought actions against the State under the State Liability Act in the past, the Government maintained that this had not relieved them of the obligation to claim compensation for forcible restriction of ownership rights within the meaning of Article 11 § 4 of the Charter. That action offered much greater chances of success than an action for damages under the State Liability Act.

56. The applicants disagreed and maintained that they had duly exhausted all available effective remedies. They had brought proceedings before the domestic courts and pursued them all the way up to the Constitutional Court.

57. The applicant company maintained that in view of the subsequent case-law of the Constitutional Court following its decision in the present case, its constitutional appeal should have been upheld and not dismissed.

58. Mr Čapský and Ms Jeschkeová further stated that a new claim under Article 11 § 4 of the Charter would have to be rejected on grounds of *res judicata* as it would concern exactly the same claim as they had lodged before and only the legal qualification would be different.

59. Mr and Ms Heldenburg argued that there had been great uncertainty regarding which claim the owners could have brought, and against whom, on the basis of restrictions of their ownership rights. The remedy indicated by the Government had been established by the Constitutional Court only in

2009 and concerned only proceedings against the State that had already started. Had landowners instituted proceedings after the decision of the Constitutional Court, they would have been able to claim damages only for a period starting in April 2006 because of the three-year statutory limitation. Consequently, their claim in respect of the period until December 2004 was already time-barred by then. Moreover, they had always used the remedies available at the relevant time and could not be blamed for not foreseeing the creation of the new remedy by the Constitutional Court in 2009.

**(b) The Court's assessment**

60. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, in principle intended to be afforded to Contracting States, of preventing or putting right the violations alleged against them. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in the domestic system in respect of the alleged breach. The only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied. Moreover, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010, and *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999).

61. In the case of *Vomočil and Art 38, a.s. v. the Czech Republic*, cited above, §§ 51-54, the Court dismissed applications complaining of rent control in the Czech Republic similar to the present complaints as inadmissible for non-exhaustion of domestic remedies, because the applicants had failed to provide the domestic courts, including the Constitutional Court, with the opportunity of preventing or putting right the violations alleged. In reaching this conclusion it noted that there had been at least two legal avenues open to landlords to remedy their respective situations, namely an action for rent increase against the tenants and an action for damages against the State, by which they could ultimately reach the Constitutional Court, which offered them a reasonable prospect of success.

62. Turning to the present case, the Court notes that in three applications the applicants sued the State for damages and in the other two they sued the tenants for rent increase. All the applicants pursued their claims all the way up to the Constitutional Court.

63. Regarding the applicant company and Mr Čapský and Ms Jeschkeová, who sued the State for damages, the Court notes that shortly after the decisions adopted in respect of the present applicants similar constitutional appeals were upheld by the Constitutional Court (see, e.g., paragraphs 142-43 of Annex II). Therefore, it cannot be said that the conclusions of the Constitutional Court in the present case dismissing the applicants' constitutional appeals on grounds that actions for damages against the State had a subsidiary character and the applicants should have first brought an action for rent increase, constituted established case-law at that time. The avenue chosen by the applicants was thus not futile or clearly devoid of any prospect of success.

64. Regarding Mr and Ms Heldenburg, the Court notes that other constitutional appeals in similar circumstances had previously been successful and the Constitutional Court had quashed the decisions of the ordinary courts. In a number of its decisions the Constitutional Court held that it was possible to claim rent increase retroactively (see, e.g., paragraph 132 of Annex II). It was only in the plenary opinion no. Pl. ÚS-st 27/09 of 28 April 2009, that is, after the applicants had lodged the present constitutional appeal, that the Constitutional Court finally settled the issue and ruled that landlords could claim rent increase only *pro futuro*. Accordingly, pursuing this remedy cannot be considered to have been devoid of any prospect of success.

65. These considerations also apply to the case of Mr Šumbera, who instituted civil proceedings against the tenants after 1 January 2007. In at least one decision adopted in another case brought by this applicant, the Constitutional Court declared that the landlord could sue the tenant for forfeiture of the proceeds of unjust enrichment in the amount of the difference between the controlled rent and the rent corresponding to the local conditions (paragraph 124 of Annex II). This conclusion could also have been applied in the applicant's case.

66. Accordingly, as the Court has already held in the inadmissibility decision of *Vomočil and Art 38, a.s.* (cited above, § 53), the domestic case-law regarding which remedies the landlords could have used had been constantly evolving. As a result, it was far from clear exactly which proceedings the landlords should have instituted. In this context the Court concluded in that case that it was primarily the constitutional appeal that was an effective remedy for landlords at the time.

67. Consequently, the Court considers that when the applicants brought their cases before the domestic courts and ultimately before the Constitutional Court and when it cannot be said that the proceedings, including the constitutional appeals, were clearly devoid of any prospect of success in the sense that there was established domestic case-law to that effect, the applicants must be considered to have satisfied the requirement of

Article 35 § 1 of the Convention to provide the domestic courts with the opportunity of preventing or putting right the alleged violations.

68. Furthermore, the Court considers that the applicants were not required to use the alternative avenue, that is, the first three applicants to institute proceedings against the tenants as well and Mr and Ms Heldenburg and Mr Šumbera to bring proceedings against the State as well, as at that time those remedies did not offer a better prospect of success, as is also evidenced by the lack of success of the applicants in the present case.

69. It remains to be determined whether, as submitted by the Government, the applicants were additionally required to institute proceedings against the State under Article 11 § 4 of the Charter after the plenary opinion of the Constitutional Court no. Pl. ÚS-st 27/09.

70. The Court has dealt in its previous case-law with the question of when applicants are obliged to exhaust a remedy that has acquired sufficient effectiveness on the basis of a judicial decision. It has held that it would not be fair to require exhaustion of such a new remedy without giving individuals reasonable time to familiarise themselves with the judicial decision (see *Broca and Texier-Micault v. France*, nos. 27928/02 and 31694/02, § 20, 21 October 2003). The extent of a “reasonable time” depends on the circumstances of each case, but generally the Court has found it to be about six months (see *Broca and Texier-Micault*, cited above, § 20; *Depauw v. Belgium* (dec.), no. 2115/04, 15 May 2007; and *Leandro Da Silva v. Luxembourg*, no. 30273/07, § 50, 11 February 2010, where the period was eight months from the adoption of the domestic decision in question and three and a half months from its publication).

71. The plenary opinion of the Constitutional Court no. Pl. ÚS-st 27/09 was adopted and published on the website on 6 May 2009 and subsequently published in the Official Gazette on 18 May 2009.

72. The Court considers that, given the complexity of the matter in the present case and the fact that the plenary opinion left open many questions regarding the new approach, including the question of the statute of limitations or that of *res judicata* regarding landlords who had unsuccessfully pursued claims against the State, the date for requiring the applicants to use this remedy should not be less than six months from its adoption. Consequently, irrespective of the question whether this remedy can be considered to offer a better prospect of success to the present applicants in their respective situations, the Court cannot require the applicant company and the applicants Mr Čapský, Ms Jeschkeová and Mr Šumbera, who lodged their applications before mid-November 2009, to have used it.

73. In respect of Mr and Ms Heldenburg, the Court notes that they claimed compensation for the period from July 2003 to December 2004 (see paragraph 49 above). Therefore, had they lodged the claim against the State

in November 2009 the question of the statutory limitation period, which is generally three years, would inevitably have arisen, as they pointed out.

74. The Government referred to several judgments adopted by courts of first and second instance in which an objection by the State on grounds of prescription had not been upheld for various reasons and thus, in their view, that remedy could not be considered ineffective for claims older than three years. The Court observes, however, that in some other cases the objections were upheld and that eventually it was the latter approach that was adopted by the Supreme Court and the Constitutional Court (see paragraphs 166 and 185-87 of Annex II). According to them, the general three-year statutory limitation must be applied from when the property rights of landlords had been interfered with.

75. Consequently, the Court considers that in the case of Mr and Ms Heldenburg a claim for damages against the State, as interpreted by the Constitutional Court in plenary opinion no. Pl. ÚS-st 27/09, was not an effective remedy for their claim as it would have been time-barred.

76. The Court will not take into account in this context the proceedings brought by Mr and Ms Heldenburg and currently pending before the Prague 1 District Court (see paragraph 41 above), which may be relevant for the part of their claim relating to the period from July to December 2004.

77. There are two main reasons for this. First, the Court has already found that applicants who sued their tenants were not required to simultaneously use an alternative remedy against the State, as prior to the plenary opinion of the Constitutional Court no. Pl. ÚS-st 27/09 this did not offer a better prospect of success (see paragraph 68 above). Applicants who have done more than was required cannot therefore be put at a disadvantage as compared with those who have not lodged such an action. Such a situation would arise in the present case if the Court were to uphold the objection of the Government and dismiss part of the applicant's claim on grounds of non-exhaustion. However, had the applicants not brought the proceedings for damages against the State in 2008 their complaint could not be dismissed as premature on those grounds.

78. Secondly, the Court observes that the applicants' action has already been pending before the first-instance court for over five years, or four years if only the period following the plenary opinion no. Pl. ÚS-st 27/09 is taken into account. The Court considers this period excessive so the remedy can no longer be considered effective in that particular case (see *Golha v. the Czech Republic*, no. 7051/06, § 52, 26 May 2011, where the Court found excessive the duration of similar proceedings under the State Liability Act that had lasted three and a half years at first instance).

79. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies regarding all five applications.

## 2. *Six months*

80. In respect of Mr Šumbera, the Government maintained that part of his complaint had been introduced outside the six-month time-limit. They maintained that his original application form concerned only one flat in the house, which had been the subject of the domestic proceedings, and for the period from 1 February to 31 July 2006. It was only in his observations of 26 November 2012 that he had stated that his application concerned the rent control applicable to all the flats in his house in Domašov nad Bystřicí in the period from 1 June 2003 to 31 December 2006.

81. The Court notes that in his application form the applicant complains that the domestic courts violated his rights as a result of their decisions. The domestic proceedings concerned one flat only for the period from 1 February to 31 July 2006. The application form describes those domestic proceedings and contains no information about any other flats in the house or any other period of time. The only mention of other flats or another period is in the very last sentence of the part of the application form entitled “Statement of the object of the application”, which reads “the applicant reserves his right to extend this application to the whole period of rent regulation in the Czech Republic regarding all flats in the house”.

82. In these circumstances, the Court concludes that the application form does not clearly state that the applicant complains about the rent-control scheme in all the flats in the house or in respect of any other period outside 1 February to 31 July 2006 (see *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 131, 24 February 2011).

83. Consequently, the complaints concerning the other flats in the house and any other period were introduced only on 26 November 2012. Irrespective of the question whether the applicant exhausted domestic remedies regarding the rent control applicable to these flats and the period outside 1 February to 31 July 2006, this part of the application must be dismissed as being introduced outside the six-month time-limit and rejected pursuant to Article 35 §§ 1 and 4 of the Convention (see *BENet Praha, spol. s r.o.*, cited above § 133).

## 3. *Lack of significant disadvantage*

84. The Government maintained that the application lodged by Mr Šumbera was inadmissible because he had incurred no significant disadvantage. They observed that the subject matter of the proceedings in application no. 36687/09 was a claim in the amount of CZK 14,514 (EUR 530) which, in their opinion, could not be regarded as sufficient to satisfy the requirement of “significant disadvantage”. Moreover, respect for human rights as defined in the Convention and the Protocols thereto did not require an examination of the application on the merits because the same issue as the one raised in Mr Šumbera’s case was the subject matter of other

applications against the Czech Republic which were before the Court at the present time. In their submission, the applicant's case had also undoubtedly been duly considered at the domestic level.

85. The applicant did not comment on the Government's objection.

86. Article 35 § 3 of the Convention reads as follows:

“The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.”

87. The Court observes that the alleged disadvantage in the present complaint under Article 1 of Protocol No. 1 is purely financial and it is therefore appropriate to have regard primarily to the amount of damages claimed (see, for example, *Burov v. Moldova* (dec.), no. 38875/08, 14 June 2011, and, conversely, *Giusti v. Italy* (dec.), no. 13175/03, 18 October 2011). It notes that the sum of EUR 530 which was at stake in the present case corresponded to the difference between the regulated rent and the rent that the applicant considered usual in the given locality (see paragraph 28<sup>3</sup> above). While it does not constitute in itself a substantial amount of money, it has to be seen in general context of which affected the applicant as the owner of several tenement houses (see paragraphs 31-32 above) and was therefore an important question of principle.

88. Accordingly, the Court concludes that the disadvantage the applicant has suffered cannot be considered as non-significant and dismisses the Government's objection.

#### 4. *Abuse of the right of application*

89. Lastly, the Government maintained that the application lodged by Mr and Ms Heldenburg should be dismissed for abuse of the right of application. They argued that the applicants had failed to inform the Court that they had brought an action for damages against the State, which had also concerned the flat constituting the subject matter of their application.

90. The applicants disagreed. They pointed out that the subject matter of their proceedings for damages against the State was different. It concerned the period from July 2004 to December 2006. Furthermore, the grounds on which they based their two actions were different. The proceedings against the tenants, which had given rise to the present application, had been based on a clause in a tenancy agreement which allowed the rent to be increased. The proceedings against the State had been based on the failure of the State

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<sup>3</sup> Rectified on 25 August 2014: the text was “see paragraph 27” in the previous version.

to enact legal regulations allowing landlords to raise rent. Accordingly, they had not stated any untrue facts in their application before the Court nor concealed any facts relating to the subject of the dispute.

91. The Court reiterates that dismissing an application for abuse of the right of application is an exceptional measure. The term “abuse” within Article 35 § 3 (a) suggests that a person is exercising his or her rights in a detrimental manner outside of their purpose (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009). An application may be rejected as an abuse of the right of application under Article 35 § 3(a) of the Convention, among other reasons, if it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Liūza v. Lithuania*, no. 13472/06, § 52, 31 July 2012, and *Hadrabová and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007).

92. With regard to the present application, the Court notes that even though there is some overlap between the applicants’ claim against the tenants and against the State, the periods are different. The claim against the tenants, which corresponds to the subject matter of the present complaint (see paragraph 49 above), concerns the period from July 2003 to December 2004, whereas the civil proceedings against the State concern the period from July 2004 to December 2006. The question that thus needs to be decided is whether this partial overlap concerns the very core of the case.

93. The Court must have regard to the context of the present case, in which the choice of domestic remedy in the context of rent regulation was far from clear (see paragraph 66 above). It thus considers that the applicants could reasonably have believed that they had exhausted all effective domestic remedies and that their attempt to protect their rights through another domestic remedy was not directly relevant for their present application. Moreover, the Court has already concluded that the fact that the applicants used another remedy did not result in the present application being premature (see paragraphs 78-79 above). Consequently, the Court is unable to discern any bad faith on the part of the applicants that could mislead the Court and justify a dismissal of their application for abuse of the right of application.

94. Accordingly, the Court dismisses the Government’s objection.

##### 5. *Otherwise as to admissibility*

95. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that apart from Mr Šumbera’s belated complaints (see paragraphs 80-83

above) they are not inadmissible on any other grounds and must therefore be declared admissible.

## **B. Merits**

### *1. Whether there was an interference with the applicants' possessions*

#### **(a) Arguments of the parties**

96. The applicants maintained that the rent-control scheme had violated their right of property. The levels of regulated rents had not even covered reparation, reconstruction and maintenance costs for the flats concerned, not to mention the impossibility of collecting any reasonable profit. At the same time they could not have terminated the tenancy agreements, which had been valid for an indeterminate time. The regulations concerning rent had constituted interference with their property rights.

97. The Government questioned whether there could have been an interference with the right to peaceful enjoyment of possessions in a situation where the State had in no way restricted the owners' acquired rights, but, on the contrary, the owners themselves had entirely voluntarily entered into the existing tenancy relationships as the original owner-landlord with full knowledge of the regulations on tenancy agreements as valid at that time. In the Government's opinion, the new owners had thus, in a way, waived their right to the peaceful enjoyment of possessions in so far as their ownership rights had been restricted at the time when they had voluntarily acquired them. Nor could the owners have any specific legitimate expectation that in the future the restriction of their ownership rights would be abolished as regards rent control.

#### **(b) The Court's assessment**

98. The Court first considers it necessary to determine what the alleged interference is in the present case. As is clear from the submissions of the applicants, their main concern is that they were unable to increase the rents paid by their tenants, which they considered too low and to which they had never agreed. The respective rent agreements were created *ex lege* by the transformation of the previously existing right of personal use of a flat (see paragraph 7 of Annex II). Those rent agreements were valid for an indefinite period of time and the amount of rent was set in compliance with the regulations existing at the relevant time. The landlords' right to terminate the agreements was seriously limited (see paragraphs 18-24 of Annex II).

99. Some of the applicants also complained that they had been unable to terminate the rent agreements. However, the Court views this as a supporting argument for their main concern, which is the level of rent. Were the landlords able to freely terminate rent agreements, they could have

concluded new rent contracts and freely negotiated the level of rent. The Court observes in this connection that the regulation did not apply to new rent agreements concluded after 1 July 1995 or to certain categories of flats even earlier (see paragraphs 32 and 46 of Annex II).

100. Consequently, the Court will concentrate on the main thrust of the applicants' complaints, that is the inability of landlords to raise the rents above the maximum amounts set by the State.

101. The Court further observes that the inability of landlords to raise the rents originated from State regulations. The alleged interference thus stems from these regulations, including the Civil Code and the various executive decrees or ordinances and, ultimately, from 31 March 2006, Law no. 107/2006 on unilateral rent increases, which started the deregulation process (see paragraphs 7-70 of Annex II). The applicants had to comply with them as they constituted the valid law. In this context is immaterial when the respective regulations were adopted. Even if had they been adopted before the entry into force of the Convention for the State concerned, their effect continued afterwards.

102. The Court does not find convincing the Government's argument that these regulations did not interfere with the applicants' property. It observes that determination of the conditions in which another person can use one's property is one aspect of a property right. In other words, the issue here is not whether the applicants were able to choose whether or not to become owners of the houses but whether they could determine the use of the property after they became owners (see *Radovici and Stănescu v. Romania*, nos. 68479/01, 71351/01 and 71352/01, § 74, ECHR 2006-XIII (extracts), where the Court considered that there had been an interference in a case of regulation of tenancy agreements where persons had restituted the house).

103. A parallel question is whether Article 1 of Protocol No. 1 protects an applicant who voluntarily purchased a property like R & L, s.r.o. (see paragraph 6 above), Ms Jeschkeová (see paragraph 18 above), Mr and Ms Heldenburg (see paragraph 33 above) or acquired it in a public auction like Mr Šumbera (see paragraph 25 above) while being aware of restrictions imposed on the property that may contravene the Convention. Admittedly, Article 1 of Protocol No. 1 does not guarantee the right to obtain profit. The Court notes at the same time that throughout the last twenty years, it has repeatedly interpreted, explicitly or implicitly, the notion of "possession" within the context of rent-control cases so as to confine itself to verifying whether the applicants could be regarded as landlords. Indeed, the protection provided by the Convention in the previous cases was never made dependent on the way applicants had acquired their landlords' rights (see *Edwards v. Malta*, no. 17647/04, 24 October 2006; *Ghigo v. Malta*, no. 31122/05, 26 September 2006; *Fleri Soler and Camilleri v. Malta*, no. 35349/05, 26 September 2006; *Lo Tufò v. Italy*,

no. 64663/01, 21 April 2005, ECHR 2005-III; *Mellacher v. Austria*, 19 December 1992, Series A 169).

The Court further notes that the applicants complain of the legal situation concerning the rent control in the Czech Republic after 2000 when the Constitutional Court called the legislation in question, which gave them a legitimate expectation that the status of their property concerned will be addressed by the national legislator would change in the due course. The fact that the first applicant purchased its tenement house in 1994, i.e. six years before the Constitutional Court repealed Decree no. 176/1993 of the Ministry of Finance providing, *inter alia*, for restrictive rent ceilings, does not have a decisive relevance and thus should be distinguished from *Łącz v. Poland* (no. 22665/02, 23 June 2009).

104. Moreover, the Court cannot overlook the fact that the then legislation which deprived the landlords concerned of the possibility to increase the rents put all of them in a situation of risk that they could not use their property in the conditions guaranteed by Article 1 of Protocol No. 1 which would correspond to the term “use” contained in Article 1 of Protocol No. 1: they could let flats in their apartment houses but as the controlled rents could generally not cover the maintenance of these houses, they faced the risk that the houses would become uninhabitable.

105. The Court notes that the applicants never explicitly agreed to the level of rent paid by their tenants in the rent-regulated flats. When they had acquired their respective houses those rents had been set with regard to the rent regulations applicable at the time. The applicants could not have increased the rents above the maximum amounts set by the State, nor freely terminated the rent agreements and concluded new ones with different – higher – levels of rent.

106. As to the Government’s argument that the landlords had implicitly waived their right to set the level of rents, the Court considers that waiving a right necessarily presupposes a possibility of exercising it. There is no waiver of a right in a situation where the person concerned has never had the option of exercising that right and thus could not waive it.

107. Accordingly, the Court considers that the rent-control regulations constituted an interference with the landlords’ right to use their property.

108. The Court considers that the interference constituted control of the use of property and accordingly will examine it under the third sentence of Article 1 of Protocol No. 1 (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 160-161, ECHR 2006-VIII, and *Radovici and Stănescu v. Romania*, cited above, § 74).

109. 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,

among many other authorities, *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I, and *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.

## 2. Principle of lawfulness

### (a) Arguments of the parties

110. The applicants maintained, generally, that the State authorities had ignored the judgments of the Constitutional Court which required them to enact constitutionally compliant legislation before the end of 2001. Furthermore, the State authorities had acted in outright disrespect and contempt for the Constitutional Court by repeatedly enacting identical regulations after the previous ones had been repealed as unconstitutional.

111. They pointed out that Article 696 of the Civil Code envisaged the existence of another legal instrument regulating the level of rent and also circumstances in which the landlords could unilaterally raise the rent. Such a legal instrument had not, however, existed until the entry into force of Law no. 107/2006. The absence of that legal instrument had been unconstitutional, as the Constitutional Court had found, and had resulted in a violation of the landlords' right of property.

112. The Government argued that the restriction of the owners' rights as landlords had been based on law within the meaning of the Court's case-law. Both the Civil Code and other legal regulations must be considered as sufficiently clear and at the same time accessible to the addressees. Therefore their consequences were entirely foreseeable.

### (b) The Court's assessment

#### *i. General principles*

113. The Court reiterates that Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII; *Broniowski v. Poland* [GC], no. 31443/96, 147, ECHR 2004-V; and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 95, 25 October 2012). However, the existence of a legal basis in the domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness. In this connection it should be pointed out that when speaking of "law", Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using

that term. It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application (see *Vistiņš and Perepjolkins*, cited above, §§ 96-97).

114. Further, the Court observes that it 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 *Špaček, s.r.o., v. the Czech Republic*, no. 26449/95, § 54, 9 November 1999 and *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 83, 14 September 2010).

115. For the purposes of its examination of lawfulness, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law and to decide on issues of constitutionality (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 143, ECHR 2005-VI, and *Former King of Greece and Others v. Greece* [GC], cited above, § 82).

116. If a constitutional court finds a particular regulation unconstitutional, this will also have consequences for the question of lawfulness of the interference under the Convention (see, e.g., *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 347-49, ECHR 2012 (extracts), and *Bączkowski and Others v. Poland*, no. 1543/06, §§ 70-71, 3 May 2007).

*ii. Application of the above-mentioned principles to the present case*

117. The Court notes that on 21 June 2000 the Constitutional Court found the Czech rent-control scheme unconstitutional as violating the right of property of owners protected by Article 1 of Protocol No. 1. It did not repeal the regulations, i.e. Decree no. 176/1993 on rents for flats and reimbursement of charges related to the use of flat (see paragraphs 31-41 of Annex II), with immediate effect but left them in force until 31 December 2001 in order to give sufficient time to the Government and Parliament to pass new and constitutionally compliant legislation.

118. Yet, both the Government and Parliament failed to use the period of eighteen months to pass such a law. Instead, the Ministry of Finance adopted successively two regulations (Ordinances nos. 01/2002 and 06/2002) which were<sup>4</sup> more or less the same as that repealed by the Constitutional Court.

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<sup>4</sup> Rectified on 25 August 2014: the text was “...a new regulation with effect from 1 January 2002, which was...” in the previous version.

119. In reaction, on 18 December 2002, the Constitutional Court also repealed the second regulation<sup>5</sup> for the same reasons, adding that by adopting a virtually identical regulation, the competent bodies had failed to comply with a previous decision of the Constitutional Court in breach of Article 89 § 2 of the Constitution. Furthermore, the Constitutional Court considered that the Government had attempted to prevent the exercise of constitutional justice (see paragraphs 95-96 of Annex II).

120. Yet the Government once again attempted to maintain the rent-control scheme as it had been in force until 31 December 2001 by adopting another decree to that effect, which was also declared unconstitutional by the Constitutional Court on 19 March 2003 (see paragraph 103 of Annex II). It again noted that the Government had violated Article 89 § 2 of the Constitution by failing to comply with previous decisions of the Constitutional Court on the subject.

121. The case-law of the Constitutional Court culminated in its judgment of 28 February 2006 in which it expressly held that the continuing failure by Parliament to enact a law on unilateral rent increases was unconstitutional. It found the situation to be in grave violation of the Charter and urged the ordinary courts to stop rejecting landlords' actions for rent increase on grounds of absence of legal basis and decide them on their merits.

122. The new legislation, namely the Law on rent increase no. 107/2006, was passed only on 14 March 2006 and entered into force on 31 March 2006, but unilateral rent increases were allowed only from 1 January 2007. Accordingly, the Government and Parliament failed to comply with the judgment of the Constitutional Court for over four years. Furthermore, the Government even attempted to prevent the exercise of constitutional justice, as established by the Constitutional Court. In the Court's opinion, such conduct involving deliberate failure to comply with a final and enforceable judgment of the highest domestic court undermines the credibility and authority of the judiciary and jeopardises its effectiveness, factors which are of the utmost importance from the point of view of the fundamental principles underlying the Convention, including the rule of law (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], cited above, § 175, and *Kurić and Others v. Slovenia* cited above, § 300). The Court considers that that situation has a direct impact on the lawfulness of the interference in the present case.

123. In sum, the Court observes that a situation described by the Constitutional Court as a legal vacuum existed between at least 1 January 2002, when the eighteen months expired (see paragraph 117 above), and 30 March 2006, a day before the Law on rent increase entered into force

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<sup>5</sup> Rectified on 25 August 2014: the text was "...that new regulation ..." in the previous version.

(see paragraph 122 above). Admittedly, the provisions of the Civil Code concerning tenancy continued to exist during this period of time (see paragraphs 7-25 of Annex II). However, it clearly stipulated 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 was entitled unilaterally to increase the rent and service charges and amend other terms of the tenancy agreement, were governed by a special Act (see paragraph 14 of Annex II). Accordingly, without adopting an appropriate and constitutionally compliant implementing legislation, these general provisions of the Civil Code were not sufficient to constitute a legal basis which could govern the rights of the landlords in an efficient and smooth way and which would comply with the requirement of lawfulness within the meaning of Article 1 of Protocol No. 1.

The Court adds that there is no issue of retrospective effect of unlawfulness in the present case as the Constitutional Court had already found the situation unconstitutional on 21 June 2000, that is, eighteen months before the relevant period. Accordingly, the interference with the applicants' rights cannot be considered to be lawful in this period of time.

124. In view of the scope of the present case (see paragraph 50 above), it remains to be decided whether the interference was lawful between 31 March and 31 December 2006.

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 Law 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).

126. The Court thus considers that since, in the opinion of the Constitutional Court, the domestic regulation of rent control continued to be unconstitutional also in the period between 31 March and 31 December 2006, the interference with the property rights of the applicants lacked a legal basis even in that period.

127. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol No. 1. Accordingly, it is not necessary to decide whether the interference was proportionate in the circumstances of the present case.

#### IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

##### A. Article 14 of the Convention

128. The applicants further complained that they had been discriminated against in comparison to owners whose flats had not been subjected to rent control. They relied on Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 that reads:

“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.”

129. The Government maintained that no distinction was made between two clearly defined groups of landlords according to whether or not their houses and/or flats were subject to rent control because there was nothing to prevent one person from falling into both these groups or from moving freely between the two, as was very common in reality. In any case, in their view, whether or not the applicants owned houses and/or flats subject to rent control was not a relevant ground of discrimination covered by “other status”.

130. The Court notes that the different treatment was not based on any personal choice in so far as this choice should be respected as elements of someone’s personality, such as religion, political opinion, sexual orientation and gender identity, or on grounds of personal features in respect of which no choice at all can be made, such as sex, race, disability and age. As to its interpretation of “other status”, the Court has considered to constitute “other status” characteristics which, like some of the specific examples listed in the Article, can be said to be personal in the sense that they are innate or inherent. However, in a number of other cases, the Court has accepted that “status” also existed where the distinction relied upon did not involve a characteristic which could be said to be innate or inherent, and thus “personal” in this sense (see *Clift v. the United Kingdom*, no. 7205/07, § 58, 13 July 2010).

131. Turning to the present case, the Court can assume that landlords such as the applicants and landlords whose property was not under the rent-control scheme find themselves in a relevantly similar situation and that they are treated differently within the meaning of Article 14 of the Convention. It considers, however, that while it has found that the applicants had the legitimate expectation that the national legislation would change in the near future after the judgment of the Constitutional Court of 2000 and would made therefore the interference with their property rights lawful for the purposes of Article 1 of Protocol No. 1 (see paragraph 103 above), the fact that they acquired their tenement houses in which a certain

number of flats was rent-controlled, the applicants deliberately put themselves in the different situation in comparison to other owners.

132. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### **B. Article 13 of the Convention**

133. The applicants further complained, under Article 13 of the Convention, that they did not have at their disposal any effective domestic remedies for the violation of their property rights.

134. The Government disagreed.

135. The Court has already decided in a previous case that there was an effective remedy, as the owners had access to different procedures, and ultimately access to the Constitutional Court, which offered them a reasonable prospect of success (see *Vomočil and Art 38, a.s. v. Czech Republic*, cited above, § 53). The present applicants were able to use those remedies, including constitutional appeals (see paragraphs 62-67 above).

136. Consequently, this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### **C. Article 6 of the Convention**

137. Lastly, the applicants disagreed on various grounds with the domestic decisions and complained that their right to a fair trial had been violated. They relied on Article 6 of the Convention.

138. Having examined these complaints submitted by the applicants, the Court, having regard to all the material in its possession and in so far as the complaints fall within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## **V. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

139. 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.”

140. The first applicant claimed CZK 743,148 (EUR 27,122) in respect of pecuniary damage, EUR 10,000 in respect of non-pecuniary damage and

CZK 52,715 (EUR 1,924) for the domestic proceedings and CZK 78,120 (EUR 2,851) in respect of costs and expenses incurred in proceedings before the Court. Mr Čapský claimed CZK 1,980,966 (EUR 72,298) in respect of pecuniary damage, CZK 750,000 (EUR 27,372) in respect of non-pecuniary damage and CZK 260,200 (EUR 9,496) in respect of costs and expenses incurred in the proceedings before the domestic courts and CZK 570,000 (EUR 20,803) for those incurred before the Court. Ms Jeschkeová claimed CZK 1,048,620 (EUR 38,271) in respect of pecuniary damage, CZK 750,000 (EUR 27,372) in respect of non-pecuniary damage and CZK 169,995 (EUR 6,204) in respect of costs and expenses incurred in the proceedings before the domestic courts and CZK 500,000 (EUR 18,248) for those incurred before the Court. Mr Šumbera claimed CZK 1,084,535 (EUR 39,582) in respect of pecuniary damage, CZK 600,000 (EUR 21,898) in respect of non-pecuniary damage and CZK 80,000 (EUR 2,920) in respect of costs and expenses incurred in the proceedings before the domestic courts and CZK 500,000 (EUR 18,248) for those incurred before the Court. Mr and Ms Heldenburg claimed CZK 118,880 (EUR 4,339) in respect of pecuniary damage and CZK 75,959.80 (EUR 2,772) in respect of costs and expenses incurred in the proceedings before the domestic courts and CZK 31,932 (EUR 1,165) for those incurred before the Court.

141. The Government considered the amounts excessive and asked the Court to reserve the question of just satisfaction as far as any pecuniary damage was concerned. They also disputed the amounts claimed by the applicants in respect of the costs and expenses.

142. In the circumstances of the present case, the Court considers that the question of the application of Article 41 is not ready for decision. That question must accordingly be reserved and the subsequent procedure fixed, having regard to any agreement which might be reached between the Government and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

## FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;
2. *Declares*, unanimously, the applicants' complaints concerning Article 1 of Protocol No. 1 admissible, except for the part of Mr Šumbera's complaint concerning flats that were not a subject matter of the domestic proceedings, and the applicants' other complaints under Articles 6, 13 and 14 of the Convention inadmissible;
3. *Holds*, unanimously, that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds*, by six votes to one, that the question of the application of Article 41 of the Convention is not ready for decision and accordingly,
- (a) reserves the said question;
  - (b) invites the Government and the applicants to submit, within three months from the date on which the judgment becomes final according to 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 3 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Mark Villiger  
President

## ANNEX I

<b>No</b>	<b>Application No</b>	<b>Lodged on</b>	<b>Applicant Date of birth Place of residence</b>	<b>Represented by</b>
1.	37926/05	12/10/2005	<b>R &amp; L, S.R.O.</b> Brno	Renata VOLNÁ
2.	25784/09	29/04/2009	<b>Josef ČAPSKÝ</b> 10/12/1939 Praha 9	Dita KŘÁPKOVÁ
3.	36002/09	23/06/2009	<b>Miroslava JESCHKEOVÁ</b> 07/11/1947 Brno	Dita KŘÁPKOVÁ
4.	44410/09	12/08/2009	<b>František ŠUMBERA</b> 07/12/1945 Svitavy	Dita KŘÁPKOVÁ
5.	65546/09	02/12/2009	<b>Michal HELDENBURG</b> 15/02/1975 Praha  <b>Olga HELDENBURG</b> 11/07/1979 Praha	Petr MIKEŠ

## ANNEX II

### RELEVANT DOMESTIC LAW AND CASE-LAW

#### I. RELEVANT DOMESTIC LAW

##### A. The Constitution

1.<sup>1</sup> Under Article 89 § 1 of the Constitution, decisions of the Constitutional Court are enforceable as soon as they are delivered in the manner provided for by statute, unless the Constitutional Court decides otherwise with regard to enforcement. Under § 2 enforceable decisions of the Constitutional Court shall be binding for all authorities and individuals.

##### B. The Charter of Fundamental Rights and Freedoms

2. Article 2 § 2 of the Charter stipulates that State authority may be asserted only in cases and within the limits provided for by law and only in the manner prescribed by law.

3. Under Article 3 § 1 everyone is guaranteed the enjoyment of his or her fundamental rights and freedoms without regard to gender, race, colour of skin, language, faith and religion, political or other convictions, national or social origin, membership of a national or ethnic minority, property, birth, or other status.

4. Article 4 § 1 provides that duties may be imposed upon persons only on the basis of and within the limits of the law, and must respect the fundamental rights and freedoms of the individual. Under the second paragraph, limitations may be placed upon fundamental rights and freedoms only by law and under the conditions prescribed in the Charter. Under the third paragraph, any statutory limitation on fundamental rights and freedoms applies in the same way to all cases which meet the specified conditions. The fourth paragraph states that in implementing the provisions concerning limitations on fundamental rights and freedoms, the essence and significance of those rights and freedoms must be preserved. Such limitations are not to be applied for purposes other than those for which they were laid down.

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<sup>1</sup> Rectified on 25 August 2014: paragraphs were re-numbered. The previous numbering started at 143.

5. Under Article 11 § 1 everyone has a right to own property. The property rights of each owner shall have the same subject matter and enjoy the same protection. Under the fourth paragraph, expropriation of property or any interference with property is permissible only in the public interest, on the basis of a statute, and against compensation.

6. Under Article 11 § 4 expropriation or forced restriction on ownership rights is allowed in general interest, on the basis of a law and against indemnification.

### **C. Civil Code (Act no. 40/1964, as in force until 30 March 2006)**

#### *1. Replacement of the right of personal use with the right to lease*

7. Under Article 871 § 2, introduced by the amendment to the Civil Code (Act no. 509/1991) which entered into force on 1 January 1992, the right to personal use of a dwelling was in future to be regarded as a tenancy. A legal relationship based on mutual consent between contracting parties was thereby instituted in contract law, replacing consent to an administrative decision by virtue of which a national authority granted the use of a flat to an individual. The term “personal use of property” ceased to exist with this amendment. Some of the restrictions imposed on landlords by the Civil Code of 1964 concerning, in particular, succession to the tenancy of a flat, rent ceilings, landlords’ obligations in respect of property maintenance and termination of leases, remained in force.

#### *2. Creation of a tenancy*

8. Under Article 685 § 1, a tenancy in respect of a flat was created by means of a tenancy agreement, under which a landlord handed over a flat to a tenant for his or her use for a definite or indefinite period of time.

#### *3. Succession to the right to lease a flat*

9. The Civil Code granted the right to succeed to a tenancy to the relatives of tenants and to persons living with them in flats rented by them. Article 706 § 1 provided as follows:

“Upon a tenant’s death, where a flat is not rented jointly by a married couple, the right to lease the property shall pass to the deceased’s children, grandchildren, parents, siblings, son-in-law or daughter-in-law, if they can prove that they were living with him or her in a shared household on the date of his or her death and do not have their own flat. The same right shall be enjoyed by persons who were looking after the shared household and had been living with the tenant in a shared household for at least three years and do not have their own flat.”

10. Article 707 § 1 provided:

“The surviving spouse shall become the sole tenant of a common flat upon the other spouse’s death.”

11. Article 708 provided:

“The provisions of Article 706 §§ 1 and 2 and Article 707 shall also apply in the event that a tenant permanently leaves a shared household.”

4. *Controlled rents*

12. Article 686 § 1 stipulated, *inter alia*, that the written tenancy agreement should provide details of the flat, its facilities, the scope of its use and the method of calculating the rent and service charges related to use of the flat, or the amounts thereof.

13. Under Article 671 § 1 a tenant had to pay the rent laid down in the tenancy agreement, or the rent usually payable at the time the lease was agreed, regard being had to the value of the leased property and the mode of its use.

14. Article 696 § 1 provided, *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 was entitled unilaterally to increase the rent and service charges and amend other terms of the tenancy agreement, were governed by a special Act.

15. Article 877 read as follows:

“1. Prices, payments and other pecuniary transactions governed by this Act, and falling within the scope of application of the generally binding Act on prices, shall be considered to constitute prices within the meaning of this Act.

2. Where the term ‘generally binding legal Act’ is used herein, it shall be taken to mean Act no. 526/1990 on prices.”

5. *Duties of landlords in respect of property maintenance*

16. Under Article 687, a landlord had to hand over a flat to a tenant in a fit state for normal use and to secure to the tenant the full and uninterrupted enjoyment of the rights linked to the use of the flat. Where an occupational tenancy agreement did not provide otherwise, small repairs to the flat linked with its use and the costs associated with ordinary maintenance were met by the tenant. The terms “small repairs” and “ordinary maintenance” were defined in a special law (Government Decree no. 258/1995).

17. Under Article 695 a landlord was entitled to make structural alterations to a flat with the approval of the tenant.

6. *Termination of a lease in respect of tenants paying controlled rent*

18. Under Article 493 § 1 no obligation could be modified without the mutual consent of the parties, unless the law stipulated otherwise.

19. Under Article 685 § 1 the tenancy was protected. The landlord could terminate it only on the grounds provided for by law.

20. Under Article 686 § 2 if a tenancy agreement did not indicate its duration, its term was presumed to be indefinite.

21. Article 710 stated that the tenancy could cease on the basis of a written agreement between the landlord and the tenant, or on written notice of termination of the lease given by the tenant or the landlord. If the tenancy agreement was entered into for a fixed period of time, the tenancy ceased on the expiry of that period. The written notice had to give the date on which the lease was to be terminated and the notice period had to be at least three months.

22. Article 711 § 1 specified the grounds that would justify the serving of notice on a tenant and made such notice subject to prior approval by a court. The lease could be terminated if:

(a) the landlord needed the flat for himself or herself, his or her spouse, his or her children, grandchildren, son- or daughter-in-law, parents or siblings;

(b) the tenant ceased to work for the landlord and the latter needed the flat for the replacement worker;

(c) the tenant, or persons sharing the flat with him, acted *contra bonos mores*, despite a prior written warning;

(d) the tenant substantially contravened his duties under the tenancy agreement, in particular by a failure for more than three months to pay rent or charges for use of the flat;

(e) the use of the flat or house was precluded in the public interest or owing to reconstruction;

(f) the flat was connected to premises designed for commercial use and the landlord or tenant of such premises intended to use it;

(g) the tenant had two or more flats, except where their use was justified on exceptional grounds;

(h) the tenant did not use the flat, or used it only occasionally, without any serious justification; or

(i) the tenant of a specially-assigned flat was not a disabled person.

23. Under Article 711 § 2 if the court approved the notice of termination of a lease, it also fixed the date on which the tenancy relationship was to end, taking into account the period of notice which commenced as late as the first day of the calendar month following that in which the judgment became final. At the same time the court decided that the tenant was obliged to vacate the flat within 15 days at the latest after the expiry of the period of notice. If the tenant was entitled to a substitute flat or accommodation, the court held that the tenant was obliged to vacate the flat within 15 days after the provision of the substitute flat, and if provision of the substitution accommodation was sufficient, then within 15 days after its provision.

24. Under Article 712, a person whose tenancy agreement was terminated under Article 711 § 1(a),(b),(e),(f) or (i) was entitled to be

provided with substitute housing in the form of a flat or other accommodation.

7. *Exchange of flats*

25. Under Article 715 tenants could, with their landlords' assent, agree in writing to exchange their respective flats. If either landlord disagreed with the exchange, the tenant could appeal to a court; a ruling by the court in the tenant's favour replaced the consent of the landlord to the exchange.

**D. Act no. 265/1991 on the powers of the State authorities in relation to prices**

26. Section 2(2) provides, *inter alia*, that the Ministry of Finance issues legal acts to regulate and negotiate prices, to define disproportionate economic profit and unjust enrichment in connection with violations of price regulations, and to control prices.

**E. Decree no. 60/1964 on payment for the use of a flat and for services related to the use of a flat, as amended by Decree no. 15/1992 (in force until 31 December 1993)**

27. With effect from 16 January 1992 the decree as amended stipulated in section 1(1) the method of calculating the rent for a flat and the manner of negotiating and paying for the rent and for the service charges for the use of the flat between the owners, or housekeepers as landlords, and the tenants.

28. The decree did not apply to flats built with financial, credit or other assistance provided under regulations on financial and credit assistance to cooperative housing construction, or to flats under the Administration of Diplomatic Services (*Správa služeb diplomatického sboru*).

29. Section 5(2) stated that the amount of rent determined under section 5(1) should be increased by 100% starting with the rent for July 1992. The landlord had to notify the new rent, in a manner that was standard in the place concerned, within 60 days at the latest from the entry into force of the decree.

30. Section 16 provided for the rent and prices for services in dwelling houses owned by natural persons, with a limited number of dwelling rooms or a limited floor area. Under subsection 1 the amount of rent for a dwelling house with 5 rooms at most, excluding the kitchen, or with more dwelling rooms but with a floor area not exceeding 120 square metres, should be negotiated in an agreement between the landlord and the tenant. As to the kitchen, the floor area should include kitchens exceeding 12 square metres. Under section 16(2) if the rent for dwelling houses under subsection 1 did

not reach the amount determined under section 5, the landlord could increase the rent up to the latter amount.

**F. Decree no. 176/1993 of the Ministry of Finance on rents for flats and reimbursement of charges related to the use of flats (entered into force partly on 1 July 1993 and partly on 1 January 1994; and was repealed by the Constitutional Court with effect from 1 January 2002)**

31. The decree established rent ceilings, provided guidelines on how to calculate them and laid down rules regulating certain aspects of the conduct of landlords and tenants. It did not apply to flats in housing cooperatives established after 1958, if built with financial, credit and other assistance provided under regulations on financial, credit or other assistance for cooperative housing construction, for which the rent was determined under separate regulations, and the decree did not apply to flats managed by the Administration of Diplomatic Services.

32. Moreover, under section 2, flats owned by housing cooperatives, leased by foreign legal persons or built after 30 June 1993, or those in family houses for which a tenancy agreement had been concluded with a new tenant, fell outside its scope of application (except in cases involving the legal transfer of tenancy, the exchange of flats and substitute housing). The exception concerning family houses was later extended to all flats. This amendment took effect on 1 July 1995.

33. The break-up of flats into the categories stipulated in section 4 was, except for minor differences, essentially the same as under Decree no. 60/1964, flats being classified into four categories according to their quality.

34. Sections 5 and 6 provided for two types of basic rent: maximum basic rent and cost-based regulated basic rent. Rent was regulated on a cost basis for flats whose construction was approved after 30 June 1993 where public funds were used in their financing, and for flats whose reconstruction or modernisation was approved after 30 June where public funds were used in their financing.

35. For the first case of cost-based regulated rent, it was calculated by multiplying the purchase price of the flat by a monthly coefficient ( $k = 0.00375$ ), while the purchase price of the flat was to be calculated from the actual purchase costs for the building of the house according to the ratio of the flat's floor area to the floor areas of all flats and commercial premises. This rent could not exceed double the maximum basic rent determined under section 5.

36. In the second case, the rent was calculated by multiplying the replacement purchase price of the flat by a monthly coefficient ( $k = 0.00375$ ), while the replacement purchase price of the flat was the price

of the flat according to its category before the reconstruction or modernisation as determined under section 3a of Ministry of Finance Decree no. 393/1991, as amended, and raised by the actual costs of the reconstruction or modernisation of the flat. This rent could not exceed double the maximum basic rent for the category of a flat after reconstruction or modernisation as determined under section 5. The provisions on cost-based regulated basic rent came into force on 1 July 1993.

37. The maximum basic rent was calculated by multiplying the flat's floor area by the maximum basic monthly rent per square metre of floor, as set for each category and listed in the annex to the decree as follows:

- first-category dwelling (flats with central heating in all dwelling rooms and basic accessories): CZK 6 (EUR 0.24) per square metre;
- second-category dwelling (flats without central heating, with basic accessories, or flats with central heating and partial basic accessories): CZK 4.50 (EUR 0.18) per square metre;
- third-category dwelling (flats without central heating with partial basic accessories or flats with central heating without basic accessories): CZK 3.50 (EUR 0.14) per square metre;
- fourth category dwelling (flats without central heating and without basic accessories): CZK 2.50 (EUR 0.101) per square metre.

38. Both maximum and cost-based regulated basic rent calculated under sections 5 and 6 could be modified depending on the quality of the flat, the location of the building and the flat's equipment. The prices of services were not included in the rent.

39. Section 5a provided for annual rent-ceiling increases in line with the average monthly index of price growth in the construction industry, as assessed by the Ministry of Finance.

40. Under section 9, municipalities were empowered to increase or decrease rents by up to 20%, to reflect an "advantageous or disadvantageous" location of the housing. According to the applicant, between 1998 and 2002 the rents were increased only by amounts reflecting the annual rate of inflation. Since 2002 the real value of controlled rents has decreased due to inflation, being now significantly below the reconstruction costs of the housing resources.

41. Under section 16(2), the rent control under sections 5, 6, 8, 9 and 10 also applied to rents originating before 1 January 1994. If the controlled rent applying as of 31 December 1993 was higher than the rent calculated under the decree, the higher rent was applicable and it was considered to be the maximum until the change in conditions for rent calculation provided for in sections 6(2), 9, 10, 12(3), 15 and 16(1)(b). Under section 16(1) the landlord could enter into an agreement with the tenant on the new rent under agreements concluded prior to 1 July 1993 in family houses with 5 dwelling rooms at most, excluding the kitchen, or with more dwelling rooms but with a floor area not exceeding 120 square metres, including a kitchen area

exceeding 12 square metres, and for which the area of commercial premises was not more than one third of the total of all areas, both residential and commercial. If they did not reach an agreement, then the landlord could increase the rent:

(a) up to the rent determined under section 5, modified under sections 8 and 9 and then increased by the rent for the flat equipment under section 10, from 1 January 1994 at the earliest,

(b) on the basis of a valuation authority's decision, to a maximum level of double the rent determined under section 5, modified under sections 8 and 9 and then increased by the rent for the flat equipment under section 10, and at the earliest from the first day of the month after twelve months from the landlord's written notice to the tenant concerning the change in rent.

**G. Decree no. 30/1995 of the Ministry of Finance of 8 February 1995 amending the Decree no. 176/1993 (entered into force partly on 1 March and partly on 1 July 1995)**

42. The new section 5a entered into force on 1 March 1995. Under its subsection 1 the maximum level of the basic monthly rent per square metre of the floor area of a flat of the relevant category under section 5 was annually determined according to the following formula with effect from 1 July to 30 June of the subsequent year:

$$N_{t+1} = N_t \times K_i \times K_v \times K_r, \text{ where}$$

$N_{t+1}$  was the new maximum level of basic monthly rent per square metre of the flat's floor area as valid from 1 July of the current year,

$N_t$  was the maximum level of basic monthly rent per square metre of the flat's floor area as valid until 30 June of the current year,

$K_i$  was the coefficient of rent increase reflecting the rate of inflation for the whole previous calendar year,

$K_v$  was the coefficient of rent increase depending on the size of the municipality,

$K_r$  was the decision coefficient.

43. The coefficient of rent increase reflecting the rate of inflation  $K_i$  was calculated from the running average of change in the level of consumer prices (the rate of inflation) for the previous calendar year according to the index of the Czech Statistical Office; the Ministry of Finance determined the coefficient  $K_i$  in its decision and published it in the Price Journal until 1 March (incl.) of the current year. The value of the coefficient  $K_r$  was 1.00. The Ministry fixed the coefficient  $K_r$  at a level lower than 1.00, if the rate of inflation expressed as coefficient  $K_i$  was higher than 1.15, or at a level higher than 1.00, if the rate of inflation expressed as coefficient  $K_i$  was lower than 1.10. The maximum coefficient of rent increase depending on the size of the municipality  $K_v$  was determined in the following way:

Prague	1.19
Municipality with at least 100,000 inhabitants	1.15
Municipality with 50,000 to 99,000 inhabitants	1.11
Municipality with 10,000 to 49,999 inhabitants	1.08
Municipality with less than 10,000 inhabitants	1.06

44. The municipality falling under the relevant group according to its number of inhabitants fixed the specific amount of the coefficient  $K_v$  for the whole territory of the municipality in a generally binding decree that came into effect on 1 July of the current year at the latest; the municipality could decrease the maximum coefficient  $K_v$  applicable to it to a minimum value of 1.00 or in justified cases it could use the coefficient fixed for the next highest category of municipalities up to its maximum value.

45. Under the amended section 9 of the decree, the municipality could also, in a generally binding decree, change the basic rent modified under section 8 of the decree in parts of the municipality or in individual houses chosen for their advantageous or disadvantageous location, especially from the point of view of traffic access, technical and civic amenities and environment, in the following way:

(a) increase it by 20% at most or decrease it by 15% at most in municipalities with at least 50,000 inhabitants, in Františkovy Lázně, Luhačovice, Mariánské Lázně and Poděbrady,

(b) increase it by 10% at most or decrease it by 10% at most in municipalities with at least 1,000 inhabitants and less than 50,000 inhabitants,

(c) increase it by 10% at most in the territory of national parks and zone one protected landscape areas.

46. With effect from 1 July 1995, Decree no. 30/1995 amended the existing section 2(2)(b) of Decree no. 176/1993. In consequence, the rent regulation under this decree, in effect from 1 July 1995, did not apply from that date onwards to all flats in respect of which a tenancy agreement was negotiated with a new tenant, with the exception of statutory transfer of tenancy, exchange of flats, replacement flats and more recently also service flats for professional soldiers. With the exception provided for in the amended section 2(2)(b) of Decree no. 176/1993, the rent regulation under Decree no. 30/1995 also applied to tenancies that existed on 1 March 1995.

47. From 1 July 1995 rent was regulated on a cost basis in the relevant manner for flats whose reconstruction or modernisation was approved after 30 June 1993 with the help of public funds, and for flats whose

reconstruction or modernisation was approved after 30 June 1993. If the cost-based regulated basic rent determined under section 6(1) and (2) was lower than the maximum basic rent determined under sections 5 and 5a, then the rent control under these sections applied.

**H. Decree no. 274/1995 of the Ministry of Finance of 13 November 1995 (entered into force on 1 January 1996)**

48. The decree further amended and supplemented Decree no. 176/1993. Under the previous section 3(8), public funds meant above all financial means provided from the State budget and funds, municipal budgets, and budgets of district offices or of organisations dependent on these resources, while it also meant resources, credits in particular, in which such offices or organisations participated. These latter resources were no longer mentioned and, by contrast, in the new section 3(9) it was explicitly stipulated that public funds did not refer to funds provided under the Act on building savings and State subsidies for building savings or under the Government order requiring State financial support for mortgage credit in respect of flat construction.

49. At the same time, for the flats subject to cost-based regulated basic rent under section 6(1), the maximum limit of cost-based regulated rent changed from double to triple the maximum basic rent. Moreover, the rent regulation under this decree applied also to tenancies originating before the entry into force of this decree.

**I. Decree no. 86/1997 of the Ministry of Finance of 27 February 1997 (entered into force on 30 April 1997)**

50. The decree again amended Decree no. 176/1993. Section 5a(5) newly stipulated that for the period from 1 July 1997 to 30 June 1998 the maximum coefficient of rent increase  $K_v$  would be 1.67 for Prague and 1.35 for municipalities with at least 100,000 inhabitants. Moreover, Prague could, from 1 July 1998 onwards, use a maximum coefficient  $K_v$  higher than 1.19 and up to 1.30. Section 6(1) of the decree was amended so that the cost-based regulated rent under this provision applied to flats whose construction or completion was approved after 30 June 1993 and public funds were used in the financing thereof, or approved even before this date and public funds were used in the financing thereof from 1995. Furthermore, the rent regulation under this decree also applied to tenancies originating before its entry into force.

**J. Decree no. 41/1999 of the Ministry of Finance of 22 February 1999  
(entered into force on 28 February 1999)**

51. The decree amended in particular section 5a of Decree no. 176/1993. The maximum level of basic monthly rent per square metre of the floor area of a flat of the relevant category under section 5 of the Decree was now to be determined annually according to the following formula, with effect from 1 July to 30 June of the following year:

$N_{t+1} = N_t \times K_i$ , where

$N_{t+1}$  was the new maximum level of basic monthly rent per square metre of the flat's floor area as valid from 1 July of the current year,

$N_t$  was the maximum level of basic monthly rent per square metre of the flat's floor area as valid until 30 June of the current year,

$K_i$  was the coefficient of rent increase.

52. The maximum coefficient of rent increase  $K_i$  reflecting the average monthly index of price growth in the construction industry in the previous year was fixed by the Ministry of Finance and published in the Price Journal until 1 March of the current year. The specific amount of this coefficient for the whole territory of a municipality was to be determined by the municipality in a generally binding decree that would come into effect on 1 July of the current year at the latest; the municipality could decrease the maximum coefficient  $K_i$  to a minimum value of 1.00.

**K. Ordinance no. 01/2002 of the Ministry of Finance on the list of goods with controlled prices (entered into force on 1 January 2002 and the relevant parts on rent control were repealed by Ordinance no. 06/2002)**

53. The ordinance introduced, *inter alia*, a maximum level of monthly rent and service charges to be paid by tenants occupying flats which had been subject to the controlled rent scheme on 31 December 2001. It stipulated, *inter alia*, as follows:

“1. From 1 January 2002 to 30 June 2002 the maximum level of monthly rent for a flat including a flat in a family house ..., for which on 31 December 2001 the rent was regulated by a maximum price under Decree no. 176/1993 ... is the rent as valid on 31 December 2001 with appropriate modifications under points 5 to 7.

2. With effect from 1 July 2002 the maximum level of basic monthly rent in a flat mentioned in point 1 shall be determined by multiplying the flat's floor area by the maximum level of basic monthly rent in the municipality per square metre of the relevant flat category under point 3.

3. The maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid from 1 July 2002 shall be determined according to the following formula:

$$N_{t+1} = N_t \times K_i$$

$N_{t+1}$  = the new maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid from 1 July 2002,

$N_t$  = the maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid on 31 December 2001,

$K_i$  = the coefficient of rent increase reflecting the average monthly index of price growth in the construction industry in the previous year, determined by the decision of the Ministry of Finance and published in the Price Journal until 1 March 2002. ...”

54. From 1 July 2002 to 31 December 2002 the coefficient of rent increase  $K_i$  reflecting the rate of inflation was determined in Ministry of Finance Ordinance no. 02/2002 at 1.04.

**L. Ministry of Finance Ordinance no. 06/2002 on maximum rents for flats, maximum service charges and rules for controlled rents (adopted and entered into force on 15 November 2002 and was repealed by the Constitutional Court on 18 December 2002)**

55. The Ordinance fixed a new maximum level of monthly rent and maintenance costs in respect of flats which had been subject to the controlled rent scheme under Ordinance no. 01/2002 on 14 November 2002. Point 1 of the Ordinance stipulated, *inter alia*, the following:

“1. From 15 July 2002 to 30 June 2003 the maximum level of basic monthly rent in a flat, including a flat in a family house with one flat (hereinafter “in a flat”), in which as of 14 November 2002 the rent was regulated by the maximum level under Ministry of Finance Ordinance no. 01/2002 on the list of goods with controlled prices, shall be the rent determined by multiplying the flat’s floor area by the maximum level of basic monthly rent in the municipality per square metre for a flat of the relevant category as valid from 1 July 2002 with the appropriate modifications under points 6 and 7.

2. With effect from 1 July 2003 the maximum level of basic monthly rent in a flat mentioned in point 1 shall be calculated by multiplying the flat’s floor area by the maximum level of basic monthly rent in the municipality per square metre for a flat of the relevant category under point 4. ...

4. The maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid from 1 July 2003 shall be determined according to the formula:

$$N_{t+1} = N_t \times K_i$$

$N_{t+1}$  = the new maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid from 1 July 2003

$N_t$  = the maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid on 30 June 2003

$K_i$  = the coefficient of rent increase reflecting the average monthly index of price growth in the construction industry in the previous year, determined by the decision of the Ministry of Finance and published in the Price Journal until 1 March 2003.”

**M. Government Decree no. 567/2002 on rent moratoria (entered into force on 20 December 2002 and was repealed by the Constitutional Court on 20 March 2003)**

56. Reacting to the judgment of the Constitutional Court no. Pl. ÚS 8/02 of 20 November 2002, the Government ordered that rents which, on 17 December 2002, were fixed and unchangeable under binding regulations, and rents paid in respect of flats whose extension, completion or reconstruction had been approved after 30 June 1993 using public funds, could not be increased for a period of three months after the entry into force of this decree.

**N. Act no. 107/2006 on unilateral rent increases and amendments to the Civil Code (entered into force on 31 March 2006)**

*1. Creation of tenancy*

57. Article 685 § 1 of the Civil Code provides that a tenancy agreement may be concluded for the period of the tenant's work for the landlord.

58. Article 685a § 1 of the Civil Code states that when the lease is agreed the landlord is entitled to request the tenant to provide funds as security for the rent and service charges for the use of the flat and as payment for other liabilities in connection with the lease.

59. Article 687 § 2 of the Civil Code provides that in the tenancy agreement it may be stipulated that the landlord will hand the flat over to the tenant in a condition that is not fit for proper use, if the tenant has agreed with the landlord that the former would carry out the renovation of the flat.

*2. Termination of tenancy*

60. Article 711 § 1 of the Civil Code continues to specify the grounds for which the landlord may serve notice of termination of the tenancy. Its subparagraph newly provides that the landlord may do so without the court's approval if:

“(a) the tenant or persons residing with him/her, have acted *contra bonos mores* in the house, despite a prior written warning;

(b) the tenant has grossly violated his/her obligations arising under the tenancy, in particular by a failure to pay rent or charges for the use of the flat in an amount corresponding to triple the monthly rent and service charges for the use of the flat or if he has not supplied funds to the account under Article 686a § 3;

(c) the tenant has two or more flats, except where he cannot be fairly requested to use only one flat;

(d) the tenant leaves the flat unused without any serious justification or uses it only occasionally;

(e) the flat is specially-assigned or in a specially-assigned house and if the tenant is not a disabled person.”

61. Article 711 § 3 of the Civil Code specifies that the landlord’s written notice must be served on the tenant and it must include the ground for the notice, the period of notice, advice to the tenant concerning the possibility, within sixty days, of bringing an action before a court for a declaration that the notice is void, and if the tenant is entitled to a replacement flat under this Act then it must also mention the landlord’s obligation to secure to the tenant a corresponding replacement flat.

62. Under Article 711a § 1 of the Civil Code the landlord may serve notice of termination of the tenancy only with the court’s approval in the following cases:

“(a) the landlord needs the flat for him-/herself, his/her spouse, his children, grandchildren, son-in-law or daughter-in-law, his/her parents or siblings;

(b) the tenant has ceased to be employed by the landlord and the flat was tied to this employment and the latter needs the flat for his/her replacement;

(c) owing to public interest the flat or the house needs to be disposed of in a way that the flat cannot be used, or if the flat or the house need repairs during which the flat or the house cannot be used for an extended period of time;

(d) the flat is connected to premises designed for the purpose of a shop or other commercial use and the tenant or owner of these commercial premises wants to use this flat.”

63. Under Article 711 § 4 of the Civil Code if the tenant is entitled to a substitute flat or substitute accommodation, then he is obliged to vacate the flat within 15 days from the moment the corresponding substitute flat or accommodation is secured. Subparagraph 5 provides that the tenant is not obliged to vacate the flat, if, within 60 days from the service of the notice, he brings an action seeking to declare the notice null and void and the proceedings are not terminated by a final court decision.

### *3. Succession to the right to lease a flat*

64. Under the amended Article 706 § 1 of the Civil Code if the tenant dies and if the tenancy does not concern a flat in spouses’ joint tenancy, then the tenant’s children, parents, siblings, son-in-law and daughter-in-law become its tenants (joint tenants), if they can prove that they lived with the original tenant in a common household on the day of his/her death and that they do not have their own flat.

65. Under the new Article 706 § 2 of the Civil Code, the tenant’s grandchildren and persons taking care of the common household of the deceased tenant or persons dependent on him/her as regards their upbringing also become tenants (joint tenants), if they can prove that they had lived with him/her in the common household continuously for at least three years prior to his/her death and if they do not have their own flat. In the case of

the tenant's grandchildren, the court may decide for reasons worthy of special consideration that they could become the tenants, even if their stay in the common household with the tenant had not lasted for three years. In the case of persons whom the flat tenant housed after the conclusion of the tenancy agreement, the first sentence applies to them only if the tenant and the landlord concluded a written agreement on that matter; this condition does not apply in the case of the tenant's grandchildren. Under Act no. 115/2006 partners of the deceased tenant are also covered by paragraph 1 with effect from 1 July 2006.

#### 4. *Rent*

66. Article 696 of the Civil Code newly provides as follows:

“1. The rent at the time the lease is agreed or any change in the rent during the tenancy relationship shall be provided for in an agreement between the landlord and the tenant, unless this Act or a separate regulation stipulate otherwise.

2. The method of calculating the amount of service charges for the use of the flat and the method of their payment shall be stipulated by a separate regulation.”

67. Section 1 of Act no. 107/2006 provides for a procedure for unilateral rent increase; nevertheless, it does not apply to rent for the flats mentioned in subsection 2, i.e. flats:

“(a) leased to partners, members or founders of a legal entity created for the purpose of becoming an owner of a house containing flats,

(b) of housing cooperatives established after 1958, if the flats in question have been built with financial, credit or other assistance provided under regulations on financial, credit and other assistance to cooperative housing construction, these flats being leased to their members,

(c) of housing cooperatives labelled under the regulations at the material time as people's housing cooperatives, these flats being leased to their members,

(d) whose construction or completion was approved after 30 June 1993 and the municipalities received subsidies for their construction from the State budget or from State funds for the construction of tenement flats for the period of validity of the conditions of the provided subsidy,

(e) that are specially assigned and in flats in specially-assigned houses whose construction was approved before 30 June 1993.”

68. Section 3 defines the method of unilateral rent increase as follows:

“1. Unilateral rent increases by the landlord can be applied in the period starting on the date of the entry into effect of this Act and ending on 31 December 2010.

2. The landlord shall be entitled to increase the rent unilaterally once a year, from 1 January 2007 onwards and in subsequent years from 1 January, or from a later date, but not retroactively to cover the period since 1 January of the year in question, unless the landlord agrees on a different arrangement with the tenant.

3. Unilateral rent increases in each of the specified periods of 12 months may not be higher than the maximum increase in the monthly rent determined for each specific

value of the present rent per square metre of the flat's floor area in relation to the corresponding target value of the monthly rent per square metre of the flat's floor area.

4. The method of calculating target values of the monthly rent per square metre of the flat's floor area and maximum increases in monthly rent is stipulated in the annex to this Act.

5. The landlord's notice of unilateral rent increase must be done in writing and it must include justification that the rent was duly determined on the basis of a maximum increase in monthly rent.

6. The obligation to pay the increased rent shall come into existence on the date given in the notice of increase, but no sooner than the first day of the calendar month three months after the delivery of the notice to the tenant. Within this time limit the tenant is entitled to bring an action before a court for a declaration that the rent increase is void."

69. Under section 4 the Ministry for Regional Development issues and publishes in the form of a notice in the Collection of Laws, with effect from 1 July every year, the following information:

"(a) basic prices per square metre of a flat's floor area reflecting average rates of purchase prices of real estate based on statistics of real-estate prices,

(b) target monthly rents per square metre of a flat's floor area calculated using the formula stipulated in the annex to this Act, according to classification into size groups of the municipalities for individual regions, and in the case of Prague and Brno according to classification based on town districts,

(c) the maximum increases in monthly rent calculated using the formula stipulated in the annex to the present Act,

(d) regional classification of municipalities by grouping cadastral areas taken over from the classification used for the purpose of property valuation,

(e) classification of municipalities into size categories according to the number of inhabitants,

(f) procedure for establishing the maximum increase in monthly rent in the case of a specific flat."

70. To date, the Ministry of Regional Development has issued four notices (nos. 333/2006, 151/2007, 214/2008 and 180/2009) which entered into force on 1 January 2007, 1 January 2008, 1 January 2009 and 1 January 2010 respectively, and were repealed on 1 January 2008, 1 January 2009 and 1 January 2010 respectively.

**O. Act no. 102/1992 on certain questions relating to the enactment of Act no. 509/1991 amending the Civil Code (entered into force on 5 March 1992)**

71. Section 1(1) provides that if a landlord who gave notice of termination with the court's approval, or a person in whose favour the court has decided on another person's obligation to vacate a flat, cannot secure

replacement accommodation, then he may request the provision of such accommodation from the municipality on whose territory the flat to be vacated is located.

72. Under section 2(1) the municipality provides a replacement flat by offering the tenant a tenancy agreement concerning a flat or a room in a house owned by it, or by concluding a tenancy agreement in respect of a flat in a house of another legal or natural person for the benefit of the person who is obliged to vacate the flat.

73. The Act came into effect on 5 March 1992 and Part One thereof, providing *inter alia* for the competence of the municipalities in securing replacement flats, has not been amended since then.

**P. Government Order no. 258/1995 to apply the Civil Code (entered into force on 3 November 1995)**

74. Section 5 defines the term “minor repairs in the flat”, as mentioned in Article 687 § 2 of the Civil Code, as amended by Act no. 509/1991, as follows:

“1. Repairs to the flat and its interior equipment, if this equipment forms part of the flat and is owned by the landlord, are considered to be minor repairs according to their physical definition or according to the amount of costs.

2. The following repairs and replacements are considered to be minor repairs according to the physical definition:

(a) repairs to individual top parts of floors, repairs to floor coverings and replacements of thresholds and mouldings,

(b) repairs to individual parts of windows and doors and their components and replacements of locks, hardware, handles, shades and Venetian blinds,

(c) replacements of switches, sockets, circuit-breakers, bells, illuminators and house telephones, including electric locks,

(d) replacements of cocks in the gas plumbing with the exception of the main gas seal for the flat,

(e) repairs to stop valves on water plumbing, replacement of water and grease traps,

(f) repairs to heat metres and hot water metres.

3. The following repairs are considered minor: repairs to water plumbing outlets, siphons, hoods, mixer taps, showers, water heaters, bidets, basins, baths, sinks, kitchen sinks, flushing systems, cooking stoves, baking ovens, cookers, infrared radiators, kitchen units, fitted wardrobes and wardrobes. In the case of heating equipment the following repairs are considered minor: repairs to gas, electric and solid fuel fires, solid, liquid and gas fuel boilers for floor heating, including stop and regulation fittings and thermostat controls in floor heating; however repairs to radiators and central heating plumbing are not considered minor.”

75. Section 6 defines the term “costs related to the routine maintenance of the flat” under Article 687 § 2 of the Civil Code as follows:

“Costs related to the routine maintenance of the flat are costs for maintaining and cleaning the flat usually carried out in cases of long-term use of the flat. These include, in particular, regular checks and cleaning of objects mentioned in section 5(3) (gas appliances *etc.*), painting including plaster repairs, wallpapering and cleaning of floors including floor coverings, wall facing, cleaning of clogged waste pipes up to ascending pipes and interior painting.”

**Q. Act no. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision or the conduct of proceedings, as amended by Act no. 160/2006 (“State Liability Act”, entered into force on 15 May 1998 and 27 April 2006 respectively)**

76. Under section 1, subject to the conditions stipulated by this Act, the State shall be liable for damage caused during the exercise of the State’s power. Under section 2, this liability cannot be excluded.

77. Under section 3, the State shall be liable for damage caused by:

- (a) the State authorities,
- (b) legal and natural persons in the exercise of public administration that has been conferred on them by law or on the basis of law,
- (c) authorities of autonomous regional governments, if the damage occurred during the exercise of public administration that was transferred to them by law or on the basis of law.

78. Under section 5 as amended, subject to stipulated conditions, the State is liable for damage caused by:

- (a) a decision delivered in civil court proceedings, in administrative proceedings, in proceedings pursuant to the Administrative Code or in criminal proceedings,
- (b) incorrect official procedure.

79. Section 13(1) provides that the State is liable for damage caused by an incorrect official procedure (first sentence), while incorrect official procedure consists also in non-compliance with an obligation to perform an act or deliver a decision within the statutory time limit (second sentence). The third sentence newly incorporated by Act no. 160/2006 specifies that provided there is no statutory time limit for performing an act or delivering a decision, an incorrect official procedure shall include a failure to comply with an obligation to perform an act or deliver a decision within a reasonable time.

80. Under section 14(1) the claim for damages shall be raised with the authority specified in section 6 of the Act (prior to the entry into effect of Act no. 160/2006 this “preliminary hearing” of the claim before the competent authority was not required for claims for compensation for damage caused by incorrect official procedure). Under subsection 3, the raising of the claim for damages under this Act is a pre-requisite for the eventual raising of the claim for damages before a court.

81. Under section 15(2) the aggrieved party may claim damages before a court only if the claim is not fully satisfied by the competent authority within six months after the filing of the request.

82. Section 26 provides that certain aspects of the nature and extent of damages to be paid are specified in sections 27 to 31 of the Act; the Civil Code is then applied subsidiarily.

83. Section 31a(1), newly incorporated by Act no. 160/2006, provides that reasonable satisfaction for non-pecuniary damage suffered shall be also awarded, regardless of whether any damage was caused by an unlawful decision or an incorrect official procedure.

84. Under section 32(1) the limitation period for claiming damages under this Act is three years from the date when the aggrieved party learned about the damage and about the person liable for it. If the quashing of a decision is a precondition for claiming a right to damages, then the limitation period commences on the date of delivery (notification) of the quashing decision. Nevertheless, the latest that the aggrieved party can claim his/her right is ten years from the date when he/she received (was notified of) the unlawful decision whereby he/she suffered damage; this does not apply in case of damage to health (section 32(2)).

85. The limitation period for claiming compensation for non-pecuniary damage under this Act is six months from the date the aggrieved party learned about the non-pecuniary damage, but not later than ten years from the date of legal fact as a result of which the non-pecuniary damage occurred; if non-pecuniary damage was caused by incorrect official procedure under section 13(1), second and third sentences, or under section 22(1), second and third sentences, then the limitation period ends no sooner than six months after the termination of the proceedings in the course of which this incorrect official procedure occurred (section 32(3)).

86. Under section 35 the limitation period is frozen from the date the claim for damages is filed until the end of the preliminary hearing, but for no longer than six months.

87. Section 36 provides that liability under this Act relates to damage caused by decisions delivered after the date of entry into effect of this Act and to damage caused by incorrect official procedure after the date of entry into effect of this Act; the liability for damage caused by decisions delivered prior to the entry into effect of this Act and damage caused by incorrect official procedure prior to the entry into effect of this Act is governed by existing regulations (Act no. 58/1969).

**R. Act no. 150/2009 on amendments to Act no. 107/2006 on unilateral rent increases (entered into force on 1 June 2009)**

88. The Act extends the period during which the “target rent” is to be reached until 2012 (from the originally expected 2010). This amendment

concerns flats in Prague, in municipalities in Central Bohemia with a population of more than 9,999 as at 1 January 2009, and in the cities of České Budějovice, Plzeň, Karlovy Vary, Liberec, Hradec Králové, Pardubice, Jihlava, Brno, Olomouc and Zlín. The reasons for this distribution of the last stage of the deregulation over three years was the fact that in the above locations excessive levels would be reached owing to increases in the prices of flats from which the target rent is calculated.

### **S. Amendment to the Civil Code (Act no. 132/2011)**

89. An amendment to the Civil Code came into force on 25 May 2011. Selected amended provisions read now as follows:

#### **“Article 689**

(1) The landlord shall have the right to request that the number of persons living in the flat is such that it is adequate to the surface area of the flat and does not prevent any of these persons from using the flat duly and living in satisfactory sanitary conditions.

(2) The landlord shall have the right to reserve, in the lease contract, his consent to the acceptance of additional persons to the flat. This shall not apply if it concerns a closely connected person or other cases worthy of special consideration.

(3) The tenant shall inform the landlord in writing and without undue delay of changes in the number, first names, surnames and dates of birth of persons in the flat if it can be assumed that such change will last for more than two months; the tenant shall also inform the landlord of his marriage or passage of tenancy. If the tenant fails to do so within two months from the day on which the change occurred it shall be understood that he has grossly violated his obligation.

(4) If the tenant is aware in advance of his long-lasting absence from the flat, combined with complicated contacts with him, he shall inform the landlord thereof. At the same time he shall specify a person who will provide for the possibility of entering the flat if necessary.

[...]

#### **Article 696**

(1) The rent at the moment of conclusion of the lease contract or change in the rent during the tenancy relationship shall be arranged for in an agreement between the landlord and the tenant, unless this Act or a separate regulation stipulate otherwise.

(2) If the rent is not agreed, the landlord can propose a rent increase to the tenant in writing. If the tenant agrees with the proposed rent increase, the rent shall be increased as of the third calendar month following the delivery of the proposal. If the tenant does not notify the landlord in writing, within two months of the delivery of the proposal, that he agrees with the rent increase the landlord shall have the right to propose, within another period of three months, that the rent be determined by a court. Upon the landlord's motion the court shall decide on the determination of the rent that is customary at the given place and time. The court shall determine the rent as from the day on which the motion was filed with the court.

(3) The court can decide, pursuant to subsection 2, also in the case of tenancy in which the rent was agreed and which is a tenancy for an indefinite period of time if the circumstances that formed the basis from which the landlord or tenant proceeded when agreeing on the rent have changed substantially.

(4) If the tenant proposes a rent decrease, subsections 2 and 3 shall apply *mutatis mutandis*.

(5) Subsections 2 to 4 shall not apply when determining rents in the case of flats in housing cooperatives.

(6) The method of calculating the amount of service charges for the use of the flat and the method of their payment shall be stipulated by a separate regulation, unless the landlord and the tenant agree otherwise.

[...]

#### **Article 706**

(1) If the tenant dies and the flat is not in spouses' joint tenancy, then the rights and obligations under the tenancy shall pass to the person who lived with the original tenant in a common household on the day of the tenant's death and who does not have his own flat. If that person is not the tenant's spouse, partner, parent, sibling, son-in-law, daughter-in-law, child or grandchild, the rights and obligations under the tenancy shall pass to that person only if the landlord had consented to that person's living in the flat. The consent shall be given in writing.

(2) After its passage under subsection 1, the lease of the flat shall end in two years from the moment of the passage of the tenancy at the latest. This provision shall not apply if the person to whom the tenancy has passed is at least 70 years old at the moment of the passage of the tenancy. This provision shall not apply also if the person to whom the tenancy has passed is less than 18 years old at the moment of the passage of the tenancy; in that case the tenancy shall end on the day when that person is 20 years old at the latest, unless the landlord and the tenant agree otherwise.

(3) If several persons satisfy the conditions for passage of the tenancy, then the rights and obligations under the tenancy shall pass to all of them jointly and severally. However, if there is the tenant's child among those persons, then the rights and obligations under the tenancy shall pass to that child.

(4) Everyone satisfying the conditions for passage of the tenancy can notify the landlord in writing within one month of the tenant's death that he does not intend to continue with the tenancy; that person's tenancy shall end on the day of the notification.

(5) If the tenant of a flat in a housing cooperative dies and this flat is not in spouses' joint tenancy, then upon the tenant's death his membership of the housing cooperative and the tenancy of the flat shall pass to the heir to whom the membership share was conveyed."

## II. THE CONSTITUTIONAL COURT'S CASE-LAW CONCERNING THE CONSTITUTIONALITY OF THE RENT CONTROL LEGISLATION

### **Judgment no. Pl. ÚS 3/2000 of 21 June 2000 (published in the Official Gazette under the number 231/2000)**

90. Ruling on a constitutional appeal lodged by fourteen Senators, the Constitutional Court found Ministry of Finance Decree no. 176/1993 to be contrary to Article 1 of Protocol No. 1 and Article 11 § 1 of the Charter. It held, *inter alia*:

“The major challenges faced and the substantive restrictions on property rights adopted from 1950 to 1980 made it necessary to put an end to discrimination against certain classes of owners so as to restore their right to the peaceful enjoyment of their possession within the meaning of Article 1 of Protocol No. 1 and Article 11 § 1 of the [Charter]. The essence of the discrimination lies in the fact that, in contrast with other owners, some of the substantive aspects of their property rights are denied to the aforementioned owners and, further, ... in the fact that in many cases, where their only income is derived from rent, those owners are being obliged to subsidise what in the Constitutional Court's view is a major social problem, ... that is, a burden which cannot be shouldered by a certain section of society but requires a reasonable and balanced solution by the State and society as a whole. ...

In other words ... as a result of existing legislation, certain groups in our society are bearing costs which ... should be covered by the State. The rent-ceiling scheme, if it is to be compatible with the Constitution, must not keep rents at a level which eliminates any possibility of an economic return on all the established and necessary costs. [Otherwise]... it would imply the denial of all the principles of ownership.”

91. The decree was repealed on 31 December 2001 in order to provide the legislature with time to legislate on the subject anew.

### **Judgment no. Pl. ÚS 8/02 of 20 November 2002 (published in the Official Gazette on 18 December 2002 under the number 528/2002)**

92. The Ombudsman and a group of senators challenged the constitutionality of Ordinance no. 01/2002 of the Ministry of Finance. They argued, *inter alia*, that the new regulation had been extending the unconstitutionality declared by the Constitutional Court in its judgment no. Pl. ÚS 3/2000 because the content of the new regulation was almost the same as the repealed regulation.

93. On 11 November 2002, during the examination of this constitutional appeal, the Ministry of Finance informed the Constitutional Court that it intended to amend the rent control regulations, which it did on 15 November 2002 by Ordinance no. 06/2002. Under section 67(1) of the Constitutional Court Act the Constitutional Court shall terminate the

proceedings requesting repeal of a provision if that provision loses effect during the proceedings before the Constitutional Court.

94. The Constitutional Court, however, considered Ordinance no. 06/2002 to be practically identical to the relevant parts of Ordinance no. 01/2002 and thus acceded to request of the Ombudsman and the group of senators to consider repealing the latter Ordinance instead.

95. Regarding the adoption of new Ordinance no. 06/2002 the Constitutional Court noted that it considered the conduct of the Ministry of Finance as a clear attempt to circumvent the objective of section 67(1) of the Constitutional Court Act and an attempt to prevent the exercise of constitutional justice.

96. Regarding the merits it repealed the Ministry of Finance Ordinance no. 06/2002 reaffirming its conclusions in Judgment no. Pl. ÚS 3/2000 and noting that the new regulation is in the important parts identical with the part of the previous regulation that was repealed as unconstitutional. In this context it agreed with the group of senators that previous opinion of the Constitutional Court had not been respected in breach of Article 89 § 2 of the Constitution.

97. It found also that the Ministry had not been empowered to regulate rents for dwellings by means of that form of secondary legislation. The ordinance violated Article 1 of Protocol No. 1, Article 2 § 2 of the Charter and Articles 1, 2 § 3 and 15 of the Constitution read in conjunction with Articles 1, 4 §§ 3, 4 and 11 § 1 of the Charter, as the rent ceilings which they introduced froze the rent-control scheme in force before 1 January 2002.

98. As regards the procedure used for the adoption of the ordinance, the Constitutional Court noted that the Ministry, in issuing the ordinance, had relied on Act no. 265/1991 on the powers of the authorities of the Czech Republic in relation to prices and Act no. 526/1990 on prices. Whilst these legal acts empowered certain State authorities to adopt measures regulating the prices of goods defined therein, they did not entitle them to regulate the conduct of landlords and tenants subject to the legislation in any other manner.

99. The court found that the Ministry had acted beyond and contrary to these laws when imposing its regulations across the board on landlords and tenants within the meaning of the Civil Code and in regulating certain aspects of their conduct in a manner which was reserved only for statutory regulations in accordance with the Charter, and which infringed the principle of contractual autonomy of private parties.

100. Moreover, the court ruled that the impugned ordinance lacked proportionality and discriminated against a certain class of owners. In its reasoning it stated, *inter alia*, that a rent-control scheme could generally be said to be in conformity with constitutional law if it reflected market prices

based on the location of dwellings and if it struck a fair balance between the public interest and the fundamental rights of individuals.

101. Relying on differences between Czech law and the European standards, the court further held that, although the legal concept of personal use of dwellings had been replaced by the concept of lease within the meaning of the Civil Code, effective reform of the lease-control scheme to reflect the free-market economy had not yet been introduced. With regard to the rent-control scheme, it observed that it was based on so-called command prices which were fixed administratively, whereas in other European countries controlled rents were related to market prices.

102. According to the Constitutional Court, the Ministry of Finance Ordinance, which reflected only the trend in costs and inflation, had ignored the trend in prices on the market.

**Judgment no. Pl. ÚS 2/03 of 19 March 2003 (published in the Official Gazette on 20 March 2003 under the number 84/2003)**

103. Ruling on a constitutional appeal by twenty-five Senators, the Constitutional Court repealed Government Decree no. 567/2002, finding in particular:

“... in general, it can be said that the object [of the regulation] is to ‘freeze’ rents for a definite period of time. The regulation does not apply to all rents but only to those which were subject to rent ceilings on 17 December 2002, that is, rents within the meaning of Section 1 of Ordinance no. 06/2002, annulled on 18 December 2002 by Constitutional Court judgment no. 528/2002, and to those paid for dwellings with regulated rent ... On the basis of these findings, it can be observed that this moratorium represents continuity with Ordinance no. 06/2002 and that the objectives of both regulations are basically identical. ...

In that respect the question arises what is the current state; more exactly at what level are rents currently regulated. It can be presumed that the Ordinance no. 06/2002 ceased to be in force as of 18 December 2002 and since that date nothing prevented the contractual parties from agreeing on rent by mutual consent; to the contrary, unilateral rent increases ceased to be permissible... Another possibility should not be omitted i.e. that one of the contractual parties would bring the issue of rent to a court; this would concern cases of disagreement over level of rent namely when the landlord would claim the level of rent common in the given locality on the ground that the parties did not agree on the price (§ 671 Civil Code); this would however not be the case of rent increase properly speaking... It is possible to presume that it was not possible to increase rent unilaterally after the repeal of Ordinance no. 06/2002, unless the parties agreed so by mutual consent. This is, however, rather a theoretical possibility, owing not only to the limited time available to negotiate such a tenancy agreement but also – and most importantly – to the obvious economic disadvantage of such an arrangement for tenants. It follows that the impugned regulation effectively freezes in time the rent-control scheme which was declared unconstitutional by Constitutional Court judgment no. 528/2002 and also no. 231/2000 on the ground of the rent ceilings it imposed and the method of their calculation. ...

In this situation the factual correspondence as regards the contents between the interference under consideration concerning the amount of rent and cases declared unconstitutional by the Constitutional Court in the past, account being taken of the fact that the form of this interference was again a secondary regulation issued beyond the limits of statutory delegation, which the Constitutional Court found unconstitutional in the previous cases as well, constitutes unconstitutionality for the reasons mentioned in the cited findings, in particular for the reason of violation of Article 2 § 2 of the Charter and Article 2 § 3 of the Constitution taken together with Article 1, Article 4 §§ 3 and 4 and Article 11 § 1 of the Charter and Article 1 of Protocol no. 1 to the Convention taken together with Article 14 of the Convention. Therefore the Constitutional Court holds that Government Order no. 567/2002, on a price moratorium over rents, is contrary to the constitutional order and the Czech Republic's international obligations. For this reason the Constitutional Court was compelled to repeal it pursuant to Section 70, subsection 1 of the Constitutional Court Act. The Constitutional Court shares the claimants' opinion that Article 89 § 2 of the Constitution was violated, because in their actions the Government were bound by previous findings of the Constitutional Court, when the decisive legal reasoning expressed in the above findings constituted a sufficient basis for the Government's further actions (...) irrespective of the fact that respect for opinions of a Constitutional Court is a usual component of a political and legal culture in developed countries. ..."

104. It further noted in an *obiter dictum* that should a rent control scheme compliant with the Constitution not be adopted by the legislator, the Constitutional Court would have no other possibility than to fulfil its duties and assure observation of principles guaranteed by the Constitution and international treaties at least in individual cases, although such solution would be insufficient and provisory, the only satisfactory solution being adoption of a regulation.

**Judgment no. Pl. ÚS 20/05 of 28 February 2006 (published in the Official Gazette under the number 252/2006 on 2 June 2006)**

105. The Municipal Court in Prague, in the context of proceedings where a plaintiff was claiming the payment of outstanding rent for July 2003 corresponding to the difference between the regulated rent and usual rent as determined by an expert opinion, asked the Constitutional Court to repeal several provisions of the Civil Code. After having rejected the request, the Constitutional Court nevertheless declared unconstitutional the long-lasting inactivity of the legislator to adopt a special law regulating circumstances under which an owner was allowed to unilaterally increase the rent:

"The Constitutional Court notes that the decision in the case no. Pl. ÚS 8/02 was adopted more than three years ago (20 November 2002) and it is clear that the situation in the housing market could not have changed much. The legislature, instead of responding flexibly in cooperation with the government to the findings in which the Constitutional Court strongly criticized the legislation of severe rent control violating property rights of owners of flats and unfinished transformation of tenancies, failed to this day to fulfil the intentions of Article 696 paragraph 1 of the Civil Code. The result of this activity, respectively inactivity, is the actual freezing of regulated rents,

thereby further exacerbating the violation of property rights of the owners of the flats subject to the regulation. The balance cannot be provided otherwise than by adopting envisaged legislation. By not adopting it, the legislature created an unconstitutional situation, which is in stark contrast with the Charter, ...”

106. The Constitutional Court urged the ordinary courts to fulfil their essential role and not to reject the landlords’ actions for rent increase on the ground of absence of legal basis. It held that the ordinary courts had to decide on rent increase notwithstanding the absence of special legislation:

“On the basis of these facts the Constitutional Court, in the recalled role of the constitutionality protector, cannot restrict its function to the mere position of a ‘negative’ legislator and must, within the balance of individual components of power characteristic of a State based on the rule of law and respect for the rights and freedoms of a man and citizen (Article 1 § 1 of the Constitution of the Czech Republic), create space for the respect for fundamental rights and freedoms. The issue at stake is that the ordinary courts, despite the absence of presumed specific regulation, must decide on the rent increase and they must do so depending on the local conditions so that the discrimination mentioned above does not occur. With regard to the fact that in such cases it would concern finding and applying simple law, which does not appertain to the Constitutional Court, as it repeatedly emphasises in its case-law, it refrains from offering specific decision making procedures and thus substituting the ordinary courts’ function. It would only note that it is necessary to avoid arbitrariness; a decision must be based on rational arguments and thorough assessment of all circumstances of the case, the use of common principles and practice of civic life, the work of legal theorists and the courts’ established case law that is in conformity with the Constitution.

Attention should be also paid to the second level of the claimant’s objections, which is based on the assertion that there is an unconstitutional *vacuum legis* consisting in that so far the envisaged regulation has not been adopted. In consequence of the legislator’s failure to act it can cause an unconstitutional situation if the legislator is obligated to adopt certain statutory regulations and does not do so, and thus interferes with an interest protected by law – the Constitution. The legislator’s obligation may follow directly from the constitutional level (e.g. in securing the realisation of the fundamental rights and freedoms or their protection), and also from the level of ‘ordinary’ acts, where it imposed this obligation upon itself *expressis verbis*. It is a well-known fact that in the activities of the constitutional courts the protection against failure to act was developed especially in the case of the German Federal Constitutional Court. Also the Czech Republic’s constitutional judiciary dealt with the issue of *vacuum legis* (...). Therefore it can be concluded that under certain conditions the consequences of *vacuum legis* (legislative vacuum) are unconstitutional, especially in a case when the legislator has decided that it would regulate in a certain field, and expresses this intention in an act, but does not adopt the envisaged regulation. The same conclusion holds true in a case when Parliament has adopted the declared regulation, but it has been repealed because it did not satisfy criteria of conformity with the Constitution and the legislator has not adopted a replacement that would be in conformity with the Constitution, although the Constitutional Court has provided the legislator with sufficient time (18 months). Moreover, it remained inactive also after the lapse of this time limit and to this day it has not adopted the requisite regulation (not even after more than four years).”

### III. CONSTITUTIONAL COURT'S JUDGMENTS IN INDIVIDUAL CASES

#### **Judgment no. IV. ÚS 524/03 of 23 September 2004**

107. The Constitutional Court found that Czech rent law was based on a high level of protection for tenants, prompted in particular by social considerations, as housing served a basic human need. However, it was unacceptable simply to transfer a social burden from one group of persons (tenants) to another (landlords). In the current housing market, landlords did not have any legal means of obtaining a rent-controlled flat as substitute housing for a tenant whose tenancy they sought to terminate.

108. Moreover, the fact that there was no rent-control law leading to rent deregulation should not be detrimental to landlords. The distortion of the market in consequence of the long-term failure to solve the problem of rent-controlled flats could not be perpetuated by the national courts' case-law. It was not permissible to create inequality between tenants of rent-controlled flats and those renting flats not subject to rent control, or between landlords who owned flats with controlled rents and those who owned flats not subject to control.

#### **Judgment no. IV ÚS 8/05 of 1 June 2005**

109. Some landlords lodged a constitutional appeal against the decisions of ordinary courts dismissing their action for vacation of a flat against a deceased tenant's granddaughter, who had claimed that the right of tenancy had passed to her on the basis of the Civil Code. The Constitutional Court held as follows:

“On the basis of the constitutional appeal under consideration the Constitutional Court was called to decide whether the ordinary courts, by making an extreme interpretation of Article 706 § 1 of the Civil Code, had interfered with the applicants' ownership rights, which are guaranteed by Article 11 § 1 of the Charter and which did not receive judicial protection contrary to Article 36 § 1 of the Charter. ...

*A fortiori*, it cannot be accepted in a case where the facts, ascertained in such a careless way, are to be subsumed under Article 706(1) of the Civil Code which, as explained above, significantly restricts the applicants' basic ownership right in relation to the flat. By this course of action not only is Article 36 § 1 of the Charter violated, but Article 11 § 1 of the Charter, which provides protection to ownership rights at the constitutional level, is also violated in consequence of the extension of the purpose of Article 706 § 1 of the Civil Code (i.e. in consequence of a failure to observe Article 4 § 4 of the Charter). From the constitutionality perspective it is true that not even an established practice is enough to justify an expansive interpretation of grounds for succession to tenancy by which landlords' ownership rights are restricted beyond the law. If such interpretation is to protect the right to housing, then the Constitutional Court must observe that in its finding of 21 June 2000 no. Pl. ÚS 3/2000 it held that although the European Social Charter embodied the

right to housing, in case of competition of this right with other rights these clashes need to be measured against the principles of fair balance and proportionality ... In case of a clash between the right to housing, which is a social right (the fact that it arises under international law does not alter this in any way), and the ownership right it is necessary to apply principles that are also valid in respect of other social rights ... It cannot be neglected that the content of social rights – contrary to the classical fundamental rights – depends on the wealth of society and on economic development, including fluctuations in the economic cycle. This characteristic, i.e. this condition, often leads to the classification of social rights as constitutional soft law (in contrast to classical fundamental rights). In testing the proportionality and fair balance the ‘right’ of an actual tenant, who may resort to ‘feigned’ cohabitation or may move in for a short period of time solely to acquire favourable housing conditions, would not stand in relation to the ownership right. The expedience of the conduct may, for example, be determined from a comparison of the situations in which the person lived prior to his/her move, in relation to which he/she asserts that it was motivated exclusively by the care of a relative. Furthermore, the case-law of the Supreme Court of the Czech Republic satisfies this requirement, when it bases its decision-making on the following opinion: ‘Although for persons specified in Article 706 § 1, first sentence of the Civil Code, the condition of a community of consumption is not required for succession to tenancy of a flat, from the point of view of satisfying the condition of there being a common household, it is necessary for the cohabitation in the flat with the tenant to be characterised by permanency. The cohabitation is considered permanent if there are circumstances that can be objectively ascertained and that show that the flat tenant and the person living with him/her in his/her flat agreed upon the intention to cohabitate permanently.’ (cf. decision of 16 January 2001 no. 26 Cdo 1867/2000, no. 42/2001 in the Collection of Decisions of the Supreme Court). ...

From the point of view of Article 4 § 4 and Article 11 § 1 of the Charter it is not acceptable for Article 706 § 1 of the Civil Code to provide protection to relatives of the deceased tenant specified in this provision who make use of this unique opportunity contrary to its narrow purpose. The Constitution obliges the courts to verify carefully whether the person asserting the satisfaction of conditions for succession to tenancy is not abusing the law to the detriment of the owner. This holds true *a fortiori* if a short period of only several months has passed from the moment of the beginning of the cohabitation to the death of the original tenant and during this period the original tenant was mainly in hospitals or other health-care facilities. The decisions of the ordinary courts are based on an interpretation of the law that does not observe the constitutional protection of the applicants’ ownership rights and furthermore the ordinary courts reached their conclusions via a course of action in assessing the evidence that is contrary to the rules of a fair trial. ...”

#### **Judgment no. IV. ÚS 113/05 of 7 September 2005**

110. In this judgment the Constitutional Court quashed the judgment of the appellate court upholding a first-instance judgment in which an applicant’s action against tenants for the surrender of unjust enrichment had been rejected. The unjust enrichment consisted in the fact that the tenants had used a flat in the applicant’s building without legal entitlement and they had paid her, for the use of the flat, the amount of the “controlled rent” for a second-category flat. The Constitutional Court stated, *inter alia*, as follows:

“In the case under consideration the applicant requested, before the ordinary courts, the enjoined party to surrender the unjust enrichment which that party had allegedly gained to the detriment of the applicant by refusing to vacate the flat, in relation to which that party’s right of lease had ended upon a notice of termination, despite having been provided with a substitute flat. In the Constitutional Court’s view it is not possible to accept the interpretation according to which until the time of a decision of the court on the enforcement of a decision the relationship between the former landlord and tenant is regulated by Article 712a of the Civil Code, i.e. that until that time the former tenant is obliged to pay to the landlord rent as determined by Decree no. 176/1993, i.e. the ‘controlled rent’. Such a broad interpretation does not even observe the protection of the right to housing, but it protects housing ‘for a price subsidised by the owner’ and that is a consideration that is markedly outside a reasonable interpretation of the right to housing. In the Constitutional Court’s opinion such interpretation does not observe the essence and objective of the protection of ownership rights and consequentially it creates an entirely disproportionate restriction, or even negation of ownership rights, which are already inadmissibly restricted during the tenancy by the mere nature and form of the rent regulation, as the Constitutional Court has repeatedly held in the past (*cf.* judgments nos. Pl. ÚS 3/2000, Pl. ÚS 8/02 and Pl. ÚS 2/03). ...

In other words, Article 712a of the Civil Code must be interpreted in a way that it affects the relationship between the former landlord and tenant only until the time when the former landlord secures a replacement flat for the tenant. It is then up to the owner of the flat to show, in evidential proceedings before the ordinary courts, on what date he secured the replacement flat. From that moment the former tenant uses the flat without legal entitlement and this relationship is no longer governed by Article 712a of the Civil Code. After this time the right of the owner ... to the surrender of unjust enrichment comes into existence, while the amount of the unjust enrichment should correspond to the amount of usual rent in the given place and time. The interpretation by the ordinary courts, which does not respect the limits stipulated in Article 4 § 4 of the Charter, represents a disproportionate restriction of the ownership rights of the flat owner and is therefore contrary to Article 11 § 1 of the Charter.”

#### **Judgment no. IV. ÚS 611/05 of 8 February 2006**

111. As no statute providing for controlled rents had been enacted after Constitutional Court judgment no. 84/2003 and the ordinary courts had failed to provide landlords with any remedy in respect of controlled rents, the Constitutional Court, with reference to the case-law of the Court (*Kruslin v. France*, 24 April 1990, Series A no. 176-A) and to the principle of non-interference with property rights other than on a statutory basis, reiterated its intention to apply the principles enshrined in its previous judgments in individual cases until the existing *vacuum legis* was filled. It held:

“... it is incumbent upon the courts to fill the *vacuum legis* by their case-law... while taking into consideration the Constitutional Court’s case-law...”

112. The court further found:

“The interpretation [by the ordinary courts] of the Constitutional Court’s case-law ... in such a way as to deny the protection of property rights of landlords cannot be accepted. The objective of this case-law was not to freeze and set in stone the unconstitutional interference with property rights, but to eliminate unconstitutional restrictions on landlords’ property rights. The distortion of the market caused by the long-lasting lack of a solution to the problem of dwellings subject to the rent-control scheme cannot be perpetuated by the courts’ practice. Pending action by the legislature it is incumbent upon the ordinary courts to safeguard the rights ... of individuals. ... The courts cannot refuse to protect individuals’ fundamental rights by referring to the *vacuum legis*. On the contrary, they are obliged to provide such protection. They are requested to do so in a way that will protect the very substance and objective of ownership within the meaning of Article 4 § 4 of the Charter.”

113. The Constitutional Court then quashed the judgments of the Pardubice District Court of 7 October 2004 and Hradec Králové Regional Court of 16 June 2005 dismissing an action by J.K. seeking an order for his tenant to pay outstanding rent. The appellate court had *inter alia* held that the tenant was not receiving unjust enrichment because she had a legal title to live in the flat and was paying a rent in the same amount as when that legal title had been established.

**Judgment no. I. ÚS 717/05 of 21 March 2006 (see too paragraphs 160-162 below)**

114. On 6 August 2003, the plaintiff lodged an action to declare null and void regulated tenancies and order the tenant to pay a newly fixed increased rent as of 1 April 2003, which was rejected by ordinary courts. In its judgment the Constitutional Court reiterated the principles articulated in judgment no. Pl. ÚS 20/05 of 28 February 2006 and quashed the lower courts decisions.

115. The Constitutional Court criticised the Supreme Court’s decision in that case which applied judgment no. 26 Cdo 867/2004 of 31 August 2005 referred to in judgment no. Pl. ÚS 20/05 of 28 February 2006. It urged the Supreme Court to lay down the basis for unification of the ordinary courts’ jurisprudence.

116. The Constitutional Court further noted that the issue of declaring null and void the contractual provisions regarding the level of rent was new in jurisprudence which led to a legal uncertainty for the landlord. In consequence, the Supreme Court would have to refrain from rejecting the action on the ground that the landlord failed to comply with formal requirements for formulating such an action but allow the lower courts to give him sufficient possibility to reformulate his action in compliance with the Supreme Court’s perception, if need be.

117. One of the three judges composing the chamber of the Constitutional Court, Vojen Güttler, formulated a partly dissenting opinion where he expressed the view that judicial solution of the regulated rent issue

was very risky due to the possibility that ordinary courts would decide randomly and inconsistently. He esteemed that the reasoning should have indicated that the duty of ordinary courts to decide on rent increase would end as of the day of taking of effect of a new legislation regulating rent increases. He also pointed out that the ordinary courts would have to consider whether the increased rent should be granted as of the day of lodging the action for rent increase or of the courts' decision becoming final.

#### **Judgment no. I. ÚS 489/05 of 6 April 2006**

118. On 5 August 2004, the plaintiff introduced an action for payment of outstanding rent for the period between 18 December 2002 and 31 July 2004 representing the difference between the usual and the controlled rent for a flat. His action was rejected by lower courts whose decisions were subsequently quashed by the Constitutional Court.

119. The Constitutional Court stated that it had affirmed the lower courts' obligation to decide on rent increase notwithstanding the absence of legislation for the first time in its judgment Pl. ÚS 20/05 above.

120. It further held that when deciding on increases in rent, the ordinary courts were empowered to act only *pro futuro* and that it was not possible to claim payment of the difference between regulated rent and the rent common in the given locality for the past.

121. Given the extraordinary character of this procedure created by the judgment Pl. ÚS 20/05 above the courts must provide the parties with sufficient space to take account of the applicable principles and to use adequate instruments including a possible modification of the formulation of the petition and the possibility of concluding a settlement. The plaintiff must be provided by the courts with sufficient instructions even outside the general obligation to provide advice embodied in Article 5 of the Code of Civil Procedure.

122. The court further held that if the landlord's founded claims were not fully satisfied, he would have no choice but to sue the State for damages.

#### **Judgment no. IV. ÚS 111/06 of 16 May 2006**

123. In this judgment the Constitutional Court quashed lower courts' decisions having rejected an action for payment of outstanding rent. It reiterated the opinion that if the landlord's founded claims of rent increase were not fully satisfied, he would have no choice but to sue the State for damages.

**Judgment no. II. ÚS 93/05 of 8 June 2006**

124. In this judgment, the Constitutional Court quashed the lower courts decisions having rejected the landlord's action for surrender of unjust enrichment in the amount of the difference between the controlled rent and the rent corresponding to the local conditions. The Constitutional Court esteemed that this action was "the only imaginable for the landlord"; by rejecting it the lower courts deprived him of the right to a fair trial and his right to peaceful enjoyment of property.

**Judgment no. I. ÚS 47/05 of 13 July 2006**

125. In this judgment the Constitutional Court reiterated the principles articulated in its previous judgments and quashed the lower courts' decisions by which they rejected a landlord's action requesting the payment of additional rent, corresponding to the difference between the regulated and market rent, for a past period of time.

126. Subsequently, lower courts rejected again the action referring to judgment no. I. ÚS 489/05. They considered that a rent increase was only possible *pro futuro*. Their decisions were quashed again by the Constitutional Court on 5 February 2009 (see judgment no. III. ÚS 696/07 (paragraphs 132-134 below)) holding that it was possible to claim rent increase for the past.

**Judgment no. I. ÚS 123/06 of 17 April 2007**

127. On 12 July 2004, the plaintiff filed an action for payment of usual rent for the period from 21 March 2003 until delivery of the court's decision, which was rejected by ordinary courts. The Constitutional Court reiterated the opinion that the landlords could only claim rent increase *pro futuro*. Ordinary courts were obliged to provide the plaintiff with adequate space to be allowed to take account of applicable principles and to use adequate instruments including modification of the formulation of the petition, and with adequate instructions even outside the general obligation to provide advice embodied in Article 5 of the Code of Civil Procedure. If the landlord's founded claims of rent increase were not fully satisfied, he would have no choice but to sue the State for damages.

**Judgment no. IV. ÚS 282/05 of 31 May 2007**

128. In this judgment, the Constitutional Court granted a landlady's constitutional appeal against the judgments of the lower courts which had dismissed her action to pay the difference between the rent paid by the defendants for August 2003 in the amount last determined under the

repealed regulations in the domain of rent control and the usual rent, specified in an expert opinion. It found, *inter alia*, as follows:

“The fact that the applicant’s constitutional appeal was granted does not mean that the ordinary courts would accept the amount of rent requested by her without further examination. The specific amount of rent must result from the process of evidence in particular, during which the ordinary courts must provide sufficient opportunity to the litigants to enable them to present relevant background information that may influence the amount of rent. Given the exceptional nature of this procedure in which the law is developed, the claimant and the defendant must receive appropriate advice from the ordinary court, even outside the general obligation to provide advice embodied in Article 5 of the Code of Civil Procedure.”

### **Judgment no. II. ÚS 361/06 of 26 July 2007**

129. In this judgment the Constitutional Court specified that the ordinary courts could decide on actions for rent increase only until valid legislation regulating rent increase as of 1 January 2007 becomes effective.

### **Decision no. Pl. ÚS 7/07 of 14 August 2008**

130. In this decision the Constitutional Court specified, in an *obiter dictum* and referring to its decisions *Pl. ÚS 20/05, I. ÚS 719/2005, IV. ÚS 611/05, II. ÚS 93/05*, the meaning of *pro futuro*. It can only mean from the date on which the civil action for rent increase was lodged or the date indicated by the claimant, and for the period indicated in the action or until the date on which the court decides on the action.

### **Judgment no. IV. ÚS 175/08 of 9 September 2008**

131. In this judgment the Constitutional Court reiterated the opinion that the landlords could only claim rent increase *pro futuro* and indicated that the meaning of *pro futuro* was as of the date of lodging the action. Should the landlord’s founded claims of rent increase not be fully satisfied, he would have no choice but to sue the State for damages.

### **Judgment no. III. ÚS 3158/07 of 4 December 2008 (applied in III. ÚS 905/06 of 27 January 2009, III. ÚS 696/07 of 5 February 2009, III. ÚS 1129/07 of 19 February 2009, III. ÚS 95/08 of 19 February 2009)**

132. In these decisions the Constitutional Court observed that all previous cases in which the Constitutional Court had quashed lower courts’ decisions concerned an issue of rent increase for a past period of time (*inter alia* judgments nos. I. ÚS 489/05, II. ÚS 361/06, IV. ÚS 111/06). It

followed that the lower courts' obligation to decide on rent increase, affirmed in judgment Pl. ÚS 20/05 of 28 February 2006, could not be reduced only to future tenancy relationships; it was possible to apply it also to past relationships and to order the payment of additional rent for a past period of time (surrender of unjust enrichment).

133. The court further held that claims for damages against the State had a subsidiary character with respect to the landlords rent claims against the tenants (rent increase, payment of additional rent).

134. One of the three judges composing the chamber, Jan Musil, expressed the same dissenting opinion in all five cases where he esteemed that the rent increase was only conceivable as of the day of lodging the action for rent increase against the tenant. He noted that the judgment Pl. ÚS 20/05 contained no explicit reference as to the point of time from which it was possible to increase rent. While the judgment no. I. ÚS 489/05 referred to an increase *pro futuro*, excluding at the same time any increases for the past, judgment no. IV. ÚS 175/08 considered that the increase could be granted as of the day of lodging the action for rent increase *pro futuro*.

#### **Judgment no. IV. ÚS 2525/07 of 2 March 2009**

135. In this judgment the Constitutional Court held that the opinion that the rent increase could not be granted for the past, expressed in judgment no. I. ÚS 489/05, had been overcome and quashed the lower courts' judgments which had rejected an action for surrender of unjust enrichment lodged by a landlord.

#### **Opinion no. Pl. ÚS 27/09 of 28 April 2009 (published in the Official Gazette under the number 136/2009)**

136. The Constitutional Court decided that the ordinary courts could grant rent increases for a period from the date of the lodging of the action until 31 December 2006. The rent could not be increased for the period preceding the lodging of the action. Nor could it be increased for the period after 1 January 2007 since unilateral rent increases were authorized by Act no. 107/2006.

137. For the abovementioned period of time the action for damages against the State on the ground of the long-lasting unconstitutional inactivity of the Parliament regarding the failure to adopt a special regulation on conditions under which the owners were authorized to increase rents, charges, or other conditions of rent agreements unilaterally, had subsidiary character and could only be lodged if the action for rent increase against the tenant failed. As regards the period preceding the date of the lodging of the action, the owner could claim damages directly against the State.

138. In that respect, the Constitutional Court precised that the right to damages from the State could in no way be deduced from its judgment no. Pl. 20/05 of 28 February 2006 where it had held that the long-lasting inactivity of the legislator had been unconstitutional. Responsibility for legislative competence was primarily political. Although the margin of appreciation of the legislator was limited by the constitutional order, if these boundaries were not respected it was possible either to repeal the relevant act or to declare its unconstitutionality by the Constitutional Court. Such intervention by the Constitutional Court could under some circumstances impact the rights of an individual which had been restricted (e.g. inapplicability of an act in a particular case). Nonetheless, it did not create the individual's claim for compensation. As regards judgments nos. I. ÚS 489/05 of 6 April 2006 and IV. ÚS 175/08 of 9 September 2008, the subsidiary claim of damages was based on the ordinary courts' unfounded refusal to grant an action for rent increase, not the legislator's inactivity.

139. The Constitutional Court further considered that claims for damages filed against the State under the State Liability Act on the ground of the long-lasting unconstitutional inactivity of the Parliament were to be analyzed by lower courts as claims for damages under Article 11 § 4 of the Charter. Since the Charter did not regulate practical details of such law suit such as competent authority, time-bars etc., the court esteemed that it was necessary to apply the State Liability Act *per analogiam*.

140. The Constitutional Court urged the legislator to deal with the issue of rent control and to take into consideration different measures adopted in Poland as a result of the Court's judgment in the case of *Hutten-Czapska v. Poland* (no. 35014/97, ECHR 2006-VIII).

141. There are dozens of decisions of the Constitutional Court delivered after this plenary opinion in which reference was made to this opinion and the landlords' constitutional appeals against ordinary courts' decisions on actions in which these landlords sought compensation for damage that had allegedly been caused by rent control, were granted.

### **Judgment no. I. ÚS 3241/07 of 16 June 2009**

142. The plaintiff sued the state for damages in the amount of the difference between regulated rent and market rent for the period between February 2002 and January 2004. In its judgment the Constitutional Court ruled that the "possibility to pursue an action for rent increase against the tenant was created only by judgment no. Pl. ÚS 20/05". Thus, the action for damages against the State did not have subsidiary character regarding the period concerned by the action. In other words, the owner was entitled to sue the State for damages directly regarding the period of time prior to that judgment.

The Court further held that the amount of indemnification to be paid by the State was not necessarily identical to the difference between the regulated rent and the rent that was common in the given locality.

**Judgment no. I. ÚS 680/08 of 2 July 2009**

143. In this case the owner filed an action for damages against the State on 29 August 2006. The action concerned the period from 1 September 2004 until 31 August 2006, i.e. both before judgment no. Pl. ÚS 20/05 but also after it became final, for which the owner was claiming payment of damages in the amount of the difference between regulated and usual rent.

144. The Constitutional Court reiterated that the “possibility to pursue an action for rent increase against the tenant was created only by judgment no. Pl. ÚS 20/05”. Consequently, the action for damages against the State did not have a subsidiary character until the day of publication of that judgment and the owners were entitled to sue the State for damages directly regarding the period of time preceding that date.

145. Nonetheless, the Constitutional Court esteemed that pursuant to the principle *vigilantibus iura*, the plaintiff should have introduced an action for rent increase for the period after the latter judgment became final. Although this fact did not entirely exclude the possibility of receiving compensation from the State, lower courts were obliged to take into account the amount which the owner could have successfully requested from the tenant.

146. The Court further held that the amount of indemnification to be paid by the State was not necessarily identical to the difference between the regulated rent and the rent that was common in the given locality.

147. The Constitutional Court further clarified that the court of appeal was manifestly mistaken when it considered that it was not possible to sue the State after the adoption of Act no. 107/2006 i.e. 31 March 2006. Restrictions on property rights had been removed first – although only progressively and partly – on 1 January 2007 when it became possible to increase rent unilaterally, not when the act had been adopted, nor when it took effect. This did not however exclude its subsidiary character after the publication of judgment no. Pl. ÚS 20/05.

**Judgments nos. IV. ÚS 1431/09 of 26 January 2010, III. ÚS 870/09 of 8 April 2010, I. ÚS 1026/08 of 19 August 2010, and Decision no. IV. ÚS 1343/10 of 3 September 2010**

148. In these rulings the Constitutional Court referred to its findings in opinion no. Pl. ÚS 27/09. It held that the ordinary courts could grant rent increases only for a period from the date of lodging of the action until 31 December 2006. For that period the action for damages against the State had subsidiary character and could only be lodged if the action for rent

increase against the tenant failed; for the period preceding the date of the lodging of the action, the owner could claim damages directly against the State.

#### **Judgment no. IV. ÚS 156/05 of 28 July 2009**

149. In this judgment the Constitutional Court applied its judgment no. Pl. ÚS 27/09 of 28 April 2009 and quashed the Supreme Court's judgment no. 25 Cdo 1124/2005 of 31 January 2007 (see paragraph 170 below).

150. The Court further held that the amount of indemnification to be paid by the State was not necessarily identical to the difference between the regulated rent and the rent that was common in the given locality.

#### **Decisions nos. IV. ÚS 152/06 of 4 August 2009, IV. ÚS 256/06 of 31 August 2009**

151. In these decisions the Constitutional Court, referring to its judgments nos. I. ÚS 489/05 and Pl. ÚS 27/09, refused to quash lower courts' decisions considering that the owner could not request the courts to order a tenant to pay the difference between a regulated rent and a rent that was common in the given locality (or "minimal economic rent") for a past period of time, whatever the legal ground e.g. surrender of unjust enrichment or compensation for limitation of property rights, but only claim a rent increase *pro futuro* from the date of lodging of such an action.

#### **Judgment no. I. ÚS 908/09 of 19 August 2009**

152. In this case the owners filed an action for damages against the State on 18 July 2007. Their action concerned the period from 1 May 2004 until 31 December 2006, i.e. both before judgment no. Pl. ÚS 20/05 but also after it became final, for which the owners were claiming payment of damages in the amount of the difference between regulated and economic rent.

153. The Constitutional Court ruled that the "possibility to pursue an action for rent increase against the tenant was created only by judgment no. Pl. ÚS 20/05". Thus, the plaintiffs had the possibility to sue the tenant as of the day of publication of that judgment in the Official gazette. Regarding the period preceding that date, the owners were entitled to sue the State for damages directly.

154. Therefore, the Constitutional Court esteemed that pursuant to the principle *vigilantibus iura*, they could have introduced an action for rent increase for the period after the latter judgment became final. Although this fact did not exclude the possibility of receiving compensation from the State for that period without prior action against the tenants entirely, lower courts

were obliged to take into account the amount which the owner could have successfully requested from the tenant.

155. The court rejected the owners' argument that due to the entry into force of Act no. 107/2006 it would have been useless to introduce an action for rent increase after 2 June 2006. The court esteemed that the day of taking of effect of that law was not decisive but 1 January 2007 – the first day as of which it was possible to increase rent unilaterally.

156. The Court further held that the amount of indemnification to be paid by the State was not necessarily identical to the difference between the regulated rent and the rent that was common in the given locality.

**Decisions nos. I. ÚS 2187/09 of 8 September 2009 and II. ÚS 3134/09 of 18 February 2010**

157. These decisions confirmed that the approach developed in decision no. Pl. ÚS 27/09 was only applicable until 31 December 2006. Afterwards, it was necessary to apply Act no. 107/2006 which provides for a unilateral increase of rents.

**Judgment no. IV. ÚS 1431/09 of 26 January 2010**

158. On 8 December 2006, the owner sued the State for damages in the amount of the difference between regulated and market rent for the period between 22 December 2004 and 21 December 2006. In its judgment the Constitutional Court reiterated that the "possibility to pursue an action for rent increase against the tenant was created only by judgment no. Pl. ÚS 20/05." Consequently, the Court ruled that the owner could claim rent increase from the tenant only for the period after 2 June 2006, the date on which the Constitutional Court's judgment no. Pl. ÚS 20/05 was published. Regarding the period preceding that date, actions for damages against the State could be lodged directly.

For the period after the latter judgment had been published the possibility of receiving compensation directly from the State without prior suing of the tenants for rent increase was not excluded, but lower courts were obliged to take into account the amount which the owner could have successfully requested from the tenant.

159. The Court further reiterated that the amount of indemnification to be paid by the State was not necessarily identical to the difference between the regulated rent and the rent that was common in the given locality.

**Decision no. IV. ÚS 141/09 of 26 January 2010**

160. In this case, the landlord repeatedly requested a tenant to increase rent between 1 November and 31 July 2005. The tenant refused the

landlord's proposals. In consequence, the landlord introduced an action for surrender of unjust enrichment, or alternatively for payment of compensation for limitation of property rights, against the tenant for the abovementioned period. His action was rejected by lower courts with a reference to the Constitutional Court's judgment no. I. ÚS 489/05. In his constitutional appeal, he complained that the legal opinion applied by lower courts was erroneous since the limitation of rent increase *pro futuro* made it impossible to obtain redress for the period which was relevant in his case. The Constitutional Court rejected his complaint applying decision no. I. ÚS 489/05 and opinion Pl. ÚS 27/09.

#### **Decision no. IV ÚS 716/07 of 25 October 2010**

161. This decision was adopted in the same law suit as judgment no. Pl. ÚS 20/05 of 28 February 2006. After the adoption of the Constitutional Court's latter judgment, which quashed the lower courts' decisions by which the landlord's action for payment of the difference between the regulated rent and the rent common in the given locality for a past period of time had been rejected, the lower courts informed the applicant that in the light of judgment no. Pl. ÚS 20/05 of 28 February 2006 he was entitled to claim a rent increase only *pro futuro* and gave him the possibility to reformulate his action. The applicant did not comply with that invitation esteeming that he should be given a possibility to obtain redress not only for future but also for the past. Moreover, if he had complied, his reformulated action would either have been rejected on the ground that as of 31 December 2006 the new Act on unilateral rent increase was applicable, or such rent increase would only cover a period of 25 days between 6 December and 31 December 2006.

162. The Constitutional Court applying its judgment no I. ÚS 489/05 and opinion Pl. ÚS-st 27/09 rejected the new constitutional appeal considering that a rent increase could only be granted *pro futuro*.

#### **Judgment no. II. ÚS 115/08 of 2 March 2011**

163. This judgment was adopted in the same case as the judgment no. I. ÚS 717/05 of 21 March 2006 (constitutional appeal lodged on 20 December 2005), where the plaintiff's action to declare null and void regulated tenancies and order the tenant to pay a newly fixed increased rent as of 1 April 2003, lodged on 6 August 2003, had been rejected by ordinary courts. These decisions were subsequently quashed by the Constitutional Court in the abovementioned judgment and the case was remitted to the lower courts which, yet again, rejected the owner's request to increase the rent.

164. Applying judgment no. I. ÚS 489/05, they considered that the owner could not claim rent increase for a past period of time, therefore any rent increase could be effective only as of the day of delivery of the court's decision, in this particular case 27 June 2007. The plaintiff however demanded rent increase from 1 April 2003 until 21 December 2006. Thus, more than five years following the applicant's initial constitutional appeal and almost 8 years after he lodged his initial action, the Constitutional Court remitted the case, again, before the lower courts.

165. The Constitutional Court approved the approach of the lower courts to the extent that they had rejected the plaintiff's action for rent increase for the period between 1 April 2003 and 5 August 2003. Nonetheless, the lower courts' opinion that it was possible to increase rent only as of the date of delivery of their decision was unconstitutional. Regarding the period between 6 August 2003, when the applicant lodged his action, and 21 December 2006, when he transferred the property of the building, the lower courts should have decided on the rent increase.

**Decisions nos. I. ÚS 3654/11 and I. ÚS 1896/12 of 20 November 2012  
and no. II. ÚS 3685/12 of 14 March 2013**

166. In these decisions the Constitutional Court rejected the idea that by its opinion no. Pl. ÚS –st 27/09 it had created a completely new action against the State. It had only held that action lodged before under Act no. 82/1998 should be considered as actions lodged under Article 11 § 4 of the Charter. Therefore it cannot be considered that the limitation period started to run only from the plenary opinion. In the decision no. II. ÚS 3685/12 it upheld the conclusions of the ordinary courts that for the claim against the State under Article 11 § 4 of the Charter the general three year prescription period applied running from 2006 and not from the date of adoption of the plenary opinion no. Pl. ÚS –st 27/09.

**IV. SUPREME COURT'S DECISIONS**

**Judgment no. 26 Cdo 867/2004 of 31 August 2005; Decisions  
nos. 26 Cdo 80/2005 of 15 September 2005; Cdo 819/2005 of  
22 September 2005; 26 Cdo 1674/2005 of 19 October 2005;  
26 Cdo 1912/2005 of 26 October 2005 and 26 Cdo 983/2005 of  
27 January 2006**

167. In these judgments the Supreme Court held that the Civil Code (and any other statute) did not allow a court to interfere with the contractual tenancy or to modify one of its components, including the rent, and that this entitlement was confined to the legislative and executive powers in which

courts could not intervene and for which they could not substitute themselves.

**Judgments nos. 26 Cdo 32/2006 of 7 July 2006; 26 Cdo 1013/2005 of 30 August 2006; 26 Cdo 1039/2006 of 31 August 2006; 26 Cdo 1213/2006 of 20 September 2006; 26 Cdo 1924/2006 of 10 October 2006; 26 Cdo 2106/2006 of 24 October 2006**

168. In these judgments, the Supreme Court applied the binding opinion of the Constitutional Court expressed in its judgment no. Pl. ÚS 20/2005 and held that if there was no agreement on an amendment to the tenancy agreement and there was no special law allowing the unilateral increase in rent as provided for in Article 696 § 1 of the Civil Code, general courts were empowered to intervene in the rent relationship and to increase (fix) the rent.

**Decision no. 26 Cdo 594/2005 of 16 August 2006; Judgments nos. 26 Cdo 1013/2005 of 30 August 2006; 26 Cdo 1039/2006 of 31 August 2006; 26 Cdo 1924/2006 of 10 October 2006; 26 Cdo 3663/2007 of 29 October 2008**

169. In these judgments the Supreme Court held, with reference to the Constitutional Court's judgment no. I. ÚS 489/05, that the rent could be increased only *pro futuro*, not for the past.

**Judgment no. 25 Cdo 1124/2005 of 31 January 2007 (applied *inter alia* in decisions nos. 25 Cdo 3034/2005 of 26 September 2007, 25 Cdo 2076/2006 of 24 October 2007, 25 Cdo 3113/2005 of 25 October 2007, 25 Cdo 2818/2005 of 29 October 2007, 25 Cdo 811/2006 of 22 November 2007, 25 Cdo 3098/2005 of 27 November 2007, 25 Cdo 4513/2007 of 29 January 2008, 25 Cdo 4531/2007 of 30 January 2008, 25 Cdo 1250/2006 of 28 February 2008, 25 Cdo 2864/2006 of 11 March 2008, 25 Cdo 2742/2007 of 21 April 2009, 25 Cdo 1893/2008 of 21 April 2009)**

170. The Supreme Court dealt with an appeal on points of law brought against a decision of the appellate court upholding the first-instance judgment by which the claimant's action for damages against the State had been dismissed. The court dismissed the appeal on points of law, but noted the following:

“In the case under consideration the appellate court was dealing with a legal issue – whether the Parliament's activities in voting on an Act constituted an official procedure within the meaning of section 13 of Act no. 82/1998. Since this legal issue

has never been dealt with in the case-law of the appellate review court, in this respect the challenged appellate court judgment represents a decision that is of fundamental importance for its precedent value and in this regard the appeal on a point of law is admissible under Article 237 § 1(c) of the Code of Civil Procedure. ...

State liability under Act no. 82/1998 is in principle related to incorrect official procedure of executive and judicial authorities. With regard to the fact that the Parliament, consisting of the Chamber of Deputies and the Senate, is the supreme authority of the legislative power ... which decides, in a representative democracy, by the voting of its members – Deputies and Senators – whether or not to enact legislation, while there is no rule or regulation and there cannot be any rule or regulation on how the individual Deputy, Senator or a group of Deputies or Senators should vote on bills ..., the procedure for the enactment of legislation by voting in the Chamber of Deputies or the Senate cannot be considered an official procedure within the meaning of section 13 of Act no. 82/1998 and – if the rules of procedure of the Chamber of Deputies or the Senate were observed – it would furthermore be impossible to consider a ‘judicial’ review as to whether the outcome of the voting was correct or incorrect. It is part of the constitutional sovereignty of the legislative authority, which is accountable to the people. ...

The result of votes by the Deputies or Senators in their respective legislative body does not constitute an official procedure and therefore liability on the part of the State for damage in relation to individual voters cannot result from it.

The appellate court’s legal reasoning that for State liability for damage to be established, first of all, the requirement of incorrect official procedure of a State authority in applying State power was not met is correct. This reason *per se* is sufficient to reject an action for damages. With regard to this, the other objections in the appeal on points of law cannot influence the overall conclusion of the appellate court.”

**Decisions nos. 25 Cdo 290/2006 of 26 February 2008,  
25 Cdo 700/2006 of 25 March 2008, 25 Cdo 1861/2007 of  
26 March 2008, 25 Cdo 1309/2006 of 22 April 2008,  
25 Cdo 1220/2007 of 4 June 2008, 25 Cdo 3021/2006 of 14 August  
2008**

171. In these decisions the Supreme Court applying its judgment no. 25 Cdo 1124/2005 of 31 January 2007 refused to admit that the landlord could sue the State for damages on the ground that the Parliament failed to adopt a law. It further held that the Constitutional Court’s judgments nos. Pl. ÚS 20/05 of 6 April 2006 and I. ÚS 489/05 of 6 April 2006 did not have any effect on that conclusion.

**Decisions nos. 26 Cdo 800/2006 of 21 December 2006**

172. In this decision the Supreme Court held that judicial rent increase could be granted only until the date of taking of effect of a new legislation allowing for unilateral rent increase.

**Judgment no. 26 Cdo 3255/2007 of 19 November 2008**

173. The plaintiff filed an action for rent increase as of 4 August 2006 which was rejected by ordinary courts. The court of appeal in particular held that the plaintiff could have increased rent pursuant to the Act 107/2006 at the material time.

174. The Supreme Court rejected the appeal on points of law. Referring to judgment no. II. ÚS 361/06 it held that rent increase by ordinary courts had been possible only exceptionally during the period of absence of a legal norm authorizing rent increases. This period however ended on 31 March 2006 when Act no. 107/2006 took effect. Indeed, owners were entitled to increase rents pursuant to this Act from 31 March 2006 until 31 December 2010.

**Judgment no. 26 Cdo 3663/2007 of 29 October 2008 and decision no. 26 Cdo 4595/2007 of 20 January 2009**

175. In these decisions the Supreme Court held that rent increase by ordinary courts was possible only exceptionally during the period of absence of a legal norm authorizing rent increases. According to the Supreme Court this period however ended on 31 March 2006 when Act no. 107/2006 took effect. Indeed, owners were entitled to increase rents pursuant to this Act from 31 March 2006 until 31 December 2010.

**Judgment no. 26 Cdo 2259/2007 of 24 March 2009**

176. On 31 July 2006, the plaintiffs filed an action for rent increase as of July 2006 which was rejected by ordinary courts. The court of appeal in particular confirmed the first instance court's view that it was not possible to grant rent increase after 31 March 2006 when Act no. 107/2006 took effect. Indeed, if the courts granted rent increase, they would decide against valid and applicable legislation.

177. The Supreme Court recalled its jurisprudence according to which it was not possible to grant rent increase after a new legislation on rent increase had taken effect and declared the appeal on points of law inadmissible.

**Judgments nos. 25 Cdo 3305/2007 of 29 July 2009, 25 Cdo 3777/2007 of 25 August 2009, 25 Cdo 4508/2008 22 October 2009, 25 Cdo 3792/2009 of 27 January 2010, 25 Cdo 2395/2008 of 11 February 2010, 25 Cdo 2953/2008 of 11 February 2010, 25 Cdo 4078/2008 of 21 December 2010, 25 Cdo 2660/2009 of 22 December 2010, 28 Cdo 196/2009 of 5 April 2011, 28 Cdo 1409/2009 of 20 October 2011**

178. In these decisions the Supreme Court applying the Constitutional Court's judgment no. Pl. ÚS 27/09 of 28 April 2009 quashed the lower courts' decisions which had rejected the landlords' actions for damages against the State. It maintained that the State Liability Act was not applicable to the Parliament's inactivity as legislator. Nonetheless, claims for damages against the State filed under the State Liability Act were to be analyzed as claims for damages for forced restriction of ownership rights within the meaning of Article 11 § 4 of the Charter.

**Judgment no. 26 Cdo 2489/2007 of 28 May 2009 and Decision no. 26 Cdo 1366/2008 of 8 July 2009**

179. In this judgment the Supreme Court recalled both its jurisprudence, according to which judicial rent increase could only be granted until 31 March 2006, and the Constitutional Court's opinion no. Pl. 27/09 according to which this was possible until 31 December 2006.

**Decisions nos. 26 Cdo 5408/2008 of 10 November 2009, 26 Cdo 3265/2009 of 14 July 2010, and Judgment no. 26 Cdo 1480/2009 of 25 May 2010**

180. In these decisions the Supreme Court applied the Constitutional Court's judgment no. Pl. 27/09 and held that the ordinary courts were entitled to grant rent increases for a period from the date of lodging of the action for rent increase until 31 December 2006.

**Decision no. 26 Cdo 392/2009 of 16 March 2010**

181. In this decision the Supreme Court recalled both its jurisprudence, according to which judicial rent increase could only be granted until 31 March 2006 and the Constitutional Court's opinion no. Pl. 27/09 according to which this was possible until 31 December 2006.

182. It declared the appeal on points of law inadmissible confirming the appellate court's view that "the landlord could not claim rent increase for a period when Act no. 107/2006 had already been effective."

**Decision no. 26 Cdo 1819/2009 of 20 October 2009**

183. In this decision the Supreme Court, notwithstanding the fact that it referred to the Constitutional Court's judgment no. Pl. ÚS 27/09, approved the appellate court's decision which had dismissed an action for rent increase filed after 31 March 2006, date of taking of effect of Act no. 107/2006.

This decision was confirmed by the Constitutional Court on 26 August 2010 (decision no. I. ÚS 96/10).

**Judgment no. 26 Cdo 1480/2009 of 25 May 2010**

184. In this judgment the Supreme Court applied the Constitutional Court's judgment no. Pl.-st 27/09 and held that it was not true that a judicial rent increase could take effect only after the delivery of the court decision on rent increase but that it took effect as of the date of lodging of the action for rent increase.

**Decision of the Civil and Commercial Division of the Supreme Court of 9 January 2013**

185. The plenum of the Civil and Commercial Division of the Supreme Court decided to publish, and thus implicitly agree with, the judgment of the Prague Municipal Court no. 13 Co 578/2011 of 22 February 2012 in which the Municipal Court had held that the action for compensation under Article 11 § 4 of the Charter was subject to three year period of limitation running from the time when the property rights of landlords had been interfered with.

**Judgment no. 28 Cdo 2421/2012 of 13 March 2013**

186. In this decision the Supreme Court, referring to the decision of the Constitutional Court no. I. ÚS 1896/12, held that the action for compensation under Article 11 § 4 of the Charter is subject to three year period of limitation running from the time when the landlords suffered the damage. Moreover it held that the rejection of the plea of limitation period of the Government can happen only in strictly exceptional circumstances.

**Judgment no. 22 Cdo 367/2012 of 23 April 2013**

187. In this judgment the Supreme Court dealt with the question how to calculate the amount of compensation for forcible restriction of ownership rights under Article 11 § 4 of the Charter to be paid by the State because of

rent control. It held that courts must always take into account the individual circumstances of each case, including how long the flat or flats were subjected to rent regulations; whether all the flats in the house were regulated or whether the owner could have received sufficient income from flats or business premises in the house not subject to rent regulation; and the concrete cost of maintenance of the house. On the other hand the manner of acquiring the ownership was not relevant for the purposes of calculating the amount of due compensation.

## V. THE CASE-LAW OF THE ORDINARY COURTS

**Prague 1 District Court's Decisions nos. 27 C 46/2002-23 of 19 September 2002; 22 C 77/2004-33 of 29 November 2004; 24 C 189/2004-27 of 9 February 2005; 24 C 3/2005-33 of 12 October 2005; 13 C 338/2006 of 21 June 2007; Prague Municipal Court's Judgments nos. 16 Co 100/2003-46 of 2 December 2003; 20 Co 67/2005-47 of 28 April 2005; 20 Co 218/2005-47 of 29 August 2005; 20 Co 2/2006-47 of 2 February 2006, 13 Co 300/2005-71 of 28 February 2006, 20 Co 135/2006-71 of 1 June 2006, 20 Co 162/2006-91 of 22 June 2006, 13 Co 184/2006-57 of 25 October 2006, 13 Co 194/2006-46 of 25 October 2006, 20 Co 270/2006-65 of 26 October 2006, 13 Co 302/2006-75 of 13 December 2006, 13 Co 376/2006-56 of 24 January 2007, 35 Co 239/2007-45 of 13 September 2007, 54 Co 244/2007-47, 19 September 2007, 22 Co 395/2007-58 of 22 November 2007, 13 Co 461/2005-68 of 19 December 2007, 22 Co 255/2008-60 of 2 October 2008**

188. In these decisions the Prague 1 District Court and the Prague Municipal Court refused to admit that the Parliament's legislative inactivity could be regarded as a cause of the State's liability under the State Liability Act.

**Prague 1 District Court's Judgments no. 27 C 46/2002-23 of 19 September 2002**

189. In this judgment the District Court held *inter alia* that adoption of a generally binding legal act cannot constitute an incorrect official procedure for which damages could be requested pursuant to the State Liability Act.

**Tábor District Court's Decision no. 3 C 18/2005 of 21 April 2005 and  
České Budějovice Regional Court's Decision no. 15 Co 456/2005  
of 8 August 2005**

190. On 28 January 2005, the landlord introduced an action for rent increase *pro futuro* as of the day on which the court's decision becomes final. On 21 April 2005, the District Court partly granted the action (it increased the rent but fixed it at a lower level than the one requested by the landlord) in application of the Constitutional Court's judgment no. 2/03 of 19 March 2003. This decision was confirmed by the court of appeal and by the Supreme Court in its judgment no. 26 Cdo 32/2006 of 7 July 2006 which however referred to the Constitutional Court's judgment no. Pl. ÚS 20/2005 (see paragraph 163 above).

**Prague Municipal Court's Judgments nos. 20 Co 67/2005-47 of  
28 April 2005**

191. In this judgment the Prague Municipal Court held *inter alia* that regarding the period before 20 March 2003, i.e. the date as of which the last regulation fixing rent ceilings was repealed, the action for damages against the State could not be granted due to the fact that rights and obligations created before repeal of a legal act remain unaffected.

A similar approach was adopted by the Prague 1 District Court in its decisions nos. 20 Co 218/2005 of 29 August 2005, 24 C 3/2005 of 12 October 2005, 24 C 189/2004 of 9 February 2005, 24 C 171/2005 of 20 December 2006, and the Prague Municipal Court in judgments nos. 20 Co 2/2006 of 2 February 2006, 20 Co 270/2006 of 26 October 2006, 13 Co 218/2006-49 of 29 November 2006, 13 Co 178/2007 of 20 June 2007.

**Nymburk District Court's Decision no. 6 C 626/2004 of 9 September  
2005 and Prague Regional Court's Decision no. 24 Co 197/2006 of  
25 May 2006**

192. The landlord introduced an action for surrender of unjust enrichment for the period between 1 November 2003 and 28 February 2004 in the amount of the difference between the rent paid by the tenant and usual rent. The district court rejected this action on 17 September 2004 but its decision was quashed by the Prague Regional Court on 3 March 2005. Subsequently, the district court partly granted the action (in a lower amount) and its decision was confirmed by the Prague Regional Court.

**Plzeň-South District Court's Decision no. 7C 92/2005-56 of 21 March 2006; Plzeň Regional Court's Decision no. 61 Co 288/2006 of 28 February 2007**

193. The District Court rejected a landlord's action for rent increase considering that it was not empowered to interfere with the contractual relationship. Referring to the Supreme Court's decision 26 Cdo 32/2006 and to the evolution in Constitutional Court's and Supreme Court's case-law, the Regional Court quashed that decision considering that the District Court's approach was not admissible any more. Subsequently, the parties concluded a settlement agreement.

**Prague Municipal Court's Decision no. 14 Co 102/2006-56 of 14 April 2006**

194. In this decision the Prague Municipal Court quashed the first instance court's judgment and ruled that in the light of the evolving Constitutional Court's case-law (*inter alia* decisions nos. I. ÚS 489/05 and I. ÚS 717/05) the Parliament's legislative inactivity was to be regarded as a cause of the State's liability under the State Liability Act.

**Pardubice District Court's Decision no. 10 C 178/2004 of 9 May 2006**

195. This decision was adopted in the same case as the Constitutional Court's judgment no. IV. ÚS 611/05 of 8 February 2006. After the case was remitted by the Constitutional Court to the District Court, the plaintiff extended his action and claimed rent increase from 10 March 2003 until 10 March 2006. The defendant accepted to conclude settlement agreement with the plaintiff whereby she accepted to pay the whole sum requested by the landlord. In its decision the District Court approved the settlement.

**Prague Regional Court's Decision no. 8C 1005/05 of 25 May 2006; Nymburk District Court's Decision no. 8 C 1005/2005 of 15 September 2006; Prague Regional Court's Decision no. 8C 1005/05 of 26 April 2007**

196. The plaintiff introduced an action for surrender of unjust enrichment in the amount of the rent paid and the market rent. On 1 November 2005, the action was rejected by the District Court which considered that in the absence of special legislation allowing for rent increase it was not possible to increase rent unilaterally. On 25 May 2006, the Prague Regional Court applied the Constitutional Court's judgment no. Pl. ÚS 20/05 and quashed the District Court's decision. Both courts considered however that the landlord did not have a claim regarding unjust

enrichment but payment of rent. On 15 September 2006, the District Court accepted that view and granted the action. On 26 April 2007, the Regional Court confirmed this decision.

**Brno Municipal Court's Decision no. 31 C 262/2004 of 10 October 2006**

197. Referring to the Supreme Court's decision 26 Cdo 32/2006, the Municipal Court ordered the tenant to sign an amendment to the lease agreement whereby she agrees to a rent increase.

**Prague 4 District Court's Decision no. 28 C 389/2003 of 31 January 2007**

198. In this decision the District Court partly granted an action for rent increase *pro futuro*. It rejected the action for the period preceding the date of lodging of the action.

**Prague Municipal Court's Decision no. 14 Co 244/2007-88 of 17 August 2007**

199. In this decision, the Prague Municipal Court intervened again in the same case as in decision no. 14 Co 102/2006-56 of 14 April 2006 referenced above. Since the first instance court had not applied its opinion expressed in the latter decision, the Prague Municipal Court quashed the first instance court's second decision. It explained that although the Supreme Court had been refusing to admit the State's liability for the Parliament's inactivity under the State Liability Act, this approach had to change in the light of the Constitutional Court's case-law (*inter alia* decisions nos. I. ÚS 489/05, IV. ÚS 111/06, I. ÚS 123/06).

**Prague Municipal Court's Decision no. 22 Co 56/2009-91 of 28 May 2009**

200. In this decision, the Prague Municipal Court applied the Constitutional Court's judgment no. Pl. ÚS-st. 27/09 of 28 April 2009 and quashed the first instance court's decision rejecting the action for damages against the State.

**Pardubice District Court's Decision no. 8 C 153/2006-48 of 29 June 2009**

201. On 31 March 2006, the landlord lodged a rent increase action for the period from 1 January 2002 onwards. The District Court applied plenary opinion no. Pl. ÚS-st 20/05 of 28 April 2009 and granted the action only for the period between 1 April 2006 (day of lodging) and 31 December 2006. It rejected it for the period between the day of lodging and after 31 December 2006.