

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

THIRD SECTION

DECISION

Application no. 54831/07
Marcela HORÁKOVÁ and Others
against Slovakia

The European Court of Human Rights (Third Section), sitting on 4 January 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 7 December 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

## THE FACTS

1. The applicants are three Slovakian nationals. Ms Marcela Horáková (the first applicant) was born in 1943 and lives in Bratislava. Mr Milan Nemeček (the second applicant) was born in 1941 and lives in Bratislava. Ms Vilma Mikušová (the third applicant) was born in 1968 and lives in Bánovce nad Bebravou. Their application was lodged on 7 December 2007.

They were represented before the Court by Mr R. Procházka, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Priošíková.

## A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

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

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

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

5. As regards flats in residential houses, tenancy was replaced by the "right of lasting use".

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

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

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

9. In situations similar to that of the applicants, the owners of residential houses had practically no legal possibility to terminate tenancies and evict tenants without providing them with "housing compensation". Furthermore, owners were not allowed to transfer ownership of a flat leased by an individual to any third person other than a tenant.

10. The Government of the Slovak Republic have dealt with the issue of rent control on several occasions (see also paragraphs 19-22 below).

11. Documents of the Ministry of Construction and Regional Development indicate that registration forms have been submitted by tenants in respect of 923 flats where rent control is applied. 2,311 persons have lived in those flats, the average surface area of which is 71.38 square metres. The documents indicate that it is envisaged that substitute accommodation will be made available to the persons concerned by the planned reform to the extent that this is justified by their social situation. 76.5% of the tenants thus registered lived in flats located in Bratislava.

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

*2. Particular circumstances of the applicants' case*

13. The applicants co-own a house which comprises several flats and is situated in the Bratislava-Staré Mesto municipality. Two of the flats have been used by tenants under the rent-control scheme.

14. The house was built in 1921 and in the 1950s it was placed under State administration on the ground that the first and second applicants' mother and the third applicant's grandmother was allegedly unable to ensure its repair.

15. At the first and second applicants' request, the house was released from State administration and restored to them, in poor condition, in 1992. They each own a 14/16 share of the house. The third applicant inherited a 13/180 share of ownership of the house in October 2002.

16. The applicants submitted that, between 1994 and 2007, repairs of the house were indispensable, resulting in expenses corresponding to approximately EUR 65,000. The amount which the applicants and the other co-owners invested in repairing the house exceeded by ten times the income which they have been able to obtain from letting the flats under the rent-control scheme. Further repairs of a similar value are still needed. The applicants maintained that the rent which they are entitled to receive does not even allow them to cover the maintenance costs.

17. According to the applicants, depending on the period and the relevant law in force, the maximum rent permissible represented between 5% and 13% of the level of rent applicable in respect of comparable flats in the same area which have been leased without State interference.

18. The Government were in disagreement with the figures put forward by the applicants. They relied on the opinion of an expert indicating that the average market price for the lease of comparable flats in the Bratislava-Staré Mesto municipality was between EUR 6.134 and EUR 6.476 per square metre depending on the number of rooms. The regulated rent per square metre in the two flats co-owned by the applicants (with a surface area of 75 square metres each) was EUR 1.

The Government were also opposed to the method which the applicants had used for calculating the maintenance costs for the house.

### B. Relevant domestic law and practice

19. A recapitulation of the relevant domestic law and practice is set out in *Krahulec v. Slovakia* (dec.), no. 19294/07, 7 June 2011).

20. In addition, on 15 September 2011, the Act on Termination and Settlement of Certain Apartment Tenancy Contracts (Law no. 260/2011) came into effect. It was adopted with a view to eliminating rent payment restrictions concerning individual owners.

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

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

## COMPLAINTS

23. The applicants complained that their rights under Article 1 of Protocol No. 1 had been violated as a result of the implementation of the rules governing rent control in respect of their property.

24. The applicants also complained under Article 13 of the Convention that they had no effective domestic remedy at their disposal in respect of the above complaint.

# THE LAW

## A. Article 1 of Protocol No. 1

25. The applicants complained that they were restricted in enjoying their property as a result of the rent-control scheme. They alleged a breach of Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

### *1. Arguments of the parties*

#### (a) The Government

26. The Government admitted that the rent-control scheme had resulted in a limitation on the use of the applicant's property. Such a measure was in accordance with the relevant domestic law, which met the requirements of accessibility and clarity, and the effects of which were sufficiently foreseeable.

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

28. As to the requirement of proportionality, the Government maintained that a swift deregulation of rent would have had unfavourable social implications, and that therefore the rights of tenants which had been established in the earlier non-market environment had to be protected while the State found a means of gradually resolving the issue. The rent-control scheme was therefore compatible with the general interest within the meaning of Article 1 of Protocol No. 1. There had been several increases in permissible rent levels and other measures had been taken with a view to resolving the issue.

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

30. With respect to the amount of rent chargeable under the rent-control scheme, maintenance costs would also have had to be borne by owners if their flats had not been rented out at all. Thus, the amount of rent and the

allegedly higher costs of maintaining the property could not automatically be associated.

31. The applicants had failed to submit detailed calculations of the maintenance and other costs during the relevant period. The Government objected to the example of calculation of maintenance costs based on methods used in the Czech Republic, and to the applicants' estimation of the amount of rent they could have obtained had the rent-control scheme not applied to the flats in their house.

32. Since the rent-control scheme currently affected only about 1,000 dwellings, amounting to 0.06% of the overall number of permanently inhabited housing facilities, it was questionable whether the situation in question was "systemic".

33. The Government concluded that the rent-control scheme met the general interest of society and was compatible with the interests of house and flat owners, as the maximum level of rent chargeable had been regularly increased and the number of houses to which the rent-control scheme would be applicable after 2011 had been reduced, while a legal framework for ending the rent-control system was currently being devised.

**(b) The applicants**

34. The applicants alleged that the interference with their right to peaceful enjoyment of their property was unlawful and that it did not pursue any legitimate aim. It imposed a disproportionate burden on them, for which there existed no relevant justification.

35. In particular, the applicants argued that the extent of the limitations imposed on the use of their property and their duration were capable of amounting to a *de facto* deprivation of property.

36. The interference complained of lacked a sufficient statutory basis. The relevant rules lacked consistency and were not sufficiently foreseeable. The applicants pointed to the fact that a large number of plans, measures and steps had been announced in the course of the last twenty years with a view to resolving the problem. However, the only tangible result was a minimal index-linking of the regulated rent levels, which did not change the position of flat owners to a substantial degree.

37. Despite the above-mentioned index-linking, the interference complained of continued to be disproportionate to the aim pursued. The rent which the applicants were entitled to receive did not even suffice to cover the maintenance costs inherently associated with the house. The figures put forward by the Government did not allow a different conclusion to be reached.

*2. The Court's assessment*

38. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the

determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

### B. Article 13 of the Convention taken together with Article 1 of Protocol No. 1

39. The applicants further complained that they had no effective remedy available as regards their complaint under Article 1 of Protocol No. 1. They alleged a breach of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

40. The Government stated that the alleged breach resulted from the relevant law as it stood.

It has been confirmed by the Constitutional Court and it has not been disputed between the parties that the alleged breach of Article 1 of Protocol No. 1 stemmed from the legal framework governing the rent-control scheme in Slovakia.

41. In this respect the Court reiterates that Article 13 cannot be interpreted as requiring a remedy against the state of domestic law (see *Iordachi and Others v. Moldova*, no. 25198/02, § 56, 10 February 2009, or *Leander v. Sweden*, 26 March 1987, § 77(d), Series A no. 116).

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

### C. Article 14 of the Convention taken together with Article 1 of Protocol No. 1

43. Upon communication of the application to the Government the Court decided, of its own motion, to put a question as to whether the applicants had been discriminated against, contrary to Article 14 of the Convention, in the enjoyment of their property rights.

44. Since the applicants did not reply to that question in their observations, the Court considers that no further examination of this issue is called for.

For these reasons, the Court unanimously

*Declares* admissible, without prejudging the merits, the applicants' complaint under Article 1 of Protocol No. 1 concerning the restrictions

which the rent-control scheme has imposed on their right to peacefully enjoy their possessions;

*Declares* inadmissible the complaint under Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1;

*Decides* that it is no longer required to examine whether the facts of the case amount to a breach of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

Santiago Quesada
Registrar

Josep Casadevall
President