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

# FIFTH SECTION

# DECISION

Application no. 11179/06
Oskar MORAWETZ
against the Czech Republic

The European Court of Human Rights (Fifth Section), sitting on 17 September 2013 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 regard to the above application lodged on 16 March 2006,

Having regard to the observations submitted by the respondent Government, the observations in reply submitted by the applicants and the comments received from the third parties (Article 36 § 2 of the Convention and Rule 44 § 2).

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Oskar Morawetz, is a Canadian national, who was born in 1917 and lived in Ontario. The applicant died on 13 June 2007 in Canada. But his legitimate heirs, Ms Claudia Morawetz and Mr Richard Morawetz expressed their will to pursue the original application. They are represented before the Court by Mr M. Kölbl, a lawyer practising in Praha.

The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm, from the Ministry of Justice.

Mr Karel Jungwiert, the former judge elected in respect of the Czech Republic, withdrew from sitting in this case (Rule 28). The Government

accordingly appointed Mr Zdeněk Kühn to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

## A. The circumstances of the case

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

On an unspecified date in 1998, as it appears from an extract from the Prague Land Register issued on 29 February 2000, the applicant inherited a tenement house built on a plot of land in Prague-Holešovice. The house consists of fifteen dwellings which are subject to the rent-control scheme. The rents which the tenants were paying monthly for the lease of the respective flats in the applicant's house between 1 January 2002 and 31 December 2005 were described as follows[1]:

| Apt No. | Surface area in m² | Controlled rent per month in CZE | Regular market rent per month in CZE |
|---|---|---|---|
| 1 | 33.75 | 645.00 | 6,413.00 |
| 2 | 38.33 | 742.00 | 7,283.00 |
| 3 | 84.42 | 1,683.00 | 16,040.00 |
| 4 | 104.19 | 2,060.00 | 19,796.00 |
| 5 | 118.10 | 2,348.00 | 22,439.00 |
| 6 | 105.82 | 2,064.00 | 20,106.00 |
| 7 | 118.15 | 2,349.00 | 22,449.00 |
| 8 | 107.20 | 2,094.00 | 20,368.00 |
| 9 | 118.10 | 2,338.00 | 22,439.00 |
| 10 | 104.19 | 2,060.00 | 19,796.00 |
| 11 | 122.15 | 2,404.00 | 23,209.00 |
| 12 | 107.69 | 1,883.00 | 20,461.00 |
| 13 | 118.15 | 2,349.00 | 22,449.00 |
| 14 | 89.29 | 1,573.00 | 16,965.00 |
| 15 | 91.77 | 1,637.00 | 17,436.00 |

## B. Relevant domestic law and information

The relevant domestic law with historical background and development of rent-control scheme are set-out in *Vomočil and Art 38, a.s. v. the Czech Republic* (dec.), nos. 38817/04 and 1458/07, Annex)

[1] A comparison is made with the regular market rent.

# COMPLAINTS

1. The applicant complained that, at least since the judgment of the Constitutional Court published in the Official Gazette under the number 231/2000, there had been an unlawful situation in the rent-control sphere. As a consequence, landlords of tenement houses had to pay off the maintenance of the houses and flats, because controlled rents did not correspond to reconstruction value of the dwellings (*náklady prosté reprodukce*). In fact, landlords involuntarily paid off social allowances normally assumed by the State. The applicant noted that there was a systemic problem caused by the malfunctioning of the Czech legislature and the failure of the Czech executive authorities and the Parliament to deal with the matter.

2. Under Article 1 of Protocol No. 1 alone and together with Article 14 of the Convention, and with reference to Constitutional Court judgment no. 84/2003, the applicant argued that the rent-control scheme was not based on the financial situation and earnings of tenants and was, therefore, highly damaging to society, having a negative impact on a significant part of the population.

3. Under Article 1 of Protocol No. 1 taken together with Article 13 of the Convention, the applicant maintained that the domestic court system constituted a wholly inefficient instrument for defending landlords' constitutional rights and rights guaranteed by the Convention. In fact, the courts systematically refused to offer protection to landlords. The applicant added that even if the domestic courts and the Constitutional Court were able to deal with the large number of individual cases, lengthy judicial proceedings would render that remedy ineffective. Moreover, the Czech judicial system did not provide for a collective constitutional appeal.

# THE LAW

The applicant raised the different complaints under Article 1 of Protocol No. 1 alone and together with Articles 13 and 14 of the Convention which read, as follows:

**Article 1 of Protocol No. 1**

> "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."

**Article 13**

"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."

**Article 14**

"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."

The Government claimed that the applicant failed to exhaust domestic remedies. They maintained that there were two principal remedies available to the applicant. In particular, he could have brought an action for a rent increase against the tenants as a preventive remedy and an action for damages against the State as a compensatory remedy.

Moreover, in the context of civil proceedings concerning approval of the notice of termination of the tenancy, the applicant could dispute the constitutionality of his inability to terminate the tenancy unilaterally and of the right of succession to tenancy before the Constitutional Court.

The Court observes that the applicant is unable to point to an established case-law at the time of lodging his application that would absolve him from using any of the suggested remedies including, ultimately, a constitutional appeal. Admittedly, there were certain inconsistencies in the Constitutional Court's case-law and not all constitutional appeals brought by landlords were successful. Yet, in the vast majority of cases the Constitutional Court ruled in favour of landlords. In this respect the Court notes that what is relevant from the point of view of the rule of exhaustion of domestic remedies is that the remedy offers a reasonable prospect of success and not absolute certainty of success (see *Vomočil and Art 38, a.s.,* cited above, § 52).

The Court is rather of the opinion that the applicant could have had access to different procedures, and ultimately access to the Constitutional Court, which offered a reasonable prospect of success to his complaints in the circumstances of the present case. However, the applicant did not avail himself of any of those opportunities. He did not bring any proceedings at all and thus he did not provide the domestic courts, including the constitutional jurisdiction, with the opportunity of preventing or putting right the violations alleged (see *Vomočil and Art 38, a.s.,* cited above, §§ 53-54).

It follows that the present application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President