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

FIFTH SECTION

DECISION

Application no. 36687/09
Frantisek ŠUMBERA
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 29 June 2009,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr František Šumbera, is a Czech national, who was born in 1945 and lives in Svitavy. He was represented before the Court by Ms D. Křápková, a lawyer practising in Brno.

The Czech Government ("the Government") were represented by their Agent, Mr Vít A. Schorm, of 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).

The circumstances of the case

The applicant owns a tenement house consisting of twelve flats located in Mezina. When the house was acquired on 10 February 2004 the rent of one of the flats ("the flat") was set at 1,300 Czech korunas (CZK) (52 euros (EUR) per month.

On 23 March 2004 the applicant informed the tenants of the flat of a unilateral rent increase and asked them to pay CZK 3,500 (EUR 143) per month. The tenants did not react.

On 15 December 2006 the applicant lodged an action against the tenants seeking payment of the outstanding rent, including the increase, totalling CZK 28,500 (EUR 1,168) for the period from March to December 2004.

On 21 February 2008 the Bruntál District Court ordered the tenants to pay CZK 6,500 (EUR 266), which corresponded to five monthly regulated rents (5 x CZK 1,300) for the period from August to December 2004, which they had failed to pay. The court added that it was irrelevant that the tenants had not actually lived in the flat for some time, because the rent agreement had remained in force for the relevant period. The remainder of the applicant's action concerning the rent increase was rejected. In that regard, the court referred to the case-law of the Constitutional Court and the Supreme Court, and found that the rent could be increased only *pro futuro*.

On 13 May 2008 the Ostrava Regional Court dismissed an appeal lodged by the applicant, holding that given that the rent increase had not been valid, since such an increase was authorised neither by law nor within the terms of the rent agreement concluded between the applicant and his tenants, the applicant could not claim the rent increase retrospectively but could only claim for an increase in the future.

On 3 June 2009 the Constitutional Court, referring to its Opinion no. 27/09 of 28 April 2009, dismissed a constitutional appeal confirming that the rent could not be retrospectively increased by a court.

In their observations of 29 June 2012, the Government submitted that since the tenants had not been living in the flat, the applicant had let it to other persons for the period from July to December 2004 for CZK 3,500 (EUR 143) per month. The applicant confirmed this information in his observations of 26 November 2012 and added that since then, the flat had not been subject to rent control.

COMPLAINTS

The applicant complained under Article 6 of the Convention and Article 1 of Protocol no. 1 that the domestic courts had failed to award him any rent above the regulated rent, which had been insufficient even for the basic upkeep of the house.

THE LAW

A. Scope of the case

In his observations of 26 November 2012 the applicant submitted that his application concerned the rent control of all the twelve flats in his tenement house in Mezina.

The Government maintained that his original application related only to one flat in the house, which had been the subject of the domestic proceedings.

The Court notes that in his application the applicant alleged that his rights had been violated by the domestic courts. It observes in this respect that the domestic proceedings concerned only one flat. The application form describes those domestic proceedings and contains no information about any other flats in the tenement house. The only mention of other flats is in the very last sentence of the part of the application form headed "Statement of the object of the application", which reads that "the applicant reserves the right to extend this application to the whole period of rent regulation in the Czech Republic regarding twelve flats in the house".

In these circumstances, the Court concludes that the application form does not clearly state that the applicant complains about the rent-control scheme for all the flats in the house (see *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 131, 24 February 2011).

Accordingly, the complaints concerning the other eleven flats were introduced only on 26 November 2012, when the applicant complained that the rents for those flats had been controlled until December 2006. Irrespective of the question whether the applicant exhausted domestic remedies regarding the rent control of the flats, the Court finds that this part of the application must be dismissed as being introduced outside the six-month time-limit and must be rejected pursuant to Article 35 § 1 of the Convention (see *BENet Praha, spol. s r.o.*, cited above § 133).

Furthermore, the application form does not clearly indicate the period for which the applicant complains of the rent-control scheme. Given that his complaints are based on the domestic proceedings, it seems that the period should be the one at issue in the domestic proceedings. Moreover, in his claim for just satisfaction formulated in his observations of 26 November 2012, the applicant claims pecuniary damages only in the amount he unsuccessfully claimed in the domestic proceedings in respect of the flat. The Court will therefore proceed on the basis that the complaint regarding the flat concerns the period from March to December 2004.

B. Abuse of the right of application

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 abusive 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 *Hadrabová and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007, and *Liuiza v. Lithuania*, no. 13472/06, § 52, 31 July 2012).

The Court notes that the applicant was claiming in the domestic proceedings, and is claiming as damages before the Court, the unregulated rent for the flat for the period from March to December 2004. He failed to inform the Court that he had been collecting a market rent, in the exact amount that he is claiming, in the period from July to December 2004. The Court considers that this information concerns the very core of the case, which is that landlords were unable to charge market rents because of the rent-control and tenancy regulations. The applicant failed to give any explanation as to why he had not disclosed that information before the Government informed the Court in 2012.

Moreover, the Court cannot overlook the fact that the applicant claimed in the domestic proceedings the rent including the period in which he let the flat to other persons for the market rent. Thus, at least for the period from July to December 2004, he attempted in the domestic proceedings – and is ultimately trying before the Court – to collect rent for the same flat twice. The Court finds this conduct to be contrary to the purpose of the right of individual application (see, *mutatis mutandis*, *Hadrabová and Others*, cited above, where the applicants were seeking compensation for the length of proceedings and did not inform the Court that they had already been compensated at the domestic level).

In the light of these circumstances, the Court finds that the conduct of the applicant constitutes an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention.

Hence the rest of the application must be rejected as inadmissible, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President