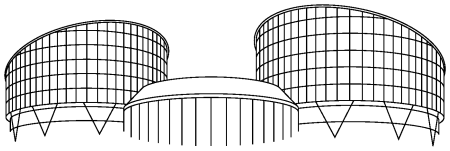

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KRAHULEC v. SLOVAKIA

(Application no. 19294/07)

JUDGMENT

STRASBOURG

5 July 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Krahulec v. Slovakia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 14 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 19294/07) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Mr Štefan Krahulec ("the applicant"), on 30 April 2007.

2. The applicant was represented by Mr R. Procházka, a lawyer practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged that the rent-control scheme had imposed restrictions on his right to peaceful enjoyment of his possessions, in breach of Article 1 of Protocol No. 1 to the Convention.

4. By a decision of 7 June 2011, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1) on the merits and just satisfaction and replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1945 and lives in Zvolen.

A. The applicant's property and title

7. In 1929 the applicant's grandfather built a house in Piešťany. His predecessors retained ownership under the communist regime. Ownership was transferred to the applicant from his mother on 21 December 1998.

8. The house comprises four flats. Two have a surface area of 108 sq. m each in size, while the other two measure 123 sq. m each.

B. Rent control of the applicant's property

9. At the time the application was lodged, the flats were inhabited by tenants with a regulated rent. Their or their predecessors' right to use the flats had been established by decisions taken by the municipal authorities between 1953 and 1986. After 1 January 1992 their right of use had been transformed into tenancies with regulated rent for an indefinite period.

10. Under the relevant legislation, the applicant had to accept that his flats were occupied by those tenants and that he could charge them no more than the maximum amount of rent fixed by the State ("the rent-control scheme"). The applicant had no possibility of unilaterally terminating the leases on his flats.

11. Under the applicable legislation, the maximum monthly rent chargeable for the flats in 1999 was the equivalent of some 13 to 33 euros (EUR). After several increases in the regulated rent, in 2004 the applicant was able to charge EUR 115 monthly in respect of each of the smaller flats and EUR 124 monthly in respect of the larger ones.

12. The applicant contended that he, in fact, received from the tenants less than the maximum amount of rent set by the applicable legislation. To this end he led several property disputes with them and the local municipality.

13. The parties provided differing figures as to the market rent.

The applicant relied on data from the National Association of Real Estate Agencies ("the NAREA") and claimed that the monthly market rent for similar flats reached EUR 600 to 800 between 2004 and 2007.

The Government submitted an expert valuation according to which the monthly market rent for the applicant's flats in 2010 amounted to EUR 265.50 and EUR 325 respectively.

14. In submissions made on 16 June 2014 the applicant informed the Court that the rent control in respect of his four flats had been terminated. The first flat had been subject to rent control until May 2007, the second and third flats until August 2007, and the fourth flat until April 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant domestic law and practice governing the rent-control scheme in Slovakia and its historical background are set out in the case of *Bittó and Others v. Slovakia* ((merits), no. 30255/09, §§ 7-16, 32-72, 28 January 2014).

III. IMPLEMENTATION OF THE COURT'S JUDGMENT IN THE CASE OF BITTÓ AND OTHERS

16. In *Bittó and Others* ((merits), cited above), the Court found that the application of the rent-control scheme in respect of the applicants' property constituted a violation of Article 1 of Protocol No. 1 to the Convention. In the relevant part of its judgment under Article 46 of the Convention it held that:

> "133. [Its] conclusion ... as regards the effects of the rent-control scheme on the applicants' right to peaceful enjoyment of their possessions, suggests that the violation found originated in a problem arising out of the state of the Slovakian legislation and practice, which has affected a number of flat owners to whom the rent-control scheme has applied .... The Court further notes that 13 other applications concerning the same issue are pending before it which concern some 170 persons.
>
> 134. It is true that measures have been taken with a view to gradually improving the situation of landlords. Thus, as a result of the introduction of Law no. 216/2011, the controlled rent could be increased by 20% every year as from the end of 2011. Where a municipality has not provided tenants exposed to material hardship with a dwelling by the end of 2016, the landlords will have the right to claim the difference between the free-market rent and the controlled rent ... Thus those measures provide for a complete elimination of the effects on flat owners of rent-control only as from 2017, and they do not address the situation existing prior to their adoption.
>
> 135. The Court considers that further measures should be taken in order to achieve compliance with Article 1 of Protocol No. 1. To prevent future findings of infringement of that provision, the respondent State should introduce, as soon as possible, a specific and clearly regulated compensatory remedy in order to provide genuine effective relief for the breach found."

17. Implementation of the judgment in *Bittó and Others* is still pending.

THE LAW

I. SCOPE OF THE APPLICATION

18. The Court notes that the present application is concerned with rent control in relation to the applicant's property from the date the applicant acquired title, 21 December 1998, until the rent-control scheme ceased to

apply in respect of it, in May and August 2007 and April 2008 (see paragraphs 7 and 14 above).

19. It is thus concerned with rent control over the applicant's property of eight years in respect of the first flat, almost nine years in respect of the second and third flats and over nine years in respect of the fourth flat.

20. In addition, the Court observes that the applicant provided no information concerning his claims for rent for his property which he had been entitled to under the rent-control scheme. It thus finds that the scope of the application is further limited to the difference between the rent that he was entitled to under the rent-control scheme and the rent that he would likely have obtained for his property on the open market.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

21. The applicant complained that his right to peaceful enjoyment of his possessions had been breached as a result of the implementation of the rent-control scheme which applied to his property. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

A. The arguments of the parties

1. The applicant

22. The applicant argued that the rent-control scheme had constituted an interference with his right to peaceful enjoyment of his property. He claimed that the restrictions imposed on the use of his property and their duration could amount to a *de facto* deprivation of property. He had been forced to satisfy the housing needs of other people at his own expense, and had had no possibility of terminating the leases or receiving adequate compensation for them.

23. In addition, he claimed that the interference had been without statutory basis because the relevant legislation was incoherent and insufficiently foreseeable, that it had not pursued a legitimate aim, and that the rent-control scheme had constituted a disproportionate burden on his ownership rights. In this connection he argued, *inter alia*, that the rent he had been entitled to charge for his flats under the rent-control scheme had not even covered the costs of their maintenance.

2. The Government

24. In their submissions in reply, the Government admitted that the rent-control scheme had resulted in a limitation on the use of the applicant's property. However, the measure had been in accordance with the relevant domestic law, which met the requirements of accessibility and clarity and was sufficiently foreseeable in effect, and had pursued a legitimate aim.

25. As to the requirement of proportionality, they challenged the figures provided by the applicant in respect of the market rent for his property and provided different figures on the basis of their own expert evidence (see paragraph 13 above).

26. The Government argued that the situation in the present case was different from that in *Bittó and Others* where the regulated rent had corresponded to 20-26% of the market rent. Relying on the expert evidence mentioned, they contended that in the present case the regulated rent had reached 44-50% of the market rent.

27. They considered that that difference distinguished the present case from *Bittó and Others*, that the burden created by the rent-control scheme in relation to the applicant in the present case had been justified by the legitimate aim it had pursued, namely social policy in the field of housing, and had not been disproportionate. In addition, they submitted that the relationship between the regulated rent and the market rent was not the only relevant criterion and that the Court should assess the case on the basis of the relationship between the rent the applicant had been entitled to and the expenses he had actually incurred for the maintenance of his property. However, they pointed out that he had failed to substantiate his claims in that respect.

B. The Court's assessment

28. The relevant case-law of the Court is summarised in *Bittó and Others* ((merits), cited above, §§ 94-100, with further references).

29. In that case, the Court found (i) that the rent-control scheme had amounted to an interference with the applicants' property, (ii) that that interference had constituted a means of State control of the use of their property to be examined under the second paragraph of Article 1 of Protocol No. 1, (iii) that it had been "lawful" within the meaning of that Article, (iv) that it had pursued a legitimate social policy aim, and (v) that it had been "in accordance with the general interest" as required by the second paragraph of that Article (ibid., §§ 101-04). The Court has no reason to reach different conclusions on these points in the present case.

30. In addition, in *Bittó and Others* the Court found that in the implementation of the rent-control scheme the authorities had failed to strike the requisite fair balance between the general interests of the

community and the protection of the applicants' right of property, as a result of which there had been a violation of their rights under Article 1 of Protocol No. 1 (ibid., §§ 105-19).

31. Turning to the facts of the present case, the Court observes that it follows the pattern of *Bittó and Others* entirely, both structurally and contextually. Nevertheless, the Government sought to distinguish it from that case, arguing that the restrictions placed on the applicant's property rights in the present case had been smaller than those in *Bittó and Others.*

32. In particular, the Government argued that in *Bittó and Others* the regulated rent had corresponded to 20-26% of the market rent, whereas in the present case it had corresponded to 44-50% of the market rent. In addition, they objected that the applicant failed to substantiate his claims in respect of the expenses actually incurred for the maintenance of his property.

33. The Court notes at the outset that it has not been provided with information permitting it to assess the actual effects of the rent control on the applicant's ability to maintain his property. Therefore, and in view of the scope of the case as established above (see paragraph 20), it will base its assessment on the difference between the maximum rent permissible under the rent-control scheme and the market rental value of the flats. It must accordingly establish first the regulated rent the applicant was entitled to under the rent control in the present case.

34. The Court notes that it has not been disputed between the parties that in 1999 the regulated rent for the applicant's flats ranged between the equivalent of EUR 13 and EUR 33, and that in 2004 it was EUR 115 and EUR 124 respectively (see paragraph 11 above).

35. As to the market rent, the Court notes the following disagreements in the parties' submissions. According to the applicant, between 2004 and 2007 the monthly market rent for flats similar to his was EUR 600 to 800, whereas according to the Government in 2010 the figures were EUR 265.50 and EUR 325 respectively.

36. This disagreement is reflected in the parties' submissions as regards the proportion that the regulated rent represented in relation to the market rent.

The Government submitted that the regulated rent in respect of the applicant's flats had corresponded to some 44-50% of the market rent in 2010 (see paragraph 26 above).

On the basis of information from the NAREA relied on by the applicant (see paragraph 13 above), the regulated rent amounted to 2-5.5% of the market rent in relation to the year 1999 and 15-20% in relation to the year 2004.

37. As regards the Government's argument in particular, the Court points out that it is based on figures for 2010, whereas the rent-control scheme had ceased to apply to the applicant's property in 2007 and 2008

(see paragraphs 14 and 18 above). Moreover, and more importantly, the Court notes that under the applicable legislation, the level of regulated rent gradually increased over the years (see *Bittó and Others* (merits), cited above, §§ 56-57), which naturally had an impact on the difference between the regulated rent and the market rent.

38. At the same time, the Court observes that the Government made no submissions in respect of the difference between the regulated rent and the market rent in the period preceding the gradual increases in regulated rent, that they submitted nothing to rebut the applicant's claim in that respect, and that there is no indication that the gradual increases in the regulated rent referred to above may serve as a basis for obtaining compensation for use of the property under the rent-control scheme with any retrospective effect.

39. In view of the above, and in so far as the Government's arguments have been substantiated, the Court finds nothing to justify a different conclusion on the merits of the applicant's complaint in the present case than that reached in *Bittó and Others*.

40. The Court thus cannot but conclude that the Slovakian authorities failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant's right of property.

There has accordingly been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

41. The Court notes that nineteen other applications are currently pending before it concerning similar matters to those obtaining in the present case and that they involve 239 applicants. As in *Bittó and Others* ((merits), cited above, §§ 129-35), and for the same reasons, it considers that further measures should be taken in order to achieve compliance with Article 1 of Protocol No. 1. To prevent future findings of infringements of that provision, the respondent State should introduce, as soon as possible, a specific and clearly regulated compensatory remedy in order to provide genuine effective relief for the breach found.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

A. Damage

43. The applicant claimed EUR 328,000 in respect of pecuniary damage, calculated with reference to the difference between the regulated rent and market rent from 1999 until 2011. In addition, the applicant claimed EUR 25,000 in respect of non-pecuniary damage.

44. The Government challenged the claim in respect of pecuniary damage arguing that, in so far as it was based on the material from the NAREA, it was speculative and in any event excessive, as was the amount in respect of non-pecuniary damage.

45. The Court has summarised the applicable case-law principles and has applied them in relation to claims for compensation in respect of pecuniary and non-pecuniary damage in a context similar to that in the present case in *Bittó and Others* ((just satisfaction), cited above, §§ 20-29).

46. In line with its findings in that case, the Court acknowledges that the applicant must have sustained damage which is to be compensated by an aggregate sum covering all heads of damage. It notes that compensation may only be awarded in respect of the period during which the rent-control scheme applied to the applicant's property.

47. In determining the scope of the award, the Court takes into account all the circumstances, including (i) the purpose and the context of the rent control and the level of the awards in *Bittó and Others*, (ii) the size of the property in question (see paragraph 8 above), (iii) the duration of the application of the rent-control scheme in respect of it (see paragraph 19 above) and (iv) its location (see paragraph 7 above).

48. In sum, the Court finds it appropriate to award EUR 64,800, plus any tax that may be chargeable, to cover all heads of damage.

B. Costs and expenses

49. The applicant claimed EUR 3,580.91 in costs incurred before the Court. This claim consisted of legal fees in the amount of EUR 3,262.23 and fees for a valuation of the market rent for his property in the amount of EUR 318.68. The main part of the claim was supported by an invoice, while the claim for the valuation fees was not supported by any documents.

50. The Government challenged the main part of the claim for being excessive and the remainder for being unsubstantiated

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

52. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award

the sum of EUR 3,000, plus any tax that may be chargeable to the applicant, in respect of his expenses for legal assistance before the Court.

C. Default interest

53. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
      (i) EUR 64,800 (sixty-four thousand eight hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President