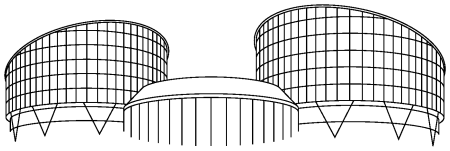

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RUDOLFER v. SLOVAKIA

(Application no. 38082/07)

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 Rudolfer 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. 38082/07) 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 Tomáš Rudolfer ("the applicant"), on 20 August 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 4 January 2012 the Court declared the application partly admissible.

5. The applicant and the Government each submitted 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 1946 and lives in Bratislava.

7. The applicant's parents built a house in Bratislava-Ružinov in 1937. In the second half of the 1950s they were compelled to donate the house to the State. On 31 July 1992 it was restored to the applicant's mother

(a three-quarters share) and the applicant (a one-quarter share) under the special legislation on restitution. Since 30 September 1996 the applicant has been its sole owner.

8. At the time of its restitution to the applicant and his mother, the house comprised nine flats subject to rent control. One flat has a surface area of 30 sq. m and the remaining eight measure 70 sq. m each. Under the relevant legislation (i) the applicant had to accept that his flats were occupied by the tenants, (ii) he could charge them no more than the maximum amount of rent fixed by the State, (iii) he could not unilaterally terminate the leases, and (iv) he could not sell the flats to anyone other than the tenants ("the rent-control scheme").

9. In 1996 and 2000 two of the bigger flats became vacant, as a result of which the rent-control scheme ceased to apply to them. The rent control ceased to apply in respect of another two 70 sq. m flats in January 2008 and November 2012 respectively. Currently, five flats are under the rent control regime.

10. Under the applicable legislation, between 1992 and 1999 the maximum permissible monthly rent chargeable for the flats was equivalent of some 3 to 8 euros (EUR). After several increases in the regulated rent, in 2007 the applicant could charge some EUR 35 for the smaller flat and EUR 65 for each of the larger ones.

11. The parties provided differing figures as to the market rent:

The applicant relied on data from the National Association of Real Estate Agencies ("NAREA") and claimed that in 2007 the monthly market rent for similar flats with a surface area of 70 sq. m reached EUR 553 and for flats measuring 30 sq. m some EUR 375.

The Government submitted an expert valuation according to which the monthly market rent for the applicant's flats in 2010 amounted to EUR 330 and EUR 160.50 respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. 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).

13. On 15 September 2011, the Termination and Settlement of Tenancy (Certain Apartments) Act ("Law no. 260/2011") came into force. It was enacted with a view to eliminating rent restrictions concerning individual owners.

14. Its provisions are applicable, in particular, to individual apartments whose rent has so far been regulated. In those cases, landlords were entitled to give notice of termination of a tenancy contract by 31 March 2012. Such termination of tenancy takes 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 expiry of the notice period, until a new tenancy contract with a municipality has been set up. Law no. 260/2011 further entitles landlords to increase the rent by 20% once a year until 2015.

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

16. Law no. 150/2013 amends the earlier legislation on the Housing Development State Fund. It took effect on 1 January 2014. Among other things, with reference to Law no. 260/2011 it entitles owners of houses or flats which have been restored to their original owners to apply for preferential loans for the purpose of modernisation of such buildings.

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

17. 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."

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

THE LAW

I. COMPLIANCE WITH THE SIX-MONTH TIME-LIMIT

19. Under Article 35 § 1 of the Convention, the Court may only deal with the matter "within a period of six months from the date on which the final decision was taken". Where the alleged violation constitutes a continuing situation against which no domestic remedy is available, such as the application of a rent-control scheme in the present case, the six-month period starts to run from the end of the situation concerned (see *Bittó and Others*, cited above, § 75). Pursuant to Article 35 § 4 of the Convention, the Court shall reject any application which it considers inadmissible under that Article. It may do so at any stage of the proceedings.

20. Following the Court's decision to declare the application admissible the parties submitted further information, which specified the periods of application of the rent-control scheme in respect of the flats concerned. According to the information submitted by the applicant rent control had ceased to apply in respect of two flats, both with a surface area of 70 sq. m ("the first and second flats"), in 1996 and 2000 respectively (see paragraph 9 above), that is more than six months before the introduction of the application on 20 August 2007.

21. Consequently, to the extent that the applicant alleges a violation of his rights as a result of the application of rent control to the first and second flats, he failed to respect the six-month time-limit laid down in Article 35 § 1 of the Convention (see *Bittó and Others*, cited above, §§ 75-78). It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. SCOPE OF THE APPLICATION

22. The Court notes that the present application is concerned with rent control in relation to seven flats, six with a surface area of 70 sq. m and one measuring 30 sq. m, and the duration of the rent control from the date the applicant acquired the title, on 31 July 1992 (a one-quarter share) and 30 September 1996 (full ownership), until the rent-control scheme ceased to apply in respect of two 70 sq. m flats in January 2008 and November 2012 respectively. The rent control in respect of the remaining five flats still applies.

23. The application is thus concerned with fifteen years' rent control in respect of the first 70 sq. m flat, twenty years in respect of the second 70 sq. m. flat, and twenty-four years in respect of the remaining five flats, four with a surface area of 70 sq. m and one measuring 30 sq. m.

24. 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 have been likely to obtain for his property on the open market.

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

25. 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

26. The applicant argued that the rent-control scheme constituted an interference with his right to peaceful enjoyment of his property. He claimed that the statutory basis regulating the rent-control scheme lacked consistency, and that the scheme had constituted a disproportionate burden on his ownership rights. He argued that the regulated rent was substantially lower than the market prices for similar flats in the area, and submitted that the level of regulated rent was less than one-tenth of the market rent for comparable flats. As a result he had been forced to satisfy the housing needs of other people at his own expense, with no possibility of terminating the leases or receiving adequate compensation for them. 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. He argued that owing to the repeated delays in deregulation of rents, he was in a permanent state of uncertainty and his health had deteriorated.

27. According to the applicant, Law no. 260/2011 had not provided any substantial relief of his situation, because a yearly 20% increase in regulated rent envisaged by the law was not sufficient to close the gap between the regulated and the market rent. Moreover, that law did not address the situation prior to its enactment.

2. The Government

28. 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; it had also pursued a legitimate aim.

29. 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 11 above).

30. The Government argued that the situation in the present case was different from that in *Bittó and Others*, where the regulated rent corresponded to 20-26% of the market rent. They referred to the 15% increase in regulated rent in 2008 and gradual increases in regulated rent envisaged by Law no. 260/2011. They calculated that after all these increases the regulated rent had reached 50-74% of the market rent in 2015.

31. 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.

32. Finally, the Government pointed out that the situation of legal uncertainty had been resolved by the adoption of Law no. 260/2011, because by the end of 2016 the regulated rent should reach the market rent. The Government also referred to the possibility of applying for a preferential loan to modernise their property (see paragraphs 13-16 above).

B. The Court's assessment

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

34. 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.

35. 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).

36. 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.*

37. 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 reached 50-74% of the market rent in 2015. 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.

38. 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 24), 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.

39. 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 3 and EUR 8, and in 2007 it was EUR 35 and EUR 65 respectively (see paragraph 10 above).

40. As to the market rent, the Court notes the following disagreements in the parties' submissions. According to the applicant, in 2007 the monthly market rent for similar flats with a surface area of 70 sq. m reached EUR 553 and for flats measuring 30 sq. m some EUR 375, whereas according to the Government in 2010 it was EUR 330 and EUR 160.50 respectively.

41. This disagreement translates into the parties' submissions as regards the proportion of the market rent that the regulated rent represented.

The Government submitted that the regulated rent in respect of the applicant's flats reached 50-74% of the market rent in 2015 (see paragraph 30 above).

On the basis of the information from NAREA relied on by the applicant (see paragraph 11 above), the regulated rent amounted to 9-12% of the market rent in 2007.

42. 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 and paragraph 14 above), which naturally had an impact on the difference between the regulated rent and the market rent. In this connection 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 (see paragraph 30 above), 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.

43. 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*.

44. 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.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

45. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed EUR 428,585.40 in respect of pecuniary damage, calculated with reference to the difference between the regulated rent and market rent between 1992 and 2011. In addition, the applicant claimed EUR 40,000 in respect of non-pecuniary damage.

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

49. 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).

50. In line with its findings in that case, the Court acknowledges that the applicant must have sustained damage, which is to be compensated for by an aggregate sum covering all heads of damage.

51. 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 relation to each individual part of the property (see paragraph 23 above), (iv) its location, and (v) the ownership share of the applicant in the property in the relevant time (see paragraph 7 above).

52. In sum, the Court finds it appropriate to award EUR 158,900, plus any tax that may be chargeable, to cover all heads of damage.

B. Costs and expenses

53. The applicant claimed EUR 2,323.57 in respect of legal fees incurred before the Court.

54. The Government challenged the fees as excessive.

55. 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).

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 2,000, plus any tax that may be chargeable to the applicant, in respect of his expenses for legal assistance before the Court.

C. Default interest

56. 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. *Declares* the application inadmissible to the extent that it concerns application of the rent-control scheme to the first and second flats;

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

3. *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 158,900 (one hundred and fifty-eight thousand nine hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 2,000 (two 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;

4. *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