EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

22 juin 2009

Pièce n° 4

Fédération Européenne des Associations Nationales Travaillant avec les Sans-Abri (FEANTSA) c. Slovénie
Réclamation n° 53/2008

REPONSE DU GOUVERNMENT A LA REPLIQUE DE LA FEANTSA

(TRADUCTION)

enregistrée au Secrétariat le 29 mai 2009

REPUBLIQUE DE SLOVENIE

Réponse du Gouvernement de la République de Slovénie à la réplique de la FEANTSA

(« Réplique au mémoire du Gouvernement de la République de Slovénie sur le bien-fondé de la réclamation n° 53/2008 », datée du 9 avril 2009)

Ljubljana, 29 mai 2009

Suite à la réplique de la FEANTSA au mémoire du Gouvernement slovène sur le bien-fondé de la réclamation n° 53/2008 (document daté du 9 avril 2009), nous tenons à apporter les précisions ci-après.

La loi de dénationalisation, dont la Slovénie s'est dotée en 1991, concernait quelque 11 000 logements qui devaient être restitués à leurs propriétaires d'origine. Après l'adoption de ce texte, une procédure de dénationalisation a été engagée qui a permis de privatiser totalement 6 300 logements, avec octroi d'un titre de pleine propriété ; les 4 700 autres n'ont pu l'être que partiellement (sans titre de pleine propriété) car ils étaient occupés par des locataires – les anciens titulaires du droit d'occupation.

A partir de 1991, ces locataires ont bénéficié d'une protection juridique identique à celle des autres locataires d'anciens logements sociaux. Le bail qu'ils avaient signé leur permettait d'occuper l'appartement pour une durée indéterminée et moyennant un loyer social dont le montant était encadré par l'Etat. Les locataires de ces logements dénationalisés n'ont pas pu accéder à la propriété au moment de la privatisation car les appartements qu'ils occupaient avaient déjà été restitués, conformément à la loi de dénationalisation, à leurs propriétaires d'origine – généralement, des personnes physiques.

Pour pallier cette situation, la loi sur le logement de 1991 et ses modifications ultérieures ont prévu trois options permettant aux locataires de logements dénationalisés qui le souhaitaient d'accéder à la propriété.

1ère option

Au moment de la privatisation des logements sociaux en 1991, le propriétaire d'un logement dénationalisé consentait à vendre l'appartement au locataire à un prix préférentiel. En compensation, l'Etat versait au propriétaire une somme représentant la différence entre le prix d'achat et la valeur totale du bien; celle-ci était déjà fixée par les pouvoirs publics et ne correspondait pas à la valeur marchande réelle du bien.

2e option

Le propriétaire d'un logement dénationalisé n'entendait pas vendre son appartement aux conditions proposées dans la 1ère option. Le locataire avait alors la possibilité d'acquérir un autre logement disponible sur le marché ou de construire une maison, et donc de quitter le logement qu'il occupait. L'Etat lui versait alors une somme forfaitaire et, le cas échéant, il avait également droit à un prêt de l'Office slovène des logements pour pouvoir acheter un autre logement approprié ou construire une maison. Les prêts accordés par cet organisme étaient relativement plus favorables que ceux des autres banques commerciales.

3e option

Le locataire d'un logement dénationalisé pouvait demander en mairie la liste des logements municipaux inoccupés et des logements occupés par des locataires, et décider d'acheter l'un d'entre eux dans le cadre d'une opération de privatisation.

La Cour constitutionnelle slovène a, dans son arrêt n° U-I-268/96 du 25 novembre 1999 (point 3), déclaré nulle et non avenue la troisième option susmentionnée; elle a considéré en effet que cette faculté comportait une atteinte supplémentaire au droit des propriétaires des logements et, partant, une restriction importante à leur liberté de disposer de leur bien. Une telle restriction aurait pu se justifier sur le plan constitutionnel si elle avait été motivée par la nécessité de garantir la fonction économique, sociale ou écologique du bien (cf. article 67 de la Constitution) ou si elle

avait été rendue nécessaire (conformément au principe de proportionnalité) par l'obligation de protéger les droits d'autrui. Or, d'après la Cour constitutionnelle, il n'y avait nullement lieu d'invoquer en l'espèce l'article 67 de la Constitution.

La nouvelle loi sur le logement de 2003 a fusionné les deux premières options dans le but de régler le problème du logement. Ce texte garantit lui aussi le droit du locataire à louer un logement pour une durée indéterminée moyennant un loyer social (fixé à l'avance). De plus, si le locataire se porte acquéreur d'un logement, il a droit à des aides plus importantes, non remboursables, déterminées selon une procédure distincte; le locataire peut négocier l'achat du logement dénationalisé avec le propriétaire si celui-ci le souhaite, ou décider d'acquérir un autre logement qui lui convient sur le marché ou de construire une maison.

Jusqu'à présent, 2 548 locataires d'appartements dénationalisés ont décidé d'engager une procédure afin de régler définitivement leur problème de logement; 334 ont déjà présenté une demande en ce sens, dont l'examen touche à sa fin. Nous pensons qu'à l'expiration du délai de cinq ans dont disposent les occupants de biens dénationalisés pour présenter un dossier en vue de régler définitivement leur problème de logement, délai qui court à compter de la date de la décision de dénationalisation, 320 autres locataires auront soumis une demande en ce sens.

Nous estimons qu'environ 1 490 locataires de logements dénationalisés n'auront pas opté pour un règlement définitif de leur problème de logement, et ce pour diverses raisons: certains se satisfont parfaitement de leur situation actuelle de locataires protégés acquittant un loyer social et bénéficiant d'un bail indéterminé; d'autres ne songent même pas à accéder à la propriété, en raison de leurs faibles revenus, de leur incapacité à souscrire un emprunt, de l'impossibilité pour eux d'entretenir un logement (qui est une obligation pour chaque propriétaire), du fait de leur âge, ou encore parce qu'ils se sont habitués à leur cadre de vie.

ANNEXE
(uniquement en anglais)

B, P, A, N,

REPUBLIC OF SLOVENIA

CONSTITUTIONAL COURT

Reference number: *U-I-268/96*
Date: *25.11.1999*

D E C I S I O N

The Constitutional Court in the procedure for evaluation of the constitutionality, launched upon request from the Municipal Council of the Municipality of Tolmin, represented by its President, and upon initiative of the "Plinarna Maribor" stock company, represented by Mr. Bozidar Vidmar, lawyer in Maribor, on its session held on 25 November 1999

D e c i d e d a s f o l l o w s :

1. Second paragraph of Article 123 of the Housing Act (Official Journal of the Republic of Slovenia No *18/91, 9/94, 21/94 and 23/96) are without prejudice to the Constitution.*

2. Paragraphs 3 and 4 of Article 125 of the Housing Act are without prejudice to the Constitution.

3. Paragraphs 5 and 7, as well as the first sentence of paragraph 8 of Article 125 of the Housing Act shall be repealed.

R a t i o n a l e

A.

1. The Municipal Council on behalf of Municipality of Tolmin, represented by the President, invokes to indent 7 of Article 23 of the Constitutional Court Act (Official Journal of the Republic of Slovenia No. 15/94 (hereinafter referred to as "the CCA") when requiring assessment of the constitutionality, it actually requires constitutionality of paragraph 2 of Article 123 of the Housing Act (hereinafter referred to as "the HA"), as well as of paragraphs 3, 4, and 5 of Article 125 of that Act. It claims that the above mentioned provisions, without previous consent by the municipalities in accordance with Article 140 of the Constitution, encroached on (also) its ownership right over housing units. In addition, the Municipality invokes general rules of the civil law. The Municipality further considers that, by means of these provisions, the legislator transfers to municipality owners the burden of denationalization which, in itself, constitutes exclusively the matter of the State and of the Slovenian Indemnity Fund. Current municipalities are not legal successors of former municipalities as socio-political communities, states the applicant Party, hence the Act must not impose to them the burden of denationalization and privatization of housing units. Following the first requests submitted on the basis of contested paragraphs of Article 125, it concludes that requests to the value amounting to approximately 180,000 DEM can be expected and as such too large burden for them.

2. "Plinarna Maribor", represented by Maribor lawyer Mr. Bozidar Vidmar, contests the provision referred to in paragraph 3 of Article 125 of the HA. It justifies its legal interest by the fact that it has received requests from holders of rights submitted on the basis of the provision being contested. A conclusion may be drawn from the Constitutional Court position that a legal entity must be treated, in terms of human rights, equally as a natural person, and that a legislator wishing to regulate differences in this regard must have sensible reasons originating from the nature of the matter in question. The initiating Party holds that, by enacting the contested provision, the legislator, without any sensible reason and without any logical connection with the subject of regulation, places additional burden upon legal entities as bounded parties in denationalization. The initiating Party moreover holds that benefits provided by the HA to owners of denationalized housing units, provided they are sold to protected tenants, at that moment are legitimate, yet that these should not be calculated to their account but to the account of the Slovenian Indemnity Fund and the Development Fund of the Republic of Slovenia. Hence it proposes in this regard that an assessment of conformity be done of Article 14 with the Constitution.

3. The National Assembly responds to the request by stating that the HA also regulates ownership transformation and privatization; that it had to respect the status of tenant right holders guaranteed in the previous Constitution; that the Act at the same time gives and burdens ownership to municipalities and that, hence, it is not the matter of transferring State tasks to municipalities requiring their approval; that legally determined municipal burdens are not disproportionate with the ones they have acquired with the occurrence of ownership; that the Denationalization Act (Official Journal of the Republic of Slovenia No 27-91 and the following (hereinafter referred to as "the DA") already lays down that the funds gained in the purchase during the sale of such housing units are a source of funds for the Slovenian Indemnity Fund, and that the provision referred to in paragraph 2 of Article 123 merely simplifies the procedure. Consequently, it holds that provisions contested by the first initiating Party are neither contrary to Article 140 nor to any other article of the Constitution.

4. In view of the initiative, the National Assembly responds that contested provisions represent a source of dissatisfaction both to denationalization right holders and to tenancy right holders, and that the principle of equality has not been violated as all denationalization bound parties have equal status as housing owners. Their denationalization burden is proportionate to ownership acquired, the National Assembly claims.

Should the initiating Party find the housing ownership not profitable to it, this Party may, in accordance with paragraph 3 of Article 130 of the HA, transfer such entitlement to the national housing fund or to the municipal housing fund.

5. In addition to statements issued by the National Assembly, the Government, in their issued opinion, explicitly state their being in favour of the content of provisions bringing the position of former tenancy right holders over denationalized housing units closer to the position of tenancy right holders over housing units acquired through the public finance system, and that those provisions are applied in the same manner. In terms of the initiative, the Government indicates to the fact that the Constitutional Court has rejected initiatives to assess the constitutionality of paragraph 2 of Article 113 whereby municipalities have at the same time been granted the status of (temporal) owners of housing units and bounded Parties in denationalization procedures. In the opinion of the Government, "material obligations" mentioned in paragraphs 3 and 4 of Article 125 do not have to be borne by the funds only, but also in part by the new temporal owner that "also has specified benefits on the basis of a particular property", implying primarily the fact that the housing unit in question may eventually remain under the title of the temporal owner as such. Consequently, having regard of the latter, they reiterate the tendency of the legislator to bring the positions of both categories of former tenancy right holders closer to each other.

B.- I.

6. The Constitutional Court accepted the initiative and incorporated the file for the purpose of collective processing.

7. Paragraph 2 of Article 123 of the HA states: "The seller must, without delay, send to the Slovenian Indemnity Fund the concluded contract on housing unit sale referred to in paragraph 2 of Article 113 of this Act to which no denationalization request has been filed or regarding which the denationalization request has been rejected with legal effect. The contract must specify that the buyer shall pay in to the Slovenian Indemnity Fund the amount of the housing unit purchased."

8. The contested provision applies to entities mentioned in paragraph 2 of Article 113 of the HA and for municipalities and other legal persons having become, with the adoption of the HA, owners of housing units i.e. apartments and houses, nationalized on the basis of regulations referred to in Articles 3 and 4 of the DA. It applies to cases when such entities sell housing units not covered by denationalization: it thereby obliges such entities to send the concluded contract to the Slovenian Indemnity Fund and that the contract must specify that the buyer shall pay in to the Slovenian Indemnity Fund the amount of the housing unit purchased.

9. The contested provision serves to bring to effect other legal provisions, namely the provision referred to in Article 49 of the DA, according to which one of the funding sources of the Slovenian Indemnity Fund is the "whole amount collected via purchase of nationalized housing units when such units are properly transferred from social ownership to persons not being bounded parties according to this Act", as well as the provision referred to in Article 9 of the Act on the Slovenian Indemnity Fund (Official Journal of the Republic of Slovenia No. 7/93 (hereinafter referred to as "the ASIF") according to which funds to cover the liabilities of the Fund come, inter alia, from the whole amount collected from nationalized housing units, if bounded parties according to the DA have not accepted requests or if these have not been fully denationalized. The contents of the contested provision is hence not the specification stating funds collected from the purchase of specified housing units should be transferred to the Slovenian Indemnity Fund but the fact that each contract must include a provision obliging the seller to forward the contract to the Fund. This represents a logical continuation of the legal status, determined in the HA and in other regulations which are not subject to this request for assessment of the constitutionality whereby the initiating Party has at the same time become the subject to ownership over a housing unit and a subject to charges and deductions of such ownership, either in the case of denationalization thereof or in the case of privatization thereof according to the HA, or in the case

of mere disposal therewith. The legislator was authorized to carry out such regulation yet, in the transition procedure, it had to shape the whole transition from a social and economic system based upon social ownership to a system with known ownership and market economy, in doing so having to carry out denationalization and a housing reform including ownership over and privatization of housing units in social ownership. In making efforts to maintain the whole system of housing unit ownership (in connection with the denationalization system), the legislator was allowed to prescribe, within the contents of the contested provision, without prejudice to the Constitution, in particular to Article 140 thereof, as stated by the initiating Party. The warning issued by the opponent party also stands that, for instance, a municipality may renounce ownership as referred to in the HA, together with charges stipulated in the HA, the DA, and the ASIF, in a manner envisaged in paragraph 3 of Article 130 of the HA.

B. - II.

10. Paragraph 3 of Article 125 of the HA among other things stipulates the following: "If an owner to whom a housing unit has been returned on the basis of denationalization regulations agrees with such a selling procedure, he shall be entitled to a *compensation* for a discount mentioned in paragraph 2 of Article 117 i.e. in Article 119 or 120 of this Act from the obliged Party for the return of the housing unit ..." Paragraph 4 of the same Article also states: "Should the owner disagree with the sale according to the paragraph above, the previous owner of the tenant right may, upon consent of the owner, himself acquire a housing unit under rent or may choose construction. In such case, the owner must pay to him ... a *remuneration* of 50% of that particular value and shall receive ... one third from the obliged Party for the return of the housing unit ..." The text further reads: "If the owner refuses to agree according to the provisions referred to in the paragraph above, he must himself pay to the previous tenancy right holder remuneration for the housing unit vacated as an obliged party in denationalization ...

11. Persons mentioned in paragraph 2 of Article 113 of the HA have become owners of apartments and of houses with the date of adoption of the HA. Ownership over such immovable property did not exist before that moment. Hence, ownership appeared genuinely with this Act, within the lines of burdens and restrictions determined by the legislator. These legal burdens and restrictions do not represent encroachment to municipalities' ownership over housing units as there was no such ownership prior to the regulation of such burdens. This applies to remunerations mentioned in paragraph 3, contested by both the proposing party and the initiating party, as well as to compensations mentioned in paragraph 4 of Article 125 of the HA contested by the proposing party only. Provisions contested do not alter the ownership legal status of the proposing party or of the initiating party, discussed in point 9 of this Decision. Furthermore, this does not apply to the transfer of tasks from State to municipal competence requiring previous consent according to paragraph 2 of Article 140 of the Constitution. This is why it is considered that the paragraphs discussed are without prejudice to this constitutional provision. As the burdens mentioned in both paragraphs equally apply to all obliged parties in terms of the return of (nationalized) housing units, it is not possible to speak about any violation of the principle of equality (cf. paragraph 2 of Article 14 of the Constitution). As the Constitutional Court has explained on several occasions, in addition to the requirement that all essentially equal conditions should be processed equally, the principle of equality in front of the Act also contains a requirement to the legislator that conditions yielding substantial differences among themselves be regulated differently, to an appropriate scale. The fact that housing units are involved having become, by means of forceful regulations, general property and hence not having originated within the system of public mutual financing with housing construction, as well as reasons stated in point 9 of this Decision point out to the fact that the legislator has had significant reasons to engage in separate regulation the status of units having turned to such housing units with the enactment of the HA.

12. Paragraph 5 of Article 125 of the HA among other things states: "In the case where the owner does not agree with the sale of the housing unit in accordance with paragraph 3 above, the previous holder of the

tenancy right ... may request from the obliged party, in terms of housing unit return, data and a list including all available vacant and occupied housing units in his ownership, and which he has to offer for purchase ...”

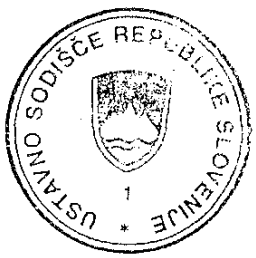
13. The provisions referred to in paragraph 5 of Article 124 in the amended HA imply an additional encroach to the right of housing unit owners, having originated with the adoption of the HA, yet they substantially limit the freedom of their disposal compared to housing units i.e. apartments in legal acts. Such encroachment could be constitutionally justifiable if sustained by the need to guarantee the economic, social or environmental functions of the property (cf. Article 67 of the Constitution) or if inevitably (in line with the principle of proportionality) necessitated by the protection of the rights of others. In this particular example, there are obviously no reasons mentioned in Article 67 of the Constitution hence are not claimed as such by the opposing party. With the aim of providing best possible equality between the legal position of former tenancy right holders in denationalized housing units - not only in terms of the rental relation having replaced their former tenancy right, but also in terms of the possibility of housing purchase – and the positions of other tenancy right holders, such additional burden to the enjoy of ownership is not possible to determine.

14. In view of the revoking of paragraph 5 of Article 125 of the HA, revoking was found necessary also for paragraph 7 and first sentence of paragraph 8, related by the meaning of their content with paragraph 5.

C.

15. The Constitutional Court adopted this Decision on the basis of Articles 21 and 43 of the CCA, in the following composition: President Mr. Franc Testen, as well as judges: Mr. *Janez Čebulj PhD, Mr. Zvonko Fišer PhD,* Mrs. *Miroslava Geč-Korošec, Mr. Lojze Janko, Ms. Milojka Modrijan Mr, Mirjam Škrk,* Mr.*Lojze Ude PhD, and Mrs. Dragica Wedam-Lukic.* The first point of the Decision text was adopted unanimously; the second point of the Decision text was adopted with seven votes in favour and two votes against, the latter cast by judge Wedam-*Lukičeva and judge Čebulj, who issued a recorded negative opinion; point 3 of the Decision text was adopted with 8 votes in favour and one vote against, the latter cast by judge Ude who issued a recorded negative opinion.* Judge Testen issued his recorded positive opinion.

Constitutional Court of the Republic of Slovenia
President Franc Testen



Predsednik
Franc Testen