EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Case document No. 1

European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia
Complaint n° 53/2007

COMPLAINT

registered at the Secretariat on 28 August 2008

Secretariat of the European Social Charter
Directorate General of Human Rights
and Legal Affairs
Directorate of Monitoring

Council of Europe

F-67075 Strasbourg Cedex

COLLECTIVE COMPLAINT

in accordance with the Additional Protocol to the European Social Charter

Providing for a System of Collective Complaints

FEANTSA v. SLOVENIA

Brussels, 14 August 2008

CONTENTS

A. ADMISSIBILITY AND GENERAL OBSERVATIONS

1. FEANTSA is a European non-governmental organisation with more than 100 member organisations in about 30 European countries. Members are non-governmental organisations that provide a wide range of services to homeless people including accommodation and social support. Most of the members of FEANTSA are national or regional umbrella organisations of service providers. FEANTSA is the only major European network that focuses exclusively on homelessness at European level. FEANTSA works closely with the European Union institutions, and has consultative status with the United Nations. FEANTSA enjoys participatory status with the Council of Europe and is one of the international NGOs, which has been included on a list of international NGOs entitled to lodge collective complaints alleging violations of the European Social Charter.

2. The Republic of Slovenia has been a High Contracting Party to the Revised European Social Charter (hereafter: RESC) since 1999. The Republic of Slovenia accepted supervision under the collective complaints procedure provided for in Part IV, Article D, paragraph 2 of the RESC in accordance with the Additional Protocol to the ESC providing for a system of collective complaints. The Republic of Slovenia ratified the RESC and the Additional Protocol on 11th March 1999 by the Act on Ratification of the European Social Charter (revised), published in the Official Gazette of the Republic of Slovenia – International Treaties, No 7/99 as per 10th April 1999.

3. The subject-matter of this complaint is the failure of the Republic of Slovenia to comply with the provisions of the RESC with regard to a specific group of Slovenian tenants in so-called restituted (denationalised) dwellings. However, we wish to emphasise that the aim of this complaint is neither to provoke political debates and disputes regarding this group of Slovenian citizens and their supposed lustration by the national authorities, nor to stir up political disputes regarding the restitution of property expropriated (confiscated or nationalised) by the socialist regime in the aftermath of the Second World War or the mass privatisation of housing in Central and Eastern European States during the transition period. On the contrary, this application focuses exclusively on the social consequences of certain measures taken by the national authorities of the Republic of Slovenia that affected the housing situation of a significant number of Slovenian citizens and raises the question of whether these measures are compatible with the rights stipulated in the RESC. Furthermore, by resolving this case certain questions of a general nature should be answered regarding the scope of the obligations of signatory states to the RESC and the scope of protection that the RESC provides for

households in Europe, especially in relation to the ratio between non-regression of rights and security of tenure, on the one hand, and housing rights protection and non-discrimination rules, on the other. The question of the relationship between the RESC and the European Convention for Protection of Human Rights and Fundamental Freedoms is also an important issue of this application.

4. Articles concerned:

- Article 31 of the RESC (right to housing);

- Article 16 of the RESC (right of the family to social, legal and economic protection);

- Article E of the RESC (anti-discrimination rule).

B. FACTS

I. The situation preceding the housing reform in the Republic of Slovenia during the period of transition

5. Prior to 1991, the national legislation followed the concept of housing economy that was in place in all of the former republics of the then Socialist Federal Republic of Yugoslavia (hereafter: SFRY). In line with the concept of a 'providing' housing system, the public authorities actively provided the necessary resources for solving the housing issues of the population. The basic forms of housing assistance consisted of granting cheap housing loans financed by public funds and guaranteeing the allocation of public housing for unlimited use of the individuals with the option of buying those flats at an advantageous price. Housing assistance was allocated according to the principles of reciprocity and solidarity. Until 1991, this housing concept was established by the Constitution of the Socialist Republic of Slovenia, the Housing Economy Act, the Housing Relations Act, and the Act laying down special conditions for the sale of publicly-owned houses and flats.

6. The housing system was financed by the budget, funds collected through the sale of publicly-owned flats and especially by funds collected through compulsory contributions that were imposed on all active citizens by law. From 1950 to 1991 all individuals were paying an average of 6-9% of their regular monthly income into this fund in order to finance the housing system described above. The contribution was defined as a special housing contribution.

7. Until 1991, the public housing fund in the Republic of Slovenia disposed of approximately 230.000 publicly-owned flats and administered by state institutions, municipalities, public enterprises and other legal entities governed by public law. These flats were owned by the general community: the public administrators were not their owners and they were supposedly the property of Society as a whole ("družbena lastnina"). These were flats, which were either originally public property, built or reconstructed by the public authorities, or flats acquired through purchase, nationalisation, confiscation or other forms of expropriation by the State. The methods of transfer of these flats into the public domain prior to 1991 did not have any impact on their legal or material status as all publicly-owned flats, independently of their origin, shared the same fate. Within the context of public housing assistance, flats were allocated to individuals and families for permanent use with the aim of solving their

housing problem. Estimates of the number of publicly-owned flats prior to 1991 are based on the official data published by the Government of the Republic of Slovenia in the National Assembly's gazette No 81/02 as per 3rd September 2002.

8. Individuals and families occupied the publicly-owned flats on the basis of the Housing Right, a civil right that existed only in the legal orders of the former republics of the SFRY. The Housing Right in respect of a publicly-owned flat was acquired pursuant to an administrative decision, which was followed by a civil law contract. The administrative decision and the contract were issued and/or signed on behalf of the grantee of the Housing Right by the public administrator, that is, a public entity in charge of the administration of the building. Sometimes the acquisition of the Housing Right was granted subject to a condition: for instance, the grantee could be required to pay a special additional financial contribution, or to make a contribution in kind (for example, an exchange of a smaller flat owned by the grantee for a bigger publicly-owned flat, renovation to be at the grantee's own expense).

9. In accordance with the pre-transition legislation and case-law in all former republics of the SFRY, the Housing Right guaranteed permanent and uninterrupted usufruct of the dwelling in question. When the holder of the Housing Right passed away, this right was transferred according to the law to those family members who lived in that dwelling. The holders of the Housing Right carried the financial burden related to maintenance of these flats as they had to regularly pay a flat-rate charge to cover maintenance costs. The Housing Right could be revoked only in three cases determined by law: (i) inappropriate behaviour; (ii) failure to pay maintenance costs; or (iii) if the holder possessed an equivalent unoccupied flat. In the Republic of Slovenia, the rights and obligations of the holder of the Housing Right were regulated by the Housing Relations Act. The sale of an occupied flat was null and void unless the buyer was the holder of the Housing Right, an exception that was regulated by the Act on special conditions for the sale of publicly-owned houses and flats. Holders of the Housing Right to individual flats in an apartment building enjoyed legal equality with owners of flats. These ownership relations were defined in detail in the Act on Rights on buildings in condominium. According to national case-law and the Constitutional Court, the status of a holder of the Housing Right was closer to the status of an owner than that of a leaseholder (see, for example, the decision of the Constitutional Court of Republic of Slovenia No Up-29/98 as per 26.11.1998, para. 9 of the grounds).

II. Housing reform in 1991-1994

10. The Housing Act, which introduced the housing reform was adopted in the Republic of Slovenia in 1991. The former providing housing system was abandoned and the previous housing legislation was repealed. The Housing Right was abolished. According to the 1991 Housing Act, the undefined ownership of former publicly-owned dwellings was transferred to the public entities that had administered the property until then. However, as compensation for the revoked Housing Right and a means of solving the newly provoked housing problem facing the existing holders of that Right (approximately 230.000 families), the law required the public entities as new owners to sell the flats to the previous holders of the Housing Right – or, in cases where the holder had died, to the closest family members – in the two years that followed the adoption of these provisions. The selling price was set by the law at 5% to 10% of the market value of the flats and the holders of the Housing Right could use the option of paying the purchase price in instalments over a period of 20 years. If a flat could not be sold because of a pre-emptive right held by a third party or because the building had to be pulled down, the new owner had to ensure that the previous holder of the Housing Right was given an opportunity to purchase an alternative flat under the same advantageous conditions. (The above refers to Articles 111 to 159 of the 1991 Housing Act.) Given the general transformation of social and economic system and the abolition of the Housing Right as a special instrument of the national legal order, the privatisation system described above allowed the former holders of the Housing Right to keep their allotted flats and to adapt to the new legal situation.

11. At the same time, by means of the housing reform described above the Republic of Slovenia created conditions for the emergence of a vulnerable group of individuals and families - the tenants of denationalised dwellings and the tenants of the dwellings that were handed back or restituted to previous owners and their heirs on the basis of other restitution laws besides the Denationalisation Act (according to the majority rule hereafter called: tenants in denationalised dwellings). Article 117 of the 1991 Housing Act allowed an exception from the general rule governing the conversion of the Housing Right to the ownership right: the temporary transitional owners (previously the administrators) of once publicly-owned dwellings that had been transferred to public property through nationalisation, confiscation or other forms of mass socialist expropriation in the wake of the Second World War were not bound by the obligation to sell their flats to the holders of the Housing Right. This exception concerned some 13.000 flats.

12. In such cases, the holders of the Housing Right could not purchase the flats, but the 1991 Housing Act guaranteed them the right to sign a contract with the new owner (previously, the building administrator) for lease of the flat in respect of which they had previously enjoyed the Housing Right. That contract had to be for an indefinite period of time and for a non-profit rent (Article 147). The 1991 Housing Act specified nine possible grounds on which the owner could unilaterally terminate the lease contract (Article 53). The Act introduced the possibility for the owner to terminate the lease contract with the tenant without justification if an adequate substitute flat could be offered to the tenant (Article 54). In the case of the tenant's death, the closest family members had the right to take over the lease contract (Article 56). The non-profit rent was regulated and determined by an implementing regulation (Article 63).

13. Following the adoption of the 1991 Housing Act, the legislature justified the distinction that it had made between the majority of former Housing Right holders and those who lived in formerly expropriated flats in terms of its intention to restore the flats that had been expropriated in the wake of the Second World War to their former private owners or their legal heirs. That intention manifested itself in the adoption of the Denationalisation Act, also in 1991, which offered former owners of nationalised, confiscated or otherwise expropriated properties the following restitution options: restitution *in integrum* or just compensation. Restitution *in integrum* was not an option if the property was privately owned (Article 16). For flats that were occupied by holders of the Housing Right, the law provided that former owners or their heirs could demand a form of restitution *in integrum*, which consisted in the transfer, free of consideration, of the ownership right from the public owner to the former private owner, but the latter was bound by an obligation to honour the lease contracts with current tenants (Article 29 of the Denationalisation Act). Some 9.000 requests for this form of restitution were filed.

14. The privatisation and denationalisation of the housing sector triggered numerous disputes in the national legislative body and before the national Constitutional Court. In Decision No U-I-95/91 of 10.7.1992, the national Constitutional Court, responding to actions brought by numerous public enterprises that had become the owners of flats through the implementation of the 1991 Housing Act, assessed whether or not the obligation to sell the newly acquired flats to the holders of the Housing Right was permissible. The Constitutional Court ruled that this legal solution was not only constitutionally permissible and legitimate but also necessary. Thus, it was established that this was a measure protecting the public interest because it solved the housing problem of a significant number of citizens. The Court reiterated that the Republic of Slovenia was bound to provide a solution to this problem in compliance with Article 11 of

the International Covenant on Economic, Social and Cultural Rights (hereafter: ICESCR) and that such a solution was the appropriate way to implement this right in given circumstances (more about this see point 114).

15. The majority of the constitutional reviews regarding privatisations and denationalisations in the housing sector over the past decade and a half address the issue of denationalised flats. In the judgment cited above, the Constitutional Court carried out the first constitutional review of the situation of this vulnerable group of tenants, finding that former holders of the Housing Right in previously expropriated flats were not discriminated against. The Constitutional Court based its findings on the following argument: the situation of those persons is different from that of other holders of the Housing Right because they lived in flats that had been transferred to public ownership through expropriation. Therefore, the rights of the former owners or their heirs must be given priority over the rights of the current tenants.

16. Several other actions were brought before the national Constitutional Court regarding the alleged discrimination. The claimants argued that the justifications provided by the Court in the first decision were unsound. Such actions were rejected on the ground that restitution of formerly expropriated flats had been completed in accordance with the Denationalisation Act and that it would therefore be impossible, in any event, to remedy the alleged harm caused.

17. In 1994, owing to increasing dissatisfaction and public criticism regarding the discrimination against the previous holders of the Housing Right, the legislature amended the 1991 Housing Act and prohibited termination of the lease contract under any circumstances (except where the tenant commits a fault that justifies termination). Thus the legislature eliminated the possibility, previously open to beneficiaries of denationalisation, of terminating the lease contract by providing a substitute flat for rent (Article 56). In addition, special models were introduced for resolving the difficulties regarding denationalised flats (Article 125, "substitute privatisation models"). These models offered the following solutions:

- Model I: if the owner decided to sell the flat to the tenant under the advantageous privatisation conditions of 5% to 10% of the flat's market value, the owner could demand a non-refundable grant, financed from public resources, worth approximately 5% to 10% of the market value of the flat sold;

- Model II: if the previous holder of the Housing Right purchased a different flat from his own funds and moved out of the rented flat, he could demand a non-refundable grant financed from public resources in the value of approximately 5% to 10% of the market value of the vacated flat;

- Model III: following the example of the existing Article 129 of the Housing Act, which entitled the former holders of the Housing Right to demand an advantageous purchase of a substitute flat from a public owner in case of legal errors, the former holder of the Housing Right in a flat that had been expropriated acquired an equal right to demand of the local community the allocation and the advantageous sale of an equivalent substitute flat (the selling price being set by the same law at 5% to 10% of the market value of the flat and the holders of the Housing Right also being entitled to pay in instalments over a 20-year period).

18. The consequence of the implementation of the two transition laws, the 1991 Housing Act and the Denationalisation Act, was the formation of the vulnerable group of tenants who constitute the subject of this complaint. The tenants in question, who held the Housing Right in respect of former publicly-owned flats, and who - according to the national case-law – were closer in status to home-owners than to leaseholders, were coerced by the Republic of Slovenia into a position where they became the leaseholders of State-owned flats. Their flats were then privatised as part of the denationalisation process in the interest of the pre-war private owners or, rather, their heirs. The housing situation of the previous holders of the Housing Right was supposed to be legally protected by the following:

- a guarantee of a permanent and inheritable lease on the flat with a non-profit rent which could only be revoked on the basis of one of the 9 statutory grounds for termination;

- a guarantee of an option whereby the previous holder can demand that the local community sell him an equivalent substitute flat under the advantageous terms laid down by statute (Substitute Privatisation Model III, see above).

We do not consider Substitute Privatisation Models I and II to offer an efficient, socially favourable, satisfactory or just solution to the problem of the tenants in denationalised flats. Model I depends entirely on the goodwill of the new owners to sell the flat to the tenant under non-market terms, whereas Model II entitled a tenant who vacated the flat

only to a symbolic contribution to the funds necessary to provide a permanent solution to his housing problem.

III. Facts that are relevant for the group of Slovenian tenants for the 1995-2006 period

19. In 1995, the Slovenian Ministry for Environment and Spatial Planning changed the methodology for the calculation of non-profit rent in such way that the upper limit of non-profit rent was increased by 117%. Capital costs were to be included in the non-profit rent.

20. In 1996, following an action brought by the owners of denationalised flats, the national Constitutional Court repealed the special statutory ban on moving the tenants in restituted flats to substitute flats. As grounds for Decision U-I-119/94 of 21 March 1996, the Constitutional Court held that the protection for tenants introduced by the 1994 amendment of the 1991 Housing Act (see point 17) interfered with the acquired rights of owners. However, in the same decision, the Constitutional Court ruled that the inheritability of flat tenure – also under challenge from the new owners of denationalised flats – should be maintained. In this context, it referred to Article 53§3 of the Constitution of the Republic of Slovenia, which lays down the right to protect the family.

21. In 1999, in a case brought by the local communities, the national Constitutional Court repealed Substitute Privatisation Model III. Decision U-I-268/96 of 25 November 1999 was substantiated with the argumentation that the obligation on local communities to sell substitute flats to the tenants of denationalised dwellings was incompatible with the constitutional right to protection of private property.

22. In 2000, acting upon a proposal from the Government of the Republic of Slovenia, the national legislative body amended the 1991 Housing Act with regard to the terms of non-profit rent. The upper limit for non-profit rent was increased by 50%. Taken together with the 1995 increase (see point 19), that meant that the upper limit had been increased by 226% since it was first specified.

23. In 2003, following actions brought by the owners of restituted flats, the national Constitutional Court partially repealed and amended the provisions of the legislation governing rents in such a way that the vulnerable group of tenants saw the ceiling for their statutory regulated rent increase by a further 37%; taken together with the

increases in 1995 and 2000 (see points 19 and 22), that meant that the ceiling had risen by 346% since its inception in 1995. Decision U-I-303/00 of 20 February 2003 was substantiated with the argumentation that the protection of acquired rights and the prohibition of retroactivity does not protect tenants from increases in rent. Every rent increase should therefore be imposed on both the new and the previous generation of tenants in a uniform fashion.

24. In 2003, acting upon a proposal from the Government of the Republic of Slovenia, the national legislative body adopted a new Housing Act (Housing Act-1, Official Gazette RS, no. 69/2003). The following amendments are relevant for the vulnerable group of tenants referred to:

- the number of grounds for eviction was increased from 9 to 13. The new grounds for eviction are now: increase in the number of users of the flat without the owner's authorisation; violation of the house rules; failure to clean the flat; absence from the flat for a period in excess of three months; and ownership of another flat, either by the tenant or by his/her spouse or partner (Article 103);

- a planning tax was integrated into the non-profit rent, resulting in an aggregate increase in the non-profit rent ceiling of 60% (Article 118); taken together with the rises in 1995, 2000 and 2003 (see points 19, 22 and 23), that meant that the ceiling had risen by 613% since it was first set in 1995;

- more rigorous conditions were introduced for the transfer of the lease following the death of the holder of Housing Right: under the new provisions, this right was conferred only to those users of the flat who had been living with the tenant in the flat on the day of his or her death, whose permanent residence was in the flat and who requested a signature of the lease no later than 90 days after the tenant's death (Article 109);

- Substitute Privatisation Models I and II were replaced with a unified model. The unified model gives the tenant in a denationalised flat the right to non-refundable public finance funds in the amount of 5% to 10% of the market value of the flat if he or she purchases a substitute flat and vacates the existing flat. The newly established general deadline for benefiting from this option is 19 October 2008 (Article 173).

25. In 2005, the national Supreme Court deliberated in a case concerning the right of a family member to demand a new non-profit rent lease after the tenant of the denationalised flat in question had died. The Supreme Court reversed the case-law and

decided that users of denationalised flats cannot demand a continuation of a non-profit lease following the demise of the tenant; they are entitled only to a lease, whereas the owner determines the amount of the rent freely and without any limitations. Supreme Court judgment No II Ips 98/04 was issued on 21 April 2005. It was argued in substantiation of this new case-law that non-profit rent inherently interferes with the constitutional protection of private property. This case-law became the legally substantiated guidance for the ordinary national courts when confronted with analogous cases.

26. In the light of all the foregoing, it is clear that after 1995 the Republic of Slovenia in fact did away with the essential instruments designed to ensure the protection of the tenants in denationalised dwellings. This protection was guaranteed at the time of the housing reform, when the acquired Housing Right was abolished and the status of the holders was coercively converted into that of leaseholders (see point 13). That protection has been weakened in the following ways:

- the lease is now neither permanent (the tenants can be moved to a substitute flat as described in point 20), nor inheritable (see the case-law and the reversal of the case-law of the ordinary national courts as described in point 25); its non-profitable character is also not guaranteed in the long-term (profit-geared elements have been incorporated into the non-profit rent, such as capital costs and planning tax as described in points 19 and 24, representing an aggregate increase of 613% as compared with the initial level as described in point 24, and taking into account the position of the national Constitutional Court that the national authorities are free to increase or amend the non-profit rent at any time, which leaves the current tenants without any protection from further increases in the internal legal order, as described in point 23);

- the tenants have lost the right and possibility to solve their housing problem permanently by purchasing a substitute flat from a local community on advantageous terms (see point 21).

27. In individual cases, the situation of tenants in denationalised flats in the Republic of Slovenia is steadily becoming worse, and disputes between owners and tenants are multiplying. The reports of the Council for the Protection of Tenants' Rights, City of Ljubljana, and the reports of the national tenants' organisation (hereafter: National Association of Tenants) indicate that in general these tenants are living under permanent pressures from the new owners, who are endeavouring to bring about the vacation of their newly restituted flats so that they can start to trade freely in that property.

According to the reports of the National Association of Tenants, it has become commonplace for tenants in denationalised flats to be subject to various forms of chicanery and intimidation; some are confronted with legal measures, such as formal claims and lawsuits seeking eviction or the imposition of a rent that is higher that the rent prescribed by law, whereas others may even be the victims of simple violence and illegal evictions. Denationalised houses and flats with tenants are usually poorly maintained or not maintained at all, since this is seen as an effective way of "encouraging" the tenants to relocate "voluntarily".

IV. International comparison of arrangements regarding restituted dwellings

28. Several countries of Central and Eastern Europe are confronted with the problem of the restitution of property that had been taken over by the State as a result of post-war socialist nationalisation, confiscation and other forms of expropriation. By Parliamentary Assembly Resolution 1096 on measures to dismantle the heritage of former communist totalitarian systems (27 June 1996), the Council of Europe also called upon its members to return unjustly expropriated property. The Resolution proposed the following to the Member States:

> *Furthermore, the Assembly advises that property, including that of the churches, which was illegally or unjustly seized by the state, nationalised, confiscated or otherwise expropriated during the reign of communist totalitarian systems in principle be restituted to its original owners in integrum, if this is possible without violating the rights of current owners who acquired the property in good faith or the rights of tenants who rented the property in good faith, and without harming the progress of democratic reforms. In cases where this is not possible, just material compensation should be awarded. Claims and conflicts relating to individual cases of property restitution should be decided by the courts.*

29. It is our view that the situation of Slovenian tenants in denationalised flats cannot be compared with the situations of tenants in other Central and Eastern European States, because their pre-transition legal status was different. At the beginning of the transition period, only the former Yugoslav republics (Croatia, Bosnia and Herzegovina, Serbia, Montenegro) were confronted with a situation identical to the one described in this complaint. The Housing Right – a special civil right to a publicly-owned flat – existed only

in the legal orders of the former SFRY Republics. Pre-transition housing legislation of the individual Yugoslav Republics before the collapse of the Federal State was based on a common constitutional regulation and the crucial components of the pre-transition housing legislation of the individual Republics were identical.

30. On the basis of a comparison between the situations in the former Yugoslav Republics, it is apparent that no other former Republic opted for abolition of the Housing Right to publicly-owned flats and for the restitution of occupied expropriated flats in the same way as the Republic of Slovenia. Other Republics of former Yugoslavia did indeed abolish the Housing Right to publicly-owned flats as part of the process of transition in the housing sector, but at the same time, they offered the possibility to all holders of this right to permanently solve their housing problem by becoming owners of the flats in which they lived. In order to provide a permanent solution to the housing problem of tenants living in publicly-owned flats, other former Yugoslav Republics – like the Republic of Slovenia – also granted the tenants the right to buy the flats at advantageous prices. Yet no other republic gave denationalisation priority over the need to solve the housing problem of the users of formerly publicly-owned flats. The vulnerable group of tenants of denationalised flats thus emerged only in the Republic of Slovenia.

31. And, last but not least, the Respondent State ratified the Agreement on Succession Issues (Official Gazette of the Republic of Slovenia – International Treaties No. 20, as at 8 August 2002), signed by all States successors of the former common State Yugoslavia in Vienna on 29 June 2001 whereby in the Annex G (*Private Property and Acquired Rights)* the States explicitly entered into an obligation not to use any form of discrimination in domestic legislation in the field of protection and respect of *'dwelling rights (»stanarsko pravo / stanovanjska pravica«)'.*

V. Initiatives and debates regarding the solution of the problems

32. In the framework of the national legal order and in accordance with national law, numerous individual tenants of denationalised flats instituted constitutional proceedings to counter the encroachments on their status. The national Constitutional Court often had occasion to review individual applications or constitutional appeals from individual tenants, both with regard to the issues related to a permanent solution of the housing problem in the form of substitute privatisation and those addressing the issues of security and durability of tenancy. To this day, the national Constitutional Court has never – not even once – granted a tenant's appeal on the merits. More than 400 tenants

of denationalised flats have filed a class action with the European Court of Human Rights. According to the data provided by the National Association of Tenants, many individual tenants have also lodged appeals with the European Court of Human Rights. None of the cases has yet been judged on the merits.

33. The National Association of Tenants has consistently pointed to the vulnerable group of tenants of denationalised flats as the most endangered category of tenants in the Republic of Slovenia. It has done so in all its reports, before the national authorities and before international institutions. The National Association of Tenants is advocating several alternative solutions to the tenants' problem, namely:

- restitution of the forcibly divested Housing Right, together with the elements of protection that existed before the housing reform;

- guarantee of a durable, safe and inheritable lease at a guaranteed non-profit level (abrogation of the owners' right to relocate the tenants; reduction of the number of grounds for termination; a guarantee that the lease will be transferred to the family members of a deceased tenant; the exclusion of capital costs and planning tax from non-profit rent; abrogation of various legal prohibitions, restrictions and obligations, such as the ban on any increase in the number of family members, the obligation to clean the flat under threat of eviction, and so on);

- provision of an appropriate substitute privatisation model, which would ensure a permanent solution to the housing problem of tenants in denationalised dwellings (provision of privatisation of substitute publicly-owned flats along the lines of the former Model III or modification of the current model by an increase of public funds provided by the Republic of Slovenia to solve the housing problem of tenants in denationalised flats).

34. In its decisions of 11 September 1997, the National Assembly of the Republic of Slovenia explicitly instructed the Government of the Republic of Slovenia to envisage measures for the resolution of the problems of tenants in denationalised flats and to formally include those measures in the National Housing Programme.

35. Following the petition presented by the then national non-governmental organisation, the Association of Tenants of Denationalised Dwellings, the Government of the Republic of Slovenia adopted Decision no. 463-01/98-1 (N) of 6 April 1998. The Government thus decided to establish a commission composed of specialists in law and economics as well as representatives of non-governmental organisations. Nevertheless, the national

Ministry of the Environment and Spatial Planning, which is responsible for housing issues, ultimately never nominated the commission and therefore it could not start working. The National Association of Tenants repeatedly urged the Government and the competent ministry to nominate the commission, so that it could start working, but the national authorities failed to react to this request.

36. In its minutes no. 0651-05/98-28/2 of 6 October 1999 and opinion no. 805-01/90-0003/0145 EPA 842-II of 7 October 1999, the Commission on Local Communities and Regional Development of the National Council of the Republic of Slovenia took formal note that conflicts of interests between tenants, former Housing Right holders in denationalised dwellings and the new owners remain unsolved and pending. On that occasion, the representative of the Ministry of the Environment and Spatial Planning promised to draft substantial changes in the law so that this problem would finally be resolved. The above-mentioned Commission of the National Council pledged to organise a wide public debate on the issue, but this never came about owing to the fact that the draft legislation was never presented to the legislature.

37. Since 1995, the Slovenian Ombudsman has been warning about the problem of the critical category of tenants in his numerous regular reports. He issued a Special Report dedicated to this theme (no. 9.1-124/2001 <RO>) on 8 January 2002. In this special report he discussed the topic of the critical category of Slovenian tenants and estimated that tenants in restituted flats have been unjustly discriminated against, by comparison with other holders of the Housing Right in respect of publicly-owned flats. His conclusions were the following:

- On the basis of a proposal from the Government, the legislature should adopt in the Housing Act such substitute privatisation models as would really solve the problems of most tenants and new owners of restituted flats. This could be done by providing higher subsidies for tenants where they purchase another dwelling or extensive material incentives for owners to sell their flats to tenants under favourable conditions.

- By means of amendments to the Housing Act, it is necessary to ensure stability and consistency of the tenants' position in restituted flats and to define precisely the details of the non-profit rent, which should not include certain items such as capital costs. Possible differences in the rent could be refunded to the owners by the State.

- It is necessary to ensure effective measures for the legal protection of tenants in restituted flats. The law should make provision for councils for the protection of tenants' rights to be converted into bodies that would offer free advice and legal assistance to tenants, especially those in restituted flats.

- It is appropriate to investigate the possibility of more effective implementation of the pre-emptive right of tenants in the Housing Act for every case of a dwelling sale, even in cases of the sale of the whole residential building. The pre-emptive right should be entered in the land registry, especially for those in restituted flats.

- The Housing Act should permit a realistic evaluation of the tenants' investments in restituted dwellings while the latter were publicly-owned.

The national legislative body reviewed the Special Report of the national Ombudsman in several phases and adopted its contents. It furthermore proposed to the Government of the Republic of Slovenia that it should study the proposals and integrate them in the formulation of the text of the new housing act.

38. A debate on the theme of tenants in denationalised flats was triggered by a parliamentary question at the 15th regular session of the National Assembly on 16 April 2002. Almost all parliamentary groups agreed that this problem needed to be solved and that tenants of denationalised flats had suffered injustice during the process of denationalisation. The then Prime Minister, Dr. Janez Drnovšek, acknowledged this fact in the course of the debate.

39. During the preparation of the draft of the new housing law in 2002 and 2003 (see point 24), the National Association of Tenants submitted numerous proposals to the national authorities regarding the protection of the tenants and the provision of an efficient model for improving the situation of the tenants in denationalised flats. Their proposal enjoyed the support of several other non-governmental organisations (namely the National Association of Pensioners, the Association of Tenants of Commercial Premises, and the Council for the Protection of Tenants' Rights of the City of Ljubljana). Before formulating the text of the new law, the Government studied two possibilities: (1) to provide the funds to compensate the owners of denationalised flats if the tenants were to be guaranteed the right to purchase their flats on advantageous terms; (2) to increase the public funds set aside for solving the housing problem encountered by the tenants in denationalised flats in order to finance the purchase of substitute flats on the real estate market. The Government estimated that, in order properly to tackle the housing problem

of the tenants of denationalised flats, funds in the amount of approximately EUR 113 million would have to be made available and that the available budgetary funds are insufficient.

40. Following the adoption of the new Housing Act, the National Association of Tenants submitted a written initiative to begin procedure before the Constitutional Court for the assessment of the constitutionality and legality of the new law for the following reasons: deterioration of terms and conditions of lease, increase of the non-profit rent and the national authorities' insistence on an inefficient model of substitute privatisation. By Decision U-I-192/04 of 13 May 2004, the Constitutional Court rejected the initiative in so far as it alleged deterioration of the terms and conditions of the lease, basing that rejection on the argument that the National Association of Tenants does not have a sufficient legal interest in making such an initiative. With reference to the above-quoted argumentation decision (see points 15 and 23), the Constitutional Court also rejected the section of the national association's initiative challenging the increase in the non-profit rent and the inefficiency of the substitute privatisation model.

41. The European Commissioner for Human Rights visited Slovenia in 2003 and reported that Slovenian tenants in denationalised dwellings are one of the two typical groups of victims of human rights violations during the transitional period. In his written report, he suggested that the national authorities act in accordance with the conclusions of the national ombudsman (see point 37). The Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Slovenia 11 – 14 May 2003 for the attention of the Committee of Ministers and the Parliamentary Assembly stipulates:

> *(39) I consider that there can be neither winners nor losers in this situation, because both sides may be considered disadvantaged. On the one hand, it is impossible not to see the difficulty, indeed the hardship, of the situation in which the tenants of denationalised apartments have been placed. Apart from the fact that this is a one-off situation depriving them of the advantages on offer to the vast majority of their fellow-citizens as part of the privatisation of municipal housing, these tenants have had to face a completely unprecedented situation in which their rights were completely unprotected and the whole of their life's achievements jeopardised. Not only had most of them lived for many years in their flats in good faith, but also for decades they had repaired and improved their dwellings, investing in them as if they were their own property. Many of these tenants are now elderly and are finding this situation hard to bear and even unjust: they live in constant fear of no longer being*

able to afford possible rent increases or other types of renewed pressure. At the same time, the authorities are unable to come up with an equitable solution.

(...)

(41) It must therefore be concluded that the present situation satisfies neither side and that the problem must be settled as quickly as possible in order to put an end to the exasperation on both sides, among the tenants and the flat owners. It is equally clear that the State will have to find the solution because the parties are patently unable to reach agreement.

(42) This is why I consider that the Government should begin by following the Slovenian Ombudsman's recommendations in his report on this problem. Consideration should also be given to the possibility of going even further and proposing a legislative amendment to settle the problems facing one side while also protecting the interests of the other.

(...)

Conclusions and recommendations:

(86) Since its accession to the Council of Europe in 1993, Slovenia has made commendable efforts in respect of human rights promotion and protection. It is, moreover, evident that the authorities remain committed to reaching the highest standards in areas where problems persist. In order to assist the Slovenian authorities in the pursuit of their goals, the Commissioner, in accordance with Article 8 of Resolution (99) 50, makes the following recommendations: (...)

Consider seriously the recommendations made by the Ombudsman towards finding a solution to the situation of tenants following the denationalisation of property; ...

42. When the national Supreme Court reversed the case-law in 2005, revoking the right of family members to take up the non-profit lease after the death of a tenant (see point 25), the National Association of Tenants filed a application with the national Supreme Court. The National Association of Tenants requested in its application that the disputed new case-law be reviewed by a panel composed of all the judges of the Supreme Court. The National Association of Tenants also filed an application with the national Constitutional Court, asking the Court to review the constitutionality of the Housing Act,

interpreted in the light of the judgment of the Supreme Court. A petition pleading for the implementation of urgent measures to solve the housing problem of family members following the death of the leaseholder was sent to the highest representatives of the national legislative and executive powers. The Supreme Court rejected the application for review of its judgment, stating that the supreme judges do not have any doubts regarding the accuracy of the judgment. The national Constitutional Court rejected the application on grounds of lack of legal interest in bringing proceedings. Other representatives of national authorities did not respond to the petition presented by the National Association of Tenants.

43. According to the data of the National Association of Tenants, the Housing Ministry had already announced in 2005 new amendments to the housing legislation designed to resolve the problems of tenants in denationalised flats. The State Secretary at the Ministry, Mr Marko Starman, announced on 19 March 2005 in an interview with the national daily Delo that changes in the housing law were imminent. The Director of the Directorate of Spatial Planning, Ms Metka Černelč, allegedly communicated to the national organisation by letter no. 352-01-111/2005-pb of 31 May 2006 that the competent ministry was supposed to be intensively working on the amendments to the housing legislation. To this day, no changes have been presented. Even more so the Act amending the Housing Act, which entered the parliamentary procedure just recently (precisely on 31 March 2008) does not tackle the problem in question at all (there are only few rather cosmetic and ineffective amendments regarding tenancies in general to be found in the law), while Minister for Housing, Mr Janez Podobnik, when presenting the draft law after its adoption at the Governmental session stated that the issue of tenancies is a rather demanding issue that calls for further prudential considerations.

44. On the occasion of the International Union of Tenants (IUT) Board meeting in Ljubljana in October 2006, the IUT and 12 European national non-governmental organisations adopted the »Statement of the International Union of Tenants (October 2006)«, in which they drew the attention of the national authorities to the following:

- the unacceptable increase of the non-profit rent ceiling by more than 650%; the incorporation of profit elements into the non-profit rent; and the lack of legal certainty for the tenants stemming from the position of the national Constitutional Court which endorses the right of the national authorities to arbitrarily change the levels of non-profit rents,

- the unfair nature of some of the grounds for eviction established by law and the inadequacy of the arrangement which does not guarantee the tenant even the most basic living quarters in cases of eviction,

- the consequences of the national Supreme Court judgment, which revoked the right of family members to benefit from the non-profit lease after the death of the tenant, and is in clear contradiction with both the lease contracts and written law,

- the inadequacy of the regulation according to which the owner can demand that the tenant be relocated to a substitute flat without any reason,

- the problems encountered by tenants in denationalised flats and other vulnerable users of housing services,

They also called on the national authorities to launch a radical revision of the existing housing legislation and to ensure the participation of the national non-governmental organisations.

The statement was transmitted to the President of the Republic, the national Ombudsman, the Speaker of the national legislative body, the Prime Minister, the Minister responsible for housing and to the national Constitutional and Supreme Courts. The Constitutional Court responded that it could not comment on its previous judgments and that every tenant affected could turn to the Constitutional Court and file an application for review of the existing legislation. The national Supreme Court responded that it took formal note of the statement. The Minister responsible for housing rejected by analogy all the grievances included in the statement and insisted that the existing situation was entirely legitimate. There has been no reply to the follow-up letter in which IUT warned of the possibility that a collective complaint would be filed under the provisions of the RESC.

C. LAW

I. Relevant aspects of the rights concerned and non-discrimination rules

45. On the basis of all the foregoing, we believe that the national authorities of the Republic of Slovenia have failed to comply with the provisions of the RESC. Their interference with the position of tenants in denationalised flats has severely threatened the housing position of those persons. As a consequence of this active interference on the part of the national authorities and the subsequent artificial degradation of the protection acquired by such tenants, numerous Slovenian citizens and families have been placed in circumstances of great insecurity and a new vulnerable group has thus been created. Such consequences produced actively and intentionally by the national authorities are in clear contradiction with the aims laid down in the RESC. This has affected not only the housing position of individual holders of tenancies – former Housing Right holders – but also the housing position of their families. That is why this complaint does not limit itself to alleging breach of the right to housing, but refers also to the right of families to social, legal and economic protection. A comparison of the housing situation of the group of tenants in denationalised flats with that of the majority of Slovenian individuals and families indicates that although the two groups used to be in the same position, they are now being treated in fundamentally dissimilar ways by the national authorities. This also raises the question of compliance with the non-discrimination rules laid down in the RESC, an issue that this application also addresses.

46. For the purposes of evaluating whether a Signatory State has met its obligations under the RESC, attention is usually directed to the positive activities of the national authorities of that State. The question is usually whether the national authorities reacted appropriately in the face of negative social phenomena or whether they took proper measures to prevent such phenomena. The RESC is based on the positive human rights concept, which is more advanced than negative human rights protection. While a negative human rights approach restricts States from interfering with individuals, the positive human rights approach imposes a positive obligation to act with a view to protecting the population from social or economic disadvantage. However, we believe that such an approach to positive human rights and also to the rights laid down in the RESC does not, under any circumstances, displace the essential negative prohibitive element as an element of all human rights protection as such. Positive human rights are primarily implemented through the efforts of the authorities to accomplish set goals and comply with certain principles within the framework of legally permissible and legitimate possibilities. However, where a State acknowledges an individual positive human right

and is therefore committed to ensuring the protection of that right within the limits of its ability, the national authorities of that State should not, in our opinion, actively create situations that are in contradiction with the objectives and the principles to which that State has thus committed itself. Concretely: if a State is bound to respect and implement the right to housing, the national authorities are not only obliged to promote access to adequate housing, but are also and even more so prohibited from actively inhibiting the existing possibilities for the population to access housing of an adequate standard, or from depriving the population of the housing that has already been acquired. National authorities are not only obliged to prevent and reduce homelessness, but are also and even more so prohibited from actively generating homelessness. Therefore we believe that the RESC not only imposes positive obligations on signatory States, but also entails implicit negative prohibitions intended to protect existing situations which are in compliance with the aims laid down in the RESC, such negative prohibitions being in our opinion a pre-requisite for the efficient fulfilment of the positive obligations. Furthermore in the case of Slovenian tenants in denationalised flats, we believe that the national authorities of the Republic of Slovenia have breached these negative prohibitions deriving from the rights in question. Thus, they did not endeavour to fulfil the positive obligations under the RESC, but on the contrary, they actively and artificially created the sort of situation that, in the light of the RESC, a Signatory State should seek to remedy or prevent.

47. However, neither positive obligations nor implicit negative prohibitions deriving from the RESC are absolute in the sense of being unlimited. Where restrictions are justified in accordance with Article G of the RESC, the adoption of improper measures by the national authorities of a Signatory State, or their failure to adopt proper measures, should not be regarded as an infringement of the RESC. In the case of the Slovenian tenants of denationalised flats, the national authorities have always cited an overriding justification, usually the need to protect the rights of the new owners. That is why in this complaint we have taken especial care to evaluate in the light of Article G of the RESC each individual measure taken to interfere with the position of the tenants in question.

II. Rights concerned in the internal legal order of the Republic of Slovenia

II.1 Right to housing

48. The internal legal order of the Republic of Slovenia does not explicitly define the right to housing. Individual elements of this right are integrated in certain provisions of the Constitution of the Republic of Slovenia, namely in the first paragraph of Article 36, which stipulates: "Dwellings are inviolable", and in Article 78: "The State shall create opportunities for citizens to obtain proper housing".

49. Nevertheless, the Republic of Slovenia adopted the Universal Declaration of Human Rights (UDHR – see Article 25) and ratified both the International Covenant on Economic, Social and Cultural Rights (ICESCR – Article 11) and the RESC. In conformity with Articles 8 and 153 of the Constitution of the Republic of Slovenia, the internal legal order must comply with generally accepted principles of international law, hence also with the UDHR, and with treaties, hence also with the ICESCR and the RESC. In so far as international legal instruments binding on Slovenia define human rights and fundamental freedoms, they are applied directly on the basis of the Constitution. Consequently, internal implementation (with the exception of certain harmonising statutory and implementing acts), is not necessary. Article 15 of the Constitution of the Republic of Slovenia stipulates:

> *Human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution. (§1)*
>
> *(...)*
>
> *No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognize that right or freedom or recognizes it to a lesser extent. (§5)*

50. We consider that, given the constitutional provisions cited above, a specific definition of the right to housing in a statute or in the Constitution is not indispensable for its acknowledgement and implementation in the internal legal order. This right derives from general principles of international law and is governed by international legal instruments which the Republic of Slovenia has adopted in due form. Therefore, this right should be respected and implemented directly on the basis of the Constitution of the Republic of

Slovenia. Moreover, as this complaint will demonstrate, the national authorities respected and implemented the right to housing although it was not explicitly defined in the Constitution of the Republic of Slovenia and they did so with reference to Article 11 of the ICESCR (see points 14 and 114).

II.2 Family protection

51. By contrast with the right to housing, family protection is explicitly prescribed in the national Constitution. Thus, Article 53§3 of the Constitution of the Republic of Slovenia stipulates:

> *The State shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection.*

52. This constitutional protection is pursued in practice also in relation to the protection of family housing. A clear example of that approach is to be found in Decision U-I-119/94 of the national Constitutional Court, in which the Court preserved the inheritability of tenure in denationalised flats referring to the cited provision of the Constitution (see point 20).

53. Moreover, family protection is prescribed also in the international agreements to which the Republic of Slovenia is bound, including the RESC, which means that it is incorporated in the national legal order also on the basis of Article 15 of national Constitution (see points 49 and 50).

II.3 Non-discrimination rules

54. By the same token as the right to family protection, non-discrimination rules are a part of the national internal legal order and are also incorporated in the law on human rights protection. Article 14 of the Constitution of the Republic of Slovenia stipulates:

> *In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance.*
>
> *All are equal before the law.*

55. The case-law of the national courts, especially the numerous decisions of the national Constitutional Court, show that the non-discrimination rules in the national legal order are not interpreted merely as prohibiting direct and negative discrimination, but as entailing the principle of equality (the obligation to treat equals equally and unequals according to their inequality) and the obligation to apply reverse discrimination in relation to disadvantaged categories of persons. Therefore the national legal order is undoubtedly consistent with the non-discrimination rules laid down in Article E of the RESC.

II.4 Conclusion

56. The grievance in this complaint is therefore not that the Republic of Slovenia does not acknowledge or implement the rights concerned in general, but that, with regard to the vulnerable group of tenants in denationalised dwellings, the Republic of Slovenia does not acknowledge and implement those rights and violates both the positive obligations and the negative prohibitions that derive from them.

D. ALLEGED BREACHES OF THE RESC

I. Introduction

57. By this complaint, we submit on the basis of the facts described above that, in relation to the vulnerable group of tenants in denationalised flats, the national authorities of the Republic of Slovenia have committed the following infringements:

- breach of Article 31§1 RESC in that they actively revoked the acquired legal titles to homes, increased the price of accommodation and reduced the possibilities of acquiring adequate accommodation, thus encroaching upon acquired security of tenure;

- breach of Article 31§2 RESC in that the effect of the measures taken against the vulnerable group in question is to provoke evictions and bolster homelessness;

- breach of Article 31§3 RESC in that they are reducing in the long term the affordability of housing that was once guaranteed;

- breach of Article 16 RESC in that they have artificially created housing problems for the families of tenants in denationalised flats;

In the situations covered by the above four indents, the conditions envisaged in Article G RESC were not met.

Lastly, we submit that the national authorities breached the prohibition of discrimination laid down in Article E RESC because in implementing the right to housing they treated this group of citizens differently and worse than other citizens in comparable or identical situations without any objective and reasonable justification.

58. At the end of this complaint, we will also submit that the national authorities have been and still are in a position to efficiently resolve the problem of tenants in denationalised flats, in the light of the existing possibilities for its resolution and the budgetary resources of the Republic of Slovenia. Since this problem has been artificially created, we also allege that the State's failure to provide for any efficient solution for this group of Slovenian tenants represents a breach of its diligence obligations under Article 31§1 RESC.

II. Alleged breaches of the right to housing (Article 31)

II.1 General observations

59. Article 31 of Part II of the RESC provides:

> *With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:*
>
> *(1) to promote access to housing of an adequate standard;*
> *(2) to prevent and reduce homelessness with a view to its gradual elimination;*
> *(3) to make the price of housing accessible to those without adequate resources.*

60. In the case-law of the European Committee of Social Rights and in findings of European experts on social rights, the right to housing is dealt with at an abstract level. Two principles have been raised above others: accessibility and adequacy of housing. Between them, these principles cover all important dimensions of housing: availability, allocation and security of tenure, on the one hand (accessibility), and habitability, suitability and affordability, on the other (adequacy). The element relevant for this complaint is above all security of tenure, since it is this element that has been primarily encroached upon and it is in terms of this element that the disadvantaged position of the group of tenants in question is demonstrated.

61. In several documents of the European Committee on Social Rights, security of tenure has been defined as one of the basic elements of Article 31§1 of the RESC:

Digest of the Case Law, December 2006, p. 160:

> *The notion of adequate housing must be defined in law. Adequate housing means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by law. ...*
>
> *The effectiveness of the right to adequate housing implies its legal protection. Adequate procedural safeguards are requested. Tenants or occupiers must be given access to affordable and impartial judicial remedies. ...*

Conclusions 2003, Volume 1, France, p. 221-229:

> *The Committee considers that, for the purpose of Article 31§1, the Parties must define the notion of adequate housing in law. The Committee considers that*

»adequate housing« means a dwelling which is structurally secure, safe from sanitary and health point of view and not overcrowded with secure tenure supported by the law.

This definition means that:

– a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity; etc and if specific dangers such as, for example, the presence of lead or asbestos are under control.

– over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.

– security of tenure means protection from forced eviction and other threats, and it will be analysed in the context of Article 31§2.

(...)

The Committee considers that effectiveness of the right to adequate housing implies its legal protection. This means that tenants or occupiers must have access to affordable and impartial judicial and other remedies. ...

62. A number of international bodies have also expressed the view that secure tenure and legal title for possession of a dwelling are one of the basic elements of the right to housing as a human right. In its General Comment 4 on the right to adequate housing, the United Nations Committee on Economic, Social and Cultural Rights elaborated an approach whereby adequate housing was to be understood in terms of seven key elements, security of tenure being the first of those elements (United Nations Committee on Economic, Social and Cultural Rights, General Comment 4, paras. 6-7. Sixth Session, 1991). Ruling in *Connors v. the United Kingdom*, the European Court of Human Rights found that Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been infringed where the Respondent State had failed to provide adequate legal security of tenure for an applicant. In *Larkos v. Cyprus*, the Court found that Article 14 of the Convention, read in conjunction with Article P1-1 thereof, had been infringed by an eviction order based on legislative amendments which had introduced discrimination according to whether tenants lived in public or private flats.

II.2 Accessibility and secure tenure (Article 31§1)

63. In view of the positive obligations deriving from Article 31§1, Signatory States are obliged to promote security of tenure. However, this obligation implies also an obligation not to actively and artificially lower the level of security of tenure that has already been reached, unless it is necessary in view of the reservations provided for in Article G of the RESC (see points 46 and 47). Such a negative obligation is also consistent with the general principles of non-regression of rights and the protection of vested rights, which are undoubtedly commonly recognised in the legal orders of European States. Furthermore, non-regression and the protection of vested rights is also an important element of the protection provided by Articles 8 and P1-1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, since they protect the home and acquired possessions of tenants, home-owners, leaseholders or other holders of occupancy rights.

64. On the basis of all of the above, we submit that the national authorities of the Republic of Slovenia are in breach of the implicit negative prohibition on the creation of housing problems for the population which, according to our belief, derives from Article 31§1. Since they have actively encroached upon security of tenure as one of the basic elements of the right to housing and encroached upon existing possibilities to resolve their housing problem, the acts of the authorities are in contradiction with this provision.

65. As described in point 7, prior to the housing reform the vulnerable group of tenants in denationalised flats in the Republic of Slovenia, together with all the other holders of the Housing Right in publicly-owned flats, represented one third of the Slovenian population that solved their housing problem by acquiring the Housing Right. The Housing Right was a special civil right that existed only in the internal legal orders of the former Yugoslav republics. The legal title of the Housing Right holders was legally acquired, regulated by law, based on final decisions and contracts, permanent, inheritable and protected by constitutional law. The housing problem of holders of this right and their family members was thus permanently solved (see point 9). With regards to the vulnerable group of tenants in denationalised flats, the Republic of Slovenia revoked this legal title and ceded their flats to private owners (see points 10, 11 and 13). In the framework of the housing reform, the State first sought to protect such tenants. After abolishing the Housing Right, it secured for them the possibility of either continuing in an adequately protected tenancy in the now privately-owned flat or permanently solving their housing problem through Substitute Privatisation Model III (see points 12 and 17). Amidst various disagreements

among different branches of national authority (especially the legislative power, the constitutional judiciary and the ordinary judiciary) and repeated changes to the national legislation and the case-law, the Republic of Slovenia plunged this particular group of tenants into a precarious housing situation (see points 26 and 27). Owing exclusively to measures adopted by the national authorities, the formerly protected and entitled proprietors of public flats are today in a precarious position, without adequate legal certainty and protection and facing a long-term unresolved housing problem. The national authorities:

- created a long-term housing problem for tenants of denationalised flats and their families and thus created new vulnerable group of households (forcible annulment of the Housing Right as described in point 10, cession of the flats to private owners as described in point 13, introduction of the possibility for new private owners to arbitrarily relocate their tenants as described in point 20, increase of the grounds for eviction as described in point 24, and especially, revocation of the transferability of tenancy to family members as described in point 25);

- ultimately abolished the only possibility of achieving a permanent solution to the artificially created housing problem and thus for this vulnerable group eliminated the only means of improving their housing position and security of tenure (abolition of Model III, as described in point 21).

66. The table below shows a comparison of the key elements defining the housing position of the vulnerable group of tenants before the first transitional interventions of the national authorities, following the intermediate period after the completion of the housing reform, and today:

element of the position	prior to the housing reform in 1991	after the completion of the housing reform in 1994	current situation in 2008
ownership of the flat	public	private	private
legal title	Housing Right	rental right	rental right
grounds for eviction	3	9	13
possibility of	not allowed	generally admissible,	allowed without

termination of the lease and relocation to a substitute flat		prohibited for the group under consideration here	restrictions
transferability of the lease to family members and users of the flat	guaranteed	transfer restricted to blood relations	not guaranteed
costs of tenancy	maintenance costs (payable to public administrator) + running costs	rent (payable to private owner) + running costs	rent (payable to private owner) + running costs
elements of the financial obligation towards the owner	maintenance costs: - maintenance - depreciation - management	rent: - maintenance - depreciation - management - capital costs	rent: - maintenance - depreciation - management - capital costs - planning tax
rent increases	0%	0 %	up to 613%
rights and obligations related to the use of the flat	- tenants decide freely on the number of users of the flat - redecoration and renovation of the flat admissible - owner is obligated	- limited number of users of the flat - redecoration and renovation of the flat without the owner's consent is prohibited under threat of eviction - owner is obligated	- increase of the number of users without the owner's consent is prohibited under threat of eviction - redecoration and renovation of the flat without the owner's consent is prohibited under threat of eviction - under threat of

	to maintain the flat	to maintain the flat	eviction tenant is obliged to partly maintain and clean the flat
possibility for tenants to acquire a privately-owned flat	exclusive right of purchase the flat, prohibition of sale to other buyers	right to purchase a substitute flat at favourable conditions (III. model of substitute privatization)	right of purchase is non-existent

Source: Združenje najemnikov Slovenije (Association of Tenants of Slovenia), Ljubljana, July 2007

67. We are of the opinion that in the light of its obligations under Article 31§1 of the RESC, the Republic of Slovenia should not interfere with the position of the group of tenants in the manner described above, such interference being in fact one of the reasons for their vulnerability as regards the right to housing. The Republic of Slovenia thus acted in clear contradiction of the aims and principles defined in Article 31§1 of the RESC, to the extent that it breached its implicit prohibitions as described in point 46. Efficient implementation of the right to housing is above all the following: the national authorities should refrain from implementing measures that suppress or diminish the existing possibilities for solving the housing issues of the population and a fortiori they should not interfere with the position of those whose housing problem has already been solved.

68. Within the meaning of Part I of the RESC, the national authorities were expected to create favourable conditions for an efficient solution of the housing problems of tenants in denationalised flats by encouraging access to adequate housing within the meaning of Article 31§1. Instead, in relation to the vulnerable group of Slovenian tenants, the national authorities (1) took steps to deprive the tenants of existing adequate housing, reduce the security of tenure and increase the price of accommodation, and (2) prevented and obstructed the existing possibilities for acquiring an adequate substitute flat. The national authorities encouraged the seizure of the existing adequate

accommodation when they forcibly modified the ownership of the flats that have been occupied by members of the vulnerable group of tenants (denationalisation) whilst replacing their acquired legal title with a considerably weaker title (substitution of the Housing Right with the rental right). In addition, over the years they have increasingly encroached upon the initially secured protection. The national authorities helped to prevent and obstruct the existing possibilities for acquiring an adequate flat when they abolished Substitute Privatisation Model III, which provided for a permanent solution to the housing problem for all the members of the group of tenants in question.

69. Over a period of 15 years, from the radical shift in position in 1994 until today, not one single improvement or consolidation of their position has been noted. On the contrary, there is a constant tendency to shrink the scope of their rights and with no end in sight. Therefore we believe that the Republic of Slovenia is in breach of its obligation deriving from Article 31§1.

II.3 Homelessness prevention (Article 31§2)

70. According to Article 31§2, Signatory States are obliged to prevent homelessness with a view to its gradual elimination. Individuals are homeless where they do not legally have at their disposal a dwelling or other form of adequate shelter (Conclusions 2003, Italy, p. 345). For this purpose, the parties are to take reactive and preventive measures (Conclusions 2003, France, p. 225). While reactive measures are aimed at people who are already homeless, preventive measures are aimed at households in danger of becoming homeless. States must take action to prevent categories of vulnerable people from becoming homeless. To that end, they must implement a housing policy for all disadvantaged groups of people to ensure access to adequate housing (Conclusions 2005, Lithuania, p. 409). This implies that the Signatory States are to implement a housing policy for all disadvantaged groups of people to ensure access to social housing and housing allowances. It also requires that procedures be put in place to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned (Conclusions 2003, France, p. 228, 229).

71. When preventing homelessness, proper measures should be taken to limit the risk of eviction for existing households. As the notion of adequate housing includes security of tenure, Signatory States must set up procedures to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which

respect the dignity of the persons concerned (Conclusions 2003, Italy, p. 345). Forced eviction can be defined as the deprivation, on grounds of insolvency or wrongful occupation, of housing which a person occupies (Conclusions 2005, Lithuania, p. 409).

72. In the case of the Slovenian tenants in denationalised flats it must be borne in mind that initially they were not a vulnerable group, nor were they a disadvantaged category of persons in danger of becoming homeless. Their housing position was permanently solved and security of tenure was closer to that of a home-owner than that of leaseholder with regulated and controlled tenure (see point 9). However, solely through restrictive measures taken by the national authorities, they found themselves in the position of persons living with a high risk of becoming homeless. There are two aspects to the threat of homelessness as regards the Slovenian tenants in denationalised flats: the short-term and the long-term.

73. A short-term threat exists because the new owners of the flats are allowed to evict tenants from their homes of many years, without having to make sure that a substitute dwelling is available for relocation, on the basis of 13 grounds for eviction. And some of the possible grounds for eviction concern situations which do not affect the interests of the owners in any way and, far from being unlawful as such, can be part of the life for an average person: increase in family members, being absent for longer than 3 months or failure to clean a flat. And yet those are situations which, under the legislation in force, can lead to eviction (see point 24). The short-term threat is especially severe for tenants with low incomes, since the rent ceiling has been raised by more than 600% (see points 19, 22-24).

74. The long-term threat is of a more complex nature. It consists of three elements, of which each individually can in the long-term lead to the eviction of the tenants in question: (1) owing to the change in approach of the ordinary courts, as a result of which tenants of denationalised flats are being denied the once self-evident inheritability of their tenures (see point 25), families living in denationalised flats can all to the very last one expect to be evicted from their homes as soon as the existing holder of the contract dies; this element will be discussed also in connection with the alleged breaches of family protection; (2) owing to the Constitutional Court's revocation of regulated rent as a vested right (see point 23) and its stand-point that rent regulation is not an issue of constitutional protection (see point 40) tenants in denationalised flats no longer have a guaranteed permanent position; the approach adopted by the national Constitutional Court means that any future government can raise the regulated rent without any limit for tenants in denationalised flats, what in the long-term will give rise to more and more

evictions; this element will be also discussed hereunder in connection with the affordability of housing; (3) there is clear tendency on the part of the national authorities to shrink the scope of the rights of tenants, which can finally lead to no less than final revocation of their legal title to their homes of many years.

75. In the case of the Slovenian tenants in denationalised flats, the national authorities are not taking measures to prevent homelessness, and, in particular they are not limiting the risk of evictions. On the contrary, from all that has been stated above it is clear that the national authorities are intentionally and actively introducing short and long-term threats of eviction and homelessness. On the one hand, they are raising the rents and the number of possible grounds for eviction; and, on the other, they are limiting permanency and inheritability of legal title. It is clear from all the above that instead of introducing measures to prevent disadvantaged groups from becoming homeless, the national authorities are artificially creating a new vulnerable group which is in danger of becoming homeless. It is on this basis we submit that the Republic of Slovenia is also in breach of its obligation under Article 31§2.

II.4 Affordability (Article 31§3)

76. For the purposes of Article 31§3, the Signatory States are to ensure an adequate supply of affordable housing. Housing is affordable, if the household can afford to pay the initial costs, the current rent and/or other housing-related costs on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located (Conclusions 2003, Sweden, p. 655). In normal circumstances, benevolent national authorities should be fulfilling this obligation through the adoption of appropriate measures for the construction of housing, in particular social housing, and/or by introducing housing benefits for the low-income and disadvantaged sectors of the population (Conclusion 2003, Sweden, p. 656). However, in this particular case, we are not dealing with such a situation, but the opposite one in which the national authorities are in the long term obstructing the existing system which guaranteed for many years the permanent affordability of housing of Slovenian tenants in denationalised flats.

77. Affordable housing is in our belief a term which is not limited to social rental housing and housing allowances, but has a wider meaning. A variety of legal titles exist, in accordance with which habitation of a particular dwelling is "legitimate", from simple permission from the owner to ownership; and, in our view, affordability within the

meaning of Article 31§3 should be an element of all of these. Since the right to housing is a positive human right, the Parties to the RESC should endeavour to provide affordability for all these types of housing, within their existing possibilities. Because it is a question of a diligent obligation, social housing and housing allowances should be the proper way to meet the minimum standards of Article 31§3. However, we believe that in the light of that provision the Signatory States are on no account allowed to artificially and intentionally revoke the affordability of existing housing, even though it has not been provided in the form of social housing or housing allowances.

78. The tenants of denationalised flats in the Republic of Slovenia acquired the existing flats in the times before transition, under a system that provided the masses with social and affordable housing (see points 5-9). As a consequence of the measures taken by the national authorities, especially denationalisation, these dwellings have been excluded from social housing and have become the private property of persons who cannot be regarded as social providers (see point 13). Nevertheless, the tenants living in such dwellings were given to understand that the affordability of their acquired housing would be permanently guaranteed, above all by means of a regulated rent (see point 18). However, latterly the national authorities have been actively interfering even with this key-element of affordability, to the extent that the housing has become unaffordable, at least in the long term.

79. Changes of rent regulation in 1995 introduced the inclusion of capital costs in non-profit rent (see point 19), which constitutes unnecessary interference with the position of tenants in denationalised flats. The new owners of the flats are not social providers, still less have they invested their capital to create the dwellings in question, and so the capital costs represent only profit for them. An even more blatant incorporation of a profitable element in the rent was the inclusion of planning tax, as a result of the amendments in 2003 (see point 24). Even though the rent is in statutory law still named "non-profit", it is clear that it has been changed into a profit one. We on no account deny possibilities of including also profit elements into rent in general, if such inclusion promotes building of new social housing. However, in this particular case the only consequence of these changes in rent regulation has been to create clear profit for the new owners of the flats in question. By such measures, the national authorities have changed the position of tenants in denationalised flats in such way that they have been forcibly changed from tenants with non-profit housing into tenants living in flats with profit rent. And in our view such a change is not in favour of affordability as one of elements of right to housing.

80. There are no official data on the average correlation between the non-profit rent and the incomes of the households in denationalised flats. That is why it is hard to say that affordability has been finally revoked in this case. However, despite the lack of data, we believe that when looking at all the measures that the national authorities have taken with regard to rent regulation there is a clear long-term trend leading to the eventual cancellation of rent regulation for tenants in denationalised flats, and thus an active attempt to deprive them of their affordable housing. In hopes of stopping this activity we file this collective complaint.

81. We believe that the question of the breach of Article 31§3 in this case also concerns matters of principle. Special attention should be paid to the approach of the national Constitutional Court, as expressed in its decisions on the issue of rent regulation.

82. By one of its decisions, the national Constitutional Court itself changed the rent regulation to the detriment of tenants (see point 23). On a certain level, the law existing at that time preserved the ceiling of regulated rent for tenants who had concluded tenures before its adoption, which included the tenants in denationalised dwellings. However, the Constitutional Court annulled those provisions and dismissed the objections of the legislature that these provisions sought to protect the vested rights of tenants. The Constitutional Court took the position that non-regression rules in the internal legal order do not apply to rent regulation. We believe that such an approach is in clear contradiction with the aims of Article 31§3 and the position of the Committee. If rent regulation is a measure that is pursuing affordability of housing, and in this case it is, then it is our view that it should be permanent (permanent in regard to its structure and relatively permanent in regard to general economic situation in national State (e.g. inflation). Only permanent rent-regulation can guarantee the affordability of housing in the long term. And only housing that is affordable in the long term meets the standards of Article 31§3 (see quotations in point 77, Conclusions 2003, Sweden, p. 655). Therefore, the position of the national authorities, and in particular of the national Constitutional Court, to the effect that rent regulation can be changed at any time and without preserving the rights of existing tenants is incompatible with the long term affordability of housing.

83. ThereT is also another decision of the national Constitutional Court that has to be examined. As already mentioned, the National Association of Tenants challenged the new Housing Act adopted in 2003 also from the perspective of a new rise in rents and the Constitutional Court rejected their action in its entirety (see point 40). What is important is that by that decision the national Constitutional Court was also adjudicating on the issue of rent regulation. It rejected the objections of the Tenants' Association that rent

increases are not in compliance with the provisions of the RESC on the ground that rent regulation is not a constitutional term and that the content of the regulated rent is an economical question. Therefore it denied rent regulation any meaning from the perspective of human rights protection, even though it is an essential element for the affordability of housing, which in turn is a vital aspect of the right to housing.

84. In the light of all the foregoing, it is clear that the provisions of the RESC prescribing the right to housing are not being seriously dealt with by the national authorities, since even the national Constitutional Court refuses to examine rent regulation from the point of view of its consequences on the affordability of housing, even though that is an essential element of the right to housing. And this is in addition to the concrete and clear tendency to revoke the once existing affordability of housing for tenants in denationalised flats – another element of the alleged breaches of Article 31§3.

III. Alleged breaches of the right of families to social, legal and economic protection (Article 16)

85. Article 16 of the RESC stipulates:

> *With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.*

86. The fact that the right to housing is laid down in Article 31 of the RESC does not preclude consideration of relevant housing issues arising under Article 16 of the RESC, which addresses housing in the context of securing the right of families to social, legal and economic protection. In this context and with respect to families, Article 16 focuses on the right of families to an adequate supply of housing, on the need to take into account their needs in framing and implementing housing policies and ensuring that existing housing is of an adequate standard and includes essential services (ERRC v. Bulgaria, Complaint No. 31/2005, Decision on admissibility of 10 October 2005). From this quotation it is clear that Article 16 includes the right to housing, but limits the beneficiaries to families as such.

87. Even though all negative effects of the measures taken by the national authorities from the point of view of Article 31 interfered not only with the housing position of the holders of rental contracts in denationalised flats, but also with the position of their families, in this part of complaint we will focus only on those measures that obviously and most severely affected family protection. At this point we will not repeat everything that has been said in previous allegations; however we refer to them also in the context of the alleged breaches of Article 16. There are two more elements of discrepancy between the activities of the national authorities and the RESC, especially Article 16: (1) prohibition of freely creating a family for tenants in denationalised flats, and (2) creating a long-term housing problem for families living in denationalised flats.

88. By the new Housing Act in 2003, new prohibitions were introduced for tenants, also for tenants in denationalised flats (see point 24). One of those is also a prohibition on increasing the number of family members after conclusion of rental contract. According to the new regulations, tenants are allowed to increase the number of family members living in a flat only with the written consent of the owner. And if consent of the owner is not given, and the tenant nevertheless increases the number of inhabitants in the flat, that constitutes grounds for evicting the whole family. With regard to tenancies concluded before 2003, this new sanction applies not only for new increases in the number of people living in the flat, but for all increases that took place also before 2003, if the tenants did not have the written consent of the owner to increase the number of family members. The National Association of Tenants reports that these provisions are not being commonly used by landlords on the free market, since they don't show any interest in the number of inhabitants using rented flats together with the holder of the rental agreement (let alone the extreme situations when the excessive number of co-users of the flat constitutes *de facto* interference with the rights of others living in the same building). However, such a restrictive measure is especially dangerous in the case of the denationalised flats, whose new owners are endeavouring to empty them of existing tenants so that they can start to trade them on the free market. Therefore these new restrictions that have been in force since 2003 prevent tenants in denationalised flat from freely pursuing their family life in their rented flats, and in our opinion that is in clear contradiction with Article 16.

89. Special attention in regard to Article 16 has also to be paid to the latest changes in the approach of the ordinary courts in 2005 (see point 25). As explained before, families living in formerly publicly-owned flats on the ground of the Housing Right, also in flats that are today denationalised, were considered to have their housing problem permanently resolved. That is to say, the Housing Right was inheritable for all family

members living in a flat with the holder of that right (see point 9). And also the imposed lease that forcibly replaced the former Housing Right at the end of the Housing Reform in the Republic of Slovenia was considered to be inheritable in the same way (see points 12 and 18). This meant that such a tenure represented a long-term and permanent resolution to the housing problem of families as a whole. However, the change in the practice of the Slovenian ordinary courts in 2005 introduced a long-term housing problem for families living in restituted flats, since their legal title for possession of a flat was limited to the lifetime of the existing holder of the rental contract. Since this is also a consequence of a measure taken intentionally and actively by the national authorities, we believe that Article 16 has been breached also for this reason.

90. In this context, it has to be mentioned that the above-described changes in court practice regarding the inheritability of tenures in denationalised flats have been limited solely to the group of tenants in denationalised flats and are in clear contradiction even with the text of statutory law and the approach consistently taken by the national Constitutional court. Article 109 of the Housing Act in force explicitly prescribes that after the holder of the rental agreement is deceased, members of his family have the right to claim conclusion of a rental agreement under the same contractual conditions as were valid for the deceased tenant. On the other hand, the national Constitutional Court decided in 1996 that the right of the family members of a deceased tenant of a denationalised flat to continue tenure also after the tenant dies is necessary for the protection prescribed in Article 53§3 of the Constitution (complement to family protection in the internal legal order as explained in points 51-53), and therefore does not present an excessive interference in the property rights of the new owners of denationalised flats (see point 20). Despite that, the ordinary courts refused after 2005 to recognise such a protection to families in denationalised flats and interfered with the protection provided by Article 16. And this interference has not been redressed even though the National Association of Tenants and the International Union of Tenants have been warning about it since 2005 (see points 42 and 44).

IV. Non-existence of the conditions envisaged in Article G of the RESC (restrictions)

IV.1 General Observations

91. The factual basis of this complaint comprises measures taken by the national authorities by which they interfered with the position of tenants in denationalised flats (see part B of this complaint). As already mentioned above, the national authorities usually substantiated their measures by reference to the protection of property rights. To this end, the argument should be further developed in relation to Article G of the RESC.

92. Article G of the RESC stipulates:

> *The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.*
>
> *The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.*

93. Considering the text above and with reference to the European Committee of Social Rights' Digest of the Case Law, December 2006, p. 164-165, we believe that restrictions, in order to be considered lawful, must comply with all three key-elements, and must therefore:

(i) be prescribed by law – that is to say, by statute or other legal text or case-law, provided that it is sufficiently clear,

(ii) pursue a legitimate purpose, such as the protection of the rights and freedoms of others, of public interest, national security, public health or morals, and

(iii) be necessary in a democratic society, that is to say, the pursuance of those purposes must be compatible with the principle of proportionality (there must be a reasonable relationship between the restrictive measures and the legitimate aim(s) pursued).

94. The final consequence of the series of action taken by the national authorities as described in part B of this complaint has been severely aggravating the housing position of a significant part of the Slovenian population. We believe that in the light of Article G, this series of actions should be considered in its totality but also from the perspective of each individual measure separately. We intend to show hereunder that regardless of the method of consideration stated above, the conditions laid down in Article G for the legitimacy of acts have not been met. The series of actions that will be examined hereunder consists of the various individual restrictive measures taken by the national authorities and are as follows:

- abolition of the Housing Right (see point 10),
- restitution of expropriated flats in integrum (see point 13),
- 1st changes in rent regulation (see point 19),
- annulment of statutory ban on forcibly moving tenants to substitute flats (see point 20),
- annulment of Substitute Privatisation Model III (see point 21),
- 2nd changes in rent regulation (see point 22),
- 3rd changes in rent regulation (see point 23),
- abolition of non-regression rules vis-à-vis tenants in restituted flats (see point 23),
- increase in the number of grounds for eviction (see point 24),
- 4th changes in rent regulation (see point 24),
- restrictions on inheritability of tenure (see point 24),
- abolition of inheritability of tenure in restituted flats (see point 25).

IV.2 Evaluation of each restrictive measure individually

95. The very first formal action of the national authorities was the simultaneous annulment of the Housing Right in abstract regulations and its forcible revocation in relation to the existing holders (see point 10). The national authorities thus artificially, rather than following a natural course of events, deprived the existing Housing Right holders and their family members of the acquired legal title to live in their homes. To this day, the national authorities have not presented a reasonable ground for the Housing Right annulment. As it derives from the legal materials for the adoption of the 1991

Housing Act, an excuse for this first restrictive measure was the intention of the national authorities to promote Housing Right holders to home-owners. However, this could not substantiate the revocation of Housing Right in the case of the tenants of denationalised flats, since they were not granted the right to buy their home of many years and were thus not offered the option of becoming home-owners. We also believe that revocation of Housing Right was not necessary because the Housing Right as such could have continued to exist in the internal legal order. That is to say, apart from ownership and lease, numerous other rights in rem or contractual rights which entitle a holder to use a flat exist both in the internal legal order and in other comparable legal orders in Europe. Thus, for example, traditional European legal orders traditionally recognise the easement of real estate or usufruct as a special civil right. Therefore, also the Housing Right as a special occupancy right of civil law could have continued to be recognised in the internal legal order of the Republic of Slovenia.

96. The next action consisted in the unique way in which the Republic of Slovenia regulated denationalisation and other forms of property restitution. Former post-war private owners or their heirs were granted the right to demand ownership even of occupied flats whose tenants enjoyed the Housing Right at the beginning of the housing reform (see point 13). This measure allowed them to become landlords in relation to the existing users. This arrangement was also not indispensable in the light of Article G, because neither the international community nor other countries with comparable legal systems recommended such solutions. In the countries with comparable legal systems, occupied flats were not restituted in integrum; instead, former owners were equitably compensated for expropriated property either financially or in the form of substitute property (see point 28-31).

97. By annulling the legal prohibition on doing so, the Constitutional Court introduced the possibility for the new private owners to relocate the tenants of denationalised dwellings from their homes to substitute flats without any reason (see point 20). This represents additional crucial encroachment by the national authorities on the tenants' rights. This measure was especially controversial in the light of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, because the tenants of denationalised dwellings no longer enjoy secure tenure in their homes; instead of peaceful enjoyment of their rights, these tenants have been put in a position in which - by a simple demand of a third person and not because they would choose to do so – they can be forced to leave their home and move to a substitute flat. From the perspective of respect for the home, it is particularly contentious that families of tenants of denationalised dwellings moved to the existing flats on the basis of an acquired Housing

Right that guaranteed them a permanent and inheritable title at a concrete location. From the perspective of the right to housing, this measure is highly relevant since the position of the tenant in the existing home is so precarious that tenure cannot be considered secure - which is an essential attribute of adequate housing. The decision of the national Constitutional Court was substantiated with the argumentation that prohibition of relocation encroaches on the acquired rights of the new owners. That prohibition, by which it was sought to protect the tenants, had been adopted in the final stages of the housing reform by means of an amendment to the Housing Act (see point 17). Because of that fact, the Constitutional Court considered that in the meantime private owners had acquired the right to relocate the existing tenants to substitute flats and overlooked the fact that the tenants had acquired these flats in permanent and inheritable possession long before the position of the new private owners had become effective (see point 12). In other words, the prohibition on relocating tenants only restored the acquired right of tenants and was not a new element of their protection. Furthermore, traditional democratic societies are not obliged, not even for the protection of private property, to allow private landlords to demand repossession of a rented flat at any time. No similar regime for the arbitrary relocation of legally protected tenants exists in any other European State. The European Court of Human Rights adopted the following decision in *Velosa Barreto and Others. v. Portugal*:

> The case *Velosa Barreto v. Portugal* had been brought to the Court on the ground of application of an owner and not from side of a tenant. The national courts did not grant the applicant's action against tenant demanding the termination of the existing lease, claiming that the applicant needs the rented flat for himself and his family. Applicant believed that his right deriving from Article 8 had been breached as well as his property rights. The Court did not see any interference in the applicant's conventional right, neither under Article 8, nor under Article P1-1. The Court reiterated that even though Article 8 provides a positive obligation of state to protect individual's home even in the interpersonal relationships, it does not require the legal protection in national legal order enabling each family to get a home for themselves, neither does the Convention go so far as to place the State under obligation to give the landlord the right to recover possession of a rented house on request and in any circumstances.

98. One of the crucial encroachments of the national authorities on the position of the vulnerable group was the abolition of substitute privatisation Model III. By a decision that took effect in 2000, the national Constitutional Court thus deprived the vulnerable group of the possibility of permanently solving their housing problem through the purchase of

substitute flats (see point 21). The national Constitutional Court substantiated its decision by stating that the obligation of local communities to provide substitute flats for this category of individuals encroached on the constitutional protection of private property. We consider that the constitutional protection of private property in democratic societies is secured primarily by protecting the individuals' private sphere. The subject of Conventional protection in accordance with Article P1-1 and other international legal instruments is private property. The protection of private property is therefore primarily intended for the benefit of the holders of human rights, that is, individual and civil legal entities of private law in relation to their property. We are not aware of any other example akin to the concrete case of the Slovenian Constitutional Court in which the need to protect private property was quoted in order to protect local communities as forms of local self-government and therefore to protect the public authorities at the expense of the rights of individuals. In accordance with international legal instruments regulating the area of human rights, local communities are not holders of human rights and fundamental freedoms; nor are they entitled to file complaints with the European Court of Human Rights. International legal instruments and the protection of private property that they regulate are intended for the protection of individuals and legal entities of private law and not to safeguard public property and the regulation of relations between various branches of public authority, that is, central-State authority and autonomous local authority. In traditional democratic societies, it is private property that is constitutionally protected from encroachment by the public authorities, rather than public property being protected from claims by individuals. We therefore consider that the reasons put forth by the national Constitutional Court to substantiate such an interference with the position of the vulnerable group of individuals most certainly cannot be justified by reference to Article G of the RESC.

99. The national authorities further encroached on the security of the vulnerable group of tenants of denationalised flats by significantly multiplying the number of grounds for eviction, firstly, by forced revocation of the Housing Right and its replacement with a tenancy right in the context of the housing reform (see points 10, 11 and 12), and secondly, by the 2003 amendment to the housing legislation (see point 24). The initial 3 grounds for the eviction of tenants from denationalised dwellings have been increased to 13. The law also lists obviously unreasonable grounds for eviction, such as an increase in the number of users of the flat without the owner's authorisation, failure to maintain and clean the flat, failure to allow the owner to enter the flat at least twice a year, renovation of the flat without the owner's authorisation, absence from the flat for more than three months, and so on. The national authorities never saw fit to substantiate this multiplication of reasons justifying eviction of current tenants in the reasoning and other

legal materials at the time when the housing legislation was being amended, so there is no legitimacy in these measures. We therefore consider that such interference with the position of tenants in denationalised dwellings also does not meet the conditions enumerated in Article G of the RESC.

100. The national authorities frequently increased the non-profit rent ceiling, raising it in total by 613% (see points 19, 22, 23 and 24) although in the given circumstances these measures were not indispensable in a democratic society and the national authorities have never presented reasons substantiating the need for such encroachment on the position of the vulnerable group of tenants. When the national Constitutional Court intervened in the tenancy regime in 2003 and increased the non-profit rent (see point 23), this measure was justified by reference to the equality principle. The Constitutional Court considered that the existing and the new tenants of non-profit flats needed to be put on an equal footing. It is our view that the equal treatment of landlords who concluded the tenancy agreements before and those who did so after the new tenancy regime had been put in place, is not indispensable in a democratic society. One of the basic principles of the rule of law in traditional democratic societies is precisely the protection of acquired rights and the prohibition of retroactivity. Consequently, the principle of equality operated between the old and the new landlords cannot be indispensable within the meaning of Article G of the RESC. The major encroachment of the national authorities on the legal certainty of the tenants in denationalised dwellings from the perspective of affordability of housing is undoubtedly the subsequent position of the national Constitutional Court, according to which the tenants' position with regard to the structure and the level of the regulated non-profit rent is not protected by the Constitution from the perspective of the principle of safeguarding acquired rights and the prohibition of retroactivity. The reverse position, that is, for the national authorities to secure them such protection would certainly not be contrary to the principles of the rule of law and therefore refusal to grant such protection in the internal legal order is also not indispensable within the meaning of Article G.

101. The final crucial encroachment on the position of the group under discussion here was the recent abolition of the right to transfer tenancies to family members after the death of the holder of the lease (see point 25). The national ordinary judiciary adopted a position according to which continuation of a regulated non-profit tenancy following the death of the existing tenant would be excessively prejudicial to private property. Therefore, despite explicit legal provisions, the national ordinary judiciary does not acknowledge the right of the family members of tenants in denationalised dwellings to continue the non-profit tenancy after the death of its holder. The regulation of rent,

including the non-profit rent, is not incompatible with democratic legal orders because practically all European States have this legal mechanism in the case of both public and private flats. The European Court of Human Rights adopted the following decision in *Mellacher and Others v Austria*. The abolition of the right to transfer tenancies to family members thus also does not meet the conditions prescribed in Article G of the RESC.

> *Mellacher and Others v. Austria* is about public interference in owners' property rights when pursuing the aim to protect tenants. Changes of Austrian housing legislation introduced several limitations for private owners about existing tenures. Rent had been strictly limited and termination of existing leases prohibited. Owners contested, that due to new limitation of rent, they are unable to cover even maintenance costs of rented buildings. Owners reproached the respondent state that new rent limitation in connection to new limitations of termination of existing leases made their property without any economic value and therefore turned it into nuda proprietas. The Court did not grant the applications. Even though the owners contested that they had been de facto expropriated, the Court believed that new limitations had constituted merely the way of controlling the use of property and therefore interference in owners' possessions. Namely, the owners still preserved the right to sell their flats, while lowering economic value of property by itself does not constitute deprivation of property. Because the aim pursued was resolution of housing situations of large number of individuals (tenants), contested interferences were in public interest. And as contested changes in legislation had constituted merely an an interference, just compensation for owners was not necessary regarding the Convention. The Court believed that interference had been proportionate from the view of waging public aim pursued and infringed owners' interests.

IV.3 Evaluation of the series of restrictive measures as a whole

102. The series of restrictive measures taken by the Slovenian authorities consisted of several changes in legislation that were introduced in the Slovenian legal system via legislative amendments of statutory law, decisions of the national Constitutional Court or the approach taken by the ordinary courts. As the first key-element in Article G is actually a form of restrictive measures we believe that this first requirement is undoubtedly fulfilled. We intend to prove hereunder that the other two elements constituting Article G were not met in the case of the Slovenian tenants in question.

103. As explained before, the official purpose of some of the restrictive measures measures is not yet clear, since the national authorities have never offered any explanation. However, the majority of restrictive measures in question were pursued in order to protect the property rights of owners. Therefore the question of conflict between the need to protect the property rights of the new owners and the need to protect the acquired Housing Rights of the tenants should be discussed in the context of appraising the legitimacy and necessity of the series of measures in question.

104. On no account do we deny the legitimacy of measures pursuing the protection of property rights in general. It is an obligation of all European States, deriving from Article P1-1 of the Convention. However, there is a limit to the property rights protection set by the Convention, and even the European Court for Human Rights has established that the Convention does not go so far as to provide for the absolute protection of private property. Certain national authorities are allowed by the national legal order to pursue a higher level of protection of private property; however, once the minimum standards set by the Convention are reached, the higher level of protection is not any more required under the Convention. Protection in excess of the Conventional requirements is therefore a political decision within the margin of appreciation of the national authorities and, from the point of view of Conventional property rights protection, it is not necessary.

105. It is quite legitimate for an individual State to take a political decision to provide a higher level of protection of property rights than required under the Convention. However, if such a decision causes conflict with the rights of others and these are also protected by the Convention, the legitimacy of such excessive protection becomes doubtful. A fortiori, if such a decision is solely an excuse to encroach on the rights of others. If the conflict reflects the obligations of the State laid down in the RESC, then the legitimacy of such measures should be considered also in the light of the RESC.

106. In this context, we believe that the degradation of the Housing Rights of tenants in denationalised dwellings in Slovenia was not necessary for the protection of the new owners, and that the legitimacy of that degradation is doubtful, whether or not the aim of those measures was indeed to protect property rights.

107. In the light of a number of cases brought before the Court, it may be concluded that the protection of property rights under the Convention cannot justify the undermining of the tenants' position. The Conventional protection of property rights does not require the national authorities to abstain from the restrictions that were repealed as part of the series of measures in the case of the Slovenian tenants of denationalised dwellings.

There are several cases in which the Court showed that the Convention does not protect owners to such an extent that prohibitions or limitations on evictions should not be allowed (see *Velosa Barreto* v. *Portugal*, see point 97; *Mellacher and Others*. v Austria, see point 101; or *Immobiliare Saffi* v. *Italy* – discussed hereunder) or that rents should not be regulated, so long as they cover at least maintenance costs (see *Mellacher and Others* v. *Austria* or *Hutten-Czapska* v. *Poland* – discussed hereunder). On the contrary, the Court has allowed more extensive interference with the owners' position for the purpose of protecting tenants. Imposing a pre-emption right for the benefit of tenants did not represent a breach of the Convention (see *Thörs* v. *Iceland* – discussed hereunder), and,a the expropriation of owners for the benefit of tenants in return for just compensation was confirmed to be in compliance with the Convention (see *James and Others* v. *UK*, see point 130).

The case of *Immobiliare Saffi v. Italy* is about the protection from eviction of existing tenants with expired tenures. In certain period in Italy large number of existing tenures expired. Because of a threat of mass evictions and homelessness of numerous individuals, new legislation temporarily introduced prohibition of eviction of tenants with expired tenures. The applicant was an owner of a flat with such a tenant. Because of the described legislation he was unable to evict the tenant from his flat. However, after the expiration of the new legislation the applicant still could not evict tenant. After the statutory prohibition on evictions was invalidated, a large number of claims for evictions was brought to execution organs and applicant's claim for eviction were not treated for years. At the end, the applicant's tenant died and only then the applicant recovered possession of flat in question. The Court granted the application. However, the legal prohibition of eviction was not considered to be in contradiction with the Convention. It was considered proportionate interference pursuing a legitimate aim in the general interest, that is homelessness prevention of large number of tenants (tenants with expired tenures). The unlawful interference in the applicant's property rights was incapacity to evict tenants later when legal prohibition of evictions expired and the only reason for remaining tenant in applicant's flat was incapacity of executive organs to deal with applicant's claim on eviction. That is why the Court believed that applicant's property rights (Article P1-1) and right to fair trial (Article 6) had been breached.

The case of *Hutten-Czapska v. Poland* represent a certain step back from the Court points of view expressed in the case *Mellacher and oth. v Austria*. This case is about the same issues as the previous case but with a different outcome. In the socialist regime the state introduced strict limitations on private owners. Even though they

were never de iure expropriated, the public authorities were granted the right to govern private rental flats, so even private flats had been allotted to tenants by public authorities. Rent had been strictly regulated and tenants had enjoyed high level of security of tenure. Their tenures had been inheritable. After change of the socialist regime, the sitting tenants in such flats preserved their acquired position and regulated rent. The applicant, an owner of such a flat, alleged that her conventional right to peaceful enjoyment of possessions has been breached, as far as she could not terminate imposed lease and evict the tenant or raise limited rent. The case was firstly adjudicated by the Senat (first instance) and subsequently, on the ground of Poland's request, by the Grand Chamber (second instance). Both, the Senat and the Grand Chamber believed that rent regulation in Poland is in contradiction with the Convention and application was granted. The Senat believed that limiting rent to such extent that rent does not cover even maintenance costs represents a breach of owners' property rights. The Grand Chamber confirmed this point of view, and even more, expressed its view that limited rent should also bring certain level of profit to owners if necessary. However, neither the Senat nor the Grand Chamber granted application in the part where the applicant contested prohibition of termination of lease and protection from eviction.

The case of *Thörs v. Iceland* is about tenant's pre-emption right. Legislation in force introduced pre-emption right for tenants and owners were prohibited to sell flats to others than tenants, while the statue in force prescribed the purchase price. The applicant was an owner who contested tenant's pre-emption right to be in contradiction with the Convention. His application was dismissed by the Commission as clearly unfounded.

108. In all those cases, the Court has reiterated that the interference with the rights of the owners was in compliance with the Convention, since such interference pursued the legitimate aim of resolving the housing problems of the population. Therefore the Court itself made property rights protection subordinate to the promotion of housing and homelessness prevention. And there is even more to it. The Convention does not guarantee that the public authorities would abandon existing restrictions on individual's property (see *Hammerle v. Austria*) and even less protects an interest to acquire property (see *Radwillovicz v. Poland*). And in the case of the Slovenian tenants in denationalised dwellings, the restrictive measures have all been directed at acquiring the property for new owners and abandoning restrictions on their newly acquired property. For all these reasons, we believe that the series of restrictive measures by which the

national authorities of the Republic of Slovenia pursued the protection of property rights were not proportionate and necessary within the meaning of Article G of the RESC.

109. Additionally, it has to be mentioned that the legitimacy of the contested measures as a whole is also disputable from the point of view of the provisions of the Convention. That is to say, Conventional property rights protection is certainly not limited only to the rights of owners or landlords, but entails also the protection of tenants. It is important that the notion »possessions« (in French: biens) in Article P1-1 of the Convention has an autonomous meaning which is certainly not limited to ownership of physical goods; certain other rights and interests constituting assets can also be regarded as "property rights" and thus as "possessions", for the purposes of this provision (see *Gasus Dosier- und Fördertechnik GmbH v. Netherlands*, para 53. of the grounds). The right to use another's land or a lease of land is considered a possession (see *Matos e Silva, Lda., and Others v. Portugal*, *Zacher v. Germany* or *Fischer v. Austria*). The same is true of the tenure of a flat (see *U.L. v. Sweden*). In the present case, this means that even though the weakening of the tenants' position was pursued with the aim of protecting owners vis-à-vis their property rights, those same measures breached that protection in the case of the tenants vis-à-vis their possessions. Moreover, the tenant's position in a flat is also protected as part of the Conventional protection of privacy and home, prescribed in Article 8. That is why we deny the contested measures as a whole also the key-element of legitimacy.

110. On the basis of all the foregoing, a detailed analysis of the reasons put forward by the national authorities to substantiate individual infringements of the position of the vulnerable group of tenants leads us to conclude that none of these infringements meets the conditions of Article G of the RESC. Interference with their position was not indispensable.

V. Alleged breaches of non-discrimination rules (Article E)

111. Article E of the RESC, read in conjunction with the Appendix thereto, provides:

> *The enjoyment of the rights set forth in this Charter shall be secured without discrimination...*
>
> *A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.*

112. Article E prohibits all forms of discrimination. It confirms the right to non-discrimination which is established implicitly or explicitly by a large number of Charter provisions. The insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the fundamental rights contained therein. Its function is to help secure the equal effective enjoyment of all the rights concerned regardless of the specific characteristics of certain persons or group of persons (*Autism-Europe* v. *France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51). And indeed it is not only negative direct discrimination that is prohibited by Article E. It is clear from the case law of the Committee that this provision includes also a prohibition of indirect discrimination and provides a principle of equality, which means that equals should be treated equally and unequals unequally, which in turn entails the application of measures of reverse discrimination, if necessary.

Autism-Europe v. *France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51 and §52:

> *The expression "or other status" means that this is not an exhaustive list. ...*
>
> *The Committee observes that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court for Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the Thlimmenos case (...), the principle of equality that is reflected therein means treating equals equally and unequals unequally. ...*
>
> *In this regard the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.*

Digest of the Case-Law, December 2006, p. 163:

> *The principle of equality underlying article E implies not only that all people in the same situation must be treated equally but also that people in different situations must be treated differently.*

ERRC v. *Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, §36:

> *Committee recalls that Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justifications (see paragraph 1 of the Appendix), any group with particular characteristics, including Roma, benefit in practice from the rights in Charter.*

113. Another element of the behaviour of the Republic of Slovenia in relation to the Slovenian tenants of denationalised flats that is inadmissible from the perspective of the RESC is discrimination in the implementation of the right to housing. Within the framework of the housing reform and the subsequent legislative changes to the detriment of the group of individuals under consideration here, the national authorities introduced discrimination in implementing the right to housing without any objective or reasonable justification. This constitutes a breach of Article E of the RESC in relation to the Appendix to the RESC.

114. As already mentioned in the previous observations, the Republic of Slovenia acknowledged and implemented the right to housing before the ratification of the RESC, at the very beginning of the housing reform (c.f. point 14). The implementation of the right to housing was the fundamental guidance of the national authorities in their conception of basic solutions to the housing reform and privatisation according to the 1991 Housing Act. After the revocation of the Housing Right which provided a solution to the housing problem for approximately one third of the Slovenian population, the Slovenian legislature made provision for the right to purchase the existing flat. The law stipulated that in the presence of legal or material obstacles to the realisation of this right with regards to the existing flat, the right to advantageous purchase was to be transferred to a substitute flat, provided by a public owner (see point 10). The conversion of the Housing Right to a civil ownership right offered their holders a permanent solution to the housing problem even after the changes of the social system by allowing them to become home-owners. Their security of tenure was promoted from that of occupancy rights holders to that of home-owners. The national Constitutional Court determined that in securing the transition of the Housing Right to the ownership right the national authorities implemented the very right to housing, which was then derived in the internal legal order from Article 78 of the Constitution and Article 11 of the ICESCR (c.f. point 14, 48-50). The Constitutional Court responded to the contentions by those liable for sale of former socially-owned flats with the following words:

Dwellings as a special social good are of special importance. The state creates the opportunities for citizens to obtain proper housing (Article 78 of the Constitution). In its Article 11, the ICESCR binds the Contracting Parties to the obligation to recognize the right of everyone to an adequate standard of living for himself and his family, including the housing. The States Parties also commit to taking appropriate steps to ensure the realization of this right. The legislator thus had the right and the duty to regulate the area of publicly-owned housing in a particular way.

115. Considering the fact that the national authorities artificially withdrew from their holders the Housing Right as a legal title entitling them to permanent habitation in the existing dwellings, the concurrent granting of the right to purchase the existing or a substitute flat at an advantageous price represented an adequate instrument with which to implement the right to housing for this category of citizens. Yet, the national authorities eliminated the right to advantageous purchases of existing or substitute flats by the vulnerable minority of former Housing Right holders under discussion here (see points 11 and 21). In the very decision in which it adopted the right to purchase as a general rule for the conversion of the revoked Housing Right into an ownership right and in doing so, refered to the international legal instruments defining the right to housing, the national Constitutional Court thus explained the introduction of this differentiation:

Neither is it possible to agree with the position that claims that we are in the presence of discrimination against the inhabitants of nationalized and confiscated flats that cannot purchase the flat because the expected rightful claimant enjoys a pre-emptive right to it. It this case the flat was not acquired with contributions and resources from the common expenditures fund, consequently we are not in the presence of the aforementioned actual state. When two rights collide, in this case the right to purchase and the property right, the law gives priority to the stronger right, that is, the property right

116. The national authorities thus considered that after the revocation of their Housing Right, members of the vulnerable group under consideration here should not be entitled to purchase the flats in which they lived because the authorities themselves gave priority to protecting the property rights of former post-war owners of these flats or their heirs. Considering this consequence and by means of a housing reform, the national authorities therefore secured different rights for the holders of the Housing Right in such flats. Initially, the solution was a permanent and inheritable non-profit lease with the option to purchase a substitute flat. Over the years, the national authorities frequently encroached on this position as has been described in the previous observations.

117. We are of the opinion that the Republic of Slovenia discriminated against tenants in denationalised flats by comparison with other previous holders of the Housing Right. The grievance of discrimination is based on three different aspects: (1) from the perspective of comparison of the final outcomes resulting from its measures within the framework of the housing reform, (2) from the perspective of differentiation among rights to acquisition of ownership right to an existing flat and (3) from the perspective of differentiation among rights to acquire a title to a substitute flat.

(1) Discrimination revealed by comparing the final outcomes resulting from the measures implemented by the national authorities

118. The double-track approach to former holders of the Housing Right adopted by the national authorities ultimately brought the minority vulnerable group to a situation that is considerably worse than that of the large majority of individuals belonging to the same category. While the large majority of former holders of the Housing Right was offered the opportunity to become home-owners – and this has been the best and the safest solution to the housing problem in the Republic of Slovenia – a long-term housing problem emerged for the vulnerable group of tenants as they were not given the opportunity to solve it satisfactorily by comparison with other former Housing Right holders. From the point of view of the right to housing, the national authorities ultimately failed to secure the same or a comparable situation for an entire sector of the population that had lost its Housing Right through the process of housing reform. A comparison of the situation of home-owners with today's legal position of individuals and families belonging to the vulnerable group under consideration indicates that its treatment by the national authorities has been substantially worse. Their status in the rented flats is not permanently secured, the rent can increase without any limitations in the long term and, above all, their position is particularly weak with regards to the durability of a solution to the housing problem of the entire family because the national authorities also restricted the inheritability of the lease of tenants in denationalised flats.

119. There exists no objective or rational reason that could justify such differentiation in the final outcome of the measures adopted by the national authority and such unequal treatment with regards to the right of housing. The abrogation and the revocation of the Housing Right were circumstances that required special measures by the national authorities in the framework of the housing reform and particularly from the perspective of the right to housing, as has also been acknowledged by the national Constitutional

Court. These circumstances required that the national authorities simultaneously adopt adequate measures for individuals and families whose Housing Right had been revoked. When the latter occurred, the national authorities made no distinction as to the modality of transition of a given flat to public property; the Housing Right was abolished for all in the same way. For this reason, the national authorities should adopt adequate measures that would from the housing perspective lead today's marginalised minority and vulnerable group of tenants in denationalised flats to the same position (or a comparable position) as that enjoyed by the remaining majority of the same category of individuals. The obligation to secure a permanent solution of the housing problem created through the abrogation of the Housing Right would have to be fulfilled with the same effect for all former holders of the Housing Right although other means may need to be deployed in the case of the group under consideration here.

120. The fact that members of the vulnerable group under consideration acquired the Housing Right to those publicly-owned flats that had became public property through post-war nationalisations, confiscations and other forms of expropriation before the start of the housing reform, whereas the others acquired the Housing Right on publicly-owned flats that had become public property through construction, purchase or by other means, is in our opinion not an objective and reasonable motive for the distinction that characterises the final situation of both groups. The fact that in the post-war era flats were transferred to the State through expropriations was a historical datum that many holders of the Housing Right were not aware of at the beginning of the housing reform in 1991 or even at the time of his or her acquisition of the Housing Right. This historical fact was relevant for the relationship between the State and the former expropriated owners or their heirs. Independently of their modality of acquisition, expropriation or new acquisition, both types of publicly-owned flats were at the beginning of the housing reform considered solely as publicly-owned and their status was identical (see point 7). Both groups of former holders of the Housing Right occupied the existing flats on the basis of the same and identically acquired right, that is, from the then public administrator and in accordance with the applicable housing legislation that regulated the providing housing system (see points 5-7). The European Court of Human Rights judged in *Larkos v. Cyprus* that ownership of a property alone cannot justify different treatment of the tenants who acquired their tenure under the same terms. In the case of the Slovenian tenants of denationalised dwellings even the ownership of the property was the same for both categories; the only difference between them was the mode of transition to public property.

The case of *Larkos v. Cyprus* is a case where an application of a tenant of a flat was granted by the Court because of termination of a lease and tenant's eviction. The applicant as a civil servant acquired tenure in a public flat. Housing regulation in force at the time of concluding the contract did not differ between tenures in public and private flats on terms of tenure and terms for termination of a lease. However, subsequent changes in legislation introduced difference in such way that tenants in public flats became less protected from termination of a lease that those in private flats. The aim of housing legislation was to increase possibility for public authorities to dispose with public flats for vulnerable groups of people. As a consequence of changed legislation, the applicant's lease was terminated and he received eviction order. He applied to the Court alleging the breach of Article 8, P1-1 and 14 of the Convention. The Court granted his application due to foundation that applicant has been discriminated (Article 14 in connection with Article P1-1 of the Convention). The Court believed that the applicant had been deprived of his possessions (termination of a tenure on the ground of changed regulation). The Court compared his position with position of other tenants who concluded rental contracts at the same time as the applicant (tenants in private flats whose position has not been changed by subsequent legislation amendments). On the ground of this comparison it is founded that the applicant has been treated differently than other tenants who concluded tenures at the same time and therefore founded the applicant to be discriminated.

(2) Discrimination from the perspective of the possibilities offered to the tenant to become the home-owner of the existing flat

121. The essential differentiation that was adopted by the national authorities was that they made it impossible for the tenants to become home-owners in the existing flats because in their view the former owners or their heirs enjoyed priority over former holders of the Housing Right to these flats with regards to the acquisition of ownership rights. We consider that the national authorities did not proceed to this distinction on the basis of objective and reasonable grounds, although these flats had been expropriated in the wake of the Second World War.

122. An international comparison of the problems related to occupied flats that had been transferred to the State during the post-war period of socialist expropriation indicates that the international community does not recommend restitution *in integrum* in cases where such restitution would infringe on the rights and interest of existing proprietors. It is also indicative that aside from the Republic of Slovenia, none of the other former

Yugoslav republics with comparable legal orders has opted for such a solution. Moreover, former Yugoslav republics, including the Republic of Slovenia, adopted an international treaty whereby they pledged to recognise the Housing Right for all persons in the same way (see points 28-31). Therefore, neither the international community nor other States in similar situations considered that former holders of the Housing Right in expropriated flats should not be treated in the same way as all the other former holders of the Housing Right in publicly-owned flats. In other countries, holders of the Housing Right in once expropriated flats maintained the same position as other holders of the Housing Right: they could either benefit from the right to an advantageous purchase if the Housing Right was converted into a right to purchase, or they could continue their tenure, if there was no such option. In other countries, former private owners of expropriated properties or their heirs were equitably compensated in money or with substitute property. The States thus took it upon themselves to carry the burden of the injustices created by socialist expropriation. It should also be noted that, aside from the Republic of Slovenia, all the other former Yugoslav republics were involved in wars during the period of transition. Nevertheless and despite these difficulties and in the face of a considerably aggravated budgetary and economic situation, these States did not pass the burdens of restitution of the unjustly expropriated property to the current proprietors of formerly expropriated property.

123. Given the above, we are of the opinion that the argumentation that the national authorities use to justify the distinction introduced (see point 69) cannot condone this differentiation and the consequent unsuitable treatment of the vulnerable group of Slovenian tenants with regards to securing the realisation of the right to housing within the framework of the housing reform. The modality of transfer of the property to public ownership in relation to the vulnerable minority of former Housing Right holders cannot justify the non-recognition of the right to purchase the existing flat. According to the position of the national Constitutional Court, the national authorities were obliged to secure implementation of the right to housing following the abrogation and revocation of the Housing Right. We referred earlier to the position of the European Court of Human Rights adopted in *Larkos v. Cyprus* to the effect that ownership of property alone cannot justify different treatment of the tenants who acquired their tenure under the same terms (see point 74). The European Court of Human Rights was even more explicit in its appreciation of discrimination and origin of flats in *Strunjak and Others v. Croatia* and *Sorić and Others. v. Croatia*. In those cases, the Court was called to decide on two collective applications filed by Croatian tenants of private flats. Their complaint was rejected, but the Court also stated that with regards to the right to purchase, the Croatian authorities justifiably assimilated the holders of the Housing Right in

nationalised flats with the holders of the Housing Right in other publicly-owned flats because both had acquired the Housing Right in publicly-owned flats.

The cases *Strunjak and oth. v. Croatia* and *Sorić and oth. v. Croatia* addresses the introduction of differentiation between tenants in public and private flats with regards to the right to purchase. Prior to the housing reform in Croatia, the so-called Housing Right could be acquired in both public and private flats. In the framework of the housing reform, the holders of this right in public flats acquired the right to purchase the flat, whereas the holders of the Housing Right in private flats were transformed to legally protected tenants benefiting from a regulated rent and an inheritable tenure. These tenants in private flats considered that they had been discriminated against because unlike the holders of the same right in public flats, they could not benefit from the right to purchase the flat. The Court did not admit the complaint. It considered that the rights of complainants to respect of home in accordance with Article 8 of the Convention have not been breached because the internal legal order grants them the right to continue to inhabit their homes and guarantees legal protection, regulated rent and inheritable tenure. To the extent that the complainants compared their situation with that of those holders of the Housing Right on the properties that were transferred to public ownership through expropriation, the Court observed that the holders of the Housing Right in expropriated flats are justifiably assimilated to the holders of the same right in other publicly-owned flats because they had acquired the Housing Right s to the public flats *ab initio.* The complainants, on the other hand were from the very beginning tenants in private flats.

(3) Discrimination from the perspective of the possibility of becoming owner of a substitute flat

124. Should the modality of transfer of flats to public property nevertheless represent a relevant circumstance that would justify the distinction between those whose Housing Right could be converted into the right to become home-owners of the existing flats and those whose right could not, the national authorities still could not justify the distinction introduced with regards to the possibility offered to tenants of denationalised flats to become owners of substitute flats. This is the third aspect of the alleged discrimination.

125. As we have repeatedly stated, the national authorities allowed the former holders of the Housing Right to become home-owners by granting them the right to purchase their flats after the abrogation of the Housing Right. This right was exercised primarily with

regards to the existing flat. If legal or material circumstances prevented such a sale, the national authorities legally obliged the public owners who privatised the existing flats (local communities) to provide the holders of the Housing Right with an adequate substitute flat (see point 10). This solution was also initially adopted with regards to the vulnerable group of tenants in denationalised flats under consideration here. Given that in the process of denationalisation the national authorities gave priority to the restitution of the property rights in the existing flats to their former post-war owners or their heirs, the sale of flats to sitting tenants was hindered. Consequently, applying Substitute Privatisation Model III, the national authorities imposed on the local communities the obligation to provide the holders of the Housing Right in denationalised flats with the possibility of purchasing substitute flats at an advantageous rate (see point 17). This option was defined in the law as a permanent option until the national Constitutional Court annulled this provision with effect from 2000 (see point 21). The argumentation substantiating this decision was that the relevant legal provision infringes upon the constitutional protection of the property rights of local communities (see point 98). The national authorities have not replaced this option with any substitute option since the year 1999.

126. The national authorities thus secured for the former holders of the Housing Right the possibility to become home-owners in the face of an artificially created housing problem, either in the existing or in the substitute flats. Only the vulnerable marginalised group of tenants of denationalised flats was excluded from this scheme in 1999, this time with reference to the constitutional protection of the property belonging to the local communities. As stated above, the protection of property rights of local communities as a special self-governing branch of public authority most certainly cannot be a reasonable ground for infringing upon the rights of individuals. And if so, this circumstance is then relevant to the relation between the central State authority and the local self-government. If the central State authority considered that it could not burden local communities with an instrument that would provide a permanent solution to the housing problem of the vulnerable group of individuals, despite the fact that it had done so for all the previous holders of the Housing Right, it should have taken this burden upon itself. Since the central State authority failed to do so, it discriminated against tenants in denationalised flats in adoption and implementation of its measures for realisation of the right to housing.

VI. Alleged breach of positive obligations and possible resolution of the problem

127. The national authorities of the Republic of Slovenia should endeavour, in accordance with Part I and Article 16 and 31 of the RESC, to solve the housing problem of the tenants in denationalised dwellings which they have, through their actions, themselves caused. It follows from the facts stated in points 32-44 that the national authorities are aware of the problem. Also drawing attention to the problem are national and international non-governmental organisations and human rights institutions. National authorities have on many occasions bound themselves to studying, and adopting adequate solutions, but have failed to follow up in earnest with concrete solutions; all solutions endorsed, unfortunately, proved immediately or subsequently inefficient.

128. We believe that the Republic of Slovenia is in possession of realistic legal and financial means to efficiently solve the problem of the tenants in denationalised flats. We therefore hold that the Republic of Slovenia is also in breach of its duty of positive diligence under Article 31 of the RESC. In the ensuing, in seeking to demonstrate that contention, we are defining (1) possible solutions within the existing national legal order (2) whether or not the national authorities have examined, and attempted to pass, individual solutions, and (3) whether these solutions would apply given the present financial means of the Republic of Slovenia.

(1) Possible solutions of the problem

129. In order to ensure a lasting solution to this artificially created housing problem, it is essential that the national authorities grant the critical group of tenants an adequate legal title for a permanent housing solution. Given that the internal legal order no longer recognises the Housing Right as a *sui generis* civil right, and taking into account the treatises, suggestions and motions of interested institutions and NGOs (see point 32), we suggest that a suitable title for a permanent solution of the housing problem of the crucial group could be either ownership title, or tenant title with due legal guarantees. Such title could pertain to either the existing, or a substitute flat.

130. The establishing of ownership titles on existing flats would be possible with a simultaneous disowning of the private owners who gained such status through denationalisation and other forms of property restitution. For the eventual implementation of such a solution, the national authorities should employ the traditional standards of private property protection. As the Republic of Slovenia is bound by the European Convention on the Protection of Human Rights and Fundamental Freedoms, the standards laid down in Article P1-1 thereof should be followed. Nevertheless, the realisation of this solution would be possible as other countries have frequently utilised it,

and as the European Court of Human Rights ruled, in the analogous case of *James and Others v. The United Kingdom*, to disown the private owners in order to insure a lasting solution of the housing problem of the tenants, designating such solution as tenable and in accord with the Convention:

> *The case of James and oth. v. UK* is about expropriation of private owners for the benefit of tenants. Under the housing reform certain private owners were bound to sell their property to tenants with long-term tenancies and regulated rent under legally prescribed purchase price which was much below market price of property. Applicants were the owners bound to such sale and appealed to the Court alleging unlawful deprivation of their property. The Court did not grant their applications. Forced sale for tenants was considered as an act of deprivation, but a legitimate one. While applicants contested that sale for the benefit of tenants was not in general interest, the Court believed that pursued aim (resolution of housing problems of numerous individuals) was a legitimate aim in general interest. Even though the owners did not receive market value of sold houses, the Court considered legally prescribed price to be just compensation for lost property. Namely, the Court took into account the fact that sold houses were burdened with long-term tenures with low rent, so the only thing that owners in this case lost was the right to low rent. Therefore the Court believed that legally prescribed purchase price, as low as it was, did represent a just compensation for lost property of the owners.

131. Acquiring title to a substitute flat as the second possible solution to the problem of the tenants in denationalised flats is the most frequently discussed viable solution so far. In this vein, the law initially prescribed the right of the tenants of denationalised flats in accord with Substitute Privatisation Model III (see point 17); the national authorities considered this possibility also later, in the process of adoption of the new Housing Act-1 (see point 39). Such a solution the national authorities could enforce either (1) by offering accessible purchase fees on substitute public flats to the tenants in denationalised units, or (2) by financing the purchase of substitute flats for the tenants which the latter would themselves identify on the real estate market.

132. A third solution encompasses a guarantee of tenant rights with a sufficient degree of legal protection. This solution would require changing the national housing legislation so as to incorporate the appropriate measures of legal protection for the tenants. The number of grounds for eviction should be reduced; the possibility of moving the tenants from one flat to another should be annulled; the continuation of lease contracts following the death of the principal tenant should be guaranteed; the rents should be reduced and

permanently regulated; and the rights and obligations in relation to the use of the leased flat should be reconsidered. The existing situation does not guarantee sufficient legal protection with respect to the situation enjoyed by the critical group of individuals before the national authorities interfered with their status (see point 26). The national authorities should seek to define the present status of the tenants of denationalised flats in terms as close as possible to the status that they enjoyed before the housing reform in 1991. As is evident in the continuation of this complaint, protecting the legal status of the tenants would not interfere with the rights of private owners in a manner inadmissible in terms of the protection of private property.

133. Considering all the above, there are four legally admissible variants of the solution of the problem of tenants in denationalised dwellings which the national authorities could employ in order to fulfil their obligations in accordance with Article 31 of the RESC:

- Variant 1: introducing the legal right to buy the flat currently leased, under suitable conditions, from the owners of the denationalised units, including an equitable reliability from public funds to the owners (see points 83 and 84);

- Variant 2: providing substitute flats, from the part of the national authorities, for the critical group to buy, under suitable conditions, (see points 83 and 85);

- Variant 3: providing means from public finances for the tenants in the denationalised flats to buy substitute units (see point 85);

- Variant 4: a thorough revision of housing legislation that would incorporate all necessary elements of legal protection such as the tenants of the denationalised flats enjoyed before the housing reform (see point 86).

(2) Attempts by the national authorities to solve the problem

134. Variant 1 above was considered by the national authorities at the time of adoption of the Housing Act. It was established that in order to compensate the losses of the owners, approximately EUR 118 million was required by way of public funds. It was decided that such an amount would not be available for the purpose of solving the problem of the tenants of denationalised flats (see point 39).

135. Substitute privatisation Model III (see point 17) represented an attempt on the part of the national authorities to enact Variant 2 above. The national legislature has, upon a

proposal from the Government, prescribed a model according to which the local communes would provide substitute flats, and sell them to the tenants under favourable privatisation conditions. This attempt as a solution failed following the ruling of the National court annulling these provisions. The national Constitutional Court opined that protection of the property of local communes takes precedence over solving the problem of the tenants of denationalised dwellings, despite the fact that the former concerns public entities (see point 21).

136. In an approximation of Variant 3 above, the current internal legal order provides for the possibility of substitute privatisation that grants the tenants in denationalised flats the right to financial support from public finances if they get the opportunity to buy their existing flat, or a substitute unit, thereby vacating the existing unit. As this financial support, however, covers only 5% to 10% of the market value of the existing flat, the solution is neither efficient, nor does it actually help solve the housing problem (especially for individuals with insufficient means). An efficient solution should provide for a substantial increase in the public financial resources available. This option was considered by the national authorities when adopting the housing law, but was discarded (see point 39).

137. As to Variant 4 above, the national authorities have not so far considered this possible solution to the problem of the tenants of the denationalised dwellings.

(3) Financial and material resources of the Republic of Slovenia for adopting an efficient solution

138. In order to employ Variants 1 and 3, the national authorities should reserve, according to their own calculation, approximately EUR 113 million from the budget (see point 39). These means could be utilised over a prolonged period of time, in accordance with the proposals of the National Association of Tenants, five years, which means that the yearly burden on the national budget would be approximately EUR 22,6 million. We are of the opinion that the Republic of Slovenia certainly had, and still has the financial potential to employ either of the two variants of the solution.

139. In 2003, following the assertion of funds needed, and following the decision not to employ any of them, the national budget amounted to EUR 5.813 million. This means that the national authorities should redistribute 1,9% of the 2003 budget should they go for immediate and complete settlement of the problem of the tenants of denationalised

dwellings in 2003. Should the national authorities opt, however, for a gradual realisation of either of the two variants over a period of five years, the national budget would be burdened, in the period from 2003 – 2008, by a yearly amount of approximately EUR 22,6 million, which represents an average of 0,3% of the yearly budget. The table below shows the distribution of budgetary funds needed in order to implement variants 1 or 3 in the years 2003-2008:

year	total national budget (in mio)	% of the budget for a one-off solution (113 mio €)	% of the budged for a progressive solution over a period of five years (22,6 mio €/year)
2003	5.813 €	1,9 %	0,4 %
2004	6.488 €	1,7 %	0,3 %
2005	6.755 €	1,7 %	0,3 %
2006	7.331 €	1,5 %	0,3 %
2007	7.766 €	1,5 %	0,3 %
2008	8.139 €	1,4 %	0,3 %

140. The failure to do so was attributed to the alleged lack of budgetary means. However, in 2003, substantial portions of the national budget were redistributed for several other non-planned purposes. For example: for the new governmental aircraft approximately EUR 22,7 million (0,4 % of the 2003 budget), for compensation for investments of population in the public telecommunication network approximately EUR

100 million (1,7% of 2003 budget), for compensation of the victims of Communist violence in the times after Second World War approximately EUR 105 million (1,8% of the 2003 budget). Even more so. For redressing the wrongs of the socialist confiscations and nationalisations after Second World War, the Republic of Slovenia assigned more than EUR 4 billion just for financial compensations in the years 1997-2017, while the value of the public property assigned to be returned to former private owners or their heirs in kind or as substitute property is so immense that it was never calculated. Comparing mere financial means assigned for the redressing of post-war wrongs in the Republic of Slovenia to the financial means necessary for the resolution of the tenants' problem in question shows that the latter require only 5,2% of the financial means assigned for the financial compensation of the victims of post-war violence, in most cases their heirs. In the Law redressing material damages of the Second World War that recently entered governmental procedure EUR 600 million is envisaged for its realisation. It is therefore clear that the Republic of Slovenia is able financially to realise either Variant 1 or Variant 3, if the national authorities would only decide to take the problem seriously.

141. In order to implement Variant 2, the national authorities should have a sufficient number of unoccupied substitute flats at their disposal. As the ruling of the national Constitutional Court dismissed Substitute Privatisation Model III, and with it, the participation in the process of the local communes, the central national authorities should have such a housing pool. There are no publicly accessible data on the number of housing facilities that are the property of the Republic of Slovenia. During the housing reform in 1991-1994, surplus facilities not privatised or denationalised were taken over by local communes. Likewise, construction of new public housing facilities was, in accordance with national legislation, relegated to local communes. We therefore surmise that the central State authorities of the Republic of Slovenia do not control a housing pool sufficient for the realisation of variant 2.

142. Employing Variant 4 would release the Republic of Slovenia from all and any financial burdens. The solution would follow a substantial change of national legislation and protection of the legal status of tenants in denationalised housing facilities. Although such measures would, to an extent, limit the rights of the new private owners, they would primarily be measures in amenities of ownership that is in accordance with the practice of the European Court of Human Rights following Article P1-1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms that does not entail obligations of monetary reliability. The European Court of Human Rights has so

ruled, for example in the analogous case of *Mellacher and Others. v. Austria* (see point 63).

143. It follows from the above, in point 81, that there exists an obligation on the part of the Republic of Slovenia to solve the problem of denationalised flats. This obligation stems from Article 31 of the RESC. The responsibility of the Republic of Slovenia in this particular case is however even more serious given the fact that the national authorities are solely responsible for creating the problem, and that the problem does not result from risks taken by the tenants. The national authorities are conscious of the obligation, and do in fact acknowledge it on certain levels, but have failed to meet it. Given the concrete situation in the State, the authorities could endorse a number of measures in order to dispose of a problem artificially created for a critical group of individuals and families. The analysis of the present state of affairs shows that there exist realistic and just legal and financial ways of solving the problem, in at least three diverse, effective ways (of the variants described in point 87, only variant 3 remains dubious in terms of realisation, as explained in point 95). Given that the national authorities have failed, despite much urging and even their own assurances, to undertake the necessary steps towards a resolution of the problem, they have acted in neglect of their obligation to ensure, by all appropriate means, the effective exercise of the right to housing especially in regards to the obligation to promote access to housing of adequate standard in accordance with Article 31§1 of the RESC, pertaining to a critical group of tenants of denationalised dwellings.

E. OBJECTION RATIONE TEMPORIS

144. It is possible that the national authorities may object to the admissibility of this complaint by referring to the application ratione temporis of the RESC, since the Republic of Slovenia did not ratify the RESC until 1999. That is why we have to clear this objection in advance. Three circumstances are particularly important when assessing such a possible objection: (1) the Republic of Slovenia acknowledged and implemented the rights concerned in its internal order before the ratification of the RESC, (2) crucial encroachments on the position of the vulnerable group of Slovenian tenants occurred after Slovenia's ratification of the RESC, and (3) the situation presented in this complaint constitutes a continuing situation, which started before the ratification of the RESC but still persists and even carries on after its ratification.

145. We have explained that the national authorities acknowledged and implemented the right to housing, the protection of families and the non-discrimination rules long before the ratification of the RESC. That is true not only on a general level, but also in practice (see points 48-55). Therefore ratification of the RESC did not bring any new commitments on the part of national authorities in this field, but merely repeated them and stressed their importance as well as provided efficient supervisory mechanisms for their realisation. Since the rights concerned were valid and effective in the national legal order throughout the whole period - from the emergence of the problem until today, an objection ratione temporis is not justified.

146. Following the completion of the housing reform (1994), the national legislation still guaranteed the possibility for a permanent solution of the housing situation for the vulnerable group of tenants either in existing flats as leaseholders with a high level of security of tenure, inheritable legal titles and affordable housing, either by acquiring substitute flats and becoming home-owners (see point 18). The crucial infringements as described in points 21-25 that led to the current situation of this group of tenants (revocation of the right to acquire substitute flats and inheritability of legal titles, encroachments on security of tenure and affordability of housing), occurred only after the ratification of the RESC.

147. And, last but not least, restrictive measures implemented by the national authorities before the ratification of the RESC represent merely introductory measures for the process of the gradual impairment of the housing position of the tenants in question. In analogous situations, the European Court of Human Rights also considers that the Convention should apply to such situations (for example the case of *Bromiowski* v.

Poland, the Grand Chamber judgement, para. 122 to 125; or *Vasilescu* v. *Romania*, para. 49 and 51). In the light of the foregoing, we believe that an objection ratione temporis cannot be considered justified.

F. PROPOSAL TO THE COMMITTEE

148. For all the reasons cited above, we hold that the Republic of Slovenia is in breach of Article 31 and Article E of the RESC. Therefore, we propose that the European Committee of Social Rights:

(1) declare this collective complaint admissible,

(2) conclude that the Contracting Party concerned has not ensured the satisfactory application of Articles 16, 31 and E of the RESC,

(3) recommend that the Committee of Ministers adopt a resolution and a recommendation on the issue of this complaint with regard to the possibilities presented for the effective resolution of the problem (see points 138-143).

On behalf of FEANTSA,

Hannu Puttonen,
President