EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

26 February 2009

Case Document No. 2

European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia
Complaint No. 53/2008

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

registered at the Secretariat on 19 February 2009

REPUBLIC OF SLOVENIA

Opinion of the Republic of Slovenia pursuant to the first paragraph of Article 7 of the Additional Protocol to the European Social Charter providing for a System of Collective Complaints
FEANTSA v. Slovenia

Complaint No. 53/2008

Ljubljana, 19 February 2009

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1. Summary

1. The European Social Charter (revised) (hereinafter: RESC) was adopted on 3 May 1996. The Republic of Slovenia signed the Charter on 11 October 1997 and ratified it on 11 March 1999 (the Act ratifying RESC is published in the *Official Gazette [Uradni List] of the Republic of Slovenia* – MP No. 7/99); RESC entered into force on 1 July 1999 (also in the Republic of Slovenia). The Republic of Slovenia also ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (hereinafter: Additional Protocol).

2. FEANTSA (European Federation of National Organisations Working with the Homeless) is one of the organisations listed in Article 1 of the Additional Protocol.

3. FEANTSA has lodged a collective complaint against the Republic of Slovenia in accordance with Articles 4 and 5 of the Additional Protocol. In accordance with Article 5 of the Additional Protocol, the Secretary General has notified the Republic of Slovenia of it.

4. FEANTSA alleges that the following breaches of RESC have been committed by the national authorities of Republic of Slovenia:
   - breach of Article 31(1) in that they actively revoked 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) 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) in that they are reducing in the long term the affordability of housing that was once guaranteed;
   - breach of Article 16 in that they have artificially created housing problems for the families of tenants in denationalised flats;
   - breach of Article E in that unequal conditions have been created for both groups of previous holders of the housing right with respect to tenancy, which replaced the former right to housing.

5. At its 184th regular session, held on 30 October 2008, the Government of the Republic of Slovenia adopted the Opinion of the Republic of Slovenia pursuant to Article 6 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, regarding the admissibility of the collective complaint lodged by FEANTSA against Slovenia, by which it confirmed that the collective complaint lodged by FEANTSA against Slovenia was formally admissible, and appointed a delegation to act as a representation agent for the Government of the Republic of Slovenia before the European Committee of Social Rights with regard to said collective complaint.

6. On 2 December 2008, the European Committee of Social Rights declared the collective complaint by FEANTSA against Slovenia admissible and, in accordance with Article 7(1) of the Additional Protocol, requested that the Government of the Republic of Slovenia submit its opinion on the subject matter of the collective complaint by 20 February 2009.

7. The Government of the Republic of Slovenia fully denies FEANTSA's allegations of breaches of Article 31, Article 16 and Article E of the European Social Charter (revised), and presents detailed arguments below.

2. Decision of the European Committee of Social Rights on the admissibility of the collective complaint

The European Committee of Social Rights (ECSR) considered the collective complaint FEANTSA v. Slovenia at its 233rd session on 2 December 2008. In accordance with its Rules of Procedure, the ECSR examined individual admissibility conditions and established that the collective complaint lodged by FEANTSA against Slovenia fulfilled all the admissibility conditions.

In accordance with Article 7(1) of the Additional Protocol, the ECSR requested that the Government of the Republic of Slovenia submit its opinion on the subject matter of the collective complaint by 20 February 2009.

3. The Government of the Republic of Slovenia's arguments against FEANTSA's allegations

3.1. Alleged breach of Article 31(1) in that they actively revoked 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

3.1.1. Historical and legal description of the housing situation in the Republic of Slovenia

The first Housing Act, adopted in October 1991, abolished social ownership in the field of housing and set up legal bases for the transformation of ownership of flats and residential buildings and their privatisation. As part of the abolition of social ownership, the right to housing that guaranteed the use of socially owned flats, as a systemic feature of the former social order, was revoked and replaced by a tenancy right that guaranteed all previous housing right holders, including tenants in denationalised flats, a high level of security, namely a tenancy agreement for an indefinite period of time and a non-profit rent.

During the privatisation of housing in 1991, there were 652,400 flats in Slovenia, out of which approximately 225,000 were public property. The public housing fund was created in two ways: partly through compulsory contributions imposed on all active citizens to the reciprocity and solidarity scheme, and partly through the nationalisation or confiscation of privately owned flats and residential buildings after World War II.

Under the Housing Act, the right to privatisation of those flats was only given to the previous holders of the housing right to flats acquired by virtue of the payment of housing contributions. However, it was not possible to grant former housing right holders the right to flats acquired through nationalisation or confiscation after World War II, since the privatisation of those flats had already been carried out through denationalisation.

In the field of tenancy, the Housing Act of 1991 guaranteed all tenants in non-profit housing, including tenants in denationalised flats, a tenancy agreement for an indefinite period of time and a non-profit rent. The applicable Housing Act, adopted by the National Assembly of the Republic of Slovenia in 2003, explicitly takes into account said principle.

Since 1994, i.e. since adoption of the first amendment to the original Housing Act, former holders of the housing right to denationalised flats or tenants in denationalised flats have been provided with the possibility of using substitute privatisation through a system of material incentives to purchase the flats in which they reside, or to purchase another flat on the market, or to build a house, provided they vacate the denationalised flat in question. Tenants were given the possibility of purchasing a flat if the owner of the flat agreed to it; they also used material incentives to purchase flats on the market or build houses.

3.2. Alleged breach of Article 31(2) in that the effect of the measures taken by the Republic of Slovenia against the vulnerable group in question is to provoke evictions and bolster homelessness

The provisions of the Housing Act (*Uradni list RS*, No. 69/03, 18/04-ZVKSES, 47/06-ZEN, 45/08-ZVEtL and 57/08-SZ-1A) concerning the position of tenants in denationalised flats, non-profit rent for the use of such flats, and the right to material incentives for tenants in denationalised flats in the event that they vacate or repurchase a denationalised flat were reviewed several times by the Constitutional Court, which explicitly stressed in one ruling that "both categories of former housing right holders now enjoy equal legal positions with regard to tenancy, which has replaced the former right to housing. As for the possibility of purchasing a flat to which a tenant had the housing right, both categories of housing right holders, on the other hand, cannot enjoy equal legal positions: the privatisation of these flats has already been carried out through denationalisation".

The Ministry of the Environment and Spatial Planning, which is responsible for monitoring and analysing data under the Housing Act, has established that to date the majority of tenants in such flats have exhausted this possibility, since the most recent data show the following:

- According to the Ministry of the Environment and Spatial Planning (estimates made on the basis of the 16th Report on the implementation of the Denationalisation Act), approximately 4,700 flats occupied by former housing right holders have been returned to the original owners.

Since 1994, when the amendment to the Housing Act introduced substitute privatisation, 2,566 favourable decisions have been issued to tenants who decided to vacate a denationalised flat and/or permanently resolve their housing problem by purchasing or building a house. There are currently 394 applications, which will be considered favourably, provided they are appropriately supplemented.

On 14 October 2008, the time limit expired for the submission of applications by tenants in denationalised flats for which a final decision on denationalisation was issued up to and including 14 October 2003. In October 2008, we received 78 additional applications from tenants.

- Tenants living in denationalised flats for which the time limit of five years from the date on which the decision on denationalisation becomes final has not yet expired may still submit an application after that date in accordance with Article 173 of the Housing Act. In our estimate, around 250 tenants will submit applications in the coming years.

On the basis of the above data, we estimate that, in the end, fewer than 1,500 tenants will remain in the aforementioned flats with a tenancy agreement for an indefinite period and a non-profit rent.

The allegation that the Housing Act provokes eviction and bolsters homelessness is completely unsubstantiated. Article 103 of the Housing Act lays down 12 fault-based grounds on which the owner may unilaterally terminate a tenancy agreement by filing suit, whereby the owner must give the tenant in breach of the tenancy agreement prior written notice. The warning must state the breach, method and time limit for eliminating the reason for the termination of the tenancy.

Tenants' allegations that the 2003 Housing Act has introduced new prohibitions for tenants, including for tenants in denationalised flats, one of them being a prohibition on increasing the number of family members after the conclusion of a tenancy agreement, are completely unfounded. The complainants state that tenants are allowed to increase the number of family members living in a flat only with the written consent of the owner. If the consent of the owner is not given, and the tenant nevertheless increases the number of family members in the flat, that constitutes grounds for evicting the whole family.

The new Housing Act, quite the opposite, lays down that the tenancy agreement may not be terminated due to an increase in the number of the tenant's family members.

The Housing Act clearly states that the owner of the flat is obliged to add a relevant annex to the tenancy agreement on the proposal of the tenant if the number of the tenant's dependants increases, whereas for any other person, the owner must add such an annex if the flat is large enough to accommodate the proposed number of persons (Article 91 of the Act).

If a tenant deceases, the owner of the apartment is obliged to conclude a tenancy agreement under the same contractual conditions with the tenant's spouse or common law partner or with one of the tenant's close family members, providing that, at the time of the tenant's death, they actually lived in the flat, had the apartment registered as a place of permanent residence and were stated in the tenancy agreement (Article 109 of the Act).

Similarly, the complainants' allegations that the tenancy agreement may also be terminated on the grounds of the tenant's absence from the flat for more than three months or failure to clean the flat are untrue.

This arrangement is necessary due to a considerable shortage of non-profit housing. However, this condition is not fulfilled if the tenant is absent from the flat for more than three months due to medical treatment, or because he or she is in a home for the elderly for less than six months, or if the tenant has not used the flat for other justified reasons, such as a job transfer, education in another place, serving a prison sentence or similar.

In the event that the tenancy agreement is terminated on fault-based grounds, the Housing Act stipulates that the owner must give the tenant in breach of the tenancy agreement prior written notice and a time limit to remedy the breach. If the tenant does not remedy the breach after being issued with a warning notice, the owner may begin legal proceedings to terminate the tenancy agreement.

The owner may terminate the tenancy agreement on a no-fault basis only exceptionally and providing that the tenant is provided with an adequate substitute flat. The costs of the move to a substitute flat are borne by the owner. The move must not worsen in any way the position of the tenant and other persons living in the flat in any particular aspect (Article 106).

With regard to improvements made by the tenant to the flat, it must be stressed that the Housing Act expressly stipulates that the owner may not deny the tenant the right to make any alterations to the flat if these alterations are in compliance with the relevant technical requirements, if it is in the tenant's personal interest to make them, if they are made at the tenant's expense, if these alterations do not affect the interest of the owner and other flat owners in the building, and if they do not harm the common areas or appearance of the building. The tenant may, according to the household's needs, modernise or make improvements to the plumbing, electric and water heating system, gas, heating and sanitary appliances, make improvements that save energy and make the flat more functional, or install a telephone line, etc.

Article 97 of the Housing Act states that the tenant who vacates the flat shall be entitled to reimbursement of the non-depreciated value of the improvements made to the flat at his/her own expense and with the consent of the owner.

A characteristic of tenancy as governed by the Housing Act is also inspection with a view to ensuring the ordinary use of a multi-apartment building, which is also defined as a public interest in the field of housing.

3.3. Alleged breach of Article 31(3) in that they are reducing in the long term the affordability of housing that was once guaranteed

Tenants in non-profit rented flats (there are around 24,000 such flats in Slovenia), including tenants in denationalised flats, pay a non-profit rent.

A non-profit rent is a rent determined by the Housing Act at the national level, and is much lower than a commercial rent, which represents profit for the owner.

A ceiling is imposed on a non-profit rent, which is defined as a cost rent covering the following elements: maintenance costs associated with the flat and common areas, management costs, depreciation costs over the useful life of 60 years and capital costs associated with the flat. It should be stressed that a non-profit rent does not include any elements of the planning tax (as stated by the complainants) other than the elements stated above.

If they had in mind a location rent, we stress that a location rent is not included in the elements of a non-profit rent. Owners may only charge a location rent where the municipality issues an ordinance establishing the impact of location. In so doing, the municipality must take into account all the criteria for establishing the impact of location laid down in Article 118 of the Housing Act. Such ordinances have been issued by two municipalities only; one of them is an urban municipality, which also established a negative impact of location. In practice this means that the rent charged for flats in the area with a negative location impact is lower.

The statutory maximum level of a non-profit rent is actually lower than the one proposed in the study "Elements of a non-profit rent and their shares with regard to the value of a flat", made by the Faculty of Economics of the University of Ljubljana.

The complainants state in the table under point 66 that, in 1991 and 1994, the non-profit rent did not increase, which is untrue.

In 1991, non-profit rents increased by 124% compared to 1990; in that period, inflation was at 118%. Rent expenses represented 9.1% of average net income in the country. (When calculating average rents in the country, the rent for an older two-room flat of 56 m^2 was taken into account.)

In the period between 1991 and 1994, the non-profit rent increased by 390%, with inflation hitting 692%. Rent expenses represented 7.6 % of average net income in the country.

The complainants state that in 2008 the non-profit rent increased by 613%; however, they fail to specify in which observation period the stated increase occurred.

According to the data of the Ministry of the Environment and Spatial Planning, non-profit rents increased by 604% in the period 1994–2006 or 1994–2008 (in 2007 and 2008, no non-profit rent increases occurred); in the period 1994–2006, inflation averaged 127.5%. The average net wage in the given period increased from SIT 60,089 to SIT 185,342 – an increase of 208% in nominal terms. In the given period, the costs of non-profit rents increased in real terms from 7.6% to 17.4% of the net wage, which means that, compared to the net income in the given period, **non-profit rents increased in real terms by 128%**.

The non-profit rent gradually increased from 2.9% of the annual value of flats in 1994 to 4.68% of the annual value at the end of 2006. Average non-profit rents varied between €2.5 and €3.5 per sq m of living space, depending on the age of the building and the furnishings. These rents, of course, are much lower than commercial rents, which stand at around €7 per sq m of living space at the national level, and can also amount to €15 per sq m of living space in the capital city and several better locations.

After 2006, non-profit rents stopped increasing in nominal terms (they did not change in line with the rate of inflation in the country), let alone in real terms, and therefore it is completely understandable that in 2007 and 2008 non-profit rents again decreased. In August 2008, rent expenses represented only 16.5% of average net income.

Moreover, tenants of non-profit flats with lower income who after paying the rent would not have enough means to make a decent living are entitled to a subsidised rent. Depending on the family income, the family is entitled to a subsidy amounting to as much as 80% of the non-profit rent.

3.4. Alleged breach of Article 16 in that the Republic of Slovenia has artificially created housing problems for the families of tenants in denationalised flats

With regard to the complainants' allegations that the change in the practice of Slovenian ordinary courts in 2005 introduced a long-term housing problem for families living in restituted flats, since their legal title to possession of a flat was limited to the lifetime of the existing holder of the tenancy agreement, we would like to explain that this was the judgement of the Supreme Court, and we cannot comment on it, but we must explain that it related to one single case which had been taken to court before the entry into force of the new Housing Act in 2003, and the court considered it in accordance with the previous regulations.

Irrespective of that, throughout the validity of the previous Housing Act, the executive branch used and interpreted the articles in question in the sense of a continuation of a non-profit tenancy also after the death of a tenant, the previous holder of the housing right, as defined in Article 109 of the new 2003 Housing Act. The Act clearly stipulates that after the death of the tenant (the previous holder of the housing right), the owner of the flat is obliged to conclude a tenancy agreement under the same contractual conditions with the tenant's spouse or one of the tenant's close family members who at the time of the tenant's death actually lived in the flat and was stated in the tenancy agreement. This means that a non-profit rent and tenancy must continue for an indefinite period of time. The request for the conclusion of an agreement must be submitted to the owner within 90 days of the tenant's death.

3.5. Alleged breach of Article E in that unequal conditions have been created for both groups of previous holders of the right to housing with regard to tenancy, which replaced the former right to housing

With regard to the position of tenants in denationalised flats, we do not accept generalised allegations about conflicts between owners and tenants; the Housing Act provides for judicial protection in all cases of unlawful conduct identified to date (unlawful request for the conclusion of a tenancy agreement for a definite period of time, unlawful request for a profit rent, etc.).

We would also like to stress that the claimants' allegation that the Ministry of the Environment and Spatial Planning, which is responsible for housing issues, despite the Government's decision of 6 April 1998, never appointed a commission to examine the relations between owners and tenants in denationalised flats, and that the national authorities failed to respond to this request, does not hold true.

On 22 June 1998, the relevant minister (in 1998, the relevant minister was Dr Pavel Gantar), on the basis of the above decision of the Government of the Republic of Slovenia, appointed a working group to examine the possibilities of solving the housing problem of tenants in denationalised flats; the working group subsequently met four times. The working group consisted of representatives of the Association of Former Owners of Expropriated Property, the Association of Tenants of Denationalised Dwellings and representatives of the relevant ministry. The working group put forward a set of proposals for possible measures, which was later, in the parliamentary procedure for the adoption of

the housing law, reflected in an increase in material incentives for tenants of denationalised flats who wanted to solve their housing problem. The Act preserved the right of tenants to solve their housing problem through the purchase of (this or a substitute) flat or the building of a house. To those tenants who did not want or were not able to exhaust this possibility, the Act guarantees the right to live in denationalised flats for an indefinite period of time and for a non-profit rent.

4. Conclusion

In view of the above, the Government of the Republic of Slovenia is of the opinion that the implemented legislative solutions with respect of the position of tenants in denationalised flats do not in any way constitute a breach of the Revised European Social Charter.