EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

20 April 2009

Case Document No. 3

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

RESPONSE FROM FEANTSA TO THE SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

registered at the Secretariat on 10 April 2009

FEANTSA

Secretariat of the European Social Charter
Directorate General of Human Rights and Legal Affairs
Directorate of Monitoring
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European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia

Response to the submissions of the Government of the Republic of Slovenia on the merits of Complaint No. 53/2008

Brussels, 09 April 2009

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149. FEANTSA has reviewed carefully the opinion of the Republic of Slovenia on the collective complaint and would like to maintain its position. FEANTSA holds that the Respondent State has answered most of the arguments put forward in a general way while the concrete contestations given are erroneous. FEANTSA believes that from the point of view of RESC the Respondent State failed to justify the actions undertaken, which were raised in the collective complaint. In the following, we are presenting:

- the facts - replies to individual contestations of the Respondent State,
- the law - summary of alleged breaches of the RESC.

AS TO THE FACTS

(1) Regarding the forcible withdrawal of the Housing Right

150. The Respondent State justifies the withdrawal of the Housing Right from the members of a vulnerable group by stating that this right represents a "systematic feature of the former social order that was revoked and replaced by tenancy right". The newly introduced tenancy right is allegedly interminable and includes non-profit rent which should render to the tenants a high level of security. We submit that the Respondent State failed from the point of view of RESC to justify the withdrawal of Housing Right.

151. The mere assertion that the Housing Right was a systematic feature of the former social order is in our opinion no justification for its withdrawal. It was a vested right that represented an interminable and inheritable legal title to its holders and their families in their apartments. As explained in detail in the collective complaint, the Housing Right could, as a right *sui generis*, remain in existence as a legally affirmed civil right within the internal legal order, as it would be comparable to other *rights in rem* (cf. point 95 of the collective complaint). If, however, the national authorities sought to terminate it, they should, from the point of view of the right to housing, by all means have replaced it with another corresponding legal title or another right that would enable solving housing problems with a level of security equal to the withdrawn Housing Right (e. g. the right of repurchase, or to adequate financial compensation).

152. The assertion of the Respondent State to the effect that the Housing Right was replaced by a tenancy right is not entirely accurate. At the time of the withdrawal of the Housing Right, the general rule was that the holder of the Housing Right had, through the right to favourable privatisation repurchase of an apartment, the opportunity to become a home-owner either in the apartment they inhabited, or in a substitute apartment (cf. point 10). This was logical and

necessary as the Housing Right was closer to ownership right than to tenancy right. This was not contested either in legal theory or the previous and subsequent case law (cf. point 9). Also, the national Constitutional Court opined explicitly that the privatisation of apartments benefitting the holders of the Housing Right was not only permissible, but also a necessary solution precisely from the point of view of the right to housing (cf. points 14 and 114). The tenancy right represented, in compliance with the will of the national authorities, a substitute to the Housing Right only with regard to a vulnerable group of tenants, i.e. a marginalised minority who, unlike other former holders of the Housing Right, were unable to continue their housing situation as home-owners once the Housing Right was withdrawn. This is precisely the main argument of FEANTSA's collective complaint in the part where we claim the breach of Article E RESC.

153. It should not be overlooked that the national authorities admitted through their actions the failure to meet their obligation as defined in the right to housing regarding the members of the vulnerable group who were not granted the opportunity to become home-owners. As explained, in 1994 the authorities granted by law the right to repurchase a substitute apartment through the so-called Model III of substitute privatisation, which was later revoked because certain municipalities, and the national Constitutional Court, contested it (cf. points 17, 18 and 21). The national authorities never provided a comparable solution to overcome these legal voids and inequalities, which had arisen *a posteriori*. This is in fact the main argument of FEANTSA's collective complaint

(2) Regarding the present situation of tenants in denationalised apartments

154. The Respondent State incorrectly asserts that Article 103 of the actual Housing Act (hereinafter: HA-1) prescribes only 12 at-fault reasons for the termination of a rental lease. In fact, it prescribes 13, as on top of the 12 mentioned in Par. 1 of this Article, there is another cited in Par. 5 of the same Article, as is obvious in the wording of the Act itself. FEANTSA would like to reiterate that the increase of reasons for which tenants can be held responsible for breach of contract to 13 instead of 9 (in the Housing Act valid between 1991 – 2003, hereinafter: HA/'91) and earlier only 3 (before 1991 according to the Housing Relations Act) represents a considerable increase.

Housing Act 2003 Article 103, Par. 1 and 5 (Reasons for termination with culpability)	Housing Act 1991 Article 53, Par. 1 (Termination of a contract of lease)	Housing Relations Act 1982 Section V – Termination of a housing relationship Article 56, Par. 1
(1) An owner may terminate a contract of lease because of the following reasons of culpability: 1. if the tenant or persons living with him causes major damage to the housing or shared parts of a residential or multi-dwelling building, by the way the housing is used; 2. if he performs an activity in the housing without a permit or in conflict with a permit; 3. if the tenant does not maintain the housing in accordance with the regulations referred to in Article 125 of this act in the part that relates to the tenant; 4. if the tenant does not pay rent or costs that are paid in addition to rent within the time limit specified by the contract of lease, and if the time limit is not specified, within 60 days of receipt of the bill; 5. if the tenant or a person living with him, by the way of using the housing grossly violates the rules of neighbourly coexistence determined in the house rules or by the way of use seriously disturbs other residents in their peaceful use of housing; 6. if the tenant performs or carries out changes to the housing and built-in equipment without the prior consent of the owner, except in cases referred to in Article 97 of this act; 7. if a person or number of persons in addition to the tenant, who are not stated in the contract of lease, use the housing for more than 60 days in a period of three months without the tenant obtaining the consent of the owner for this; 8. if the tenant sub-lets the housing without the agreement of the owner as specified in Article 84 of this act; 9. if the tenant does not allow access to the housing in cases referred to in the third indent of Article 94 and Article 99 of this act;	(1) An owner may terminate a contract of lease because of the following reasons of culpability: - if the tenant or persons living with him use the apartment in contradiction with the law and rental contract; - if the tenant or persons living with him causes major damage to the housing or shared parts of a residential or multi-dwelling building; - if the tenant does not pay rent or costs that are paid in addition to rent within the time limit specified by the rental contract in two subsequent rates or in any two months within the last 12 months; - if the tenant or a person living with him, by the way of using the housing often and seriously disturbs other residents in their peaceful use of housing; - if the tenant performs or carries out changes to the housing and built-in equipment without the prior consent of the owner; - if a person or number of persons in addition to the tenant to whom the owner may refuse to conclude an annex to the contract of lease use a flat in a period of 30 days; - if the tenant sub-lets the housing without the agreement of the owner or charges higher sub rent as specified in Article 49 of this act; - if the tenant does not allow access to the apartment in cases referred to in Article 47 and in the third indent of Article 44 of this act; - if the tenant or a person living with him performs an illegitimate activity in the housing or if legitimate activity is performed in contradiction to the Article 50 of this act.	(1) A housing provider may terminate housing contract because of the following reasons: - if the Housing Right holder or persons living with him use the apartment in contradiction with the self-governing legal acts of the housing provider and housing community or if they at-fault cause damage to the housing, shared parts or built-in equipment; - if the Housing Right holder does not pay maintenance costs and other costs that are paid in addition to the maintenance costs as specified by the laws on housing management in three subsequent rates or in any three months within the last two years, unless longer period is stipulated; - if the Housing Right holder or a person living with him, by the way of using the housing disturbs other residents in their peaceful use of housing.

10. if the tenant without justifiable reasons does not take over the housing or does not begin to reside in the housing within 30 days after concluding the contract of lease; 11. if the tenant and persons stated in the contract of lease cease to use the housing and have not lived in it for more than three months without interval; 12. if he communicates false data which are the basis for obtaining rights to subsidised rent in accordance with Article 121 of this act. (5) If a tenant of non-profit housing or his spouse or a person who lives with the tenant in a durable extra-marital community, owns suitable housing or a residential building, the owner may terminate the contract of lease.		

155. The statement of the Respondent State that the new HA-1 "lays down that the tenancy agreement may not be terminated due to an increase in the number of tenant's family members", does not correspond to the truth. In the wording of the Act, there is no such provision, nor does the Respondent State quote it. The provision of Par. 2 of Article 91 of HA-1 to the effect that the owner is obliged to sign an annex to the contract of lease if the number of family members of a tenant increases is not objectionable; however, this provision does not prohibit the eviction of the tenant in cases where the owner breaches his legal obligation and does not consent to the increase. An increase in the number of the users of an apartment without the owner's consent is defined as a reason for liability and eviction in pt. 7, Par. 1 of Article 103, whereas the same reason is not excluded in cases where the owner denies consent, although he/she is obliged to give it according to Par. 2 of Article 91 of HA-1. The provisions contained in Par. 2 of Article 91, and Par. 1 of Article 103 of HA-1 are therefore contradictory and this is at the expense of the tenant.

Par. 2 of Article 91 of HA-1	Indent 8 of Article 94 of HA-1	Indent 7 of Par. 1 of Article 103 of HA-1
(2)The owner must conclude an annex to the contract of lease at the request of the tenant if the number of persons increases by one or more persons that the tenant must support by law, and for all other persons only if the housing is still suitable in terms of the number of people.	A tenant of housing must: . . . - propose to the owner the concluding of an annex to the contract of lease if the number of persons using the housing changes;	(1) An owner may terminate a contract of lease because of the following reasons of culpability: . . . 7. if a person or number of persons in addition to the tenant, who are not stated in the contract of lease, use the housing for more than 60 days in a period of three months without the tenant obtaining the consent of the owner;

156. FEANTSA furthermore insists that the provision which foresees that an absence of tenants from the apartment for over 3 months is a reason for eviction (Indent 11, Par. 1, Article 103 of HA-1) is unsuitable. It is true that the Act defines certain exculpation reasons, however, these pertain to extraordinary situations which do not eliminate the danger of eviction in cases where the tenant and their family, for instance, undertakes travelling for a lengthier period of time. The justification offered by the Respondent State that such a provision was necessary because of the shortage of non-profit apartments in the Republic of Slovenia is likewise unfounded. Since this eviction reason is prescribed also for the cases of denationalised apartments, such provision does not in the least increase the stock of non-profit apartments. Following the eviction of the tenant in denationalised apartment, the owner is not obliged to lease it another tenant at non-profit rent. When referring to privately owned apartments, non-profit rent appears to be an exception pertaining to denationalised apartments, if and until the date when those residing in the flat are the former holders of the Housing Right. Apart from that situation, such apartments are leased at market rents in the Republic of Slovenia.

157. FEANTSA furthermore highlights that failure to clean the apartment or shared rooms in a building represents a novel reason for eviction within the national legal order in the Republic of Slovenia. Another new reason for eviction is also the failure to maintain the apartment as defined in the implementing regulation mentioned in Article 125 of HA-1 (Indent 3 Par. 1 Article 103 HA-1)., namely the Rules on standards for the maintenance of apartment buildings and apartments (Official Gazette of the Republic of Slovenia No. 20/2004 from 4 March 2004). The Rules mentions as maintenance the fact that the tenant is obliged to carry out the cleaning of the apartment, shared parts of a residential or multi-dwelling building and land. Namely, Article 6 says that the maintenance works the tenants are obliged to carry out, specified in the column 7 of tables 1 and 2 in the annex of the Rules, include regular cleaning of the cellars and bunkers in the house, shared staircases, the interiors of the lifts, mailboxes, eventual traffic signals in joint garages, eventual sewers in the yards, sanitary pits, parking lots, paths leading to the

house, garden benches, flower pots, lanterns, waste bins, and within the apartment, the regular cleaning of the balcony and balcony fencing, window sills, fences on terraces, windows, walls, ceilings, floors, sinks, water closet bowl, bathtubs, kitchen vents and ventilators. If therefore the tenant fails to perform any of these and numerous other cleaning tasks, they have failed to fulfil their obligation to "maintain" the apartment, and this constitutes a reason for eviction according to the law.

158. Furthermore, the response of the Respondent State to the effect that the owner is allowed to move the tenant into a substitute apartment but exceptionally does not correspond to facts. As explained before, according to the national law, the owner of the apartment can terminate the lease contract at any given time, if a substitute apartment is offered instead (formerly Article 56 of HA/'91, now Article 106 of HA-1). In the last instance this means that the owner can request the tenant to move from his/hers home to a substitute apartment. The owner's right to move the tenants at their free will was new and particularly disturbing to the members of the vulnerable group of tenants, since they leaved in their homes for decades and had invested substantial financial and other means in order to design their homes according to their needs and desires. . Prior to the Housing Reform, these tenants were entitled to the Housing Right, therefore nobody could move them from their home against their will; in 1996 however, the new private owners of apartments were granted this opportunity (as explained in detail in points 12, 17, 20 and 97). It is therefore untrue that this refers only to exceptional cases. The law does not mention any exceptions, while the wording of Par. 3 of Article 106 explicitly states that the owner, when moving a tenant for the first time, is not required to give a justifiable reason.

Article 106
(Non-culpable reasons for termination)

(1) An owner may terminate a contract of lease for reasons that are not enumerated in Article 103 of this act or a contract of lease only if he provides alternative suitable housing to the tenant.

(2) This should not worsen the tenant's situation, which means that, in addition to the definition referred to in Article 10 of this act, suitable housing shall be considered housing that in no other significant circumstance, in comparison with the current housing, signifies an essential worsening of the housing conditions of the tenant and persons living with him in the apartment.

(3) It is possible to terminate a contract of lease of the same tenant under conditions referred to in the first paragraph of this article without well-founded reasons only once. As well-founded reasons shall be considered the owner's own housing needs or those of his immediate family members as well as if for objective circumstances connected with the housing, further residence in this housing is no longer possible (envisaged demolition, change of purpose of the entire building, threatened safety of dwelling and similar). As the owner's own housing needs or those of his immediate family members shall be considered in particular an increase in the number of immediate family members, an increase in the number of households, taking into account standards in relation to suitability of housing referred to in Article 10 of this act.

(4) The restriction referred to in the previous paragraph shall not apply to housing owned by a municipality, non-profit housing organisation, public housing fund or the state, whenever they are carrying out exchange for the sake of the rational occupancy of their housing fund, whereby it is necessary to offer the tenant housing in accordance with the second paragraph of this article.

(5) The costs of relocation shall be born by the owner.

(6) In the event of dispute, the courts shall decide on the suitability of alternative housing in a civil

proceeding.

159. The implicit assurance of the Republic of Slovenia that the family members of the tenant are granted the right of continued tenancy following the death of the tenant is in contradiction with facts. It is true that Article 109 of HA-1 explicitly so stipulates, but as pointed out before, the case law in regular national courts has consistently rejected the use of this provision in cases of denationalised apartments. Our statement does not refer to the fact that tenancy relations are generally inheritable in the national legal order; what FEANTSA would like to highlight is that the Respondent State's national authorities (in this case, the ordinary courts competent for decisions regarding the rights in tenancy relations and evictions) deny the right of inherited tenancy precisely to the members of the vulnerable group (but not to other tenants under their jurisdiction) following the death of the tenant (cf. points 25 and 101). The Respondent State does not contest the fact that the Supreme Court has, in 2005, adopted such a standpoint in a concrete case, but implicitly says that one concrete decision does not have a generalised effect on case law. This is untrue. Since the verdict in question was published on a judiciary web page, the ordinary courts followed this precedent in all cases of denationalised apartments. That the Supreme Court which is by law responsible for the unity of case law insisted on this standpoint despite the petition of the national Association of Tenants, was pointed to in the collective complaint (cf. point 42); attached herewith is also the pertinent correspondence. Moreover, it should be said that the national Supreme Court reaffirmed its standpoint in other ensuing cases, e. g. II Ips 616/2005 from 17 January 2008. From 2005 on, the members of the vulnerable group of tenants have no longer been granted the inheritability of tenancy relations. This final limitation of duration of tenancy means that, following the death of a tenant - former Housing Right holder - his/hers family members are no longer entitled to continue the lease at non-profit rent. Since the profit rent is not regulated in national legal order this tragic event is necessary accompanied by eviction of the rest of the family (be it young children or the elderly spouse), since they can not pay the irrationally high rent, if it is – by chance – offered to them at all. To this end, the long-term problem of vulnerable group of tenants in denationalized apartments was created with finality.

Attachment No 1:

- Correspondence between the Supreme Court of the Republic of Slovenia and the Association of Tenants of the Republic of Slovenia (the case of Kuret v Kosina).

160. Finally, FEANTSA would like to reject the implicit remark of the Respondent State that our estimation of the conflicting nature of relations in denationalised apartments is merely general. It is based on the reports of the national Association of Tenants as well as on explicit assertions of both national and international institutions (cf. points 27, 32 – 44). Among others,

it should be noted that numerous tenants in denationalised apartments filed complaints to the European Court of Human Rights. Upon agreement of the complainants, the national Association of Tenants, has shared with FEANTSA the descriptions of cases that were presented to the Court. These descriptions are attached to this file in order to illustrate how these situations are experienced by the complainants in their everyday life, as well as the impact of these provisions on their social life.

Attachment No 2:

1. The case of Primož Kuret,
2. The case of Dunja Marguč,
3. The case of Ivanka Bertoncelj,
4. The case of Ljudmila Brglez
5. The case of Ema Kugler,
6. The case of Cornelia Berger – Krall,
7. The case of Dušan Milič,
8. The case of Drago Logar,
9. The case of Slavica Jerančič and
10. The case of Dolores Zalar

(3) Regarding the increase in rent

161. Having thoroughly studied the opinion of the Respondent State and the national tenancy regulations, FEANTSA would like to review in detail the way non-profit rents for tenants in denationalised apartments were increased. The following represents, a partial correction to our previous calculation and are based in an analysis carried out by the national Association of Tenants whose analysis is attached to this file and defines in detail the ways in which the rents were increased for the vulnerable group from 1992 onwards.

162. According to the national regulations, the non-profit rent was always determined in a given percent of the value of the apartment (the degree of non-profit rent), while the value of the apartment, in turn, was determined, following the prescribed rules, according to the following formula: value of apartment = acreage x no. of points x value of point x correction factor. The national authorities raised the non-profit rent by changing the rules in such a manner that one or the other among the equation elements that determine the rates of rents was affected: they either raised the rates, or redefined the factors of the calculation.

163. In 1995, the national authorities increased the value of the point used in the formula to calculate the value of an apartment from 1,88 DEM to 3,75 DEM. With this, the non-profit rent

increased for the vulnerable group for the first time 99 percent (and not 117%, as we claimed in point 19).

164. In 2000, tenancy regulation changed again. Different systems for the calculation of the non-profit rent were introduced, depending on ownership, age of the apartment, status of the tenant, and the time when the contract made. For the vulnerable group it was foreseen that the following 4 years would bring a gradual increase in the rent rates. It was prescribed that the rate of non-profit rent for tenants in apartments older than 60 years would drop from the then 2.90 percent to 2.54 percent, and for tenants in apartments of less than 60 years since construction, raise from the then 2,90 percent to 3,81 percent. Enforcing this system could bring a decrease of 12,4 percent in rent to tenants in apartments older than 60 years, meaning that the new rent would amount to no more than 74 percent increase with regard to the original rent valid until 1995. For the tenants in apartments of less than 60 years of age, the new system would bring a 31 percent increase in relation to the then rate; in other words, the then new increase would, together with the increase in 1995, amount to 162 percent in relation to the rate of 1995 (and not 50 and 226 percent as stated in point 22). However: before the new system was in place, other changes of the housing legislation were introduced and caused rent increases for both the above categories of tenants.

165. In 2003, first the national Constitutional Court changed the contents of the then regulations as explained in point 23. The value of the point used in calculating the value of an apartment was raised from the then 3.75 DEM to 2.63 € (5.13 DEM). The rent thus increased by 37 percent with respect to the rent before the change; together with former increases, the upper limit of the non-profit rent was raised by 258 percent in relation to the rent up until 1995.

166. Second, in 2003, the new Housing Act was adopted as explained in point 24. The new system of calculating the rents was introduced gradually, so that it took full effect as from 1 January 2007. The new Act introduced a unified system of calculating the non-profit rent, and a unified rate, by raising the latter by 4,69 percent. For tenants in apartments older than 60 years, this represented a raise in rent of 85 percent in comparison to what they were paying before the HA-1 (as the rate was increased from 2,54 percent to 4,69 percent); for tenants in apartments of less than 60 years of age, the raise was 23 percent compared to before the HA-1 was introduced (as the rate was raised from 3,81 percent to 4,69 percent). In both categories, the rent was increased by 341 percent in comparison to the original rent valid until 1995.

167. This overall increase brought about with the new Housing Act did not exhaust the opportunities for further raising the non-profit rent in concrete cases. The new HA-1 entitles the municipalities the authority to introduce the so-called planning tax which, once introduced, can cause the non-profit rent to increase by additional 43 percent of current rent. Together with all other increases, this would mean an increase of a total of 531 percent from the original rent

until 1995. As the Respondent State admits, certain municipalities already introduced a planning tax. In the analysis attached, the national Association of Tenants draws attention to a yet another possibility of rent increase in concrete cases as a result of a new system of apartment evaluation. The national authorities have, in the new Housing Act, made possible for the owners to request a re-evaluation of their property, and to determine the rate of the rent accordingly. The new evaluation system does not exclude the investments of the tenants into the apartments; therefore a raise in the rent may ensue. This is particularly relevant to denationalised apartments which are, as a rule, older, and have been refitted and modernised by the tenants since WWII and on. In certain cases, the owners may be entitled to raise the rent to over 10.00 € per square metre per year. Combined with the planning tax, this increase may total to up to 14.30 € per square metre annually.

168. As follows from the attached analysis of the national Association of Tenants, the non-profit rent in denationalised apartments should, on basis of the rules valid in 1992, amount to a maximum of 2,50-5,00 € per square metre, while it could today, with the introduction of planning tax and the new evaluation system, amount to no less than 30,00-35,00 € per square metre per year. This is the result when using the official formula for calculating the non-profit rent on simulated cases.

169. In this context, FEANTSA would like to stress that the above calculations do not include the inflation in the Republic of Slovenia, as it is irrelevant. Tenancy regulations have at all times determined the rates of the non-profit rent in foreign currencies: up until 2003, in Deutsch Mark (DEM), and from 2003 onwards, in Euro (€). The inflation, on the other hand, represents the devaluation of the national currency which was, until 31 December 2006, the Slovenian Tolar (SIT). It was precisely in order to maintain the real value of rents that the national authorities prescribed the rates of the rent in foreign currencies. In the Republic of Slovenia saving money in foreign currencies was commonly understood as tantamount to preserving the real value of monies.

170. The majority of concrete data concerning the increase of the rent and its rates given in the response of the Respondent State cannot be verified, as they are not explained in detail. We do not agree with the statement of the Respondent State on rent increases on the grounds of the non-presented analysis; our allegations are based on a detailed review of the tenancy regulations, prepared by the national Association of Tenants. FEANTSA is furthermore unable to take a position on the Respondent State's statement on the relation between the average non-profit rent and the average wage, as the Respondent State fails to explain the method employed in these calculations, nor does it define the average wage or which time period is being referred to. We would like to stress that in the Republic of Slovenia, there is no standardised or prescribed system of monitoring the average rates of market and non-profit rents; therefore, FEANTSA expresses doubts about the accuracy of the information provided.

Furthermore, FEANTSA is unable to take a position concerning the study entitled "Elements of a non-profit rent and their shares with regard to the value of a flat" as the Respondent State failed to make it available, including to the home public. According to the data of the national Association of Tenants, the said study is allegedly based in the extraction of profits from non-profit rents for the investors in non-profit construction in order to stimulate private capital to invest in non-profit construction, all of which is in FEANTSA's opinion not pertinent for the problem of denationalised apartments. The denationalised apartments are not subject to private capital investment into non-profit construction. This measure concerns rather apartments which were transferred from public to the private sector in the framework of Housing reform. Non-profit rent was intended in these cases as one of the instruments for sustainable protection of the housing situation of tenants, and at the same time, as a compensation for the withdrawn Housing Right.

171. At this point, FEANTSA wishes to underline once more that the collective complaint targets the fact that the national authorities do not recognise, and do not guarantee, a long-term sustainability and stability of the renting system rather than the mere rates of the rents. As the national Association of Tenants pointed out in the attached analysis, the national Constitutional Court denied the tenants any constitutional protection with regard to the rates of the rent, while the national authorities under every consecutive government raised the rents randomly and at will. The national Constitutional Court explicitly denied the tenants protection to their vested right concerning the rates of the rent (in the Decision we drew attention to in points 23, 83 and 165), and has likewise adopted the position that the rate of non-profit rent is not a constitutional category and thus not within the jurisdiction of the Constitutional Court (in the Decision we drew attention to in paragraphs 40 and 82). Also, the national authorities incessantly change the tenancy regulations by increasing the rates at will, in the absence of any justifiable reasons for doing so.

Attachment No 3:

- Analysis of the increase of non-profit rents for tenants in denationalized apartments during the years 1992 – 2009.

(4) Regarding actual models of substitute privatisation, and the number of tenants belonging to the vulnerable group

172. The Respondent State avers that only 4.700 apartments were occupied by the former holders of the Housing Right which were restored to the former owners or their heirs. Out of this number, less than 1.500 are said to be still occupied by tenants as the rest supposedly took the opportunities offered by the substitute privatisation. FEANTSA questions the accuracy of these data, as according to our data, there has never been any compilation of data on the

restitution of the occupied apartments. We therefore think that the Respondent State gives an estimate.

173. It is FEANTSA's estimate that the number of apartments restituted (denationalised) *in integrum* and were occupied by the former holders of the Housing Right is circa 6.000. From the last published official report of the national authorities on the implementation of the denationalisation (16th Report on the realisation of Denationalisation Act prepared by the Ministry of Justice, accessible on the webpage of this Ministry), the following data can be extracted (particularly from Tables 5, 9 and 10):

- in total, the denationalisation claims concerned an acreage of 789.437 square metres of apartments (The Ministry of Justice authorised to compile evidence on denationalisation does not itemize the number of apartments claimed and returned, but instead presents the total acreage of claimed apartments);

- until 30 June 2001, 663.949 (84,10 percent) square metres of total acreage claimed was decided upon, out of which 608.877 square metres (91,71 percent) were decided in favour of the claimants;

- in cases decided in favour of the claimants, returned in nature (by establishing co-ownership shares, ownership right, or by return in ownership and possession) were 366.483 square metres (60,19 percent of cases decided in favour of claimants).

It further ensues from the 2002 Census data (accessible at the webpage of the national Statistical Office of the Republic of Slovenia) that the average acreage of apartments in multi-apartment buildings constructed before the year 1945 is 59,26 square metres (total acreage of apartments in multi-apartment buildings built up to 1945 was, at the time of the Census, 2.122.120 square metres; the total number of these apartments was 35.809). The average acreage is relevant because it was primarily the leased apartments in which the owners did not live, therefore most of all the apartments in multi-apartment buildings that were subject to nationalisation. It also follows from the said Census data that the inhabitation rate of housing units in the Republic of Slovenia is 85,5 percent (out of 777.772 total housing units in the Republic of Slovenia, 665.111 are permanently inhabited).

The following conclusions can be drawn from the above data:

- the total number of apartments claimed for denationalisation is most likely circa 13.000 (given that total acreage claimed was 789.437 square metres, and that the average acreage of leased apartments built before 1945 is 59,26 square metres),

- the total number of apartments that has been denationalised (either by monetary compensation, or *in integrum*) is most likely circa 11.900 (given that an estimated 13.000 housing units were claimed, and that the percentage of claims decided in favour of claimants is 91, and that it was 84 up to 2001),

- the total number of apartments that will be denationalised *in integrum* most likely amounts to circa 7.100 (given that the number total of denationalised apartments is estimated at 11.900, and that the share of denationalisation *in integrum* cases is 60,19 percent of all claims),

- the total number of apartments that will be denationalised *in integrum* and were at the time of denationalisation occupied by the former holders of the Housing Right, is most likely circa 6.000 (given that the number total of *in integrum* denationalised apartments is estimated at 7.100, and that the inhabitation rate of all housing units in the Republic of Slovenia is 85.51 percent).

174. FEANTSA would further submit that the implicit statement of the Respondent State that circa 3.200 tenant families in denationalised apartments managed to solve their housing problem through substitute privatisation. We have no reasons whatsoever to doubt the accuracy of the data that the national Ministry of the Environment and Spatial Planning issued, since 1994, a total of 2.566 decisions on the rights derived from substitute privatisation, and that a further 394 as yet undecided claims are filed, and that in the future, 250 additional claims are expected to be filed. Still, the data that the Ministry issued a decision on the rights ensuing from substitute privatisation to an individual claimant does not mean that the tenant in a denationalised apartment in question actually took advantage of this right and actually bought a substitute apartment and vacated the rented one. Namely, the Ministry in the cases of substitute privatisations issues preliminary and declaratory decisions in which the amount becoming to a claimant is stated should the claimant, upon receiving the decision, buy an apartment himself and decide to vacate the rented apartment. This however does not mean that the tenant actually decides for this course of action.

175. FEANTSA wishes to stress that even if the data and estimates on the vulnerable group affected presented by the Respondent State prove accurate, the collective complaint still has a relevance. The arguments provided are a matter of principle and target the systemic disproportions between regulations and practice of the national authorities in the Republic of Slovenia, and RESC. The main argument of the complaint is in the fact that the national authorities created, in a systematic way, a long-term housing problem to a concrete target group of the population who were not faced with a housing problem before. This reproach is not only on behalf of those who cannot solve their housing problem in the circumstances created (according to the estimate of the national authorities, these are less than 1.500 families; in FEANTSA's estimate, the number exceeds 3.000), but also on behalf of all who were forced to solve their housing problem again because of the intervention of the national authorities in their

status, although by means of the instruments of substitute privatisation. As stated before, the means that the national authorities allocate to the members of the vulnerable group to help solve their artificially created housing problem following the annulment of Model III of substitute privatisation, amount to mere 5-10 percent of all means needed (cf. points 17, 21 and 24). Escape from the position of a tenant in denationalised apartment was possible only to those who were able to afford solving their housing problem a second time, while all the rest found themselves in an impasse. However, in both situations, the national authorities violated the right to housing.

(5) Regarding the reasons to differentiate the vulnerable group from among other former holders of the Housing Right

176. Furthermore, we would like to set straight the two misleading arguments of the Slovenian Government concerning the country's situation in practice. The first one concerns the argument that there would not have been possibilities to provide better treatment for people in vulnerable situation as has been done in many other Central and East European countries. The second one concerns the setting up of an independent committee to formulate a solution to the problem of denationalised apartments.

177. The Respondent State maintains that at the time of withdrawal of the Housing Right, it was impossible to grant the members of the vulnerable group the right to repurchase of the apartments because the privatisation of these housing units was already determined by denationalisation. We hold that with this statement, the Respondent State cannot, from the point of view of the right to housing, justify the differentiation introduced between the vulnerable group and the rest of the holders of Housing Right.

178. The HA/'91 was adopted on 11. October 1991 and was valid since 19 October 1991, while the Denationalisation Act was adopted on 29 November 1991 and was valid since 7 December 1991. The decision to exclude the members of the vulnerable group of tenants from the general model of transformation of the Housing Right into ownership right was, therefore, a conscious political decision taken before the national authorities adopted the legal basis for the denationalisation. This means that the denationalisation was not an already existing circumstance preventing the national authorities from equal treatment of the vulnerable group of tenants. On the contrary, the authorities introduced the differentiation in order to subsequently carry out the denationalisation in a specific manner. The differentiation was therefore introduced with the intention to realise the political decision of the then national authorities to give the once nationalised apartments to their pre-war owners and their heirs, regardless of whether or not they were inhabited. The national Constitutional Court justified the discrimination by inventing a conflict between the right to repurchase of the holders of the

Housing Right and the ownership right of the denationalisation claimants, on which we have opined in detail (cf. points 14, 15, 96, 120 – 123). The Respondent State failed to present any new counter arguments in this matter, therefore FEANTSA insists on our hitherto presented statements of facts in their entirety.

179. FEANTSA would also like to stress that the Respondent State failed in its response to justify the introduced differentiation regarding the right to repurchase a substitute apartment. All holders of the Housing Right, the members of the vulnerable group included, possessed the right to repurchase a substitute flat in case of difficulty in repurchasing the rented apartment (cf. points 10, 17 and 18), while the members of the vulnerable group were denied their right *post festum* (cf. points 21, 98, 124 – 126). The Respondent State does not bring forth the reasons that could justify such differentiation.

(6) Regarding the nomination of a committee upon decision of the Government of the Republic of Slovenia

180. In our collective complaint, we have, *inter alia*, drawn attention to the fact that the Government of the Republic of Slovenia decided that the Ministry of the Environment and Spatial Planning should nominate a committee of independent legal and economic professionals and representatives of NGOs to find a solution to the problem of denationalised apartments (cf. point 35). Contrary to our data, the Respondent State insists that the committee in question was indeed formed and provided the solutions upon which the new HA-1 is based. Since the committee should include the representatives of the national Association of Tenants, we have again made inquiries with the Association in this matter and were informed that the committee was never nominated and thus never commenced its work.

(7) Regarding the potential organisation of a hearing by the European Committee of Social Rights

181. In case the European Committee of Social Rights wishes to ascertain the situation of the Slovenian housing market, we are willing and prepared to participate in a hearing regarding the matter should the Committee decide a hearing is necessary.

AS TO THE LAW

182. In addition to instituting ownership to residential property many of the transition countries have strived at offering their citizens the possibility of continued housing as home-owners in the new socio-economic situation. By low payments the governments have guaranteed the right to ownership of housing even for those who lack own resources to access standard housing. In principle, all states enjoy the freedom of choosing the direction of their housing policy, whether by promoting private housing market and/or by maintaining a social rental housing stock. The Government of the Republic of Slovenia has chosen both options, but not in a way which could satisfy the need for standard housing for the whole population. The Government has consciously risked endangering the right to housing and dignity of thousands of citizens, even of those living in the most vulnerable situation.

183. Before the transition the housing position of Housing Right holders in Republic of Slovenia was closer to the position of home-owners than to tenants. This is the reason why throughout the decades most of them invested their own means in reconstruction, renovation and modernization of their housing and thus themselves creating housing of an adequate standard. Once in the same factual and legal position, former Housing Right holders in Republic of Slovenia were then artificially divided into two groups. Whereas the majority freely enjoys their housing rights as home-owners, the housing position of the minority has been gradually weakened to the point where they and their families are facing severe threat of loosing their homes of many years.

184. In this sense, the Slovenian Government has gone too far by promoting private housing markets, following the market orientation even under public rental housing policy and leaving aside the housing situation of those whose rights were encroached upon in a process of mass privatization of social housing stock, and thus artificially – by the deeds of a state - made vulnerable in the housing market. Continuous minimization of vested housing rights of this particular group of people consequently led to situation in which their capacities are insufficient to function either on the owner-occupied or the rental housing market without positive action from the public authority. This positive requirement is not respected and many people are treated unequally as citizens and forced into a situation where they are at risk of becoming homeless, or where that inhumane and degrading situation has already materialized.

185. The double-track approach of national authorities to the former Housing Right holders on the basis of the political decision to restitute once expropriated property *in integrum* resulted into a growing gap between the majority living in a secure housing position and the deprived minority. This clearly represents a breach of Article E in relation to Article 31 of the RESC (cf. point 117-126).

186. Following numerous negative actions towards the above mentioned minority, which used to share the status common to all former Housing Right holders, and due to the lack of any effective protection under the new position of contractual tenants imposed upon them, the Slovenian Government has essentially weakened the possibility of thousands of citizens to access standard housing. This is opposite to the requirement laid down in Article 31§1 of the RESC (cf. point 63-69). Instead of fulfilling its obligation to promote access to housing of an adequate standard for all, and disadvantaged categories in particular, the Republic of Slovenia created a new vulnerable group without any justification or pressing need (cf. point 95-110). The direction of the development decreases the possibilities of the Government to guarantee everyone a decent standard of living within a foreseeable period of time. Furthermore, it contributes to the possibility of homelessness and is thus the exact opposite to what is required as preventive measures under Article 31§2 of the RESC (cf. point 74-75).

187. The compulsory conditions laid down in the housing law prevent contracts that would safeguard the unlimited housing right of the tenant. This is due to the exhaustive list of at-fault reasons, which strengthen the owners' right to terminate the lease and as a result weaken the right to housing of the tenant. The requirement of additional workload, i.e. regular cleaning of cellars and bunkers in the house, shared staircases, interiors of the lifts and other common areas, reflect the impaired and unreasonable demands to tenants in a way that runs counter to the requirements of fair contracting under Article 31§1 of the RESC. Again, it also contributes to the possibility of homelessness and is thus the exact opposite to what is required as preventive measures under Article 31§2 of the RESC (cf. point 73).

188. Since the Slovenian Supreme Court has repeatedly stated that tenancy relations for tenants in denationalized flats are not inheritable, families are de facto left in a vulnerable situation in cases when the tenant dies. Such a practice is in non-conformity with the right of families to protection provided under Article 16 of the RESC (cf. point 85-90).

189. The national regulations on non-profit rent have subjected all tenants to unreasonable rent increases, with an increase of 531% to the original rent since 1995. This is contrary to what is required under Articles 31§1 and 31§3 of the RESC (cf. point 76-84). It also diminished the possibilities to safeguard the right of those in the most vulnerable situation to a minimum standard of living and endangered their right to standard housing provided under Article 31§1, as well as increased their risk of becoming homeless, which is in breach of the protection required by Article 31§2 of the RESC (cf. point 73).

190. Summary of alleged violations:

- Violation because of the direction of development opposite to what is required a) for access to standard housing under Art. 31§1 and b) for preventive measures against homelessness under Art. 31§2;

- Violation because of the unreasonable contractual situation in the light of Article 31§1 and Article 16, as an impact of that, also because of violation against Article 31§2;

- Violation against the reasonable price of housing as required under 31§1 and 31§3 and, as an impact of that, also because of violation against Article 31§2;

- Violation against the prohibition of discrimination as provided under Article E in relation to Article 31 of the RESC.

Attachments

No 1: Correspondence between the Supreme Court of the Republic of Slovenia and the Association of Tenants of the Republic of Slovenia (the case of Kuret v Kosina) – in Slovenian language.

No 2: Descriptions of the 10 cases of Slovenian tenants in Slovenian language provided by the Association of Tenants. A summary for each case is available in English.

No 3: Analysis of the increase of non-profit rents for tenants in denationalized apartments during the years 1992 – 2009 provided by the Association of Tenants.