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Meeting: 1230 meeting (9-11 June 2015) (DH)

Item reference: Action plan (18/05/2015)

Communication from the Czech Republic concerning the case of R & L,s.r.o. and Others against Czech Republic (Application No. 37926/05)

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Réunion : 1230 réunion (9-11 juin 2015) (DH)

Référence du point : Plan d'action

Communication de la République tchèque concernant l'affaire R & L,s.r.o. et autres contre République tchèque (Requête n° 37926/05) (**anglais uniquement**)

DGI

18 MAI 2015

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**Execution of the judgment of the European Court of Human Rights
in cases nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09 –
R & L, s.r.o. and others v. the Czech Republic
Action Plan submitted by the Czech Government on 18 May 2015**

In its principal judgment of 3 July 2014, which became final in accordance with Article 44 § 2 b) of the Convention on 3 October 2014, the European Court of Human Rights found that the domestic regulation of rent control lacked a legal basis between 1 January 2002 and 31 December 2006 and thus there was a violation of the right of property owners protected by Article 1 of Protocol no. 1 to the Convention. The Court noted that it was not necessary to decide whether the interference was proportionate in the circumstances of the present cases.

The Court held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision and reserved it for examination at a later date.

The present report is intended to inform the Committee of Ministers of individual and general measures of execution of the judgment.

I. INDIVIDUAL MEASURES

In its judgment the Court reserved the question of the application of Article 41 of the Convention.

The Court considered that there had been an interference with the applicants' property rights guaranteed by Article 1 of Protocol no. 1 to the Convention. However, such interference does not last as the respective legislation changed (see below the part of the Action Plan covering general measures).

In any case, the Government are of the opinion that under current circumstances the need for any individual measure could reasonably be assessed only after the future judgment of the Court on just satisfaction becomes final.

II. GENERAL MEASURES

The domestic courts and the relevant ministries (the Ministry of Finance and the Ministry of Regional Development) involved in the case at hand were duly informed of the Court's judgment and were provided with its translation which was also published on the website of the Ministry of Justice. Moreover, the summary of the judgment was published in the Newsletter of the Office of the Government Agent.

The Court stated that the Constitutional Court found the Czech rent-control scheme unconstitutional and therefore violating the right of property of owners protected by Article 1 of Protocol no. 1 to the Convention. The Government and Parliament failed to comply with the case-law of the Constitutional Court and failed to enact a law on unilateral rent increase for over four years. The Court's judgment refers to legal vacuum (only) in the years 2002 to 2006.

The new legislation, namely Act no. 107/2006 on unilateral rent increases, was passed on 14 March 2006 and entered into force on 31 March 2006. Unilateral rent increases were

allowed from 1 January 2007. The Government emphasize that Act no. 107/2006 has not been challenged in any respect by the Constitutional Court, let alone the Court.

Therefore, the passing of Act no. 107/2006 removed the unlawful situation of the legislator's inactivity and allowed landlords to increase controlled rent unilaterally and gradually. Therefore, since 1 January 2007 the situation cannot be considered unconstitutional. The de-regulation process ended on 31 December 2012.

Accordingly, Act no. 107/2006 has fulfilled the requirements set out in the Constitutional Court's case-law and introduced the principle of balance between protection of flat owners' and their tenants' competing rights. In the meantime on 25 May 2011 an amendment to the Civil Code came into force (Act no. 132/2011); this amendment considerably boosted landlords' position in tenancy relationships. The most important change introduced by the amendment was the creation of the landlord's and the tenant's opportunity to approach a court with a motion to determine rent if the rent was not mutually agreed on and one party to the tenancy relationship did not accept a proposal for rent modification received from the other party (Article 696 of the Civil Code). The respective provisions are described in § 89 of Annex II to the principal judgment of 3 July 2014.

Finally, liberal elements introduced by the amendment to the Civil Code have been maintained and further developed by the new Civil Code (Act no. 89/2012) which came into force on 1 January 2014. Among other things, the parties are allowed to arrange for annual rent increases. If they do not agree on that, the landlord has the right to propose, once a year, a rent increase up to the rent that is usual at the given place. If the tenant does not agree with the rent increase within two months, the landlord has the right to file a motion with a court to increase the rent. The new Civil Code has also changed provisions on the termination of tenancy; in certain cases it is possible to terminate it without any period of notice. The rent and related issues are established in Articles 2246 *et seq.**

The Government are of the opinion that no changes of legislation or other general measures are necessary as the Court did not address the rent legislation at all. Basically, the legal vacuum criticized by the Court was overcome by Act no. 107/2006. The legislative changes were further completed by the new Civil Code.

III. CONCLUSION

The Government of the Czech Republic conclude that the judgment in question does not require any specific general measures to be taken and that, at this stage of the proceedings, no individual measures can be envisaged.



* English translation is to be found on the following website: <http://obcanskyzakonik.justice.cz/anglicky-jazyk/> (then click on the link Nový občanský zákoník).