THE CZECH REPUBLIC

OBSERVATIONS OF THE GOVERNMENT
ON THE ADMISSIBILITY AND MERITS OF THE APPLICATIONS

Jan VOMOČIL v. THE CZECH REPUBLIC
(no. 38817/04)

Oskar MORAWETZ v. THE CZECH REPUBLIC
(no. 11179/06)

Vladislav HLAVÁČEK and Václav HLAVÁČEK
v. THE CZECH REPUBLIC
(no. 11163/06)

Art 38, a. s. v. THE CZECH REPUBLIC
(no. 1458/07)

PRAGUE

31 DECEMBER 2007

1. In its letter of 7 June 2007 the European Court of Human Rights (hereinafter "the Court") notified the Government of the Czech Republic (hereinafter "the Government") that Mr Jan Vomočil (hereinafter "Applicant Vomočil") had submitted an application to the Court, filed under no. 38817/04, against the Czech Republic. Concurrently the Court invited the Government to submit their observations on the admissibility and merits of this application, and in doing so provide answers to the following questions posed to both parties:

I. As to the "pilot-judgment" procedure and the existence of a "systemic situation"

1. Do the facts of the present application disclose the existence of a "systemic situation" where the deficiencies in the national law and practice complained of may give rise to numerous similar applications?

   In this respect, the Court notes that 59 applications concerning the rent-control scheme have been introduced before it so far, involving some 4,800 applicants.

   Is the present case suitable for the "pilot-judgment" procedure?

   In their replies to the two above questions, the parties are invited to submit their comments also in the light of the Court's case-law, in particular the judgments in the cases of *Broniowski v. Poland* [GC], 31443/96, §§ 189 *et seq*., ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC] no. 35014/97, ECHR 2006-… §§ 231 *et seq*.).

II. As to the admissibility of the application

2. What domestic remedies – if any – within the meaning of Article 35 § 1 of the Convention should the applicant have exhausted in order to comply with the requirements of that provision?

   Has the applicant exhausted such remedies?

   Is the situation of which the applicant complains a "continuing" one for the purposes of Article 35 § 1 of the Convention?

III. As to the alleged violation of Article 1 of Protocol no. 1

3. Has there been an interference with the applicant's peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol no. 1 on account of the operation of the laws imposing rent control and restricting other rights of landlords in respect of leases?

4. If so, was that interference necessary to control the use of property in accordance with the general interest? If so, was the interference lawful within the meaning of Article 1 of Protocol no. 1?

5. Were the measures designed to control increases in rent and termination of leases, as applicable in the present case since 15 December 1995, in the "public interest" within the meaning of Article 1 of Protocol no. 1? If so, what was the specific public interest warranting the measures applied by the Czech authorities?

6. Have the Czech authorities maintained a fair balance between the demands of the general interest and the requirements of the applicant's right to "the peaceful enjoyment" of his possessions under

Article 1 of Protocol no. 1 (*Hutten-Czapska v. Poland*, §§ 167-168)?

In particular, the parties are requested to refer to the following:

a) the operation of the relevant laws between 15 December 1995 and 30 March 2006;

b) the operation of Act no. 107/2006 between 31 March 2006 and the present day.

The Government are furthermore requested to comment on these issues also in respect of the period from 18 March 1992, when the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition, until 14 December 1995.

7. Does it play a role in respect of the maintenance of a fair balance between the above competing interests that the applicant was aware of the rent-control scheme when he acquired the property?

The Government are requested to inform the Court about the structure of owners whose property is under the rent-control legislation having regard to the way of acquisition of their property (inheritance, restitution, purchase, donation, etc.).

The Government are further requested to indicate the average gross wage in the Czech Republic and to specify, with regard to the present case, the ratio between the annual incomes of the tenants and the rents which they are requested to pay.

IV. As to the alleged violation of Article 13 of the Convention

8. Did the applicant have at his disposal an effective domestic remedy as required by Article 13 of the Convention in respect of his complaints raised under Article 1 of Protocol no. 1?

V. As to the alleged violation of Article 14 of the Convention

9. Has the applicant suffered discrimination in the enjoyment of his property rights, contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol no. 1, in comparison with landlords owning houses or/and flats to which the rent-control legislation does not apply?

2. In its letter of that same day the Court notified the Government that Mr Oskar Morawetz (hereinafter "Applicant Morawetz"), Mr Vladislav Hlaváček and Mr Václav Hlaváček (hereinafter "Applicants Hlaváček") and the company Art 38, a. s. (hereinafter "the Applicant Company") had submitted applications to the Court, filed under nos. 11179/06, 11163/06 and 1458/07, against the Czech Republic. Concurrently the Court invited the Government to submit their observations on the admissibility and merits of these applications, and in doing so provide answers to the following questions posed to both parties:

I. As to the "pilot-judgment" procedure and the existence of a "systemic situation"

1. Do the facts of the present applications disclose the existence of a "systemic situation" where the deficiencies in the national law

and practice complained of may give rise to numerous similar applications?

In this respect, the Court notes that 59 applications concerning the rent-control scheme have been introduced before it so far, involving some 4,800 applicants.

Are the present cases suitable for the "pilot-judgment" procedure?

In their replies to the two above questions, the parties are invited to submit their comments also in the light of the Court's case-law, in particular the judgments in the cases of *Broniowski v. Poland* [GC], 31443/96, §§ 189 *et seq*., ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC] no. 35014/97, ECHR 2006-… §§ 231 *et seq*.).

II. As to the admissibility of the applications

2. What domestic remedies – if any – within the meaning of Article 35 § 1 of the Convention should the applicants have exhausted in order to comply with the requirements of that provision?

   Have the applicants exhausted such remedies?

   Is the situation of which the applicants complain a "continuing" one for the purposes of Article 35 § 1 of the Convention?

III. As to the alleged violation of Article 1 of Protocol no. 1

3. Has there been an interference with the applicants' peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol no. 1 on account of the operation of the laws imposing rent control and restricting other rights of landlords in respect of leases?
4. If so, was that interference necessary to control the use of property in accordance with the general interest? If so, was the interference lawful within the meaning of Article 1 of Protocol no. 1?
5. Were the measures designed to control increases in rent and termination of leases, as applicable in the present cases in the "public interest" within the meaning of Article 1 of Protocol no. 1? If so, what was the specific public interest warranting the measures applied by the Czech authorities?
6. Have the Czech authorities maintained a fair balance between the demands of the general interest and the requirements of the applicants' right to "the peaceful enjoyment" of their possessions under Article 1 of Protocol no. 1 (*Hutten-Czapska v. Poland*, §§ 167-168)?

   In particular, the parties are requested to refer to the following:

   a) the operation of the relevant laws between 18 March 1992 and 30 March 2006;

   b) the operation of Act no. 107/2006 between 31 March 2006 and the present day.

7. The Government are requested to specify, with regard to the present case, the ratio between the annual incomes of the tenants and the rents which they are requested to pay.

IV. As to the alleged violation of Article 13 of the Convention

8. Did the applicants have at their disposal an effective domestic remedy as required by Article 13 of the Convention in respect of their complaints raised under Article 1 of Protocol no. 1?

V. As to the alleged violation of Article 14 of the Convention

9. Have the applicants suffered discrimination in the enjoyment of their property rights, contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol no. 1, in comparison with landlords owning houses or/and flats to which the rent-control legislation does not apply?

3. With regard to the fact that all four applications concern the same issue and the questions posed by the Court are essentially identical with the exception of small differences, which shall be pointed out below, the Government submit common Observations on the admissibility and merits of all four applications.

Therefore under Rule 42 § 1 of the Rules of Court the Government request the Court to order the joinder of these four applications and to examine them simultaneously.

4. With regard to the extent of the present Observations and pursuant to paragraph 10 of the practice direction on written pleadings issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003, also a summary is filed together with the Observations.

5. The Government take due note of the information addressed to them by the Court in its letter dated 21 August 2007 (as amended by a letter dated 14 September 2007) that in accordance with Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court the President of the Chamber granted leave for the intervention in the proceedings on all four applications by a third party – Občanské sdružení majitelů domů, bytů a dalších nemovitostí v České republice [the Civic Association of the Owners of Houses, Flats and Other Immovables in the Czech Republic] (hereinafter "the Intervening Association") and the President of the Chamber also set 5 October 2007 as the deadline for the Intervening Association to submit its observations on these applications.

The Government would note that the Intervening Association submitted its observations in letters to the Court dated 13 September and 3 October 2007. With regard to the fact that the Intervening Association used this opportunity to largely present itself and to dispute the Court's procedure in hearing its application, at this moment the Government do not consider it necessary to comment on the observations of the Intervening Association in any way.

THE FACTS

I. CIRCUMSTANCES OF THE CASES

6. The Government have no fundamental objections to the description of the facts of the case of Applicant Vomočil, as presented by the Court in the summary of facts based on the Applicant's assertions and documents submitted by him and this only applies where the assertions are actually supported by documents submitted by the Applicant.

Here, the Government do not consider it necessary to dispute assertions that are not duly supported by evidence or assertions that are only one possible interpretation of the facts provided by the Applicant. These matters will be addressed by the Government's argumentation in the part entitled "The Law".

However, the Government consider it necessary to supplement the description of the facts of the case of Applicant Vomočil with facts that are relevant for the assessment of the merits of the application filed by him.

7. On the other hand, the Government believe that the description of the facts of the cases of Applicant Morawetz, Applicants Hlaváček and the Applicant Company are entirely inadequate and presumably this stems from the fact that the Applicants' assertions are altogether very general and supported by very few evidential documents.

8. Therefore the Government cannot but attempt to supplement the description of the facts of the above mentioned cases in particular – and to a certain extent also the case of Applicant Vomočil – to the maximum extent possible. At the same time, however, it is evident that only the Applicants themselves have access to certain facts that are relevant for the assessment of the merits of their applications and in case of which attention shall be drawn to them in the text of the Observations. Therefore it will be up to the Court to ask them to evidence these facts, if it considers this to be helpful, as the Government do.

(i) On the case of Applicant Vomočil

a) History of the ownership of the Applicant's house

9. From the information recorded in the Land Register and the Companies Register and from the documents filed there the Government ascertained the following facts concerning the Applicant's house.

10. The house was built in 1932 and E.G. was its original owner and on the basis of a certificate of assignment of 15 December 1941, R.G. became its owner.

11. On 15 August 1962 R.G. made an 'offer of voluntary transfer of an immovable' to the Czechoslovak State. Subsequently the house was transferred to the administration of the Housing Management Undertaking of the Brno V District National Committee (*Podnik bytového hospodářství Obvodního národního výboru Brno V*).

12. On 4 October 1991 R.G.'s legal successors, as entitled persons under Act no. 87/1991, on extra-judicial rehabilitation, concluded an agreement on the surrender of property with the Brno V Housing Management Undertaking (*Podnik bytového hospodářství Brno V*), on the basis of which the house was surrendered to them and they became its owners.

In this agreement (see Enclosure A1) it is noted, *inter alia*, the following:

> "The immovables are surrendered in a condition as on the day of conclusion of this agreement. The beneficiaries declare that they have no claims in respect of the Brno V Housing Management Undertaking. The Brno V Housing Management Undertaking declares that it has no claims in respect of the beneficiaries."

13. On 9 December 1992 the new owners sold the house to the company T. s. r. o. for the price of CZK 5,000,000.

In the agreement (see Enclosure A2) it is noted, *inter alia*, the following:

> "The joint ownership of the sellers shall be transferred on the day of its registration from the sellers to the purchaser and on that day all the interest, risks and obligations, as well as all rights related to the purchased immovable shall pass to the purchaser."

14. On 20 October 1994 the last mentioned company sold the house to the company PRAGOIMEX, a. s. for the price of CZK 2,764,000 for the purpose of partial settlement of a debt.

In the agreement (see Enclosure A3) it is noted, *inter alia*, the following:

> "The selling company […] sells, by this agreement, the immovables specified above [the house together with the plot of land on which it is situated] with all accessories and appurtenances […] into the exclusive ownership of the purchasing company […] for the price determined according to the expert opinion of the expert witness […].
>
> The agreed purchase price amounting to CZK 2,764,325 shall be partially settled by the offset of a receivable due by the seller to the purchaser […]. The above receivable came into existence as a result of default [by the selling company] under a credit agreement concluded between the purchaser and seller on 10 December 1992 […] and it markedly exceeds the purchase price under this present agreement.
>
> […]
>
> The purchasing company […] declares that it has duly examined the immovables in question and that it is familiar with their condition."

15. On 15 December 1995 Applicant Vomočil bought the house for the purchase price of CZK 6,500,000. The ownership right passed to the Applicant on 7 February 1996 when the registration in the Land Register came into effect.

In the agreement (see Enclosure A4) it is noted, *inter alia*, the following:

> "The purchaser explicitly declares that he is familiar with the condition of the purchased immovables, that he has examined them prior to the conclusion of this purchase agreement and that he purchases the immovables in question in a condition which he has ascertained.
>
> […]

> On the day of the legal effect of the decision on the registration of the ownership right all the interest, risks, obligations […], as well as all rights related to the ownership of the purchased immovables shall pass to the purchaser."

16. On 28 January 2004 the Applicant deposited his house into the registered capital of the company JOHNY, s. r. o. The legal effects of the registration of the ownership right in favour of this company occurred on 5 May 2004.

In the declaration of the depositor concerning the deposit of the immovable in the registered capital of the company of 28 January 2004 (Enclosure A5) it is noted, *inter alia*, the following:

> "By a decision of the sole shareholder of JOHNY, s. r. o. on the increase of the company's registered capital, JOHNY, s. r. o. accedes to all rights and obligations relating to the immovables recorded on the ownership title certificate no. 3596 for the Brno Municipality and Královo Pole cadastral area, to which the existing owner was entitled or which he owed."

In the expert opinion of 11 November 2003 (see Enclosure A6) in which the value of the house was determined on that occasion as amounting to CZK 7,850,000 it is noted, *inter alia*, the following:

> "The block of flats is at the corner of the streets Malátova and Palackého. It is a house with a commercial ground floor and residential first to fifth floor, the sixth floor is the laundry and attic […]. The building […] serves as a block of flats with a shop and a Chinese bistro at the ground floor.
>
> […]
>
> Repair works:
>
> - 1995 to 2003 routine repairs and maintenance works
>
> - 1996 new asphalt roofing, flashing and window frame painting
>
> - 2000 repairs of the electrical wiring, gas boiler in the bistro
>
> - routine and regular maintenance
>
> […]
>
> Technical condition: no evident and visible defects were found, not even structural defects in the supporting structure that may affect the life span of the building, except for wet stains on the plaster in the basement.
>
> […]
>
> At present the whole building is leased for CZK 105,882 a month including the controlled rent. This amount, incl. the controlled rent, corresponds to the standard price […]."

The expert witness determined the annual gross revenue to be CZK 1,270,584 (12 × CZK 105,882), he then calculated the annual costs for the immovable, which amounted to CZK 590,940 (the real estate tax CZK 9,800, accumulated depreciation CZK 98,600, insurance CZK 12,340, regular costs of the routine maintenance CZK 434,200, costs of the house administration CZK

36,000). By deducting the costs from the gross revenue he then received the net annual revenue amounting to CZK 679,644.

b) Proceedings on the action for the imposition of an obligation to conclude an amendment to the lease contract

17. On 14 July 2003 the Applicant brought actions with the Brno Municipal Court against six tenants for the imposition of an obligation to conclude an amendment to the lease contract. For example in the action against V.Ch. the Applicant requested that the defendant be ordered to "*sign the written amendment to the lease contract, on the basis of which the existing rent shall increase from CZK 2,375 to CZK 3,210 a month as from 1 April 2003*." (see Enclosure A7).

18. In its decision of 20 September 2004 the court ordered the joinder of the proceedings on the individual actions.

19. In its judgment of 14 July 2005 the Brno Municipal Court rejected the Applicant's actions.

20. On 1 September 2005 the Applicant filed an appeal.

21. On 30 August 2006 the Brno Regional Court quashed the judgment of the court of first instance and remanded the case to it for further proceedings. In the substantiation of its decision (see Enclosure A8) the appellate court noted, *inter alia*, the following:

> "From the substantiation of the challenged judgment of the court of first instance it stems that the court rejected the action largely due to the reason that since the repeal of Decree no. 176/1993, as well as Ordinances nos. 01/02 and 06/02 the contracting parties may arrange for the rent only in an agreement, unilateral rent increase by the landlord is not admissible and the court is not entitled to substitute a declaration of the tenant's will, because the relationship between the participants may not be amended without the parties' consent.
>
> Here the appellate court would recall that the above conclusion of the court of first instance corresponds with the former case law of the Supreme Court of the Czech Republic (see e.g. the decision of the Supreme Court of the Czech Republic of 31 August 2005 file ref. no. 26 Cdo 867/2004), which concluded that unless the lease contract provides for the contrary, the landlord is not entitled to unilaterally increase the rent for the use of a flat, not even after the repeal of the regulations making provisions for the rent control.
>
> However, during the appellate proceedings the Constitutional Court of the Czech Republic concluded in its finding of 21 March 2006 file ref. no. I. ÚS 717/2005 that the rent control scheme constitutes a restriction on ownership rights that is admissible only if it is on a statutory basis, pursues a legitimate aim in the form of a specific public interest approved by the Constitution and if it observes the principle of proportionality. Ownership rights may be restricted only by law, which does not exist as regards the issue of determination of the rent, because the normative provisions of rent regulation have been repeatedly ruled unconstitutional by the Constitutional Court. With regard to the case law of the European Court of Human Rights which considers also courts'

> case law as law in the substantive sense, it is incumbent upon the courts to fill the *vacuum legis* by their case law and create law that could be considered law in the substantive sense. The distortion of the market caused by the long-lasting lack of a solution to the problem of dwellings subject to the rent-control scheme cannot be, according the Constitutional Court, perpetuated by the case law of ordinary courts. It is the latter's function to protect the individual's rights and fundamental rights.
>
> With regard to the above case law of the Constitutional Court of the Czech Republic (see also findings of the Constitutional Court of the Czech Republic of 28 February 2006 file ref. no. Pl. 20/2005, of 8 February 2006 file ref. no. IV. ÚS 611/2005), according to the appellate court the appellant's objections must be accepted in respect of the fact that if there was no agreement on the change in the lease contract concerning the amount of rent between the landlord and the tenant and if there is no separate regulation allowing for a unilateral rent increase, the existence of which is presumed by Section 696, subsection 1 of the Civil Code, the ordinary court is entitled to intervene in the tenancy relationship and to determine the rent for each flat.
>
> […]
>
> With regard to the legal reasoning of the appellate court, based on the case law of both the Constitutional Court of the Czech Republic and the Supreme Court of the Czech Republic, it must be deduced that the decision of the court of first instance is based on an incorrect legal assessment of the case. However, it is evident that in this situation it is necessary to request the claimant to describe all the relevant facts and to propose evidence necessary to support his disputed assertions […]. This supplement should especially concern the assertion that the amount of rent proposed by the claimant in his prayer for action is the appropriate one."

22. As late as by his submission of 2 February 2007 the Applicant informed the court that he was no longer the house owner and proposed the company JOHNY, s. r. o. to enter the proceedings in his place (see Enclosure A9).

On 9 March 2007 the court granted this proposal (see Enclosure A10).

23. During the further stages of the proceedings the claimant company and the defendant tenants concluded settlement agreements in which the tenants agreed to the rent increase in the future and also to a retroactive increase for the preceding period from 5 May 2004 and the Applicant was obligated to withdraw the action (see Enclosures A11a to A11f).

For example in the settlement agreement concluded on 12 June 2007 with V.Ch. (Enclosure A11a) it is noted, *inter alia*, the following:

> "2) The parties agree to state [that between them] the amount of rent for the period from 5 May 2004 to 31 December 2006 forming the subject matter of proceedings before the Brno Municipal Court is disputed.
>
> In this settlement agreement the parties arrange for the rights disputed or in doubt between them that form the subject matter of court proceedings […], in the following way:

a) the tenant shall pay to the landlord the amount of CZK 10,005 […].

[…]

3) In the conclusion the parties agreed and declare:

a) that by this agreement all rights, obligations and liabilities that formed the subject matter of court proceedings are arranged for and settled […],

b) that they have no other claims in respect of each other,

c) that the unilateral rent increase for the period from 1 January 2007 which had already been effected by the landlord, and which was based on the original amount of monthly rent and the surface area shall remain valid,

d) that for the year 2008 the rent increase shall be calculated based on the correct surface area, which should be included, and that the calculation be done on the basis of the rent for the period from 1 January 2007,

[…]."

24. On 27 June 2007 the Brno Municipal Court discontinued the proceedings on the action due to the fact that the claimant had withdrawn his action (see Enclosure A12).

(ii) On the case of Applicant Morawetz

25. First of all, the Government consider it to be necessary to mention that according to information given on the web pages administered by the Applicant's daughter, Mrs Claudia Morawetz (*www.oskarmorawetz.com*; visited on 28 August 2007 – see Enclosure B1), the Applicant died in Canada on 13 June 2007.

a) History of the ownership of the Applicant's house

26. From the information recorded in the Land Register and documents filed there, as well as from the court files kept in relation to the proceedings mentioned below the Government ascertained the following facts concerning the Applicant's house.

27. The house was built in 1938 and it was originally owned by the Applicant's father, Richard Morawetz, who soon afterwards left Czechoslovakia along with his family (in 1947 he acquired Canadian citizenship and one year earlier also the Applicant acquired Canadian citizenship).

28. By a decision of the Financial Department of the Prague 1 District National Committee (*finanční odbor Obvodního národní výboru v Praze 1*) of 20 January 1964 all the property of the Applicant's father was confiscated under Section 1, subsection 1 point 3 of the Decree of the President of the Republic no. 108/1945, on the confiscation of enemy property and on the National Reconstruction Funds, whereby it passed to the ownership of the Czechoslovak State. Subsequently it was assigned to the administration of the Prague 7 District Housing Management Undertaking (*Obvodní podnik bytového hospodářství v Praze 7*)

(later on changed to the Prague 7 Housing Management Undertaking (*Bytový podnik Praha 7*).

29. The Agreement between the Government of Canada and the Government of the Czechoslovak Socialist Republic relating to the settlement of Financial Matters was concluded on 18 April 1973 and it entered into force on 22 June 1973.

On the basis of this Agreement the Czechoslovak side provided collective compensation in the amount requested by the Canadian side as high enough to enable the latter to pay to its citizens compensation for their property affected by various Czechoslovak government action. By paying the collective compensation the Czechoslovak side was released from its obligations in relation to Canadian natural and juristic persons for whose property it provided this compensation, regardless of whether the Canadian side, which made provision to decide on the individual cases, awarded the compensation to its citizen and paid it to him/her, and also regardless of whether the Canadian citizen requested compensation for his/her property from the Canadian compensation commission. The criteria for distribution and payment of the compensation were determined by the Canadian side and the Czechoslovak authorities were not entitled to intervene in its decisions in any way.

The report of the Canadian Foreign Claims Commission (*Commission des réclamations étrangères*) suggests that the house in question was included in the compensation scheme (see Enclosure B2).

On 31 March 1979 the Applicant's brother John Morawetz, as the executor of his father's estate, declared that he waived the claims in respect of which the payments were provided (see Enclosure B3).

30. In its decision of 11 April 1996 the Prague Municipality granted the protest filed by the state prosecutor of the District State Prosecution Office for Non-criminal Cases for the Territory of Prague and repealed the decision on the confiscation (see Enclosure B4). By this decision, the ownership right of the Applicant's father was restored, but in the meantime, in 1965, he had died (nevertheless, *cf*. § 40 of the Observations below).

31. On 27 July 1999 the Prague 7 District Court confirmed that the Applicant had acquired the house as the only testamentary heir (see Enclosure B5). The decision became final on 14 September 1999.

The ownership right in respect of the house passed to the Applicant on the basis of a registration in the Land Register with effect from 29 September 1999.

b) Restitution proceedings concerning the Applicant's house

32. In his letter dated 13 September 1991 the Applicant requested the Prague 7 Housing Management Undertaking to surrender the house; the latter did not comply with the request. Therefore the Applicant then brought an action with the Prague 7 District Court for the imposition of an obligation to conclude an agree-

ment on the surrender of the house under Act no. 87/1991, on extra-judicial rehabilitation.

33. On 4 December 1996 the court rejected the action. In the substantiation of its decision (see Enclosure B6) it noted, inter *alia*, the following:

> "The court believes that in consequence of [the Agreement between the Government of Canada and the Government of the Czechoslovak Socialist Republic relating to the settlement of Financial Matters of 1973] all estate claims after Richard Morawetz and his heirs against the property which he left on the territory of our country ceased to exist, because they were settled and concerned by this intergovernmental agreement."

34. The Applicant filed an appeal against the judgment.

35. On 8 August 1997 the Prague Municipal Court quashed the challenged decision and remanded the case to the court of first instance for further proceedings (see Enclosure B7).

In the substantiation it noted, *inter alia*, the following:

> "The appellate court does not share the conclusion of the court of first instance that the fact that the part of the property which the claimant's father left in Czechoslovakia was subject to application of the Agreement between the Government of Canada and the Government of the Czechoslovak Socialist Republic relating to the settlement of Financial Matters constitutes, on its own, a reason for which the action cannot be granted. The appellate court is convinced that such conclusion cannot be made from the wording of Act no. 87/91."

36. On 26 August 1997 the Applicant withdrew his action due to the repeal of the confiscation order of 1964 and initiation of the probate proceedings (see §§ 30 to 31 of the Observations above). Therefore the Prague 7 District Court discontinued the proceedings concerning this case (see Enclosure B8).

c) Proceedings on the action brought by the Prague 7 Municipality for the declaration of the ownership title regarding the house

37. On 14 January 2004 the Prague 7 Municipality brought an action with the Prague 7 District Court against the Applicant and in this action it requested the determination of ownership title regarding the house (see Enclosure B9).

38. On 5 April 2004 the court rejected the action when it concluded that the claimant did not have the right of action and that it did not have an urgent legal interest in the determination of the ownership title, as required by Section 80, subsection (c) of the Rules of Civil Procedure (see Enclosure B10).

The claimant filed an appeal against the judgment.

39. On 3 September 2004 the Prague Municipal Court upheld the judgment of the court of first instance (see Enclosure B11).

d) Proceedings on the action brought by the Municipality of Prague for the declaration of the ownership title regarding the house

40. On 24 February 2005 the Municipality of Prague brought an action with the Prague 7 District Court against the Applicant for the declaration of the ownership title regarding the house (Enclosure B12).

In the claimant's opinion by the mere repeal of the confiscation measure the ownership right of the Applicant's father could have not automatically been restored; for that to happen there would have to have been a claim raised under Act no. 87/1991, on extra-judicial rehabilitation. The claimant supported this legal reasoning by reference to the Constitutional Court's relevant case law.

41. On 9 May 2007 the court rejected the action (see Enclosure B13).

42. In June 2007 both, the claimant and the enjoined party on the claimant's side (the Prague 7 Municipality), filed appeals against the judgment.

There has been no decision on the appeals as yet.

e) Criminal complaint

43. On 18 December 2004 one of the tenants in the house filed a criminal complaint against the Applicant and his counsel (this is the same person who addressed the Court on behalf of the Applicant) regarding an offence of fraud, allegedly committed by these two persons by requesting the surrender of the house in question in restitution proceedings while being aware that compensation had already been paid for the confiscation of the house under the above Agreement between the Governments of Czechoslovakia and Canada of 1973.

44. On 3 January 2005 the police authority notified the informant that criminal proceedings had been initiated in the case (see Enclosure B14). The file was handed over to the Prague Municipal Public Prosecution Office in order for a request to be made regarding the explanation by the Applicant using an international legal assistance.

45. In its letter dated 3 July 2006 the Supreme Public Prosecution Office (International Department, Unit of Legal Contact with Abroad) (*mezinárodní odbor, oddělení právního styku s cizinou Nejvyššího státního zastupitelství*) informed the Prague Municipal Public Prosecution Office that the Applicant "*had been in a retirement home for seven years and his health had very deteriorated, his speech is not coherent. Therefore he is not capable of being examined.*" (Enclosure B15).

46. The criminal proceedings are pending; no criminal prosecution as regards this case has been commenced in respect of any person yet.

(iii) On the case of Applicants Hlaváček

47. From the information recorded in the Land Register and documents filed there the Government ascertained the following facts concerning the Applicants' houses.

48. Both houses were built in 1948. The houses were originally owned by the Applicants' mother, Vlasta Hlaváčková.

49. By a warrant of the Ministry of Finance of 26 June 1953 the houses were included in the property of the construction undertaking of Václav Hlaváček and together with this property they were expropriated under Act no. 121/1948, on expropriation in the civil engineering, as amended by Act no. 58/1951. Initially, the houses were administered by the Prague Housing Undertaking (*Bytový podnik hlavního města Prahy*) and then in 1957 the administration was transferred to the Prague 14 District National Committee, then in 1962 to the Prague 4 District Housing Management Undertaking (*Obvodní podnik bytového hospodářství v Praze 4*) which then changed to the District Housing Management Undertaking Prague 4 (*Obvodní bytový podnik v Praze 4*).

50. On 9 October 1991 the Applicants, as entitled persons under Act no. 87/1991, on extra-judicial rehabilitation, concluded with the Prague 4 Obvodní bytový podnik an agreement on the surrender of property on the basis of which the houses were surrendered to them and the Applicants became their owners with effect from the day of the registration of the agreement by the State Notary Office (this took place on 22 October 1991).

In the agreement (see Enclosure C1) it is noted, *inter alia*, the following:

> "All rights and obligations related to the ownership of the immovable pass to the beneficiary on the day of the registration of the agreement by the State Notary Office."

(iv) On the case of the Applicant Company

51. From the information recorded in the Land Register and documents filed there, as well as from the court files kept in relation to the proceedings mentioned below the Government ascertained the following facts concerning the Applicant Company's house.

52. The house was built (probably) in 1913 and it was originally owned by V.E. and T.E.

53. On the day of finality of the decision of the Plzeň Municipal National Committee (*Městský národní výbor v Plzni*) of 20 August 1960 on the basis of Government Order no. 15/1959 and Decree no. 88/1959, on measures relating to certain property used by organisations of the socialist sector, the house passed to the ownership of the Czechoslovak State. Initially, the immovable was administered by the organisation Pramen Plzeň-město, then by the Plzeň Municipal Housing Management Undertaking (*Městský bytový podnik v Plzni*) and subsequently by the Plzeň 2 District National Committee District Housing Management Undertaking (*Bytový podnik Obvodního národního výboru Plzeň 2*) which later changed to State Undertaking – the Plzeň Municipal Housing Management Undertaking (*státní podnik Bytový podnik města Plzně*).

54. On 22 May 1991 J.E., as the entitled person under Act no. 403/1990, on the mitigation of consequences of certain property injustices, concluded an agreement with this undertaking on the surrender of property on the basis of which the house was surrendered to him and J.E. became its owner.

In the agreement (see Enclosure D1) it is noted, *inter alia*, the following:

> "The beneficiary takes due note that the right of use of the present users of the residential and commercial premises remains in existence and it shall be further provided for by generally binding regulations."

55. J.E. sold the house to Z.K. on the basis of an agreement of 17 December 1991 for the price of CZK 1,350,000.

In the agreement (see Enclosure D2) it is noted, *inter alia*, the following:

> "The purchaser declares that he is familiar with the condition of the purchased immovables and that he purchases them in this condition."

56. Subsequently on 27 January 1992 the purchaser created a mortgage to the benefit of the company Č.S., a.s. in relation to receivables under credits amounting to CZK 1,500,000.

57. In its decision of 26 October 1999 the Plzeň-město District Court ordered the enforcement of a decision by way of sale of the house for the purpose of settling the receivable owed to the company Č.S.

According to the expert opinion of 13 December 2000, produced for the purpose of proceedings on the enforcement of the decision, the value of the house was CZK 3,143,450 (see Enclosure D3).

58. In a court decision of 31 May 2001 the final value of the house for the purpose of public auction was determined at CZK 1,500,000.

In the decision's substantiation (see Enclosure D4) it is noted, *inter alia*, the following:

> "In the case in question it concerns a three-storey block of flats 87 years old with a basement under one part of the building […]. In the house there is a commercial premise (at the ground floor) and six flats, two per floor with two or one bedrooms *[2+1 or 1+1 sizes as used in the Czech Republic]*. […]
>
> With regard to the fact that it concerns the sale of an occupied block of flats, this fact influences the range of interested parties, because the functional utility of the building is limited due to the existing tenancy rights of persons related to this immovable. From this point of view it is a very limiting element as regards the marketability of the whole immovable and that necessarily manifests itself in the final value. For the valued immovable it concerns a non-standardised residential building where more than one half of the floor area is taken up by flats. The rent revenue from the flats (controlled rent) amounts to CZK 61,380 a year. There are no encumbrances related to the immovable to the detriment of the owner of the immovable.
>
> After the assessment of the decisive criteria forming the idea about the real value the court determined the final value of the immovable in question at CZK 1,500,000 when it took into account its location in the downtown area of a regional town with very good accessibility [of the public transport service]. An element decreasing the aggregate market demand for this building is the fact that by a sale in the auction the tenancy rights in relation to the flats will not cease to exist, including the related inheritance ties, another such element is the present technical

> condition, which requires large financial investment for the reconstruction and renovation of the whole building.
>
> […]
>
> Since the purpose of the determination of the final value is the closest possible approximation of the market value, the court concluded, after assessment of the decisive criteria for determining the real value and therefore the marketability of the immovables under consideration (location, third party rights, utility value, nuisance and other disturbing effects *etc.*), that the final value of the immovable in question corresponds to the amount of CZK 1,500,000. […]"

59. On 23 August 2001 the court delivered a notice of an auction (see Enclosure D5), in which the reserve price was determined at CZK 1,000,000 (under Section 336e, subsection 1 of the Rules of Civil Procedure the court shall determine the reserve price to two-thirds of the determined value).

60. On 26 September 2001 a public auction took place and only the Applicant Company participated in it. By the decision of the Plzeň-město District Court of that same day it benefited from the fall of the hammer, since it made the highest bid – CZK 1,000,000 (i.e. amounting to the reserve price). The decision became final on 30 October 2001 (see Enclosure D6).

61. The ownership right of the house passed to the Applicant Company on the basis of registration in the Land Register with effect from 16 January 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Restitution Legislation

(i) Act no. 403/1990, on the mitigation of the consequences of certain property injustices

62. Under Section 1 this Act shall apply to consequences of property injustices caused to natural and juristic persons by the confiscation of ownership rights to immovable or movable property under Government Order no. 15/1959, on measures relating to certain things used by organisations of the socialist sector, under Act no. 71/1959, on measures relating to certain private house property, and by expropriation on the basis of ordinances issued by certain sector ministries after 1955 and referring to expropriation legislation of 1948; also the alienation of ownership rights on the basis of a purchase agreement under Section 4, subsections 1 and 2 of Government Order no. 15/1959 is considered to be confiscation of ownership rights within the meaning of this Act.

63. Under Section 2 of the Act the mitigation of consequences of property injustices under this Act shall consist in the surrender of the property to the natural or juristic person from whom it was confiscated on the basis of legislation specified in Section 1, in the provision of pecuniary compensation (Section 14 of the Act) or in the surrender of the purchase price (Section 15 of the Act) or in the

payment of a difference between the pecuniary compensation and the purchase price (Section 16 of the Act).

64. If the original owner died or was declared deceased the thing was to be surrendered to other persons specified in Section 3 of the Act.

65. The range of things that were subject to surrender and the range of persons who were obligated to surrender property owned by them is specified in Section 4 of the Act.

66. Under Section 5 of the Act the entitled person had to request the obligated person to surrender the property. Subsequently the obligated and entitled persons were supposed to conclude an agreement on the surrender of the property and on the mutual settlement of claims under this Act. If the obligated person did not comply with his/her obligations, the entitled person could raise his/her claims before a court.

67. Under Section 10, subsection 1 of the Act the property shall be surrendered to the entitled person in the condition in which it is on the day of the conclusion of the agreement.

Under Section 10, subsection 2 of the Act if the surrendered building is depreciated, in comparison to its condition at the time of its confiscation, to such an extent that it cannot be used for residential, industrial, commercial or other services without immediate construction work, the entitled person shall also be awarded pecuniary compensation (Section 14 of the Act).

Under Section 14, subsection 1 of the Act the competent Ministry for the Administration of National Property (Ministry of Finance since 1 July 1996) and its privatisation shall provide to the entitled person, upon his/her request supported as stipulated in Section 6, for a building that has been demolished and for immovables for which pecuniary compensation is payable under Section 10, pecuniary compensation in an amount determined according to the condition on the day of confiscation using Decree of the Ministry of Finance no. 73/1964, on the prices of buildings in personal ownership and on compensation for the expropriation of an immovable, raised by 3 % of this amount for each year that elapsed between the confiscation and the entry into effect of this Act.

Under Section 14, subsection 3 of the Act, the compensation provided under Section 10, subsection 2 of the Act shall be reduced by the price of the surrendered immovable determined under the Decree mentioned in subsection 1, calculated according to the condition of the immovable mentioned in Section 10, subsection 1 of the Act (Section 14, subsections 1 and 3 of the Act were reformulated by Act no. 137/1991 with effect from 15 April 1991).

68. Under Section 11 of the Act the obligated person cannot raise any financial or other claims against the entitled person relating to the surrendered property; also the entitled person to whom the property was surrendered cannot raise claims against the obligated person relating to the surrendered property other than stipulated in this Act; mortgages and easements attached to the property on

the day of its confiscation or on the day of its surrender are not to be taken into account.

69. Under Section 12 of the Act the right of use held by the existing occupants of residential or commercial premises in the surrendered immovables shall remain in existence and shall remain governed by regulations concerning residential property management and tenancy and sub-tenancy of commercial premises.

This provision was amended by Act no. 137/1991 and therefore, effective from 15 April 1991 the new Section 12, subsection 1 of the Act stipulated that on the day of recovery of the immovable the entitled person shall accede to the rights and obligations of the landlord who concluded the agreement on the hand over and acceptance of the flat or a lease agreement concerning commercial premises in the assumed immovable.

(ii) Act no. 87/1991, on extra-judicial rehabilitation

70. Under Section 1, subsection 1 the Act shall apply to the mitigation of the consequences of certain property and other injustices caused by civil law and labour law acts and administrative acts performed during the period from 25 February 1948 to 1 January 1990 contrary to the principles of a democratic society respecting citizens' rights as expressed in the United Nations Charter, the Universal Declaration of Human Rights and the subsequent International Covenants on Civil, Political, Economic, Social and Cultural Rights.

Under Section 1, subsection 2 the Act shall also provide for requirements for raising claims arising from quashed rulings on the sentence of forfeiture of property, forfeiture of property or seizure of property, as well as for the type of compensation and extent of these claims.

71. Entitled persons are defined in Section 3 of the Act and obligated persons are defined in Section 4 of the Act.

72. Under Section 5 of the Act the entitled person had to request the obligated person to surrender the property within a provided time limit. Subsequently the obligated person had to conclude an agreement on the surrender of property with the entitled person. If the obligated person did not comply with the request, the entitled person could raise its claim before a court.

73. Under Section 7, subsection 1 of the Act the property shall be surrendered to the entitled person in the condition in which it was on the day of service of the written request for the surrender of the property on the obligated person.

Under Section 7, subsection 3 of the Act if the surrendered immovable is depreciated, in comparison to its condition at the time of its confiscation, to such an extent that it cannot be used for residential, industrial, commercial or other services without immediate construction work, the entitled person may request, instead of the surrender of the immovable, financial compensation under Section 13.

Under Section 13, subsection 5 (subsection 4 as amended by Act no. 115/ /1994) the financial compensation shall consist in the payment of cash in the maximum amount of CSK 30,000 and in the issue of securities that are not of the

nature of government bonds. In their order the Government shall provide for the amount of financial compensation in cash (in Order no. 233/1991, on the amount of financial compensation in cash provided under the Act on extra-judicial rehabilitation, the financial compensation in cash was determined at the amount of CSK 10,000; if the financial compensation determined under the valid price regulations was lower, then the calculated sum was paid in cash).

74. Under Section 10, subsection 1 of the Act the obligated person cannot raise any financial or other claims against the entitled persons relating to the surrendered property; also the entitled person to whom the property was surrendered cannot raise claims against the obligated person relating to the surrendered property other than stipulated in this Act.

75. Under Section 12, subsection 1 of the Act on the day of taking over of the immovable the entitled person shall accede to the rights and obligations of the landlord who concluded an agreement on the hand over and acceptance of a flat or a lease contract concerning commercial premises in the assumed immovable.

(iii) Act no. 229/1991, on the regulation of ownership of land and other agricultural property

76. Under Section 1, subsection 1 the Act shall apply, *inter alia*, to residential buildings, agricultural buildings and other constructions belonging to the original farm, including built-up land, and to residential and agricultural buildings and constructions serving agricultural and forest production or related water management, including built-up land.

77. Entitled persons are defined in Section 4 of the Act and obligated persons are defined in Section 5 of the Act.

78. Under Section 9 of the Act the entitled person must raise his/her claim with a land office and at the same time he/she must request the obligated person to surrender the immovable; the obligated person is obligated to conclude an agreement with the entitled person on the surrender of the immovable, which is subject to approval by the land office. The land office's decision is subject to judicial review.

79. Under Section 22, subsection 2 of the Act (in its original wording) if the contemporary user and the owner have not concluded any other agreement, then on the day of entry into effect of this Act or on the day when the immovable was surrendered under Part Two of this Act a tenancy relationship shall come into existence and a notice can be given as on 1 October of the current year; the notice period is one year, unless it is agreed otherwise.

Act no. 93/1992, which amended Act no. 229/1991 with effect from 28 February 1992, limited the applicability of the above provision only to agricultural land. Under the new Section 22, subsection 7 of the Act (now subsection 8) if the contemporary user and the owner of the immovables, with the exception of agricultural land, have not concluded any other agreement, then on the day of entry into effect of this Act or on the day when the immovable was surrendered under Part Two of this Act a tenancy relationship shall come into existence and no-

tice can be given at any time; the notice period was three months and it began on the first day of the month following the month when the notice was delivered.

80. Under Section 25, subsection 1 of the Act the owner shall accede to the rights and obligations of the landlord arising under an agreement on the hand over and acceptance of a flat or a lease contract concerning a plot of land or a lease contract concerning commercial premises in the assumed immovable.

81. Under Section 26, subsection 2 of the Act upon a motion of the owner of a residential building belonging to a farm, filed within three years of the entry into effect of this Act, the competent authority shall repeal the right of use of the flat or shall decide on its vacation, if the owner needs it for himself/herself and relatives or closely connected persons for the purpose of agricultural production.

82. Under Section 27, subsection 2 of the Act if the residential or commercial premises are depreciated on the day of termination of the right of use, more than would correspond to normal wear, the user of these premises is obligated to pay compensation for this depreciation to the owner of the building.

83. Under Section 28 of the Act the obligated person cannot raise any financial or other claims against the entitled persons relating to the surrendered property; also the entitled person to whom the property was surrendered cannot raise claims against the obligated person relating to the surrendered property other than stipulated in this Act.

B. Regulation of Tenancy Relationships Prior to 31 December 1991

84. Tenancy relationships were specifically arranged for in the Civil Code (Act no. 40/1964, as amended; it came into effect on 1 April 1964) which did not provide for the institute of lease of flats. The flats together with immovables in which they were located were owned by the State and the flats were not leased to the citizens but instead the 'personal use' of flats was established.

The regulation of the personal use of flats was contained in Part Three Chapter One of the Civil Code (Sections 152 to 189) and it remained virtually unchanged (with the exception of Section 174 in which a second subsection was inserted by Act no. 131/1982 with effect from 1 April 1983) until 1 January 1992 when Act no. 509/1991 came into effect.

(i) Creation of the right of use of a flat

85. Under Section 153 of the Civil Code State, cooperative and other socialist organisations left the flats to the personal use of the citizens without arranging for the duration of the use and they did so in return for payment, unless legislation provided for the contrary.

Under Section 154 of the Civil Code by a decision on the assignment of a flat delivered by the local national committee or another authority competent under regulations on flat management, or by other facts stipulated by this Act, the citizen's right consisting in the organisation's obligation to conclude an agreement with him/her on the hand over and acceptance of a flat was established.

Under Section 155, subsection 1 of the Civil Code by the conclusion of this agreement the citizen's right to use the flat was established.

Under Section 155, subsection 2 of the Civil Code there had to be a report on the agreement on the hand over and acceptance of a flat drawn up and this report had to include, in particular, the decision on the assignment of the flat, the subject matter and scope of the right to use the flat including its accessories, the specification of the payment for the use and for the services, or, where appropriate, the method of determining the payment, and description of the condition of the flat.

(ii) Extinguishment of the right of use of a flat

86. Under Section 183 of the Civil Code the right of use of a flat could be extinguished upon a written agreement between the organisation and the user or upon a written notice of the user to the effect that he no longer wanted to use the flat. The time period within which the use was to end had to be included in the written notice and it had to be at least one month so that it ended at the end of a calendar month; if the time period was not stated then the right of use extinguished at the end of the month following the month during which the organisation received the notice.

87. Under Section 184 of the Civil Code upon a motion filed by the organisation a court could terminate the right of use of a flat:

> "(a) that was permanently designated to house an employee of the organisation, if the existing user ceased to be employed by the latter and the organisation urgently needs the flat for another of its employees. In justified cases the court may lay an obligation upon the organisation to reimburse to the user the costs for his/her relocation;
>
> (b) if the user or persons residing with him/her, despite warnings, grossly violate the principles of socialist co-existence or if the user grossly violates his/her obligations particularly by not paying for the use of the flat or for services for more than three months;
>
> (c) if the user has two flats;
>
> (d) if the user leaves the flat unused without any serious justification, or uses it only occasionally."

88. Under Section 185 of the Civil Code the local national committee could terminate the right of use of a flat, if the flat was excessively large under legislation on flat management or if it was necessary to dispose of the flat or house in a way that the flat could no longer be used.

89. Under Section 186 of the Civil Code the user was not obligated to move out of the flat until he was provided with an adequate substitute flat; even without being given substitute flat the user was obligated to move out of the flat, if it was sufficient, under the law, to provide substitute accommodation or if it was not necessary to provide substitute flat or substitute accommodation at all. If the user was obligated to move out of the flat on the grounds that without any serious justification he used the flat only occasionally, it was sufficient to provide substitute accommodation instead of substitute flat. No substitute flat or substitute accommodation was provided if the user of the flat was obligated to move out because

he had two flats or without any serious justification he did not use the flat at all. In cases when the law stipulated that the user of the flat was not obligated to move out until adequate substitute flat was assigned or substitute accommodation secured to him/her, the right of use of the flat ceased to exist on the day when the substitute flat was assigned or substitute accommodation secured.

90. Under Section 179, subsection 1 of the Civil Code if the user died and if it did not concern a flat jointly used by the spouses, then the user's children, grandchildren, parents, siblings, son-in-law and daughter-in-law became its users, if they lived in a common household with him/her on the day of his/her death and if they did not have their own flat; also persons taking care of the common household of the deceased or persons dependent on him/her as regards their upbringing also became its users, if they had lived with him/her in the common household for at least one year prior to his/her death and if they did not have their own flat.

The same applied when the user permanently left the common household (Section 181 of the Civil Code).

91. Also the option of an exchange of flats was provided for in the Civil Code (Sections 188 and 189).

(iii) Payment for the use of a flat

92. Under Section 168 of the Civil Code the user was obligated to pay for the use of the flat. The payment for services that were provided in connection with the use of the flat or advance on that were paid together with the payment for the use of the flat, unless legislation provided or participants agreed otherwise. The amount paid for the use of the flats and for the provision of services, as well as the method of their payment was provided for in a separate regulation.

93. This separate regulation was Decree no. 60/1964, on the payment for the use of a flat and for services related to the use of a flat.

The Decree applied to flats that were left to be used by the citizens in houses administered by socialist organisations and in houses in private ownership; it did not apply to flats in housing cooperatives, to flats managed by Správa služeb diplomatického sboru [the Diplomatic Corps' Services Administration], and to dwelling rooms in dormitories, in company and other housing facilities (Section 3 of the Decree).

Under Section 2 of the Decree the payment for the use of the flat also included the payment for lights in the common areas in the house, cleaning of the chimneys, ash and dust disposal, sewage disposal and cleaning of a septic tank. On the other hand it did not include the payment for central (district) heating and for hot water, cleaning of the common areas in the house, use of the elevator, supply of water from public water pipes and water works, sewage water disposal by public sewage system and use of house (block) laundry.

For the purpose of specifying the payment for the use of the flat, flats were divided into four categories (Section 4, subsection 1 of the Decree):

> "category one – flats with central (district) heating and complete basic accessories;
>
> category two – flats without central (district) heating and with complete basic accessories;
>
> category three – flats without central (district) heating and with partial basic accessories in a locked flat;
>
> category four – flats without central (district) heating and without basic accessories."

Under Section 5, subsection 1 of the Decree the annual payment for the use of the flat was calculated by multiplying the area of its dwelling and accessory rooms by rates per square metre of this area (Section 6 of the Decree), annual rates for its basic operation equipment and other equipment and facilities (Sections 7 and 8 of the Decree) and an increase or decrease with regard to its quality (Section 9 of the Decree).

Under Section 6 of the Decree the annual rates per square metre of floor area were:

Table 1

	Dwelling rooms	Accessory rooms
category one	CZK 26	CZK 12
category two	CZK 18	CZK 10
category three	CZK 14	CZK 10

The payment for the use of a category four flat collected as of 1 October 1964 did not change and constituted the total payment for the use of the flat (Section 12, subsection 1 of the Decree).

Under Section 10 of the Decree if the flat user or a member of his/her household had dependant children who lived with him/her permanently in the common household, then the payment for the use of the flat determined under Sections 6 to 9 of the Decree decreased for flats of first, second and third categories by 5% (1 child), 15% (2 children), 30% (3 children) or 50% (4 or more children).

Under Section 16 of the Decree as regards the payment for the use of the flat and for services related to the use of a flat in family houses in personal ownership an agreement concluded between the owner of the house and the user of the flat applied.

94. Under Section 161, subsection 1 of the Civil Code the organisation was obligated to allow the user full and undisturbed exercise of his/her rights related to the use of the flat. It was particularly obligated to hand over to him/her the flat in a condition capable of being duly used, to maintain it in this condition and if possible to improve it, to perform due maintenance of the house and its equipment and to secure also regular performance of services whose provision was related to the use of the flat.

Under Section 161, subsection 2 of the Civil Code the user paid for small repairs in the flat related to its use and costs related to the routine maintenance.

C. Regulation of Tenancy Relationships from 1 January 1992 to 30 March 2006

95. Act no. 509/1991, amending the Civil Code, replaced the existing regulation of personal use of flats with regulation on flat leasing (Part Eight, Chapter Seven, Division Four, Sections 685 to 716 of the Civil Code).

A number of provisions are still applicable, nevertheless, some were substantially amended over the years, particularly by Act no. 107/2006 (see below §§ 150 *et seq.* of the Observations).

(i) Creation of the tenancy

96. Under Section 685, subsection 1 first sentence of the Civil Code tenancy of a flat was created on the conclusion of a lease contract by which a landlord handed over a flat to a tenant for their use for a definite or indefinite period of time.

97. Under Section 871, subsection 1 of the Civil Code the right of personal use of a flat and the right of use of other dwelling rooms and rooms not designed for dwelling purposes created under the existing regulations as on the day of entry into effect of Act no. 509/1991, changed to tenancy on the day of entry into effect of this Act; joint use of a flat and joint use of a flat by spouses changed to joint tenancy.

In its finding of 25 March 1994 file ref. no. Pl. ÚS 37/93 the Constitutional Court rejected the motion to repeal this provision (for details see § 185 of the Observations below).

(ii) Extinguishment of the tenancy

98. Under Section 685, subsection 1 second sentence of the Civil Code the tenancy shall be protected; if no agreement is reached then a notice of termination may be given only for reasons stipulated in law (with effect from 1 January 1995 this provision was reformulated by Act no. 267/1994 and it newly stipulated that *the landlord* may give a notice of termination only for reasons stipulated in law; with effect from 31 March 2006 Act no. 107/2006 moved the above provision to Section 685, subsection 3 of the Civil Code).

99. Under Section 710 of the Civil Code the tenancy of a flat shall cease on the basis of a written agreement between the landlord and the tenant, or on the basis of a written notice of termination. If the tenancy was concluded for a definite period of time, the tenancy shall cease on expiry of the set period. The written notice has to give the date on which the lease was to be terminated; the period of notice has to be at least three months and has to end at the end of a calendar month.

100. Under Section 711, subsection 1 of the Civil Code the landlord could serve a notice of termination on the tenant only subject to the prior approval by a court for the following reasons:

> "(a) the landlord needs the flat for him-/herself, his/her spouse, his/her children, grandchildren, son-in-law or daughter-in-law, his/her parents or siblings;
>
> (b) the tenant has ceased to be employed by the landlord and the flat was tied to this work and the latter needed the flat for his/her replacement;
>
> (c) the tenant or persons residing with him/her, have acted *contra bonos mores* in the house, despite a prior written warning;
>
> (d) the tenant has grossly violated his/her obligations arising under the tenancy, in particular by a failure for more than three months to pay rent or charges for the use of the flat;
>
> (e) due to public interest the flat or the house needs to be disposed of in such a way that the flat cannot be used or if the flat or the house need reconstruction during which the flat or the house cannot be used for an extended period of time;
>
> (f) the flat was connected to premises designed for the purpose of a shop or another commercial use and the tenant or owner of these commercial premises wants to use this flat;
>
> (g) the tenant has two or more flats, except where he cannot be fairly requested to use only one flat;
>
> (h) the tenant leaves the flat unused without any serious justification."

In Act no. 264/1992, with effect from 1 January 1993 another ground for notice was stipulated: "*(i) in case of a specially-assigned flat or a flat in a specially-assigned house and the tenant is not a disabled person.*"

Act no. 267/1994, with effect from 1 January 1995 extended the ground under letter (h) in a way that the requirement for a notice was not only a situation when the tenant leaves the flat unused without any serious justification , but also a situation when he uses it "*only occasionally without any serious justification*."

101. Under Section 711, subsection 2 of the Civil Code if the court grants its approval of the notice of termination of the flat lease, it shall also determine the day on which the tenancy relationship is to end, taking into account the period of notice. The period of notice commences as late as the first day of the calendar month following the finality of the judgment. At the same time the court shall decide that the tenant is obligated to vacate the flat within 15 days at the latest after the expiry of the period of notice. If the tenant is entitled to a substitute flat (substitute accommodation), the court shall hold that the tenant is obligated to vacate the flat within 15 days after the provision of the substitute flat, and if provision of substitute accommodation is sufficient then within 15 days after the provision of substitute accommodation.

102. The right to a replacement flat in case of extinguishment of the lease is provided for in detail in Sections 712 to 714 of the Civil Code.

103. Under Section 706, subsection 1 of the Civil Code if the tenant died and where the flat was not in spouses' joint tenancy, then the tenant's children, grandchildren, parents, siblings, son-in-law and daughter-in-law became its tenants (joint tenants), if they lived in a common household with him/her on the day of his/her death and if they did not have their own flat; also persons taking care of the common household of the deceased tenant or persons dependent on him/her as regards their upbringing also became its tenants (joint tenants), if they had lived with him/her in the common household for at least three years prior to his/her death and if they did not have their own flat.

Act no. 267/1994 amended this provision with effect from 1 January 1995 so that the enumerated persons had to prove that they had lived with the tenant in the common household and that they did not have their own flat.

Section 706, subsection 1 of the Civil Code applied also in cases where the tenant permanently left the common household (Section 708 of the Civil Code).

104. Also the option of an exchange of flats is provided for in the Civil Code (Sections 715 and 716).

105. According to the general regulations governing the lease contract in Section 680, subsection 2 of the Civil Code it applies that if there is a change in the ownership of the leased property then the acquirer enters into the legal position of the landlord.

(iii) Rent

106. Under Section 671, subsection 1 of the Civil Code the tenant is obligated to pay rent according to the agreement, otherwise rent that is standard at the time of the conclusion of the agreement with regard to the value of the leased property and way of its use.

107. Under Section 686, subsection 1 of the Civil Code the lease contract had to include specification of the subject matter and extent of its use, the amount of rent and the amount of service charges for the use of the flat or the method of their calculation; from 1 January 1995 this provision was formulated in the following way: "*the lease contract must include specification of the flat, its accessories, extent of their use and the manner of calculating the rent and payment of service charges for the use of the flat or their specific amounts.*"

108. Under Section 687, subsection 1 of the Civil Code the landlord is obligated to hand the flat over to the tenant in a condition fit to be duly used and to secure to the tenant full and undisturbed exercise of his/her rights related to the use of the flat.

Under Section 687, subsection 2 of the Civil Code unless the lease contract stipulates otherwise, the tenant shall pay for minor repairs in the flat related to its use and for costs related to the routine maintenance. The terms 'minor repairs' and 'costs related to the routine maintenance' shall be provided for in a separate regulation (Government Order no. 258/1995, to apply the Civil Code – see §§ 174 to 176 of the Observations below).

109. Under Section 696, subsection 1 of the Civil Code the method of calculating the rent, the payment of service charges for the use of the flat, the manner of their payment, as well as cases where the landlord is entitled to unilaterally increase the rent, the payment of service charges for the use of the flat, as well as modify other terms and conditions of the lease contract shall be provided for in a separate regulation.

a) Regulation of rent until 31 December 1993

110. On 23 December 1991 the Federal Ministry of Finance (together with the Ministry of Finance of the Czech Republic and the Ministry of Finance of the Slovak Republic) issued, with reference to Section 20 of Act no. 526/1990, on prices, and to Section 696, subsection 1 of the Civil Code, Decree no. 15/1992, to amend and supplement Decree no. 60/1964 (see §§ 93 *et seq.* of the Observations above).

111. With effect from 16 January 1992 Decree no. 60/1964, as amended, stipulated the method of calculating the rent for a flat and the way of negotiating and paying for the rent and for the service charges for the use of the flat between the owners, or housekeepers as landlords and the tenants (Section 1, subsection 1 of the Decree).

112. The Decree did not apply to flats in housing cooperatives established after 1958, if it concerned flats built with financial, credit or other assistance provided under regulations on financial and credit assistance to cooperative housing construction, for which the rent was determined under separate regulations, and the Decree also did not apply to flats managed by Správa služeb diplomatického sboru (Section 1, subsection 2 of the Decree).

113. Under Section 2, subsection 1 of the Decree the rent did not include payments for central (district) heating and for the supply of hot water, cleaning of the common areas in the house, use of the elevator, supply of water from public water pipes and water works, sewage water disposal by public sewage system, the use of house (block) laundry, lights in the common areas in the house, checking and cleaning of the chimneys, ash and dust disposal, sewage disposal and cleaning of a septic tank, for the provision of common TV and radio antennas in the flat, or payments for other services.

114. Decree no. 15/1992 inserted a new subsection two into the existing Section 5 of the Decree which stipulated that "the amount of rent determined under subsection 1 shall be increased by 100% starting with the rent for the month of July 1992. The landlord must notify the new rent in a way that is standard in the place within 60 days at the latest from the entry into effect of this Decree."

The rent for a category four flat, collected as of 31 December 1991, did not change and formed the basis for calculating the rent increase under Section 5, subsection 2 (Section 12, subsection 1 of the Decree).

115. Furthermore, Decree no. 15/1992 repealed Section 10 of the Decree, which had provided for discounts for dependant children.

116. In Section 16 the Decree newly provided for the rent and prices for services in dwelling houses, owned by natural persons, with a limited number of dwelling rooms or a limited floor area.

Subsection 1 stipulated that the amount of rent for a dwelling house with 5 dwelling rooms at most, excluding the kitchen, or with more dwelling rooms but with a floor area not exceeding 120 square metres, shall be negotiated in an agreement between the landlord and the tenant; as regards the kitchen, the floor area shall include also the kitchen area exceeding 12 square metres.

If the rent in dwelling houses under subsection 1 did not reach the amount determined under Section 5, the landlord could increase the rent up to the latter amount (Section 16, subsection 2 of the Decree).

Procedure under Section 2 was applicable for the way of distributing and determining prices for services in dwelling houses under subsection 1, unless the landlord and the tenant agreed otherwise (Section 16, subsection 3 of the Decree).

b) Regulation of rent from 1 January 1994 to 30 June 1995

117. On 17 June 1993 the Ministry of Finance issued Decree no. 176/1993, on the rent for flats and payment of service charges for the use of flats. Certain provisions of the Decree came into effect as early as 1 July 1993, and the remaining provisions on 1 January 1994 (Section 18 of the Decree), *inter alia* also Section 17 by which Decree no. 60/1964 was repealed.

118. Similarly to Decree no. 60/1964, the new Decree also did not apply to flats in housing cooperatives established after 1958, if it concerned flats built with financial, credit or other assistance provided under regulations on financial, credit or other assistance for cooperative housing construction, for which the rent was determined under separate regulations, and the Decree also did not apply to flats managed by Diplomatický servis [Diplomacy Services] (Section 2, subsections 1(a) and 1(b) of the Decree).

As early as 1 July 1993 the following provision came into effect: the Decree did not apply to flats if their tenant was a juristic person with a registered office outside the Czech Republic or a natural person without a permanent residence in the Czech Republic or a foreign embassy or diplomatic mission (Section 2, subsection 1(c) of the Decree].

From that day the rent control under this Decree also did not apply to flats and houses built without public funds, for which the final building approval was to be issued after 30 June 1993 (Section 2, subsection 2(a) of the Decree), and to flats in family houses for which the rent was to be negotiated with the new tenant, excluding cases of statutory passage of tenancy, exchange of flats or use of replacement flat (Section 2, subsection 2(b) of the Decree].

119. The break-up of flats into categories stipulated in Section 4 of the Decree was, with exception of minor differences, essentially the same as under the previous Decree.

120. The Decree provided for two types of basic rent: maximum basic rent (Section 5 of the Decree) and materially regulated basic rent (Section 6 of the Decree).

121. The rent was materially regulated for flats whose construction was approved after 30 June 1993 and public funds were used in the financing (Section 6, subsection 1 of the Decree), and for flats whose reconstruction or modernisation was approved after 30 June 1993 and public funds were used in the financing (Section 6, subsection 2 of the Decree).

In the first case the rent was calculated by multiplying the purchase price of the flat by a monthly coefficient (k = 0.00375), while the purchase price of the flat was to be calculated from the actual purchase costs for the building of the house according to the ratio of the flat's floor area to the floor areas of all flats and commercial premises. This rent could not exceed double the maximum basic rent determined under Section 5 (point 2 letter (a) of Annex to the Decree).

In the second case the rent was calculated by multiplying the replacement purchase price of the flat by a monthly coefficient (k = 0.00375), while the replacement purchase price of the flat was the price of the flat according to the category before the reconstruction or modernisation determined under Section 3a of Decree of the Ministry of Finance of the Czech Republic no. 393/1991, on the prices of buildings, land, permanent vegetation, payments for the creation of the right of personal use of land and compensation for temporary use of land, as amended by Decree no. 110/1992 and Decree no. 611/1992, and raised by the actual costs of the reconstruction or modernisation of the flat. This rent could not exceed double the maximum basic rent for the category of a flat after reconstruction or modernisation determined under Section 5 (point 2 letter (b) of Annex to the Decree).

The provisions on the materially regulated basic rent came into effect as early as 1 July 1993.

122. The maximum basic rent was calculated by multiplying the flat's floor area by the maximum basic monthly rent per square metre of the floor area set for the relevant category in point 1 of Annex to the Decree (Section 5, subsection 1 of the Decree), specifically:

Table 2

category one	CZK 6.00
category two	CZK 4.50
category three	CZK 3.50
category four	CZK 2.50

123. Basic rent (both, the maximum and materially regulated) calculated pursuant to Sections 5 or 6 of the Decree could then be further modified depending on the quality of the flat (Section 8 of the Decree), the location of the house (Section 9 of the Decree) and the flat's equipment (Section 10 of the Decree).

If separate regulations provided for the use of a part of the flat for commercial purposes with the consent of the landlord, the rent for that part of the flat's floor area was negotiated at a maximum level of double the basic rent modified pursuant to Sections 8 and 9 of the Decree (Section 15, subsection 1 of the Decree).

124. The prices of services [central (district) heating and supply of hot water, cleaning of the common areas in the house, use of the elevator, supply of water from public water pipes and water works, sewage water disposal by public sewage system, the use of house laundry, lights in the common areas in the house, checking and cleaning of the chimneys, ash and dust disposal, sewage disposal and cleaning of a septic tank, the provision of common TV and radio antenna in the flat, or payments for other services agreed by the landlord and the tenant] were not included in the rent (Section 11, subsection 1 of the Decree).

125. Under Section 16, subsection 2 of the Decree the rent regulation under Sections 5, 6, 8, 9 and 10 of the Decree applied also to rents originating before 1 January 1994.

If the controlled rent applied on 31 December 1993 was higher than the rent calculated under this Decree, then this higher rent was applicable and it was considered maximum until the moment when it was exceeded by the rent under this Decree given a change in conditions for the rent calculation stipulated in Section 6, subsection 2, Sections 9 and 10, Section 12, subsection 3, Section 15 and Section 16, subsection 1(b) of the Decree (Section 16, subsection 3 of the Decree).

126. Under Section 16, subsection 1 of the Decree the landlord could conclude an agreement with the tenant on the new rent under agreements concluded prior to 1 July 1993 in family houses with 5 dwelling rooms at most, excluding the kitchen, or with more dwelling rooms but their floor area not exceeding 120 square metres, including a kitchen area exceeding 12 square metres, and for which the area of commercial premises is not more than one third of the total of all areas, residential and commercial. If they did not reach an agreement, then the landlord could increase the rent:

a) up to the rent determined under Section 5, modified under Sections 8 and 9 and then increased by the rent for the flat equipment under Section 10, and as from 1 January 1994 in the earliest,

b) on the basis of a valuation authority's decision to a maximum level of double the rent determined Section 5, modified under Sections 8 and 9 and then increased by the rent for the flat equipment under Section 10, and at the earliest as from the first day of the month after twelve months from the landlord's written notice to the tenant concerning the change of rent.

c) Regulation of rent from 1 July 1995 to 31 December 1995

127. On 8 February 1995 the Ministry of Finance issued Decree no. 30/1995, to amend and supplement Decree no. 176/1993.

128. As early as 1 March 1995 the provision whereby the new Section 5a was inserted in Decree no. 176/1993 came into effect; under subsection 1 of the new Section 5a the maximum level of the basic monthly rent per square metre of the floor area of a flat of the relevant category under Section 5 of the Decree was annually determined according to the following formula with effect from 1 July to 30 June of the following year:

$N_{t+1} = N_t \times K_i \times K_v \times K_r$, where

N_{t+1} is the new maximum level of basic monthly rent per square metre of the flat's floor area as valid from 1 July of the current year,

N_t is the maximum level of basic monthly rent per square metre of the flat's floor area as valid until 30 June of the current year,

K_i is the coefficient of rent increase reflecting the rate of inflation for the whole previous calendar year,

K_v is the coefficient of rent increase depending on the size of the municipality,

K_r is the decision coefficient.

The coefficient of rent increase reflecting the rate of inflation K_i was calculated from the running average of change in the level of consumer prices (the rate of inflation) for the previous calendar year according to the index of the Czech Statistical Office; the Ministry of Finance determined the coefficient K_i in its decision and published it in the Price Journal until 1 March (incl.) of the current year (Section 5a, subsection 3 of the Decree).

The value of the coefficient K_r was 1.00. The Ministry of Finance could, in its decision, fix the coefficient K_r at a level lower than 1.00, if the rate of inflation expressed as coefficient K_i was higher than 1.15, or at a level higher than 1.00, if the rate of inflation expressed as coefficient K_i was lower than 1.10 (Section 5a, subsection 4 of the Decree).

The maximum coefficient of rent increase depending on the size of the municipality K_v was determined in the following way:

Table 3

Prague	1.19
Municipality with at least 100,000 inhabitants	1.15
Municipality with 50,000 to 99,999 inhabitants	1.11
Municipality with 10,000 to 49,999 inhabitants	1.08
Municipality with less than 10,000 inhabitants	1.06

The municipality falling under the relevant group according to its number of inhabitants fixed the specific amount of the coefficient K_v for the whole territory of the municipality in a generally binding decree that came into effect on 1 July of

the current year at the latest; the municipality could decrease the maximum coefficient K_v applicable to it to a minimum value of 1.00 or in justified cases it could use the coefficient fixed for the nearest higher category of municipalities up to its maximum value (Section 5a, subsection 6 of the Decree).

Under the amended Section 9 of the Decree the municipality could also, in a generally binding decree, change the basic rent modified under Section 8 of the Decree in parts of the municipality or in individual houses chosen for their advantageous or disadvantageous location, especially from the point of view of traffic access, technical and civic amenities and environment, in the following way:

a) increase it by 20% at most or decrease it by 15% at most in municipalities with at least 50,000 inhabitants, in Františkovy Lázně, Luhačovice, Mariánské Lázně and Poděbrady,

b) increase it by 10% at most or decrease it by 10% at most in municipalities with at least 1,000 inhabitants and less than 50,000 inhabitants,

c) increase it by 10% at most in the territory of national parks and zone one protected landscape areas.

129. With effect from 1 July 1995 Decree no. 30/1995 amended the existing Section 2, subsection 2(b) of Decree no. 176/1993. In consequence, the rent regulation under this Decree, in effect from 1 July 1995, did not apply any more to all flats in the case of which a lease contract was negotiated with a new tenant (i.e. not only to such flats in family houses regarding to which the rent regulation had not applied since 1 July 1993), with the exception of statutory passage of tenancy, exchange of flats, replacement flats and more recently also service flats for professional soldiers.

With the exception provided for in the amended Section 2, subsection 2(b) of Decree no. 176/1993 the rent regulation under Decree no. 30/1995 also applied to tenancies that existed on the day of entry into effect of this Decree, i.e. on 1 March 1995 (Art. II taken together with Art. III of Decree no. 30/1995).

130. From 1 July 1995 the rent was materially regulated in the relevant way not only for flats whose reconstruction or modernisation was approved after 30 June 1993 and public funds were used in its reconstruction, but for all flats whose reconstruction or modernisation was approved after 30 June 1993 (Section 6, subsection 2 of the Decree). It newly stipulated that if the materially regulated basic rent determined under Section 6, subsections 1 and 2 was lower than the maximum basic rent determined under Sections 5 and 5a, then the regulation under Sections 5 and 5a of the Decree applied (Section 6, subsection 3 of the Decree).

d) Regulation of rent from 1 January 1996 to 29 April 1997

131. On 13 November 1995 the Ministry of Finance issued Decree no. 274/ /1995, which again amended and supplemented certain aspects of Decree no. 176/ /1993.

132. Under the existing Section 3, subsection 8 of the Decree, public funds meant (apart from tangible property of the State and municipalities and means of charitable organisations) especially financial means provided from the State budget and State funds, municipalities budgets, budgets of district offices or, if applicable, of organisations dependent on these resources, while it also meant resources, credits in particular, in which the last mentioned means participated. In the new wording these resources were no longer mentioned and on the other hand in the new Section 3, subsection 9 of the Decree it was explicitly stipulated that by public funds it is not meant funds provided under the Act on building savings and state subsidy for building savings and under the Government order in which requirements for State financial support of mortgage credits on flat construction are provided for.

At the same time for the flats subject to materially regulated basic rent under Section 6, subsection 1 of the Decree, the maximum limit of materially regulated rent changed from double to triple the maximum basic rent.

133. Under Article II of Decree no. 274/1995 the rent regulation under this Decree applied also to tenancies originating before the entry into effect of this Decree.

e) Regulation of rent from 30 April 1997 to 27 February 1999

134. Another amendment to Decree no. 176/1993 was effected by Decree of the Ministry of Finance no. 86/1997 of 15 April 1997, which came into effect on 30 April 1997.

135. In Section 5a, subsection 5 the Decree newly stipulated that for the period from 1 July 1997 to 30 June 1998 the maximum coefficient of rent increase K_v shall be 1.67 for Prague and 1.35 for municipalities with at least 100,000 inhabitants.

Moreover, Prague could, as from 1 July 1998, use a maximum coefficient K_v higher than 1.19 and up to 1.30.

136. Section 6, subsection 1 of the Decree was amended so that the materially regulated rent under this provision applied to flats whose construction or completion was approved after 30 June 1993 and public funds were used in the financing thereof, or approved even before this date and public funds were used in the financing thereof from 1995.

137. Under Art. II of Decree no. 86/1997 the rent regulation under this Decree also applied to tenancies originating before the entry into effect of this Decree.

f) Regulation of rent from 28 February 1999 to 31 December 2001

138. On 22 February 1999 the Ministry of Finance issued Decree no. 41/ /1999, which amended, in particular, Section 5a of Decree no. 176/1993 with effect from 28 February 1999.

The maximum level of basic monthly rent per square metre of the floor area of a flat of the relevant category under Section 5 of the Decree was now to be determined annually according to the following formula, with effect from 1 July to 30 June of the following year:

> $N_{t+1} = N_t \times K_i$, where
>
> N_{t+1} is the new maximum level of basic monthly rent per square metre of the flat's floor area as valid from 1 July of the current year,
>
> N_t is the maximum level of basic monthly rent per square metre of the flat's floor area as valid until 30 June of the current year,
>
> K_i is the coefficient of rent increase.

The maximum coefficient of rent increase K_i reflecting the average monthly index of price growth in the construction industry in the previous year was to be fixed by the Ministry of Finance in its decision and published in the Price Journal until 1 March of the current year (Section 5a, subsection 3 of the Decree).

The specific amount of the coefficient K_i for the whole territory of a municipality was to be determined by the municipality in a generally binding decree that would come into effect on 1 July of the current year at the latest; the municipality could decrease the maximum coefficient K_i to a minimum value of 1.00 (Section 5a, subsection 4 of the Decree).

139. In its finding of 21 June 2000 file ref. no. Pl. ÚS 3/2000 the Constitutional Court repealed, as of 31 December 2001, Decree no. 176/1993 in the wording as valid at that time (for details see § 186 of the Observations below).

g) Regulation of rent from 1 January 2002 to 14 November 2002

140. On 28 November 2001 the Ministry of Finance issued, pursuant to Section 10 of Act no. 526/1990, on prices, Ordinance no. 01/2002, on the list of goods with controlled prices. The ordinance came into effect on 1 January 2002.

141. The flat lease was provided for in point 5 of Part One of Section A of the Ordinance (The list of goods with officially determined prices – Maximum prices fixed by the Ministry of Finance) where it was stipulated, *inter alia*, that:

> "1. From 1 January 2002 to 30 June 2002 the maximum level of monthly rent for a flat including a flat in a family house (hereinafter "in a flat"), in which on 31 December 2001 the rent was regulated by a maximum price under Decree no. 176/1993, on rent in flats and payment of service charges for the use of the flat, as amended, is the rent as valid on 31 December 2001 with appropriate modifications under points 5 to 7.
>
> 2. With effect from 1 July 2002 the maximum level of basic monthly rent in a flat mentioned in point 1 shall be determined by multiplying the flat's floor area by the maximum level of basic monthly rent in the municipality per square metre of the relevant flat category under point 3.
>
> 3. The maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid

from 1 July 2002 shall be determined according to the following formula:

$N_{t+1} = N_t \times K_i$

N_{t+1} = the new maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid from 1 July 2002,

N_t = the maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid on 31 December 2001,

K_i = the coefficient of rent increase reflecting the average monthly index of price growth in the construction industry in the previous year, determined by the decision of the Ministry of Finance and published in the Price Journal until 1 March 2002.

[…]"

142. From 1 July 2002 to 31 December 2002 the coefficient of rent increase K_i reflecting the rate of inflation was determined in the Ordinance of the Ministry of Finance no. 02/2002 at 1.04.

h) Regulation of rent from 15 November 2002 to 17 December 2002

143. On 15 November 2002 the Ministry of Finance issued, pursuant to Section 1, subsection 6 and Section 10 of Act no. 526/1990, on prices, Ordinance no. 6/2002, on maximum rents for flats, maximum service charges for the use of the flat and rules for materially controlled rents and amending Ordinance of the Ministry of Finance no. 1/2002. The ordinance came into effect on that same day.

144. Point 1 of the Ordinance stipulated, *inter alia*, the following:

"1. From 15 July 2002 to 30 June 2003 the maximum level of basic monthly rent in a flat, including a flat in a family house with one flat (hereinafter "in a flat"), in which as on 14 November 2002 the rent was regulated by the maximum level under Ordinance of the Ministry of Finance no. 01/2002, on the list of goods with controlled prices, is the rent determined by multiplying the flat's floor area by the maximum level of basic monthly rent in the municipality per square metre for a flat of the relevant category as valid from 1 July 2002 with the appropriate modifications under points 6 and 7.

2. With effect from 1 July 2003 the maximum level of basic monthly rent in a flat mentioned in point 1 shall be calculated by multiplying the flat's floor area by the maximum level of basic monthly rent in the municipality per square metre for a flat of the relevant category under point 4.

4. The maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid from 1 July 2003 shall be determined according to the formula:

$N_{t+1} = N_t \times K_i$

N_{t+1} = the new maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid from 1 July 2003

> N_t = the maximum level of basic monthly rent in the municipality per square metre of the floor area of a flat of the relevant category as valid on 30 June 2003
>
> K_i = the coefficient of rent increase reflecting the average monthly index of price growth in the construction industry in the previous year, determined by the decision of the Ministry of Finance and published in the Price Journal until 1 March 2003.
>
> […]"

145. In its finding of 20 November 2002 file ref. no. Pl. ÚS 8/02 the Constitutional Court repealed, with effect from 18 December 2002, Ordinance no. 6/ /2002 (for details see § 187 of the Observations below).

i) Regulation of rent from 20 December 2002 to 19 March 2003

146. On 19 December 2002 the Government issued Order no. 567/2002, on a price moratorium over rents. The Order came into effect on 20 December 2002.

147. In Section 1 of the Order it was stipulated that:

> "Rents in flats which were, as on 17 December 2002, regulated as regards their maximum level, and rents in flats whose construction, completion or reconstruction was approved after 30 June 1993 making use of public funds, cannot be increased for a period of three months after the entry into effect of this Order."

148. In its finding of 19 March 2003 file ref. no. Pl. ÚS 2/03 the Constitutional Court repealed Order no. 567/2002 with effect from the day of publication of the finding in the Collection of Laws, i.e. from 20 March 2003 (for details see § 188 of the Observations below).

In the period from 20 March 2003 (as in the short period from 18 to 19 December 2002) there was no separate regulation limiting rents in flats and houses in private ownership.

D. Regulation of Tenancy Relationship since 31 March 2006

149. On 31 March 2006 Act no. 107/2006, on unilateral rent increase and amending Act no. 40/1964, the Civil Code, as amended, came into effect.

In Part One this Act provides a mechanism for unilateral rent increase, Part Two then amended certain provisions of the Civil Code relating to the tenancy relationship.

(i) Creation of tenancy

150. Under Section 685, subsection 1 of the Civil Code a lease contract may be concluded for the period of the tenant's work for the landlord.

151. Under Section 686a, subsection 1 of the Civil Code during the conclusion of a lease contract the landlord is entitled to request the tenant to provide funds as security for the rent and service charges for the use of the flat and as payment for other liabilities in connection with the lease.

152. Under Section 687, subsection 2 of the Civil Code in the lease contract it can be arranged for that the landlord shall hand the flat over to the tenant in a condition that is not fit for regular use, if the tenant agreed with the landlord that the former would carry out the renovation of the flat.

(ii) Extinguishment of the tenancy

153. The landlord may still serve a notice of termination only on grounds provided for in the Act (Section 711, subsection 1 of the Civil Code), however, amended Section 711, subsection 2 of the Civil Code stipulated that the landlord may do it without the court's approval, if:

> "(a) the tenant or persons residing with him/her, have acted *contra bonos mores* in the house, despite a prior written warning;
>
> (b) the tenant has grossly violated his/her obligations arising under the tenancy, in particular by a failure to pay rent or charges for the use of the flat in an amount corresponding to triple the monthly rent and service charges for the use of the flat or if he has not supplied funds to the account under Section 686a, subsection 3;
>
> (c) the tenant has two or more flats, except where he cannot be fairly requested to use only one flat;
>
> (d) the tenant leaves the flat unused without any serious justification or uses it only occasionally;
>
> (e) in case of a specially-assigned flat or a flat in a specially-assigned house and if the tenant is not a disabled person."

In such case the landlord's written notice must be served on the tenant and it must include the ground for the notice, the period of notice, advice to the tenant concerning the opportunity, within sixty days, to bring an action with a court for a declaration that the notice is void, and if the tenant is entitled to a replacement flat under this Act then it must also include the landlord's obligation to secure to the tenant a corresponding replacement flat (Section 711, subsection 3 of the Civil Code).

If the tenant is entitled to a substitute flat or substitute accommodation, then he/she is obligated to vacate the flat within 15 days from the moment the corresponding substitute flat or substitute accommodation is secured (Section 711, subsection 4 of the Civil Code).

The tenant is not obligated to vacate the flat, if, within sixty days from the service of the notice, he brings an action for a declaration that the notice is void and the proceedings are not terminated by a final court decision (Section 711, subsection 5 of the Civil Code).

154. Under Section 711a, subsection 1 of the Civil Code the landlord may serve a notice of termination of the tenancy only with the court's approval in the following cases:

> "(a) the landlord needs the flat for him-/herself, his/her spouse, his/her children, grandchildren, son-in-law or daughter-in-law, his/her parents or siblings;

> (b) the tenant has ceased to be employed by the landlord and the flat was tied to this employment and the latter needs the flat for his/her replacement;
>
> (c) due to public interest the flat or the house needs to be disposed of in a way that the flat cannot be used or if the flat or the house need repairs during which the flat or the house cannot be used for an extended period of time;
>
> (d) the flat is connected to premises designed for the purpose of a shop or another commercial use and the tenant or owner of these commercial premises wants to use this flat."

155. In Section 710, subsections 4 to 6 the details of extinguishment of the tenancy are provided for in case of a tenancy of a flat that was concluded for a period of employment for the landlord.

156. Subsequently the provisions relating to replacement flat in case of extinguishment of the tenancy were modified accordingly (Sections 712 to 714 of the Civil Code).

157. Also provisions relating to the passage of tenancy to other persons in case of the tenant's death were amended.

Under the amended Section 706, subsection 1 of the Civil Code if the tenant dies and if it does not concern a flat in spouses' joint tenancy, then the tenant's children, parents, siblings, son-in-law and daughter-in-law shall become its tenants (joint tenants), if they prove that they lived with the original tenant in a common household on the day of his/her death and that they do not have their own flat.

Under the new Section 706, subsection 2 of the Civil Code also the tenant's grandchildren and persons taking care of the common household of the deceased tenant or persons dependent on him/her as regards their upbringing became tenants (joint tenants), if they could prove that they had lived with him/her in the common household continuously for at least three years prior to his/her death and if they do not have their own flat. In case of the tenant's grandchildren, the court may decide for reasons worthy of special consideration that they could become the tenants, even if their stay in the common household with the tenant had not lasted for three years. In case of persons whom the flat tenant housed after the conclusion of the lease contract the first sentence applies to them only if the tenant and the landlord concluded a written agreement on that; this does not apply in case of the tenant's grandchildren.

By Act no. 115/2006 also the partner of the deceased tenant was included in subsection 1 with effect from 1 July 2006.

(iii) Rent

158. The new wording of Section 696 of the Civil Code reads as follows:

> "(1) The rent at the moment of conclusion of the lease contract or change in the rent during the tenancy relationship shall be arranged for in an agreement between the landlord and the tenant, unless this Act or a separate regulation stipulate otherwise.

> (2) The method of calculating the amount of service charges for the use of the flat and the method of their payment shall be stipulated by a separate regulation."

159. Under Section 1 of Act no. 107/2006 this Act provides a procedure for unilateral rent increase; nevertheless, it does not apply to rent in flats mentioned in subsection 2, i.e. in flats:

> "(a) leased to partners, members or founders of a juristic person created for the purpose of becoming an owner of a house with flats,
>
> (b) of housing cooperatives established after 1958, if they concern flats built with financial, credit or other assistance provided under regulations on financial, credit and other assistance to cooperative housing construction, these flats being leased to their members,
>
> (c) of housing cooperatives labelled under the regulations at the material time as people's housing cooperatives, these flats being leased to their members,
>
> (d) whose construction or completion was approved after 30 June 1993 and the municipalities received subsidies for their construction from the State budget or from State funds for the construction of tenement flats for the period of validity of conditions of the provided subsidy,
>
> (e) that are specially-assigned and in flats in specially-assigned houses whose construction was approved before 30 June 1993."

160. The method of unilateral rent increase is defined in Section 3 of the Act as follows:

> "(1) Unilateral rent increase by the landlord can be effected in the period starting on the day of entry into effect of this Act and ending on 31 December 2010.
>
> (2) The landlord is entitled to unilaterally increase the rent once a year starting on 1 January 2007 and subsequently always with effect from 1 January, or at a later date, but not retroactively for a period that elapsed from 1 January of the year in question, unless the landlord agrees on a different arrangement with the tenant.
>
> (3) Unilateral rent increase in each of the specified periods of 12 months may not be higher than the maximum increase in a monthly rent determined for each specific value of the present rent per square metre of the flat's floor area in relation to the corresponding target value of the monthly rent per square metre of the flat's floor area.
>
> (4) The method of calculating target values of the monthly rent per square metre of the flat's floor area and maximum increases in monthly rent is stipulated in the annex to this Act.
>
> (5) The landlord's notice of unilateral rent increase must be done in writing and it must include justification that the rent was duly determined on the basis of a maximum increase in monthly rent.
>
> (6) The obligation to pay the increased rent shall come into existence on the day given in the notice of increase, but no sooner than the first day of the calendar month three months after the delivery of the notice to the tenant. Within this time limit the tenant is entitled to bring an action with a court for a declaration that the rent increase is void."

161. Under Section 4 of the Act the Ministry for Regional Development issues and publishes in the form of a notice in the Collection of Laws always with effect from 1 July of the calendar year the following information:

> "(a) basic prices per square metre of the flats' floor area reflecting average rates of purchase prices of real estate based on statistics of real estate prices,
>
> (b) target monthly rents per square metre of the flat's floor area calculated using the formula stipulated in the annex to this Act, and this is done according to classification of size groups of the municipalities for individual regions, and in case of Prague and Brno according to classification based on town districts,
>
> (c) the maximum increases in monthly rent calculated using the formula stipulated in the annex to this Act,
>
> (d) regional classification of municipalities by grouping cadastral areas taken over from the classification used for the purpose of property evaluation,
>
> (e) classification of municipalities into size categories according to the number of inhabitants,
>
> (f) procedure for finding the maximum increase in the monthly rent in case of a specific flat."

The relevant notices for the years 2007 and 2008 were published as nos. 333/2006 and 151/2007 in the Collection of Laws.

For an easy calculation of the unilateral rent increase 'calculators' are available on the website of the Ministry for Regional Development (*www.mmr.cz*).

E. OTHER REGULATIONS

(i) The Constitution of the Czech Republic (constitutional Act no. 1/1993)

162. Under Article 10 of the Constitution promulgated international treaties, to the ratification of which the Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if an international treaty provides something other than the law, the treaty shall apply.

163. Under Article 89 § 2 of the Constitution enforceable decisions of the Constitutional Court are binding on all authorities and persons.

(ii) The Charter of Fundamental Rights and Freedoms (promulgated in the resolution of the presidium of the Czech National Council as no. 2/1993 in the Collection of Laws)

164. Article 11 of the Charter reads as follows:

> "(1) Everyone has the right to own property. The ownership rights of all owners shall have the same statutory content and shall enjoy the same protection. Inheritance is guaranteed.
>
> (2) The law shall specify which property, essential for securing the needs of the entire society, development of the national economy, and

> public welfare may be owned exclusively by the State, a municipality or specified juristic persons; the law may also specify that certain property may be owned by citizens or juristic persons with their registered office in the Czech and Slovak Federal Republic only.
>
> (3) Ownership is binding. It may not be misused to the detriment of the rights of others or against legally protected general interests. Its exercise may not cause damage to human health, or the natural environment beyond statutory limits.
>
> (4) Expropriation or other forcible restriction of ownership rights is possible only in the public interest and on the basis of law, and for compensation.
>
> (5) Taxes and fees may be levied only on the basis of law."

165. Under Article 36 § 3 of the Charter everyone is entitled to compensation for damage caused to him/her by an unlawful decision of a court, another State authority or public administration, or by an incorrect official procedure. Paragraph 4 stipulates that the conditions and detailed provisions are to be specified by law.

(iii) Act no. 526/1990, on prices

166. Under Section 1, subsection 1 the Act applies to the use, regulation and control of prices of products, performances, works and services for the domestic market, including prices of imported goods and prices of goods to be exported.

167. The details of price regulation are provided for in Sections 3 to 10 of the Act.

Under Section 3, subsection 1 of the Act price regulation shall mean the determination or direct regulation of prices by price authorities and local authorities.

Under Section 4, subsection 1 of the Act the individual methods of price regulation are:

a) price fixation (the 'officially fixed prices');

b) regulation of price development in connection with material conditions (the 'material price regulation');

c) regulation of price development in time (the 'time regulated prices');

d) price moratoria.

Under Section 5, subsection 1 of the Act officially fixed prices are prices of specified types of goods, determined by price authorities as maximum, rigid or minimum prices, or by local authorities as maximum prices. Under Section 5, subsection 2 of the Act the maximum price is a price that may not be exceeded.

Under Section 6, subsection 1 of the Act material price regulation consists in the stipulation of conditions by price authorities for price negotiation; these conditions can be the following:

a) the maximum possible extent of an increase in a price for goods within a specified period;

b) the maximum ratio at which it is possible to reflect the increase in prices of specified inputs within a specified period;

c) mandatory procedure for price creation or its calculation.

(iv) Act no. 172/1991, on the transfer of certain things from the property of the Czech Republic to the ownership of municipalities

168. Under Section 3, subsection 1 of the Act on the day of entry into effect of the Act (24 May 1991) dwelling houses and plots of land forming one functional entity with them passed to the ownership of municipalities, if the houses and land satisfied the following requirements:

a) they were located in their cadastral areas,

b) they were owned by the Czech Republic,

c) the right of use relating to them belonged to organisations in case of which the function of their founder or the power to establish, manage or dissolve these organisations passed to the district offices, municipalities and in Prague also to town districts,

d) they did not pass to the ownership of the municipalities under Section 2 of the Act.

A dwelling house was defined as a house in case of which at least two thirds of the total floor area of all rooms in the house are flats, including flats and parts of flats used for other purposes than residing, as well as accessory rooms and accessories belonging to the flats (Section 59, subsection 1 of Act no. 41/1964, on the flat management).

169. Act no. 10/1993 then added to Section 3 of Act no. 172/1991 provisions according to which on the day of entry into effect of the last mentioned Act complex buildings under construction as on 31 December 1992 and the plots of land forming a functional entity with them, including rights and obligations relating to them passed from the ownership of the Czech Republic to the ownership of municipalities, if the buildings and the plots satisfied the requirements of subsection 1(a) and if investors in this case were on the day of entry into effect of this Act district offices, the municipality of Prague, Brno, Plzeň or Ostrava.

Furthermore, on the day of entry into effect of the Act, things owned by the Czech Republic, in case of which on the day of entry into effect of this Act the right of use belonged to organisations providing investment activities in complex building construction if the power to establish, manage and dissolve these organisations passed to the district offices, municipality of Prague, Brno, Plzeň and Ostrava, passed to the ownership of municipalities on whose territory they were located, unless these pass to the ownership of municipalities under Section 2 or under Section 3, subsections 1 to 3.

170. Under Section 4, subsection 2 of the Act, things owned by the Czech Republic whose surrender would be claimed by an entitled person under separate regulations (while in the footnote examples of such Acts were mentioned – Act no. 403/1990, on the mitigation of certain property injustices, and Act no. 87/

/1991, on extra-judicial rehabilitation) did not pass to the ownership of municipalities.

(v) Act no. 102/1992, to provide for certain issues relating to the adoption of Act no. 509/1991, amending the Civil Code

171. Under Section 1, subsection 1 of the Act, if a landlord, who gave a notice of termination with the court's approval, or a person in whose favour the court has decided on another persons' obligation to vacate a flat, cannot secure a replacement flat, then he/she may request the provision of this compensation with the municipality on whose territory the flat to be vacated is located.

172. Under Section 2, subsection 1 of the Act the municipality provides a replacement flat by offering to the tenant to conclude a lease contract concerning a flat or a room in a house owned by it, or by concluding a lease contract concerning a flat in a house of another juristic or natural person to the benefit of the person who is obligated to vacate the flat.

173. The Act came into effect on 5 March 1992 and Part One thereof, in which the municipalities competence in securing replacement flat is provided for, has not been amended since then.

(vi) Government Order no. 258/1995, to apply the Civil Code

174. Section 5 of the Order defines the term 'minor repairs in the flat' within the meaning of Section 687, subsection 2 of the Civil Code, as amended by Act no. 509/1991 (Section 687, subsection 3 of the Civil Code, as amended by Act no. 107/2006) in the following way:

> "(1) Repairs of the flat and its interior equipment, if this equipment forms part of the flat and it is owned by the landlord, are considered to be minor repairs according to material definition or according to the amount of costs.
>
> (2) The following repairs and replacements are considered to be minor repairs according to the material definition:
>
> a) repairs of individual top parts of floors, repairs of floor coverings and replacements of thresholds and mouldings,
>
> b) repairs of individual parts of windows and doors and their components and replacements of locks, hardware, handles, shades and Venetian blinds,
>
> c) replacements of switches, sockets, circuit-breakers, bells, illuminators and house telephones, including electric locks,
>
> d) replacements of cocks in the gas plumbing with the exception of the main gas seal for the flat,
>
> e) repairs of stop valves on water plumbing, replacement of water and grease traps,
>
> f) repairs of heat meters and hot water meters.
>
> (3) The following repairs are considered minor: repairs of water plumbing outlets, siphons, hoods, mixer taps, showers, water heaters, bidets, basins, baths, sinks, kitchen sinks, flushing systems, cooking-

> stoves, baking ovens, cookers, infrared radiators, kitchen units, fitted wardrobes and wardrobes. In case of heating equipment the following repairs are considered minor: repairs of gas, electric and solid fuel fires, solid, liquid and gas fuel boilers for floor heating, including stop and regulation fittings and thermostat controls in floor heating; however repairs of radiators and central heating plumbing are not considered minor."

175. Section 6 of the Order defines the term 'costs related to the routine maintenance of the flat' within the meaning of Section 687, subsection 2 of the Civil Code (subsection 3 as amended by Act no. 107/2006) in the following way:

> "Costs related to the routine maintenance of the flat are costs for maintaining and cleaning of the flat usually carried out in cases of a longer-term use of the flat. These include, in particular, regular checks and cleaning of objects mentioned in Section 5, subsection 3 (gas appliances *etc.*), painting including plaster repairs, wallpapering and cleaning of floors including floor coverings, wall facing, cleaning of clogged waste pipes up to ascending pipes and interior paintings."

176. The Order came into effect on 13 November 1995 and has not been amended yet.

(vii) Act no. 82/1998, on liability for damage caused during the exercise of public power by a decision or incorrect official procedure

177. Under Section 1 of the Act, subject to the conditions stipulated by this Act, the State shall be liable for damage caused during the exercise of the State's power. This liability cannot be excluded (Section 2 of the Act).

178. Under Section 3 of the Act, the State shall be liable for damage caused by: (a) the State authorities, (b) juristic and natural persons during the exercise of public administration that has been conferred on them by law or on the basis of law, (c) authorities of autonomous regional governments, if the damage occurred during the exercise of public administration that was transferred to them by law or on the basis of law.

179. Under Section 5 of the Act (as amended by Act no. 160/2006, which amended Act no. 82/1998 with effect from 27 April 2006) subject to stipulated conditions, the State shall be liable for damage caused by: (a) a decision delivered in civil court proceedings, in administrative proceedings, in proceedings pursuant to the Rules of Administrative Justice or in criminal proceedings, (b) by incorrect official procedure.

180. Under Section 13, subsection 1 of the Act, the State shall be liable for damage caused by an incorrect official procedure (first sentence), while incorrect official procedure consists also in the non-compliance with an obligation to perform an act or deliver a decision within the statutory time limit (second sentence).

Act no. 160/2006 then added a third sentence to this provision which specifies that provided there is no statutory time limit for performing an act or delivering a decision, an incorrect official procedure shall include a failure to comply

with an obligation to perform an act or deliver a decision within a reasonable time.

181. Under Section 14, subsection 1 of the Act, the claim for damages shall be raised with the authority specified in Section 6 of the Act (prior to the entry into effect of Act no. 160/2006 this 'preliminary hearing' of the claim before the competent authority is not required for claims for compensation for damage caused by incorrect official procedure).

Under subsection 3, the raising of the claim for damages under this Act is a pre-requisite of the eventual raising of the claim for damages before a court.

Under Section 15, subsection 2 of the Act, the aggrieved party may claim damages before a court only if the claim is not fully satisfied by the competent authority within six months after the filing of the request.

182. Certain aspects of the nature and extent of damages to be paid are specified in Sections 27 to 31 of the Act; the Civil Code is then applied subsidiarily (Section 26 of the Act).

Under this Act, reasonable satisfaction for non-pecuniary damage suffered shall be awarded, too, regardless of whether any damage was caused by an unlawful decision or an incorrect official procedure (Section 31a, subsection 1 of the Act as in effect from 27 April 2006).

183. Under Section 32, subsection 1 of the Act, the limitation period for claiming damages under this Act is three years from the day when the aggrieved party learned about the damage and about the person liable for it. If the quashing of a decision is a precondition for claiming the right to damages, then the limitation period commences on the day of delivery (notification) of the quashing decision. Nevertheless, the last day the aggrieved party can claim his/her right is ten years from the day when he/she received (was notified of) the unlawful decision whereby he/she suffered damage; this does not apply in case of damage to health (Section 32, subsection 2 of the Act).

The limitation period for claiming compensation for non-pecuniary damage under this Act is six months from the day the aggrieved party learned about the non-pecuniary damage, not later, however, than ten years from the day when the legal fact, as a result of which the non-pecuniary damage occurred, happened; if non-pecuniary damage was caused by incorrect official procedure under Section 13, subsection 1, second and third sentences or under Section 22, subsection 1, second and third sentences, then the limitation period shall not end sooner than six months after the termination of the proceedings in the course of which this incorrect official procedure occurred (Section 32, subsection 3 of the Act).

Under Section 35 of the Act the limitation period is frozen from the day of raising the claim for damages until the end of preliminary hearing, but for no longer than six months.

184. Under Section 36 of the Act, liability under this Act relates to damage caused by decisions delivered after the day of entry into effect of this Act and to damage caused by incorrect official procedure after the day of entry into effect of

this Act; the liability for damage caused by decisions delivered prior to the entry into effect of this Act and damage caused by incorrect official procedure prior to the entry into effect of this Act shall be governed by existing regulations (that is Act no. 58/1969, on liability for damage caused by a decision or incorrect official procedure by a State authority).

F. THE CONSTITUTIONAL COURT'S CASE LAW

(i) Finding of 25 March 1994 file ref. no. Pl. ÚS 37/93 (published as no. 86/1994 in the Collection of Laws)

185. In this finding the Constitutional Court rejected the motion to repeal Section 871, subsection 1 of the Civil Code, as amended by Act no. 509/1991 (for details see § 97 of the Observations above).

In the substantiation of its decision the Constitutional Court noted, *inter alia*, the following:

> "In the first place the Constitutional Court dealt with the issue of whether Section 871, subsection 1 of the Civil Code is contrary to Article 11 § 1, second sentence of the Charter, according to which the ownership rights of all owners have the same statutory content and enjoy the same protection. The court concluded in the negative. Section 871, subsection 1 of the Civil Code is a provision of the transformation character: in the explanatory report on Act no. 509/1991, on the amendments to the Civil Code it is noted that directly *ex lege* there will be a change of the right of personal use to protected tenancies. The purpose of this provision is to secure the protection of all existing flat users (participants of agreements on the hand over and acceptance of a flat) and to create a state of sufficient legal certainty for the existing users' relationships. This is fully in compliance with Article 1 of the Constitution of the Czech Republic according to which the Czech Republic is a sovereign, unitary and democratic, law-abiding State, based on respect for the rights and freedoms of man and citizens. This alone would be sufficient to find the challenged provision unconstitutional.
>
> […]
>
> […] The challenged Section 871, subsection 1 of the Civil Code does not violate the right to property within the meaning of Article 11 § 1 of the Charter. This provision of the Civil Code which only transforms the disappearing right of personal use of a flat into a tenancy, cannot be qualified as expropriation or forcible restriction of the ownership right within the meaning of Article 11 § 4 of the Charter. On the other hand, with regard to the historical situation it is necessary to emphasise the wording and the meaning of Article 11 § 3 of the Charter, according to which ownership is binding and cannot be misused to the detriment of the rights of others or against legally protected general interests. This provision of the Charter constitutes one of the substantial leads in assessing the constitutionality of the challenged Section 871, subsection 1 of the Civil Code and it fully corresponds to the considerations already pronounced by the Constitutional Court in another case."

(ii) Finding of 21 June 2000 file ref. no. Pl. ÚS 3/2000 (published as no. 231/2000 in the Collection of Laws)

186. In this finding the Constitutional Court repealed, upon a motion of a group of Senators of the Parliament of the Czech Republic, Decree no. 176/1993, on rents in flats (for details see §§ 117 *et seq*. of the Observations above).

In the substantiation of its decision the Constitutional Court noted, *inter alia*, the following:

> "Decree of the Ministry of Finance no. 176/1993, on rents for flats and payment of service charges for the use of the flats, was issued on the basis of Section 20, subsection 1(a) of Act no. 526/1990, on prices […]. Although Act no. 135/1994 deleted the cited Section 20, the deletion of this provision, however, cannot by itself lead to unconstitutionality of the Decree for the reason that it is not based on statutory delegation. By the deletion of the delegating statutory provision, the Decree, issued on the basis of this delegation, cannot be automatically repealed, unless it is explicitly stipulated in the Act, therefore the challenged Decree remains a valid component of the Czech legal order, especially in a situation where this delegation is repeated in a later Act of the Czech National Council no. 265/1991, on the powers of the authorities of the Czech Republic in the domain of prices, specifically in its Section 2, subsection 2.
>
> […]
>
> As regards the material aspects, the opinion of the Constitutional Court is that the objective of tenants' protection, also as regards the rent increase, has been continuously pursued from as early as 1920s (Acts nos. 275/1920, 130/1922, 44/1928 – the consolidated version of the last mentioned Act was promulgated in Decree of the Minister of Social Welfare no. 62/1934 in the Collection of Laws) and then also in the post-war period, for example by the adoption of the Civil Code no. 141/1950, no. 40/1964, as amended. In this connection the claimants' reference to the fact that the Parliament of the Czech Republic did not include the right to housing in the fundamental rights and freedoms does not stand; on the other hand, all the previous regulations seem to be in compliance with what is described in the international treaties on human rights and fundamental freedoms, by which the Czech Republic is directly bound within the meaning of Article 10 of the Constitution of the Czech Republic, as 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions' (Article 11 § 1 of the Covenant). Also Article 16 of the European Social Charter and Article 4 of Additional Protocol to the Charter which were ratified by the Czech Republic and then promulgated (Article 10 of the Constitution of the Czech Republic). The right to adequate standard of living (Article 11 § 1 of the Covenant) includes, according to the General Comment of the Committee on Economic, Social and Cultural Rights no. 4 of 1991, *inter alia*, the aspect of ability to pay the rent. The amount of rent paid by an individual or service charges for the use of the flat should not be at a level that would threaten or compromise the satisfaction of other basic needs.

Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. The Constitutional Court considers this right embodied in Article 11 of the Covenant, for the above reasons, as unimpugnable, as the aim, in respect of which also our State is obligated to take 'appropriate steps' within the meaning of this Article. Commensurable rights, though limited to the benefit of families, or elderly, are included in Article 16 of the European Social Charter (The right of the family to social, legal and economic protection) which came into force for the Czech Republic on 3 December 1999 and which was promulgated as no. [14/2000] in the Czech Republic Collection of International Treaties, in Article 4 § 2(a) (The right of elderly persons to social protection) of the Additional Protocol to the European Social Charter of 5 May 1998 which came into force for the Czech Republic on 17 December 1999 and which was promulgated as no. 15/2000 in the Czech Republic Collection of International Treaties. Also the European Court of Human Rights dealt with a similar issue in the case of Mellacher and Others v. Austria (19 December 1989, A-169). In its decision, in which it did not find a violation of Article 1 of Protocol no. 1 to the Convention in case of applications of several real estate owners against the introduction of regulation, i.e. also the actual rent decrease, this Court drew certain general conclusions applicable also in the present case. In the first place, it concluded that the measures taken aiming at the rent regulation cannot be considered as a formal or a *de facto* expropriation, because there was no transfer of the applicants' property, nor were they deprived of their right to use, let or sell it. The contested measures which, admittedly, deprived them of part of their income from the property amounted in the circumstances merely to a control of the use of property. The second paragraph of Article 1 of Protocol no. 1 reserves to States the right to enact such laws as they deem necessary to control the use of property in accordance with the general interest. Such laws are especially called for and usual in the field of housing, which in our modern societies is a central concern of social and economic policies. In order to implement such policies, the legislature must have a wide margin of appreciation both with regard to the existence of a problem of public concern warranting measures of control and as to the choice of the detailed rules for the implementation of such measures. As the Court emphasised in the case of James and Others, the State's interference must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The search for this balance is reflected in structure of Article 1 as a whole, and therefore also in Article 1 § 2 of Protocol no. 1 to the Convention, in other words there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

[…]

Therefore in this context the claimants' arguments are outside the subject matter of the case, these arguments consisting in that Decree no. 176/1993 protects only the group of tenants in flats with controlled rents and thus constitutes a difference and inequality between the owners of houses with tenement flats, in which there are flats with controlled rent, and the owners of houses with flats for which the rent is agreed on by the contracting parties, as well as a difference and inequality between the tenants in houses with tenement flats, in which there are flats with controlled rent, and the tenants in houses with flats for which the rent is agreed on by the contracting parties. The fact that the challenged Decree, with regard to Section 2, subsections 2(a) and 2(b), excludes the rent control in cases listed exhaustively in this provision, can be considered, in the Constitutional Court's opinion, as entirely natural and logical, because in both cases described herein these are 'inputs' into the contractual relationship, inputs which are basically guided by the principle of liberty of contract. If this was essentially not possible and allowed, then for example the right to carry on business in the domain of tenement housing, i.e. the right, which is in its general manner embodied in Article 26 § 1 of the Charter, would be only a 'fictitious right written on a piece of paper'.

However, in the opinion of the Constitutional Court the principle of reasonable (fair) balance was affected in the case under consideration at one of the key moments that cannot be separated from the challenged Decree as a whole, and this is as far as the challenged Decree did not take into account the process of destruction of ownership rights after February 1948. At this point the Civil Code no. 141/1950 introduced the distinction between 'personal' and 'private' ownership (Sections 105 and 106) and in Section 110 it embodied an ideological slogan that the ownership relations as regards the land were based on the principle that 'the land belonged to those working on it'. The process of destruction of ownership rights was intensified by the adoption of the Civil Code no. 40/1964 which introduced the 'personal use' of flats, other rooms and land, moved the provisions concerning private ownership into the final provisions and in other aspects it restricted and impugned the ownership right in a way contrary to general principles of law as recognised by civilised nations. Also the delegated rent regulation significantly contributed to this process of destruction, this regulation was contained in Decrees nos. 411/1950, 371/1952, 60/1964 and 217/1988. While the legislation in this domain during the First Republic provided for only rent increases, without affecting the amount of the agreed rent in any way, Decree of the Ministry of Labour and Social Welfare no. 411/1950, on rent regulation in flats and other rooms completed after 5 May 1945, in its Section 2, categorically stipulated, as a basic provision, that rent could be requested and paid only in the amount determined under this Decree. Decree of the Minister of Finance no. 371/1952, on the payment of rent for houses to special accounts with the State savings banks, then made the owner rather a hostage in the hands of the State, when in its Section 1 it laid down the obligation of the house owner, subject to conditions specified in this provision, to open a special rent account at a State savings bank, in its Section 4 it laid down the owner's obligation to transfer the collected quarterly or monthly rent to this special account in the State savings

bank and in its Section 5 it laid down the corresponding obligation of the savings bank, while in Sections 10 and 11 conditions for releasing funds necessary for paying the costs of repairs, for paying the owner's public law liabilities *etc.* were provided for. The obligation to transfer the rent to the special rent accounts was retained by Decree of the Ministry of Finance, Prices and Salaries of the Czech Socialist Republic no. 217/1988. All these restrictions of ownership rights, which were produced by the trend of the political system to eliminate private ownership as a potential source of certain economic autonomy led to the situation in which from the 1950s onwards there was an extensive number of cases of gifting of tenement houses in particular by their owners to the State, which can be hardly imagined in the circumstances of a functioning democratic State. On the other hand, after the November 1989 events and after the adoption of Act no. 87/1991, on extrajudicial rehabilitation, there was a huge number of restitution claims raised by the original owners, or their legal successors, concerning these objects. It is a common knowledge that a countless number of these immovables was surrendered to these original owners, or their legal successors, in a very derelict state, therefore certain categories of owners, i.e. owners of tenement houses in particular, could not comply even with their basic obligation as landlords contained in Section 687, subsection 1 of the Civil Code. Therefore in dealing with the disproportion between the continuous protection of tenants and the stated destructive invasions of ownership rights in the period from 1950s to 1980s the challenged Decree was entirely one-sided. For the owners of tenement houses to be able to comply with the mentioned obligations and for the individual's right to regular housing within the meaning of Article 11 of the Covenant to be actually observed, the possible way that could have been chosen was the one already taken by the legislation during the First Republic, which in Section 9, subsection 4 of Act no. 32/1934, as amended, provided for a possibility of increasing the rent due to payment for costs of occasional or exceptional necessary repairs or reconstruction of the building.

To sum up, the fact that starting with the legislation of the First Republic the protection of tenants was rather consistently promoted, and this was also as regards rent increases, while on the other hand from the beginning of 1950s to the end of 1980s ownership rights were substantially restricted and a number of owners' component rights were eliminated, required removal of the mentioned discrimination of certain categories of owners so that their right to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol no. 1 to the Convention, as well as the right embodied in Article 11 § 1 of the Charter are fulfilled. The essence of the above discrimination lies in the fact that, in contrast to other owners, some of the substantive aspects of the ownership rights are denied to the aforementioned owners and furthermore, they are put in a situation when in many cases, where their only income is derived from rent, those owners are being obliged to subsidise what in the Constitutional Court's view is a major social issue and responsibility, that is, a burden which cannot be shouldered by a certain section of society but requires a responsible and balanced solution by the State and society as a whole, as is noted in the General Comment of the Committee on economic, social and cultural rights

no. 4 of 1991 (regulation of rent subsidies). As was already mentioned in for example the Constitutional Court finding file ref. no. Pl. ÚS 4/95 published in the Collection of Findings and Resolutions of the Constitutional Court of the Czech Republic in volume 3 of the year 1995 – Part 1 under no. 29, if inequality in social relations is to affect the fundamental human rights, then it must achieve intensity which raises doubts, at least in certain respects, about the essence of equality. This generally happens when the principle of equality is violated together with another fundamental right, for example the right to possessions under Article 11 of the Charter. While freedom is already inherent in the essence of an individual, equality generally requires a 'connecting link', relation to another social value. In the Constitutional Court's opinion such violation of equality in the mentioned concept is present also in the case under consideration, because the challenged Decree violates the ownership rights which are guaranteed at the constitutional level by Article 1 of Protocol no. 1 to the Convention, as well as by Article 11 § 1 of the Charter. This is because, in contrast to other owners, in case of a category of owners actually 'subsidising' the rent – and in many cases even municipalities, owning tenement houses as well, belong to this category – the content and exercise of a number of owner's basic rights, which form the content of the ownership rights, are unjustifiably impugned and denied. Although it is indubitable that also these discriminated against categories of owners are obligated, as regards the issue of rent increase, to conform to certain restrictions, this can only occur subject to requirements arising under Article 4 §§ 3 and 4 of the Charter. Under paragraph 3 of the above Article statutory restrictions of the fundamental rights and freedoms must apply equally to all cases meeting the set conditions, while within the meaning of paragraph 4 of this Article when using provisions on the limits of the fundamental rights and freedoms their essence and objective must be respected. However, in the case under consideration it is not so and in the Constitutional Court's opinion the challenged Decree is also contrary to Article 4 §§ 3 and 4 of the Charter, because certain categories of owners are compelled to comply with substantial restrictions of their ownership rights, while other categories are not, and the challenged Decree creates this restriction in a way that is hardly close to respect for the essence of the ownership rights.

In the Constitutional Court's opinion the principle of reasonable (fair) balance requires that while respecting the requirements contained in Article 11 of the Covenant the mentioned process of destruction of ownership rights should be taken into account, particularly as regards owners of tenement houses, who are discriminated against in comparison with the other owners of e.g. family houses by being denied *usus fructus* of their property, because with regard to the amount of rent and level of costs necessary for the functioning of immovables, which are often in a derelict state, they are compelled to bear the loss of a part of the rent that could otherwise be considered adequate with regard to all circumstances. In other words in consequence of the existing regulation in our present society there exist social groups or subjects that bear the costs that should be provided by the State in the interest of observance of the mentioned Article 11 of the International Covenant on Economic, Social and Cultural Rights. Price regulation, if it is not to be

> out of the limits of constitutionality, may not clearly reduce the price to such a level that would eliminate the opportunity of at least its economic return given all established and necessary costs, because in such a case it would actually imply the denial of the purpose and all functions of ownership.
>
> Finally, as regards the violation of Article 26 § 1 of the Charter alleged by the claimants, the Constitutional Court also believes that the price regulation does not prevent anyone from carrying on a business or another economic activity, because everyone has the freedom of choice as to whether he/she will engage in business in a specific field subject to given conditions. Moreover, the rent regulation does not apply to newly concluded lease contracts and therefore it does not obstruct business activities.
>
> Therefore with regard to the above the Constitutional Court concluded that Decree of the Ministry of Finance no. 176/1993 is contrary to Article 1 of Protocol no. 1 to the Convention, Article 11 § 1 and Article 4 §§ 3 and 4 of the Charter and Article 1 of the Constitution of the Czech Republic and therefore it repealed the challenged Decree pursuant to Section 70, subsection 1 of Act no. 182/1993, on the Constitutional Court, with effect from 31 December 2001 and it did so for the purpose of providing sufficient time to the legislator to draw up a high-quality new regulation."

(iii) Finding of 20 November 2002 file ref. no. Pl. ÚS 8/02 (published as no. 528/2002 in the Collection of Laws)

187. In this finding the Constitutional Court repealed, upon a motion of the Ombudsman and a group of Senators of the Parliament of the Czech Republic, Ordinance of the Ministry of Finance no. 6/2002, on maximum rents for flats, maximum service charges for the use of the flat and rules for materially controlled rents and amending Ordinance of the Ministry of Finance no. 1/2002 (for details see §§ 143 *et seq.* of the Observations above).

In the substantiation of its decision the Constitutional Court noted, *inter alia*, the following:

> "The Constitutional Court did not find it necessary to assess the issue of admissibility of price regulation as such, because the motion was directed only against the admissibility of price regulation in the field of rents and other related issues (against its form and content). It must be recalled in this place that the Constitutional Court has already expressed its opinion on this issue with the consequence that it acknowledged price regulation as such as a constitutional form of implementation of State policy [particularly in findings file ref. nos. Pl. ÚS 24/99 (no. 167/2000 in the Collection of Laws), Pl. ÚS 3/2000 (no. 231/2000 in the Collection of Laws) and Pl. ÚS 5/01 (no. 410/2001 in the Collection of Laws)]. There are also no objections as regards the use of the Price Act in relation to rent regulation, because its Section 1, subsection 4 does not explicitly exclude this possibility, while Section 1, subsection 3 of that same Act does not explicitly provide for the opportunity to regulate rents. Section 696, subsection 1 of the Civil Code is then a provision containing a general delegation that can be used at all

times, while regulation under the Price Act may be used only subject to special conditions defined by the latter Act.

[…]

Ordinance no. 06/2002, beyond statutory delegation, regulates not only prices, but also defines terms used in the Acts. As a public law act it not only defines for example the term 'public funds' in point 6(a) of item no. 3, but also the term 'household member' (in point 3 of item no. 2), although Section 115 of the Civil Code defines the persons belonging to a household for the field of civil law relationships, to which certainly rents also belong. In this regard Ordinance no. 06/2002 is beyond the scope and limits of not only the Price Act. If it were considered a special regulation (which the Ordinance functionally and materially replaces) under Section 696, subsection 1 of the Civil Code, then it would also trespass on the delegation stipulated therein. Such delimitation is not possible even in the situations mentioned in Section 1, subsection 6 of the Price Act. Similarly Ordinance no. 06/2002 defines categories of flats, stipulates the essentials of the basic equipment of a bathroom and toilet, defines basic accessories of a flat, dwelling room *etc.*

The Constitutional Court did not consider it necessary to deal with the individual provisions of Ordinance no. 06/2002, because the only way of remedying this situation is by repealing these provisions in their entirety and by adopting an adequate statutory regulation. Ordinance no. 06/2002 is evidently not a mere price decision within the meaning of the Price Act and Act no. 265/1991, but also an effort to replace the regulation that was repealed by finding no. 231/2000 in the Collection of Laws due to being unconstitutional. However, if in the mentioned items the Ministry of Finance regulates, in addition to prices, also the landlords' and tenants' conduct in a way that is reserved to statutory regulation and within its limits and subject to respect for fundamental rights and freedoms to secondary delegated legislation, it is at the same time contrary to Article 4 §§ 1 and 2 of the Charter. On the basis of the above, there are no doubts that this is done beyond the limits of the Price Act.

[…]

The Constitutional Court is not a price authority and its function in these proceedings was not to ascertain in how many cases the rent is in order or otherwise. It is clear that for each individual lease relationship it cannot be unambiguously determined whether the controlled rent is adequate or not (see finding no. 43/2001 in the Collection of Laws, mentioned in other circumstances). However, if the State considers it necessary to regulate the rent, it is necessary to provide for a procedure allowing the landlord to prove that in his case and for his flat it is appropriate and that letting in his case is not a business activity, but performs a function belonging to a social State.

[…]

In the Constitutional Court's opinion the criteria of assessment of the State's activities under the domestic constitutional order may be stricter than the criteria used by the European Court of Human Rights in the assessment of compliance with the Convention. The European

> standard in the field of protection of ownership rights and prohibition of discrimination may seem different under the Convention than under the rules of the Charter only in relation to domestic situation, where the Charter may impose higher demands regarding the State's conduct in relation to an individual. At the same time it must be emphasised that the housing policy in each State may pursue different aims and that it is very difficult to compare the situation in this field in the Czech Republic and in the States of Western Europe. However, this does not change anything about the State's obligation to provide protection to a certain group of owners, where in the case of all owners of the same type it is guaranteed under Article 11 § 1 of the Charter that their ownership rights shall be provided for by a statutory regulation, in particular (and not by a price decision) and that it shall have the same content and enjoy the same protection.
>
> […]
>
> Therefore the Constitutional Court holds that Ordinance no. 06/2002 is contrary to the constitutional order, the Czech Republic's international obligations and law as regards both, its content and the corresponding legal form. Specifically, Article 2 § 2 of the Charter and Article 2 § 3 of the Constitution taken together with Article 1, Article 4 §§ 3 and 4 and Article 11 § 1 of the Charter and Article 1 of Protocol no. 1 to the Convention taken together with Article 14 of the Convention were violated, when the Ministry of Finance did not respect its statutory powers in the domain of price regulation and interfered with the domain of regulation reserved to a statutory regulation. At the same time, by its course of action it discriminated against a specific group of owners, while 'reasonable proportion' between the means employed and the aim sought to be realised was not ascertained with regard to the time that had elapsed since 1989. The Ministry of Finance also exceeded its powers in issuing the Ordinance because in its price decision it also made provisions for relationships and defined terms that were to be reserved to statutory regulation and delegated legislation issued on a statutory basis. This also violated Articles 1 and 15 of the Constitution which embody the principle of a democratic State governed by the rule of law and the constitutional principle of separation of powers. Due to the fact that, by its content and function, Ordinance no. 06/2002 replaced the regulation itself, the Constitutional Court was compelled to repeal it with regard to its content and form."

(iv) Finding of 19 March 2003 file ref. no. Pl. ÚS 2/03 (published as no. 84/2003 in the Collection of Laws)

188. In this finding the Constitutional Court repealed, upon the motion of a group of Senators of the Parliament of the Czech Republic, Government Order no. 567/2002 (for details see §§ 146 *et seq*. of the Observations above).

In the substantiation of its decision the Constitutional Court noted, *inter alia*, the following:

> "In connection with the above, there arises the question as to what the situation is, or more precisely to what extent – from the legal point of view – is rent regulated nowadays. We can base our considerations on

the fact that Ordinance of the Ministry of Finance no. 06/2002 is no longer in force and effect since 18 December 2002 and after this day there was nothing to prevent the contracting parties from arranging for the amount of rent in an agreement, but unilateral rent increase effected by the landlord has not been possible, because unilateral rent increase is allowed in case of flat lease, but only subject to the condition that special regulation provides for it (Section 696, subsection 1 of the Civil Code), however, such regulation is missing now. Another option that cannot be ignored is that one of the contracting parties may address the competent court with a case concerning the rent, these would concern disputes regarding the amount of rent, particularly if the landlord sought the rent in the 'usual' amount for the reason that there has been no agreement on the price (Section 671, subsection 1 of the Civil Code); in such cases, however, it would not concern a rent 'increase' *per se* (see also below as regards this issue). At this moment we can base our considerations on the fact that after the repeal of Ordinance of the Ministry of Finance no. 06/2002 the rent could not be unilaterally increased and if there was an increase then that could have occurred on the basis of an agreement between the parties, this option being rather theoretical not only because of the short time period for possible negotiations, but especially with regard to the well known economic disadvantage of this step from the point of view of the tenant.

[…]

In this situation the factual correspondence as regards the contents between the interference under consideration concerning the amount of rent and cases declared unconstitutional by the Constitutional Court in the past, account being taken of the fact that the form of this interference was again a secondary regulation issued beyond the limits of statutory delegation, which the Constitutional Court found unconstitutional in the previous cases as well, constitutes unconstitutionality for the reasons mentioned in the cited findings, in particular for the reason of violation of Article 2 § 2 of the Charter and Article 2 § 3 of the Constitution taken together with Article 1, Article 4 §§ 3 and 4 and Article 11 § 1 of the Charter and Article 1 of Protocol no. 1 to the Convention taken together with Article 14 of the Convention. Therefore the Constitutional Court holds that Government Order no. 567/2002, on a price moratorium over rents, is contrary to the constitutional order and the Czech Republic's international obligations. For this reason the Constitutional Court was compelled to repeal it pursuant to Section 70, subsection 1 of the Constitutional Court Act. The Constitutional Court shares the claimants' opinion that Article 89 § 2 of the Constitution was violated, because in their actions the Government were bound by previous findings of the Constitutional Court, when the decisive legal reasoning expressed in the above findings constituted a sufficient basis for the Government's further actions […].

[…]

The Constitutional Court considers it necessary to add, as *obiter dictum*, that from the provisions of the Civil Code it stems that rent is arranged for in an agreement in general, or it is possible to pay it in the amount usual as on the day of conclusion of the contract (Section 671, subsection 1 of the Civil Code). From that it then stems that the ten-

> ancy is based on a real or at least hypothetical consensus of both contracting parties as regards, *inter alia*, the price (i.e. the rent determined in an agreement or usual rent, *in eventum* market rent). However, a special situation occurred in the case of lease contracts in which the rent was regulated, with its maximum, in particular, being fixed. As the Constitutional Court has already described in detail in its finding no. 528/2002 in the Collection of Laws, the right of personal use of a flat was transformed into a flat lease and the right of personal use was characterised by a quasi ownership nature, while it was created upon the assignment of a flat and in the vast majority of cases the amount of payment was not created on the basis of free agreement of contracting parties, but it was officially fixed […]. The above transformation of the personal use into a 'typical' lease was not perfect, because the lease relationship retained a number of characteristics of the previous legal relationship and that manifested itself in both, the high level of protection of the tenants by the civil law rules and the rent regulation. Both these factors together then caused that in many areas of the Czech Republic there is not even a hypothetical consensus of the contracting parties (it is often rather a profound disharmony). With regard to the declared unconstitutionality of the legal status (and due to the mentioned specific features of the lease contracts with 'regulated' rent), if no rent regulation which is in conformity with the Constitution is introduced into the Czech legal order, then the Constitutional Court cannot but comply with its obligations arising under the Constitution and at least in individual cases it would have to secure the functioning of principles arising under the Czech Republic's constitutional order, or the relevant international treaties, although such solution is insufficient, unsystematic and by its nature only temporary, whereas the only real solution is evidently the adoption of appropriate regulations within the meaning of the Constitutional Court's previous finding."

(v) Finding of 23 September 2004 file ref. no. IV. ÚS 524/03

189. In this finding the Constitutional Court expressed its opinion on the issue of interpretation of the term 'a substitute flat' mentioned in Section 712 of the Civil Code.

The Constitutional Court summarised the content of the challenged decisions of the ordinary courts as follows:

> "In the constitutional appeal the applicant sought the quashing of the Brno Regional Court resolution […], in which Prostějov District Court resolution had been upheld […]. In this resolution of a court of first instance the entitled person's (applicant's) motion for the enforcement of a decision on eviction from a flat was rejected. The court of first instance concluded that the substitute flat which the applicant had offered and which belonged to the obligated person (the enjoined party) under the enforcement title, did not satisfy requirements for a replacement flat, because it is not an essentially equivalent flat when compared with the one being vacated. Although it would be possible to consider it essentially equivalent as regards its location, floor area and quality, the set rent together with the service charges are several times the amount of the original rent for the vacated flat, therefore in this re-

> spect the offered flat cannot be considered equivalent. The controlled rent for the vacated flat was CZK 799 a month in 1999; however, the rent, together with the service charges, in the offered flat would be higher by CZK 2,896 and given the financial situation of the obligated person (a retired person) that would mean a severe deterioration in her standard of living. The court of first instance finally noted that in a situation when higher rent than the controlled rent was fixed in the obligated person's case, such replacement flat cannot be considered an equivalent substitute flat.
>
> Upon the applicant's appeal the appellate court, in its resolution, upheld the decision of the court of first instance and shared the latter's conclusions. It stated that it followed from Section 712, subsection 2 of the Civil Code that adequate substitute flat should be, according to the local conditions, essentially equivalent to the vacated flat, while the determining factors were the floor area, quality and equipment, in particular. 'Quality' is also determined by other conditions of the tenancy and the rent is one of these. Therefore the amount of rent is one of the decisive factors in assessing the essential equivalence of the substitute flat. If the court of first instance ascertained that in the case in question the obligated person would have to pay as rent and advances on service charges for the use of the flat an amount that would be higher by CZK 2,900 than previously, and therefore did not find the replacement flat equivalent, it proceeded correctly. Due to the fact that already from the point of view of the amount of rent the obligated person was not provided with an equivalent replacement flat, the appellate court did not have to examine the conclusions of the court of first instance regarding other criteria."

In the substantiation of its finding the Constitutional Court further noted, *inter alia*, the following:

> "The Czech rent law is based on a high level of protection of tenants. This fact is shown particularly in case of termination of the tenancy by specific stipulated reasons, for which the court may grant its approval concerning the notice of termination of the lease, and the tenants' protection is also secured by the condition that the tenant is not obligated to move out of the flat until an adequate replacement flat is secured to him/her. This enhanced protection is motivated by social considerations, in particular, because housing satisfies one of the most basic human needs and as such it has a long tradition. Nevertheless, as the Constitutional Court has already noted on several occasions in its decisions, though in a rather different connection, it is unacceptable to transfer a social burden from one group of persons (the tenants) to another one (the landlords).
>
> Statutory regulation distinguishes among several types of substitute flats on the basis of criteria of quality and quantity. One of them is the 'adequate substitute flat'. It is defined on the statutory level as a replacement flat that is essentially equivalent to the vacated flat given the local conditions. The Constitutional Court expressed its opinion on the interpretation of the terms 'essential equivalence' and 'local conditions', used in Section 712, subsection 2 of the Civil Code, in the finding file ref. no. III. ÚS 114/94. It concluded that they must be inter-

preted in a way which imposes an obligation upon the landlord to exert the maximum efforts that can be reasonably expected of him/her in order to secure a substitute flat that is as equivalent as possible to the vacated flat given the local conditions and according to all statutory variables. A narrow interpretation of the term 'essential equivalence' in a situation when given the local conditions it is difficult or impossible to secure such adequate substitute flat, would lead to an actual 'emptying' of the landlord's right to serve a notice of termination on the tenant. A narrow interpretation would lead to the elimination of the right of disposal of the landlord, as the owner, which would affect his rights guaranteed by the Constitution (Article 4 § 4 of the Charter). From the above it stems that in assessing whether the adequate substitute flat is essentially equivalent to the vacated flat all the statutory criteria need to be examined in a comprehensive way with regard to their mutual relations and context (*cf.* the Constitutional Court resolution file ref. no. II. ÚS 63/01).

As stems from the file, which the Constitutional Court requested from the court of first instance, during the enforcement proceedings on the flat eviction the applicant offered to the obligated person a substitute flat that was apparently essentially equivalent to the vacated flat as regards its floor area, quality and equipment. The only reason the ordinary courts did not accept this replacement flat as essentially equivalent, while the appellate court did not deal with the other aspects, was the amount of rent and service charges for the use of the flat. Although the applicant had also offered the obligated person a flat with a smaller floor area where the rent was also lower, but the obligated person rejected it noting that it was not an equivalent flat. In fact, the applicant offered to the obligated person a substitute flat with the lowest possible rent (it was a municipal flat and moreover it was a social flat), although it was not a controlled rent flat like in the vacated flat. With regard to the current situation on the flat market, the landlord has no legal means of obtaining a flat with controlled rent as a replacement flat. The Constitutional Court again emphasises that the social burden of socially disadvantaged persons, which should be otherwise carried by the State, cannot be transferred to landlords. The method of solving the possible financial burden of a group of persons, for whom the satisfaction of housing needs would produce unreasonable difficulties, lies in the domain of the State assistance to socially disadvantaged persons (e.g. taking the form of a housing subsidy).

The amount of rent is important in assessing the adequacy of the replacement flat, but only in the sense that it must correspond to the usual level of rent in the place and time in question. Therefore an amount of rent remaining at the same level as it was in the period when an unconstitutional rent regulation was in force cannot be considered corresponding. The circumstance that no statutory regulation concerning rent that would lead to its deregulation has not been adopted yet cannot be to the landlords' detriment. The distortion of the flat market caused by a long-term failure to solve the problem of tenement flats with 'controlled rents' cannot be perpetuated by the courts' case law. It is contrary to constitutional principles if inequality between subjects of private law relationships is artificially created by e.g. court decisions.

> Tenants in flats with the 'controlled rents' cannot be put in an unequal position in relation to tenants in flats not subject to controlled rent, equally, landlords owning houses with flats with 'controlled rents' cannot be put in an unequal position in relation to landlords owning houses with flats not subject to controlled rent. Therefore if the landlord receives an enforcement title on eviction of a tenant from a flat with 'controlled rent', then he/she has the right to request executory eviction under the same conditions as a landlord who achieved the same in the case of a flat without controlled rent.
>
> On the basis of the above facts it must be concluded that the ordinary courts violated Article 36 § 1 of the Charter which embodies the right to judicial protection, and also Article 90 of the Constitution which imposes an obligation upon the courts to provide protection of rights in a manner defined by law, because they denied the applicant the opportunity to realise his right arising under the execution title.
>
> Therefore with regard to the above reasons the applicant's constitutional appeal was granted and under Section 82, subsection 3(a) of Act no. 182/1993, on the Constitutional Court, as amended, the challenged decision was repealed."

(vi) Resolution of 25 May 2005 file ref. no. IV. ÚS 162/04 (see Enclosure E1)

190. This decision concerned a constitutional appeal lodged against the ordinary courts' decision on indemnity for illegal deprivation of the applicant's liberty. Although the Constitutional Court partly shared the objections raised by the applicant, it did not, however, quash the challenged decisions, because in the meantime the applicant had received indemnity *ex gratia* from the Ministry of Justice.

In the substantiation of its decision the Constitutional Court noted, *inter alia*, the following:

> "The Czech Republic is a State which has passed the duality concept of the international and national law and incorporated the Convention into its legal order. The wording of Article 10 of the Constitution (i.e. after the amendment made by constitutional Act no. 395/2001), to which e.g. the Constitutional Court finding published as no. 403/2002 in the Collection of Laws refers, leads to this conclusion. […] The potential contradiction between the Convention and law, to which the Charter refers, must be resolved in favour of the Convention. […]
>
> With regard to the fact that compensation claims under the Charter (and the implementing laws) and requirements under the Convention do not fully match, although they partly overlap, it is necessary, with respect to the specific circumstances of the case, to assess the case either under the Charter or under the Convention, or with account being taken of fundamental rights embodied in both documents. If the ordinary courts conclude that in respect of the content of the compensation claim the national regulation is narrower, it must take into account Article 10 of the Constitution and apply Article 5 § 5 of the Convention which prevails over statutory regulation (if the other requirements for the application of Article 5 § 5 are satisfied in the specific case). At the

> same time it is necessary to take into account that in contrast to Article 36 § 3 of the Charter, Article 5 § 5 of the Convention has a normative character and is directly applicable by the national courts. […]"

(vii) Finding of 1 June 2005 file ref. no. IV. ÚS 8/05

191. Landlords lodged a constitutional appeal with the Constitutional Court against the decisions of ordinary courts in which their action for flat vacation against the granddaughter of the deceased tenant, who had claimed that the right of tenancy had passed to her on the basis of the relevant provisions of the Civil Code, had been rejected.

The Constitutional Court quashed the decisions of the ordinary courts, while in the substantiation of its finding it noted, *inter alia*, the following:

> "On the basis of the constitutional appeal under consideration the Constitutional Court was called to decide whether the ordinary courts, by making an extreme interpretation of Section 706, subsection 1 of the Civil Code, had interfered with the applicants' ownership rights, which are guaranteed by Article 11 § 1 of the Charter and which did not receive judicial protection contrary to Article 36 § 1 of the Charter.
>
> Under the Civil Code 'if the tenant dies and the flat concerned is not in spouses' joint tenancy, then the tenant's children, parents, siblings, son-in-law and daughter-in-law shall become its tenants …, if they can prove that they lived with the original tenant in a common household on the day of his/her death and that they do not have their own flat.' (Section 706, subsection 1, first sentence of the Civil Code). From the constitutional point of view this statutory provision needs to be understood as a provision restricting the ownership right which is constitutionally embodied in Article 11 § 1 of the Charter. For the purpose of interpretation of provisions restricting fundamental rights or freedoms the Charter lays down a constitutional limit in Article 4 § 4: 'When using provisions on the limitation of fundamental rights and freedoms their essence and objective must be respected. Such limitations may not be used for other purposes than those for which they were instituted.' The ownership right undoubtedly also includes the owner's ability, guaranteed by simple law, to use the property according to his/her own consideration and will, unless these collide with a statutory prohibition (Article 2 § 1 of the Charter). The subject matter of a tenancy relationship is in principle a temporary abandonment of property (flat in this case) for use and in return for payment. Section 706, subsection 1 of the Civil Code restricts the contractual freedom of the owner of a block of flats to use his/her property. The purpose of such extensive restriction is the protection of actual tenants who had very close ties with the deceased tenant and this was shown, *inter alia*, by the fact that they lived with him/her permanently prior to his/her death and who thus relied on the security of shelter, which they cannot obtain in another way 'from day to day'. However, this restriction may not be abused for other purposes, e.g. gaining advantageous housing by expedient conduct that would satisfy the wording, but not the purpose of the restricting provision.

The applicants addressed the ordinary courts with a view to achieving the vacation of a flat whose lease the granddaughter of the original tenant was attempting to take over, despite the fact that, according to their information, she did not live with the original tenant permanently. They evidenced this assertion by presenting evidence available to them, including evidence on use of the flat and witness testimonies of persons living in the house, which convincingly demonstrated the expedient conduct of the defendant in whose favour mainly persons closely connected to her testified. It stems from the file that the testimonies, on which the District Court based its decision making, with the exception of the witness B. (folio 23, but the witness specifies June 2001 as the date when the granddaughter moved in), had the character of testimonies given by a closely connected person. The witness N. (folio 31) is the defendant's mother, the witness N. (folio 52) is the applicant's partner. The witness K. (folio 45), who, according to his own statement, persuaded the defendant to 'legalise the situation', asserts, in contrast to the defendant, that the defendant moved into the flat as early as spring 2001, was a former partner of the defendant's mother and 'broke up' with her in 1996. The witness B., who was to confirm the presence of the original tenant during the period of her permits, was not examined (folio 32 and folio 60). In this situation it was necessary to thoroughly analyse and assess the individual witness testimonies, in particular to clearly specify which of them can be considered credible and which not, citing the reasons for such assessment. Only after that could the court have satisfied the requirements of Article 36 § 1 of the Charter, which guarantees the right to a fair trial and from the point of view of its protective measure key importance is to be assigned to Section 157, subsection 2 of the Rules of Civil Procedure, which makes it possible to monitor the court's considerations and to possibly dispute them utilizing available remedies.

According to the court it would not be substantial even if it were eventually found that the defendant moved in shortly before the death of the original tenant. This way of assessing the evidence with a subsequent automatic subsuming of it under Section 706, subsection 1 of the Civil Code makes the requirements mentioned therein entirely formalistic. And it also entirely ignores the narrow purpose of this provision, which has to be interpreted, on the other hand, in the wider context of the principle of protection of ownership (Article 11 § 1 of the Charter). That is how Article 4 § 4 of the Charter is violated.

Even the appellate court did not remove this deficiency […].

The Constitutional Court states that this overall approach towards assessing evidence cannot be accepted in any court decision. *A fortiori*, it cannot be accepted in the case when the facts of the case, ascertained in such a careless way, are to be subsumed under Section 706, subsection 1 of the Civil Code which, as explained above, significantly restricts the applicants' basic ownership right in relation to the flat. By this course of action not only is Article 36 § 1 of the Charter violated, but Article 11 § 1 of the Charter, which provides protection to ownership rights at the constitutional level, is also violated in consequence of the extension of the purpose of Section 706, subsection 1 of the Civil

Code (i.e. in consequence of a failure to observe Article 4 § 4 of the Charter).

From the constitutionality perspective it is true that not even an established practice is enough to justify an expansive interpretation of grounds for passage of tenancy by which landlords' ownership rights are restricted beyond the law. If such interpretation is to protect the right to housing, then the Constitutional Court must recall that in finding of 21 June 2000 file ref. no. Pl. ÚS 3/2000 it held that although the European Social Charter embodies the right to housing, in case of collision of this right with other rights these clashes need to be measured against the principles of fair balance and proportionality (*cf.* no. 231/2000 in the Collection of Laws or Collection of Findings and Resolutions, vol. 18, p. 287). In case of a clash between the right to housing, which is a social right (the fact that it arises under the international law does not alter this in any way), and the ownership right it is necessary to apply principles that are also valid in respect of other social rights (*cf. mutatis mutandis* finding of 3 April 1996 file ref. no. ÚS 32/95 in the Collection of Findings and Resolutions, vol. 5, p. 215 or no. 112/1996 in the Collection of Laws). It cannot be neglected that the contents of social rights – contrary to the classical fundamental rights – depend on the wealth of the society and on the economic development, including fluctuations of the economic cycle. This characteristic, i.e. this conditionality, often leads to the classification of social rights into the domain of constitutional soft law (in contrast to classical fundamental rights). In testing the proportionality and fair balance the 'right' of an actual tenant, who would resort to 'feigned' cohabitation or who would move in for a short period of time solely in order to acquire favourable housing conditions, would not stand in relation to the ownership right. The expedience of the conduct may, for example, be determined from a comparison of the situations in which the person lived prior to his/her moving in relation to which he/she asserts that it was motivated exclusively by the care of a relative. Furthermore, the case law of the Supreme Court of the Czech Republic satisfies this requirement, when it bases its decision making on the following opinion: 'Although for persons specified in Section 706, subsection 1, first sentence of the Civil Code, the condition of a community of consumption is not required for the passage of the tenancy right in relation to the flat, from the point of view of satisfying the condition of there being a common household, it is necessary for the cohabitation in the flat with the tenant to be characterised by permanency. The cohabitation is considered permanent if there are circumstances that can be objectively ascertained and that show that the flat tenant and the person living with him/her in his/her flat agreed upon the intention to cohabitate permanently.' (*cf.* decision of 16 January 2001 file ref. no. 26 Cdo 1867/2000, no. 42/2001 in the Collection of decisions of the Supreme Court of the Czech Republic).

[…]

From the point of view of Article 4 § 4 and Article 11 § 1 of the Charter it is not acceptable for Section 706, subsection 1 of the Civil Code to provide protection to relatives of the deceased tenant specified in this provision who make use of this unique opportunity contrary to its

> narrow purpose. The Constitution obliges the courts to carefully verify whether the person asserting the satisfaction of conditions for the passage of tenancy is not abusing the law to the detriment of the owner. This holds *a fortiori* if a short period of only several months has passed from the moment of the beginning of the cohabitation to the death of the original tenant and during this period the original tenant was mainly in hospitals or other health care facilities.
>
> The decisions of the ordinary courts are based on an interpretation of law that does not observe the constitutional protection of the applicants' ownership rights and furthermore the ordinary courts reached their conclusions via a course of action in assessing the evidence that is contrary to the rules of a fair trial. […]"

(viii) Finding of 7 September 2005 file ref. no. IV. ÚS 113/05

192. In this finding the Constitutional Court quashed the judgment of the appellate court, which had upheld the judgment of the court of first instance, in which the applicant's action against tenants for the surrender of unjust enrichment had been rejected; the unjust enrichment consisted in that the defendants used a flat in the applicant's building without legal title and they paid her, for the use of this flat, the amount of the 'controlled rent' for a category two flat.

The Constitutional Court stated, *inter alia*, the following:

> "In the case under consideration the applicant requested, before the ordinary courts, the enjoined party to surrender the unjust enrichment which the enjoined party had allegedly gained to the detriment of the applicant by refusing to vacate the flat, in relation to which their right of lease had ended upon a notice of termination, despite having been provided a substitute flat. In the Constitutional Court's view it is not possible to accept the interpretation according to which until the moment of a decision of the court on the enforcement of a decision the relationship between the former landlord and tenant is regulated by Section 712a of the Civil Code, i.e. that until that moment the former tenant is obligated to pay to the landlord rent determined by Decree no. 176/1993, i.e. the 'controlled rent'. Such a broad interpretation does not even observe the protection of the right to housing, but it protects housing 'for a price subsidised by the owner' and that is a deliberation that is markedly outside the reasonable interpretation of the right to housing. In the Constitutional Court's opinion such interpretation does not observe the essence and objective of the protection of ownership rights and consequentially it creates an entirely disproportionate restriction, or even negation of ownership rights, which are already inadmissibly restricted during the tenancy by the mere nature and form of the rent regulation, as the Constitutional Court has repeatedly held in the past (*cf.* findings in cases file ref. nos. Pl. ÚS 3/2000, Pl. ÚS 8/02 and Pl. ÚS 2/03).
>
> […] In other words, Section 712a of the Civil Code must be interpreted in a way that it affects the relationship between the former landlord and tenant only until the moment when the former landlord secures a replacement flat for the tenant. It is then up to the owner of the flat to

> show, at evidential proceedings before the ordinary courts, on what day he secured the replacement flat.
>
> From that moment the former tenant uses the flat without legal entitlement and this relationship is no longer governed by Section 712a of the Civil Code. After this moment the right of the owner of the flat to the surrender of unjust enrichment comes into existence while the amount of the unjust enrichment should correspond to the amount of usual rent in the given place and time. The interpretation given by the ordinary courts which does not respect the limits stipulated in Article 4 § 4 of the Charter represents disproportionate restriction of the ownership rights of the flat owner and it is therefore contrary to Article 11 § 1 of the Charter."

(ix) Finding of 8 February 2006 file ref. no. IV. ÚS 611/05

193. In this finding the Constitutional Court dealt with a constitutional appeal against decisions of ordinary courts in which the applicant's action for the payment of rent due had been rejected.

The Constitutional Court summarised the content of challenged decisions of the ordinary courts and the applicant's arguments in the following way:

> "In the challenged judgment of the Hradec Králové Regional Court – Pardubice office the judgment of the Pardubice District Court was upheld as regards its subject matter, in the latter decision the applicant's action against the enjoined party, in which the applicant sought payment of the amount of CZK 19,810 with incidentals, was rejected.
>
> As the applicant noted in the constitutional appeal, he requested this financial amount as the payment for rent for the period from 1 April 2003 to 30 September 2003. However, according to the applicant the courts rejected the action in its entirety and by doing that they did not grant him even the 'controlled rent'. In the applicant's opinion the enjoined party was using the flat owned by him without being a tenant and without being a member of the cooperative in the previous period. In other words by delivering the challenged decisions the ordinary courts did not grant to the applicant even the claim to the payment for the use of the flat amounting to a sum corresponding to the controlled rent. This is what allegedly disadvantaged him compared to the overwhelming majority of flat owners in the Czech Republic to whom at least the amount of controlled rent is granted as the payment for the use of the flat.
>
> Therefore the applicant believes that by delivering the challenged decisions the ordinary courts violated his fundamental rights guaranteed by the Constitution, specifically the right to equality before law under Article 1 of the Charter of Fundamental Rights and Freedoms (hereinafter 'the Charter'), equality of ownership rights under Article 11 § 1 of the Charter and the right to a fair trial under Article 36 § 1 and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the Convention') and Article 14 of the International Covenant on Civil and Political Rights. With regard to that the applicant proposed to the Constitutional Court to deliver a finding to quash both challenged ordinary courts' judgments."

The Constitutional Court further noted that:

> "The interpretation of the Constitutional Court's previous findings, in which it described the content and form of rent regulation as unconstitutional and repealed the relevant regulations (*cf.* findings in cases file ref. nos. Pl. ÚS 3/2000, Pl. ÚS 8/02, Pl. ÚS 2/03) in such a way as to deny the protection of ownership rights of flat owners cannot be accepted. The objective of the Constitutional Court's previous decisions was to eliminate unconstitutional restrictions on the ownership rights of landlords from the legal order and not to freeze and set in stone the unconstitutional interference with the ownership rights. As the Constitutional Court has already noted in its finding file ref. no. IV. ÚS 524/03 (in the Constitutional Court of the Czech Republic: Collection of Findings and Resolutions, vol. 34, finding no. 138, p. 387), the circumstance that no statutory regulation concerning the rent that would lead to its deregulation had been adopted yet could not be to the landlords' detriment. The distortion of the flat market caused by a long-term failure to solve the problem of tenement flats with 'controlled rents' cannot be perpetuated by the courts' case law. In a situation where the legislator fails to act it is therefore the ordinary courts whose task it is to provide protection to the individual's rights (Article 90 of the Constitution of the Czech Republic) and fundamental rights (Article 4 of the Constitution of the Czech Republic).
>
> In the findings cited above the Constitutional Court also indicated the direction in which the method of calculating the rent should develop so that the requirements of conformity with the Constitution are satisfied.
>
> In other words, the conclusions which the ordinary courts made in the case in question do not observe the protection of the enjoined party's right to housing itself, but they protect housing 'for a price subsidised by the owner' and that is a deliberation that is markedly outside the objective and meaning of the above cited Constitutional Court findings and the restriction of ownership rights approved by the Constitution in its partial right to *usus fructus* of the owned property. On the other hand, in consequence the courts denied protection of the ownership rights, or this part thereof.
>
> In the Constitutional Court's opinion it is incumbent upon the ordinary courts to satisfy the requirement of Article 4 § 2 of the Charter, according to which restrictions of fundamental rights can only be imposed on a statutory level and pending action by the legislator to fill the *vacuum legis* with their case law, which can be, in such a case, considered law in the material sense. The ordinary courts cannot refuse to protect a fundamental right by referring to the *vacuum legis*, but on the contrary they are obligated to provide such protection. They are requested to do so in a way that will protect the very substance and objective of the ownership rights (in the case in question the ownership rights in respect of a flat), within the meaning of Article 4 § 4 of the Charter.
>
> Therefore the Constitutional Court concluded that in the case in question the ordinary courts did not observe Article 4 § 4 of the Charter when they automatically accepted the *vacuum legis* in the Czech Republic's legal order whereby they also unacceptably restricted, even denied, the applicant's ownership rights, under the head of *usus fructus*

of the property, the protection of which is guaranteed by Article 11 § 1 of the Charter.

With regard to the above, the Constitutional Court granted the constitutional appeal under Section 82, subsection 2(a) of Act no. 182/1993, on the Constitutional Court, as amended, and quashed the challenged ordinary courts' decisions under Section 82, subsection 3(a) of the cited Act."

(x) Finding of 28 February 2006 file ref. no. Pl. ÚS 20/05 (published as no. 252/2006 in the Collection of Laws)

194. In this finding the Constitutional Court rejected the motion of the Prague Municipal Court to repeal Section 696, subsection 1 of the Civil Code and dismissed the motion of the same court to repeal Sections 685 to 716 of the Civil Code (with the exception of the provision mentioned in the first place).

In the introduction to the substantiation of its finding the Constitutional Court summarised the claimant's arguments in the following way:

"In compliance with Article 95 § 2 of the Constitution of the Czech Republic the claimant requested the Constitutional Court to deliver a finding in which it would repeal the special provisions concerning flat leasing, in Part Eight, Chapter Seven, Division Four of Act no. 40/1994, the Civil Code, as amended (Sections 685 to 716 of the Civil Code). It noted that in the legal case of the claimant T.Z., represented by lawyer S.N., against the defendant R.P., the Prague 5 District Court had decided in its judgment of 23 April 2004, Ref. no. 6 C 392/2003-27, in such a way that it had rejected the action for the payment of the amount CZK 3,668 with incidentals. In this case the claimant, as the landlord of a house, in which the defendant was a tenant in one of the flats, requested rent in a usual amount under Section 671, subsection 1 of the Civil Code, because according to his assertion the amount of rent had never been agreed and until 19 March 2003 it had only been officially fixed by a regulation that had been, however, repealed by the Constitutional Court findings. According to a private expert opinion the amount of usual rent is CZK 4,839, but for the month of July 2003 the defendant paid to the claimant only CZK 1,171, therefore the claimant requests payment of the difference. After the presentation of evidence the court of first instance concluded that the motion was ill-founded, while it based its conclusion on the findings that the defendant used the flat on the basis of an agreement on the use of a flat concluded on 2 May 1990. The amount of CZK 1,171 paid as rent in July 2003 corresponded to the rent last determined by Decree no. 176/1993. The court of first instance assessed the above findings pursuant to Section 696, subsection 1 of the Civil Code and held that with regard to the fact that at that time there was no regulation that would have provided for an opportunity to increase rent for the use of a flat within the meaning of this provision, when the general provisions of the Civil Code concerning the tenancy cannot be applied, the claimant's request for the payment of usual rent was ill-founded and therefore it was necessary to base the decision on the amount of rent as last determined under Decree no. 176/1993. The claimant lodged an appeal against the judgment and in the appeal he claimed that the decision was

contrary to the Constitutional Court's conclusions mentioned in its decisions nos. 231/2000 in the Collection of Laws, 528/2002 in the Collection of Laws and 84/2003 in the Collection of Laws, because the court of first instance provided protection to an unconstitutional situation, and that the court of first instance should have submitted the case to the Constitutional Court together with a motion to repeal a statutory provision that is in conflict with the Constitution, i.e. Section 696 of the Civil Code. According to the claimant the challenged decision is not only in breach of constitutional regulations, but also of the Act itself; it is because Decree no. 176/1993 was not a secondary regulation in relation to the Civil Code, but a regulation adopted on the basis of the Price Act no. 526/1990. Section 696, subsection 1 of the Civil Code has never been fulfilled and that is what the Constitutional Court also noted in its finding. Therefore according to the claimant Section 696 of the Civil Code cannot be applied, if there is no regulation implementing it and the court should have proceeded under Section 671, subsection 1 of the Civil Code and determine the amount of rent as the usual rent.

The appellate court, after repeating certain evidence, concluded that it was necessary to proceed under Section 109, subsection 1(c) of the Rules of Civil Procedure. It is because the evidence produced suggests that the dispute in question does not concern determination of rent as a requirement for the conclusion of a new lease contract concerning the flat, where it would be possible to base the decision on the usual rent under Section 671, subsection 1 of the Civil Code given the non-existence of implementing special regulation presumed by Section 696, subsection 1. This is because the lease contract between the claimant's legal successor and the defendant was duly concluded, including the rent determined by the decree on rents that was valid in the previous period and which provided for the rent regulation as well. The claimant, as the legal successor of the previous owners, acceded to all rights and obligations of the landlord that arose under the concluded lease contract. This conclusion is not changed by the fact that the Constitutional Court repealed Decree no. 176/1993, as well as other regulations. In the dispute in question it is necessary to assess the claimant's claim for unilateral increase of the rent that was previously duly determined and since it is a legal assessment of the issue, in this respect the court is not bound by the motion of the claimant who refuses such application of law. For that reason the court of first instance was correct in deciding pursuant to Section 696, subsection 1 of the Civil Code, but reached an incorrect legal conclusion when it deduced that it was necessary to reject the action due to lack of regulation in relation to Section 696 of the Civil Code.

The claimant further refers to the fact that under Section 493 of the Civil Code a contractual relationship cannot be modified without the parties' consent, unless the Civil Code stipulates otherwise. Under Section 696, subsection 1 of the Civil Code the method of calculating the rent, the service charges for the use of the flat, method of their payment, as well as cases in which the landlord is entitled to unilaterally increase the rent, the service charges for the use of the flat, and to modify other terms and conditions of the lease contract shall be provided

for in a separate regulation. These provisions suggest that the Civil Code classifies lease relationships concerning a flat among exceptional contractual relationships in case of which there may be a change in the obligations also on the basis of a unilateral act of the obligee (the landlord). The mentioned exceptional nature in the landlord's rights is offset by the fact that the tenant enjoys a higher level of protection arising under the special provisions on rights and obligations in a flat lease (e.g. the restrictions to the possibility to serve a notice of termination only on statutory grounds, only with the court's approval and in some cases stipulated by the law also in return for compensation). In the claimant's opinion Section 696, subsection 1 of the Civil Code cannot be interpreted in a way that, in the absence of a separate regulation, the action for the payment of the increased rent must be rejected, because by taking such course of action the court would provide the types of protection to an unconstitutional situation that was found in all the Constitutional Court findings cited above. This would lead to violation of the fundamental constitutional principle embodied in Article 90 of the Constitution of the Czech Republic, according to which the courts shall first and foremost provide in a manner defined by law protection of rights. According to this we must also base our considerations on the principle that in civil law relationships, essentially, it is not possible to deny protection of subjective rights with reference to non-existing legal rules, the court is obligated to provide, in its decision, fair protection to the rights of the landlord who claims an increase in the controlled rent.

The claimant, as the appellate court, dealt with the issue of whether the dispute in question could be resolved using an *analogia legis* (Section 853 of the Civil Code), or *analogia juris*, and based this also on the opinion of the plenum of the Constitutional Court expressed in decision no. 21/1996. In doing so the claimant deduced that in the absence of a direct implementing statutory regulation in relation to Section 696, subsection 1 of the Civil Code in the case in question, neither the general provisions of the Civil Code governing lease contracts (Sections 663 to 684), nor the general provisions governing the law of contract (Part Eight, Chapter One of the Civil Code), nor provisions of other civil law regulations could be used by analogy, because none of them provided for requirements under which it would have been possible to unilaterally increase the payment under a lease contract without prior agreement. Consistently with the opinion of the court of first instance, the claimant deduced that not even Act no. 526/1990, on prices, could be used, because this Act does not provide for any requirements under which it would be possible to assess the validity of the landlord's unilateral act aimed at increasing the rent. Such requirements could only be provided for by a relevant civil law regulation, while the appellate court fully referred to the legal analysis given by the Constitutional Court in its finding no. 528/2002 in the Collection of Laws. In this respect the claimant concluded that not even using analogy could the dispute in question be resolved.

Therefore the claimant proposed that the existing unconstitutional situation be resolved by the Constitutional Court, repealing the specific part of the Civil Code (Sections 685 to 716 of the Civil Code), that

provides for rights and obligations relating to a lease of flats. Due to the interconnection of the whole regulation of the flat lease it is not possible to request repeal of only some of the provisions, e.g. Section 696, subsection 1 of the Civil Code. This provision is an exception stipulated for the purpose of protecting the landlord's rights and this is offset by a higher level of protection of the tenant's rights during the termination of the lease. In the claimant's opinion, in the absence of an implementing regulation in relation to Section 696, subsection 1 of the Civil Code, the existing regulation of the flat lease is unbalanced and one-sided in favour of the tenant. It is therefore contrary to the principle of equal protection of ownership (Article 11 § 1 second sentence of the Charter of Fundamental Rights and Freedoms, hereinafter 'the Charter'), as well contrary to the principle that forcible restriction of ownership rights is possible only in the public interest, on the basis of law and in return for compensation (Article 11 § 4 of the Charter). At the same time the claimant emphasises that it does not consider unconstitutional the very content of the special provisions concerning the flat lease but the *vacuum legis* consisting in that no regulation envisaged by Section 696, subsection 1 of the Civil Code was adopted, not even within the time limit set by the finding no. 231/2000 in the Collection of Laws and not even in the following period of more than three years. The claimant is aware of the seriousness of its proposal, but in the dispute in question it is not competent to resolve whether and what social impacts his motion might have in social, economic and other aspects. It adds to this that in this specific case the repeal of the whole special regulation on flat leasing would indeed not make it possible for the claimant to successfully claim from the defendant payment of the higher rent than the rent determined earlier. However, the inequality of rights and obligations under the tenancy in question would be removed because all rights and obligations arising under the lease contract concerning a flat would have to be subsumed under the general provisions on the lease contract, as well as general provisions on contractual relationships and general provisions of the Civil Code. The possible excesses during the exercise of the rights and obligations under the lease contract would have to be resolved before a court as in the case of other lease contracts.

Since only the Constitutional Court has the power and is qualified to examine the conformity of the individual provisions of the Civil Code with the Charter, the Prague Municipal Court filed, under Article 95 § 2 of the Constitution and Section 64, subsection 3 of Act no. 182/1993, on the Constitutional Court, as amended (hereinafter 'the Constitutional Court Act'), this motion to repeal the special provisions on flat tenancies."

The Constitutional Court substantiated its decision on the case, *inter alia*, in the following way:

"As regards the arguments of the ordinary courts that within the meaning of Articles 90 and 95 of the Constitution they are forbidden to comply with the fundamental obligations which they are called upon to perform, i.e. to provide 'protection to rights in a manner defined by law', the Constitutional Court would remark that in a situation where, with the consent of the Government and the Parliament, there exist on

a long-term basis two groups of owners of tenement flats, one receiving market revenue from rents and the second one receiving revenue from rents administratively fixed, which are by estimation several times lower, and when the legal relationships in both these groups are based on regulation contained in the valid Civil Code; then, with the aid of principles contained in the reasoning forming the basis of the decision in the mentioned findings, the Constitutional Court is convinced that the ordinary courts are given sufficient authority to decide and provide protection to the fundamental rights of the participants who brought their dispute before them.

On the basis of these facts the Constitutional Court, in the recalled role of the constitutionality protector, cannot restrict its function to the mere position of a 'negative' legislator and must, within the balance of individual components of power characteristic of a State based on the rule of law and respect for the rights and freedoms of a man and citizen (Article 1 § 1 of the Constitution of the Czech Republic), create space for the respect for fundamental rights and freedoms. The issue at stake is that the ordinary courts, despite the absence of presumed specific regulation, must decide on the rent increase and they must do so depending on the local conditions so that the discrimination mentioned above does not occur. With regard to the fact that in such cases it would concern finding and applying simple law, which does not appertain to the Constitutional Court, as it repeatedly emphasises in its case law, it refrains from offering specific decision making procedures and thus substituting the ordinary courts' function. It would only note that it is necessary to avoid arbitrariness; a decision must be based on rational arguments and thorough assessment of all circumstances of the case, the use of common principles and practice of civic life, the work of legal theorists and the courts' established case law that is in conformity with the Constitution.

Attention should be also paid to the second level of the claimant's objections, which is based on the assertion that there is an unconstitutional *vacuum legis* consisting in that so far the presumed regulation has not been adopted. In consequence of the legislator's failure to act it can cause an unconstitutional situation if the legislator is obligated to adopt certain statutory regulations and does not do so, and thus interferes with an interest protected by law – the Constitution. The legislator's obligation may follow directly from the constitutional level (e.g. in securing the realisation of the fundamental rights and freedoms or their protection), and also from the level of 'ordinary' Acts, where it imposed this obligation upon itself *expressis verbis*. It is a well known fact that in the activities of the constitutional courts the protection against failure to act was developed especially in the case of the German Federal Constitutional Court. Also the Czech Republic's constitutional judiciary dealt with the issue of *vacuum legis* (*cf.* finding file ref. no. Pl. ÚS 48/95, finding file ref. no. Pl. ÚS 36/01; in the substantiation of the latter finding the Constitutional Court considers unconstitutional any failure of the legislator that leads to an inequality that is not acceptable at the constitutional level). Therefore it can be concluded that under certain conditions the consequences of *vacuum legis* (legislative vacuum) are unconstitutional, especially in a case when the leg-

islator has decided that it would regulate in a certain field, and expresses this intention in an Act, but does not adopt the presumed regulation. The same conclusion holds true in a case when Parliament has adopted the declared regulation, but it has been repealed because it did not satisfy criteria of conformity with the Constitution and the legislator has not adopted a replacement that would be in conformity with the Constitution, although the Constitutional Court has provided the legislator with sufficient time (18 months). Moreover, it remained inactive also after the lapse of this time limit and to this day it has not adopted the requisite regulation (not even after more than four years).

The relationship between the legislature and judiciary stems from the separation of powers in the State as provided for in the Constitution. The material approach to the interpretation leads us inevitably to the conclusion that the purpose of this separation of powers is not the separation itself, but that a higher aim is pursued. From the very beginning the constitutional legislator subordinated the separation of powers to an ideal, the basis of which is above all service to the citizen and society. Each power tends to be self-centred and tends to hypertrophy and corruption; absolute power tends towards an uncontrollable corruption. If one of the components exceeds its constitutional role, its powers, or on the contrary it does not fulfil its tasks and thus prevents another component (in the case in question the judiciary) from regular functioning, then the controlling mechanism of checks and balances, built-in into the system of separation of powers, has to start operating. The main task of the judiciary is defined by the Constitution as follows: 'The courts shall first and foremost provide for, in a manner defined by law, the protection of rights.' (Article 90) and 'The fundamental rights and freedoms shall be protected by the judiciary.' (Article 4). Also the position of the Constitutional Court stems from the same constitutional definition of a democratic State subject to the rule of law: 'The Constitutional Court is a judicial body charged with the protection of constitutional rule.' (Article 83). If we analyse the Supreme Court's arguments in the light of these rules, we reach a conclusion that the Supreme Court and other ordinary courts are mistaken when they refuse to provide protection to the rights of natural and juristic persons who have addressed them with a request for justice, when their actions were rejected only due to technicalities and with a reference to the legislator's failure to act (non-existence of relevant regulations) all of which happened after the Constitutional Court, as the protector of the constitution and its supremacy, had opened a way for them by its prior rulings. The Constitutional Court repeatedly found the unequal position of one group of owners of tenement flats and houses to be discriminatory and unconstitutional. It also declared the long-term failure to act on the part of the Parliament of the Czech Republic to be non-compliant with the requirements of the rule of law. On the basis of the will of the constitutional legislator the Constitutional Court became responsible for the observance of the constitutional order in the Czech Republic and therefore it must fulfil this obligation, and it also calls upon the ordinary courts to fulfil their obligations and it refuses to rely only on the pressure exerted by the European Court of Human Rights, and therefore it decided as stated in ruling I.

> In relation to the current motion, after the performed proceedings the Constitutional Court states that there are no reasons to repeal Section 696, subsection 1 of the Civil Code, because this provision on its own is not contrary to Article 11 § 1 second sentence of the Charter or Article 11 § 4 of the Charter, and therefore it rejected the Prague Municipal Court's motion under Section 70, subsection 2 of Act no. 182/1993, on the Constitutional Court, as amended (ruling II)."

(xi) Finding of 21 March 2006 file ref. no. I. ÚS 717/05

195. In this finding the Constitutional Court granted the part of a constitutional appeal that was directed against the Supreme Court decision in which:

> "the applicant's appeal on a point of law against the judgment of the Hradec Králové Regional Court – Pardubice office was dismissed for being inadmissible. Within appellate proceedings the court of second instance upheld the Pardubice District Court judgment in which the latter had rejected the applicant's action for the determination that the lease contract concluded on 13 October 1995 between P. s. n., spol. s r. o., as the landlord, and J.P., as the tenant, in its provision which reads '*The tenant shall be obligated to pay to the landlord a monthly rent and advances to service charges, mentioned in the breakdown of payments, which forms the annex to this contract and which can be changed according to the valid decrees and according to the increase in the prices of services related to the functioning of the house*' was void. In its judgment the court of first instance had also rejected the applicant's motion for a determination that the rent for the use of the flat which was the subject matter of the above lease contract amounted to CZK 4,500, with effect from 1 April 2003."

The Constitutional Court noted, as regards the objection of violation of fundamental rights and freedoms guaranteed by the Constitution:

> "Therefore in the case in question the Supreme Court of the Czech Republic, in assessing the admissibility of the appeal on a point of law disregarded the above mentioned significance of the protection of the applicant's fundamental rights, if it concluded that the appeal on a point of law was not admissible, regardless of the fact that its conclusion was incorrect from the point of view of the Constitutional Court's previous case law concerning rent regulation, which was binding on all authorities and persons under Article 89 § 2 of the Constitution at the time of the Supreme Court of the Czech Republic's decision. Therefore if not even the Supreme Court of the Czech Republic provided protection for the applicant's fundamental rights, then it continued with the violation thereof, which had been established by the decision of the court of first instance.
>
> Therefore the Constitutional Court believes that now it is up to the Supreme Court of the Czech Republic to accept and satisfy, after the Constitutional Court finding quashing the previous decisions, both requirements mentioned above, i.e. to provide protection to the applicant's fundamental subjective rights and at the same time at the level of simple law to create the basis for the unification of the ordinary courts' case law, as regards the judicial 'finishing' of law in the field of

> determining the an amount of rent that is consistent with the Constitution.
>
> The Constitutional Court would add that the issue of nullity of the provision of the lease contract regarding the amount of rent needs to be dealt with as a preliminary issue; however, the Supreme Court of the Czech Republic must present its opinion on the form of the prayer for action concerning the determination of the rent precisely due to the fact that it is obligated to consolidate the ordinary courts' case law. Nevertheless, with regard to the absence of case law on this issue and therefore with regard to the existence of legal uncertainty, not only on the applicant's part, it is not possible to accept that the Supreme Court of the Czech Republic reached a judgment rejecting the action due only to its form. On the other hand, if the prayer for action used by the applicant does not match the appellate review court's requirements, then the applicant must be given an opportunity to modify the prayer in further proceedings before the ordinary courts. This requirement stems from the priority given to the protection of the applicant's fundamental right to possessions.
>
> With regard to the above, the Constitutional Court, acting pursuant to Section 82, subsection 2(a) of Act no. 182/1993, on the Constitutional Court, as amended, partly granted the constitutional appeal and quashed the challenged decision of the Supreme Court of the Czech Republic under Section 82, subsection 3(a) of the cited Act.
>
> Given the situation mentioned above, the Constitutional Court then dismissed the applicant's motion directed against the judgments of the Pardubice District Court and the Hradec Králové Regional Court – Pardubice office under Section 43, subsection 1(e) of Act no. 182/1993, on the Constitutional Court, as amended, because – as mentioned above – first of all it would be up to the appellate review court to deal with the decisions of the courts of first and second instance again in appellate review proceedings."

196. In the subsequent proceedings the Supreme Court quashed the relevant decisions of the inferior courts in their parts concerning the rejection of the motion for the determination of the rent and concerning costs and remanded the case to the court of first instance for further proceedings (the Supreme Court judgment of 31 August 2006 file ref. no. 26 Cdo 1039/2006).

(xii) Finding of 6 April 2006 file ref. no. I. ÚS 489/05

197. In the constitutional appeal the applicant challenged the ordinary courts' decisions delivered in an action in which he requested payment of an amount representing the difference between the usual and controlled rent for a flat.

The Constitutional Court quashed the challenged decisions and in the substantiation of its finding it noted, *inter alia*, the following:

> "The right to judicial protection – and eventually also the right to the protection of ownership within the meaning of Article 11 § 1 of the Constitution – were violated by the course of action followed by the ordinary courts when they rejected the applicant's action, referring to the lack of existence of the implementing law presumed in Sec-

tion 696, subsection 1 of the Civil Code, i.e. a regulation that would allow for unilateral rent increases to be effected by landlords, eventually leading to the elimination of controlled rent. The Constitutional Court is aware that without doubt this case is socially delicate, given the lack of existence of 'social housing' supported by the State, and which has roots deep in the era of the totalitarian system; the Constitutional Court expressed its detailed opinion on this issue in finding file ref. no. Pl. ÚS 20/05 (it refers to the reasoning thereof […]). In this finding, in the part of its decision concerning ruling I, the Constitutional Court, for the first time in its long-lived efforts aimed at eliminating the unjust situation in the field of rents, referred to the direct liability of the State – the Parliament for the unconstitutional situation in the field of controlled rent and the subsequent supporting ideal, according to which the ordinary courts, despite the absence of a presumed specific regulation, must decide on the rent increase and they must do so depending on the local conditions so that discrimination does not occur. At the same time it is necessary to avoid arbitrariness; a decision must be based on rational arguments and thorough assessment of all circumstances of the case, the use of common principles and practice of civic life, the work of legal theorists and the courts' established case law, in conformity with the Constitution. It is not acceptable for the court to refuse to decide due to 'silence, ambiguity or insufficiency of law'; such case would constitute *denegatio iustitiae*. As regards this conclusion the Constitutional Court would add that in deciding on the amount of rent the ordinary court would add the finishing touches to the objective law in its constitutive (*pro futuro*) decision (in this respect the District Court's premise that it is not possible to claim the payment for the difference between usual and controlled rent for the past is correct). With regard to the exceptional nature of the procedure founded by ruling I in finding file ref. no. Pl. ÚS 20/05, the court must provide the participants with sufficient time and space to familiarise themselves with the principles of the law created by the court and to use adequate instruments, including the possible change in the prayer for action and the opportunity to conclude a settlement. In this sense the claimant has to get appropriate advice from the ordinary court, even outside the general obligation to provide advice embodied in Section 5 of the Rules of Civil Procedure.

As mentioned above, in ruling I of finding file ref. no. Pl. ÚS 20/05 ["*The long-term failure to act on the part of the Parliament of the Czech Republic, consisting in the failure to adopt special regulations specifying cases in which the landlord is entitled to unilaterally increase rent, the payment of service charges for the use of the flat and modify other terms and conditions of the lease contract, is unconstitutional and violates Article 4 § 3, Article 4 § 4 and Article 11 of the Charter of Fundamental Rights and Freedoms and Article 1 § 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.*"] the emphasis was put on the State liability for damage caused as a result of the failure to adopt the presumed regulation. It stems from this that if the landlord's justified claim is not fully satisfied, there is nothing else he/she could do but to raise a claim for damages against the State."

(xiii) Resolution of 8 June 2006 file ref. no. III. ÚS 217/06 (see Enclosure E2)

198. The applicant – a landlord – requested, in her action against a tenant, payment of the amount that was supposed to represent the difference between the original rent and rent increased under Ordinance no. 2/2002. The court of first instance rejected her complaint noting that this specific Ordinance, on its own, did not even allow for a unilateral rent increase and Ordinance no. 6/2002 which allowed for that had been quashed by the Constitutional Court prior to the beginning of the period for which the applicant requested the payment of the difference.

The Constitutional Court dismissed the constitutional appeal, noting, in particular, the following:

> "No criticisms can be made in respect of the ordinary court's conclusion on the illegality of a unilateral rent increase effected by the landlord on the basis of Ordinance of the Ministry of Finance no. 02/2002 […].
>
> If the applicant refers, in her constitutional appeal, to the necessity of securing equality between the landlord and the tenant, while reproaching the court for not assessing whether the rent was 'usual' in that place and time, or whether it was fair, it must be remarked that the applicant's possible claim for the rent increase is not supported by the 'simple law', but it could be so from the point of view of the constitutional law, as the Constitutional Court had suggested in a number of its decisions, from the more recent ones see finding of 28 February 2006 file ref. no. Pl. ÚS 20/05 […] or of 8 February 2006 file ref. no. IV. ÚS 611/05 […]. On the other hand, the Constitutional Court is of the opinion that in connection with controlled rents it is not possible to 'automatically' presume violation of fundamental rights and freedoms of all landlords as guaranteed by the Constitution, therefore if the applicant, in proceedings before the district court, did not argue in an adequate manner (which she does not assert in her constitutional appeal and it is not evident from the relevant judgment either), it was not this court's obligation to deal with the applicant's case in this aspect."

(xiv) Finding of 8 June 2006 file ref. no. II. ÚS 93/05

199. In this finding the Constitutional Court quashed the ordinary courts' decisions on the applicant's action in which he had requested his tenant to be ordered to pay the difference between the market and controlled rent retroactively cause of action of unjust enrichment.

At the same time in the substantiation of its decision on the appeal on a point of law the Supreme Court noted, *inter alia*, the following (resolution of 27 January 2006 file ref. no. 26 Cdo 983/2005):

> "The conclusion that it is possible to consider assessment of the claim for the payment of pecuniary performance raised by reason of use of the property of another under the provisions on unjust enrichment only if the performance cannot be justified by a valid lease contract or another contractual relationship, also stems from e.g. the Supreme Court judgments of 15 June 1999 file ref. no. 25 Cdo 2578/98, 31 July 2003

> file ref. no. 25 Cdo 1934/2001, published in the Collection of Court Decisions and Opinions, year 2000, as no. 53, and year 2004, as no. 78). The conclusion that performance on the cause of action of unjust enrichment can only be awarded if such performance does not belong to the claimant on another legal cause of action logically leads to the conclusion that if there exists a legal contractual relationship between the participants, under which one party is obligated to make a certain pecuniary performance, then the same party's obligation to further (higher) pecuniary performance by virtue of unjust enrichment cannot be implied. Therefore if the tenant is obligated to pay to the landlord a certain amount of rent, then the landlord cannot successfully claim the payment of a higher sum (not even) by reason of unjust enrichment."

In the substantiation of the cited finding the Constitutional Court noted, *inter alia*, the following:

> "In the case in question the applicant specifically disagreed, although it is not very clearly and intelligibly expressed and formulated in his constitutional appeal, with the ordinary courts' conclusion on which they based their decisions rejecting his action; said conclusion consisting in that if after the creation of the right of personal use, or its transformation to a tenancy, the price of the tenancy and services provided with the use of the flat was governed by regulations, then it is necessary to follow this situation until the relevant special regulation, the existence of which is presumed by Section 696, subsection 1 of the Civil Code, is adopted. This is not changed by the fact that these regulations have been repealed, therefore at present there is no possibility to unilaterally increase the rent. In other words, he did not agree with the statement that the defendant was not obligated to pay market rent and at the same time the court lacked the powers to determine the rent in a situation when there is no separate regulation, that would allow it to do so within the meaning of Section 696, subsection 1 of the Civil Code.
>
> […]
>
> The absence of the presumed regulation leads to a situation when during the existence of the tenancy the change in the content of the tenancy (including the amount of rent) is subject to agreement of the contracting parties. If there is no such agreement then there is no legal procedure available (in consequence of the legislator's failure to act), using which it would be possible to achieve a change by way of a unilateral act by the landlord. The legislator's failure to respond to the Constitutional Court's previous findings, or its failure to act, caused an actual freezing of the controlled rents, whereby the ownership rights of owners of those flats to which the regulation applied were even more seriously violated. The legislator did not react until the adoption of Act of 14 March 2006 no. 107/2006, on unilateral rent increase and on the amendment to Act no. 40/1964, the Civil Code, as amended; this new Act came into effect on 31 March 2006. However, in the case in question the applicant requested a unilateral rent increase for the period when there had been no regulation allowing for a unilateral rent increase. If the ordinary courts refused this applicant's request while re-

ferring to the non-existence of regulation, then they caused *denegatio iustitiae* in relation to the applicant.

[…]

Therefore it is not possible to accept such interpretation of the previous findings, in which the Constitutional Court described the content and form of the rent control as unconstitutional and repealed the relevant regulations (*cf.* findings in cases file ref. nos. Pl. ÚS 3/2000, Pl. ÚS 8/02, Pl. ÚS 2/03), which leads to the denial of the ownership rights of the flat owners. The objective of the Constitutional Court's previous decisions was to eliminate from the legal order unconstitutional restrictions on the ownership rights of the landlords and not to freeze and set in stone the unconstitutional interference with the ownership rights. The distortion of the flat market caused by a long-term failure to solve the problem of tenement flats with the 'controlled rents' cannot be perpetuated by the courts' case law. In a situation where the legislator's failure to act was authoritatively found to be unconstitutional – i.e. in the period of the ordinary courts' decision making also in the case under consideration – it is therefore the ordinary courts whose task it was to provide protection to the individual's rights (Article 90 of the Constitution of the Czech Republic) and fundamental rights (Article 4 of the Constitution of the Czech Republic); however, this did not happen.

The ordinary courts violated the right to judicial protection – and eventually also violated the right to the protection of property – by rejecting the applicant's action with a reference to the non-existence of the implementing Act, presumed in Section 696, subsection 1 of the Civil Code, i.e. regulation allowing for a unilateral rent increase by the act of a landlord, although his only defence was an action against the tenant (the enjoined party in the case in question) for the payment of restitution for unjust enrichment that occurred in the amount of difference between the actual rent given the local conditions and the 'controlled rent'. Therefore it must be stated that also in the case under consideration the challenged judgment, in which the appellate court refused to provide judicial protection to the applicant's ownership rights, violated Article 36 § 1 and Article 11 § 1 of the Charter of Fundamental Rights and Freedoms. Therefore the Constitutional Court quashed the challenged judgments."

(xv) Finding of 13 July 2006 file ref. no. I. ÚS 47/05

200. The constitutional appeal was directed against a decision of the appellate court which had upheld a decision of the court of first instance on the rejection of the applicants' action for the payment of rent due.

In the substantiation its finding, in which it quashed the appellate court's decision, the Constitutional Court noted, *inter alia*, the following:

"In the Constitutional Court's opinion it is evident – as well as in the cited case file ref. no. Pl. ÚS 20/05 or e.g. in cases file ref. nos. I. ÚS 717/05 and I. ÚS 489/05 (not yet published in the Collection of Findings and Resolutions of the Constitutional Court) – that the essence of the constitutional appeal lies (in the period of the ordinary courts' decision making) in the absence of any regulation that would be in confor-

mity with the Constitution, or rent deregulation, based on the opportunity to unilaterally increase the rent. In dealing with this undoubtedly socially delicate case, which has its roots deep in the era of the totalitarian system, according to the Constitutional Court's conclusions derived from the above findings it is, *inter alia*, necessary to respect the nature of the legal relationship created by a tenancy, including the lease of a flat, as a contractual relationship, whose concept presumes the creation of sufficient space for the autonomous expression of will and contractual freedom of the parties. At the same time the Constitutional Court, in a number of its decisions, has acknowledged a constitutional character of the principle of autonomous expression of will and contractual freedom. The individual's right to an autonomous will, i.e. eventually the individual's freedom itself, corresponds with the requirement imposed upon the State power to acknowledge individuals' autonomous expressions of their will and the corresponding acts. If such acts do not interfere with third party rights, then the State power must only respect, or approve the individuals' expressions of will. The State power may interfere with an individual's freedom only in cases where there is a certain public interest, if such interference is proportional (reasonable) with regard to the aim sought to be realised. The principle of protection of an autonomous will of legal subjects is widely reflected in the private law which is characterised by the principle of equality of participants (it is the concept of equality which is reflected in the reciprocity of the inner structure of private law relations when compared with the public law which is characterised by the prevalence of the holder of public sovereign power, and not the concept of equality before the law in the sense of absolute and general equality before the law). However, also in the field of private law it applies that the objective law creates certain restrictions on the autonomous will, or contractual freedom (*cf.* Section 2, subsections 2 and 3 of the Civil Code). It cannot be neglected that as regards the very regulation of flat leasing, the Civil Code contains a number of rules of peremptory (mandatory) nature, whose common factor is the concept of the 'protected flat lease'. However, the Constitutional Court also recalled that it is unacceptable to transfer a social burden from one group of persons (the tenants) to another one (the landlords) and added that it is also unacceptable to create distinct categories of landlords (or tenants) depending on whether the rent for the flats of one category is subject to control or not. The obvious consequences of the legislator's failure to act led the Constitutional Court, aware of its position as the body for the protection of constitutionality, to the necessity to replace the instruments of the landlords' legal protection that were missing on the level of 'ordinary' Acts by using the principles of constitutional regulation. Therefore in the cited findings the Constitutional Court insisted on the fulfilment of the ordinary courts' fundamental function, i.e. provision of proportional protection of subjective rights and interests protected by law, and requested the ordinary courts to provide this to landlords in a way that they do not *a priori* reject landlord's actions requesting the determination of increased rent with a reference to the lack of regulation. The Constitutional Court considered the rejection of these actions for reasons summarised in the Supreme Court judgment of 31 August 2005 file ref. no. 26 Cdo 867/2004 (subsequently used in

> resolutions dismissing appeals on a point of law due to inadmissibility – see resolutions file ref. nos. 26 Cdo 80/2005, 26 Cdo 819/2005, 26 Cdo 1647/2005 and 26 Cdo 1912/2005) as violation of Article 36 of the Charter. With the aid of principles contained in the thought structure forming the basis for the decision making in the mentioned findings, the Constitutional Court is convinced that the ordinary courts were given a sufficient amount of regulation to decide and to provide protection to the fundamental rights of the applicants in the case under consideration as well."

(xvi) Finding of 31 May 2007 file ref. no. IV. ÚS 282/05

201. The applicant, as the landlord, requested the payment of the difference between the rent paid by the defendants for August 2003 in the amount last determined by the repealed regulations in the domain of rent control and the usual rent, specified in an expert opinion.

The Constitutional Court quashed the challenged appellate court decision, in which the judgment of the court of first instance, rejecting the action, had been upheld, noting in the substantiation, *inter alia*, the following:

> "The fact that the applicant's constitutional appeal was granted does not mean that the ordinary courts would accept the amount of rent requested by her without further examination. The specific amount of rent must result from the process of evidence in particular, during which the ordinary courts shall provide sufficient space to the litigants to enable them to present relevant background information that may influence the amount of rent. With regard to the exceptional procedure in creating the law the claimant and the defendant must receive appropriate advice from the ordinary court, even outside the general obligation to provide advice embodied in Section 5 of the Rules of Civil Procedure."

G. THE SUPREME COURT'S CASE LAW

(i) Judgment of 31 January 2007 file ref. no. 25 Cdo 1124/2005 (see Enclosure E3)

202. The Supreme Court was deciding on an appeal on a point of law against a decision of the appellate court, in which the judgment of the court of first instance rejecting the action for damages against the State had been upheld.

The Supreme Court rejected the claimant's appeal on a point of law, while noting in the substantiation, *inter alia*, the following:

> "In the case under consideration the appellate court was dealing with a legal issue – whether the Parliament's activities in voting on a Bill constituted official procedure within the meaning of Section 13 of Act no. 82/1998. Since this legal issue has never been dealt with in the case law of the appellate review court, in this respect the challenged appellate court judgment represents a decision that is of fundamental importance for its precedent value and in this regard the appeal on a point of law is admissible under Section 237, subsection 1(c) of the Rules of Civil Procedure.

Under Section 13, subsection 1 of Act no. 82/1998, on liability for damage caused during the exercise of public power by a decision or incorrect official procedure and amending Act of the Czech National Council no. 358/1992, on notaries and their activities (the Notary Code) (hereinafter 'the Act'), the State shall be liable for damage caused by an incorrect official procedure. While incorrect official procedure consists also in the non-compliance with an obligation to perform an act or deliver a decision within the statutory time limit. Under subsection 2 of this Section any person who suffers damage as a result of an incorrect official procedure shall be entitled to damages.

The State liability under Act no. 82/1998 is in principle related to incorrect official procedure of executive and judicial authorities. With regard to the fact that the Parliament, consisting of the Chamber of Deputies and the Senate, is the supreme authority of the legislative power (*cf.* Article 15 of Act no. 1/1993, the Constitution of the Czech Republic, as amended, hereinafter 'the Constitution'), which decides, in a representative democracy, by the voting of its members – Deputies and Senators on the adoption or non-adoption of a presented Bill, while there is no rule or regulation and there cannot be any rule or regulation on how the individual Deputy, Senator or a group of Deputies or Senators should vote on the Bills (under Article 23 § 3 and Article 26 the Deputies and the Senators are obligated to discharge their office in the interests of all the people and to the best of their abilities and conscience and they are not bound by any instructions), the procedure of adoption of laws by voting in the Chamber of Deputies or the Senate cannot be considered official procedure within the meaning of Section 13 of Act no. 82/1998 and – if the rules of procedure of the Chamber of Deputies or the Senate were observed – it would furthermore be impossible to consider a 'judicial' review, as to whether the outcome of the voting is correct or incorrect. It is a principle of constitutional sovereignty of the legislative power which is liable to the people.

Although the Constitutional Court, in its finding of 22 September 1999 file ref. no. I. ÚS 245/98, dealt with the issue of possible liability for damage caused in the exercise of public power in connection with the activities of the legislative body, it was on an entirely different factual basis (*cf.* the Constitutional Court finding of 22 September 1999 file ref. no. I. ÚS 245/98) and concluded that State liability for damage caused by an incorrect official procedure was not excluded in a situation when there had occurred a mistake during the publishing of the Act of the former Federal Assembly, when in copying the text of the Act the wording to be published in the Collection of Laws had not been the one adopted by the legislative body (the legislative body adopted a different text from the one signed by the constitutional officials and published in the Collection of Laws). Nevertheless, the result of the voting by the Deputies or Senators in their respective legislative body does not constitute an official procedure and therefore liability on the part of the State for damage in relation to individual voters cannot result from it.

The appellate court's legal reasoning, that for State liability for damage to be established, first of all, the requirement of incorrect official procedure of a State authority in applying the State power was not met is

correct. This reason *per se* is sufficient to reject an action for damages. With regard to this, the other objections in the appeal on a point of law cannot influence the overall conclusion of the appellate court."

(ii) Judgment of 7 July 2006 file ref. no. 26 Cdo 32/2006 (see Enclosure E4)

203. The Supreme Court rejected an appeal on a point of law against decisions of inferior ordinary courts in which an action for determination of a higher rent had been partly granted (for details see §§ 205 *et seq.* of the Observations below).

In the substantiation of its decision the Supreme Court noted:

"In its judgment of 31 August 2005 file ref. no. 26 Cdo 867/2004 (in the judgment referred to by the appellant in his appeal on a point of law) the Supreme Court of the Czech Republic determined that neither the Civil Code (nor any other Act) allowed the court to intervene with a contractual tenancy by changing any of its component parts, including the amount of rent, and that this competence was confined to the legislative and executive powers which the ordinary courts could not intervene in or substitute for. The Supreme Court repeated this conclusion also in its resolutions of 15 September 2005 file ref. no. 26 Cdo 80/2005, 19 October 2005 file ref. no. 26 Cdo 1674/2005, 26 October 2005 file ref. no. 26 Cdo 1912/2005, 27 January 2006 file ref. no. 26 Cdo 983/2005, and 22 September 2005 file ref. no. 26 Cdo 819/2005.

Upon a motion of the Prague Municipal Court to repeal Sections 685 to 716 of the Civil Code, the Constitutional Court of the Czech Republic, in its finding of 28 February 2006 file ref. no. Pl. ÚS 20/05, published as no. 252/2006 in the Collection of Laws, noted that the long-term failure to act on the part of the Parliament of the Czech Republic, consisting in the failure to adopt special regulations specifying cases in which the landlord is entitled to unilaterally increase rent, the payment of service charges for the use of the flat and modify other terms and conditions of the lease contract, was unconstitutional and violated Article 4 § 3, Article 4 § 4 and Article 11 of the Charter of Fundamental Rights and Freedoms and Article 1 § 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, rejected the motion to repeal Section 696, subsection 1 of the Civil Code and dismissed the motion to repeal Sections 685 to 695, Section 696, subsection 2 and Sections 697 to 716 of the Civil Code. In the substantiation of the cited finding the Constitutional Court noted, *inter alia*, that the ordinary courts, despite the absence of the presumed specific regulation, must decide on the rent increase and they must do so depending on the local conditions so that the discrimination mentioned above does not occur. The Constitutional Court did not offer a specific decision procedure (so as not to replace the ordinary courts' function), but it recalled that it is necessary to avoid arbitrariness; a decision must be based on rational arguments and thorough assessment of all circumstances of the case, the use of common principles and practice of civic life, the work of legal theorists and the courts' established case law, in conformity with the Constitution. The Constitutional Court reached a similar decision in for example its finding of 8 February

> 2006 file ref. no. IV. ÚS 611/05, and then also in its finding of 21 March 2006 file ref. no. I. ÚS 717/05, in which it quashed the Supreme Court resolution of 22 September 2005 file ref. no. 26 Cdo 819/2005, based on (incorrect) legal reasoning expressed in the Supreme Court judgment of 31 August 2005 file ref. no. 26 Cdo 867/2004. In the finding of 6 April 2006 file ref. no. I. ÚS 489/05 the Constitutional Court added to this that in deciding on the amount of rent the ordinary court would give finishing touches to the objective law in its constitutive decision (*pro futuro*).
>
> With regard to the Constitutional Court case law cited above, the court agrees with the appellate court's legal reasoning that if there was no agreement on an amendment to the lease contract as regards the amount of rent and if there is no special regulation allowing for a unilateral rent increase, the existence of which is presumed by Section 696, subsection 1 of the Civil Code, the ordinary court is entitled to intervene in the content of the lease relationship and increase (determine) the amount of rent."

204. The Supreme Court approved the Constitutional Court's legal reasoning expressed in the cited findings in a similar way also in other decisions (see e.g. resolution of 16 August 2006 file ref. no. 26 Cdo 594/2005, judgment of 30 August 2006 file ref. no. 26 Cdo 1013/2005, judgment of 31 August 2006 file ref. no. 26 Cdo 1039/2006, judgment of 20 September 2006 file ref. no. 26 Cdo 1213/2006, judgment of 10 October 2006 file ref. no. 26 Cdo 1924/2006, judgment of 24 October 2006 file ref. no. 26 Cdo 2106/2006).

H. Case Law of Ordinary Courts of Lower Instances

(i) The Tábor District Court judgment of 21 April 2005 file ref. no. 3 C 18/2005 (see Enclosure E5)

205. In his action of 28 January 2005 against his tenant the owner of a flat requested a judgment in which an obligation would be imposed upon the defendant to pay a monthly rent amounting to CZK 2,800 – with effect from the first month after the finality of the judgment – instead of the existing rent CZK 890.

In its judgment, mentioned in the heading, the court of first instance partly granted the action when it imposed an obligation upon the defendant to pay a monthly rent amounting to CZK 1,867. It based its decision on, *inter alia*, the following considerations:

> "In the opinion of the court, from the last mentioned Constitutional Court finding [of 19 March 2003 file ref. no. Pl. ÚS 2/03] there stems an opportunity for the Constitutional Court to intervene in a contractual relationship between the landlord and the tenant so that the constitutional principle of protection of the ownership rights of the flat owners is respected within the meaning of Article 11 § 1 of the Charter of Fundamental Rights and Freedoms and so that their right to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol to [the Convention] is satisfied. If the ordinary court is also to fulfil its constitutional function under Article 90 of the Constitution of the Czech Republic, i.e. to provide protection of rights in a manner defined

> by law, and if it is to proceed, in civil court proceedings, under Section 1 [of the Rules of Civil Procedure] in a way that fair protection of rights and legitimate interests of the participants is secured, then while respecting the above principles of the protection of the ownership rights of the flat owners also an ordinary court may, in the absence of the special regulation presumed by Section 696, subsection 1 [of the Civil Code] (i.e. in a situation when the legislator fails to perform its function), intervene in the content of the tenancy concerning a flat as regards the determination of the rent. If the claimant in the case in question entered into a tenancy with the defendant prior to 1990 and the rent paid by the defendant in the past was based on the relevant regulation and was frozen as on 17 December 2002, then within the meaning of Section 671, subsection 1 [of the Civil Code] it is the defendant's obligation, as the tenant, to pay usual rent for the purpose of securing the claimant's rights, as the flat owner, which are guaranteed by the Constitution. In determining the amount of rent in the case in question the court took into account the claimant's activities, as the landlord of other flats […] where he concluded new lease contracts with the tenants which set the rent at a new level of twice the final controlled rent amount, on one hand and it took into account the facts useful for fulfilling the objective of determining the rent, i.e. so that the determined rent allowed for the payment of repair costs, administration costs and costs for the maintenance of the flat used by the defendant, including the common areas and so that the claimant receives adequate profit, on the other hand. In the court's opinion the determination of the rent as twice the controlled rent also satisfies the last criteria mentioned."

The defendant lodged an appeal against the judgment of the court of first instance (the claimant also lodged an appeal, but only as regards the ruling on the costs). However, the České Budějovice Regional Court – Tábor office upheld the decision of the inferior court (judgment of 8 August 2005 file ref. no. 15 Co 456/2005 – see Enclosure E6). The Supreme Court rejected the defendant's subsequent appeal on a point of law (judgment of 7 July 2006 file ref. no. 26 Cdo 32/2006 – see above § 203 of the Observations).

(ii) The Nymburk District Court judgment of 9 September 2005 file ref. no. 6 C 626/2004 (see Enclosure E7)

206. The claimant requested the court to impose an obligation upon the defendant to pay compensation for unjust enrichment for the period of four months (from 1 November 2003 to 28 February 2004) amounting to CZK 10,728, which the defendant had allegedly gained by paying low rent for the use of the flat, this rent amounting to only CZK 818 a month. On 3 March 2005 (file ref. no. 24 Co 35/2005) the Prague Regional Court quashed the previous Nymburk District Court judgment in which the action had been rejected.

On the basis of the appellate court's legal reasoning the inferior court decided, in the decision mentioned in the heading, to partly grant the action. In the substantiation of the judgment it noted, *inter alia*, the following:

> "The claimant requested a monthly rent amounting to CZK 2,682 for the period from 1 November 2003 to 28 February 2004. The court fixed the monthly rent at an amount CZK 1,000 lower, i.e. CZK 1,682, having regard, in particular to the defendant's pension, because in such case she would pay nearly CZK 5,000 for housing costs, which amounts to nearly three quarters of her monthly pension. For this reason the court rejected the rest of the amount claimed, although the rent determined by the court is not equal to the market rent, not even to the economic return of the costs incurred by the claimant and not even to the costs he would have to pay in the future. Nevertheless, the claimant may gain revenue by letting other flats for a rent that would be equal to the non-controlled rent […]."

The Prague Regional Court subsequently upheld the last decision (judgment of 25 May 2006 file ref. no. 24 Co 197/2006 – see Enclosure E8).

(iii) The Prague Municipal Court resolution of 14 April 2006 file ref. no. 14 Co 102/2006 (see Enclosure E9)

207. The court of first instance rejected the action against the Czech Republic – the Ministry of Finance, in which the claimant sought payment for damages amounting to the difference between the controlled rent and rent determined by him in flats in the house owned by him for the period from 1 January 2002 to 30 April 2004.

The claimant saw a violation of the defendant's legal obligation in that the defendant was unconstitutionally regulating rent, and it did not adopt a statutory regulation, in conformity with the Constitution, that would determine an adequate rent. The court of first instance concluded that the State was not legally responsible for creating rules, or for the failure to adopt a statutory regulation concerning a certain field, but the State was responsible on a political level, although rights established under political responsibility could not be claimed before a court.

In the decision mentioned in the heading, the appellate court quashed the judgment of the inferior court while it noted in the substantiation, *inter alia*, the following:

> "In the light of the above Constitutional Court's case law it is necessary to abandon the mentioned narrow interpretation of the term 'incorrect official procedure', which is narrowed down to only a violation of procedural rules of State authorities which are not related to the decision making process itself.
>
> Therefore an incorrect official procedure may be defined as not only procedural shortcoming on the part of a State authority, but with regard to the aim pursued by the activities of the State authority, it is any procedure eventually aimed at the realisation of the powers of the State authority. Therefore if the legislative body proceeded in a unconstitutional way by not providing for a statutory rent regulation in a manner that conforms with the Constitution, then the course of action followed by it was incorrect and it can be considered an incorrect official procedure within the meaning of Section 13 of Act no. 82/1998.

> Therefore one of the requirements for State liability for damage caused by an incorrect official procedure is met and therefore in relation to the challenged judgment there is also cause for appeal […]. However, since the court of first instance, due to having a different interpretation of the law, did not deal with the remaining two requirements for State liability for damage (the existence of damage and a chain of causation between the incorrect official procedure effected by the State and the damage) and it did not present any evidence in this respect, the appellate court […] quashed the judgment of the court of first instance and […] remanded the case to the court of first instance for further proceedings.
>
> As regards the amount of damages claimed by the claimant the action itself is still unclear and unintelligible. […] It is therefore necessary to request the claimant to complete it first.
>
> The claimant specifies the damages claimed at CZK 620,980 for the period from 1 January 2002 to 30 April 2004, but he does not provide any detailed justification. It is therefore necessary to supplement the action with specifications on the exact floor area of each flat, the existing rent in case of each flat and information on the amount of rent the claimant requests in his action in case of each flat, on the amount of investments he made in each flat *etc*. Only on the basis of such description of the decisive facts would the court of first instance be able to determine whether the rent claimed by the claimant in his action reflects the aspects stated by the Constitutional Court for a rent regulation to be in conformity with the Constitution.
>
> In this connection it is necessary to repeat that according to the Constitutional Court, rent regulation itself is not unconstitutional, only the low amounts that the rents are fixed at by the State in a unconstitutional way. Therefore it would not be possible to match the amount of rent determined in this dispute with the 'market', or usual rent, which would be relevant only in case of a complete rent deregulation."

The court of first instance subsequently rejected the action again in its judgment of 13 March 2007, when it did not entirely follow the legal opinion of the appellate court. For that reason the Prague Municipal Court quashed its decision once more and remanded the case to it for a new hearing. In the substantiation of its resolution of 17 August 2007 file ref. no. 14 Co 244/2007 the Prague Municipal Court repeated and thoroughly explained the arguments for its conclusion that in the case in question it was necessary to regard the existence of incorrect official procedure as proven (see Enclosure E10).

(iv) The Pardubice District Court resolution of 9 May 2006 file ref. no. 10 C 178/2004 (see Enclosure E11)

208. In its finding of 8 February 2006 file ref. no. IV. ÚS 611/05 (see § 193 of the Observations above) the Constitutional Court quashed the Pardubice District Court judgment of 7 October 2004 file ref. no. 178/2004 and the subsequent Hradec Králové Regional Court judgment file ref. no. 22 Co 70/2005.

After the delivery of this finding the claimant extended his action and requested payment of the difference between the usual rent and the real payment for

the use of the flat in the period from 10 March 2003 to 10 March 2006, specifically the payment of CZK 125,856 with default interest amounting to CZK 3,776. The Pardubice District Court, as the court of first instance, granted this change in the action.

At a further stage of the proceedings the participants concluded an out-of-court settlement which the court approved in the decision mentioned in the heading in the following wording:

> "The defendant shall be obligated to pay to the claimant the amount of CZK 125,856 together with default interest amounting to CZK 3,776 and to pay to the claimant the costs of the proceedings, to be paid to the lawyer […] in an amount of CZK 20,935, in the following instalments: CZK 10,000 within ten days of the resolution's finality and in monthly instalments of CZK 1,100 payable always on the 25th day of each month starting in the month following the resolution's finality and while losing the privilege of instalments in case of default with the payment of even a single instalment."

(v) The Nymburk District Court judgment of 15 September 2006 file ref. no. 8 C 1005/2005 (see Enclosure E12)

209. In its judgment of 1 November 2005 the court of first instance rejected an action in which the claimant requested additional payment for the increased rent for the period from 1 August 2003 to 31 January 2004, in respect of which the claimant did not reach an agreement with the defendant. The claimant based its claim on the provision of the Civil Code concerning unjust enrichment. The court of first instance rejected the action noting that with regard to the absence of any relevant regulation, as referred to in Section 696, subsection 1 of the Civil Code, the rent could not be unilaterally increased.

The appellate court quashed the judgment of the inferior court noting in the substantiation *inter alia* the following (the Prague Regional Court judgment of 25 May 2006 file ref. no. 27 Co 217/2006 – see Enclosure E13):

> "[… even] after 1 August 2003 it was the defendant's obligation, as the former tenant, whose time limit for vacation from the flat has not elapsed yet, to pay the rent. Therefore the claimant's claim is not a claim for unjust enrichment, but a claim for rent, as was correctly concluded by the court of first instance.
>
> As a preliminary issue it must be resolved whether the claimant had the right to claim an increased rent from the defendant when the participants did not agree on it. The existing wording of Section 696, subsection 1 of the Civil Code referred to a special regulation regarding the landlord's opportunity to unilaterally increase the rent. On the basis of the absence of this regulation the court of first instance concluded that the claimant had no entitlement to an increased rent. However, with regard to the Constitutional Court finding of 20 February 2006 file ref. no. Pl. ÚS 20/05 it is necessary to consider the above opinion of the court of first instance as erroneous.
>
> From the mentioned finding it stems that where there are obvious and unacceptable consequences of the legislator's failure to act in respect

> of the adoption of presumed regulation, it is necessary to replace the instruments of the legal protection of one group of the landlords (the ones restricted by the controlled rent) that were missing on the level of 'ordinary' Acts by the ordinary courts' securing a proportional protection of their subjective rights and interests protected by the law. These courts are to provide this protection in a way that despite the absence of presumed specific regulation they must decide on rent increases and they must do so depending on the local conditions so that discrimination does not occur. They must determine the rent increase after a thorough assessment of all circumstances of the case, the use of common principles and practice of civic life, the work of legal theorists and the courts' established case law, in conformity with the Constitution.
>
> This finding must be used also in dealing with the above preliminary issue. In the appellate court's opinion the circumstance that in the meantime Act no. 107/2006 was adopted is not relevant for the assessment of the case, because it does not apply to the period for which the claimant requests the increased rent."

In the new decision (indicated in the heading) the court of first instance based its decision making on the legal reasoning of the appellate court and granted the action (with the exception of the part in which the claimant requested imposition of an obligation to pay default interest for the adjudicated sum). In the substantiation of the decision the court noted the following:

> "With regard to the ascertained facts of the case the court believes that the claimant's claim is justified. In the opinion of the court of first instance rent amounting to CZK 2,500 a month […] is entirely appropriate given the defendant's situation and also with regard to the usual rent in the region in question in the cases of the specified flats […]. The claimant, as the landlord, also has certain made expenditures as regards the whole house, which he proved. However, on the other hand the court also took into account the fact that the claimant did not obtain the house by way of inheritance or restitution, but he had bought it with full knowledge of the social and legal situation in the Czech Republic. Therefore if it was ascertained after the evidence that the usual rent for the flat under consideration amounted to at least approximately CZK 5,000 a month in the region in question, then in the court's opinion the rent requested by the claimant amounting to CZK 2,500 is not excessive in any way."

The Prague Regional Court subsequently upheld the last decision (judgment of 26 April 2007 file ref. no. 27 Co 110/2007 – see Enclosure E14).

(vi) The Brno Municipal Court judgment of 10 October 2006 file ref. no. 31 C 262/2004 (see Enclosure E15)

210. In the decision cited in the heading the court imposed an obligation upon the defendant to conclude an amendment to the lease contract with the claimant increasing the rent to CZK 3,000 a month (the original sum was CZK 1,584).

In the substantiation of its decision the court noted, *inter alia*, the following:

> "In the case in question the defendant particularly objected that given the existing legal situation the ordinary court was not entitled to increase the rent or to intervene in the content of the tenancy. However, this defendant's assertion is defeated by the judgment of the Supreme Court of the Czech Republic of 7 July 2006 file ref. no. 26 Cdo 32/2006, […].
>
> […]
>
> During the proceedings, Act no. 107/2006, which is a special regulation as referred to in Section 696, subsection 1 of the Civil Code and which provides for a unilateral rent increase effected by a landlord, came into effect. Even in a situation when there is a regulation allowing the landlord to unilaterally increase the rent under the conditions stipulated in it (controlled rent), the court imposed an obligation upon the defendant to conclude an amendment to the lease contract concerning the rent as mentioned in the ruling of this judgment."

(vii) The Plzeň Regional Court resolution of 28 February 2007 file ref. no. 61 Co 288/2006 (see Enclosure E16)

211. In this decision the appellate court quashed a Plzeň-jih District Court judgment in which the action for the determination of the rent had been rejected. In the substantiation of the challenged decision the court of first instance noted that it was not entitled to intervene in the participants' relationship under consideration when without the parties' consent the content of the lease contract could not be modified and changes to it could not be enforced in court proceedings, because such procedure was not based on law.

In the substantiation of its decision the appellate court noted, *inter alia*, the following:

> "[…] In a number of its decisions the Supreme Court of the Czech Republic has noted that neither the Civil Code (nor any other Act) allowed the court to intervene with a contractual tenancy by changing any of its component parts, including the amount of rent, and that this competence was confined to the legislative and executive powers which the ordinary courts could not intervene in or substitute for.
>
> However, the Constitutional Court of the Czech Republic found this court practice contrary to the constitutional order and in a number of its decisions […] it was held that the courts were entitled to decide on a unilateral increase or determination of rent. Subsequently, the Supreme Court of the Czech Republic adapted itself to this conclusion (e.g. decision file ref. no. 26 Cdo 32/2006). Finally, the same decision was made also in a similar case involving the same claimant before the Plzeň-jih District Court when the Supreme Court of the Czech Republic, in its decision file ref. no. 26 Cdo 1213/2006, quashed the Plzeň Regional Court judgment file ref. no. 15 Co 535/2005-42 and the Plzeň-jih District Court judgment file ref. no. 6 C 41/2005-29 and remanded the case to the court of first instance for further proceedings, along with the legal reasoning mentioned above.

> With regard to the above facts it is evident that the challenged judgment can no longer stand […]."

On 7 August 2007 the court of first instance approved the settlement concluded between the participants in the proceedings (resolution file ref. no. 7 C 92/2005 – see Enclosure E17).

(viii) The Prague 4 District Court judgment of 31 January 2007 file ref. no. 28 C 389/2003 (see Enclosure E18)

212. In this decision the District Court partly granted the landlords' action for the determination of rent. The court ordered the commissioning of an expert opinion, according to which the usual rent in the flat in question was CZK 5,000. The court determined this amount as the rent and it did so for a period starting on the day the action was brought *pro futuro* (i.e. from 25 August 2003); it rejected the rest of the action.

The defendant lodged an appeal against the judgment, but on 15 August 2007 the Prague Municipal Court dismissed the appeal because the appeal period was over. Therefore the District Court's decision is final.

I. INTERNATIONAL LAW

(i) Universal Declaration of Human Rights

213. The relevant part of Article 25 § 1 of the Declaration reads as follows:

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services […]."

(ii) International Covenant on Economic, Social and Cultural Rights

214. Article 11 § 1 of the Covenant reads as follows:

> "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

(iii) European Social Charter

215. Article 16 of the Charter reads as follows:

> "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."

216. Article 4 § 2(a) of the Additional Protocol to the European Social Charter stipulates:

> "With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:
>
> […]
>
> 2. to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
>
> a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
>
> […]."

THE LAW

(i) Summary of the Applicants' arguments

217. The Government find that the texts of the applications of the individual Applicants are overwhelmingly similar, they are apparently modelled on a sample application published by the Intervening Association on its website (*www.osmd.cz*).

218. The Applicants claim their right to the peaceful enjoyment of their possessions (Article 1 of Protocol no. 1), the right to an effective remedy taken together with the right to the peaceful enjoyment of possessions (Article 13 taken together with Article 1 of Protocol no. 1) and the prohibition of discrimination taken together with the right to the peaceful enjoyment of possessions (Article 14 taken together with Article 1 of Protocol no. 1).

219. The Applicants themselves – with regard to the above model relatively uniformly – summarise their complaints as follows (see e.g. point II. 2. of the application form of 16 June 2005 submitted by Applicant Vomočil):

> "Through long-standing failure to respect the Charter of Fundamental Rights and Freedoms, the Constitution of the CR and international agreements on the part of the Government of the Czech Republic and its individual executive components, as well as on the part of the House of Deputies of the CR [and] through long-standing failure to respect the findings of the Constitutional Court of the CR, Applicants […] have found themselves in a situation where the Government of the Czech Republic has imposed upon them and continues to impose upon them such restrictions in the regulation of the level of rent and at the same time is creating such further conditions of rental that it has in fact transferred to them the obligation to provide tenants with social subsidies for housing, regardless of the actual social standing of the tenant.
> […]

> The Czech Republic to the detriment of Applicants […] has made legislatively impossible even such regulation of the level of rent as is in accordance with the Convention and would enable the collection of rent at least at the level of the costs of simple reproduction. […]
>
> It hereby also rendered impossible the exploitation of one of the attributes of the right of ownership, i.e. the right to enjoy benefits from ownership. In this case it prevented the applicants […] from having profit from their ownership in the form of the revenue from the renting of accommodation.
>
> In brief: In spite of the fact that all the regulation rules were, because of the disproportionately and unfoundedly low price of the regulated rent and the transfer of the obligation to provide social compensation to the tenants from the state to the lessors, nullified by the Constitutional Court, the Czech Republic did not open the possibility of the deregulation of rents, and at the same time preserved the legal enforcement of continuing in rent relations with regulated rent."

Of course, in the applications a number of particular complaints are included and the Government shall deal with these in the relevant places.

(ii) The notion of rent regulation

220. Price regulation in general is provided for in detail in the Price Act no. 526/1990 (see §§ 166 to 167 of the Observations above). Under this Act price regulation means determination or direct regulation of prices by price authorities and local authorities. The individual methods of price regulation are:

a) price fixation ('officially fixed prices');

b) regulation of price development in connection with material conditions ('material price regulation');

c) regulation of price development in time ('time regulated prices');

d) price moratoria.

221. In the Czech Republic, for rent in flats owned by private persons, in the past there were three methods of price regulation: officially fixed prices, more specifically maximum prices (officially fixed prices are defined as prices of a set type of good fixed by the price authorities as maximum, rigid or minimum; the maximum price is a price that may not be exceeded), materially regulated prices (material regulation of prices consists in the determination of conditions by the price authorities for negotiations on prices) and price moratoria.

222. The Government would recall (and refer to the above summary of the domestic law for details – see §§ 84 to 161 of the Observations) that until 19 March 2003 (incl.) the following regulations were in force in the Czech Republic, which stipulated, each one of them in a specific manner, the maximum possible level of rent which the landlord, as the owner of defined groups of houses and flats, could collect:

– in the period until 31 December 1993 the rent was regulated by Decree no. 60/1964 (from 1 July 1992 to 31 December 1993 as amended by Decree no. 15/1992);
– in the period from 1 January 1994 (for certain flats already from 1 July 1993) to 31 December 2001 the rent was regulated by Decree no. 176/1993, as amended;
– in the period from 1 January 2002 to 14 November 2002 the rent was regulated by Ordinance no. 1/2002;
– in the period from 15 November 2002 to 17 December 2002 the rent was regulated by Ordinance no. 6/2002;
– in the period from 20 December 2002 to 19 March 2003 the rent was regulated by Government Order no. 567/2002.

223. Until 30 June 1993 the rent in flats subject to regulation were regulated by their maximum price. From 1 July 1993 to 17 December 2002 regulation applied consisted in both, determination of the maximum price ('maximum basic rent') and material regulation ('materially regulated rent'; its level was limited to double or triple the maximum basic rent). In the period from 20 December 2002 to 19 March 2003 price moratorium over rents applied in the Czech Republic.

At the same time, the relevant regulations clearly stipulated which groups of houses and flats were excluded from the rent regulation.

224. Therefore until 19 March 2003 (with the exception of a short period of two days – 18 and 19 December 2002) in case of defined groups of houses and flats the rent was regulated at a specific maximum level that could not be exceeded. After this date the rent was no longer regulated in any way.

(iii) Structure of the Government's arguments

225. The Government shall express their opinion on the individual fundamental aspects of the submitted applications in the following order:

– on the admissibility of the applications,
– on the alleged violation of Article 1 of Protocol no. 1,
– on the alleged violation of Article 13 of the Convention taken together with Article 1 of Protocol no. 1,
– on the alleged violation of Article 14 of the Convention taken together with Article 1 of Protocol no. 1,
– on the "pilot-judgment" procedure and the existence of a "systemic situation".

The above order essentially reflects the order of the Court's questions, with the exception of the questions concerning the "pilot-judgment" procedure and the existence of a "systemic situation". In the Government's opinion these questions can be answered only after the Government express their opinion on all the remaining questions. By placing this part of the argumentation at the very end of the Observations, the necessity of referring too often to arguments, which the Gov-

ernment intend to develop in subsequent parts of the Observations, shall certainly be avoided.

226. With regard to the fact that the objective of the proceedings on the submitted applications is not only to answer the question of whether, in these individual cases, rights and freedoms guaranteed under the Convention were violated or not, but also whether the potentially found violations do not disclose some systemic deficiencies in the national law or practice, the Government consider it appropriate to concentrate, in their argumentation, not only on the individual applications (argumentation *in concreto*), but also to try to grasp the problem in question on a general level (argumentation *in abstracto*).

Nevertheless, it is understood that, as a matter of principle, both levels of the argumentation must partially overlap and support each other.

I. ON THE ADMISSIBILITY OF THE APPLICATIONS

227. In the first place the Court poses the question what domestic remedies – if any – within the meaning of Article 35 § 1 of the Convention should the Applicants have exhausted in order to comply with the requirements of that provision and whether they have exhausted such remedies.

The Court also posed the question whether the situation of which the Applicants complain is a "continuing" one for the purposes of Article 35 § 1 of the Convention.

228. Article 35 of the Convention reads as follows:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
>
> 2. The Court shall not deal with any application submitted under Article 34 that
>
> (a) is anonymous; or
>
> (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
>
> 3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
>
> 4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings."

229. The Government shall deal with these preliminary pleas of inadmissibility of the applications in the following order:

- plea of incompatibility of the applications *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention,
- plea of failure to meet the six month time limit for submitting the applications within the meaning of Article 35 § 1 of the Convention,
- plea of non-exhaustion of all domestic remedies within the meaning of Article 35 § 1 of the Convention,
- and other pleas of inadmissibility relating to the submitted applications.

230. In any case, the Government believe that the issue of existence of domestic remedies, as well as to a certain extent even other issues of the applications' admissibility, are in a rather close relationship with the merits of the submitted applications, as is often the case in the Court's case law. The Government shall draw attention to this circumstance in the relevant parts below again.

A. Plea of Incompatibility of the Applications ratione temporis *with the Provisions of the Convention*

(i) Summary of the Court's relevant case law

231. The Court's jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation.

Accordingly, the Court is competent to examine the facts of a given case for their compatibility with the Convention only in so far as they occurred after the ratification of the Convention or its Protocols thereto by the respondent State. It may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *mutatis mutandis* the Grand Chamber's decision of 19 December 2002 on the admissibility of application no. 31443/96 *Broniowski v. Poland*, § 74, and decision of 16 September 2003 on the admissibility of application no. 35014/97 *Hutten-Czapska v. Poland*).

(ii) On the issue of the Court's jurisdiction *ratione temporis in abstracto*

232. The Convention is binding on the Czech Republic from 18 March 1992 onwards, when the former Czech and Slovak Federal Republic ratified the Convention (for details see decision of 23 May 2000 on the admissibility of application no. 37527/97 *Kuchař and Štis v. the Czech Republic*).

The same applies to Protocol no. 1 to the Convention which the former Czech and Slovak Federal Republic ratified along with the Convention itself.

233. Therefore the Government believe that in principle they cannot be held liable for any acts or omissions that occurred prior to 18 March 1992 and which the Applicants view as causing violation of their rights and freedoms guaranteed by the Convention.

Nevertheless, the Government accept that the Court may have regard to the facts prior to this date if it concludes that they have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date.

(iii) On the issue of the Court's jurisdiction *ratione temporis in concreto*

234. In the individual cases of the submitted applications the plea of incompatibility *ratione temporis* may be applied in general only in the case of Applicants Hlaváček who became owners of the houses in question prior to 18 March 1992.

Therefore in relation to them the Government cannot be held liable for any alleged violations of rights and freedoms guaranteed by the Convention that occurred prior to the aforementioned date.

235. The remaining Applicants acquired the immovables in question after that date, therefore the plea of incompatibility *ratione temporis* in the above sense, in general, cannot apply in their cases.

(iv) Conclusion

236. In principle the Government cannot be held liable for acts and omissions imputable to the Czech Republic which were alleged to have occurred prior to 18 March 1992.

Therefore in the case of Applicants Hlaváček the Government plead incompatibility of the applications *ratione temporis* with the provisions of the Conventions and its Protocols within the meaning of Article 35 § 3 of the Convention, if such acts and omissions should constitute violation of the Applicants' rights and freedoms guaranteed by the Convention.

B. Plea of Failure to Meet the Six Month Time Limit for Submitting the Applications

(i) Summary of the Court's relevant case law

237. Pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter within a period of six months from the final decision in the process of exhaustion. If no remedies are available or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (judgment of 18 January 2007 in the case of application no. 59334/00 *Chitayev and Chitayev v. Russia*, § 117).

238. Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period may be calculated from the time when the applicant becomes aware, or should have become aware, of those circumstances (*ibid.*).

239. However, when the alleged violation relates to a continuing situation against which no domestic remedy is available, the six month period begins to run only when that situation has ended (judgment of 16 November 2006 in the case of application no. 39299/02 *Mužević v. Croatia*, § 77).

240. The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicant a victim (the Commission decision of 30 November 1994 on the admissibility of application no. 24841/94 *A.A. v. the United Kingdom*, point 2).

(ii) On the issue of meeting the time limit for submitting an application *in abstracto*

a) Existence of "a continuing situation"

241. The Government believe that in the case in question it can be considered that there is "a continuing situation" in the sense in which the Court's case law uses this term, i.e. in opposition to the classic cases where the alleged violation of the Convention consists in a specific instantaneous event.

242. The subject matter of the applications is, in a simplified way, that an unreasonable burden has been put on the Applicants as a result of the rent regulation. Therefore if, for a certain period of time, the maximum level of rent that the landlord is allowed to collect, is fixed, and the Applicants consider this level so low that it interferes with their right to the peaceful enjoyment of their possessions, then it is evident that theoretically in this case there is a certain "continuing situation".

243. However, this statement is entirely neutral as regards the question whether this "continuing situation", as the Applicants believe, is actually contrary to the Convention or not.

244. It is also entirely neutral as regards the question whether this "continuing situation" still exists or whether it has already ended.

The Government believe that both parties would agree that the six month time limit for submitting an application with the Court always begins to run at the moment the situation violating the Convention ends, at the latest, and this is all subject to an assumption that there are no remedies at the domestic level.

In such case it stems from the Court's case law that if the applicant does not submit his/her application within this defined time limit, it must be rejected as a whole pursuant to Article 35 §§ 1 and 4 of the Convention.

245. The Government believe that it is not ruled out that the situations of continuing violation of the Convention, if such situations are even established in the cases of specific Applicants, could have been terminated at different moments in the individual cases (e.g. by the fact that the flat in question ceased to be subject to rent regulation, the person concerned sold the flat, his/her action for the determination of higher rent was granted, he/she reached an agreement with the tenant on amendment to the lease contract or on the conclusion of a new contract *etc*.).

Assessment of the foundation of the cause for dismissal of the application of failure to meet the time limit for submitting an application is therefore in principle inevitably connected with the assessment of the merits of the raised complaints of violation of rights and freedoms guaranteed by the Convention.

b) Determination of the beginning of the time limit for submitting an application in cases where "a continuing situation" exists

246. The Government essentially accept the conclusion stemming from the Court's established case law, according to which if the alleged violation of rights and freedoms guaranteed by the Convention consists in the existence of a certain situation that still exists, the plea of failure to meet the time limit for submitting an application cannot be applied and the application as a whole cannot be rejected as late and it is not possible to claim that the time limit for submitting the application began to run on the day when the situation violating the Convention was established.

However, in the Government's opinion this conclusion should not mean that the time limit for submitting an application is met in relation to the whole period during which the situation of the alleged violation of rights and freedoms guaranteed by the Convention has been in existence.

247. The Government admit that the respondent State is primarily responsible for the violation of the Convention, if it in fact takes place.

On the other hand, that should not mean that victims of such continuing violations should be allowed to wait as long as they wish before they submit the application to the Court, if they believe that in the legal order of the State concerned there are no effective domestic remedies against violation of the rights and freedoms that they want to invoke in proceedings before the Court.

248. If the applicant does not address the Court within six months from the day when the state of affairs allegedly violating the Convention commenced, but he/she does so later, it is certainly true that his/her application as a whole cannot be rejected for the failure to meet the time limit for its submission.

However, in the Government's opinion it can be rejected in the part of the application concerning the period of more than six months prior to the actual submission of the application. In other words: the Court should deal with the alleged continuing situation of violation of rights and freedoms guaranteed by the Convention only in the period of six months prior to the submission of the application.

249. The application of this objection does not always have to be particularly significant for the assessment itself of the merits of the application, if the situation of the specific applicant has not changed for the whole period of the situation (allegedly) violating the Convention in its aspects relevant for the assessment of the merits. On the other hand, it always becomes important in any decision to afford just satisfaction under Article 41 of the Convention. Therefore the compensation for pecuniary or non-pecuniary damage caused to the applicant in consequence of the found violation of rights and freedoms guaranteed by the Convention should not relate to the period of more than six months prior to the submission of the application.

250. In the Government's opinion this approach is entirely legitimate, since it is fully compliant with the obligation upon potential victims of violations of the Convention to claim their rights in the prescribed manner, which is itself part of the general obligation to be mindful of one's rights, which is expressed in the principle of the Roman law *vigilantibus iura* (*vigilantibus, non dormientibus iura suveniunt*).

This approach is also present as a latent aspect of the Applicants' obligation to exhaust all effective domestic remedies and their obligation to submit an application within six months, as well as other obligations, and the failure to satisfy these obligations results in the application being rejected as inadmissible under Article 35 § 4 of the Convention, although it would otherwise potentially be a well founded application.

The respondent State is indeed entitled to raise the failure to perform these obligations, even though the State remains responsible for the alleged (and potentially subsequently found by the Court) violations of the Convention.

251. In a situation where the applicant is convinced that there are no effective domestic remedies, he should not be given the opportunity to wait for an unlimited time before submitting an application to the Court without bearing the risk of being compelled to bear certain negative consequences of his/her delay. The Government believe that this is particularly true in a situation where the violation of the Convention is an instantaneous act and where, therefore, the possible sanction for not meeting the time limit for the submission of the application is its rejection *en bloc*.

This is also true in a situation where the violation of the Convention consists in a certain "continuing situation" and where such sanction should therefore be the partial rejection of the application, specifically for the period prior to the six months before its actual submission.

252. In the Government's opinion this negative consequence is entirely appropriate as regards the specific circumstances of the continuing violations of the Convention. On one hand full respect is given to the fact that, if the alleged violation of human rights and fundamental freedoms consists in a specific existing situation, the application as a whole cannot be rejected for being late, but the applicant is sanctioned in a certain way for his/her delay in submitting the application for more than six months after the day when the disputed situation was estab-

lished, without any legitimate and sufficient justification of his/her course of action.

253. In this context it is necessary to bear in mind that the State authorities cannot address the Court of their own volition [e.g. in the form of a preliminary ruling on the interpretation and application of the Convention, by analogy to the proceedings on preliminary questions known in the European Communities legal system (*droit communautaire*) – see Article 234 of the Treaty establishing the European Communities] with a request to assess whether the state of affairs in question is contrary to the Convention or not.

Therefore it is entirely legitimate to expect the applicant to submit his/her application to the Court within the period of six months from the day when the situation, which, according to his/her conviction, represents a violation of his/her rights and freedoms guaranteed by the Convention, was established.

By imposing this obligation on the applicant no unreasonable burden is placed on him/her, especially if we realise that in classic cases of violations of the Convention consisting in a specific instantaneous act imputable to the State (and when there are no effective domestic remedies) the applicant has an identical obligation, in the case of failure to perform it he/she loses the opportunity to claim redress before the Court *entirely*, and not only partially, as should be the case for continuing violations of the Convention.

(iii) On the issue of meeting the time limit for submitting an application *in concreto*

254. As analysed in detail below (see § 322 to 329 of the Observations), the Government believe that the Applicants did not exhaust all domestic remedies within the meaning of Article 35 § 1 of the Convention, and that is *at least* as regards the alleged violations of rights and freedoms guaranteed by the Convention that allegedly occurred in the period after 19 March 2003 (if we considered the action for rent increase to be the only effective remedy).

Therefore the Applicants could in principle claim violation of the Convention for the period prior to 19 March 2003 (incl.) at most. Nevertheless, in this respect their applications were submitted after the time limit of six months provided for in Article 35 § 1 of the Convention because Applicant Vomočil addressed the Court for the first time on 20 October 2004, Applicant Morawetz and Applicants Hlaváček both on 16 October 2006 and the Applicant Company on 4 January 2007.

255. If the Court does not accept the plea of non-exhaustion of all domestic remedies and the subsequent plea of failure to meet the time limit for submitting applications, then from the Government's above arguments (see § 246 to 253 of the Observations) it stems that the Court should deal with violations of rights and freedoms guaranteed by the Convention, which the Applicants claim, only if these occurred within the period of six months prior to the submission of the individual applications.

256. In any event, it will also be necessary to take into account whether in the individual Applicants' cases the possible continuing situation of violation of the Convention was not terminated more than six months prior to the submission of the individual applications (see §§ 244 to 245 of the Observations above).

(iv) Conclusion

257. The Government believe that in this case there is a certain "continuing situation" in the respect that the operation of regulations controlling the rent – which is the subject matter of the select and other applications submitted to the Court – and cannot be considered a specific instantaneous event.

258. The time limit for submitting these applications can be satisfied only if the Applicants addressed the Court within six months from the day when this "continuing situation" ended, if indeed the situation has ended.

259. Nevertheless, even in such a case, in the Government's opinion, the Court may only deal with the period of six months prior to the submission of such application.

C. Plea of Non-Exhaustion of All Domestic Remedies within the Meaning of Article 35 § 1 of the Convention

(i) Summary of the Court's relevant case law

260. In its established case law the Court has repeatedly held that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions (judgment of 23 April 1996 in the case of application no. 16839/90 *Remli v. France*, § 33).

The Court recalled that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters rights through their own legal system (judgment of 26 July 2001 in the case of application no. 51585/99 *Horvat v. Croatia*, § 37).

Therefore the complaints intended to be made subsequently to the Court should have been made to the appropriate domestic courts, at least in substance and in compliance with the formal requirements and time limits laid down in domestic law (judgment of 19 March 1991 in the case of application no. 11069/84 *Cardot v. France*, § 34).

It is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (Grand Chamber's judgment of 28 July 1999 in the case of application no. 25803/94 *Selmouni v. France*, § 74, judgment of 7 December 1976 in the case of application no. 5493/72 *Handyside v. the United Kingdom*, § 48)

261. These principles are based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system (judgment of 10 July 2003 in the case of application no. 53341/99 *Hartman v. the Czech Republic*, § 56).

262. Under Article 35 of the Convention, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (*ibid.*, § 57).

263. Furthermore, in the area of exhaustion of domestic remedies, Article 35 apportions the burden of proof. It is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been discharged, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (*ibid.*, § 58).

264. The Court has previously held that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the circumstances of each case. That means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the legal and political context in which they operate as well as the personal circumstances of the applicants (*ibid.*, § 59).

(ii) On the issue of existence and effectiveness of individual domestic remedies *in abstracto*

265. The Government believe that the Applicants had and have at their disposal effective remedies against the violation of rights and freedoms guaranteed by the Convention which they claim in the proceedings before the Court.

The remedies that were or are available to the Applicants are in general the following:

- action against the tenant for rent increase,
- action for damages against the State.

266. If we use the classification of domestic remedies against the violation of the right to a hearing within a reasonable time established by the Court (see Grand Chamber's judgment of 26 October 2000 in the case of application no. 30210/96 *Kudła v. Poland*, § 158), we can consider an action against a tenant for rent in-

crease as a remedy of a preventive nature, because such action is capable of preventing the creation or continuation of a violation of the right to the peaceful enjoyment of possessions (see §§ 268 *et seq.* of the Observations below), and we can consider an action for damages against the State a remedy of a compensatory nature, because by using it the aggrieved party may achieve suitable redress for a violation of the said right that has already occurred (see §§ 290 *et seq.* of the Observations below).

The opportunity to challenge the constitutionality of the provisions of the Civil Code that provide for the extinguishment and passage of tenancy can be seen as an alternative preventive remedy (see §§ 285 *et seq.* of the Observations below).

267. At the same time it is clear enough that the question of whether the Applicants had at their disposal an effective remedy against the violation of their rights and freedoms guaranteed by the Convention can be reliably assessed only after it is evident which of the objections and pleas raised by the Applicants and to what extent they (from the point of view of, for example, the time limitation) can be considered arguable.

In this connection the Government would recall the Court's established case law (see e.g. judgment of 25 March 1983 in the case of *Silver v. the United Kingdom*, § 113), according to which Article 13 of the Convention is applicable *ratione materiae* only under the condition that the applicant has an arguable claim (*grief défendable*) to be the victim of a violation of the rights and freedoms guaranteed by the Convention.

Therefore not even in the domain of Article 35 of the Convention – which is closely connected to the right to an effective remedy, within the meaning of Article 13 of the Convention (see § 261 of the Observations above) – should the Government be obligated to *a priori* prove the existence and effectiveness of remedies against all violations of human rights and fundamental freedoms and to such an extent as they seem to follow from the Applicants' assertions.

a) Preventive remedy: action against a tenant for rent increase

268. The Applicants' main objection is that the Czech Republic (for certain houses and flats) limited the amount of rent that could be collected from the tenants. The Applicants seem to challenge particularly the level at which the rent is regulated, because in their opinion this level is not sufficient and consequently violates their right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol no. 1.

In other words: the Applicants believe, in particular, that they had no opportunity to achieve a situation when the tenant was forced to pay higher rent than that was allowed by the legislation in force at the material time, i.e. rent the level of which is not influenced by the State in any way or at least rent the level of which does not represent a violation of their right to the peaceful enjoyment of their possessions with regard to the circumstances.

269. The Government believe that from a certain moment in time the Applicants had such opportunity in the form of an action brought in a court that would impose an obligation upon the tenant to pay higher rent.

α) Legal basis of the action for rent increase

270. As the Government mentioned above (see §§ 220 to 224 of the Observations) until 19 March 2003 (with the exception of a short period of two days – 18 and 19 December 2002) in case of defined groups of houses and flats the rent was regulated at a specific maximum level that could not be exceeded. After this date the rent was no longer regulated by legislation in any way.

271. After this date, unless the landlord reached an agreement with the tenant on the level of rent, he/she could not unilaterally increase the rent, as had been possible in the period from 1 July 1995 (from the entry into force of Decree no. 30/1995, which amended Decree no. 176/1993 – see §§ 127 *et seq*. of the Observations above) to 17 December 2002 (the last day of force of Ordinance no. 6/2002).

Nevertheless he/she could bring an action in a court for the determination of the new level of rent.

272. This is because the plenary session of the Constitutional Court, in its finding of 28 February 2006 file ref. no. Pl. ÚS 20/05 (see § 194 of the Observations above), noted, *inter alia*, the following:

> "[o]rdinary courts, despite the absence of presumed specific regulation, must decide on the rent increase and they must do so depending on the local conditions so that the discrimination […] does not occur."

It reacted in this way to the situation of an applicant who had brought an action for rent increase which was rejected by the court of first instance noting that in a situation where there was no separate regulation providing for cases in which the landlord would have been entitled to unilaterally increase the rent, within the meaning of Section 696, subsection 1 of the Civil Code, the action could not be granted. The appellate court did not share this opinion and addressed the Constitutional Court with a motion to repeal the whole Part Eight, Chapter Seven, Division Four of the Civil Code (Sections 685 to 716), where the issue of flat tenancies is provided for.

Although the Constitutional Court did not grant the motion, in the substantiation of its finding it suggested a way in which to interpret the existing regulation in conformity with the Constitution.

273. The Constitutional Court expressed a similar opinion a few days earlier in finding of 8 February 2006 file ref. no. IV. ÚS 611/05 (see § 193 of the Observations above):

> "The ordinary courts cannot refuse to protect a fundamental right by referring to the *vacuum legis*, but on the contrary they are obligated to provide such protection. They are requested to do so in a way that will protect the very substance and objective of the ownership rights (in the

> case in question the ownership rights in respect of a flat), within the meaning of Article 4 § 4 of the Charter."

274. The Constitutional Court subsequently referred to both key judgments, and the legal reasoning contained therein, in its further findings within the decision making on individual constitutional appeals (see e.g. findings of 21 March 2006 file ref. no. I. ÚS 717/05, of 16 May 2006 file ref. no. IV. ÚS 111/06, of 13 July 2006 file ref. no. I. ÚS 47/05, of 17 April 2007 file ref. no. I. ÚS 123/06, of 17 May 2007 file ref. no. I. ÚS 391/05, of 31 May 2007 file ref. no. IV ÚS 282/05, of 26 July 2007 file ref. no. II. ÚS 361/06, of 9 August 2007 file ref. no. II. ÚS 121/06).

275. From the Constitutional Court finding of 8 June 2006 file ref. no. II. ÚS 93/05 an opportunity for the landlords stems to claim higher rent on the basis of an action for surrender of unjust enrichment (for details see § 199 of the Observations).

In the substantiation of this decision the Constitutional Court noted, *inter alia*, the following:

> "The ordinary courts violated the right to judicial protection – and eventually also violated the right to the protection of property – by rejecting the applicant's action with a reference to the non-existence of the implementing Act, presumed in Section 696, subsection 1 of the Civil Code, i.e. regulation allowing for a unilateral rent increase by the act of a landlord, although his only defence was an action against the tenant (the enjoined party in the case in question) for the payment of restitution for unjust enrichment that occurred in the amount of difference between the actual rent given the local conditions and the 'controlled rent'."

ß) Effectiveness of the remedy in practice

276. The Supreme Court also adopted the legal reasoning of the Constitutional Court and the former did so in its case law in both the Constitutional Court proceedings cited above (see e.g. judgment of 31 August 2006 file ref. no. 26 Cdo 1039/2006), and in other proceedings when deciding on making on appeals on points of law filed against appellate court decisions (see e.g. judgment of 7 July 2006 file ref. no. 26 Cdo 32/2006, resolution of 16 August 2006 file ref. no. 26 Cdo 594/2005, judgment of 30 August 2006 file ref. no. 26 Cdo 1013/2005, judgment of 20 September 2006 file ref. no. 26 Cdo 1213/2006, judgment of 10 October 2006 file ref. no. 26 Cdo 1924/2006, judgment of 24 October 2006 file ref. no. 26 Cdo 2106/2006).

277. Finally, inferior ordinary courts have also adopted that legal reasoning (see e.g. the Prague Regional Court judgment of 25 May 2006 file ref. no. 27 Co 217/2006, judgment of the same court of that same day file ref. no. 24 Co 197/2006,the Nymburk District Court judgment of 15 September 2006 file ref. no. 8 C 1005/2005, the Brno Municipal Court judgment of 10 October 2006 file ref. no. 31 C 262/2004, the Prague 4 District Court judgment of 31 January 2007 file ref. no. 28 C 389/2003, the Plzeň Regional Court resolution of 28 February 2007 file ref. no. 61 Co 288/2006, the Prague Regional Court judgment of

26 April 2007 file ref. no. 27 Co 110/2007). We cannot also neglect the Brno Regional Court resolution of 30 August 2006 file ref. no. 38 Co 430/2005 delivered in the proceedings initiated by Applicant Vomočil.

278. However, the conclusion or legal reasoning expressed by the Constitutional Court, with reference to its previous case law, at the beginning of 2006 and on the basis of which there was a subsequent unification of the case law, was not unknown in the decision making practice of the ordinary courts prior to that period. In this connection we can refer to, for example, a Tábor District Court judgment delivered as early as 21 April 2005, i.e. nearly one year prior to the delivery of the above cited Constitutional Court finding file ref. no. Pl. ÚS 20/05. This district court concluded, similarly to the Constitutional Court several months later, that:

> "[i]f the ordinary court is […] to fulfil its constitutional function under Article 90 of the Constitution of the Czech Republic, i.e. to provide protection of rights in a manner defined by law, and if it is to proceed, in civil court proceedings, under Section 1 [of the Rules of Civil Procedure] in a way that fair protection of rights and legitimate interests of the participants is secured, then while respecting the […] principles of the protection of the ownership rights of the flat owners also an ordinary court may, in the absence of the special regulation presumed by Section 696, subsection 1 [of the Civil Code] (i.e. in a situation when the legislator fails to perform its function), intervene in the content of the tenancy concerning a flat as regards the determination of the rent."

The decision of the appellate court, which fully concurred with the legal reasoning of the court of first instance, is dated 8 August 2005 and it was therefore delivered several months prior to the publication of the above Constitutional Court judgment (for details see § 205 of the Observations above).

It is necessary to mention also the proceedings conducted before the Nymburk District Court with file ref. no. 6 C 626/2004. The court of first instance partially granted a landlord's action in its judgment of 9 September 2005 when it followed the legal reasoning of the Prague Regional Court, as the appellate court, expressed in the resolution from as early as 3 March 2005 (for details see § 206 of the Observations).

279. The substantiations of the Tábor District Court decision and the Nymburk District Court decision and subsequent key Constitutional Court findings file ref. no. Pl. ÚS 20/05 and file ref. no. IV. ÚS 611/05 (more extensively quoted in §§ 194 and 193 of the Observations above), as well as other decisions cited above (see §§ 274 to 277 of the Observations), clearly suggest that in the specific cases of the individual claimants or applicants the courts in principle applied the principles contained in early three "repealing" findings of the Constitutional Court from 2000, 2002 and 2003 (see §§ 186 to 188 of the Observations above).

The Constitutional Court did so on essentially the first possible occasion, when the first landlord addressed it with the complaint that the ordinary courts decisions, in which his action for the determination of rent had been rejected, were contrary to the fundamental rights and freedoms guaranteed by the Constitu-

tion. From that moment the Constitutional Court granted basically all constitutional appeals that concerned the same issue (see e.g. the decisions mentioned above in §§ 274 to 275 of the Observations).[1]

Anyway, as early as in the conclusion of a finding from 2003 (see § 188 of the Observations above) the Constitutional Court explicitly noted that it was ready to provide protection in individual cases:

> "With regard to the declared unconstitutionality of the legal status (and due to the mentioned specific features of the lease contracts with 'regulated' rent), if no rent regulation which is in conformity with the Constitution is introduced into the Czech legal order, then the Constitutional Court cannot but comply with its obligations arising under the Constitution and at least in individual cases it would have to secure the functioning of principles arising under the Czech Republic's constitutional order, or the relevant international treaties […]."

280. Therefore the Government believe that the effectiveness of bringing an action for rent increase as a remedy against violation of the right to the peaceful enjoyment of possessions (within the meaning of Article 13 of the Convention taken together with Article 1 of Protocol no. 1) was not established in February 2006, when the Constitutional Court findings which have been cited several times were delivered. The Applicants had this opportunity from as early as 20 March 2003 from when – as mentioned above (see § 224 of the Observations) – there was no regulation controlling the amount of rent.

The Government are convinced that the mere lack of uniformity of the ordinary courts' case law concerning the issue of opportunity to decide on actions for the determination of rent under the existing legal situation should not lead the Court to conclude that the Applicants were not obligated to exhaust such remedy (see also §§ 312 to 321 of the Observations below).

281. In this connection it is particularly necessary to emphasise again that the Constitutional Court has granted the claims of landlords who submitted constitutional appeals to it, and quashed the challenged ordinary courts decisions which did not observe the principles contained in its previous case law. Although the proceedings on a constitutional appeal *stricto sensu* cannot be considered proceedings of an ordinary or extraordinary remedy, and for that reason also not part of civil law proceedings within the meaning of the domestic law. However, on the other hand the Court repeatedly held that with regard to the Constitutional Court's cassation powers in relation to ordinary courts decisions it is necessary to consider proceedings on constitutional appeals to be proceedings that have a direct influence on the decision making on civil rights and obligations, if these were the subject matter of proceedings before ordinary courts (see e.g. decision of 23 October 2006 on the admissibility of application no. 9457/03 *Báča v. the Czech Republic*).

Therefore from the point of view of the Court's case law, a constitutional appeal is a remedy *sui generis* and the Court considers that the proceedings on it

[1] The only exception is the unpublished Constitutional Court resolution of 26 January 2006 file ref. no. III. ÚS 587/05 in which a constitutional appeal was dismissed.

form part of domestic proceedings on civil rights or obligations within the meaning of Article 6 of the Convention. Therefore also in the domain of Article 13 of the Convention the proceedings on actions for rent increase before both, the ordinary courts (the court of first instance, the appellate court, and in some cases also the appellate review court) and the Constitutional Court, within proceedings on a constitutional appeal, need to be viewed as one entity, as proceedings on a remedy against a violation of a right or a freedom guaranteed by the Convention within the meaning of its Article 13.

282. Therefore the Court should not believe that a remedy in the form of an action for rent increase can be considered effective only after the publication of the Constitutional Court findings of February 2006, but it should be considered effective from as early as 20 March 2003. As mentioned above, the landlords who brought such action and in the proceedings on it used all available remedies that the law provided to them to protect their rights, including a specific remedy, the constitutional appeal, were granted protection of their right to the peaceful enjoyment of their possessions by the Constitutional Court and an obligation was imposed upon the ordinary courts deciding on their cases to decide on their actions within the Constitutional Court case law.

283. Should the Court conclude that the landlords who now assert in their applications that they have and had no effective remedies at their disposal in the Czech Republic, were not obligated to use the opportunity to bring an action for rent increase already after 19 March 2003, when the rent ceased to be regulated, then by this it would provide protection to those who – as apposed to other landlords in the same position who made use of this opportunity – were not sufficiently mindful of the protection of their rights, either due to the fact that they did not bring the relevant action at all, or they brought this action but in proceedings on this action they did not make use of all remedies provided to them by the legal order to protect their rights, including a constitutional appeal.

If the Applicants dispute the effectiveness of domestic remedies by asserting that the relevant court proceedings on this remedy would have undoubtedly lasted for an unreasonable period of time (see e.g. points III. 3. 5. and IV. 2. of the application form of 16 June 2005 submitted by Applicant Vomočil), this assertion must be considered clearly speculative. The failure to exhaust a certain remedy cannot be justified by a mere unfounded presumption that the Czech Republic judiciary system would have collapsed if all the potential applicants addressed the courts. Moreover, even if in the case of specific court proceedings there was a violation of the right to a hearing within a reasonable time within the meaning of Article 6 § 1 of the Convention, then the applicants could successfully claim compensation for the damage incurred by them in consequence of this violation (see decision of 16 October 2007 on the admissibility of application No. 40552/02 *Vokurka v. the Czech Republic*, § 62 and 65).

284. Finally, the Government are convinced that the effectiveness of the remedy analysed in this place is also proved by the considerable number of proceedings on actions for rent increase that were discontinued in consequence of the

withdrawal of the action on the ground that in the meantime both parties to the tenancy had reached a certain form of an out-of-court agreement (agreement to pay the rent due, conclusion of a new lease contract, conclusion of an amendment to the lease contract *etc*.); in some cases the parties concluded a settlement that was approved by the court.

With the exception of the case of Applicant Vomočil (see § 23 of the Observations above), in this respect it is possible to refer to for example the Pardubice District Court resolution of 9 May 2006 file ref. no. 10 C 178/2004, in which the settlement between the claimant, the landlord, and the defendant, the tenant, was approved in the following wording:

> "The defendant shall be obligated to pay to the claimant the amount of CZK 125,856 together with default interest amounting to CZK 3,776 and to pay to the claimant the costs of the proceedings, to be paid to the lawyer […] in an amount of CZK 20,935, in the following instalments: CZK 10,000 within ten days of the resolution's finality and in monthly instalments of CZK 1,100 payable always on the 25th day of each month starting in the month following the resolution's finality and while losing the privilege of instalments in case of default with the payment of even a single instalment."

It is not possible to neglect that the defendant undertook to pay the whole sum which the claimant sought in the proceedings in question (for details see § 208 of the Observations above).

A settlement was also reached in proceedings conducted before the Plzeň-jih District Court file ref. no. 7 C 92/2005 (see § 211 of the Observations above).

It is then possible to refer to a number of proceedings conducted before the Mladá Boleslav District Court that also ended in an out-of-court agreement (see e.g. proceedings file ref. no. 8 C 286/2006, file ref. no. 5 C 88/2006, file ref. no. 15 C 285/2006, file ref. no. 5 C 105/2007, file ref. no. 15 C 104/2007, file ref. no. 15 C 105/2007, file ref. no. 15 C 157/2007, file ref. no. 15 C 106/2006, file ref. no. 15 C 132/2006, file ref. no. 15 C 221/2006, file ref. no. 15 C 285/2006, file ref. no. 15 C 286/2006, file ref. no. 15 C 287/2006, file ref. no. 8 C 285/2006, file ref. no. 8 C 287/2006 and other).

In the Government's opinion these cases clearly indicate that the defendants (the tenants) generally considered the chance of an unsuccessful outcome of the proceedings to be very likely. This would certainly not be the case if this "threat" was not supported by knowledge of specific cases where the claimants (the landlords) actually achieved their claims.

γ) Alternative preventive remedy

285. From the text of the present applications – as well as from a logical understanding of the matter – it stems that the Applicants would not consider the problem of rent regulation itself to be a fundamental one, if they had the opportunity to unilaterally terminate the tenancy of their own will. This is because from 1 July 1995 in principle all flats for which a lease contract was concluded with a

new tenant were excluded from the rent regulation (for details see § 447 of the Observations below).

However, they were denied the ability to unilaterally terminate the tenancy by the fact that under the relevant provisions of the Civil Code, landlords may serve notice of termination on tenants only on the grounds stipulated in the exhaustive list (the fact that the collected rent was too low from the point of view of the landlord was not among these) and with the court's approval (Section 685, subsection 1 and Section 711 of the Civil Code), and also by the fact that there existed the possibility of passage of tenancy (Sections 706 to 709 of the Civil Code).

286. The Government believe that there was nothing preventing the Applicants from disputing the constitutionality of these institutes within the eventual court proceedings on the approval of the notice of termination of the tenancy. The case could have been submitted to the Constitutional Court directly by the ordinary court (Article 95 § 2 of the Constitution) or the case could have reached the Constitutional Court in connection with a constitutional appeal lodged against the court decisions in the proceedings in question and to which the landlords could have added a motion to repeal the provisions of the Civil Code which they found unconstitutional (Section 74 of Act no. 182/1993, on the Constitutional Court).

287. Therefore the landlords could have requested, in particular, that the Constitutional Court repeal Section 685, subsection 1, second sentence of the Civil Code (Section 685, subsection 3 as amended by Act no. 107/2006), according to which tenancy is protected and landlords may give notice of termination only for the grounds stipulated in law, and, if appropriate, then also Section 711 of the Civil Code which specified the grounds on which landlords may terminate a tenancy with the court's approval.

In such case the landlords could terminate tenancy also under other grounds than the ones stipulated by the law until that moment and they could do so under the general provisions governing the lease contract (in case of lease contracts for unlimited periods of time) by serving notice of termination with a three month period of notice (Section 677, subsections 1 and 2 of the Civil Code). Then in the new lease contract they could agree, with the new tenant, on any amount of rent (see § 447 of the Observations below).

288. Similarly the Applicants could have achieved repeal of the provisions of the Civil Code on the passage of tenancy, on the obligation to provide a replacement flat to the tenant or other provisions restricting, in their view, landlords' rights in an unconstitutional way.

289. The Government have no information that the landlords ever filed motions with these arguments on the basis of which the Constitutional Court could have repealed the provisions of the Civil Code mentioned above.

Although the ordinary court, in case file ref. no. Pl. ÚS 20/05 (see § 194 of the Observations above), submitted to the Constitutional Court a motion to repeal the entire group of provisions concerning flat tenancies (Sections 685 to 716 of the Civil Code), the Constitutional Court, however, could only deal with the mer-

its of the part concerning Section 696, subsection 1 of the Civil Code, because the court submitting the motion could not use the other provisions in dealing with the case in question.

b) Compensatory remedy: action for damages against the State

290. The Government also believe that the Applicants had and have, at the domestic level, the opportunity to claim damages from the State for damage allegedly caused to them in consequence of the rent regulation.

291. As mentioned above, in the finding of 28 February 2006 file ref. no. Pl. ÚS 20/05, delivered in the plenary session, the Constitutional Court dealt with the motion to repeal Section 696, subsection 1 of the Civil Code for the reason that a separate regulation presumed in this provision had not been adopted; a separate regulation that would provide for cases where the landlord would have been entitled to unilaterally increase the rent. Although the Constitutional Court rejected the motion, in the substantiation of the finding it noted in this respect the following:

> "Attention should be also paid to the second level of the claimant's objections, which is based on the assertion that there is an unconstitutional *vacuum legis* consisting in that so far the presumed regulation has not been adopted. In consequence of the legislator's failure to act it can cause an unconstitutional situation if the legislator is obligated to adopt certain statutory regulations and does not do so, and thus interferes with an interest protected by law – the Constitution. The legislator's obligation may follow directly from the constitutional level (e.g. in securing the realisation of the fundamental rights and freedoms or their protection), and also from the level of 'ordinary' Acts, where it imposed this obligation upon itself *expressis verbis*. […] Therefore it can be concluded that under certain conditions the consequences of *vacuum legis* (legislative vacuum) are unconstitutional, especially in a case when the legislator has decided that it would regulate in a certain field, and expresses this intention in an Act, but does not adopt the presumed regulation. The same conclusion holds true in a case when Parliament has adopted the declared regulation, but it has been repealed because it did not satisfy criteria of conformity with the Constitution and the legislator has not adopted a replacement that would be in conformity with the Constitution […]."

292. The Constitutional Court then concisely summarised these thoughts in finding of 6 April 2006 file ref. no. I. ÚS 489/05, when it declared, *inter alia*, the following:

> "As mentioned above, in ruling I of finding file ref. no. Pl. ÚS 20/05 ['*The long-term failure to act on the part of the Parliament of the Czech Republic, consisting in the failure to adopt special regulations specifying cases in which the landlord is entitled to unilaterally increase rent, the payment of service charges for the use of the flat and modify other terms and conditions of the lease contract, is unconstitutional and violates Article 4 § 3, Article 4 § 4 and Article 11 of the Charter of Fundamental Rights and Freedoms and Article 1 § 1 of Protocol no. 1 to the Convention for the Protection of Human Rights*

> *and Fundamental Freedoms.*'] the emphasis was put on the State liability for damage caused as a result of the failure to adopt the presumed regulation. It stems from this that if the landlord's justified claim is not fully satisfied, there is nothing else he/she could do but to raise a claim for damages against the State."

The Constitutional Court expressed this opinion in the substantiation of its finding, in which it quashed the ordinary courts' decisions delivered in the case, in which the applicant, unsuccessfully until that moment, claimed payment of the difference between the usual and regulated rent for a flat (see § 197 of the Observations above).

293. The Constitutional Court confirmed the opportunity to claim damages from the State in its other decisions (see e.g. findings of 16 May 2006 file ref. no. IV. ÚS 111/06 and of 17 April 2007 file ref. no. I. ÚS 123/06).

α) Statutory regulation of the State liability for damage

294. Under Article 36 § 3 of the Charter of Fundamental Rights and Freedoms everyone is entitled to compensation for damage caused to him/her by an unlawful decision of a court, another State authority or public administration, or by an incorrect official procedure. Paragraph 4 stipulates that the conditions and detailed provisions are to be specified by law.

This law is Act no. 82/1998, on liability for damage caused during the exercise of public power by a decision or incorrect official procedure (for details see §§ 177 to 184 of the Observations above).

295. In the Government's opinion in general it is not out of the question for the failure to adopt the presumed regulation, which the Applicants consider to be the main cause of the alleged damage incurred by them, to be qualified – in the given situation and with regard to the Constitutional Court case law – as incorrect official procedure within the meaning of Section 13, subsection 1 of this Act.

296. In the Government's opinion this conclusion cannot be changed even by the fact that the Supreme Court, in its judgment of 31 January 2007 file ref. no. 25 Cdo 1124/2005, expressed an opposite view on the possibility to subsume such fact under the incorrect official procedure (see § 202 of the Observations above) when it noted in the substantiation of its decision, *inter alia*, the following:

> "In the case under consideration the appellate court was dealing with a legal issue – whether the Parliament's activities in voting on a Bill constituted official procedure within the meaning of Section 13 of Act no. 82/1998. […]
>
> […]
>
> The State liability under Act no. 82/1998 is in principle related to incorrect official procedure of executive and judicial authorities. With regard to the fact that the Parliament, consisting of the Chamber of Deputies and the Senate, is the supreme authority of the legislative power […], which decides, in a representative democracy, by the voting of its members – Deputies and Senators on the adoption or non-adoption of a presented Bill, while there is no rule or regulation and

> there cannot be any rule or regulation on how the individual Deputy, Senator or a group of Deputies or Senators should vote on the Bills […], the procedure of adoption of laws by voting in the Chamber of Deputies or the Senate cannot be considered official procedure within the meaning of Section 13 of Act no. 82/1998 and – if the rules of procedure of the Chamber of Deputies or the Senate were observed – it would furthermore be impossible to consider a 'judicial' review, as to whether the outcome of the voting is correct or incorrect. It is a principle of constitutional sovereignty of the legislative power which is liable to the people."

It must be remarked that under Article 89 § 2 of the Constitution, enforceable decisions of the Constitutional Court are binding on all authorities and persons. Therefore Constitutional Court decisions have a legal force superior to Supreme Court decisions.

In this connection the Government would also draw attention to the fact that a constitutional appeal has been lodged against the cited Supreme Court decision and no decision has been made on this appeal yet.

297. For example the Prague Municipal Court resolution of 14 April 2006 file ref. no. 14 Co 102/2006 provides evidence that the legal reasoning held by the Constitutional Court is respected in the ordinary courts and reflected in their case law (see § 207 of the Observations above). In the resolution's substantiation we can read, *inter alia*, the following:

> "In the light of the […] Constitutional Court's case law it is necessary to abandon the mentioned narrow interpretation of the term 'incorrect official procedure', which is narrowed down to only a violation of procedural rules of State authorities which are not related to the decision making process itself.
>
> Therefore an incorrect official procedure may be defined as not only procedural shortcoming on the part of a State authority, but with regard to the aim pursued by the activities of the State authority, it is any procedure eventually aimed at the realisation of the powers of the State authority. Therefore if the legislative body proceeded in a unconstitutional way by not providing for a statutory rent regulation in a manner that conforms with the Constitution, then the course of action followed by it was incorrect and it can be considered an incorrect official procedure within the meaning of Section 13 of Act no. 82/1998.
>
> Therefore one of the requirements for State liability for damage caused by an incorrect official procedure is met and therefore in relation to the challenged judgment there is also cause for appeal […]. However, since the court of first instance, due to having a different interpretation of the law, did not deal with the remaining two requirements for the State liability for damage (the existence of damage and a chain of causation between the incorrect official procedure effected by the State and the damage) and it did not present any evidence in this respect, the appellate court […] quashed the judgment of the court of first instance and […] remanded the case to the court of first instance for further proceedings."

The Prague Municipal Court reached a similar conclusion in its resolution of 31 May 2006 file ref. no. 13 Co 98/2006 (see Enclosure E19) and also in resolution of 17 August 2007 file ref. no. 14 Co 244/2007 (see § 207 of the Observations above), in which it explicitly refused to follow, with reference to the Constitutional Court case law, the legal reasoning of the Supreme Court expressed in judgment of 31 January 2007 file ref. no. 25 Cdo 1124/2005.

298. Furthermore, the Government believe that, in principle, it is not necessary to deal with the issue as to which specific public authority is liable for the situation whereby for a certain period of time a regulation that was in a way presumed by the wording of Section 696, subsection 1 of the Civil Code was missing. From the title of the Act itself, and from its purpose in particular, it stems that in the first place it concerns the liability of the State as a whole. Therefore in relation to the aggrieved party it is, in principle, entirely unimportant which State authority is liable for the damage incurred and to what extent. Anyway, in parliamentary regimes the legislative procedure is traditionally not an exclusive matter of the legislator, the executive power also has a significant role in it.

Moreover it can also be understood that neither Section 696, subsection 1 of the Civil Code, nor the relevant Constitutional Court case law suggest that the regulation, which would provide for cases where the landlord is entitled to unilaterally increase the rent, could not be a regulation with a legal force inferior to an Act (e.g. a Government Order or a Decree of the Ministry).

Finally, it is also not possible to rule out the opportunity to claim incorrect official procedure not only with reference to a missing regulation, but with reference to the procedure of the ordinary courts which refused to decide on the landlords' actions for rent increase in the given situation.

The claimant's (appellant's) limitation of the State liability for damage only to the legislator's failure to adopt a regulation could be one of the factors that led the Supreme Court to the judgment cited above (see § 296 of the Observations) to a conclusion which at the first glance seems to contradict the legal reasoning of by the Constitutional Court.

299. Therefore under Section 14, subsection 1 of the Act the Applicants have the opportunity to raise their claim for damages with the competent authority, which, apparently, should be, in the case in question, the Ministry of Finance under Section 6, subsection 3 of the Act.

They may claim damages before a court only if the claim is not fully satisfied by this authority within six months after having filed a request (Section 15, subsection 2 of the Act).

Under Act no. 82/1998 it is possible to claim damages in the narrow sense (pecuniary damage), and also satisfaction for non-pecuniary (moral) damage.

300. Finally, the Government would recall on a general level that under Article 10 of the Constitution promulgated international treaties, to the ratification of which the Parliament has given its consent and by which the Czech Republic is

bound, form a part of the legal order; if an international treaty provides something other than the law, the treaty shall apply.

In the past, while referring to Article 10 of the Constitution, the Constitutional Court concluded that it was not possible to dismiss claims for compensation for non-pecuniary damage incurred solely on the ground that Act no. 82/1998, in the period prior to the entry into effect of Act no. 160/2006, did not allow for the provision of compensation for this type of damage, if the right to compensation for such damage stems from the Convention (see § 190 of the Observations above where resolution of 25 May 2005 file ref. no. IV. ÚS 162/04 is cited; *cf.* also e.g. finding of 13 July 2006 file ref. no. I. ÚS 85/04).

Also the Supreme Court directly applies the Convention in its case law [see e.g. resolution of 10 April 2002 file ref. no. 7 Tz 316/2001 where it declared the possibility of discontinuing criminal prosecution due to its excessive length, although this option does not follow from the Rules of the Criminal Procedure; judgment of 22 July 2004 file ref. no. 11 Tdo 738/2003 and resolution of 15 February 2006 file ref. no. 5 Tdo 166/2006 where it declared the inadmissibility of criminal prosecution (*ne bis in idem*), if a sentence was already imposed in minor offence proceedings, although the Rules of Criminal Procedure do not contain such obstacle; resolution of 13 December 2001 file ref. no. 15 Tvo 155/2001 where it declared the possibility to lodge an appeal against a disciplinary fine imposed by the appellate court, although this option does not follow from the Rules of Criminal Procedure; resolution of 13 December 2001 file ref. no. 15 Tvo 165/2001 where it declared the possibility to lodge an appeal against a decision on the exclusion of a judge even in cases when this option does not follow from the Rules of Criminal Procedure].

301. The right to compensation for the restriction of the ownership right – not directly embodied in the text of the Convention – is included in the Charter of Fundamental Rights and Freedoms. In the past the Constitutional Court dealt, for example, with a motion to repeal the provision of Act no. 229/1991 allowing the land offices to create easements as regards the immovables given in restitution, but it did not explicitly mention the competence of these authorities to award compensation for such restriction of the ownership rights, which was allegedly contrary to Article 11 § 4 of the Charter ("*Expropriation or other forcible restriction of ownership rights is possible only in public interest and on the basis of law, and for compensation.*").

In the substantiation of its finding of 11 March 1998 file ref. no. Pl. ÚS 41/97 (published as no. 88/1998 of the Collection of Laws) the Constitutional Court noted, *inter alia*, the following:

> "The situation whereby at the same time the Land Act does not stipulate that the land office is to decide on the compensation for the restriction of ownership rights consisting in an easement can be resolved using Article 11 § 4 of the Charter. Under this Article it is possible to restrict ownership rights only in return for compensation. At the same time there exists the principle that the individual provisions of the Charter are directly applicable and rights contained therein can be

> claimed directly with a reference to their wording. This is true with the exception of fundamental rights listed in Article 41 § 1 of the Charter using references to specific Articles of the Charter. In the case of these exceptions it is stipulated that the relevant rights can be claimed only within the limits of laws implementing this provision. This means *a contrario* that it is possible to claim all the other rights directly and the law cannot exceed the limits set in the Charter. Since the right to compensation for the restriction of ownership rights is not mentioned among the exceptions, the owner concerned may claim his/her right to compensation directly with reference to Article 11 § 4 of the Charter, from the point of view of constitutional certainty without the necessity to constitute this right also in a regulation of inferior legal force."

302. Therefore if the statutory regulation of the State liability for damage is narrower in certain aspect than the liability arising under the Convention or the Charter of Fundamental Rights and Freedoms, it is necessary for the domestic authorities to apply directly the relevant provisions of the Convention or the Charter.

ß) Lodging of the claim by applicants – members of the Intervening Association

303. On 20 April 2007 the applicants, who are organised within the *Občanské sdružení majitelů domů, bytů a dalších nemovitostí v České republice*, which was granted the position of an intervening third party within the meaning of Article 36 § 2 of the Convention (see § 5 of the Observations above), lodged their claim for damages with the Ministry of Justice.

304. The claim (see Enclosure E20) was appended with the list of names of the Applicants and 11 files of copies of powers of attorney which the applicants issued to the counsel for the purpose of proceedings before the Court (in the claim the counsel notes that there are 4,500 powers of attorney, however, the supplied list contains, in addition to the Intervening Association, only 4,206 names of the individual applicants – natural and juristic persons).

305. In the substantiation of the claim the applicants more or less refer to their applications submitted to the Court, their argumentation is therefore in principle the same as in the case of select applications (see §§ 217 to 219 of the Observations above).

As regards particularly the arguments in the domain of Act no. 82/1998, the claimants see the State liability for damage, which they allege to have incurred in the past as a result of the regulation of tenancy, in an incorrect official procedure within the meaning of Section 13 of the Act, specifically in that, despite the Constitutional Court's request, the State did not adopt within a reasonable period of time a regulation remedying the found unconstitutional situation that existed due to the manner of the rent regulation.

Nevertheless, according to their statement, the applicants are not entirely convinced about the applicability of Act no. 82/1998 to their case (see point III. 3. of their claim).

For incorrect official procedure they request satisfaction for non-pecuniary damage amounting to EUR 10,000 for each individual claimant and EUR 100,000 for the Intervening Association. They also request compensation for damage consisting in the difference between the regulated rent and the usual rent for the place and time, which they express as a lump sum of CZK 100,000 per flat with regulated rent per year, and they request it for the period from 18 March 1992.

306. With regard to the fact that the Ministry of Justice did not consider itself the competent authority to preliminarily hear the claim, it transferred the claim to the Ministry of Finance under Section 14, subsection 2 of the Act.

307. On 2 July 2007 the Ministry of Finance sent a letter to the claimants' counsel (see Enclosure E21) and it noted in it, *inter alia*, the following:

> "By verifying the sent power of attorney forms it was confirmed that the granted powers concern exclusively the proceedings before the European Court of Human Rights. No power of attorney authorising you to act on behalf of the clients in proceedings under Act no. 82/1998 was found.
>
> We do not share your opinion, according to which your submission is a '*procedural act aimed at proceedings before the ECHR*', from which it should follow that the powers of attorney which your clients granted to you for the purpose of proceedings before the European Court of Human Rights (ECHR) are to be considered '*authorisation to represent in all proceedings related to those proceedings, i.e. also to represent before the Ministry of Justice, or other authorities*' (see point IV.2. of the claim, which should be apparently correctly labelled as point IV.3.).
>
> Proceedings before the ECHR are entirely different from any domestic proceedings. Powers of attorney to represent in these proceedings do not include in any way representation in proceedings on any domestic remedies that need to be exhausted prior to submitting an application to the ECHR (therefore in the case in question procedure under Act no. 82/1998). If it is to be to the contrary and if we were to accept your point of view, then the power of attorney granted for the purpose of proceedings before the ECHR would have also applied to proceedings before the appellate courts or the appellate review court or before the Constitutional Court. We are convinced that your arguments would not stand before these courts.
>
> […]
>
> Therefore we will not be able to deal with the merits of your submission, if we do not receive from you proper powers of attorney from your clients for the purpose of proceedings under Act no. 82/1998, i.e. specifically for the purpose of preliminary hearing of the above claim for damages and reasonable satisfaction with the competent authority under Section 14 of this Act.
>
> Nevertheless, in order to speed up the preliminary hearing and with regard to the large number of clients you are to represent, we are sending you a questionnaire with a list of necessary information essential for the assessment of the justification of the claims of your clients. We ask you to request your clients to fill in the attached questionnaire (individually for each flat in respect of which they request compensation)

> and to return it, together with the requested appendices, (by themselves or through you) to the Ministry of Finance, together with a proper power of attorney, if they still insist on you representing them also during the preliminary hearing of their claims under Act no. 82/1998.
>
> This is because the submission lodged by you does not contain the necessary objective information on the basis of which it would be possible to assess the raised claims and to decide whether they are justified or not. In the submission the following information is missing: how many houses and flats with regulated rent the individual persons own, where the houses and flats are located, for how long have the individual persons owned them, under what conditions they acquired them, who are the tenants in these flats, the amount of rent the tenants pay for the use of the flats, when was their right to use the flat created, details on the investments the owners have made in order to acquire and maintain the houses and flats *etc*. From the information supplied so far it is therefore not possible to determine whether in the specific cases the declared damage actually occurred or not, and if so what was the amount of this damage."

The questionnaire sent to the claimants' counsel is attached to these Observations (see Enclosure E22).

308. The Ministry has not received any official reply to its letter, neither from the counsel, nor from the individual claimants.

309. The claimants' refusal to co-operate naturally makes the preliminary hearing of their claim impossible. Although the claimants may appeal to a court, the Government are convinced that the court should reject any potential action with a reference to the fact that due to an obstacle on their part, the claim lodged by them was not preliminarily heard by the competent authority as required by Section 14, subsection 1 of Act no. 82/1998.

310. In any event the Government believe that the information requested by the Ministry of Finance from the claimants through their counsel (for the purpose of proceedings under Act no. 82/1998, but for the time being only an alleged counsel) in the letter and the attached questionnaire, is really absolutely necessary for the assessment of the merits (or the extent of merits) of the claims lodged by them.

In this connection the Government would again refer to, for example, the substantiation of the Prague Municipal Court resolution of 14 April 2006 file ref. no. 14 Co 102/2006, which has already been quoted once above (see § 297 of the Observations) and in which it is noted, *inter alia*, the following:

> "As regards the amount of damages claimed by the claimant the action itself is still unclear and unintelligible. […] It is therefore necessary to request the claimant to complete it first.
>
> The claimant specifies the damages claimed at CZK 620,980 for the period from 1 January 2002 to 30 April 2004, but he does not provide any detailed justification. It is therefore necessary to supplement the action with specifications on the exact floor area of each flat, the existing rent in case of each flat and information on the amount of rent the claimant requests in his action in case of each flat, on the amount of

> investments he made in each flat *etc*. Only on the basis of such description of the decisive facts would the court of first instance be able to determine whether the rent claimed by the claimant in his action reflects the aspects stated by the Constitutional Court for a rent regulation to be in conformity with the Constitution.
>
> In this connection it is necessary to repeat that according to the Constitutional Court, rent regulation itself is not unconstitutional, only the low amounts that the rents are fixed at by the State in a unconstitutional way. Therefore it would not be possible to match the amount of rent determined in this dispute with the 'market', or usual rent, which would be relevant only in case of a complete rent deregulation."

311. Finally, the Government believe that it would be efficient to have the information which the Ministry of Finance requests in its questionnaire available also for the purpose of proceedings before the Court. Therefore it might be useful if at least the select Applicants filled in this questionnaire (or a modified version of it) upon the Court's request and thus provided to the Court (and also to the respondent Government) necessary background information for the purpose of eventual assessment of the merits of their complaints about the violation of rights and freedoms guaranteed by the Convention (see also § 598 of the Observations below).

γ) Effectiveness of the remedy in practice

312. The Government are aware that – for the time being – they cannot present to the Court any specific case in which the suggested procedure under Act no. 82/1998 would lead to the award of compensation, and thus prove the practical effectiveness of this remedy.

313. The Government are also aware that the absence of specific examples of practical operation of the remedies often leads the Court to describe such remedy as ineffective within the meaning of Article 13 of the Convention and its possible non-exhaustion therefore does not lead to the rejection of the application in question pursuant to Article 35 §§ 1 and 4 of the Convention.

314. Nevertheless, the Government are aware of cases, which are not so rare, where the Court has accepted the plea of non-exhaustion even in a case where no illustrations of practical operation of the disputed remedy were submitted to it.

In this connection the Government would refer to for example the application *Bergauer and Others v. the Czech Republic* (application no. 17120/04, not communicated to the Government). In the decision on the admissibility of the application of 13 December 2005 the Court noted, *inter alia*, the following:

> "In the present case none of the applicants pursued his or her individual restitution claim before the competent national authorities although the applicants could have been expected to file a petition, seeking either a remedy or compensation before the domestic courts, and challenge before higher Czech courts, including the Constitutional Court, decisions or/and provisions of law which they considered contrary to the Convention. The Court notes that the case-law of the Czech judiciary is rather complex and not entirely settled yet.

> Therefore, the Court could not anticipate the outcome of proceedings brought by the applicants before the Czech courts had such proceedings been pursued. Thus, the assertion of the absence of domestic remedies is unsubstantiated."

This approach is a reflection of a principle that has been repeated in the case law of the Convention institutions in countless cases; according to this principle the applicant is obligated to exhaust all domestic remedies even if there exist doubts as to the chances of success (see e.g. the Commission's decision of 1 July 1996 on the admissibility of application no. 24962/94 *Koltsidas and 1158 Others v. Greece*, application no. 25370/94 *Fountis and 39 Others v. Greece* and application no. 26303/95 *Androutsos and 109 Others v. Greece*, point 1).

315. In this connection the Government would also refer to other decisions in which the Court – entirely in consequence of the above principle – refused the Government's objection that the constitutional appeal which the applicant had brought had no chance of success and with regard to the Constitutional Court's case law on this issue it had been clear in advance that it would be dismissed as manifestly ill-founded. The Court stated the following [judgments of 15 June 2004 in the case of application no. 58177/00 *Houfová v. the Czech Republic (no. 1)*, § 27, and in the case of application no. 58178/00 *Houfová v. the Czech Republic (no. 2)*, § 25]:

> "[…] the function of the Czech Constitutional Court is to assess the observance of fundamental rights and to provide redress in case of their possible violation. Therefore if the Constitutional Court had concluded that rights guaranteed by the Constitution, which the applicant claimed, had been violated, then it could have quashed the previous decisions and remanded the case to the inferior courts. Therefore the Court believe that the Government's argument based on the notion that the applicant's constitutional appeal was manifestly ill-founded is irrelevant, because it cannot be anticipated what the outcome of proceedings on this constitutional appeal will be."

The Court's statements regarding the constitutional appeal can clearly be applied *mutatis mutandis* to all remedies, i.e. also to the action for damages against the State, or also the action for rent increase (see § 268 *et seq*. of the Observations above).

316. Also the judgment of 11 January 2007 in the case of application no. 71665/01 *Augusto v. France* should not be neglected; in this judgment the Court rejected part of the application due to the non-exhaustion of all remedies and provided the following substantiation (§§ 42 to 44 of the judgment):

> "[…] it cannot be considered in the applicant's case that he did not exhaust all domestic remedies, even if by presenting domestic decisions and other relevant evidence he can prove that the available remedy, which he did not use, had no chance of success […].
>
> […]
>
> If it is true that at the material time there existed established case law in the Court of Cassation [*Cour de cassation*] which rejected such remedy, then the Court would agree with the Government that this did not

> prevent the applicant from lodging a cassation appeal with one of her objections estimating that in that regard there may be a change in the case law […]."

317. The above suggests that the absence of practical examples of effectiveness of procedure under Act no. 82/1998 should not *a priori* lead the Court to conclude that such remedy cannot be considered effective within the meaning of Article 13 of the Convention and that therefore the Applicants were not obligated to use it. On the other hand, the failure to use this domestic remedy should lead the Court to reject the applications for being inadmissible with reference to Article 35 §§ 1 and 4 of the Convention.

318. In the Government's opinion it is possible to say in general that the raised plea of non-exhaustion of all remedies should be refused by the Court only under the condition that the use of the remedies proclaimed by the Government – of either a preventive or a compensatory nature – would clearly lead to an unsuccessful outcome.

319. The opportunity to achieve redress on the domestic level should certainly not be only theoretical or illusory, i.e. it should not be practically excluded. On the other hand, this does not mean that the applicant should be obligated to exhaust the offered remedy only on the condition that at that moment there is constant case law in the domestic courts and that he is quasi-certain that the claim lodged by him will be actually satisfied – given that all set requirements are met.

320. Any other approach to the issue in question by the Court would constitute a significant interference with the principle of subsidiarity, on which the whole controlling mechanism of observance of the Convention is based. If the Court were to enter into the procedure of crystallisation of the domestic courts' case law by releasing the potential applicants from their obligation to even address the courts in their home States, then the case law that has not been constant until that moment can only settle with difficulty and the Government will have difficulty in presenting specific illustrations of practical operation of the disputed domestic remedies.

321. At the same time the possible rejection of the applications as inadmissible due to non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention does not mean that the Court cannot give clear instructions to the respondent State – in the form of a certain *obiter dictum* – as to how the case law of its courts as regards the issue in question should further develop in order to provide, at the domestic level, the maximum number of potential applicants with sufficient redress for any violations of their rights and freedoms guaranteed by the Convention and to eventually reduce the burden on the Court.

Exceedingly benevolent application of Article 35 § 1 of the Convention in relation to the applicants exhausts the Court's capacity and at the same time it denies the States the opportunity to deal for themselves with complaints about the alleged violations of rights and freedoms guaranteed by the Convention.

(iii) On the issue of existence and effectiveness of individual domestic remedies *in concreto*

a) On the case of Applicant Vomočil

322. The above summary of the facts of the individual cases clearly shows that on 14 July 2003 Applicant Vomočil brought an action against six tenants for the imposition of an obligation to conclude an amendment to the lease contract on the basis of which the existing rent would be increased with effect from 1 April 2003. The court of first instance rejected the action at first; this judgment was subsequently quashed by the Brno Regional Court which described the inferior court's opinion, according to which given the circumstances the court had not been entitled to intervene in the contractual relationship between the landlord and the tenant, as incorrect, in doing so referring to the relevant Constitutional Court case law.

In the subsequent proceedings before the court of first instance the claimant company, which replaced the Applicant in the position of claimant, and the defendant tenants concluded settlement agreements, in which the tenants agreed to the rent increase *pro futuro* and retroactively for the period from 5 May 2004 and the claimant company undertook to withdraw the action (see § 23 of the Observations above).

Therefore the court then discontinued the proceedings under the Rules of Civil Procedure.

323. The Government believe that given the circumstances the Applicant can no longer be successful with his application before the Court that in the period after 5 May 2004 he was victim of a violation of the Convention. From his application it stems that he sees the fundamental violation of the Convention in that the sum which he is entitled to collect from the tenants in certain flats in his house is too low.

However, his procedural successor in the proceedings withdrew the action for a rent increase, which the Applicant had brought on 14 July 2003 and which had not yet been decided at that point; the procedural successor withdrew it because he had reached an out-of-court agreement with the tenants.

At the same time, in the Government's opinion, with particular regard to the substantiation of the decision of the appellate court in the proceedings in question, whose legal reasoning the court of first instance would have been obligated to follow in further proceedings, it cannot be legitimately asserted that such remedy would not be fit to provide the Applicant (and his procedural successor in the position of claimant) with sufficient redress for the violation of rights and freedoms guaranteed by the Convention which he now invokes in proceedings before the Court.

In this connection it is necessary to recall that originally the Applicant sought a rent increase as early as 1 April 2003, therefore it can be believed that the action was withdrawn also as regards the period from 1 April 2003 to 4 May 2004

(incl.), although the out-of-court agreements with the tenants concerned only the period from 5 May 2004.

324. Therefore the Government believe that the Applicant did not exhaust all domestic remedies within the meaning of Article 35 § 1 of the Convention at least as regards the alleged violations of rights and freedoms guaranteed by the Convention that were alleged to have occurred in the period after 19 March 2003 (see § 280 of the Observations above).

This is because the Applicant did not claim, in court proceedings, a rent increase for the period from 20 to 31 March 2003 and as regards the period from 1 April 2003 the action was withdrawn.

325. Therefore in principle the applicant could claim a violation of the Convention only for the period prior to 19 March 2003. Nevertheless, in this respect his application is late (see § 254 of the Observations above).

326. In any event, however, the Government have no knowledge of whether or not the Applicant made use of the opportunity available under Act no. 82/1998 and claimed compensation for the damage allegedly caused to him by the Czech Republic.

The Government also have no knowledge of whether or not the Applicant initiated proceedings on the court's approval of the notice of termination, within which he could have possibly achieved the repeal of the provisions of the Civil Code which prevented him from serving a notice of termination on tenants in flats with regulated rents under other grounds than the statutory ones, or the repeal of provisions on the passage of tenancy (see §§ 285 to 289 of the Observations above).

327. Therefore also in this respect he did not exhaust all domestic remedies within the meaning of Article 35 § 1 of the Convention.

b) On the other select cases

328. The Government have no knowledge as to whether or not Applicant Morawetz, Applicants Hlaváček or the Applicant Company made use of any of the above remedies.

329. With regard to the fact that the Applicants themselves assert that no effective remedies are available to them on the domestic level, the Government cannot but believe that none of them exhausted all domestic remedies within the meaning of Article 35 § 1 of the Convention.

(iv) Conclusion

330. The landlords who believe that the rent regulation as applied in the Czech Republic violated or still violates their right to the peaceful enjoyment of their possessions guaranteed in Article 1 of Protocol no. 1 had and have the opportunity to use remedies of both a preventive nature (action for rent increase against the tenant, motion to repeal certain provisions of the Civil Code) and a compensatory nature (action for damages against the State).

331. In the Government's opinion the existing unsettled decision making practice of the Czech courts in proceedings on these actions does not acquit the Applicants of their obligation to make use of these remedies.

332. At the same time it is not possible to say that any of the Applicants duly exhausted the available remedies, therefore their applications have to be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

333. In case it is not possible to consider the above remedies effective to an extent that in using them the Applicants could have achieved *complete* redress for the violation of the right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol no. 1, the Government believe that on the other hand it must certainly be taken into account – especially in the possible examination of the acceptability of the interference with their rights and subsequently also in the possible decision making on the award of just satisfaction under Article 41 of the Convention – whether the Applicants could achieve such redress at least partially.

334. It must also be taken into account that on the other hand the possible redress which the Applicants achieved or could have achieved on the domestic level, may exceed the extent of redress which the Court would have considered sufficient to release the Applicant from the position of victim (within the meaning of Article 34 of the Convention) of the alleged violation of the right guaranteed by the Convention. The fact that in certain cases the domestic authorities granted the claims lodged by the landlords only partially *eo ipso* does not mean that the latter can still consider themselves to be victims of a violation of the Convention.

D. Other Pleas of Inadmissibility of the Individual Applications

(i) On the case of Applicant Vomočil

a) Plea of incompatibility ratione personae *with the provisions of the Convention*

335. As the Government have already mentioned above in the summary of the facts of the case, on 28 January 2004 Applicant Vomočil deposited the house in question into the registered capital of the company JOHNY, s. r. o. The legal effects of the registration of the ownership right in favour of this company occurred on 5 May 2004 and therefore from that moment the Applicant no longer owned the immovable.

336. Therefore from the above it stems that the Applicant cannot be considered, not even hypothetically, a victim of a violation of the Convention with regard to the events that occurred after the last date mentioned (incl.).

This part of the application must therefore be rejected due to its incompatibility *ratione personae* with the provisions of the Convention pursuant to its Article 35 § 3.

337. In the Government's opinion this conclusion cannot be changed by the fact that according to an excerpt from the Companies Register in the period since

the establishment of the above company the Applicant has been and still is its sole shareholder and director.

In the Government's opinion if the Applicant could be considered a victim of a violation of the Convention as regards the events that occurred in the period from 5 May 2004, that would be an absolute denial of the purpose of the legal personality of juristic persons.

Strict distinction between a company on one hand and its only shareholder and director on the other hand is necessary, particularly with regard to the Court's powers to afford just satisfaction under Article 41 of the Convention. With regard to the fact that the shareholder's property is in principle separate from the company's property (in case of a limited company with a sole shareholder this shareholder guarantees the company's liabilities only in the amount of the unpaid part of his deposit into the company's registered capital; this shareholder's liability ceases to exist upon registration of the payment of the deposit in the Companies Register – Section 106, subsection 2 of the Commercial Code in the wording in effect from 1 January 2001), it is entirely unjustified to freely conflagrate these two types of property. Such procedure would mean unlawful preferential treatment of the shareholder as a natural person and also create a potential threat to the legitimate interest of any potential creditors of the company as a juristic person.

b) Plea of abuse of the right of application

338. Moreover, the summary of the facts of the case as presented by the Court on the basis of information provided by the Applicant does not seem to indicate that he informed the Court about this substantial circumstance, although he addressed the Court several months after he had ceased to be the house owner.

339. Also in his application form of 20 October 2004 the Applicant furnished to the Court somewhat distorted economic data on his house (for details see §§ 574 to 577 of the Observations below).

340. In this connection the Government would remark that under Rule 47 § 6 of the Rules of Court the Applicant shall keep the Court informed of all circumstances relevant to the application.

341. Moreover, the Court may also declare the application inadmissible due to the abuse of the right of application if the applicant submits to the Court knowingly untrue or incomplete information (see, among the more recent cases, e.g. decision of 25 September 2007 on the admissibility of application no. 42165/02 *Hadrabová and Hadrabová v. the Czech Republic* and application no. 466/03 *Hadrabová, Křivánková, Křivánek, Horká and Horký v. the Czech Republic* and decision of 23 October 2007 on the admissibility of applications nos. 19057/02 and 7772/03 *Dostál v. the Czech Republic*).

(ii) On the case of Applicant Morawetz

342. As mentioned above, the Government have acquired the information that the Applicant died on 13 June 2007.

343. Therefore it is apparently necessary for the Court to wait and see whether or not the bereaved heirs of Applicant wish to pursue the proceedings before the Court and thus subsequently decide to resume the proceedings (see e.g. the Grand Chamber's decision of 13 December 2000 on the admissibility of application no. 33071/96 *Malhous v. the Czech Republic*).

344. If such wish does not come from the bereaved heirs within a reasonable period of time, it will be necessary to consider striking the application out of the list of cases under Article 37 § 1(c) of the Convention (see e.g. decision of 30 August 2006 in the case of application no. 21026/04 *Rusín v. the Czech Republic*).

345. However, in this connection the Government wish to draw attention – with all sincere respect to the deceased Applicant, a notable composer – to doubts over the authenticity of the power of attorney which the Applicant allegedly issued to the lawyer Martin Kölbl in Prague on 1 February 2006 and which the latter submitted to the Court.

346. The information available on the web pages *www.oskarmorawetz.com* as of 28 August 2007 suggests that in the recent years the Applicant's health was very poor (see Enclosure B1).

The Applicant, born in January 1917, allegedly suffered a nervous breakdown in 1995 and then he was hospitalised for a long period of time at a psychiatric clinic with depression. At that time he already suffered from failing health (poorer eyesight, arthritis in the fingers making it difficult to play the piano, slower walking).

In December 2001 the Applicant allegedly fell and hit his head, causing internal bleeding, and this caused some unspecified brain damage and his memory was severely affected, as was his ability to express himself coherently.

The Applicant also suffered from a developing case of Parkinson's disease and in consequence of complications from it the applicant died in June 2007, aged 90.

347. In this connection, in general, the following question arises: To what extent did the Applicant have the capacity to act, for example to grant a power of attorney to the counsel for the purpose of proceedings before the Court?

348. However, with regard to the disease from which the Applicant suffered, it is particularly viable to express considerable doubts as to whether the signature on the power of attorney form submitted to the Court by the counsel is really the authentic signature of the Applicant.

The signature itself raises doubts as to whether it could have been made by a person who had suffered from the Parkinson's disease for a number of years, *a fortiori*, the alleged signature from 2006 is virtually the same as the signature on the power of attorney which the Applicant had allegedly granted on 10 September 1991 (see Enclosure B16).

It is also practically out of the question for the Applicant to have granted the power of attorney to the counsel in Prague, as mentioned in the present document,

since on the web page mentioned above it is clearly stated that the Applicant undertook his last major trip in 1995, when he visited Prague. It is therefore legitimate to believe that he has not visited Prague since then.

349. The Government are aware that it is not the Court's task to examine in detail the authenticity of powers of attorney submitted by the Applicants, particularly with regard to the number of applications being submitted to the Court each year.

However, on the other hand in a case where there are serious and objective doubts as to the authenticity of the present power of attorney, it should be up to the counsel to clear up the doubts in a satisfactory manner or to face the consequences of his conduct, if it is shown that the relevant power of attorney was obtained in a manner that was not entirely legitimate.

It is clear that if there is no sufficient explanation from the counsel, this application cannot be considered effectively submitted and it should be struck out of the list under Article 37 § 1(c) of the Convention.

E. Conclusion

350. In the above text the Government raised preliminary pleas regarding inadmissibility of the applications concerning violations of human rights and fundamental freedoms in connection with rent regulation in the Czech Republic, both *in abstracto* and *in concreto* in the cases of individual select Applicants.

The Government specifically claim the following:

- plea of incompatibility *ratione temporis* within the meaning of Article 35 § 3 of the Convention (see §§ 231 to 236 of the Observations above),
- plea of failure to meet the six month time limit within the meaning of Article 35 § 1 of the Convention (see §§ 237 to 259 of the Observations above),
- plea of non-exhaustion of all domestic remedies within the meaning of Article 35 § 1 of the Convention (see §§ 260 to 334 of the Observations above)
- and other pleas relating to only some of the submitted applications (see §§ 335 to 349 of the Observations above).

351. In case the Court does not accept these pleas, in their entirety or at least partially, the Government shall now also express their opinion on the *merits* of the individual alleged violations of rights and freedoms guaranteed by the Convention.

II. ON THE ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

352. In connection with the alleged violation of Article 1 of Protocol no. 1 the Court posed to the Government the following series of questions:

a) Has there been an interference with the applicants' peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol no. 1 on account of the operation of the laws imposing rent control and restricting other rights of landlords in respect of leases?

b) If so, was that interference necessary to control the use of property in accordance with the general interest? If so, was this interference lawful within the meaning of Article 1 of Protocol no. 1?

c) Were the measures designed to control increases in rent and termination of leases, as applicable in the present cases, in the "public interest" within the meaning of Article 1 of Protocol no. 1?

d) If so, what was the specific public interest warranting the measures applied by the Czech authorities?

e) Have the Czech authorities maintained a fair balance between the demands of the general interest and the requirements of the applicants' right to "the peaceful enjoyment" of their possessions under Article 1 of Protocol no. 1 (*Hutten-Czapska v. Poland,* cited above, §§ 167 to 168)? In this respect the Government are to refer to the following, in particular:

– the operation of the relevant laws between 18 March 1992 and 30 March 2006;

– the operation of Act no. 107/2006 between 31 March 2006 and the present day.

353. In the case of Applicant Vomočil the questions are formulated in a slightly different way. In question (c) the Government are to refer to the application of measures in the period beginning on 15 December 1995. In the same way, in question (e) the Government are to deal with the operation of the relevant laws not between 18 March 1992 and 30 March 2006, but between 15 December 1995 and 30 March 2006.

Nevertheless, in the case of Applicant Vomočil the Court requested the Government to comment on these issues also in respect of the period from 18 March 1992, when the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition, until 14 December 1995.

Therefore the Government believe that the questions which they are to deal with in the cases of the individual applications are essentially the same.

354. It is also apparent that it is not significant that only in the case of Applicant Vomočil were the Government invited to answer the question as to whether or not it plays a role in respect of the maintenance of a fair balance between the above competing interests that the Applicant was aware of the rent-control

scheme when he acquired the property and the Government were also requested to inform the Court about the structure of owners whose property is under the rent-control legislation having regard to the way of acquisition of their property (inheritance, restitution, purchase, donation *etc*.).

It is clear that an answer to this question is significant not only in respect of the case of Applicant Vomočil, but generally for the whole issue.

355. Finally, great importance cannot be attached to the fact that in the case of Applicant Vomočil the Government are requested to indicate the average gross wage in the Czech Republic and to specify, with regard to the present case, the ratio between the annual incomes of the tenants and the rents which they are requested to pay, while in the cases of the other applications the Government are only requested to specify, with regard to the present cases, the ratio between the annual incomes of the tenants and the rents which they are requested to pay.

356. With regard to the fact that the individual questions are in close relationship with each other, the Government have decided to use a "classical" structure in the part of their Observations concerning the question of observance of Article 1 of Protocol no. 1; this structure reflects the fundamental principles of interpretation of this provision in the Court's case law:

A. Summary of the Court's relevant case law

B. Application *in abstracto*

   (i) On the existence of interference with the right to the peaceful enjoyment of possessions

   (ii) On the lawfulness of the interference

   (iii) On the legitimate aim in the general interest

   (iv) On the issue of maintaining a fair balance

C. Application *in concreto*

   (i) On the existence of interference with the right to the peaceful enjoyment of possessions

   (ii) On the lawfulness of the interference

   (iii) On the legitimate aim in the general interest

   (iv) On the issue of maintaining a fair balance

D. Conclusion

Nevertheless, within this structure the Government shall also express their opinion on the individual questions posed by the Court. For a detailed preview of the structure of the opinion as regards the issue of violation of Article 1 of Protocol no. 1 the Government would refer to the summary of the overall structure of the Observations provided at their end.

A. SUMMARY OF THE RELEVANT COURT'S CASE LAW

357. Article 1 of Protocol no. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in

> the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

358. Article 1 of Protocol no. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (the *Hutten-Czapska* judgment, cited above, § 157).

359. The first and most important requirement of Article 1 of Protocol no. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (*ibid.*, § 163).

360. Any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. The principle of a "fair balance" inherent in Article 1 of Protocol no. 1 itself presupposes the existence of a general interest of the community. Moreover, the various rules incorporated in Article 1 are not distinct, in the sense of being unconnected, and the second and third rules are concerned only with particular instances of interference with the right to the peaceful enjoyment of property (*ibid.*, § 164).

361. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a margin of appreciation (*ibid.*, § 165).

362. The notion of "public" or "general" interest is necessarily extensive. In particular, spheres such as housing of the population, which modern societies consider a prime social need and which plays a central role in the welfare and economic policies of Contracting States, may often call for some form of regulation by the State. In that sphere decisions as to whether, and if so when, it may fully be

left to the play of free market forces or whether it should be subject to State control, as well as the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues (*ibid.*, § 166).

363. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature's judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation. These principles apply equally, if not *a fortiori*, to the measures adopted in the course of the fundamental reform of the country's political, legal and economic system in the transition from a totalitarian regime to a democratic State (*ibid.*).

364. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (*ibid.*, § 167).

365. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol no. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden (*ibid.*).

366. In assessing compliance with Article 1 of Protocol no. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions for reducing the rent received by individual landlords and the extent of the State's interference with freedom of contract and contractual relations in the lease market but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (*ibid.*, § 168).

B. APPLICATION IN ABSTRACTO

(i) On the existence of interference with the right to the peaceful enjoyment of possessions

367. From the questions posed by the Court it stems that it considers, on a hypothetical level, "*the operation of the laws imposing rent control and restricting other rights of landlords in respect of leases*" an interference with the Applicants' right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol no. 1.

368. The Government would recall that the Court's Grand Chamber, in the judgment in the case of *Hutten-Czapska*, cited above, in principle endorsed the conclusions made by the Chamber regarding Article 1 of Protocol no. 1 in the judgment of 22 February 2005 in the same case and added, however, the following (§ 224 of the Grand Chamber's judgment of 19 June 2006):

> "[T]he violation of the right of property in the present case is not exclusively linked to the question of the levels of rent chargeable but, rather, consists in the combined effect of defective provisions on the determination of rent and various restrictions on landlords' rights in respect of termination of leases, the statutory financial burdens imposed on them and the absence of any legal ways and means making it possible for them either to offset or mitigate the losses incurred in connection with maintenance of property or to have the necessary repairs subsidised by the State in justified cases […]."

369. In accordance with the Grand Chamber's opinion the Government believe that the possible violation of the right to the peaceful enjoyment of possessions may theoretically consist in the combined effect of two fundamental aspects of the tenancy regulation: the regulation of the level of rents on one hand and the restriction of landlord's right to unilaterally terminate the tenancy on the other hand.

a) History

370. In the first place the Government would draw attention to the fact that rents have traditionally been regulated in the Czech Republic from as early as the establishment of the independent Czechoslovak State in 1918. Rent was regulated specifically by the Order of the Minister of Social Welfare and the Minister of Justice no. 83/1918, on the protection of tenants, and then in a number of laws for the protection of tenants (Act no. 275/1920, Act no. 130/1922, Act no. 85/1923, Act no. 48/1925 and other).

In this period, as with later, in the first half of 1990s, the rent regulation was limited only to pre-existing flats (it specifically did not apply to flats in houses for which the building permit was issued after 27 January 1917).

371. The regulation of tenancies was also based on a higher level of protection of tenants and restriction of the landlord's rights, particularly expressed in the limited ability of the landlord to unilaterally terminate the tenancy.

372. This traditional approach from the State in the field of tenement housing naturally grew stronger in the period of the Communist regime from 1948 to 1989 when the State also gradually became the owner of nearly all houses and therefore it also became a virtually monopolistic landlord.

373. After 1989 the State decided to carry out extensive privatisation of State property. As regards blocks of flats, this privatisation took place in two main ways. One big group of flats was transferred to the ownership of municipalities (this happened on the basis of Act no. 172/1991, on the transfer of certain things from the property of the Czech Republic to the ownership of municipalities – see §§ 168 to 170 of the Observations above), the second big group of flats was transferred to the ownership of private persons as part of the restitution process (particularly on the basis of Act no. 403/1990, on the mitigation of consequences of certain property injustices, and Act no. 87/1991, on extra-judicial rehabilitation).

The new owners, be it municipalities or private persons, entered into existing tenancy relationships in place of the State as the original owner and landlord.

374. Therefore in this respect it is not possible to say that after 1989 (or after 18 March 1992, when the Convention became binding on the Czech Republic and when the Court's jurisdiction *ratione temporis* began to run) rent regulation was *introduced* or the landlords' rights in the tenancy relationships were further *restricted*.

375. To the contrary, the period after 1989 is characterised by a progressive removal of rent regulation, both as regards the group of flats to which rent regulation applied (see §§ 441 to 451 of the Observations below) and the maximum level of rent (see §§ 452 to 469 of the Observations below). Hand in hand with this, the tenant's protection was reduced and the landlord's position in the tenancy relationship was strengthened (see §§ 470 to 482 of the Observations below).

b) Does the regulation of tenancy constitute an interference with the owners' right to the peaceful enjoyment of possessions?

376. The ownership right as it is traditionally understood, according to the Roman law model, is a set of several component rights: the right to possess (*ius possidendi*), to use (*ius utendi*), to enjoy the fruits (*ius fruendi*) and to dispose of the object of ownership (*ius disponendi*), i.e. to alienate it (*ius alienandi*) or to possibly destroy it (*ius abutendi*).

Nevertheless, ownership is traditionally understood as an obligation as well (see e.g. Article 11 § 3 of the Charter of Fundamental Rights and Freedoms which stipulates: "*Ownership is binding. It may not be misused to the detriment of the rights of others or against legally protected general interests. Its exercise may not cause damage to human health, or the natural environment beyond statutory limits.*"), therefore the ownership right is never entirely unlimited.

377. Rent regulation and regulation of tenancy relationship in general constitute a certain interference with some of the components of the landlords' ownership rights, in the first place, as stems from the nature of the case, the right to *usus fructus* of the object of ownership, i.e. a house or a flat in the case in question.

On the other hand none of the component parts is limited to such an extent that the landlord-owner is entirely deprived of this component of the ownership right, let alone deprived of their ownership rights as such.

378. Therefore in principle it would be necessary to assess the merits of the applications concerning the tenancy regulation in the Czech Republic under the third rule contained in Article 1 of Protocol no. 1 (see § 358 of the Observations above), as has been the case in the past when the Court has dealt with other cases concerning the examination of compliance of various aspects of tenancy regulation with this provision (see judgment of 19 December 1989 in the case of applications nos. 10522/83 and other *Mellacher and Others v. Austria*, § 44, and then e.g. judgment of 28 September 1995 in the case of application no. 19133/91 *Scollo v. Italy*, § 27, judgment of that same day in the case of application no. 12868/87 *Spadea and Scalabrino v. Italy*, § 28, judgment of 21 November 1995 in the case of application no. 18072/91 *Velosa Barreto v. Portugal*, § 35, judgment of 28 July 1999 in the case of application no. 22774/93 *Immobiliare Saffi v. Italy*, § 46, and finally also the *Hutten-Czapska* judgment, cited above, §§ 160 and 161).

In the Government's opinion, a logical understanding of the case clearly indicates that in the domain of this third rule, States must have available a much wider margin of appreciation than the one granted to them by the Court in dealing with cases of deprivation of ownership rights within the meaning of the second rule of Article 1 of Protocol no. 1.

379. However, specifically in the case of the Czech Republic – as shall be argued in detail below – there arises the question whether the right to the peaceful enjoyment of possessions could have even been interfered with in a situation where during the effect of the Convention the State in no way restricted the owners' acquired rights, but when, on the other hand, these very persons entirely voluntarily entered into the existing tenancy relationships in the position of the original owner-landlord with full knowledge of the regulations on the tenancy relationships as valid at that time. In the Government's opinion by doing this the new owners, in a way, waived their right to the peaceful enjoyment of possessions to the extent in which their ownership rights were restricted at the time when they acquired them voluntarily.

c) Did the Applicants not waive the protection of their right to the peaceful enjoyment of their possessions by voluntarily acquiring limited ownership rights?

α) Structure of owners from the point of view of acquisition of the ownership

380. In the questions posed, the Court requested the Government to provide information about the structure of owners whose property is under the rent-control legislation having regard to the way of acquisition of their property (inheritance, restitution, purchase, donation *etc*.).

381. In this connection the Government would state that the last population, house and flat census in the Czech Republic took place in 2001. However, the questionnaires did not include questions as to whether the individual flats are subject to rent regulation or not, neither did it include questions on the manner in which the owners acquired title to the immovables.

382. Therefore the Government do not have sufficiently exact information available on the structure of ownership of houses and flats subject to rent regulation from the point of view of the manner of acquisition of their property.

383. Furthermore, both aspects are subject to substantial change over time (the rent regulation ceases to apply to flats if new lease contracts are concluded, the owners sell the flats, the flats are inherited or there are other transfers of ownership rights to other persons). Therefore at present the 2001 statistics would be very much obsolete and would only provide a very outdated view.

384. The questionnaire, which the Ministry of Finance sent to the (alleged) counsel of the claimants organised around the Intervening Association, also contains questions concerning the manner of acquisition of ownership rights. As mentioned above the claimants did not provide an appropriate reaction to this attempt by the Ministry to obtain the information that could be used to provide an exact and up-to-date answer to the Court's question (see § 308 of the Observations).

385. The Applicants themselves could rather easily furnish information on the structure of ownership from the point of view of the manner of acquisition of their property in a questionnaire which could be sent to them by the Court (for details see §§ 675 *et seq*. of the Observations below).

386. Nevertheless the Government believe that the largest group of owners of houses or flats with regulated rent acquired their property either in restitution or by purchasing it. The other possible manners of acquisition are much less frequent in the group of owners of flats subject to rent control.

387. However, the Government may not exclude the possibility that at present among the Applicants there may still be persons who did not lose their property in the period of the Communist regime, and therefore for the whole period they were formally its owners.

Accordingly, only these owners may theoretically be in a similar position to the applicants who have submitted applications concerning rent regulation in Poland to the Court in recent years (see the *Hutten-Czapska* judgment, cited above, §§ 23 to 32 and 67 to 70).

388. In any event, from the above summary of the facts of the individual cases it is evident that all the select Applicants acquired the ownership of the houses which form the subject matter of their applications voluntarily after 1989: Applicant Vomočil bought the house in 1995, Applicant Morawetz inherited the house in 1999, Applicants Hlaváček were given ownership of their houses on the basis of a request under one of the restitution laws in 1991 and the Applicant Company acquired its house in 2002 via a public auction.

389. In the Government's opinion the overwhelming majority of the remaining owners of flats or blocks of flats likewise acquired the immovables which are subject to rent regulation voluntarily after 1989.

ß) Acquisition of the ownership in restitution

390. The majority of dwelling houses passed from the State ownership to the ownership of private persons on the basis of restitution regulations, particularly Act no. 403/1990, on the mitigation of consequences of certain property injustices, and Act no. 87/1991, on extra-judicial rehabilitation.

Both Acts stipulated, identically, that on the day of taking over of the immovable the entitled person shall accede to the rights and obligations of the landlord who concluded an agreement on the hand over and acceptance of a flat or a lease contract concerning commercial premises in the assumed immovable (see §§ 69 and 75 of the Observations above).

391. In any case, in the *Bergauer* decision cited above (see § 314 of the Observations) the Court explicitly noted that the Czech Republic did not have any general obligation to restore property which had been expropriated instantaneously before they ratified the Convention.

In another decision (the Grand Chamber's judgment of 8 March 2006 in the case of application no. 59532/00 *Blečić v. Croatia*, § 81) the Court remarked, in general, that:

> "The Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to [its ratification]. Any other approach would undermine both the principle of non-retroactivity in the law of treaties and the fundamental distinction between violation and reparation that underlies the law of State responsibility."

392. Therefore if the State is not obligated to restore property, it is evident in the Government's opinion that if the State anyway decides to restore it – and thus provide a higher standard of protection of human rights and fundamental freedoms than the standard arising under the Convention – it is free to lay down any conditions under which it shall do so.

In the first place it is entitled to specify the entitled persons to whom the property shall be restored. The Court has consistently held that a person who does not satisfy the requirements of the law to be an entitled person, cannot claim protection of Article 1 of Protocol no. 1, because the hope that a long-extinguished property right may be revived cannot be regarded as a "possession" within the meaning of this provision; nor can a conditional claim which has lapsed as a result of the failure to fulfil the condition (see e.g. the Grand Chamber's decision of 10 July 2002 in the case of application no. 39794/98 *Gratzinger and Gratzingerová v. the Czech Republic*, § 69).

393. More so, the State should be free as regards the determination of obligations which the entitled person shall assume at the moment of acquiring the ownership right regarding the property, whose surrender he/she requested.

This is because the Court's established case law suggests that Article 1 of Protocol no. 1 cannot be interpreted as imposing any restrictions on the Contracting States' freedom to choose conditions under which they accept to restore property which had been transferred to them before they ratified the Convention (judgment of 4 March 2003 in the case of application no. 39050/97 *Jantner v. Slovakia*, § 34, or judgment of 11 January 2005 in the case of application no. 58580/00 *Blücher v. the Czech Republic*, § 65).

394. Therefore if, within the restitution process, the entitled person voluntarily acquires property to which burdens are attached in the form of existing tenancy relationships, then he/she cannot be considered a victim of the alleged violation of rights and freedoms guaranteed by the Convention, a state of affairs which these persons would see precisely in that the newly acquired ownership right is restricted by obligations which he/she voluntarily assumed.

γ) Other ways of acquisition of ownership right

395. Also, under the general provisions (Section 680, subsection 2 of the Civil Code, as amended by Act no. 509/1991) if the ownership of a leased property changes, then the acquirer shall accede to the legal position of landlord.

396. With regard to the fact that the acquisition of an ownership right by a private person is inconceivable without this person's consent, it can be believed that, also in these cases, the ownership right, in its restricted form following the obligation to enter into the existing tenancy relationship in the place of the previous owner, was acquired voluntarily.

δ) Ability to alienate the property subject to rent regulation

397. To illustrate the context the Government would further recall that the owners of the houses or flats subject to rent regulation were not in any way prevented from alienating this property, if they believed that the ownership of this property was not advantageous to them for some reason (this applies both to persons who acquired the ownership rights after 1989 under the restitution laws or in another way, and to persons, whose ownership rights did not formally cease to exist even during the Communist regime – see § 387 of the Observations above).

398. The Government are convinced, in particular, that the overwhelming majority of applicants see the restriction of their ownership rights only in the aspect of *ius fruendi* of their property and not in the aspect of *ius utendi* of this property. Moreover, in the texts of the submitted applications there is no indication that applicants would like to use the property themselves and that they are prevented from doing so by the fact that the flats owned by them are subject to rent regulation (*cf*., *a contrario*, the *Hutten-Czapska* judgment, cited above, § 154).

In many cases the applicants own several flats, either in one or more houses, and out of which by no means all are necessarily subject to rent regulation. Therefore there is nothing to prevent them from not letting these "non-regulated" flats and using them for their own accommodation. Anyhow, as regards the regulated flats the landlords may serve a notice of termination on the tenant noting that they

need the flat for themselves or their family [Section 711, subsection 1(a) of the Civil Code, or Section 711a, subsection 1(a) of the Civil Code, as amended by Act no. 107/2006]. Cases where the owner him-/herself lives in one of the flats in the house he/she acquired into his/her ownership are not rare.

399. The select cases show that the ability to alienate a house or a flat subject to rent regulation was not an illusory one in any way. The above summaries of the facts of the cases suggest that Applicant Vomočil is the fourth owner of the house in question since it was surrendered in the restitution process to the legal successors of the original owner. Similarly the Applicant Company is the third owner of that house.

400. The Government have no exact statistics at their disposal, but they are convinced that a considerable percentage of the present private owners of houses or flats subject to rent regulation acquired this property after 1989 from another private person. The procedure proposed by the Government below (see § 676 *et seq*. of the Observations) could provide more exact data, at least as regards the current group of applicants who submitted their applications to the Court.

401. The motives for purchasing a house or a flat subject to regulated rent were in a number of cases speculative, with the purchaser relying on success in reaching an agreement with the tenants on the termination of the leases and subsequently in concluding new lease contracts with non-controlled rent.

This might have naturally been influenced also by the conviction that the rent regulation would be terminated; nevertheless, this conviction could have been based rather on subjective speculations about State policy on tenement housing than on any objective facts that could be joined by legitimate expectation (within the meaning of the Court's case law on Article 1 of Protocol no. 1) that it will in fact happen (for details see §§ 406 to 420 of the Observations below).

402. However, whatever the motivation of the new owners was, it certainly cannot be believed that any house or flat subject to rent regulation was in principle unsaleable, although it is certainly not possible to exclude – as in the case of the market for any goods – that certain houses or flats would not be as desirable at the market as would satisfy the seller's expectations.

403. On the other hand, it is clear that the market value of a house or flat subject to rent regulation is in principle lower than the value of a house not subject to this restriction (for details see § 523 of the Observations below). However, it is necessary to realise that the entitled persons acquired this property in restitution, in principle, voluntarily, *free of charge* and with knowledge of the existence of restrictions related to the existing tenancy relationships.

404. Furthermore, the value of immovables has increased considerably since 1989. It is therefore legitimate to believe that, in the absence of a particularly marked depreciation in the condition of an immovable, its value has increased with time and were it sold in the intervening years, the purchase price would have been higher than its value at the moment when the person concerned acquired the immovable into his/her ownership.

405. By presenting these arguments the Government, on one hand, do not pretend that the rather complicated problem of rent regulation could be resolved by the discontent owners selling their houses. On the other hand it is also not possible to neglect that the burden related to the ownership of flats subject to rent regulation is not an absolute category, but it is, to a great extent, dependent on the property situation and other conditions of the specific owner and his/her business abilities (see e.g. decision of 9 November 2004 on the admissibility of application no. 55631/00 *O.B. Heller, a. s. v. the Czech Republic* and application no. 55728/ /00 *Československá obchodní banka, a. s. v. the Czech Republic*, point 3.3.).

d) Did the owners have any legitimate expectation that the restriction of their ownership right would come to an end?

406. The Government further believe that neither at the moment of acquiring the ownership rights nor at any later moment did the Applicants have any legitimate expectation – within the case law regarding Article 1 of Protocol no. 1 – that their ownership rights would cease to be restricted.

407. The Court has consistently held that "possessions" within the meaning of Article 1 of Protocol no. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realised (see e.g. the *Gratzinger and Gratzingerová* decision, cited above, § 69).

408. The Court clearly recapitulated the interpretation of the term "legitimate expectation" in the judgment in the case of *Kopecký v. Slovakia* (judgment of 28 September 2004 in the case of application no. 44912/98, §§ 45 to 52), in which the Grand Chamber eventually concluded that "*where the proprietary interest is in the nature of a claim it may be regarded as an asset only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it*" (§ 52).

409. Contrary to the situation in Poland, where the 1994 Act clearly stipulated in the transitional provisions that rent regulation in Poland would be terminated as of 31 December 2004, in the Czech Republic no such time limit, on which the landlords could have counted and relied, was ever stipulated. While the Polish legislator itself laid down the limit for the termination of rent regulation in advance and under certain conditions it can be believed that by that it established "legitimate expectation" for the Polish owners within the meaning of Article 1 of Protocol no. 1, the Czech legislator laid down no such limit and therefore it did not establish "legitimate expectation".

410. It is not necessary to add in this connection that rent regulation itself is not certainly contrary to the Convention (see e.g. the *Mellacher* judgment, cited above, § 56), therefore it is not possible to read into the Convention an obligation that the introduction of such regulation be necessarily temporary, and even less so that the legislator stipulate in advance a fixed date by which such regulation would have been completely terminated.

411. The Government are convinced that the owners did not have such legitimate expectation even on the basis of the Constitutional Court finding of 21 June 2000 file ref. no. Pl. ÚS 3/2000 in which Decree no. 176/1993 was repealed with effect from 1 January 2002 (see § 186 of the Observations above). This is because the Constitutional Court did not dispute, in this finding or in another subsequent findings, that rent regulation itself was not contrary to the landlords' fundamental rights and freedoms guaranteed by the Constitution.

412. The Government further believe that on the basis of the Constitutional Court case law the *individual owners* did not have a legitimate expectation, not even as regards certain mitigation of regulation. The Constitutional Court case law does not form a sufficient basis for an individual applicant to establish an expectation that there would be at least a partial repeal of restrictions of his/her ownership right, for example in consequence of the adoption of a separate regulation in which cases where the landlord is entitled to unilaterally increase the rent would be provided for. The Constitutional Court findings alone do not suggest that each specific applicant was or still is a victim of a violation of his/her fundamental rights or freedoms guaranteed by the Constitution.

413. The Constitutional Court was deciding on the repeal of regulations which provided for the level of rent in one way or another on the basis of motions to repeal these regulations, these motions having been filed in all three cases by groups of Senators of the Parliament of the Czech Republic and in the second case also on the basis of a motion of the Ombudsman (see §§ 186 to 188 of the Observations above).

Therefore the proceedings before the Constitutional Court were, by their very nature, proceedings on an abstract review of constitutionality of the challenged regulations and within these proceedings the Constitutional Court, as clearly stems from the substantiation of its findings, did not deal with the specific circumstances of the cases of individual owners.

In finding file ref. no. Pl. ÚS 8/02, cited a few paragraphs earlier, the Constitutional Court noted, *inter alia*, the following:

> "The Constitutional Court is not a price authority and its function in these proceedings was not to ascertain in how many cases the rent is in order or otherwise. It is clear that for each individual lease relationship it cannot be unambiguously determined whether the controlled rent is adequate or not […]."

414. Similarly, in the proceedings on the constitutional appeals lodged by individual applicants, the Constitutional Court's reason for quashing the challenged ordinary court decisions was, in principle, only the fact that the ordinary courts had refused to decide – with reference to lack of jurisdiction – on the landlords' actions for rent increase, without the Constitutional Court expressing any opinion on whether the action concerned was actually founded or not, or any opinion on whether the current rent at the material time was actually such that consequently the fundamental rights and freedoms of the individual applicants' guaranteed by the Constitution were violated.

For example in its resolution of 8 June 2006 file ref. no. III. ÚS 217/06 the Constitutional Court dismissed the constitutional appeal of a landlord against the court decision in which her action against a tenant for the payment of an amount that was claimed to represent the difference between the original rent and rent increased under Ordinance no. 2/2002 had been rejected (for details see § 198 of the Observations above). Although the Constitutional Court, while referring to its previous case law, confirmed that the applicant's claim for rent increase could have been founded at the constitutional level, on the other hand it clearly expressed an opinion according to which:

> "[…] in connection with controlled rents it is not possible to 'automatically' presume violation of fundamental rights and freedoms of all landlords as guaranteed by the Constitution, therefore if the applicant, in proceedings before the district court, did not argue in an adequate manner (which she does not assert in her constitutional appeal and it is not evident from the relevant judgment either), it was not this court's obligation to deal with the applicant's case in this aspect."

Although, in another decision (finding of 31 May 2007 file ref. no. IV. ÚS 282/05), the Constitutional Court quashed the ordinary court decisions, in which the applicant's action for the payment of the difference between the rent actually paid by the defendants and the rent usual at that time had been rejected, at the same time it pointed out that:

> "[t]he fact that the applicant's constitutional appeal was granted does not mean that the ordinary courts would accept the amount of rent requested by her without further examination. The specific amount of rent must result from the process of evidence in particular, during which the ordinary courts shall provide sufficient space to the litigants to enable them to present relevant background information that may influence the amount of rent."

In this connection another interesting decision is the Prague Municipal Court resolution of 14 April 2006 file ref. no. 14 Co 102/2006, which has been cited several times (see § 207 of the Observations above). Although in this decision the appellate court in principle found the existence of liability on the State's part for damage which the landlord had incurred as a result of rent regulation, as regards the determination of the specific damage, however, it did not neglect to emphasise that this determination was dependent on a number of circumstances that must be the object of evidence before the court of first instance, whose previous decision rejecting the action was quashed in this decision of the appellate court.

415. Therefore in the Government's opinion it cannot be asserted that the failure to adopt a separate regulation, which would provide for cases where the landlord is entitled to unilaterally increase the rent, alone would *per se* represent interference with the right of *all* owners of houses or flats subject to rent regulation to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol no. 1.

416. The Government believe that the wording of Section 696, subsection 1 of the Civil Code (in the wording effective in the period from 1 January 1992 to 30 March 2006) in no way suggests that an *obligation* on the State's part to adopt

such regulation stems from this provision. In this provision the legislator only specified the issues to be provided for in a separate regulation, without imposing an obligation upon itself or another public authority to adopt such regulation, or an obligation to adopt a regulation that would cover all the mentioned issues.

417. Above all, the Act in no way established for landlords a *right* to unilaterally increase rents (see *a contrario* judgment of 11 September 2007 in the case of application no. 27527/03 *L. v. Lithuania* – in this case the respondent State explicitly established, in the Civil Code, a right for an unmarried adult to have gender-reassignment surgery, if this is medically possible; however, the legislator stipulated that the conditions, under which it is possible to request the gender-reassignment, and the procedure were to be provided for in a separate regulation that had not been adopted yet).

418. If the Constitutional Court considered the failure to adopt a regulation presumed by Section 696, subsection 1 of the Civil Code to be a violation of the landlords' fundamental rights and freedoms guaranteed by the Constitution, it is necessary to mention, in particular, that it followed such legal reasoning especially due to the fact that at the material time the amount of regulated rent was insufficient in its view, while this deficiency could not be compensated for even by the mechanism of annual increase in the maximum rent provided for in Decree no. 176/2003 and Ordinances nos. 1/2002 and 6/2002. Therefore it repealed these regulations and requested the legislator to replace them with another regulation that would allow for a level of rent that would be, from the point of view of the Constitutional Court case law, compliant with the landlords' human rights and fundamental freedoms.

If the Constitutional Court found the level of rent in flats subject to regulation sufficient from the constitutional point of view, then in the Government's opinion it is unlikely to have concluded, on the basis of the wording of Section 696, subsection 1 of the Civil Code, that only the absence of regulation regarding unilateral rent increase would be contrary to the landlords' fundamental rights and freedoms guaranteed by the Constitution.

419. Finally, Section 696, subsection 1 of the Civil Code did not suggest in any way how the unilateral rent increase is to be provided for; in this connection the Code only mentioned provision for cases where the landlord is entitled to unilaterally increase the rent.

However, it did not say at all how often could the landlord increase the rent, on the basis of what mechanism and, in particular, there was no indication at all that the regulation adopted on the basis of this provision should be the regulation that would carry out a progressive and complete deregulation in the area of rent control.

420. Last but not least, the Government would recall that the national authorities may provide a higher level of protection of human rights and fundamental freedoms than the Convention does (see e.g. the partial decision of 20 March 2007 on the admissibility of application no. 20728/05 *Vokoun v. the Czech Republic*). Therefore in principle the Court is not obligated to follow the opinion of the

national authority on whether the alleged violation of the Convention occurred or not.

The Czech Constitutional Court was also aware of this when in the substantiation of its finding file ref. no. Pl. ÚS 8/02, in which the Ordinance of the Ministry of Finance no. 6/2002 was repealed, it noted, *inter alia*, the following:

> "In the Constitutional Court's opinion the criteria of assessment of the State's activities under the domestic constitutional order may be stricter than the criteria used by the European Court of Human Rights in the assessment of compliance with the Convention. The European standard in the field of protection of ownership rights and prohibition of discrimination may seem different under the Convention than under the rules of the Charter only in relation to domestic situation, where the Charter may impose higher demands regarding the State's conduct in relation to an individual."

e) Conclusion

421. The Government believe that the issue of rent regulation in the Czech Republic is substantially different from the situation in Poland, which the Court dealt with in the case of *Hutten-Czapska* (the judgment cited above), the substantial difference consisting in that the overwhelming majority of owners acquired their property *voluntarily and with the liabilities* connected to it and *without any specific legitimate expectation* that in the future, as regards rent control, there will be abolition of the restriction of their ownership rights. In the Government's opinion the owners-landlords could have no such legitimate expectation even on the basis of the Constitutional Court case law.

The above suggests that the applications of these owners concerning the regulation of tenancy relationships in the Czech Republic should be declared inadmissible due to being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention, because it cannot be believed that, during the effect of the Convention, the Czech Republic interfered with the landlords' legitimately acquired rights.

422. In any case, if the Court does not accept the Government's opinion that the voluntary acquisition of restricted ownership rights represents, in a way, waiver of the right to the peaceful enjoyment of possessions to the extent, in which the person concerned was (or should have been) aware of this restriction, then the Court should, nevertheless, take these circumstances into account at least in assessing the reasonableness of the interference with the right to the peaceful enjoyment of possessions (see §§ 436 *et seq*. of the Observations below).

423. At all events, if the Court concludes that Article 1 of Protocol no. 1 is applicable to the case in question, then the Government find it evident that the regulation of tenancy relationships in the Czech Republic did not amount to deprivation of property within the meaning of the second sentence of Article 1 of Protocol no. 1, but only amounted to a mere control of the use of this property within the meaning of the third sentence of this Article.

(ii) On the lawfulness of the interference

424. The Government believe that the restriction of the owners' rights in the area of tenancy relationships was based on law in the same sense as the Court interprets it in its case law. Both the Civil Code and other regulations, whose summary the Government mention above (see §§ 62 to 184 of the Observations), must be considered as regulations that are sufficiently clear and at the same time accessible to the addressees. Therefore their consequences were entirely foreseeable.

425. As did the Court in the *Hutten-Czapska* judgment (cited above, §§ 172 to 173) the Government believe that the interference with the landlords' right guaranteed in Article 1 of Protocol no. 1 was based on law.

(iii) On the legitimate aim in the general interest

426. The Government are convinced that it is right to consider housing one of the most basic human needs that is worthy of a special protection. The States, including the Czech Republic, undertook to provide it in for example the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights or the European Social Charter (see §§ 213 to 216 of the Observations above).

427. As the Government have already shortly noted (see §§ 370 to 371 of the Observations above), the amount of rent in private flats was traditionally regulated in the Czech Republic from as early as 1918 and also the regulation of tenancy relationships was based on a high level of protection of tenants.

We must be aware of this fact in particular in assessing whether the restriction of the landlords' ownership rights after 1989 pursued a legitimate aim in the general interest. It is necessary to realise that this was a long-standing tradition that was already established in the inter war period and that certainly acquired almost a perverted form in the period of the Communist regime in 1948 to 1989.

Anyhow, the State's interferences with the tenancy relationships (be it in the form of regulation of the amount of rent or other significant restrictions of the landlord's contractual freedom in favour of the tenant) are common in the European countries rather than an exception.

428. Therefore the non-removal of the rent regulation after 1989 or the preservation of the high level of protection of tenants, as the more vulnerable party in the tenancy relationship, alone should not raise any doubts in the light of the Convention.

429. As the Government mentioned above (see § 373 of the Observations), after the fall of the Communist regime the State decided to carry out an extensive privatisation of property, including the tenement flats, which it almost exclusively owned. Nevertheless, by doing this it also could not jeopardise the tenants' acquired rights, rights which they had acquired by accepting the flats into their use on the basis of fixed conditions which had included, in addition to the fixed amount of rent, also the absence of specification of the period of use. Also the tenants' rights are naturally protected by the Convention.

430. It has already been said (see §§ 391 to 393 of the Observations above) that the Convention imposes no specific restrictions on the States as regards the conditions under which they decide to restore property to individuals from whom it was taken away prior to the day when the Convention came into force in relation to that State.

It stems from this, *inter alia*, that the State cannot be reproached if one of these conditions was that the new owner should assume liabilities which the State, as the landlord (or as the one who conveyed the flats to the citizens for the purpose of personal use, as was the exact wording of the Civil Code in the period prior to 31 December 1991), had imposed upon itself in the past.

It is anyway generally true that if there is a change in the ownership of a leased property then the acquirer enters into the legal position of the landlord (Section 680, subsection 2 of the Civil Code).

431. By comparing the situation in other member States of the Council of Europe we find that the persisting protection of tenants, who became party in a tenancy relationship under different regulatory conditions, is or was very common.

In virtually all countries the flat lease is regarded as a protected lease. In the majority of the European Union countries the direct restriction of the contractual freedom applies also to private tenement flats.

In the European countries the rent modification (or its increase) for existing lease contracts in the private tenancy sector is usually regulated in one way or another. Especially the "old" lease contracts (somewhere – for example in Luxembourg – the "old" flats) enjoy special protection whose purpose is to protect the tenants who concluded their lease contracts in the period when the rent regulation was stricter.

It is usually possible to increase the rent at given intervals according to the consumer price index or index of price growth in the construction industry (as in e.g. Belgium, France or Germany). The maximum rent increase may also depend on the investment costs (e.g. in Luxembourg) or its maximum percentage growth in a certain period is fixed by the Government (e.g. in the Netherlands or Germany).

The flat lease is protected also from the point of view of the termination of this contractual relationship effected by the landlord; in the absolute majority of European countries a notice of termination of the flat lease can be given only under the grounds stipulated in the relevant law.

432. As regards the Czech Republic it is necessary to take notice of the fact that until the beginning of 1990s the rent was determined as a fixed rate per square metre of the flat's floor area and the amount of rent calculated in this way could then be modified in a certain way depending on certain circumstances of the specific case (for details see § 93 *et seq*. of the Observations above).

Although it was evident that the official price determined in this way – as in the case of a number of other goods – need not correspond to the price that would

be produced in a free market, on the other hand it was not conceivable to create such market from day to day, it was also not possible to start increasing the rent determined by the regulations much too considerably.

Since the price liberalisation in January 1991 equilibrium between the demand and supply was created on the market for the vast majority of goods. In the case of the remaining goods – in particular those that concerned public expedience, were indispensable or of strategic importance – the Government chose the option of not a single reform of distorted prices, but a progressive one. These prices included, in addition to the prices of energy, heating, postal services, railroad transport, also rent. Therefore price deregulation was initiated and consisted in the progressive removal of legal and price distortions within the process, which the State "supervised". The speed of this process was appropriate to the wider conditions of economic and social transformation.

A significant fact that influenced the Government's course of action was the low price elasticity of demand in case of prices related to housing and the subsequent strong income impacts. In this case there was not only a social effect, but also an economic effect caused by the transfer of demand and the subsequent impact on the consumption and thus also on the production of other goods. The trend in these prices reflected in the rate of inflation of which the maintenance within reasonable limits was one of the Government's legitimate priorities.

A steep increase in rents would reflect, through the index of the cost of living, in the indexation of the pensions and the subsistence level and in the whole system of State social relief benefits. That would mean not only an unbearable burden on the State budget, but also an unacceptable risk that a high percentage of households would become dependent on social benefits. There would be a danger that unacceptably high housing benefits, provided to households with low income, would have a demotivating and equalising effect with regard to the development of incomes from economic activities and to the pension insurance principle.

433. In any case – as shall be analysed in detail below (see §§ 452 to 482 of the Observations) – the State resolved to both a considerable increase in the maximum basic rent, as a result of which in the subsequent years the rent in flats subject to regulation grew by hundreds of per cent, and a progressive removal of certain restrictions of the landlords' rights.

434. In this connection it is necessary to realise that each such State measure represented interference with the already existing tenancy relationships and modification of their conditions in favour of exclusively one of the parties (the landlords).

At the same time, these tenancy relationships were not in principle imposed upon the Czech landlords, as was the case of the Polish landlords (see the *Hutten-Czapska* judgment, cited above, §§ 68 to 70), but they entered into these relationships entirely voluntarily (see §§ 380 to 396 of the Observations above).

Therefore in choosing the specific form of the adopted measures and their timing it was necessary to proceed very prudently and sensitively and to respect the legitimately acquired rights of the tenants, because on the other hand they did

not have any influence on who became the other party in the tenancy relationship in which they participated.

435. Last but not least, a fact that certainly should not be underestimated, or even worse, entirely ignored, is that at the beginning of 1990s the Czech Republic – as with other countries in Central and Eastern Europe – faced an enormous and entirely unprecedented task of transformation from a country that had just went through more than four decades of totalitarian Communist regime into a country with a democratic political system observing the fundamental human rights and freedoms of its citizens to the maximum extent possible.

(iv) On the issue of maintaining a fair balance

436. The assessment of maintenance of fair balance is an issue that usually requires a global assessment of a number of aspects and circumstances of the individual cases. Therefore the assessment of this issue *in abstracto* is necessarily very complicated – if not impossible.

437. In this part of the Observations the Government shall concentrate on three basic groups of problems:

(a) analysis of the development of the regulation of tenancy relationships from the point of view of the extent of the landlords' rights;

(b) analysis of the balance of the landlords' costs for the performance of their statutory obligations and the amount of revenue from the lease of the immovables;

(c) analysis of the tenants' social situation and the extent of their housing costs.

438. Nevertheless, in the Government's opinion it is necessary to state beforehand that it is not the Court's function to deal with the issue of whether or not rent regulation itself – or in the form having functioned in the Czech Republic – is constructive from various macroeconomic aspects.

Its function should be, in particular, to assess whether, in the four select cases, rights and freedoms guaranteed by the Convention were violated, or whether these cases do or do not disclose some systemic deficiencies in the national law or practice.

439. In other words provided that the States remain within the limits of their margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem (see e.g. decision of 23 March 1999 on the admissibility of application no. 33091/96 *Českomoravská myslivecká jednota v. the Czech Republic* or the *Mellacher and Others* judgment, cited above, § 53).

In this connection it must be also emphasised that, in cases concerning the compliance of the regulation of tenancy relationships with the landlords' rights and freedoms guaranteed by the Convention, the Court always admitted that the States must enjoy a wide margin of appreciation not only as regards the legitimate aim, but also as regards the fair balance between the means employed and the aim

pursued (see e.g. decision of 5 September 2000 on the admissibility of application no. 39994/98 *SCI Carnot-Victor Hugo v. France*, the *Mellacher and Others* judgment, cited above, § 48, or the *Immobiliare Saffi* judgment, cited above, § 49).

440. The Government would also state beforehand that the problem of regulation of tenancy relationships, and rent regulation in particular, must be viewed as a whole, more precisely that it is necessary to take into account all the consequences which the regulation had for the landlords concerned, whether these consequences are directly intended by the State or whether they are only secondary effects.

As shall be illustrated in detail in the subsequent text, it is necessary to deal with the specific circumstances of the individual cases in their entirety, and not to read, out of context, only the negative impacts of rent regulation on the exercise of landlords' ownership rights, as the Applicants often do in their submissions.

a) Development of the regulation of tenancy relationships from the point of view of the extent of the landlords' rights

441. As mentioned above in the context of the issue of existence of interference with the right to the peaceful enjoyment of possessions, the development of the regulation of tenancy relationships after 1989 is characterised by a gradual, yet constant reduction in the restrictions of the landlords' rights and the related strengthening of their position to the detriment of the tenants.

442. The first fundamental change in this respect was the replacement of the right to the use of a flat with the old and traditional lease system, which took place on the basis of Section 871, subsection 1 of the Civil Code with effect from 1 January 1992 (see § 97 of the Observations above).

In this connection the Convention institutions noted that to the extent that the owners were affected by the provision at all, the changes were beneficial, since the owners thereby attained a slightly higher degree of control over their property than they had previously enjoyed (see the Commission decision of 10 September 1996 on the admissibility of application no. 26347/95 *V.S. and T.H. v. the Czech Republic*).

443. As shall follow from the subsequent review of the development of the regulation of tenancy relationships, this liberalising trend simply continued during the subsequent years.

α) Narrowing of the group of flats subject to rent regulation

444. In the first place, the group of flats subject to rent regulation was continuously reduced.

445. Decree no. 60/1964 itself did not apply to flats in housing cooperatives, to flats managed by the then *Správa služeb diplomatického sboru* and to dwelling rooms in dormitories, in company and other housing facilities (see § 93 of the Observations above).

Decree no. 15/1992 specified (with effect from 16 January 1992) that Decree no. 60/1964 did not apply to flats in housing cooperatives established after 1958, if it concerned flats built with financial, credit or other assistance provided under regulations on financial and credit assistance to cooperative housing construction, for which the rent was determined under separate regulations, and the Decree also did not apply to flats managed by *Správa služeb diplomatického sboru* (see § 112 of the Observations above).

446. Also the new Decree no. 176/1993 did not apply to specified flats in housing cooperatives or to flats managed by *Diplomatický servis*.

Nevertheless, on 1 July 1993 the following provision came into effect: the Decree did not apply to flats if their tenant was a juristic person with a registered office outside the Czech Republic or a natural person without a permanent residence in the Czech Republic or a foreign embassy or diplomatic mission.

From that same day the rent control under this Decree also did not apply to flats and houses built without public funds, for which the final building approval was to be issued after 30 June 1993, and to flats in family houses for which the rent was to be negotiated with the new tenant, excluding cases of statutory passage of tenancy, exchange of flats or use of replacement flats (see § 118 of the Observations above).

447. In consequence of entry into force of Decree no. 30/1995, from 1 July 1995, rent regulation under Decree no. 176/1993 did not apply any more to all flats in the case of which a lease contract was negotiated with a new tenant (i.e. not only to such flats in family houses regarding to which the rent regulation had not applied since 1 July 1993), with the exception of statutory passage of tenancy, exchange of flats, replacement flats and more recently also service flats for professional soldiers (see § 129 of the Observations above).

Therefore from 1 July 1995, at the latest, all flats for which a lease contract was negotiated with a new tenant (with the above exceptions) were excluded from the rent regulation.

448. Certain groups of flats that were subject to rent regulation also gradually ceased to be regulated with a maximum price and the rent remained regulated only materially in their case (for details on the individual methods of regulation see §§ 220 and 221 of the Observations above).

With effect from 1 July 1993 under Decree no. 176/1993 in its original wording the rent was regulated only materially in the case of:

a) flats whose construction was approved after 30 June 1993 and public funds were used in the financing (Section 6, subsection 1 of the Decree),

b) flats whose reconstruction or modernisation was approved after 30 June 1993 and public funds were used in the financing (Section 6, subsection 2 of the Decree).

From 1 July 1995 the rent was regulated only materially not only in the case of flats to whose reconstruction or modernisation public funds contributed, but in

the case of all flats whose reconstruction or modernisation was approved after 30 June 1993 (see §§ 121 and 130 of the Observations above).

Later on, there were other minor changes in the definition of flats subject to material rent regulation (see §§ 132 and 136 of the Observations above).

At the same time the materially regulated rent was in principle higher than the maximum basic rent (for details see § 455 of the Observations).

449. It must also be recalled that, with effect from 1 October 1995, rent for commercial premises ceased to be regulated (see Decree of the Ministry of Finance of 9 August 1995 no. 187/1995, repealing Decree of the Federal Ministry of Finance, Ministry of Finance of the Czech Republic and Ministry of Finance of the Slovak Republic no. 585/1990, on the price regulation of rents for commercial premises, as amended by Decree of the Ministry of Finance no. 168/1994).

Table 4

From …	**… rent regulation completely ceased to apply to:**
1 July 1993	- flats if their tenant was a juristic person with a registered office outside the Czech Republic or a natural person without a permanent residence in the Czech Republic or a foreign embassy or diplomatic mission; - flats and houses built without public funds, for which the final building approval was to be issued after 30 June 1993; - flats in family houses for which the rent was to be negotiated with the new tenant, excluding cases of statutory passage of tenancy, exchange of flats or use of replacement flats
1 July 1995	- all flats for which a lease contract was negotiated with a new tenant, with the exception of statutory passage of tenancy, exchange of flats, replacement flats and service flats for professional soldiers

450. In consequence of the exclusion of flats, for which a lease contract with a new tenant was concluded, from the application of Decree no. 176/1993, in the subsequent years there was a gradual "natural decline" in the number of flats subject to rent regulation.

If it is possible to accept, on one hand, that the speed of this "natural decline" was somewhat decreased as a result of the passage of tenancy (Sections 706 to 709 of the Civil Code), on the other hand it is common knowledge that in a number of cases the tenants were trying to abuse this institution. If the landlords did not properly defend themselves against the abuse of this institution in any given case, then the State cannot be held liable for the consequences for the landlords of the unlawful use of the advantages of this institution by tenants (see also § 481 of the Observations below).

At this point the Government would refer to, for example, the finding of 1 June 2005 file ref. no. IV. ÚS 8/05 in which the Constitutional Court quashed the ordinary court decisions in which the landlords' action for flat vacation against a person to whom the right of tenancy had allegedly passed on the basis of the

relevant provisions of the Civil Code, had been rejected (see § 191 of the Observations above). In the substantiation of its decision the Constitutional Court noted, inter alia, the following:

> "Section 706, subsection 1 of the Civil Code restricts the contractual freedom of the owner of a block of flats to use his/her property. The purpose of such extensive restriction is the protection of actual tenants who had very close ties with the deceased tenant and this was shown, *inter alia*, by the fact that they lived with him/her permanently prior to his/her death and who thus relied on the security of shelter, which they cannot obtain in another way 'from day to day'. However, this restriction may not be abused for other purposes, e.g. gaining advantageous housing by expedient conduct that would satisfy the wording, but not the purpose of the restricting provision.
>
> […]
>
> From the point of view of Article 4 § 4 and Article 11 § 1 of the Charter it is not acceptable for Section 706, subsection 1 of the Civil Code to provide protection to relatives of the deceased tenant specified in this provision who make use of this unique opportunity contrary to its narrow purpose. The Constitution obliges the courts to carefully verify whether the person asserting the satisfaction of conditions for the passage of tenancy is not abusing the law to the detriment of the owner. […]"

In this connection the Government would note that it is always necessary to carefully examine whether the specific flat was really subject to rent regulation in the specific period or not, and, if appropriate, which specific type of regulation was used. The mere fact alone that the tenant, on the basis of an agreement with the landlord, for some reason paid rent corresponding to the contemporary amount of regulated rent – it is common knowledge that such cases often occurred – does not necessarily mean that the Czech Republic in any way prevented the landlord from collecting a higher rent.

451. Finally, it is necessary to emphasise that from 1 January 1992, when Act no. 509/1991 came into force, it was possible to conclude lease contracts for a fixed term (the previous right of personal use of the flat consisted in leaving the flat to the personal use, in principle without specifying the period of the use – Section 153 of the Civil Code in the wording in effect until 31 December 1991).

Therefore if an owner concluded a lease contract with the tenant for an unlimited period of time after 1 January 1992, in the situation of clear regulations on tenancy relationships, then such owner cannot complain about the restrictions of his/her ownership rights to the extent in which these restrictions exist as a result of the fact that he/she did not make use of the opportunity to conclude a lease contract for a fixed term.

ß) Increase in the level of maximum rent in flats subject to rent regulation

452. The Government would further stress that after 1989 there was a significant increase in the maximum rent determined under the relevant rent control regulations.

453. Decree no. 60/1964 stipulated a fixed amount of rent calculated using annual rates per square metre for flats in categories one, two, and three flats (see § 93 of the Observations above).

454. Decree no. 15/1992 then increased these rates by 100% as from 1 July 1992.

At the same time, in addition to payments for central (district) heating and for the supply of hot water, cleaning of the common areas in the house, use of the elevator, supply of water from public water pipes and water works, sewage water disposal by public sewage system and the use of house (block) laundry, also the payments for lights in the common areas in the house, checking and cleaning of the chimneys, ash and dust disposal, sewage disposal and cleaning of a septic tank, for the provision of common TV and radio antennas in the flat, or payments for other services were no longer included in the rent.

Furthermore, rent discounts for dependant children were abolished (see §§ 113 to 115 of the Observations above).

455. Decree no. 176/1993 introduced another increase in the rent rates with effect from 1 January 1994 and it also introduced the division of rent into a maximum basic rent and materially regulated basic rent. It was possible to modify the basic rent (both, the maximum and materially regulated) depending on the quality of the flat, the location of the house and the flat's equipment. If a separate regulation provided for the use of a part of the flat for commercial purposes with the consent of the landlord, the rent for that part of the flat's floor area was negotiated at a maximum level of double the basic rent modified depending on the quality of the flat and the location of the house (see §§ 120 to 123 of the Observations above).

Materially regulated rents were in principle higher: their upper limit was fixed at double (triple, for certain flats from 1 January 1996) the maximum rent (see §§ 121 and 132 of the Observations above); from 1 July 1995 it also applied that if the calculated materially regulated rent was lower than the maximum rent, then the regulation under provisions on the maximum rent applied (see § 130 of the Observations above).

456. Decree no. 30/1995 brought a fundamental change when it introduced the mechanism of annual increases (always from 1 July) in the maximum prices of basic monthly rents according to the stipulated formula. The resulting maximum amount of the rent depended on the decisions of the Ministry of Finance (the coefficient of rent increase, the decision coefficient) and of the municipality (the coefficient of size of the municipality, modification of the rent according to the location of the house) (see § 128 of the Observations above).

457. Decree no. 86/1997 then stipulated that for the period from 1 July 1997 to 30 June 1998 the maximum coefficient of rent increase shall be 1.67 for Prague and 1.35 for municipalities with at least 100,000 inhabitants. Moreover, Prague could, as from 1 July 1998, use a maximum coefficient of size of the municipality higher than existing 1.19 and up to 1.30 (see § 135 of the Observations above).

458. Decree no. 41/1999 introduced a new mechanism for the period from 1 July 1999, this mechanism being adopted also in a modified form in the Ordinances of the Ministry of Finance no. 1/2002 and no. 6/2002 (see §§ 138, 141 and 144 of the Observations above).

Table 5

From …	**… the following modification in the amount of maximum rent took place:**
07/1992	- increase in the existing rent rates by 100%; - exclusion of all payments for services from the rent; - abolition of the possibility of discounts for dependant children
07/1993	- division into maximum and materially regulated basic rent
01/1994	- determination of new higher rent rates
07/1995	- introduction of the mechanism of annual rent increases
07/1997	- increase in one of the coefficients for the calculation of the maximum rent
07/1999	- new mechanism of annual rent increases

459. The following tables clearly show the development of the maximum basic rent in a category one flat in individual size categories of municipalities both as absolute data (in CZK per square metre per month) and as percentages of accumulated increase in relation to the amount of rent applicable until the end of the first half of 1992.

At the same time, in this and also in other tables, the Government, for the sake of clarity, concentrate on the category one flats only, because the overwhelming majority of tenement flats in the Czech Republic fell into this category (the statistics garnered in the population, house and flat census in 2001 show that out of all tenement flats 89.9%, 7.9%, 1.2% and 0.7% were in categories one, two, three and four respectively). Of course it must be acknowledged that (some) flats in houses of (some) select Applicants fall into a different category, but this circumstance cannot be decisive for the argumentation *in abstracto*.

Table 6

Beginning of the period	Development of the amount of maximum basic rent in a category one flat according to the size of the municipality (in CZK per square metre per month)				
	Up to 10,000	10 – 50,000	50 – 100,000	More than 100,000	Prague
until 07/1992	2.14	2.14	2.14	2.14	2.14
from 07/1992	4.28	4.28	4.28	4.28	4.28
01/1993	4.28	4.28	4.28	4.28	4.28
01/1994	6.00	6.00	6.00	6.00	6.00
07/1995	7.00	7.13	7.33	7.59	7.85
07/1996	8.42	8.74	9.23	9.90	10.60
07/1997	10.68	11.30	12.26	16.00	21.19
07/1998	12.28	13.24	14.77	19.96	29.89
07/1999	13.42	14.47	16.14	21.82	32.67
07/2000	14.08	15.18	16.93	22.89	34.27
07/2001	14.64	15.79	17.61	23.81	35.64
07/2002	15.23	16.42	18.31	24.76	37.07

Table 7

Beginning of the period	Accumulated increase in the maximum basic rent in a category one flat according to the size of the municipality (compared to the first half of 1992) (in %)				
	Up to 10,000	10 – 50,000	50 – 100,000	More than 100,000	Prague
07/1992	100.0	100.0	100.0	100.0	100
01/1993	100.0	100.0	100.0	100.0	100
01/1994	180.4	180.4	180.4	180.4	180.4
07/1995	227.1	233.2	242.5	254.7	266.8
07/1996	293.5	308.4	331.3	362.6	395.3
07/1997	399.1	428.0	472.9	647.7	890.2
07/1998	473.8	518.7	590.2	832.7	1,296.7
07/1999	527.1	576.2	654.2	919.6	1,426.6
07/2000	557.9	609.3	691.1	969.6	1,501.4
07/2001	584.1	637.9	722.9	1,012.6	1,565.4
07/2002	611.7	667.3	755.6	1,057.0	1,632.2

With regard to the fact that the increase in the maximum basic rent in the period in question was based on a percentage increase of the amount of rent in the previous period and no distinctions were made as to the flat category, the data on the accumulated increase in the last table are the same for all flat categories.

460. For the purpose of comparison the Government also present the rates of inflation expressed as the increase in the average annual consumer price index

reflecting the percentage change in the average level of prices for the previous twelve months against the average of the preceding twelve months:

Table 8

Year	**Rate of inflation** (in %)	**Inflation growth in comparison with 1991** (in %)
1992	11.1	11.1
1993	20.8	34.2
1994	10.0	47.6
1995	9.1	61.1
1996	8.8	75.2
1997	8.5	90.1
1998	10.7	110.5
1999	2.1	114.9
2000	3.9	123.3
2001	4.7	133.8
2002	1.8	138.0

461. By comparing the data in the last two tables we can easily see that the accumulated increase in the maximum basic rent was several fold higher than the inflation increase.

It is necessary to add to this that until January 1992 rent also included payments for certain services (see §§ 93 and 113 of the Observations above). Therefore there was a considerable increase in the real value of the rent.

Moreover, it is necessary to point out that, in fact, in a number of municipalities the rates of the basic rent could be different from those mentioned in Table 6, because the municipalities could increase the coefficient of the size of the municipality (K_v) for the whole territory of the municipality in a generally binding decree. The municipality could also increase or decrease the basic rent in parts of the municipality or in individual houses chosen based on their advantageous or disadvantageous location (for details see § 128 of the Observations above).

462. The following tables illustrate the development of the amount of maximum rent in a category one flat with an area of 60 square metres in places where the houses of the select Applicants are located, both as absolute data (in CZK per month) and as percentage of annual increase and accumulated increase in relation to the amount of rent in the first half of 1992.

Table 9a

Beginning of the period	Development of the amount of maximum basic rent in a category one flat with an area of 60 square metres		
	Prague (Applicant Morawetz, Applicants Hlaváček)		
	Amount of rent (in CZK per month)	**Annual increase** (in %)	**Accumulated increase in relation to the first half of 1992** (in %)
until 07/1992	128.4	-	-
from 07/1992	256.8	100.0	100.0
01/1993	256.8	0.0	100.0
01/1994	360.0	40.2	180.4
07/1995	471.0	30.8	266.8
07/1996	636.0	35.0	395.3
07/1997	1,271.4	99.9	890.2
07/1998	1,793.4	41.1	1,296.7
07/1999	1,960.2	9.3	1,426.6
07/2000	2,056.2	4.9	1,501.4
07/2001	2,138.4	4.0	1,565.4
07/2002	2,224.2	4.9	1,632.2

Table 9b

Beginning of the period	Development of the amount of maximum basic rent in a category one flat with an area of 60 square metres		
	Brno (Applicant Vomočil)		
	Amount of rent (in CZK per month)	**Annual increase** (in %)	**Accumulated increase in relation to the first half of 1992** (in %)
until 07/1992	128.4	-	-
from 07/1992	256.8	100.0	100.0
01/1993	256.8	0.0	100.0
01/1994	360.0	40.2	180.4
07/1995	471.0	30.9	266.8
07/1996	636.0	35.0	395.3
07/1997	1,027.8	61.6	700.5
07/1998	1,327.2	29.1	933.6
07/1999	1,450.8	9.3	1,029.9
07/2000	1,521.6	4.9	1,085.0
07/2001	1,582.2	4.0	1,132.2
07/2002	1,645.2	4.0	1,181.3

Table 9c

Beginning of the period	Development of the amount of maximum basic rent in a category one flat with an area of 60 square metres		
	Plzeň (the Applicant Company)		
	Amount of rent (in CZK per month)	Annual increase (in %)	Accumulated increase in relation to the first half of 1992 (in %)
until 07/1992	128.4	-	-
from 07/1992	256.8	100.0	100.0
01/1993	256.8	0.0	100.0
01/1994	360.0	40.2	180.4
07/1995	455.4	26.5	254.7
07/1996	615.0	35.0	379.0
07/1997	993.6	61.6	673.8
07/1998	1,239.6	24.8	865.4
07/1999	1,354.8	9.3	955.1
07/2000	1,421.4	4.9	1,007.0
07/2001	1,478.4	4.0	1,051.4
07/2002	1,537.8	4.0	1,097.7

463. After the Constitutional Court had repealed Ordinances nos. 1/2002 and 6/2002, from 18 December 2002 there was no regulation under which landlords could unilaterally increase rent. Nevertheless, if landlords could not negotiate an agreement on a rent increase with their tenants, then they could bring, in the courts, an action for the determination of rent (for details see §§ 268 to 284 of the Observations above).

464. Moreover, Act no. 107/2006 which has been in force since 31 March 2006 allows landlords to unilaterally increase, once a year throughout the period from 2007 to 2010, the existing rent according to a set mechanism. The purpose of the Act is to provide landlords with an opportunity to unilaterally increase, within a period of four years, the rent up to the lower limit of the range of rent usual in the given place and time. It is therefore evident that the purpose to be achieved by this Act grants much broader concessions to the landlords than the State would be directly compelled to grant with regard to its obligations arising under Article 1 of Protocol no. 1 and the subsequent Court's case law.

465. The main principles of the Act can be summarised as follows:

1. The amount of rent when concluding a new lease contract and any change in the rent during the operation of a lease contract are to be agreed upon by the landlord and the tenant.
2. If, during the operation of the lease contract, no agreement on a rent increase is reached, the landlord is entitled to unilaterally increase the rent once a year.

3. The unilateral rent increase in any given year may not be higher than the percentage of increase determined for each specific value of monthly rent per square metre paid prior to the increase in relation to the target rent applicable to the place in which the flat is located.
4. The target value of the monthly rent in municipalities (for each size category) in the regions (and parts of Prague and Brno) shall be derived from the data on values of flats from the immovables statistics and it shall be calculated as 1/12 of 5% of the price of the flat, 1/12 of 3.65% in Prague 2 and 1/12 of 2.9% in Prague 1 and 4.6% in Prague 6. In the case of a flat of a lower quality, a lower target value shall be determined.
5. The tables containing the target values for monthly rents for individual size categories of municipalities in individual regions and tables containing the maximum rent increase shall be published in a notice of the Ministry for Regional Development published annually (updated according to the development of prices).
6. The target value for the monthly rent may be attained after the final increase in the transitional period.

466. Section 3 of the Act specifically stipulates that unilateral rent increase by the landlord can be effected in the period starting on the day of entry into effect of this Act and ending on 31 December 2010.

The landlord is entitled to unilaterally increase the rent once a year starting on 1 January 2007 and subsequently always with effect from 1 January, unless the landlord agrees on a different arrangement with the tenant. Unilateral rent increase in each of the specified periods of 12 months may not be higher than the maximum increase in a monthly rent determined for each specific value of the present rent per square metre of the flat's floor area in relation to the corresponding target value of the monthly rent per square metre of the flat's floor area.

The annex to the Act contains an exact formula for calculating the target values for the monthly rent per square metre of the flat's floor area and an exact formula for calculating the maximum increase in monthly rent expressed in a percentage. The Act thus defines the possibilities for unilateral rent increase over the four-year period to which the regulation applies. To facilitate the application of the Act in practice, it was intended that numbers, which the landlords and the tenants can easily find in the relevant table according to the location, current rent and other information available to them, would be published in a clear way in the notice of the Ministry for Regional Development. Furthermore, for an easy calculation of the unilateral rent increase for the years 2007 and 2008 'calculators' are available on the website of the Ministry for Regional Development.

The target value is calculated on the basis of the formula set in the Act from the 'basic values of flats' in each location. The basic values come from the statistics on purchase prices for immovables, which are compiled by the Ministry of Finance. From the data in the statistics the 'basic value' per square metre of the flat's floor area were determined for the purpose of calculating the rent increase.

The Act fixes the annual target rent at 5% of the basic value of a flat in the location concerned. For lower quality flats and those in select districts of Prague the Act stipulates a lower percentage (as regards the zoning of Prague and Brno into districts it must be emphasised that it is different from the administrative zoning, because this zoning is chosen for the purpose of valuation on the basis of ascertained flat values).

467. The following tables show how the maximum level of rent for a model category one flat with an area of 60 square metres has increased or shall increase in 2007 and 2008 in each of the places where the houses of the select Applicants are located (see § 462 of the Observations above), both as absolute data (in CZK per month) and as a percentage of annual increase and accumulated increase in relation to the amount of rent at the end of 2006, including the expected increase in 2009 and 2010 (provided that the values of flats do not change and that therefore there are no other changes in the target rent and the maximum rent increase).

The rates of maximum basic rent reached in each location in 2002 are used as the source values for the year 2006 (see Tables 9a to 9c).

Table 10a

Beginning of the period	**Development of the amount of maximum basic rent in a category one flat with an area of 60 square metres**		
	Prague – Holešovice (Applicant Morawetz)		
	Amount of rent (in CZK per month)	**Annual increase** (in %)	**Accumulated increase in comparison with 2006** (in %)
until 2006	2,224.2	-	-
01/2007	2,847.0	28.0	28.0
01/2008	3,769.2	32.4	69.5
01/2009	4,990.2	32.4	124.4
01/2010	6,607.2	32.4	197.1

Table 10b

Beginning of the period	**Development of the amount of maximum basic rent in a category one flat with an area of 60 square metres**		
	Prague – Nusle (Applicants Hlaváček)		
	Amount of rent (in CZK per month)	**Annual increase** (in %)	**Accumulated increase in comparison with 2006** (in %)
until 2006	2,224.2	-	-
01/2007	2,722.2	22.4	22.4
01/2008	3,468.0	27.4	55.9
01/2009	4,418.2	27.4	98.6
01/2010	5,628.8	27.4	153.1

Table 10c

Beginning of the period	Development of the amount of maximum basic rent in a category one flat with an area of 60 square metres		
	Brno – Královo pole (Applicant Vomočil)		
	Amount of rent (in CZK per month)	**Annual increase** (in %)	**Accumulated increase in comparison with 2006** (in %)
until 2006	1,645.2	-	-
01/2007	2,089.2	27.0	27.0
01/2008	2,785.2	33.3	69.3
01/2009	3,712.7	33.3	125.7
01/2010	4,949.0	33.3	200.8

Table 10d

Beginning of the period	Development of the amount of maximum basic rent in a category one flat with an area of 60 square metres		
	Plzeň – Východní předměstí (the Applicant Company)		
	Amount of rent (in CZK per month)	**Annual increase** (in %)	**Accumulated increase in comparison with 2006** (in %)
until 2006	1,537.8	-	-
01/2007	1,860.6	21.0	21.0
01/2008	2,329.2	25.2	51.5
01/2009	2,916.2	25.2	89.6
01/2010	3,651.1	25.2	137.4

468. In consequence of the increase in the values of flats, in 2008 in the majority of locations the maximum possible rent increases will be higher than in 2007. This is because the values of flats are used to calculate the target rents that are to be reached in 2010. Using the mechanism of a "moving target" – annually updated according to the actual trend in values – the system of unilateral rent increase reacts to the contemporary developments on the housing market.

A similar pattern of development can be expected over the next two years of the effect of Act no. 107/2006. Therefore the actual rent increases in 2009 and 2010 will probably be higher than the ones shown in the above tables.

469. Finally, the next table contains data on the accumulated increase in the amount of maximum rent in a category one flat with an area of 60 square metres, in places where the houses of the select Applicants are located, in comparison with the amount of rent in the first half of 1992.

Table 11

Beginning of the period	Accumulated increase in the maximum basic rent in a category one flat with an area of 60 square metres in comparison with the first half of 1992 (in %)			
	Prague – Holešovice	Prague – Nusle	Brno – Královo pole	Plzeň – Východní předměstí
until 07/1992	-	-	-	-
from 07/1992	100.0	100.0	100.0	100.0
01/1993	100.0	100.0	100.0	100.0
01/1994	180.4	180.4	180.4	180.4
07/1995	266.8	266.8	266.8	254.7
07/1996	395.3	395.3	395.3	379.0
07/1997	890.2	890.2	700.5	673.8
07/1998	1,296.7	1,296.7	933.6	865.4
07/1999	1,426.6	1,426.6	1,029.9	955.1
07/2000	1,501.4	1,501.4	1,085.0	1,007.0
07/2001	1,565.4	1,565.4	1,132.2	1,051.4
07/2002	1,632.2	1,632.2	1,181.3	1,097.7
01/2007	2,117.2	2,020.2	1,527.3	1,349.2
01/2008	2,835.6	2,601.2	2,069.1	1,714.4
01/2009	3,786.7	3,341.3	2,791.5	2,171.6
01/2010	5,046.0	4,284.2	3,754.3	2,744.0

γ) Liberalisation of the regulation of tenancy relationship

470. As mentioned above (see § 442 of the Observations above), the first major liberalisation in the regulation of tenancy relationships was the replacement of the right of use of a flat with a traditional lease system, with effect from 1 January 1992.

In consequence of this conceptual change the position of private landlords naturally grew stronger, for example:

- the tenancy of a flat was created on the conclusion of a lease contract between the landlord and the tenant (Section 685 of the Civil Code),
- it was possible to conclude lease contracts for a fixed term (Section 685 of the Civil Code),
- the number of grounds under which the landlord may unilaterally terminate the tenancy increased from six to eight [Section 711, subsections 1(a) to 1(h) of the Civil Code].

471. In the following years there were certain particular changes in the regulation that again strengthened the position of the landlords in tenancy relationships:

- a ninth ground for serving a notice of termination was added [Section 711, subsection 1(i) of the Civil Code, as amended by Act no. 264/1992] and one of the existing reasons was extended [Section 711, subsection 1(h) of the Civil Code, as amended by Act no. 267/1994 – for details see § 100 of the Observations above];
- the following obligations were laid down for tenants:
  - to allow the landlord to carry out installation and maintenance of an appliance for measuring and regulating the heating, hot and cold water, as well as a subsequent reading of the measured values (Section 692, subsection 3 first sentence of the Civil Code, as amended by Act no. 267/1994);
  - to allow the landlord access to other technical appliances, if they are part of the flat and if they belong to the landlord (Section 692, subsection 3 second sentence of the Civil Code, as amended by Act no. 267/1994);
  - to immediately remove, upon request, all construction works and other significant changes carried out in the flat without the landlord's consent (Section 694 of the Civil Code, as amended by Act no. 267/1994);
- the provisions concerning the passage of tenancy were made more restrictive in the sense that after a tenant died, a family member hoping to take over the tenancy was obligated to prove that they lived with the tenant in a common household and that they did not have their own flat (Section 706, subsection 1 of the Civil Code, as amended by Act no. 267/1994).

472. The second comprehensive change in the regulation of tenancy relationships was introduced in Act no. 107/2006, which, in its Part Two, amended certain provisions of the Civil Code on flat tenancies. This resulted in the coming into effect, on 31 March 2006, of the following changes:

- it was, for the first time, explicitly stipulated that the rent in a new lease contract or a change in the rent during the tenancy shall be agreed on by the landlord and the tenant (Section 696, subsection 1 of the Civil Code);
- the court's approval was no longer necessary when serving notice of termination under certain grounds [Section 711, subsections 2(a) to 2(e) of the Civil Code];
- the possibility of passage of tenancy was further restricted as regards the grandchildren of the original tenant and as regards persons who took care of the common household of the deceased tenant or who

were dependent on the tenant as regards their upbringing; if the tenant accepted these persons into the flat only after the conclusion of the lease contract, then the landlord's consent is necessary for the passage of tenancy (Section 706, subsection 2 of the Civil Code).

473. Moreover, work is currently underway on the drafting of a Government Bill for an entirely new civil law code. The Bill envisages another substantial overall liberalisation of the regulation of flat tenancies and the further strengthening of the landlord's position in the tenancy relationship.

Therefore, for example, the landlord could be entitled to serve a notice of termination on the tenant without giving any grounds (however, this option is naturally connected with a longer period of notice), substantial restriction of the possibility of passage of tenancy is expected *etc*. (an extract from the June 2007 draft is included in Enclosure E23).

474. The Government believe that the following facts are also important for the assessment of the merits of the complaint about rent regulation: the regulation of the extinguishment of tenancies, i.e. specifically the issue of whether and under what conditions the landlord has the opportunity to terminate a tenancy relationship which, in his or her opinion, puts an unreasonable burden on him/her. As the Government mentioned above (see § 285 of the Observations), in their view the Applicants would not perceive the problem of rent regulation itself to be a fundamental one, if they had the opportunity to unilaterally terminate the tenancy relationship at their own discretion.

475. Under the applicable regulation the landlord's opportunity to terminate the tenancy relationship was subject to restrictions, but these restrictions in no way excluded this opportunity.

476. In the Government's opinion, in cases where the opportunity to terminate the tenancy relationship actually existed and the landlord did not make use of it for some reason, we could again consider the possibility of waiver of protection of the right to the peaceful enjoyment of possessions on the owner's part. The applicant cannot claim in proceedings before the Court that the existence of the tenancy relationship caused him/her harm if he/she did not make use of the available opportunity to terminate this relationship.

477. The Government believe that the landlord's opportunity to terminate the tenancy relationship was not illusory. In the first place, the statutory grounds for serving a notice of termination were formulated in a rather broad way. The landlord could have served a notice of termination on the tenant for a total of nine different reasons, *inter alia*, for the reason that the landlord needed the flat for him-/herself, his/her spouse, his/her children, grandchildren, son-in-law or daughter-in-law, his/her parents or siblings; for the reason that the tenant has grossly violated his/her obligations arising under the tenancy, in particular by a failure for more than three months to pay rent or charges for the use of the flat; and for a number of other reasons.

478. Although the landlord's obligation was to provide the tenant with a replacement flat (Sections 712 to 714 of the Civil Code), only in a limited number

of cases was the landlord obligated to provide an adequate substitute flat, i.e. a flat that is, according to the local conditions, essentially equivalent to the vacated flat. In other cases it was sufficient to provide substitute accommodation which was defined as a flat with one room or a room in a dormitory or a sublease in an equipped or unequipped part of a flat of another tenant, or it was sufficient only to provide shelter which means a provisional solution until the tenant finds proper accommodation and space for storing his flat furnishings and other property for home and personal use.

479. Furthermore, under Act no. 102/1992 if a landlord, who gave a notice of termination with the court's approval, or a person in whose favour the court has decided on another persons' obligation to vacate a flat, could not secure a replacement flat, he/she might have requested the provision of this compensation with the municipality on whose territory the flat to be vacated was located. Then the municipality could provide a replacement flat by offering to the tenant to conclude a lease contract concerning a flat or a room in a house owned by it, or by concluding a lease contract concerning a flat in a house of another juristic or natural person to the benefit of the person who was obligated to vacate the flat.

480. Finally, in the third place, in connection with the replacement flat issue, it is necessary to draw attention to finding of 23 September 2004 file ref. no. IV. ÚS 524/03 (see § 189 of the Observations above), in which the Constitutional Court confirmed that even a flat that is not subject to rent regulation, unlike the flat to be vacated by the tenant, can be considered an adequate substitute flat. In the substantiation of its decision it noted, in particular, the following:

> "Statutory regulation distinguishes among several types of substitute flats on the basis of criteria of quality and quantity. One of them is the 'adequate substitute flat'. It is defined on the statutory level as a replacement flat that is essentially equivalent to the vacated flat given the local conditions. The Constitutional Court expressed its opinion on the interpretation of the terms 'essential equivalence' and 'local conditions', used in Section 712, subsection 2 of the Civil Code, in the finding file ref. no. III. ÚS 114/94. It concluded that they must be interpreted in a way which imposes an obligation upon the landlord to exert the maximum efforts that can be reasonably expected of him/her in order to secure a substitute flat that is as equivalent as possible to the vacated flat given the local conditions and according to all statutory variables. A narrow interpretation of the term 'essential equivalence' in a situation when given the local conditions it is difficult or impossible to secure such adequate substitute flat, would lead to an actual 'emptying' of the landlord's right to serve a notice of termination on the tenant. […]
>
> The amount of rent is important in assessing the adequacy of the replacement flat, but only in the sense that it must correspond to the usual level of rent in the place and time in question."

481. As has already been mentioned above (see § 450 of the Observations), in the Government's opinion the landlord may claim compensation for damage allegedly caused to him/her by the operation of regulations of the amount of rent and restricting certain landlords' rights only if he/she really used all the opportuni-

ties available to him/her under the legal order to prevent this damage from occurring.

It is not fair to request the State to compensate for damage that the landlord could have avoided but was not sufficiently mindful of his/her rights to do so and made insufficient use of remedies provided to him/her by the national law.

482. Naturally, it is also necessary to admit that the landlord's rights, especially as regards the opportunity to unilaterally terminate the tenancy relationship, were subject to various restrictions. The increased protection of the tenant, as the usually much weaker party in the tenancy relationship, is, however, entirely common and standard in the legal orders of the Contracting Parties to the Convention, particularly as regards termination of lease effected by the landlord.

In this connection the Government would point out that in the past the Convention institutions have acknowledged certain substantial restrictions of the landlords' right to terminate the tenancy relationship by giving a notice to be compliant with the rights and freedoms guaranteed by the Convention, for example, as regards the inability of landlords/legal persons to terminate the lease because they need the immovable for themselves (decision of 18 May 2006 on the admissibility of application no. 38312/02 *Srpska Pravoslavna Crkvena Opština na Rijeci v. Croatia*).

They also confirmed that the right to respect for private life does not go so far as to place the State under an obligation to give landlords the right to recover possession of rented houses or flats on request and under any circumstances (the Commission decision of 16 October 1996 on the admissibility of application no. 32009/96 *Reuter v. Germany*).

δ) Summary

483. It is therefore evident that in the period after the Convention came into effect in relation to the Czech Republic no rent regulation was introduced and no landlords' rights were restricted. On the contrary, this period is characterised by three main trends:

a) narrowing of the group of flats subject to rent regulation;

b) increase in the level of maximum rent in flats subject to rent regulation;

c) liberalisation of the regulation of tenancy relationships.

484. As regards the narrowing of the group of flats subject to rent regulation it is necessary to highlight the following facts, in particular:

– until mid 1993 rent was regulated in nearly all flats, from mid 1993 and then further from mid 1995, rent was deregulated, particularly for flats for which lease contracts were concluded with new tenants, but also for other groups of flats;

– this resulted in a situation whereby, rather quickly, rent regulation ceased to apply to flats in new houses and flats in older houses for which the lease contracts were concluded with new tenants, which

was fully compliant with the tradition of rent regulation in the inter war period (1918 to 1938), and also with the rent regulation in other European countries;

– moreover, from 1 January 1992 it was also possible to conclude lease contracts for a fixed term;

– therefore the group of flats subject to rent regulation was constantly narrowing down and it is still narrowing down; for the whole period there was no increase in the number of flats subject to rent regulation, not by a single flat.

Therefore the situation in the Czech Republic is substantially different from the situation in other States of the Council of Europe, where rent regulation was newly introduced *during the effect of the Convention* and where the State intervened in pre-existing tenancy relationships and thus fundamentally restricted landlords' rights that had been duly acquired. Nonetheless, the Convention institutions have not, even in such cases, concluded that the landlords' rights to the peaceful enjoyment of their possessions had been violated (see e.g. the *Mellacher and Others* judgment, cited above).

485. As regards the amount of regulated rent the Government would state, above all, that:

– in the Czech Republic, from mid 1992 there has been a progressive liberalisation of the maximum amount of rents, at first through the increase in the fixed rent rates set by the regulations, in the second stage (from the mid 1995) by introducing a mechanism which stipulated a maximum limit to which the landlord may unilaterally increase the rent;

– after a short period of price moratorium over rents, effected by Government Order, from 20 March 2003 onwards no maximum level of rent was fixed, therefore in the absence of an agreement between the tenant and the landlord, the latter could request the court to determine a new level of rent;

– from 1 January 2007 the landlords are moreover entitled to unilaterally increase the rent in four consecutive steps until 2010, when rents in flats formerly subject to rent regulation should reach the level of market rents.

486. Finally, as regards the liberalisation of the regulation of tenancy relationships it is appropriate to mention the following facts:

– after the replacement of the former right of use of a flat with the traditional lease system on 1 January 1992, in the following years there were other particular changes to the Civil Code as a result of which the landlords' position in the tenancy relationship was strengthened;

– with effect from 31 March 2006, Act no. 107/2006 contributed to a significant strengthening of the landlords' position;

– another substantial liberalisation is envisaged by the proposal for new codification of the civil law, which should be introduced into the legislative procedure soon;
– the opportunity to terminate the tenancy with the tenant in a flat with regulated rent has not been illusory in recent years, although this step was somehow restricted, for the purpose of protecting the weaker party in the tenancy.

b) Costs for the performance of the landlord's statutory obligations and the amount of revenue from leasing the immovables

487. The Government believe that the key circumstance that led the Court, in the *Hutten-Czapska* case cited several times above, to conclude that the Polish system of rent regulation constituted a violation of the right of the applicant (and in general also other landlords) to the peaceful enjoyment of possessions was the circumstance whereby on one hand the Polish legal order imposed certain obligations upon the landlords (i.e. particularly to maintain and repair the leased immovables) and on the other hand it did not allow them to set at least such rent as would cover the costs of the performance of these obligations (see in particular §§ 173, 174 and 191 of the Chamber's judgment of 22 February 2005 and §§ 197 and 198 of the Grand Chamber's judgment of 19 June 2006).

488. Therefore for that reason it is necessary to deal with the question what can be considered, for the purpose of assessing the observance of Article 1 of Protocol no. 1, costs for the performance of the landlord's statutory obligations on one hand and on the other hand what can be considered part of the revenue from the immovable in question.

In the Government's opinion the select Applicants, in their argumentation, use a very broad definition of costs that should be covered by the rent, and at the same time they unjustifiably neglect certain revenue which the immovables bring.

α) Relevant costs for the performance of the landlord's statutory obligations

489. The Government are of the opinion that the right to the peaceful enjoyment of possessions cannot be understood in such a broad way that the *right to a constant profit-making property lease* can be deduced from it regardless of the particular circumstances of each individual case.

490. In particular, the right embodied in Article 1 of Protocol no. 1 cannot be understood as a right to *constant reproduction* of this property.

In the case of housing 'reproduction' means the process of ongoing maintenance and restoration of the flats so that they are capable of performing their function, i.e. to provide accommodation. If this capability is restored in its original extent as regards the size and quality, it is a simple reproduction (if this capability is reproduced to a larger or smaller extent then it is an extended or reduced reproduction).

The expenditure necessary for securing reproduction of the flats can be described as costs of reproduction and they can be, in a very simplified way, divided into three main components:

– costs for maintaining and repairing the house,
– depreciation,
– other costs (costs of the house administration, real estate tax *etc*.).

491. A house – as with any other thing – has a certain expected life span, after which the thing is so depreciated that it can no longer serve the original purpose.

The costs for maintaining and repairing a block of flats include costs necessary to provide for the actual use of the house, throughout its expected life span, according to its purpose, i.e. housing.

Depreciation represents costs for purchasing a new house after the degradation of the current house or for making such repairs of this house that will extend its original expected life span.

Other costs are various expenditures related to the administration of the house, to the performance of various statutory obligations related to the house (the real estate tax).

492. Therefore a prudent manager, who is considering purchasing an immovable for the purpose of leasing it, must evaluate the costs which the purchase and subsequent operation will bring. If he/she wants the business to be long-lasting and profit-making, he/she must set the rent for the house at such a level that the revenue from the house, after deducting all the costs of obtaining this revenue (including for example commission of an intermediary for the conclusion of the lease contract, costs of incomplete lease of the immovable, costs of obtaining capital for the purpose of purchasing the immovable *etc*.), covers all the costs of reproduction defined above.

493. Nevertheless, the Government believe that no *right to a constant profit-making property lease* is guaranteed in Article 1 of Protocol no. 1.

494. The right to the peaceful enjoyment of possessions was originally intended to be included in the Convention itself, but at the last minute it was excluded and placed in a separate protocol, together with the right to education and the right to free elections, so that disagreements among the States as regards the specific form of these provisions and the suitability of laying them down did not jeopardise the adoption of the Convention itself.

From *travaux préparatoires* of the Convention it clearly stems that the purpose of stipulating this right was an attempt to prevent what was happening at that time – i.e. in the late 1940s – particularly in the States of the Eastern part of the European continent, i.e. a massive deprivation of property of large groups within the population. However, on the other hand not even the founding States of the Council of Europe were liberal enough in their attitude to explicitly lay down the right to compensation in Article 1 of the Protocol. Nevertheless, in any case the

right to the peaceful enjoyment of possessions was directed primarily at the cases of complete deprivation of ownership rights and intended to subject this deprivation to certain conditions.

Since then – in particular due to an evolutive interpretation of the Convention in the Court's case law – the original intended extent of the right to the peaceful enjoyment of possessions has been considerably extended. However, in the Government's opinion this does not mean that the Convention should protect against any interference that does not deprive the owner of his/her property at all, but it only partially restricts him/her in some of the possible ways of exercise of his/her ownership right.

495. If we get back to the issue of lease of immovables, the Government believe that for the purpose of assessing whether fair balance was maintained it is not possible to work with the term 'costs of reproduction'. This category has its significance as an economic deliberation made by a person interested in investing his/her capital into immovables and in further appreciating it by leasing the immovables.

If this activity is not to be loss-making, then after the expiry of the life span of the house (let us leave out the fact that the life span of a house is on average longer than a human life) he/she must have at his/her disposal at least an amount equivalent to that which he/she invested into the immovable and for which he/she can possibly purchase another house. For this to happen it is necessary for the rent to include 'depreciation' as well; on average, depreciation amounts to around 1% of the value of the building per year (therefore an average life span of 100 years is assumed).

496. However, in the Government's opinion the right to the peaceful enjoyment of possessions should not be understood as the right to a return on investments. Article 1 of Protocol 1 should protect, above all, property which the person concerned is able to use for his/her own needs.

497. As mentioned above, many of the current applicants acquired their property on the basis of restitution regulations. With regard to the fact that the property that has been now restored (whether directly to the original owners or, with regard to the timeframe, rather to their heirs) had been confiscated before the Convention became binding on the Czech Republic and the Convention in no way imposed an obligation upon the Czech Republic to restore this property (see § 391 of the Observations above), it must be believed that these persons acquired their property entirely free of charge, from the point of view of the Convention. (The Government consider it necessary to add that this statement does not intend to dispute the legitimacy of the property restitutions as a tool of mitigating certain injustices committed during the totalitarian regime.)

Therefore if the Convention required the rent to also cover the depreciation of the immovable concerned, then it would have, in a way, guaranteed to these persons precisely the right to compensation for the deprivation of ownership rights which occurred prior to the entry into effect of the Convention and which the

Convention does not guarantee, as stems from the Court's case law (see the *Blečić* judgment cited above in § 391 of the Observations).

498. At the same time it is necessary to point out that depreciation is an amount which the landlord does not have to pay on an ongoing basis throughout the life span of the house, but he/she may potentially start accumulating these amounts after a certain period of time. The fact alone that for a certain transitional period of time the rent was not covering depreciation does not mean that the owner had to pay an amount equal to the depreciation from other sources.

499. It still holds that the right to the peaceful enjoyment of possessions should not be understood as the right to *acquire* an entirely unlimited ownership right. Therefore protection under Article 1 of Protocol no. 1 cannot be claimed in a case where the person concerned voluntarily acquired a restricted ownership right (see § 421 of the Observations above).

500. Generally speaking, if the State has laid down such conditions that business in a certain field does not pay off (i.e. when the costs exceed the possible revenue), then the State, or its representatives, can be held politically liable for the potential negative consequences of such policy to the State economy. However, the State cannot be held liable for any possible damage incurred by a person who decides to do business in this field anyway.

501. If we now proceed from depreciation to costs for maintaining and repairing the house, it must be noted that this component cannot be entirely considered costs on the landlord's part. As stems from the above summary of the domestic law, also the tenant is obligated to share these costs to a considerable extent. In Section 687, subsection 2 of the Civil Code, as amended by Act no. 509/1991, or Section 687, subsection 3 of the Civil Code, as amended by Act No. 107/2006, it is stated that unless the lease contract stipulates otherwise, the tenant shall pay for minor repairs in the flat related to its use and for costs related to the routine maintenance.

The terms 'minor repairs' and 'costs related to the routine maintenance' are defined in detail in Government Order no. 258/1995, to apply the Civil Code (see §§ 174 to 176 of the Observations above). The tenants are therefore obligated to pay for, for example, repairs of individual top parts of floors, repairs of individual parts of windows and doors, repairs of stop valves on water plumbing, replacement of water and grease traps, repairs of heat meters and hot water meters and many other things.

502. The Government do not have exact data available on the tenants' contribution to the repairs and maintenance of the flats, however, from the available statistics it can be concluded, bearing in mind the possibility of a certain statistical discrepancy, that the average tenant pays for approximately one third of all costs for maintaining and repairing the house, the landlord pays for two thirds.

For example, according to the statistics of family accounts published by the Czech Statistical Office, households living in tenement flats paid on average CZK 267 a month for maintenance and repairs in the third quarter of 2005, while households living in their own houses paid CZK 757 (see Enclosure E24). If we

presume that the total costs for maintaining and repairing tenement flats are certainly not higher than these costs for houses, whereas the costs for maintaining and repairing the tenement flat are divided between the tenant and the landlord, then we find that the tenants contributed approximately 35.3% (267 / 757 = 0.353) of the total costs.

Statistics on family accounts kept by the Czech Statistical Office for the year 2006 provide data on the costs for routine maintenance and minor repairs for persons living in their own family houses (CZK 3,401 per person per year), persons living in tenement flats (CZK 1,187 per person per year) and persons living in privately owned flats (CZK 2,187 per person per year) (see Enclosure E25). If we use the costs for persons living in their own family houses as the reference value, we get the share of 34.9%, and if we use the costs for persons living in their own flats, the share would be as much as 54.3%.

503. It is indicated that costs for maintaining and repairing an immovable average around 1.5% of the value of the building per year. Therefore it can be believed that the costs for maintaining and repairing a house paid by the landlord should not, on average, amount to more than 1% of the value of the building per year.

Moreover, it is necessary to bear in mind that the service charges related to the use of the immovable (supply of heating, water rate, sewage rate, electricity, waste disposal *etc*.) are not included in the rent and are fully paid by the tenant.

504. As regards other items that would have to be included in the costs of reproduction in case of a purely economic calculation, in connection with the real estate tax it is necessary to draw attention to the fact that until the tax year 2007 (incl.) the blocks of flats restored to the ownership of natural persons in the restitution procedure under separate regulations, unless the ownership right passed to or was transferred to other persons than relatives or closely connected persons, were exempted from the building tax [Section 9, subsection 1(h) of Act no. 338/1992, on real estate tax]. Until the same tax year, blocks of flats owned by natural persons and built before 1948, in which more than half of the flats are tenement flats, or flats in houses were occupied for at least 15 years by other users than the owner or his/her relatives or closely connected persons under the previous Acts on flat management and where the rent was ordered, unless, after 1948, the ownership right has passed to or was transferred to other persons than relatives or closely connected persons, were exempted from the building tax [Section 9, subsection 1(i) of the Act].

505. Therefore, ultimately, it cannot be believed that an unreasonable burden was put on the landlords whereby the amount of regulated rent did not cover all costs of reproduction of the immovable concerned (defined in general in § 490 of the Observations above).

506. In the Government's opinion the rent should not be regulated, on a long-term basis, at a level that does not cover the *costs of the owner of the immovable related to the performance of the landlord's statutory obligations*.

Therefore in principle the rent should cover the part of the total costs for maintaining and repairing the building which the landlord is obligated to pay (around 1% of the value of the building per year), and then also some other minor items (in total approximately 0.1 to 0.2% of the value of the building per year) related to the ownership of the immovable (the house administration costs, real estate tax).

507. With reference to various resources the Applicants indicate that the regulated rent in the Czech Republic amounted on average to 1.0 to 1.3%, or 1.12% of the value of the building (see e.g. point II. 5. 4. of the application form of 16 June 2005 submitted by Applicant Vomočil).

If we follow from these data, then it is already possible to conclude that the regulated rent in the Czech Republic – *on average* – covered the landlords' costs for the performance of their statutory obligations.

508. Therefore, in the Government's opinion, in general, it cannot be believed that an excessive burden was put on the owners of houses and flats subject to rent regulation that would unreasonably distort the fair balance between the legitimate aim and means to achieve this aim and that therefore the landlords' right to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol no. 1 would be systematically violated.

509. The Government are furthermore convinced that in assessing whether the burden placed on the landlords was unreasonable or not, account needs to be taken of other facts too.

510. It is particularly necessary to examine the difference between the costs and revenue for the longest period possible (ideally this period should be the whole life span of the house). While the amount of revenue from the immovable is relatively inelastic, repairs of the immovable usually take place in a single moment. It is therefore not possible to require the rent to be at a level whereby the costs incurred at all moments are fully covered by the revenue from rents. If the landlord makes costly repairs in one year, it is absolutely certain that the difference between the revenue and expenditure in the year in question will be negative. However, in the following years it may not be necessary to carry out any repairs, therefore the landlord will have the opportunity to compensate for the deficit in the previous period from the surplus of revenue over expenditure in this subsequent period.

Therefore, if Applicant Vomočil asserts that the collected rent did not cover even the costs for the repairs of the house which he financed, this assertion could be theoretically valid in the first few years after the repairs, but, with time, the overall balance of the 'house economy' could have not only been balanced, but also moved into the positive and presumably that is what actually happened (for details see §§ 574 to 577 of the Observations below).

511. In this connection the Government would recall that in the case of flats subject to rent regulation whose reconstruction or modernisation was approved after 30 June 1993 and where public funds were used in the financing, from 1 July 1993 the rent was not regulated by a maximum level, but was only materially re-

gulated. From 1 July 1995 the rent was materially regulated in the relevant way not only for flats where public funds were used in the financing of their reconstruction or modernisation, but for all flats whose reconstruction or modernisation was approved after 30 June 1993 (see §§ 121 and 130 of the Observations above).

At the same time, the upper limit of the materially regulated rent was, in the case of these flats, fixed at double the maximum rent; from 1 July 1995 it also applied that if the calculated materially regulated rent was lower than the maximum rent, then the regulation under provisions on the maximum rent applied (see §§ 121 and 130 of the Observations above).

Thus, if the immovable required reconstruction, its owner was allowed to collect rent amounting to twice the maximum basic rent.

512. It is necessary to point out that all costs actually incurred by the landlord cannot be automatically considered costs, only expenditure made *purposefully* is to be included, i.e. costs which the landlord was really *obligated* to spend.

Therefore costs of reconstruction or modernisation cannot be included, although they contribute to the increase in the quality of the immovable, they are not necessary for the immovable to reach the expected life span. The owner is in no way compelled to increase the quality of the immovable.

It is also not possible to accept costs at whatever amount regardless of whether these costs at least roughly correspond to the average price for the relevant services at the time when they are provided.

513. It must also be remembered that the possibility cannot be ruled out that in certain locations the market rent was so low that it did not even reach the regulated rent (see §§ 521 to 522 of the Observations below).

Therefore if the level of regulated rent is higher than the rent usual in the given place and time, this does not create a problem from the point of view of Article 1 of Protocol no. 1, even if the regulated rent itself does not cover the costs for the performance of the landlord's statutory obligations.

514. Last but not least, the Government would state that Act no. 107/2006 allows the landlords to unilaterally increase the rent progressively over the period from 2007 to 2010 up to a 'target value of rent' which should correspond to the lower limit of the range of rent usual in the place and time in question (for details see §§ 464 to 469 of the Observations above).

This target value is in principle fixed at 5% of the value of flats in the individual locations per year, i.e. approximately double the value which the Applicants mention as the amount of costs necessary for securing the simple reproduction of the immovable.

In the Government's opinion this value is entirely sufficient to cover, in the long term, all costs of reproduction and to allow the owners of immovables to gain profit (this is naturally only on the condition that with regard to the local conditions the market rent itself is at such level as to allow costs to be covered).

The owners can use this profit in the subsequent years to pay for the part of the costs for maintaining and repairing the immovables which was not covered by revenue from the rents in the preceding years.

515. Approximately twenty years after the fall of the Communist regime and nearly eighteen years after the entry into effect of the Convention in relation to the Czech Republic, conditions are being established whereby the housing market will be fully liberalised. The Government do not find the length of this transitional period unreasonable in any way, either in comparison with the average life span of houses, or in comparison with the period for which rent was regulated in Western European countries after the end of the Second World War. The Government believe that no obligation arose upon the Czech Republic under Article 1 of Protocol no. 1 to interfere with tenancy relationships to any further extent than it actually did.

ß) Relevant revenue from the immovable in question

516. Nevertheless, the issue of costs to be covered by the rent is not the only one, there is also the issue of revenue. The Government are convinced that for the purpose of decision making on the observance of the right embodied in Article 1 of Protocol no. 1 it cannot be believed that the revenue from regulated rent alone should cover all the costs for the performance of the landlords' statutory obligations.

517. First of all, it is not possible to include costs for maintaining and repairing the *whole* immovable on one hand and only revenue from flats subject to rent regulation on the other hand. This is because in a number of cases the revenue from regulated rent forms only part of the revenue from the whole immovable.

Let us again take the example of Applicant Vomočil who is comparing the costs incurred by him for the purpose of maintaining and repairing the whole house with revenue from rents in flats subject to rent regulation. However, he does not mention that only approximately half of the flats in the house are subject to rent regulation and the Applicant lets the remaining flats (or he presumably has at least the opportunity to let them) for market rent.

He further neglects to mention that in the house there are commercial premises that are used for commercial purposes and for which the rent has not been regulated in any way since 1 October 1995 (for details see §§ 574 to 577 of the Observations below).

518. Furthermore, when the owner him-/herself uses, in some way, e.g. for his/her own living or business, premises in a house with flats subject to rent regulation, this must be taken into consideration as revenue from the immovable in question.

519. Therefore the balance of costs and revenue must, in principle, be made on the level of the whole immovable, or all the immovables that the person concerned owns and uses, or is able to use, for letting. Only then we can get an accurate view of the extent of the burden which is put on the specific owner as a result of the existence of the flats being subject to rent regulation.

520. It is then necessary to take into account that at present the market rents are to a certain extent overvalued in consequence of the rent regulation and its restriction to only some of the flats in the country (a similar effect occurred in Austria in the late 1960s and early 1970s – see the *Mellacher* judgment, cited above, § 29).

In certain aspects, this effect is not necessarily favourable for the State from a macroeconomic point of view. However, this does not mean that we should not take it into account if we wish to determine the size of the burden rent regulation places on specific landlords. The operation of the rent regulation must be assessed globally, it is not possible to consider only negative impacts affecting the landlords' property, but also positive impacts, although they might be only a certain side effect of the chosen method of rent regulation.

521. Applicant Vomočil submitted to the Court an analysis entitled *Rent deregulation*, which was drawn up in March 2005 by the company P. and which provides an economic explanation of this phenomenon and quantifies it (see Enclosure E26).

The purpose of the analysis was to calculate the difference between the regulated rent and the market rent. Nevertheless, for these purposes it was necessary to distinguish between the real market rent (i.e. rent for which flats not subject to rent regulation are actually leased) and then the 'equilibrium rent' (i.e. a hypothetical market rent for which the flats would be leased if rent regulation were abolished).

The table on page 3 of the present analysis provides a clear summary of the average individual rents defined in this way in 67 towns in the Czech Republic. The following facts are evident from the table:

- at the time in question the amount of the average hypothetical equilibrium rent was always lower than the present average market rent;
- in two towns the average market rent was even lower than the regulated rent (Most and Ostrava);
- the average monthly regulated rent in the Czech Republic was CZK 2,313 lower than the average hypothetical equilibrium rent;
- the average real market rent in the Czech Republic was CZK 1,930 higher than the average hypothetical equilibrium rent.

522. On the basis of this data it is possible to reach, *inter alia*, the conclusion that the operation of rent regulation may also have a considerable positive effect for those landlords who own both flats subject to rent regulation and flats not subject to this regulation. If we use the average numbers, it is possible to say that if the owner lets two identical flats, one of them being a flat with regulated rent and the other one with market rent, the negative and positive impacts of the rent regulation affecting his/her property are balanced out and the result is nearly the same as it would be in the absence of rent regulation, i.e. if both flats were let for the equilibrium rent.

Although it may seem paradoxical at first sight, it is evident that in consequence of the above overvaluation of the market rent, a number of landlords need not have suffered any damage as a result of the operation of the rent regulation, but rather could have even profited from it.

523. Finally, it is also not possible to neglect that the obligations related to the immovable, in general, significantly influence its purchase price. There is no doubt that when a house is sold, the fact that at least some of the flats in the house are subject to rent regulation plays a role in the determination of the market value of the house. The Applicants that acquired the houses in question into their ownership via purchase certainly gained a clear advantage, in consequence of the rent regulation, over owners who decided to purchase houses entirely free of rent regulation.

On the other hand this advantage is connected with the disadvantage originating from the necessity to observe the maximum rent determined by the regulations. However, in this connection there arises the question – which is illustrated in detail by the case of the Applicant Company (see § 595 of the Observations below) – of whether in the specific cases the new owners have incurred damage in consequence of the rent regulation or whether – again rather paradoxically – not only was the owner's right to the peaceful enjoyment of possessions not violated, but the potential applicant concerned even gained a certain property benefit.

524. In this connection the Government would emphasise again that the Court's function is to decide whether or not in the specific cases the rights and freedoms guaranteed by the Convention are violated or not. It is not for the Court to say whether the legislation represented the best solution for dealing with the problem (see §§ 438 to 439 of the Observations above), particularly when the State faces the task of finding a balance between conflicting interests in the society.

γ) Survey of the management of flats in private ownership in the Czech Republic

525. From 1998 the Ministry of Finance has carried out regular surveys of the level of rent in municipal tenement flats.

These surveys have been conducted in a total of 45 municipalities (including fifteen Prague districts) with a significant number of tenement flats. The surveyed group represented approximately 40% of all tenement flats in the Czech Republic. The municipalities filled in the relevant forms (under Section 12 of Act no. 526/1990, on prices) with data on numbers, categories and age of the flats, on the amount of collected rent and on operating costs. As regards the costs, the repairs and maintenance and flats administration were shown separately.

The data extracted from these surveys showed that the achieved level of regulated rent was in principle sufficient to cover the costs and even allowed a profit to be made, which the municipalities use to finance their other activities.

526. In 2002 the Ministry of Finance tried to extend the survey on the level of rent to include flats owned by private persons in 1999 to 2001. The owners of

flats subject to rent regulation, who had posed various questions to the Ministry in the preceding years and whose addresses the Ministry thus had at their disposal, were addressed.

A total of 145 persons received letters with a request for data and the letter also included a simple questionnaire. In this questionnaire the following data were requested: the collected rent in flats and also commercial premises and the costs incurred, divided into depreciation, routine maintenance and repairs, administration costs, insurance and real estate tax. Therefore these were, in principle, the total costs of reproduction (see § 490 of the Observations above). These costs therefore did not include costs of reconstruction or modernisation of the houses, i.e. costs of changes in the construction layout or technical level of the houses that modify the purpose of a certain part of the house or increase its quality.

527. From the total number of addressed persons, 7 house owners refused to retire the questionnaire, 15 questionnaires were returned unfilled and 77 house owners did not respond at all. Therefore data from a total of 55 questionnaires were processed.

Despite the rather small number of completed questionnaires, the survey covered a not negligeable number of 724 flats for year 2001 (697 and 708 flats for years 1999 and 2000, respectively).

528. In the Enclosure the Government submit to the Court data from the individual submitted questionnaires, which have been made anonymous (Enclosure E27).

The data suggest that for 20 out of 55 houses in each surveyed year the revenue from rent was higher than the costs (of this, the data for four houses covered only one or two years), for other 11 houses the sum of total revenue in all surveyed years was higher than the total costs. Therefore in the period from 1999 to 2001 the overall difference between the revenue and costs was positive for 31 out of 55 houses (56.4%). Only for 14 out of 55 houses (25.4%) the difference was negative in all three years.

529. Aggregate data for all surveyed houses are clearly summarised in Table 12.

Table 12

	1999	**2000**	**2001**	**1999 to 2001**
Number of flats, total	697	708	724	
- category one	*480*	*497*	*504*	
- category two	*164*	*161*	*167*	
- category three	*27*	*32*	*34*	
- category four	*26*	*18*	*19*	
Floor area of all flats (in square metres)	43,950	44,685	45,858	
Floor area of commercial premises (in square metres)	3,553	3,759	3,759	
Floor area of all flats and commercial premises (in square metres)	47,503	48,444	49,617	
Average age of houses (in years)	72	70	72	
Collected rent from flats (in CZK)	11,608,027	13,672,438	15,024,548	
Collected rent from commercial premises (in CZK)	4,462,150	4,807,817	5,121,157	
Collected rent, total (in CZK)	**16,070,177**	**18,480,255**	**20,145,705**	**54,696,137 (sum)**
Average collected rent (in CZK per square metre)	**338**	**381**	**406**	**376 (weighted average)**
Costs incurred, total (in CZK)	**18,360,801**	**17,413,728**	**16,854,865**	**52,629,394 (sum)**
- depreciation	*5,543,437*	*5,957,990*	*6,294,776*	
- costs for routine maintenance and repairs	*10,712,900*	*9,416,361*	*8,546,068*	
- administration costs	*1,511,646*	*1,417,989*	*1,326,881*	
- house insurance	*444,775*	*473,371*	*527,175*	
- real estate tax	*148,043*	*148,017*	*159,965*	
Average costs incurred (in CZK per square metre)	**387**	**359**	**340**	**362 (weighted average)**
- depreciation	*117*	*123*	*127*	
- costs for routine maintenance and repairs	*226*	*194*	*172*	
- administration costs	*32*	*29*	*27*	
- house insurance	*9*	*10*	*11*	
- real estate tax	*3*	*3*	*3*	
Difference: collected rent, total/ costs incurred, total (in CZK)	**- 2,290,624**	**+ 1,066,527**	**+ 3,290,840**	**+ 2,066,743 (sum)**
Difference: average collected rent/ average costs incurred (in CZK per square metre)	**- 49**	**+ 22**	**+ 66**	**+ 14 (weighted average)**

530. The data summarised above all indicate that, in the period from 1999 to 2001, in the examined 55 houses the rent collected exceeded the costs incurred during the same period by CZK 2,066,743. On average the houses generated annual profits amounting to CZK 14 per square metre. Moreover, certain flats (from 1.1% in 1999 to 2.2% in 2001) were not occupied and therefore no revenue from rent came from these.

It is therefore evident that the average amount of rent collected during the surveyed years was increasing, while the average amount of costs incurred was decreasing.

531. The utility of these conclusions is limited, to a certain extent, by the small number of responding persons, the limited duration of only three years, and other circumstances. As mentioned above (see § 510 of the Observations), the balance of revenue and expenditure should always be drawn up for the longest period possible, because the costs incurred to maintain and repair the house usually take place in a single moment, while the amount of rent collected is much more inelastic over the individual years.

It is also necessary to take into account the fact that the Ministry in no way verified the data provided by the individual owners. Although, if any of the owners furnished biased or inaccurate data to the Ministry, it cannot be expected that he/she would have any motivation to overestimate his/her revenue from rent and underestimate the costs, it would rather be to the contrary.

532. Even bearing in mind these facts, it is clear that, in the period in question, in more than half of the cases (56.4%) the collected rent covered all costs of reproduction including the depreciation, although in a number of cases the age of the individual houses was at the very limit of the indicated average life span (100 years) or even beyond it. If we deduct the depreciation from the total costs (see §§ 495 to 499 of the Observations above), the number of houses with positive balance of revenue and costs would be considerably higher.

Moreover, the survey did not take into account whether the landlords also lived in the house in question or not or whether they use it in some other way. However, as the Government mentioned above (see § 518 of the Observations), this fact too needs to be taken into account when examining the amount of revenue.

533. Finally, it is necessary to recall again that it is not guaranteed that the proportion of revenue to costs would be better if rent regulation did not exist at all, because the rent at a hypothetical free market value does not necessarily have to reach the amount of costs incurred; even in the absence of any rent regulation the ‘house economy’ may be considerably loss-making (see § 513 of the Observations above).

δ) Summary

534. In the Government’s opinion it cannot be believed that the burden which rent regulation for certain flats placed on the owners of the houses was un-

reasonable in the sense that it would not allow them to pay costs for the performance of obligations arising for them due to the ownership of these immovables.

535. In the first place the Government are convinced that Article 1 of Protocol no. 1 does not guarantee the right to a constant profit-making property lease. Therefore in calculating the costs – which cannot be simply equated with the costs of property reproduction – the following facts need to be taken into account:

- depreciation and costs of reconstruction or modernisation which are not necessary to maintain the expected life span of the house cannot be included;
- the costs of maintenance and repairs are partly paid by the tenant;
- in contrast to the revenue from rent, the amount of costs is usually very variable over time, it is therefore necessary to spread the costs over a longer period of time;
- the rent from flats for which reconstruction was permitted after 30 June 1993 was not regulated by a maximum amount, but it was only materially regulated;
- only costs purposefully incurred can be included;
- in certain locations the amount of market rent may be lower than the amount of regulated rent.

In any case, even if they have not brought an action for a rent increase, Act no. 107/2006 allows landlords of flats subject to rent regulation in the preceding period to achieve, in early 2010, a level of rent corresponding to the lower limit of the range of the market rents for the area, which will, provided the market rent itself allows for that given the local conditions, cover all costs of property reproduction and bring a reasonable profit to the owners.

536. In the second place the Government believe that in examining the operation of the rent regulation we cannot concentrate only on revenue from those flats that are subject to rent regulation, but rather that the overall economy of the house or houses owned by the person concerned needs to be examined. In this connection the Government pointed out, in particular, that:

- in a number of houses only some of the flats were subject to rent regulation, the remaining flats, as well as any commercial premises present in the house, could be leased freely;
- in consequence of the operation of rent regulation market rents in the Czech Republic were overvalued to a certain extent;
- also the ability of the landlord him-/herself to live in the immovable in question or use it for his/her business may be understood as a kind of revenue;
- for applicants who acquired their property by purchase, it is necessary to take into account that the existence of flats subject to rent regulation is reflected in the purchase price of the immovable concerned.

537. Finally, it is evident from the survey conducted by the Ministry of Finance in 2002 that the economy of the examined houses with flats subject to rent regulation was not, on average, loss-making in 1999 to 2001, not even when all costs for simple reproduction, including depreciation, were included in the costs.

538. Despite the above, the Government cannot, of course, *a priori* exclude the possibility that in certain cases it would be possible to find the burden placed on a specific landlord in consequence of rent regulation to be unreasonable, and thus come to the conclusion, provided that other conditions are met, especially after the rejection of all preliminary pleas of inadmissibility raised by the Government above, that his/her right to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol no. 1 was violated.

Nevertheless, the Government would recall the opinion of the Constitutional Court expressed in finding of 21 June 2000 file ref. no. Pl. ÚS 3/2000 (see § 186 of the Observations above) according to which:

> "[…] price regulation does not prevent anyone from carrying on a business or another economic activity, because everyone has the freedom of choice as to whether he/she will engage in business in a specific field subject to given conditions. Moreover, the rent regulation does not apply to newly concluded lease contracts and therefore it does not obstruct business activities."

c) Social situation of the tenants and the amount of housing costs

539. Amongst other things, the Court requested the Government to indicate the average gross wage in the Czech Republic. With regard to the present cases the Government are to specify the ratio between the annual incomes of the tenants and the rents which they are requested to pay.

540. As regards the data on the average gross monthly wage in the Czech Republic in 1989 to 2006, the Government refer to the following table which also indicates the development of the amount of the average retirement pension.

Table 13

Year	Average gross monthly wage (in CZK)	Average retirement pension (in CZK)
1989	3,170	1,598
1990	3,286	1,731
1991	3,792	2,176
1992	4,644	2,413
1993	5,904	2,734
1994	7,004	3,059
1995	8,307	3,578
1996	9,825	4,213
1997	10,802	4,840
1998	11,801	5,367
1999	12,797	5,724
2000	13,614	5,962
2001	14,793	6,352
2002	15,866	6,830
2003	16,917	7,071
2004	18,041	7,256
2005	19,024	7,728
2006	20,211	8,287

541. As regards the ratio between the tenants' income and the rents which they are requested to pay, the Government understand the Court's request that they are to submit average statistical data available to them.

Nevertheless, the Government are by far unable to submit this information in respect of the specific tenants in the houses of the individual select Applicants. If this is what the Court meant (as would appear from the words "*with regard to the present case*"), the Government are afraid that in order to find information on the amount of rent paid and especially on the incomes, the cooperation of not only the individual Applicants, but especially of the tenants themselves, is necessary.

α) Housing costs in relation to the income

542. For the Court's information, the Government present statistical data concerning the ratio between the housing costs and the household income.

543. The following tables indicate the development (in years 1989 to 2006) of the following indicators:

- net financial income of an average household (in CZK per month per household);
- total housing costs (in CZK per month per household), including costs of:

  (a) rent;

  (b) central heating, hot water and other municipal utilities;

  (c) electricity, gas and fuel;

  (d) flat maintenance;
- rent costs (in CZK per month per household);

– rent costs in relation to total housing costs (in %);
– housing costs in relation to net household income (in %);
– rent costs in relation to net household income (in %);
– housing costs in relation to average gross wage/average retirement pension (in %);
– rent costs in relation to average gross wage/average retirement pension (in %).

The first two tables show the development of these indicators in tenement flats in households of wage-earners, the two subsequent tables show the same in tenement flats in households of retired persons.

Table 14a

WAGE-EARNERS	1989	1990	1991	1992	1993	1994	1995	1996	1997
Net financial income, total	5,993	6,331	7,286	8,752	10,223	11,804	13,588	15,692	16,968
Housing costs, total	521	589	783	1,089	1,296	1,514	1,743	2,001	2,419
Rent	161	170	178	243	324	420	455	558	749
Rent costs in relation to total housing costs	30.9	28.9	22.7	22.3	25.0	27.7	26.1	27.9	31.0
Total housing costs in relation to net household income	8.7	9.3	10.7	12.4	12.7	12.8	12.8	12.8	14.3
Rent costs in relation to net household income	2.7	2.7	2.4	2.8	3.2	3.6	3.3	3.6	4.4
Total housing costs in relation to average gross wage	16.4	17.9	20.6	23.4	22.0	21.6	21.0	20.4	22.4
Rent costs in relation to average gross wage	5.1	5.2	4.7	5.2	5.5	6.0	5.5	5.7	6.9

Table 14a (cont.)

WAGE-EARNERS	1998	1999	2000	2001	2002	2003	2004	2005	2006
Net financial income, total	18,589	19,841	18,887	20,685	20,870	22,062	22,661	23,262	24,277
Housing costs, total	3,160	3,279	3,415	3,683	3,925	4,126	4,204	4,258	4,523
Rent	1,021	1,186	1,227	1,344	1,408	1,531	1,568	1,667	1,669
Rent costs in relation to total housing costs	32.3	36.2	35.9	36.5	35.9	37.1	37.3	39.1	36.9
Total housing costs in relation to net household income	17.0	16.5	18.1	17.8	18.8	18.7	18.6	18.3	18.6
Rent costs in relation to net household income	5.5	6.0	6.5	6.5	6.7	6.9	6.9	7.2	6.9
Total housing costs in relation to average gross wage	26.8	25.6	25.1	24.9	24.7	24.4	23.3	22.4	22.4
Rent costs in relation to average gross wage	8.7	9.3	9.0	9.1	8.9	9.1	8.7	8.8	8.3

Table 14b

RETIRED	1989	1990	1991	1992	1993	1994	1995	1996	1997
Net financial income, total	2,196	2,347	3,025	3,445	4,047	4,528	5,585	6,595	7,631
Housing costs, total	333	348	470	700	853	1,061	1,249	1,493	1,825
Rent	129	135	137	179	242	317	364	450	625
Rent costs in relation to total housing costs	38.7	38.8	29.1	25.6	28.4	29.9	29.1	30.1	34.2
Total housing costs in relation to net household income	15.2	14.8	15.5	20.3	21.1	23.4	22.4	22.6	23.9
Rent costs in relation to net household income	5.9	5.8	4.5	5.2	6.0	7.0	6.5	6.8	8.2
Total housing costs in relation to average retirement pension	20.8	20.1	21.6	29.0	31.2	34.7	34.9	35.4	37.7
Rent costs in relation to average retirement pension	8.1	7.8	6.3	7.4	8.9	10.4	10.2	10.7	12.9

Table 14b (cont.)

RETIRED	1998	1999	2000	2001	2002	2003	2004	2005	2006
Net financial income, total	8,370	9,013	8,862	9,536	10,168	10,818	10,825	11,428	11,809
Housing costs, total	2,274	2,530	2,581	2,688	2,931	3,139	3,141	3,189	3,337
Rent	806	950	980	1,020	1,089	1,208	1,189	1,234	1,234
Rent costs in relation to total housing costs	35.4	37.6	38.0	37.9	37.1	38.5	37.9	38.7	37.0
Total housing costs in relation to net household income	27.2	28.1	29.1	28.2	28.8	29.0	29.0	27.9	28.3
Rent costs in relation to net household income	9.6	10.5	11.1	10.7	10.7	11.2	11.0	10.8	10.4
Total housing costs in relation to average retirement pension	42.4	44.2	43.3	42.3	42.9	44.4	43.3	41.3	40.3
Rent costs in relation to average retirement pension	15.0	16.6	16.4	16.1	15.9	17.1	16.4	16.0	14.9

544. The subsequent tables follow the tables on the development of maximum basic rent in 2006 to 2010 in a model category one flat with an area of 60 square metres in places, where the houses of the select Applicants are located (Tables 10a to 10d).

These tables show the development of the ratio between the maximum basic rent and total housing costs and net financial income, and it is divided into households of wage-earners (Tables 15a to 15d) and households of retired persons (Tables 16a to 16d) (data on the future development of the total housing costs and net financial income – marked * – are qualified estimates).

Table 15a

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of wage-earners (category one flat with an area of 60 square metres)				
	Prague – Holešovice (Applicant Morawetz)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	2,224	5,078	30,356	7.3	16.7
01/2007	2,847	5,804	33,301	8.5	17.4
01/2008	3,769	6,918	35,632	10.6	19.4
01/2009	4,990	8,290	38,482	13.0	21.5
01/2010	6,607	10,052	41,368	16.0	24.3

Table 15b

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of wage-earners (category one flat with an area of 60 square metres)				
	Prague – Nusle (Applicants Hlaváček)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	2,224	5,078	30,356	7.3	16.7
01/2007	2,722	5,679	33,301	8.2	17.1
01/2008	3,468	6,617	35,632	9.7	18.6
01/2009	4,418	7,718	38,482	11.5	20.1
01/2010	5,629	9,074	41,368	13.6	21.9

Table 15c

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of wage-earners (category one flat with an area of 60 square metres)				
	Brno – Královo pole (Applicant Vomočil)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	1,645	4,499	24,277	6.8	18.5
01/2007	2,089	5,045	26,632	7.8	18.9
01/2008	2,785	5,934	28,496	9.8	20.8
01/2009	3,713	7,013	30,776	12.1	22.8
01/2010	4,949	8,394	33,084	15.0	25.4

Table 15d

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of wage-earners (category one flat with an area of 60 square metres)				
	Plzeň – Východní předměstí (the Applicant Company)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	1,538	4,392	24,277	6.3	18.1
01/2007	1,861	4,818	26,632	7.0	18.1
01/2008	2,329	5,478	28,496	8.2	19.2
01/2009	2,916	6,216	30,776	9.5	20.2
01/2010	3,651	7,096	33,084	11.0	21.4

Table 16a

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of retired persons (category one flat with an area of 60 square metres)				
	Prague – Holešovice (Applicant Morawetz)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	2,224	4,327	12,234	18.2	35.4
01/2007	2,847	5,026	13,213	21.5	38.0
01/2008	3,769	6,090	13,741	27.4	44.3
01/2009	4,990	7,422	14,634	34.1	50.7
01/2010	6,607	9,146	15,512	42.6	59.0

Table 16b

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of retired persons (category one flat with an area of 60 square metres)				
	Prague – Nusle (Applicants Hlaváček)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	2,224	4,327	12,234	18.2	35.4
01/2007	2,722	4,901	13,213	20.6	37.1
01/2008	3,468	5,788	13,741	25.2	42.1
01/2009	4,418	6,850	14,634	30.2	46.8
01/2010	5,629	8,168	15,512	36.3	52.7

Table 16c

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of retired persons (category one flat with an area of 60 square metres)				
	Brno – Královo pole (Applicant Vomočil)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	1,645	3,748	11,809	13.9	31.7
01/2007	2,089	4,268	12,754	16.4	33.5
01/2008	2,785	5,106	13,264	21.0	38.5
01/2009	3,713	6,144	14,126	26.3	43.5
01/2010	4,949	7,487	14,974	33.1	50.0

Table 16d

Beginning of the period	Development of the ratio between the maximum basic rent and total housing costs and net financial income of household of retired persons (category one flat with an area of 60 square metres)				
	Plzeň – Východní předměstí (the Applicant Company)				
	Amount of rent (in CZK per month)	**Total housing costs *** (in CZK per month)	**Net financial income *** (in CZK per month)	**Ratio rent/income** (in %)	**Ratio costs/income** (in %)
until 2006	1,538	3,641	11,809	13.0	30.8
01/2007	1,861	4,039	12,754	14.6	31.7
01/2008	2,329	4,650	13,264	17.6	35.1
01/2009	2,916	5,348	14,126	20.6	37.9
01/2010	3,651	6,190	14,974	24.4	41.3

545. In any case, the Government believe that it is fully compliant with the Convention if the flats subject to rent regulation are defined not primarily with respect to the social situation of tenants living in them, but when it is essentially limited to flats for which the lease contract was concluded prior to a certain date.

546. As the Government have already mentioned above in connection with the issue of legitimate aim (see § 429 of the Observations), in the early 1990s the State resolved to perform extensive restitution of property confiscated by the Communist regime, including blocks of flats. However, at the same time the State had to ensure that this necessary step did not cause new injustices to the existing tenants and breach their acquired rights. In other European countries in the past it has been and it is still rather common that rent regulation is limited to tenants who became party to the tenancy relationship under different regulatory conditions (see § 431 of the Observations above).

547. Furthermore, the Convention institutions have confirmed in the past that a situation wherein the State decides that tenancy regulation applies to old lease contracts only, instead of having to carry out a burdensome examination of the

social situation of each tenant, is in compliance with the Convention (see e.g. the Commission decision of 3 October 1979 on the admissibility of application no. 8003/77 *X. v. Austria*, also the *Mellacher* judgment, cited above, § 53).

At the same time it is evident that tenement housing in principle is chosen by persons in a socially and economically disadvantaged situation who do not have at their disposal the means to purchase private housing.

548. As the Government show below, the limitation of the rent regulation to certain flats cannot be considered discriminatory (see §§ 619 to 652 of the Observations below).

ß) State support of financial availability of housing

549. If we can admit on one hand that by maintaining rent regulation a part of the costs for securing the availability of tenement housing was transferred to the landlords, on the other hand it cannot be asserted in any case that the State transferred these costs completely to the landlords – as the Applicants claim.

550. The burden of securing the affordability of housing was and is carried by the State, above all, and particularly through costs for social benefits supporting of tenants in need.

In the past the following social housing benefits were paid which allowed, in their entirety, households in social need to cover all justified real housing costs:

- *rent allowance and allowance for the payment of certain utilities provided together with the use of the flat (rent allowance)*:
  - the allowance was introduced on 1 January 1994 in connection with the accelerated growth in regulated rents (Decree no. 176/ /1993);
  - a tenant was entitled to this allowance if his/her income together with the income of persons examined in conjunction with him/her did not exceed 1.3 times the amount of the subsistence level of a household;
  - in 1996 the rent allowance was transformed into a housing allowance which remains part of the comprehensive protective system of the State social relief benefits;
- *housing allowance from the system of the State social relief benefits*:
  - originally all owners or tenants with their permanent residence registered at a flat were entitled to the allowance, if the decisive household income was lower than 1.4 times of their subsistence level, from 1998 the limit for the entitlement was extended to households with income up to 1.6 times the subsistence level and at the same time the allowance itself was increased in reaction to the increase in the prices of electricity and gas;
  - the information determining the entitlement and amount of the allowance was the household income, number of members of the household, the amount of the overall subsistence level and the amount of subsistence level that was considered necessary for securing the necessary household costs (i.e. housing costs in particu-

lar); in the case of each indexation of the subsistence level any increase in the housing costs reflected in the amount of the allowance, which was calculated according to the set formula; the higher the household income was, the lower the allowance was;

- approximately 7 to 9% of all households in the Czech Republic received this allowance;
- the above form of the allowance was in existence until 31 December 2006;

– *welfare benefit subject to social need*:

- the benefit was provided to households in social need with low income, and which could not increase their income on their own due to age, health condition or other serious reasons;
- the benefit, in principle, levelled the real household income with the subsistence level, but it could also be provided at a lower or, by contrast, higher level if after an individual assessment of the social and economic situation (including the property situation) of the household justified lower or higher basic living needs in relation to the determined subsistence level;
- approximately 4 to 6% of all households in the Czech Republic received this benefit;

– *social allowance to offset the increase in the prices of thermal energy (heating allowance)*:

- this form of support was characterised by aid to low income households and it was introduced as a reaction to steep increase in the thermal energy prices in 1997;
- the allowance was specified as a temporary measure so that the financial burden on households would increase more gently;
- the allowance was paid to households in flats with district heating whose net monthly income did not exceed 1.6 times the subsistence level;
- the allowance ceased to be provided on 30 June 2000;

– *social allowance to offset rent increases (rent allowance)*:

- the allowance was specified as additional assistance to low income households in the situation of increasing rent costs and it was introduced as a reaction to considerable the increase in rents in 1997;
- the allowance was paid along with the housing allowance to households in tenement flats with regulated rent whose net monthly income did not exceed 1.6 times the subsistence level;
- the allowance ceased to be provided on 31 December 2000.

551. The following table clearly summarises the total costs for the payment of benefits in the domain of housing in 1996 to 2006 (the figures are in millions of CZK).

Table 17

Year	Housing allowance	Welfare benefit subject to social neediness *	Heating allowance	Rent allowance	Annual expenditure, total
1996	677.0	600.0	-	-	**1 277.0**
1997	812.6	800.0	66.7	48.9	**1 728.2**
1998	1,367.1	1,300.0	276.7	162.7	**3,106.5**
1999	2,084.0	1,900.0	236.3	127.3	**4,347.6**
2000	2,518.0	2,400.0	105.5	73.0	**5,096.5**
2001	2,698.5	2,500.0	-	5.7	**5,204.2**
2002	3,027.6	2,600.0	-	-	**5,627.6**
2003	2,835.4	2,700.0	-	-	**5,535.4**
2004	2,548.0	2,700.0	-	-	**5,248.0**
2005	2,458.6	2,700.0	-	-	**5,158.6**
2006	2,287.4	2,500.0	-	-	**4,787.4**
Expenditure on individual benefits, total in years 1996 to 2006	23,314.2	22,700.0	685.2	417.6	47,117.0

* These are not whole amounts paid for welfare benefits, but only an estimate of the financial means used from these amounts in respect of costs related to housing.

552. In the period in question the total costs for the payment of allowances and benefits to cover the housing costs of households in social need amounted annually approximately to CZK 4,283,360,000. Therefore in 1996 to 2006 more than CZK 47 billion was paid for this purpose.

553. In connection with the possibility of a unilateral rent increase under Act no. 107/2006, from 1 January 2007 two new benefits were introduced that should provide assistance to citizens with low income to pay increased housing costs:

– *housing allowance from the system of State social relief benefits*:
  – the allowance is provided to households whose housing costs exceed 30% (35% in Prague) of their income;
  – the amount of the allowance per month is the difference between the normative housing costs and 30%, or 35%, of the decisive household income; if the actual household housing costs are lower than the normative costs, then the housing allowance is paid only in the extent up to the actual housing costs;
  – in case a household is not able to cover its justified housing costs even with this housing allowance, then it may ask the municipality for a housing supplement;

– *housing supplement from the system of assistance in the case of material need*:
  – this is an individual solution that reacts, in addition to household income, to the actual local housing costs;
  – the housing supplement is provided in an amount so that after the payment of justified housing costs a household is left with an amount corresponding to costs for securing nurture and other basic needs.

554. Both of the above-mentioned benefits, along with other relief increasing the availability of housing to financially or otherwise disadvantaged households, may contribute to the complete liberalisation of rents. The amount of allowances will probably grow in the upcoming years, because it can be expected that housing costs will grow much faster than incomes.

555. However, State intervention in the domain of housing in recent years has not concentrated on providing relief to households in social need only, but also on investing in housing, whether the purpose of the investments was the support of new constructions or repairs of existing flats.

Each year the State expends enormous amounts on housing assistance. During the period from 1998 to 2007 the State's total expenditure on housing assistance increased from CZK 15 to 23 thousand millions per year. The State provides subsidies to municipalities amounting to thousand millions of CZK per year for the construction of flats specifically for low income households and retired persons. The purpose of this State's expenditure is to decrease the tension on the flat market and to help provide for the housing needs of persons and households in social need.

γ) Summary

556. The Government provided to the Court available information concerning the social situation of persons living in tenement flats, in particular as regards the ratio between rent costs and total housing costs on one hand and household income on the other hand, and they did so for the whole period of the effect of the Convention, including an estimate of the future developments in this domain up to 2010, when the period of gradual rent increase in flats formerly subject to rent regulation is scheduled to come to an end.

557. Nevertheless, in the Government's opinion the rent regulation can be completely justified even if the specification of flats subject to rent regulation is primarily based on other criteria than the social situation of tenants living in these flats.

558. The Government proved that it is not true in any case that the landlords bear the entire burden of securing housing to persons living in flats subject to rent regulation.

d) Conclusion

559. In the Government's opinion the above facts clearly show that:

– during the effect of the Convention in the Czech Republic, no rent regulation has been introduced or any landlords' rights restricted, by contrast the group of flats subject to rent regulation has been narrowed down, the maximum level of regulated rent has been increased and at the same time the regulation of tenancy relationships has been liberalised;

– the burden which the rent regulation of certain flats placed on owners of the relevant houses has not been, on average, unreasonable in the sense that it would not allow them to pay for the costs for performing the obligations imposed upon them by their ownership of these immovables;

– the State has not transferred all costs for securing the availability of housing for persons living in flats subject to the rent regulation to the landlords.

560. The Government are convinced that, similarly to applications directed against Germany, in the assessment whether the State authorities exceeded the limits for their discretion the Court takes into account "*the unique context of German reunification*" (see e.g. the partial decision of 15 November 2001 on the admissibility of application no. 53991/00 *Honecker v. Germany* and application no. 54999/00 *Axen, Teubner and Jossifov v. Germany*, point 2), in the case of applications directed against the countries of the former "Soviet bloc" it is necessary to take into account "*the unique context of transition from a totalitarian regime to a democratic one*", and that is even more so, because unlike the former German Democratic Republic, the other Central and Eastern European countries could not fall back on any developed democratic state and the solution of problems connected with the transition to democracy was mostly on the shoulders of these countries alone.

C. APPLICATION IN CONCRETO

561. Above, the Government raised a number of preliminary pleas of inadmissibility of the individual applications (see § 350 of the Observations), it is therefore clear that the Government present the following opinion on the merits of these applications in case the Court rejects their pleas.

562. On the other hand, as they have already mentioned above (see § 230 of the Observations), the Government take notice of the fact that some of the preliminary pleas of inadmissibility are closely tied to the issue of their merits.

(i) On the existence of interference with the right to the peaceful enjoyment of possessions

563. Above, the Government thoroughly dealt with the issue of whether the regulation of rents and tenancy relationships constitute restrictions of the land-

lords' ownership rights. They concluded that indeed they constitute such restrictions, but at the same time it must be believed that by voluntarily acquiring ownership rights under clear conditions the owners waived their right to the peaceful enjoyment of their possessions to the extent in which this right was restricted by the regulation of tenancy relationships. At the same time, during the effect of the Convention the Czech Republic has not interfered with landlords' legitimately acquired rights (see § 421 of the Observations above).

564. In all four select cases the Applicants acquired their ownership rights voluntarily:

- Applicant Vomočil purchased the house in question;
- Applicant Morawetz achieved a repeal of the decision on the confiscation of his father's property and subsequently, on the basis of the probate proceedings initiated by him, became the owner of the immovable;
- Applicants Hlaváček received the houses in question upon their request in the restitution process;
- the Applicant Company entered into a public auction and bought the house in the auction.

565. Therefore at the time of acquiring the ownership rights the Applicants must have been aware that on a statutory basis they would enter into the existing tenancy relationships in the place of the original owner. They must have also been (or at least should have been) aware of the contemporary regulation of tenancy relationships.

566. At the same time the Government are convinced that neither at the moment of acquiring their respective ownership rights nor at any later moment did the Applicants have any sufficiently founded legitimate expectation that the existing restrictions of their ownership rights would be abolished.

567. In the Government's opinion, in the Applicants' case it must be believed that in consequence of the voluntary acquisition of their ownership rights they waived the protection provided by Article 1 of Protocol no. 1, as regards the various restrictions of their ownership rights which constitute, according to them, a violation of their right to the peaceful enjoyment of their possessions.

Therefore their applications should be declared inadmissible due to being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, because the Czech Republic in no way restricted the extent of the rights which they acquired at the moment when they voluntarily became the owners of the immovables in question.

568. In case the Court does not adopt this conclusion and concludes that the Applicants did not waive their right to the peaceful enjoyment of their possessions, the Government shall also subsequently express their opinion on whether the interference with this right satisfied the requirements of lawfulness, legitimacy and proportionality.

In any case, at least when assessing whether in the individual cases fair balance was maintained between the legitimate aim of the interference with the Applicants' rights and the means employed to achieve that aim the Court should take into account the circumstance that the Applicants acquired their property entirely voluntarily while conscious of all the consequences arising from that for them.

(ii) On the lawfulness of the interference

569. The Government believe that both, on the general level and naturally also in the case of the individual select Applicants, the interference with their right guaranteed by the Convention had a statutory basis in the sense as understood by the Court in its case law (for details see §§ 424 to 425 of the Observations above).

(iii) On the legitimate aim in the general interest

570. Similarly, it is necessary to state that the interference with the right of both the select Applicants and other owners in a similar situation pursued a legitimate aim in the general interest (for details see §§ 426 to 435 of the Observations above).

(iv) On the issue of maintaining a fair balance

571. The Government have already noted in the introduction to their Observations (see §§ 6 to 7 above) that the description of the facts of the individual cases, as presented by the Court in the summary of facts, is entirely inadequate, in particular with regard to the fact that the Applicants' assertions are altogether very general and supported by very few evidential documents.

In this respect Applicant Vomočil is an exception to a certain extent but, as shown later on, he neglected to inform the Court that he had ceased to be the owner of the disputed immovable as early as May 2004.

The Government have tried to supplement the description of the facts of the individual cases, but they cannot but repeat that only the Applicants themselves have access to certain facts that are important for the assessment of the merits of their applications.

a) On the case of Applicant Vomočil

572. In the first place the Government would note again that the fact that the Applicant acquired the house in question into his ownership entirely voluntarily on the basis of a purchase agreement of December 1995 must be taken into account; in this agreement it is noted, *inter alia*, the following:

> "The purchaser explicitly declares that he is familiar with the condition of the purchased immovables, that he has examined them prior to the conclusion of this purchase agreement and that he purchases the immovables in question in a condition which he has ascertained.
>
> […]
>
> On the day of the legal effect of the decision on the registration of the ownership right all the interest, risks, obligations […], as well as all

> rights related to the ownership of the purchased immovables shall pass to the purchaser."

573. Therefore the Applicant was (or at least should have been) aware of:

- the material state of the immovable,
- the repairs that would have to be carried out in the following years,
- the means that would have to be invested in the immovable,
- the revenue from the lease of the individual flats and commercial premises in the immovable,
- whether, therefore, it would be profitable for him to purchase the immovable with regard to all the circumstances mentioned above and also those not mentioned.

The Applicant must or should have been aware also of the contemporary regulation of tenancy relationships in the Czech Republic and therefore he was aware, *inter alia*, of the circumstances under which it was possible to terminate the existing lease contracts, of the maximum rent and of the way in which the rent could be unilaterally increased under the valid regulations if essentials of the lease contracts were not able to be changed upon agreement with the tenants *etc*.

At the same time, the Government are convinced that it cannot be believed that he could have legitimately expected that the rent regulation would come to an end.

574. Nevertheless, the Government would further draw attention to the fact that the relationship between the costs of maintaining the immovable and the revenue from it, as described by the Applicant in the application form of 20 October 2004, is somewhat distorted.

It is noted in it, *inter alia*, the following:

> "To this day the Applicant has invested more than CZK 1,000,000 in the house, mainly for the purpose of improving the quality of the tenants' housing. However, he received CZK 233,544 per year from the tenants as rent (at the same time he pays CZK 252,000 per year for the loan only). Therefore the rent, collected from the tenants, will not, by any means, cover the investments made or investments that have to be carried out in the short term, it does not even suffice to pay the loan. Therefore the Applicant is obligated to pay a great deal of costs of the operation of the house and its repairs and reconstruction by means obtained in his other business activity."

575. As mentioned above, on 28 January 2004 the Applicant deposited the house into the registered capital of the company JOHNY, s. r. o. On that occasion he had an expert opinion commissioned in November 2003 and in it the value of the house was determined as amounting to CZK 7,850,000 (for details see § 16 of the Observations above).

In the expert opinion it is noted, *inter alia*, the following:

> "The block of flats is at the corner of the streets Malátova and Palackého. It is a house with a commercial ground floor and residential

> first to fifth floor, the sixth floor is the laundry and attic […]. The building […] serves as a block of flats with a shop and a Chinese bistro at the ground floor.
>
> […]
>
> Repair works:
>
> - 1995 to 2003 routine repairs and maintenance works
>
> - 1996 new asphalt roofing, flashing and window frame painting
>
> - 2000 repairs of the electrical wiring, gas boiler in the bistro
>
> - routine and regular maintenance
>
> […]
>
> Technical condition: no evident and visible defects were found, not even structural defects in the supporting structure that may affect the life span of the building, except for wet stains on the plaster in the basement.
>
> […]
>
> At present the whole building is leased for CZK 105,882 a month including the controlled rent. This amount, incl. the controlled rent, corresponds to the standard price […]."

576. Therefore the expert opinion, produced nearly one year prior to the submission of the application, *inter alia* proves that the Applicant intentionally provides incorrect information to the Court about the revenue from the immovable. While the Applicant mentions the amount of CZK 233,544 per year, the expert witness, who produced the expert opinion upon the Applicant's request and substantially on the basis of information and documents provided to him by the Applicant, indicates that the revenue from rents was CZK 105,882 per month, i.e. CZK 1,270,584 per year and that is more than five times the amount which the Applicant claimed a year later.

The expert witness specified the annual costs of the immovable at CZK 590,940; by deducting the costs from the gross revenue from the immovable he calculated the net annual revenue at CZK 679,644.

577. The Government would state that the Applicant's net profit from the house in question prior to the submission of the application amounted to CZK 679,644 per year, i.e. CZK 56,637 per month.

In the light of this fact it is difficult for the Government to imagine that the Court could conclude that the regulation of tenancy relationships – in particular the rent regulation in certain flats – constituted a burden for the Applicant that could be described as unreasonable.

578. Moreover, as stems from the summary of the facts of the case, the new owner of the house, in the middle of this year, concluded settlement agreements with tenants in flats subject to rent regulation on the basis of which the tenants paid to this owner additional rent retroactively for the period from 5 May 2004 to 31 December 2006. From these agreements it also stems that the landlord has al-

ready unilaterally increased the rent as allowed by Act no. 107/2006 (see § 23 of the Observations above).

579. It can be also recalled that, without doubt, the fact that in the immovable there were flats subject to rent regulation was reflected in the purchase price for which the Applicant bought the immovable. Therefore the Applicant purchased the immovable for a price that was lower than the price he would have had to pay for an immovable without flats subject to rent regulation. Therefore there arises an, entirely theoretical, question of whether the amount which the Applicant alleges to have lost in consequence of the rent regulation from 1995 to 2004 was higher than the amount which he saved for the same reason when acquiring the immovable (see § 523 of the Observations above).

580. The Government are convinced that with regard to all the above facts it is necessary to declare the application inadmissible due to being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

b) On the case of Applicant Morawetz

581. In the application form of 1 February 2006 the counsel for Applicant Morawetz essentially devotes only one sentence to the factual circumstances of the case of his client and in it he informs the Court that his client owns a house where the tenants still pay regulated rents. The rest of the text of the application concerns, in general, only the issue of regulation of tenancy relationships in the Czech Republic and it is essentially copied from the sample application published by the Intervening Association on its website (see § 217 of the Observations above).

Only a table containing the list of the tenants, areas of the flats, the rents paid by the individual tenants and the market rents for the individual flats is attached to the application text. None of the information in the table is documented in any way.

582. In this situation it is essentially impossible for the Government to express an opinion on the merits of the submitted application in the aspect of maintenance of a fair balance between the legitimate aim of the interference with the Applicant's right to the peaceful enjoyment of his possessions and the means employed to achieve this aim.

583. Therefore the Government propose that the Court requests the counsel of the deceased Applicant to submit to the Government detailed and documented information on the 'economy' of the house in question.

With regard to the Applicant's advanced age and his poor health in the most recent years, as well as with regard to the fact that he was permanently residing outside Europe, it is practically indubitable that the immovables were administered for him by an administrator (a natural or a juristic person) who will certainly have at their disposal clear documents on the costs for the maintenance of the immovable and on revenues from it.

584. In any case, information gathered by the Government in the Land Register and the court files kept in proceedings concerning the house in question show that the Applicant initially requested the surrender, into his ownership, of the house in restitution proceedings. However, the court of first instance rejected his action; although the appellate court quashed the judgment of the inferior court, the proceedings were subsequently discontinued due to the withdrawal of the action (see §§ 32 to 36 of the Observations above).

This is because in the meantime the Applicant achieved the following: on the basis of a protest filed by the state prosecutor, the Prague Municipality repealed the decision of 1964 in which the property of the Applicant's father had been confiscated, including the disputed house. Subsequently the Applicant initiated inheritance proceedings on the basis of which he became the owner of the immovable (see § 31 of the Observations above).

585. Therefore the Applicant became the owner of the house, as did Applicant Vomočil, entirely voluntarily and with full knowledge of consequences brought about by this at the material time.

c) On the case of Applicants Hlaváček

586. As regards the application filed by Applicants Hlaváček, in principle, the same comments of the Government provided above in relation to the application of Mr Morawetz apply, and this is due to the fact that all three Applicants are represented by the same counsel.

Also in their application form of 1 February 2006 only one sentence, supplemented by two tables, is devoted to the factual circumstances of the case, the tables again contain information on the names of the tenants, areas of the flats and the regulated and market rent without any documents.

587. Therefore, again, the Government cannot but ask the Court to request the Applicants' counsel to submit to the Government reliable information on the 'economy' of the houses that form the subject matter of their application.

588. As in the cases of the two previous Applicants, in any event, it is evident that the Applicants acquired the houses in question into their ownership entirely voluntarily, specifically on the basis of an agreement on the surrender of property concluded with the Prague 4 *Obvodní bytový podnik* under Act no. 87/ /1991, on extra-judicial rehabilitation.

In the agreement it is explicitly stipulated that all rights and obligations related to the ownership of the immovable pass to the beneficiary on the day of the registration of the agreement by the State Notary Office (for details see § 50 of the Observations above).

589. Moreover, Applicants Hlaváček became the owners of the immovables in the period when the amount of rent, still known as payments for the use of a flat at that time, was determined as a fixed rate and the relevant Decree (no. 60/1964) did not contain any mechanism of gradual increase in the maximum rent (see § 93 of the Observations above).

d) On the case of the Applicant Company

590. Finally, in its application form of 4 January 2007 the Applicant Company also devotes, like the previous Applicants, to the factual circumstances of its case only one familiar sentence saying that it owns a house where the tenants still pay regulated rents.

The Applicant Company then attached to the application only record files of four flats which include, *inter alia*, the amount of rent paid by the individual tenants from 1 December 2001 (from 1 July 2002 in the case of flat no. 4).

591. The Government must reiterate that it is up to the Court to request the Applicant Company to submit reliable information on the costs related to the immovable in question and on revenue from this immovable.

592. In this case too, information which the Government gathered from the Land Register and the court files concerning the immovable (see §§ 51 to 61 of the Observations above) show that the Applicant Company acquired the house into its ownership entirely voluntarily on the basis of a public auction which it entered as the only interested party.

593. The auction in question took place within proceedings on the enforcement of a decision by way of selling the house in question. For the purpose of these proceedings, in December 2000 an expert opinion was produced which determined the value of the house at CZK 3,143,450.

Subsequently, in May 2001 the court determined, on the basis of this expert opinion, 'the final value' which represents the difference between the value of the immovable and its accessories and the value of the rights connected to the immovable on one hand and the impediments on the other hand (Section 336a, subsection 3 of the Rules of Civil Procedure). At the same time, impediments are easements specified as such by separate regulations, flat tenancy and other easements and tenancy rights in the case of which the interests of society require them to remain in application over the immovable (Section 336a, subsection 2 of the Rules of Civil Procedure).

Therefore the final value was determined at CZK 1,500,000 while the court substantiated its decision by noting, *inter alia*, the following:

> "With regard to the fact that it concerns the sale of an occupied block of flats, this fact influences the range of interested parties, because the functional utility of the building is limited due to the existing tenancy rights of persons related to this immovable. From this point of view it is a very limiting element as regards the marketability of the whole immovable and that necessarily manifests itself in the final value. In the case of the valued immovable it concerns a non-standardised residential building where more than one half of the floor area is taken up by flats. The rent revenue from the flats (controlled rent) amounts to CZK 61,380 a year. There are no encumbrances related to the immovable to the detriment of the owner of the immovable.
>
> After the assessment of the decisive criteria forming the idea about the real value the court determined the final value of the immovable in question at CZK 1,500,000 when it took into account its location in the

> downtown area of a regional town with very good accessibility [of the public transport service]. An element decreasing the aggregate market demand for this building is the fact that by a sale in the auction the tenancy rights in relation to the flats will not cease to exist, including the related inheritance ties, another such element is the present technical condition, which requires large financial investment for the reconstruction and renovation of the whole building."

Then in the notice of an auction the reserve price was determined, in compliance with the law, at two thirds of the final value and the Applicant Company purchased the immovable for this reserve price (CZK 1,000,000).

594. From that it stems that the Applicant Company purchased the immovable for a price CZK 2,143,450 lower than the value determined in the expert opinion. The court itself, after assessing all circumstances and giving due regard, in particular, to the fact that the functional utility of the building was limited due to the existing tenancy rights of persons related to this immovable, determined the final value at an amount CZK 1,643,450 lower than the value of the immovable determined by the expert witness.

595. As in the case of Applicant Vomočil, in this case too it is absolutely necessary to ask the question of whether the rent regulation could have caused any damage to the Applicant Company or whether, by contrast, although it may seem paradoxical, it rather profited from this regulation.

The Applicant Company became the owner of the immovable in January 2002, while it addressed the Court in January 2007, i.e. at a time when it could already collect rent unilaterally increased under Act no. 107/2006.

If we take into account that, with particular regard to the fact that the flats in the house in question were subject to rent regulation, the final value determined by the court was CZK 1,643,450 lower than the value of the immovable determined by the expert witness, then the Applicant Company would have to prove that within the period of five years between January 2002 and January 2007 it lost more than CZK 328,690 per year in rents. At the same time, this amount is more than five times the total annual income from rents at the time the expert opinion was produced.

The Government are convinced that with regard to the condition of the house at the time in question, it is practically out of the question that the Applicant Company would have been able to lease the flats in the house on a hypothetical free market for five times the amount of the regulated rent, even if we take into account that the existing technical condition of the immovable partially reflected in the difference between the value determined by the expert and the final value determined by the court.

At the same time, however, it cannot be ignored that no right to a complete absence of rent regulation can be deduced from the Convention and the subsequent Court's case law in any case.

D. Conclusion

596. First of all, the Government believe that the majority of owners of houses and flats subject to rent regulation acquired their property entirely voluntarily and with full knowledge of the regulations of tenancy relationships in force in the Czech Republic at the material time. Therefore, from this point of view the Government are of the opinion that there could be no interference with their right to the peaceful enjoyment of their possessions at all, because they acquired their ownership rights in an already restricted form.

If the Court does not accept these arguments, the Government believe that the given interference with the right guaranteed in Article 1 of Protocol no. 1 had a statutory basis, that this interference pursued a legitimate aim and that the means employed to achieve this aim were not unreasonable and in principle did not place an unreasonable burden on the landlords.

597. Also as regards the select Applicants, it is necessary to take into account, in particular, that all of them acquired the houses that form the subject matter of their applications, entirely voluntarily.

In any case, the possible interference with their right to the peaceful enjoyment of their possessions had statutory basis and pursued a legitimate aim in the general interest. As regards the maintenance of a fair balance, the Government do not have sufficient information – with the exception of Applicant Vomočil whose application seems to be manifestly ill-founded – about the specific circumstances of the individual cases to be able to express an opinion on this key issue.

598. As the Government mentioned above (see § 311 of the Observations), therefore it might be useful if, upon the Court's request, the select Applicants filled in the questionnaire that the Ministry of Finance sent to the counsel of the Applicants organised around the Intervening Association, or a modified version of it and thus provided to the Court the necessary background information for the purpose of an eventual assessment of the merits of their applications.

If the Applicants do not submit the necessary information, the Government believe that it would be necessary to reject their applications as manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention, because it would appear that the Applicants have not succeeded in carrying the burden of proof resting upon them, as the applicants (see, among many others, e.g. decision of 13 February 2007 on the admissibility of application no. 34140/03 *Jeong v. the Czech Republic*, point 1.1.3.).

III. ON THE ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL NO. 1

599. The Court also posed to the Government the question of whether the Applicants had at their disposal an effective domestic remedy as required by Article 13 of the Convention in respect of their complaints raised under Article 1 of Protocol no. 1.

600. The answer to this question is to a great extent predetermined by the answer to question no. 2, which asks whether or not the Applicants had at their disposal – and whether they exhausted – effective domestic remedies for the violations of rights and freedoms guaranteed by the Convention which they now invoke in proceedings before the Court.

(i) Summary of the Court's relevant case law

601. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

602. The fundamental principles of interpretation and application of Article 13 of the Convention were summarised above in connection with the plea of non-exhaustion of all domestic remedies within the meaning of Article 35 § 1 of the Convention, which is very closely tied to Article 13 of the Convention (see § 261 of the Observations above).

(ii) On the existence of effective remedies *in abstracto*

603. As mentioned above (see § 267 of the Observations above), Article 13 of the Convention is applicable *ratione materiae* only provided that the Applicant's assertion on the violation of rights and freedoms guaranteed by the Convention is at least arguable.

604. In the preceding part of their Observations the Government dealt, on the general level and on the level of the four select applications, with the issue of whether the regulation of tenancy relationships as applied in the Czech Republic constitutes an interference with the right of owners of houses and flats subject to rent regulation to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol no. 1.

605. In the first place, the Government pointed out that in their opinion it must be believed that by voluntarily acquiring ownership rights in respect of property subject to a certain burden in the form of rent regulation the persons concerned voluntarily waived the protection of their right to the peaceful enjoyment of their possessions. Therefore it cannot be believed, by any means, that there was an interference with this right, because the Applicants did not, at the moment of

acquiring their ownership rights or at any later moment, have any legitimate expectation that these restrictions would be abolished completely or at least partially in their specific case.

606. Nevertheless, even if the Court does not accept the Government's objection regarding the waiver of the right and the absence of an interference, it cannot be automatically supposed that the assertion on the violation of the right of owners of houses and flats subject to rent regulation guaranteed in Article 1 of Protocol no. 1 is arguable, and that therefore the State authorities were even obligated to provide these persons with an effective domestic remedy against the violation of this right, as required by Article 13 of the Convention.

607. The Government are convinced that in a number of cases, of which the Court selected several to be examined as pilot cases, the claim of violation of the right to the peaceful enjoyment of possessions must be considered manifestly ill-founded (for details see § 580 of the Observations above), and therefore for that reason also not arguable for the purposes of Article 13 of the Convention (see *mutatis mutandis* e.g. decision of 13 December 2005 on the admissibility of application no. 77153/01 *Bukran v. Slovakia*; nevertheless, the Court also considered in some cases such claims of violations of rights and freedoms guaranteed by the Convention which it did not find manifestly ill-founded and dealt with on their merits, to be not arguable – see e.g. judgment of 25 June 1997 in the case of application no. 20605/92 *Halford v. the United Kingdom*, § 70, or judgment of 16 November 2006 in the case of application no. 45964/99 *Karov v. Bulgaria*, § 92).

608. Nonetheless the Government naturally do not presume to assert that in all cases the claims of violation of the right to the peaceful enjoyment of possessions raised by the owners of houses or flats subject to the rent regulation should be considered not arguable.

609. The Government, nevertheless, believe that in the Czech Republic, in any case, there exist effective domestic remedies against the violation of the right to the peaceful enjoyment of possessions and therefore the claim of violation of Article 13 taken together with Article 1 of Protocol no. 1 to the Convention must be considered manifestly ill-founded.

610. Above, in connection with the plea of non-exhaustion of domestic remedies under Article 35 § 1 of the Convention, the Government highlighted to the Court the ways in which, in the Czech Republic, landlords may achieve redress for any violation of their right to the peaceful enjoyment of possessions.

611. In the first place, there is an action for rent increase under which a court decision may be requested to determine the amount of rent for the period from 20 March 2003, at which date there ceased to be effective regulation in the Czech law of the amount of rent in flats to which regulations, which were subsequently repealed by the Constitutional Court, had applied (for details see §§ 268 to 284 of the Observations above).

The action for rent increase can be considered a sort of preventive remedy against a violation of the right to the peaceful enjoyment of possessions.

A motion to repeal those provisions of the Civil Code, which prevented the landlords from serving a notice of termination on the tenants for grounds other than those stipulated in the law, and possibly also provisions on the passage of tenancy constitutes an alternative preventive remedy (for details see §§ 285 to 289 of the Observations above).

612. In the second place, there is the procedure under Act no. 82/1998, more specifically an action for damages against the State – under this procedure this claim must be heard before a competent authority first, only then can it be heard before a court (for details see §§ 290 to 321 of the Observations above).

The action for damages against the State must be considered a sort of compensatory remedy against the violation of the right to the peaceful enjoyment of possessions.

(iii) On the existence of effective remedies *in concreto*

613. The Government noted above that they are of the opinion that the select Applicants waived the protection of the right guaranteed in Article 1 of Protocol no. 1 and that therefore it cannot be believed that in their cases there was any interference with the right to the peaceful enjoyment of possessions (see § 567 of the Observations).

For that reason it would be necessary to reject their claims of the violation of the right to an effective remedy within the meaning of Article 13 of the Convention due to incompatibility *ratione materiae*, because their claim of violation of Article 1 of Protocol no. 1 cannot be considered arguable.

614. If the claim of waiver of the right is not accepted, it would be, nevertheless, necessary to further deal with the issue of whether even so with regard to the specific circumstances of the cases of the individual Applicants their claims of the violation of the right to the peaceful enjoyment of possessions can be considered arguable.

The Government stated that the claim raised by Applicant Vomočil is manifestly ill-founded (see § 580 of the Observations above). With regard to this conclusion it must also be considered not arguable within the meaning of the case law on Article 13 of the Convention and therefore the claim of violation of this provision of the Convention must be declared inadmissible due to incompatibility *ratione materiae*.

615. As regards the other select Applicants, at this moment the Government cannot express any opinion on the arguability of their claims of violation of Article 1 of Protocol no. 1 due to the insufficient amount of information provided by them (see § 597 of the Observations above).

616. Nevertheless, even if the Court were to find the claim of the violation of the right to the peaceful enjoyment of possessions arguable in the case of all or at least some of the select Applicants, the Government are convinced that they all had at their disposal effective remedies against the violation of their right guaran-

teed in Article 1 of Protocol no. 1, but that they did not make use of these remedies (see § 332 of the Observations above).

(iv) Conclusion

617. Therefore the Government believe that the claim regarding the absence of effective remedies for the violation of the right to the peaceful enjoyment of possessions can be dealt with only if the claim of the violation of the said right can be considered at least arguable. If this is not the case for any reason, it is necessary to reject the applications concerned as inadmissible due to their incompatibility *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

Nevertheless, the Government are convinced that in the Czech Republic there exist remedies within the meaning of Article 13 of the Convention – be it preventive or compensatory ones – using which the potential applicants may achieve effective redress for any violation of their right guaranteed in Article 1 of Protocol no. 1.

618. As regards the select Applicants, the Government believe that the claim of Applicant Vomočil that his right to the peaceful enjoyment of possessions was violated is not arguable, therefore his application, in its part concerning Article 13 of the Convention, must be rejected as inadmissible due to its incompatibility *ratione materiae* with the provisions of the Convention.

As regards the remaining select Applicants, currently, the Government do not have at their disposal sufficient information to be able to express an opinion on the arguability of their claim of violation of Article 1 of Protocol no. 1.

However, even if they are found to be arguable, then with regard to the above facts, the applications should still be rejected as inadmissible due to being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. ON THE ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL NO. 1

619. The Court also asks whether the Applicants suffered discrimination in the enjoyment of their property rights, contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol no. 1, in comparison with landlords owning houses or/and flats to which the rent-control legislation does not apply.

(i) Summary of the Court's relevant case law

620. Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

621. For the purposes of Article 14 a difference of treatment is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (judgment of 21 February 1997 in the case of application no. 20060/92 *Van Raalte v. the Netherlands*, § 39).

622. The scope of this margin will vary according to the circumstances, the subject-matter and the background. As a general rule, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention. On the other hand, a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (judgment of 12 April 2006 in the case of applications nos. 65731/01 and 65900/01 *Stec and Others v. the United Kingdom, §* 52).

(ii) On the issue of discrimination *in abstracto*

a) Are there two distinct groups of landlords?

623. First of all, the Government believe that there are not two clearly defined groups of landlords, as the Applicants describe them and subsequently also the Court in its above question, i.e. a group of landlords owning houses and/or flats to which the rent regulation applies, on one hand, and a group of landlords owning houses and/or flats to which the rent regulation does not apply, on the other hand.

624. This is because there is nothing to prevent one person from being a member in both these groups. Also the case of Applicant Vomočil shows that the Applicant can be included in both these groups because the rent regulation applied to only some of the flats in his house but did not apply to the remaining flats. The regulation of tenancy relationships is in no way directly tied to the landlord as a person owning a house or a flat.

625. In addition, there are certainly also "clean" cases where one owner owns only flats or houses to which the rent regulation applies. However, that does not prevent him/her from becoming a member of the second group and acquiring property, by purchasing it or in any other way, to which the rent regulation does not apply.

Another possibility, which cannot be excluded, is for a member of a theoretically disadvantaged group, under certain circumstances, to leave this group, while

this transition is to a great extent dependent on his/her will and not only on the satisfaction of conditions independent of him/her.

626. Above, in connection with the issue of maintenance of a fair balance between the pursued legitimate aim and the means employed in the domain of Article 1 of Protocol no. 1 the Government pointed out that the situation of the individual owners must be examined with regard to all the consequences of the regulation of tenancy relationships on their property rights; it is not possible to isolate and read out of context the consequences that were unfavourable for the specific Applicant and to ignore the consequences that, by contrast, improved the Applicant's situation or even paradoxically favoured him/her (see §§ 440 and 523 of the Observations above).

627. Therefore, the Government believe that in the case in question the situation is considerably different from the – "classical" – cases in which the Court dealt with the issue of discrimination between two groups of persons and where these persons could not choose their membership in one group or the other, where the passing from one group to the other one was not possible and where at the same time the membership in both compared groups at the same time was ruled out (see e.g. the discrimination against Roma as regards their access to education in comparison with the majority society – the Grand Chamber's judgment of 13 November 2007 in the case of application no. 57325/00 *D.H. and Others v. the Czech Republic*; discrimination on the ground of sex when calling citizens to jury duty – judgment of 20 June 2006 in the case of application no. 17209/02 *Zarb Adami v. Malta etc*.).

b) Are the compared groups of landlords in a similar position?

628. If the Court does not fully adopt the Government's above argumentation and insists on the possibility of comparing the two abstract groups of landlords defined by it, the Government admit that these groups may be in a situation which, although not certainly identical, could be described as similar in the relevant aspects.

Nevertheless, the Convention institutions have already concluded for example that tenants of private landlords and tenants of a building association which was "in the public interest" were not in a similar situation and a legislative amendment affecting one of these groups could not be seen as discrimination (Commission decision of 1 July 1992 on the admissibility of application no. 15155/89 *E.R. v. Austria*)

629. However, the establishment of similarity of the situations of both groups of landlords alone cannot presume the answer to the question as to whether these groups are treated in a different way and whether this difference in treatment is or is not justifiable.

c) Are these groups treated in a different way?

630. If we, nonetheless, accept the assertion that there exist two groups of landlords, ones with flats or houses to which the rent regulation applies, and the

others with flats or houses to which the rent regulation does not apply, it is evident that these groups are treated in a different way, because the differentiating characteristic is precisely the criterion of whether flats or houses owned by them are subject to rent regulation or not.

631. In consequence of the rent regulation – *de jure* – some of the landlords were not allowed, until 19 March 2003 (incl.) (see § 224 of the Observations above) to collect, for certain flats, rent only being agreed on by the landlord and the tenant.

Nevertheless, after the aforementioned date such an agreement was possible and in its absence the landlords could bring actions for rent increase with courts whose decisions on such actions would replace the lack of will on the part of the tenant.

632. Therefore it must be believed that from 20 March 2003 there was no difference in treatment between the groups of landlords defined above, because the tenancy relationships in all flats owned by private persons were provided for by the same regulations.

633. In this connection it is necessary to draw attention to the fact that a difference in treatment (in the period until 19 March 2003) may prove only theoretical where the amount of rent usual in the place and time (the market rent) was lower than the maximum level of rent that could be collected in accordance with the relevant regulations.

The Government have already referred once to an analysis of March 2005, which Applicant Vomočil submitted to the Court and from which it stems, *inter alia*, that in certain regions the market rent was lower than the regulated rent (see § 521 of the Observations). Therefore if we base our considerations on the notion that the tenants are behaving more or less rationally when concluding agreements (and therefore that they do not pay for an offered service more than is usual on the market given the circumstances), it is evident that in these regions the rent regulation itself did not significantly restricted the landlords because, even on a free market, they would have no real chance to conclude more advantageous lease contracts.

Moreover, it is necessary to take into account that at that time the amount of market rent was overvalued to a certain extent – in consequence of the application of rent regulation in part of the tenancy sector. Therefore, in the absence of rent regulation, the number of regions in which the market rent is lower than the theoretical regulated rent would further increase.

d) Is this difference in treatment based on any of the grounds mentioned in Article 14 of the Convention?

634. It is evident that a difference in treatment between both groups defined above was not established on any ground explicitly specified in Article 14 of the Convention.

635. The Government are aware that the list of these grounds is only illustrative, as stems from the Court's case law (see e.g. judgment of 8 June 1976 in the case of applications no. 5100/71 and others *Engel and Others v. the Netherlands*, § 72).

636. On the other hand, especially the French version of the relevant provision of the Convention (*fondée* notamment *sur* ...) shows that the explicitly specified grounds are considered extremely important. Although, in the Government's opinion, it does not follow from this that a difference in treatment based on other grounds could not be considered discriminatory, however, in such cases States should be provided with a wide margin of appreciation as to whether such treatment is based on objective and reasonable grounds.

e) Can this difference in treatment be justified?

637. In this connection it is necessary to take into account, above all, that until 30 June 1993 the rent regulation applied to virtually all flats.

From 1 July 1993 the rent regulation ceased to apply to:

a) flats if their tenant was a juristic person with a registered office outside the Czech Republic or a natural person without a permanent residence in the Czech Republic or a foreign embassy or diplomatic mission;

b) flats and houses built without public funds, for which the final building approval was to be issued after 30 June 1993;

c) flats in family houses in the case of which the rent was to be negotiated with the new tenant, excluding cases of statutory passage of tenancy, exchange of flats or use of replacement flats (see § 118 of the Observations above).

From 1 July 1995 the rent regulation then ceased to apply to all flats in the case of which a lease contract was negotiated with a new tenant, with the exception of statutory passage of tenancy, exchange of flats, replacement flats and service flats for professional soldiers (see § 129 of the Observations above).

638. Therefore, in principle, the difference in treatment between the two groups of landlords was based on various grounds. At the same time, not in a single case can it be believed that the State's decision to exempt a certain group of flats or tenants from the application of regulations limiting the maximum rent did not pursue a legitimate aim or that it was disproportionate in relation to this aim or, from the other point of view, that these defects could be found in the State's decision to regulate, in principle, the amount of rent in only one part of the tenancy sector where the tenancy was created under a different legislation situation.

639. As regards the liberalisation of the rent control in the case of newly concluded contracts with a new tenant, the aim of such procedure was not to discriminate against landlords owning flats subject to rent regulation, but, by contrast, to allow them, if an existing lease is terminated, to conclude new lease contracts entirely freely. Precisely by virtue of this exemption of new lease contracts

from rent regulation the procedure of progressive natural narrowing down of the group of flats subject to rent regulation started, as the Government mentioned above (see § 450 of the Observations).

On the other hand, the maintenance of the rent regulation for newly concluded lease contracts could lead to a situation where the owners could abuse their position on a large scale. As the demand for housing usually exceeds the supply, the owners could formally lease their flats to the new tenants for the rent set by the regulations, but in fact the potential tenants would be obligated to pay another sum in order to obtain the flat and in consequence the regulation would miss the mark.

640. Furthermore, as regards the liberalization of rents in houses, built without public funds, newly obtaining final building approvals, it is evident that the aim of such procedure was to encourage the construction of new housing financed with private funds.

641. Finally, the exemption from the regulation of those flats where the tenant was a foreign natural or juristic person, a foreign embassy or diplomatic mission reflects the fact that for these persons and institutions it was not possible to doubt, in principle, their ability and willingness to pay the market rent, therefore there was no reason for their increased protection.

642. The Government would point out that the Convention institutions have already had the opportunity to deal with the issue of whether or not the inequality between the landlords based – eventually – on the date of conclusion of the lease contract is justifiable, and they have repeatedly reached an affirmative conclusion and rejected the claim of violation of Article 14 of the Convention taken together with Article 1 of Protocol no. 1 as manifestly ill-founded (see e.g. Commission decision of 10 April 1995 on the admissibility of application no. 25315/94 *Bernaldo Quirós Tacón and 492 Others v. Spain*; Commission decision of 28 June 1993 on the admissibility of application no. 15674/89 *Aires v. Portugal*; Commission decision of 7 June 1990 on the admissibility of application no. 12484/86 *R.G. v. Austria*).

643. If the Constitutional Court itself, in some of its findings, mentioned the violation of the prohibition of discrimination, it is necessary to draw attention again to the fact that the national authorities may provide a higher level of protection to human rights and fundamental freedoms than the Convention does. Therefore the Court is certainly not obligated to follow the opinion of the national authority on the issue of whether the claimed violation of the right guaranteed in Article 14 of the Convention occurred or not.

f) Was not there an implicit waiver of the right to respect of the prohibition of discrimination?

644. If the Court, despite the Government's above arguments, concludes that the landlords owning houses or flats to which the rent regulation applies were victims of discrimination prohibited by Article 14 of the Convention, it is finally necessary to pose the question – as in connection with the claimed violation of the

right to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol no. 1 (see §§ 380 to 405 of the Observations above) – of whether the Applicants implicitly waived this right by the fact that by voluntarily acquiring ownership they also voluntarily became members of the group which they now consider disadvantaged.

645. The Government are convinced that if we believe that the Applicants waived the protection of their right to the peaceful enjoyment of possessions, then it would be logical to deduce that by that they also waived their right to be secured the use of this right without any discrimination.

At the same time, a difference in treatment was not based on grounds that would exclude the possibility of waiving the right not to be discriminated against (see *a contrario* the *D.H. and Others* judgment, cited above, § 204, in which the Court did not allow for the possibility to waive a right not to be discriminated on the basis of race).

(iii) On the issue of discrimination *in concreto*

646. From the information available as regards the specific circumstances of the individual Applicants it is evident that at least Applicant Vomočil had in his house both flats subject to rent regulation and flats not subject to it.

As regards the remaining Applicants, then in this respect it is necessary to wait for additional information to be provided by them.

647. In any case, in the Government's opinion it is true of all the select Applicants that their membership in one or the other group of landlords was not fixed once and for all and that it was also a question of their will whether they would cease to be members of the group in question, or whether they become members of both groups.

648. It holds, in particular, that the select Applicants too waived the protection of their right to the prohibition of discrimination in consequence of the voluntary acquisition of ownership rights restricted in one of their aspects by regulations stipulating the amount of rent in the flats, the landlords of which they also became voluntarily.

The situation of Applicants Hlaváček is rather different; they acquired the houses in question at a time when the rent regulation applied (with minor exceptions) to all flats, i.e. also to newly concluded lease contracts. However, as mentioned above, the aim of the liberalization of the rents for new contracts was not to introduce discrimination between groups of landlords, but, precisely to the contrary, the aim was to allow them to conclude lease contracts entirely freely after the termination of the existing (regulated) tenancy relationships.

(iv) Conclusion

649. The Government believe, above all, that in principle it is not possible to talk about two distinct groups of landlords in the way that they were defined by the Court. Furthermore, contrary to the "classical" cases of discrimination, mem-

bership in one group or the other is not set on a permanent basis and it is not entirely independent of the will of the person whom it concerns.

650. Nevertheless, if we accept that there are two groups of landlords in similar situations which were, in the past, treated in a different way, then the Government are convinced that this difference in treatment was based on objective and reasonable grounds.

Moreover, with regard to the fact that in no case was the difference in treatment based on any of the grounds listed in Article 14 of the Convention, the Government are of the opinion that the States enjoy a wide margin of appreciation in this domain.

651. Finally, as in the case of the claim of violation of Article 1 of Protocol no. 1 it must be taken into account, in the domain of Article 14 of the Convention as well, that in the majority of cases the landlords acquired their property voluntarily and therefore fully consciously they became members of the group which they now consider disadvantaged.

652. With regard to the above facts it cannot be believed that any of the select Applicants was a victim of discrimination within the meaning of Article 14 of the Convention in relation to their right guaranteed in Article 1 of Protocol no. 1.

Therefore this aspect of their applications should be declared inadmissible due to being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

V. ON THE "PILOT-JUDGMENT" PROCEDURE AND THE EXISTENCE OF A "SYSTEMIC SITUATION"

653. Finally the Court poses the question as to whether the facts of the present applications disclose the existence of a "systemic situation" where the deficiencies in the national law and practice complained of may give rise to numerous similar applications and it further asks whether the present cases are suitable for the "pilot-judgment" procedure.

In this respect, the Court notes that 59 application concerning the rent-control scheme have been introduced before it so far, involving some 4,800 applicants and invites the parties to reply to the two above question also in the light of the Court's case law, in particular the judgments in the cases of *Broniowski v. Poland* (Grand Chamber's judgment of 22 June 2004 in the case of application no. 31443/96, §§ 189 *et seq*.) and *Hutten-Czapska v. Poland* (the judgment cited above, §§ 231 *et seq*.).

(i) Principles for using the "pilot-judgment" procedure in the Court's case law

654. In the case of *Broniowski v. Poland,* concerning the issue of the compatibility with the Convention of a legislative scheme that affected a large number of persons (some 80,000), the Court found for the first time the existence of a sys-

temic violation, which it defined as a situation where "*the facts of the case disclose ... within the [domestic] legal order ... a shortcoming as a consequence of which a whole class of individuals have been or are still denied [their Convention right or freedom]*" and where "*the deficiencies in the national law and practice identified in the applicant's individual case may give rise to numerous subsequent well-founded applications*" (the *Hutten-Czapska* judgment, cited above, § 231).

655. The Court further found that the violation in that case had "originated in a widespread problem which resulted from a malfunctioning of Polish legislation and administrative practice and which ha[d] affected and remain[ed] capable of affecting a large number of persons" (*ibid.*).

656. In that connection, the Court directed that "the respondent State must, through appropriate legal measures and administrative practice, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol no. 1" (*ibid.*, § 232).

657. The Court thereby made clear that general measures at national level were called for in execution of the judgment and that those measures should take into account the many people affected and remedy the systemic defect underlying the Court's finding of a violation. It also observed that they should include a scheme offering to those affected redress for the Convention violation. It stressed that once such a defect had been identified, it fell to the national authorities, under the supervision of the Committee of Ministers, to take, retroactively if appropriate, the necessary remedial measures in accordance with the subsidiary character of the Convention (*ibid.*).

658. This kind of adjudicative approach by the Court to systemic or structural problems in the national legal order has been described as a "pilot-judgment procedure" (see, for example, the Court's position paper on proposals for reform of the European Convention on Human Rights and other measures as set out in the report of the Steering Committee for Human Rights of 4 April 2003 (CDDH(2003)006 Final, unanimously adopted by the Court at its 43rd plenary administrative session on 12 September 2003, paragraphs 43 to 46; and the response by the Court to the CDDH Interim Activity Report, prepared following the 46th Plenary Administrative Session on 2 February 2004, paragraph 37) (*ibid.*, § 233).

659. The object in the Court's designating a case for a "pilot-judgment procedure" is to facilitate the most speedy and effective resolution of a dysfunction affecting the protection of the Convention right in question in the national legal order. One of the relevant factors considered by the Court in devising and applying that procedure has been the growing threat to the Convention system resulting from large numbers of repetitive cases that derive from, among other things, the same structural or systemic problem (*ibid.*, § 234).

660. Indeed, the pilot-judgment procedure is primarily designed to assist the Contracting States in fulfilling their role in the Convention system by resolving

such problems at national level, thereby securing to the persons concerned their Convention rights and freedoms as required by Article 1 of the Convention, offering to them more rapid redress (*ibid.*).

(ii) On the existence of a "systemic situation" and suitability of using the "pilot-judgment" procedure

661. The Government believe that the situation forming the subject matter of the applications may be – to a certain extent – described as systemic, because the very regulation of tenancy relationships in the Czech Republic, in particular, was at its origin.

662. The general regulations (Acts in particular), according to their definition provide for legal relationships of an indefinite number of subjects. The more the deficiency to which the Applicants point in their applications is based on the wording of an Act itself (and therefore the less it is connected with its mere application in the specific case), the more probable it is that it is a "systemic situation" that may affect an indefinite – and therefore also potentially enormous – number of subjects who are or who may in the future be subject to a situation similar in its relevant aspects.

Therefore if a violation of the Convention is found for example in that the legal order of the State concerned does not allow a person, who has been convicted in his/her absence, although he/she was unaware of the criminal prosecution being conducted against him/her, to request the reopening of the case or staging of new proceedings, it is evident that this situation is systemic in the sense that anyone who appears in a similar situation: (a) he/she has been convicted in criminal proceedings in his/her absence; (b) he/she was unaware of the criminal prosecution being conducted against him/her, may potentially be a victim of this violation.

663. However, in the case of applications the subject matter of which is the rent regulation in the Czech Republic the situation is more complex. Although on one hand there is a basis of certain regulations, on the other hand notice must be taken of the fact that the manner or extent in which the rent regulation reflected in the domain of the landlords' ownership rights are very much different.

664. As regards the claim of violation of Article 1 of Protocol no. 1, the Government are of the opinion that the key question is whether in the specific case a fair balance was maintained between the legitimate aim pursued by the rent regulation and the means which the State chose to achieve this aim, or – in other words – whether with regard to the circumstances of his/her case no unreasonable burden was placed on the specific Applicant. As stems from the Government's arguments developed above, in assessing this question it is necessary to take into account a number of circumstances. The issue of the merits of the claim of violation of the landlords' right to the peaceful enjoyment of their possessions thus does not fit well with excessive generalisation which is, nevertheless, apparently the necessary requirement for a certain situation to be described as systemic and heard using the "pilot-judgment" procedure.

665. In contrast, as regards the claims of violations of Articles 13 and 14 of the Convention, here the generalisation of the situation of the individual Applicants could be acceptable to a certain extent. However, it cannot be neglected that these provisions (Article 13 in particular) are not independent and therefore as such they may be applied only in connection with other (normative) provisions of the Convention, i.e. in the case in question with Article 1 of Protocol no. 1 of the Convention. Article 13 of the Convention, as stems from the Court's case law, is applicable *ratione materiae* only under the condition that the claim of violation of a right or freedom guaranteed by the Convention is at least arguable (see § 267 of the Observations above).

In no case can it be asserted that the very fact that they own a house or a flat subject to the rent regulation would put all the Applicants into a situation where the found violation of some of the above provisions in the case of one of them would *eo ipso* mean the violation of the Convention also in the case of the remaining ones. Such generalisation would be particularly tricky in the case of a claim of violation of the right to the peaceful enjoyment of possessions.

666. The statement that there exists a certain "systemic situation" is, in any case, *a priori* entirely neutral as regards the issue of whether this "systemic situation" is contrary to the Convention or not.

If, for example, the Court faced a large number of applications in which the applicants claimed violation of their right guaranteed in Article 5 § 4 of the Convention noting that their motions to be released from custody were not – in compliance with the national criminal procedure regulations – heard in public court hearings, then in principle it would be possible to apply the "pilot-judgment" procedure, even if the Court concluded in such judgment that the Convention was not violated, as in the case of *Reinprecht v. Austria* (judgment of 15 November 2005 in the case of application no. 67175/01).

667. In the Government's opinion the Court's decision on whether or not to use the "pilot-judgment" procedure is, in its first stage, dependent on whether there exists a justified concern that similar claims may be raised in a considerable number of other applications.

At the same time, however, this does not mean that in hearing the pilot case the Court cannot conclude that there is no "systemic situation" – be it a situation of a "systemic violation" or "systemic non-violation" of the Convention – and give up on hearing the whole problem under the "pilot-judgment" procedure *ex post* and decide on all the similar applications separately.

668. If the Government interpret the use of the "pilot-judgment" procedure in the Court's previous case law correctly, then this procedure is suitable, in principle, for those cases where the alleged violation of the Convention is not – only or to a determining extent – a reflection of specific circumstances of the case in question. If this was the case, the probability of the same "situation" repeating itself in the future would not be too high, or such repetition would not be even possible, if such "situation" was related to entirely unique circumstances of the case under consideration.

Nevertheless, whether or not this is actually the case cannot be established before the hearing itself of the pilot case (or the pilot cases); as mentioned above, only the awareness of an existence of a risk of a large number of similar applications will be sufficient to make the first decision on the use of the "pilot-judgment" procedure.

(iii) On the number of "similar" applications

669. The number of submitted applications concerning the regulation of tenancy relationships in the Czech Republic (59 applications, involving 4,800 applicants, according to the Court) suggests at least that there exists a large number of persons who consider themselves victims of violation of the Convention in consequence of the rent regulation. Therefore the basic requirement for the use of the "pilot-judgment" procedure is clearly satisfied.

670. Nevertheless, in this connection the Government consider it appropriate to remark that apparently the Court has absolutely no information about the overwhelming majority of the applicants – especially those who joined the application of the Intervening Association – apart from their personal data, judging by the fact that in the proceedings under Act no. 82/1998 this group of applicants (totalling more than 4,000 natural and juristic persons) also confined itself to general statements (see § 305 of the Observations above).

In an open letter addressed to her clients, the counsel for this group of Applicants herself even admitted that the Intervening Association "*certainly does not screen everyone as to whether he/she is honest with the application, whether he/she really owns an immovable (anyway, the ownership of an immovable is not a requirement for becoming a member, everyone who declares his/her consent with the Articles of Association may apply)*" (see Enclosure E28).

From the instructions to potential applicants published on the website of the Intervening Association it stems (*www.osmd.cz*; visited on 17 October 2007 – see Enclosure E29) that the requirements for joining the application are:

- membership in the Intervening Association for which it is not necessary, as mentioned above, for the person concerned to own any immovable at all;
- the payment of CZK 3,100 to the account of the Intervening Association (from which CZK 100 is the registration fee, CZK 1,000 is the membership fee for the years 2006 and 2007 and CZK 2,000 is an 'administrative fee for the counsel');
- filling in and sending a power of attorney for the counsel.

671. Therefore the Government consider it necessary to take the number of applicants that submitted applications to the Court concerning rent regulation in the Czech Republic, with a pinch of salt. The joining of the application of the Intervening Association, as stems from the above, is more than easy from an administrative, time and financial point of view.

In addition to that, the list of the names which the counsel of the Intervening Association attached to the above request under Act no. 82/1998 suggests that frequently the individual applicants are family members in the case of whom it is legitimate to suppose that they are often only joint owners of the same immovable.

672. The Government do not wish to speculate without any grounds, but in their opinion it is not improbable that a considerable portion of the Applicants attached to the Intervening Association resolved to make this step most probably in consequence of a synergy of the common conviction, spread by the media, that the Applicant's will surely be successful with their claims in proceedings before the Court, on one hand, and the relative simplicity of joining the application without the necessity to mention or document anything specific, on the other hand.

Also in the case of the four select applications, which are not formally related to the application of the Intervening Association, it can be seen that the Applicants (with the partial exception of Applicant Vomočil) have paid scant attention to the specific circumstances of their cases (see §§ 581, 586 and 590 of the Observations above).

(iv) On the eligibility of the select cases to be heard using the "pilot-judgment" procedure and on the further process of examination of the applications

673. The Government believe that at this stage of the proceedings the Court has no sufficient information available that would enable it to reliably ascertain to what extent are the select cases suitable to be pilot ones.

674. First of all, the information provided by the individual select Applicants – perhaps with the exception of Applicant Vomočil – altogether concern only general characteristics of the developments and current situation regarding the regulation of tenancy relationships. In their submissions, the Applicants expressed their opinions on the specific circumstances of the individual cases rather briefly and moreover they supported their assertions with entirely insufficient evidence.

The Government tried to supplement the information on the individual cases as much as possible, on the other hand it must be acknowledged that the Applicants themselves should provide this information and they should bear the burden of proof in the first stage, notwithstanding that objectively only the Applicants themselves may have at their disposal certain necessary information.

675. Furthermore, no sufficient information is available on the structure of the group of owners of houses or flats subject to rent regulation.

The Government has tried to provide the Court with this information in the extent as it is available to them or they have tried to explain to the Court for what reason they could not be fairly requested to submit such information (see §§ 581 to 583 of the Observations above).

676. In this situation the Government propose to the Court to request all the Applicants who have addressed it in connection with the issue of rent regulation

to submit to it basic information on their cases from which it would be possible to get an idea about the structure of this group and thus to better assess whether in the case in question there is really a "systemic situation" in the sense defined above and whether the characteristics of the select cases are suitable to be heard within the "pilot-judgment" procedure.

677. In the Government's opinion for the assessment of the *merits* of the applications it is naturally necessary for the Applicants to submit to the Court all the information which the Ministry of Finance unsuccessfully requested from the majority of them (within the preliminary hearing of the compensation claim which they brought under Act no. 82/1998 – see §§ 303 *et seq*. of the Observations above), including the relevant documents proving the accuracy and completeness of the information provided by them.

678. However, with regard to the considerable number of Applicants it is hard to imagine that the Registry of the Court would have the resources to process this additional information, although the Government are convinced that not all Applicants would respond to the Court's request anyway.

679. Therefore the Government believe that the individual applicants should provide the Court with a certain minimum amount of information that would certainly not be sufficient in the individual cases in order to form a basis for an assessment of the merits of their applications, but on the other hand the information could provide at least a basic summary of certain issues that are key for the assessment of whether there exists – and to what extent – a certain "systemic situation" and whether it is even possible – and in what way – to hear the problem of rent regulation in the Czech Republic in the form of a pilot-judgment procedure.

680. In the Government's opinion the Applicants should inform the Court about the following:

- how and when they acquired their ownership rights in respect of the immovables that form the subject matter of their application and whether they still own them or when they have ceased to be the owners;
- whether all the flats or houses owned by them are subject to rent regulation and whether there are also commercial premises in the houses;
- whether the applicants use residential or commercial premises in the house for their own housing or business;
- whether the applicants have made use of any of the remedies which the Government mention above.

681. With this minimum amount of information it would be possible to get a basic view of the structure of the applicants and to use the gathered information both in the decision making on the further course of action in proceedings before the Court and on determining the existence or absence of a "systemic situation", and also possibly in supervising the enforcement of the judgment or judgments, should the Court conclude that in the select cases there were violations of certain

rights and freedoms guaranteed by the Convention and that these found violations originate in a certain systemic deficiency of the Czech law and practice in consequence of which a large number of the other applications could be found well founded.

682. In order to make the subsequent analysis of the provided information as simple as possible, the applicants should not be compelled to document the above facts in any way. However, the Court should warn them that the provision of incorrect or incomplete information could be classified as an abuse of the right of application within the meaning of Article 35 § 3 of the Convention and therefore their applications could be subsequently declared inadmissible for that reason (see § 341 of the Observations above).

683. The procedure proposed by the Government can certainly be considered rather non-standard, but at the same time it must be noticed that the "pilot-judgment" procedure itself is a significant deviation from the traditional hearing of applications by the Convention institutions. Moreover, it is a relatively new institute and it is not provided for in detail in the Convention, nor in the Rules of Court.

684. In the Government's opinion, in the case in question it is necessary to make use of the fact that the number of applications itself is not extremely high (59), therefore, in principle, it would be appropriate to request the Applicants to provide the necessary information through their counsels. Anyway, the overwhelming majority of the Applicants is represented by one counsel and moreover they are organized within the Intervening Association.

685. At this moment the Government go no further than to express their hope that although the information concerning the structure of the group of owners of houses or flats subject to the rent regulation is very incomplete, it will be eventually possible to hear the select cases as pilot.

686. However, that does not necessarily mean that all the applicants can be divided into four groups (only) on the basis of the way in which they acquired their property (only), i.e. by purchasing it (Applicant Vomočil), inheritance (Applicant Morawetz), restitution (Applicants Hlaváček) or a public auction (the Applicant Company). As clearly stems from the Observations of the Government in assessing the merits of the complaints concerning the rent regulation, a number of other relevant factors, which are combined with each other in different ways in the individual cases, play a role.

687. Finally, the Government would express their conviction that even prior to the decision on the admissibility of the select applications they will be given an opportunity to express their opinion on the admissibility and merits of these applications (and in doing so also on the issues relating to the existence of a "systemic situation" and suitability of using the "pilot-judgment" procedure) in the form of a reply to the Applicants' statement on these Observations and/or in connection with an oral hearing which the Chamber may order in the case.

Whether the Court decides to accept the Government's above proposal to address all the applicants through their counsels or not, it is evident that in the possi-

ble comments on these Observations of the Government the select Applicants will have to thoroughly explain the specific circumstances of their cases. Therefore it would be suitable for the Government to have an opportunity to express their opinion in a proper manner on these new facts before the Court decides on the admissibility of these select applications.

(v) Conclusion

688. The Government believe that at present there is nothing to prevent the Court from attempting to hear the problem of the rent regulation in the Czech Republic using the "pilot-judgment" procedure, because the basic requirement for the application of this procedure – the (potential) existence of a large number of similar applications – is clearly satisfied.

689. However, not until during the hearing of the select pilot cases will it be possible to show whether the situation to which the Applicants draw attention is – and to what extent – really systemic and whether it is a situation of a "systemic violation" or, by contrast, a "systemic non-violation" of the rights and freedoms guaranteed by the Convention.

690. In the Government's opinion this requires, in any case, that the applicants, who have already addressed the Court, to provide at least basic information on their cases. The select Applicants should then provide the Court with completely exhaustive information. Only then it will be possible to consider whether the select cases are actually suitable to be the pilot ones.

691. The information gathered so far (provided by the Applicants and supplemented by the Government) does not show that the select cases disclose a certain systemic *deficiency* in the Czech law or practice that could potentially lead to the submission of a large number of *founded* applications or better, given the circumstances, to finding the other, already submitted applications, founded.

The Government mentioned a number of arguments above showing that a combination of various restrictions of the landlords' ownership rights cannot be qualified as a violation of their right to the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol no. 1. In the Government's opinion nor can it be also asserted that the owners of houses or flats subject to rent regulation were victims of violation of the prohibition of discrimination within the meaning of Article 14 of the Convention or believed that at the domestic level they did not have at their disposal – as required by Article 13 of the Convention – an effective remedy for violations of rights and freedoms which they claim in proceedings before the Court.

Nevertheless, as was already mentioned above in connection with the claim of violation of Article 1 of Protocol no. 1, the Government cannot *a priori* exclude the possibility that in certain cases it would be possible to find the burden placed on a specific landlord in consequence of the rent regulation unreasonable and thus potentially come to the conclusion, provided that other conditions are met, especially after the rejection of all preliminary pleas of inadmissibility raised by the

Government, that his/her right to the peaceful enjoyment of possessions was violated (see §§ 538 and 608 of the Observations).

OVERALL CONCLUSION

I. PROPOSED DECISION OF THE COURT

692. In light of the above facts the Government of the Czech Republic, in their Observations on the applications of Mr Jan Vomočil, Mr Oskar Morawetz, Mr Vladislav Hlaváček and Mr Václav Hlaváček and the company Art 38, a. s. propose to the Court to decide as follows.

(i) In the case of Applicant Vomočil

693. The Government propose that the Court:

a) as regards all his claims of violations of rights and freedoms guaranteed by the Convention:

- declares the application inadmissible on the basis of one or more of the grounds below:
  - due to the non-exhaustion of all domestic remedies under Article 35 §§ 1 and 4 of the Convention (see § 327 of the Observations above);
  - for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention, in its part relating to events that occurred more than six months prior to the submission of the application (see § 255 of the Observations above);
  - for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention if it concludes that the situation violating the rights and freedoms guaranteed by the Convention was terminated in the Applicant's case more than six months prior to the submission of the application (see § 256 of the Observations above);
  - due to incompatibility *ratione personae* with the provisions of the Convention under Article 35 §§ 3 and 4 of the Convention as regards the facts that occurred after 4 May 2004 (see § 336 of the Observations above);
  - due to the abuse of the right of application under Article 35 §§ 3 and 4 of the Convention (see § 341 of the Observations above);

b) as regards the claim of violation of the right to the peaceful enjoyment of possessions (Article 1 of Protocol no. 1):

- declares the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 567, or § 580 of the Observations above),
- subsidiarily holds that Article 1 of Protocol no. 1 was not violated;

c) as regards the claim of violation of the right to an effective remedy for violation of the right to the peaceful enjoyment of possessions (Article 13 of the Convention taken together with Article 1 of Protocol no. 1):

- declares the application inadmissible for its incompatibility *ratione materiae* with the provisions of the Convention under Article 35 §§ 3 and 4 of the Convention (see § 693, or § 614 of the Observations above),
- subsidiarily holds that Article 13 of the Convention taken together with Article 1 of Protocol no. 1 was not violated (see § 616 of the Observations above);

d) as regards the claim of violation of the prohibition of discrimination in the exercise of the right to the peaceful enjoyment of possessions (Article 14 of the Convention taken together with Article 1 of Protocol no. 1):

- declare the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 652 of the Observations above),
- subsidiarily hold that Article 14 of the Convention taken together with Article 1 of Protocol no. 1 was not violated.

(ii) In the case of Applicant Morawetz

694. The Government propose that the Court:

- requests the Applicant's counsel to provide his opinion on the Government's doubts as to the presented power of attorney, which is supposed to entitle him to represent the Applicant, and subsequently to consider striking the application out of the list under Article 37 § 1(c) of the Convention (see § 349 of the Observations above),
- requests, at the same time, the Applicant's counsel to inform of whether the heirs intend to enter the proceedings in the place of the deceased Applicant and subsequently to consider striking the application out of the list under Article 37 § 1(c) of the Convention (see §§ 343 to 344 of the Observations above),

- and requests, at the same time, the counsel to inform about the fundamental circumstances of the Applicant's case on the basis of which it would be possible to decide on the merits of his application (see § 598 of the Observations above);

a) as regards all his claims of violations of rights and freedoms guaranteed by the Convention:

- declares the application inadmissible on the basis of one or more of the grounds below:
  - due to the non-exhaustion of all domestic remedies under Article 35 §§ 1 and 4 of the Convention (see § 329 of the Observations above);
  - for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention, in its part relating to events that occurred more than six months prior to the submission of the application (see § 255 of the Observations above);
  - for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention if it concludes that the situation violating the rights and freedoms guaranteed by the Convention was terminated in the Applicant's case more than six months prior to the submission of the application (see § 256 of the Observations above);

b) as regards the claim of violation of the right to the peaceful enjoyment of possessions (Article 1 of Protocol no. 1):

- declares the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 567, or § 598 of the Observations above),

c) as regards the claim of violation of the right to an effective remedy for violation of the right to the peaceful enjoyment of possessions (Article 13 of the Convention taken together with Article 1 of Protocol no. 1):

- declares the application inadmissible for its incompatibility *ratione materiae* with the provisions of the Convention under Article 35 §§ 3 and 4 of the Convention (see § 613 of the Observations above),
- subsidiarily holds that Article 13 of the Convention taken together with Article 1 of Protocol no. 1 was not violated (see § 616 of the Observations above);

d) as regards the claim of violation of the prohibition of discrimination in the exercise of the right to the peaceful enjoyment of possessions (Article 14 of the Convention taken together with Article 1 of Protocol no. 1):

- declares the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 652 of the Observations above),
- subsidiarily holds that Article 14 of the Convention taken together with Article 1 of Protocol no. 1 was not violated.

(iii) In the case of Applicants Hlaváček

695. The Government propose that the Court:

- requests the Applicants to inform about the fundamental circumstances of their case on the basis of which it would be possible to decide on the merits of their application (see § 598 of the Observations above);

a) as regards their claims of violations of rights and freedoms guaranteed by the Convention:

- declares the application inadmissible on the basis of one or more of the grounds below:
  - due to incompatibility *ratione temporis* with the provisions of the Convention under Article 35 §§ 3 and 4 of the Convention as regards the alleged acts and omissions imputable to the Czech Republic that were to occur prior to 18 March 1992 (see § 236 of the Observations above);
  - due to the non-exhaustion of all domestic remedies under Article 35 §§ 1 and 4 of the Convention (see § 329 of the Observations above);
  - for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention, in its part relating to events that occurred more than six months prior to the submission of the application (see § 255 of the Observations above);
  - for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention if it concludes that the situation violating the rights and freedoms guaranteed by the Convention was terminated in the Applicants' case more than six months prior to the submission of the application (see § 256 of the Observations above);

b) as regards the claim of violation of the right to the peaceful enjoyment of possessions (Article 1 of Protocol no. 1):

- declares the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 567, or § 598 of the Observations above),

c) as regards the claim of violation of the right to an effective remedy for violation of the right to the peaceful enjoyment of possessions (Article 13 of the Convention taken together with Article 1 of Protocol no. 1):

- declares the application inadmissible for its incompatibility *ratione materiae* with the provisions of the Convention under Article 35 §§ 3 and 4 of the Convention (see § 613 of the Observations above),
- subsidiarily holds that Article 13 of the Convention taken together with Article 1 of Protocol no. 1 was not violated (see § 616 of the Observations above);

d) as regards the claim of violation of the prohibition of discrimination in the exercise of the right to the peaceful enjoyment of possessions (Article 14 of the Convention taken together with Article 1 of Protocol no. 1):

- declares the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 652 of the Observations above),
- subsidiarily holds that Article 14 of the Convention taken together with Article 1 of Protocol no. 1 was not violated.

(iv) In the case of the Applicant Company

696. The Government propose that the Court:

- requests the Applicant Company to inform about the fundamental circumstances of its case on the basis of which it would be possible to decide on the merits of its application (see § 598 of the Observations above);

a) as regards its claims of violations of rights and freedoms guaranteed by the Convention:

- declares the application inadmissible on the basis of one or more of the grounds below:
  - due to the non-exhaustion of all domestic remedies under Article 35 §§ 1 and 4 of the Convention (see § 329 of the Observations above);

– for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention, in its part relating to events that occurred more than six months prior to the submission of the application (see § 255 of the Observations above);
– for the failure to meet the six month time limit for submitting the application under Article 35 §§ 1 and 4 of the Convention if it concludes that the situation violating the rights and freedoms guaranteed by the Convention was terminated in the Applicant Company's case more than six months prior to the submission of the application (see § 256 of the Observations above);

b) as regards the claim of violation of the right to the peaceful enjoyment of possessions (Article 1 of Protocol no. 1):

• declares the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 567, or § 598 of the Observations above),

c) as regards the claim of violation of the right to an effective remedy for violation of the right to the peaceful enjoyment of possessions (Article 13 of the Convention taken together with Article 1 of Protocol no. 1):

• declares the application inadmissible for its incompatibility *ratione materiae* with the provisions of the Convention under Article 35 §§ 3 and 4 of the Convention (see § 613 of the Observations above),
• subsidiarily holds that Article 13 of the Convention taken together with Article 1 of Protocol no. 1 was not violated (see § 616 of the Observations above);

d) as regards the claim of violation of the prohibition of discrimination in the exercise of the right to the peaceful enjoyment of possessions (Article 14 of the Convention taken together with Article 1 of Protocol no. 1):

• declares the application inadmissible for being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention (see § 652 of the Observations above),
• subsidiarily holds that Article 14 of the Convention taken together with Article 1 of Protocol no. 1 was not violated.

(v) On the "pilot-judgment" procedure and the existence of a "systemic situation"

697. The Government propose that the Court requests all the applicants who addressed it with similar claims to those of the select Applicants to provide it with some basic information about their cases (see § 676 of the Observations above), on the basis of which it would be easier to assess whether or not and potentially to what extent there is a "systemic situation" here and whether the select cases are suitable to be heard as pilot.

698. At the same time the Government trust that, prior to a decision on the admissibility of the select applications, they will be given an opportunity to express their opinion on this issue in the light of any additional information the select Applicants provide upon the Court's request and to react to any comments the Applicants make regarding the present Observations of the Government (see § 687 of the Observations above).

II. ANSWERS TO THE COURT'S QUESTIONS

699. Answers to the Court's questions and contained in these Observations are clearly summarised in a separate document attached thereto which is to be considered summary within the meaning of paragraph 10 of the practice direction on written pleadings issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 (see § 4 of the Observations above).

Vít A. S c h o r m
Agent of the Government

ENCLOSURES

With regard to the large number of Enclosures the Government used the following nomenclature in order to identify them:

[capital letter] [number], if applicable *[capital letter] [number] [lower case letter]*

Capital letter identifies to which application the Enclosure in question relates:

A = Applicant Vomočil;

B = Applicant Morawetz;

C = Applicants Hlaváček;

D = the Applicant Company;

E = this Enclosure concerns all select applications or at least some (more than one) of them.

Number identifies the order of the Enclosure in the list of Enclosures of the series A to E.

In some cases, when one Enclosure has several parts, these individual parts are denoted also with *lower case letters*.

Table 18

LIST OF ENCLOSURES	
ENCLOSURES TO APPLICATION NO. 38817/04 *VOMOČIL V. THE CZECH REPUBLIC*	
A1	The agreement on the surrender of property of 4 October 1991
A2	The purchase agreement of 9 December 1992
A3	The purchase agreement of 20 October 1994
A4	The purchase agreement of 15 December 1995
A5	The declaration of the depositor concerning the deposit of the immovable in the registered capital of the company of 28 January 2004
A6	The expert opinion of 11 November 2003
A7	The Applicant's action with the Brno Municipal Court of 14 July 2003
A8	The Brno Regional Court resolution of 30 August 2006
A9	The Applicant's submission with the Brno Municipal Court of 2 February 2007
A10	The Brno Municipal Court resolution of 9 March 2007
A11a	The settlement agreement with V.Ch. of 12 June 2007
A11b	The settlement agreement with J.K. of 11 June 2007
A11c	The settlement agreement with O.Ch. of 11 June 2007
A11d	The settlement agreement with M.S. of 11 June 2007
A11e	The settlement agreement with V.H. of 11 June 2007
A11f	The settlement agreement with J.S. of 11 June 2007
A12	The Brno Municipal Court resolution of 27 June 2007
ENCLOSURES TO APPLICATION NO. 11179/06 *MORAWETZ V. THE CZECH REPUBLIC*	
B1	The two texts published on the web pages *www.oskarmorawetz.com* – visited on 28 August 2007
B2	The report of the *Foreign Claims Commission*/*Commission des réclamations étrangères*
B3	The declaration of John Morawetz of 31 March 1979
B4	The Prague Municipality decision of 11 April 1996
B5	The Prague 7 District Court decision of 27 July 1999
B6	The Prague 7 District Court judgment of 4 December 1996
B7	The Prague Municipal Court resolution of 8 August 1997

B8	The Prague 7 District Court resolution of 1 April 1999
B9	The action of the Prague 7 Municipal District with the Prague 7 District Court of 14 January 2004
B10	The Prague 7 District Court judgment of 5 April 2004
B11	The Prague Municipal Court judgment of 3 September 2004
B12	The action of the Municipality of Prague with the Prague 7 District Court of 24 February 2005
B13	The Prague 7 District Court judgment of 9 May 2007
B14	The notification by the Police of the Czech Republic of 3 January 2005
B15	The notification by the Supreme Public Prosecution Office of 3 July 2006
B16	The power of attorney dated 10 September 1991
ENCLOSURES TO APPLICATION NO. 11163/06 *HLAVÁČEK V. THE CZECH REPUBLIC*	
C1	The agreement on the surrender of property of 9 October 1991
ENCLOSURES TO APPLICATION NO. 1458/07 ART 38, A. S. *V. THE CZECH REPUBLIC*	
D1	The agreement on the surrender of property of 22 May 1991
D2	The purchase agreement of 17 December 1991
D3	The expert opinion of 13 December 2000
D4	The Plzeň-město District Court resolution of 31 May 2001
D5	The Plzeň-město District Court resolution of 23 August 2001
D6	The Plzeň-město District Court resolution of 26 September 2001
COMMON ENCLOSURES TO THE SELECT APPLICATIONS	
E1	The Constitutional Court resolution of 25 May 2005 file ref. no. IV. ÚS 162/04
E2	The Constitutional Court resolution of 8 June 2006 file ref. no. III. ÚS 217/06
E3	The Supreme Court judgment of 31 January 2007 file ref. no. 25 Cdo 1124/2005
E4	The Supreme Court judgment of 7 July 2006 file ref. no. 26 Cdo 32/2006
E5	The Tábor District Court judgment of 21 April 2005 file ref. no. 3 C 18/2005
E6	The České Budějovice Regional Court – Tábor office judgment of 8 August 2005 file ref. no. 15 Co 456/2005
E7	The Nymburk District Court judgment of 9 September 2005 file ref. no. 6 C 626/2004
E8	The Prague Regional Court judgment of 25 May 2006 file ref. no. 24 Co 197/2006
E9	The Prague Municipal Court resolution of 14 April 2006 file ref. no. 14 Co 102/2006
E10	The Prague Municipal Court resolution of 17 August 2007 file ref. no. 14 Co 244/2007

E11	The Pardubice District Court resolution of 9 May 2006 file ref. no. 10 C 178/2004
E12	The Nymburk District Court judgment of 15 September 2006 file ref. no. 8 C 1005/2005
E13	The Prague Regional Court resolution of 25 May 2006 file ref. no. 27 Co 217/2006
E14	The Prague Regional Court judgment of 26 April 2007 file ref. no. 27 Co 110/2007
E15	The Brno Municipal Court judgment of 10 October 2006 file ref. no. 31 C 262/2004
E16	The Plzeň Regional Court resolution of 28 February 2007 file ref. no. 61 Co 288/2006
E17	The Plzeň-jih District Court resolution of 7 August 2007 file ref. no. 7 C 92/2005
E18	The Prague 4 District Court judgment of 31 January 2007 file ref. no. 28 C 389/2003 (including the amending resolution of 9 May 2007)
E19	The Prague Municipal Court resolution of 31 May 2006 file ref. no. 13 Co 98/2006
E20	The lodging of the claim for damages of 20 April 2007
E21	The letter of the Ministry of Finance dated 2 July 2007
E22	The questionnaire of the Ministry of Finance – attachment to the letter dated 2 July 2007
E23	The extract from the draft of the new civil law code of June 2007
E24	The housing costs of households in the third quarter of 2005
E25	The extract from the statistics on family accounts for the year 2006
E26	The analysis of the rent deregulation of March 2005
E27	55 questionnaires made anonymous – the Ministry of Finance survey of 2002
E28	The declaration of the counsel of the Intervening Association of 19 February 2007
E29	The text published on the website of the Intervening Association *www.osmd.cz* – visited on 17 October 2007

STRUCTURE OF THE OBSERVATIONS