EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

DECISION ON THE MERITS

8 September 2009

Fédération européenne des Associations nationales travaillant avec les Sans-abri (FEANTSA)
v. Slovenia

Complaint no. 53/2008

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 238th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, Vice-President
Colm O'CINNEIDE, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmila HARUTYUNYAN
Mssrs Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA QUESADA
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having deliberated on 8 September 2009,

On the basis of the report presented by Mr Jean-Michel BELORGEY,

Delivers the following decision adopted on this date:

PROCEDURE

1. The complaint lodged by the *Fédération européenne des Associations nationales travaillant avec les Sans-abri* (hereafter referred to as "FEANTSA") was registered on 28 August 2008. The European Committee of Social Rights ("the Committee") declared the complaint admissible on 2 December 2008.

2. Pursuant to Article 7§§1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and the Committee's decision on the admissibility of the complaint, the Executive Secretary communicated the text of the admissibility decision on 12 December 2008 to the Slovenian Government ("the Government"), the complainant organisation, the states party to the Protocol, the states that have ratified the Revised Charter and made a declaration under Article D§2 and to the international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the 1961 Charter, i.e. the European Trade Union Confederation (ETUC), Business Europe (formerly UNICE) and the International Organisation of Employers (IOE).

3. In accordance with Rule 31§1 of the Committee's Rules, the Committee fixed a deadline of 20 February 2009 for the presentation of the Government's written submissions on the merits. Its submission was registered on 19 February 2009.

4. Pursuant to Rule 31§2, the President set 10 April 2009 as the deadline for the complainant to present its response to the Government's submissions. The response was registered on 10 April 2009.

5. Pursuant to pursuant to Rule 31§3, the President invited the Government to submit a further response to the response of the complainant to the Government's submissions on the merits by 29 May 2009. The response was registered on 29 May 2009.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

6. FEANTSA requests the Committee to find that Slovenia is not in conformity with Articles 16 and 31 of the Revised European Social Charter, taken separately and in conjunction with Article E, on the ground that Slovenia has failed to ensure an effective right to housing for its residents, especially families. In particular, it submits that by exempting the public entities which had previously been the administrators and became the transitional owners of dwellings that had been transferred to public ownership through nationalisation, confiscation or expropriation from the obligation to sell their flats to former holders of the Housing Right (which was abolished), without offering the tenants security of tenure equivalent to the option to buy on advantageous terms, the Slovenian Act of 1991 placed some 13,000 families in an extremely precarious position. It further submits that the problems experienced by these families in

remaining in their flats or obtaining a substitute flat have been exacerbated by a change in the rules for calculating non-profit rent, causing it to rise by 613% in the space of 12 years, by the introduction of new statutory grounds for eviction, and by the imposition of very rigorous conditions for transfer of the lease to the heirs of the main tenant, upon his or her death. As a result, the number of persons unable to obtain access to adequate housing has greatly increased, as has the number of evictions and the number of homeless people.

B- The Government

7. The Government maintains that it was not possible to grant former Housing Right holders rights over flats acquired through nationalisation or confiscation which had to be returned to their owners, but that as of 1994, arrangements were made to help those concerned to purchase either the privatised flat or another flat. Thanks to these arrangements, more than half of the former holders of the Housing Right in respect of a flat that has already been privatised (2,566 out of 4,700) are considered to have found housing. The Government further submits that the grounds for eviction provided for by law are legitimate, and that the eviction procedure itself provides all the appropriate safeguards. The level at which non-profit rents are set is, in the Government's view, economically justified, and in real terms, the increase has not been more than 128%, with the result that rent expenses accounted for just 16.5% of average income in 2008.

RELEVANT DOMESTIC LAW

The 1991 Constitution of the Republic of Slovenia

8. While the right to housing was granted under the former Constitution of the Socialist Republic of Slovenia, this right is not granted anymore under the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije,* Official Journal no. 33/91, 42/1997, 66/2000, 24/2003, 69/2004, 68/2006), which provides:

Section 33 (Right to Private Property and Inheritance)

> "The right to private property and inheritance shall be guaranteed."

Section 67 (Property)

> "The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social and environmental function.
>
> The manner and conditions of inheritance shall be established by law."

Section 78 (Proper Housing)

> "The state shall create opportunities for citizens to obtain proper housing."

The Housing Act

9. The former 1991 Housing Act (*Stanovanjski zakon*, Official Journal no. 181/1991) provided in sections 111 to 114 that upon entry into force of the Act, the State and the municipalities, as well as some other legal entities, would become owners of the dwellings which had previously been socially owned. Section 113 dealt with the dwellings which had once belonged to private owners. It stated that the municipalities would become the owners of those socially owned dwellings, which had been made part of social property by acts of nationalisation, enumerated in the Denationalisation Act.

10. All the entities, which became the owners of the previously socially owned dwellings, were under Section 147 obliged to conclude a tenancy agreement with the holders of the housing right. The agreement had to be concluded within six months after the Housing Act entered into force, and had to be concluded for unlimited duration. Moreover, according to Section 150, only a non-profit rent could be imposed. The method of calculating the exact amount of the non-profit rent was to be determined by the administrative authorities appointed under Section 11.

11. Section 141 stated that on the day the tenancy agreement was concluded, the housing right expired.

12. By becoming the owners of the previously socially owned dwellings, the State and some other legal entities were under Section 117 also obliged to sell these dwellings on request to the previous holders of the housing right. The latter, as well as their close relatives, could file the request within two years after the Housing Act entered into force. Moreover, Section 117 granted the previous holders of the housing right and their close relatives the right to purchase the dwellings under advantageous conditions, for example by providing a 30% discount price of the dwelling, and by allowing the holders of the housing right to pay 90% of the price so established in instalments over 20 years. However, municipalities were exempted from the obligation to sell the dwelling.

13. For cases of socially owned dwellings which once belonged to private owners and were by the Housing Act transferred to the ownership of the municipalities, Section 125 was particularly relevant. According to that provision, the tenancy agreement concluded between a municipality and a former holder of the housing right remained in force also after the municipality returned the dwelling to its previous owner.

14. Under Section 125 further rights were guaranteed to the previous holders of the housing right, who lived in the dwellings which once belonging to private owners. In particular, once the dwelling was restituted, the previous holder of the housing right was given the right to purchase the dwelling under advantageous conditions. That right, however, was granted only under the condition that the private owner, to whom the dwelling was restituted, agreed to that.

15. Some other provisions of the Housing Act, which had general application and thus regulated every tenancy agreement, are also relevant. For example, Section 18 stated that the tenant, who had concluded a tenancy agreement for unlimited duration, was granted the pre-emption right with respect to the dwelling; the pre-emption right of the co-owner and the municipality, however, had priority over the tenant's right. Section 21 provided that in case the tenant did not purchase the dwelling, his position as a tenant should not be aggravated. According to Section 61 the tenant who moved out of the dwelling was given the right to compensation for his investments in the dwelling, under the condition that these were necessary and were made in agreement with the owner, unless he and the owner agreed otherwise.

16. In 1994 amendments were made to the Housing Act (*Zakon o spremembah in dopolnitvah stanovanjskega zakona*, Official Journal no. 21/1994). The most relevant was the amendment to Section 125. It provided further rights and benefits to the previous holders of the housing right, who were living in dwellings eventually restituted by municipalities to the previous owners. It provided, *inter alia*, that in case the owner refused to sell the dwelling, the former holders of the housing right were given the right to purchase a substitute dwelling under advantageous conditions. The 30% subvention, previously granted only to those former holders of the housing right who bought the dwelling they had lived in, was now also ensured to those buying a substitute dwelling. The subvention was to be granted by the owner himself, or in case he refused by the relevant municipality. In addition, they could be granted also a State loan.

17. The amendments made to the Housing Act in 2000 (*Zakon o spremembah in dopolnitvah stanovanjskega zakona*, Official Journal no. 1/2000) provided for a non-profit rent, which was to be governed by a tenancy agreement concluded until the day the amendments entered into force, and remain governed by the legal acts in force up-to-date. For all tenancies, which would be concluded for a non-profit rent in the future, however, the amendments provided an increase of the non-profit rent.

18. The new 2003 Housing Act (*Stanovanjski zakon*, Official Journal no. 69/2003) added a few more grounds on which the owner may denounce the tenancy agreement. The changes were applicable to all tenancies, and thus also relevant for tenants who previously held a housing right. With respect to other relevant provisions for previous holders of a housing right, the 2003 Housing Act did not introduce any substantial changes. It retained the right to purchase the dwelling, in case the tenant and owner so agreed, or the right to purchase a substitute dwelling. In both cases the tenant was entitled to different types of subventions, this time amounting to nearly 75% of the value of the dwelling lived in. The 2003 Housing Act retained also the right to a State loan, which the tenant could request in addition to other subventions. Finally, in its transitional and final provisions, the Housing Act provided, *inter alia*, that this Act did not derogate the provisions of the former 1991 Housing Act concerning the privatisation of the socially owned dwellings as regulated by sections 111 to 133, nor section 150, which ensured to previous holders of the housing right the right to a non-profit rent.

The 1991 Denationalisation Act

19. The Denationalisation Act (*Zakon o denacionalizaciji*, Official Journal nos. 271/1991, 91/1993, 65/1998, 66/2000) contains the following provisions:

Section 24

"The restitution of an item under this Act shall have no effect on the tenancy, lease or other similar legal relationship established by the onerous transaction, unless otherwise agreed by the parties or provided by law.

Notwithstanding the previous paragraph, the tenancy, lease or other similar legal relationship, for which it was determined or agreed to last more than 10 years, shall last for up to 10 more years after the decision on restitution becomes final, unless otherwise agreed by the parties.

The contract from the previous paragraph may not be denunciated without the agreement of the tenant, if the tenant is a natural person who rents the item as a main source of support for his family.

The tenancy may not be denunciated until the lessor compensates the lessee for the investments, by which the latter increased the value of the item. During this period, the rent … for the dwellings may not be higher than the rent provided for by the Housing Act.

…"

Section 29

"The dwellings for which no tenancy or a similar legal relationship has been established shall be returned to the ownership and possession of the person entitled to restitution.

The dwellings for which tenancy or a similar relationship has been established shall be returned to the ownership of the person entitled to restitution.

The rights and obligations of the landlords and tenants from the previous paragraph shall be governed by the Housing Act."

Section 60

"…

A legal or a natural person who invested in the socially owned dwelling shall be the party to the restitution proceedings in so far as it is to be decided about his or her rights stemming from such investments.

…"

The Constitutional Court's decisions

20. On 21 March 1996 the Constitutional Court delivered a decision (U-I-119/94), in which it held that the restitution of the socially owned dwelling to the previous owners was a case of original acquisition of property. Thus, the Denationalisation Act did not retroactively abrogate the legal acts under which the property had previously been nationalised, confiscated or otherwise expropriated. Instead, it regulated the property rights *ex nunc*. The limitations and obligations imposed on the owners vis-à-vis their tenants, who previously had a housing right over the dwellings, could therefore not be considered as interference in their property rights, since before the restitution they had no property right at all. Conversely, the previous holders of the housing right had had the pre-emption right with respect to the dwellings they lived in. It was therefore justified that the latter retain that right.

21. On 26 November 1998 the Constitutional Court delivered a decision (Up-29/98), in which it considered that under the legislation of the former Socialist Republic of Slovenia, the housing right enjoyed a stronger protection than a tenancy right. It was granted for an indefinite period, and protected also the persons who were living with the holder of the housing right. It concluded that, due to a very limited trade with socially owned dwellings, the housing right had been more similar to a property right than a tenancy right.

22. On 25 November 1999 the Constitutional Court further elaborated its interpretation that the privatisation of the previously socially owned dwellings, as regulated by the Housing Act and the Denationalisation Act, entailed the original acquisition of property of the new owners. It confirmed that under the legislation of the former Socialist Republic of Slovenia such dwellings were in no one's property. It also repeated that the new owners acquired the property rights over such dwellings together with all the limitations provided for in the relevant legislation, and that they could have also well refused to obtain those property rights. However, once they acquired the property, any further limitation or obligation imposed on them would result in deprivation of their property rights. The 1994 amendments to the Housing Act, which imposed such new obligations and, for example, required the private owner, or in case of his refusal the relevant Municipality, to grant the 30 % subvention also to those previous holders of the housing right purchasing a substitute dwelling, were therefore declared unconstitutional.

23. On 20 February 2003 the Constitutional Court reviewed the constitutional initiative, lodged by a group of private owners of rented dwellings, of which they had been restituted. The owners challenged the amendments made to the Housing Act in 2000 allowing the non-profit rent to be raised only in case the tenancies would be concluded after the amendments entered into force. The Constitutional Court took into consideration the Government's submissions and the preparatory works to the Housing Act, from which it transpired that the amendments were necessary in order to take into account the fact that the amount of the non-profit rent, if calculated according to the old legislation, did not cover the owners' maintenance costs of the dwellings. From the Government's submissions and the preparatory works it also followed that the new method of calculation of the non-profit rent was to apply solely to the tenancies concluded in the future, because both the legislator and the Government sought to protect the acquired rights of the tenants, who had already concluded the tenancy agreements for the lower non-profit rent. The Constitutional Court considered that the tenants' acquired rights could not justify such State interference in the property rights of the owners. It held that the owners who rented the dwellings before the amendments entered into force were discriminated against those owners who rented the dwellings after the relevant date. It therefore repealed the provisions which limited the new method of calculation of the non-profit rent only to the tenancies concluded in the future.

The Supreme Court's decisions

24. In several decisions, the first delivered in 2005 and the last on 17 January 2008, the Slovenian Supreme Court was called to assess the right of security of tenure of the family members of a tenant in a denationalised flat in the event of the latter's death, and confirmed the position of the first instance judges depriving the right-holders of such a tenant of the guarantees foreseen by law. The Constitutional Court rejected the complaint lodged against the 2005 decision by the association of tenants of the Republic of Slovenia.

THE LAW

25. Article 16 of the Revised Charter reads as follows:

Article 16 – The right of the family to social, legal and economic protection

Part I: "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development."

Part II: "With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting 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."

26. Article 31 of the Revised Charter reads as follows:

Article 31 – The right to housing

Part I: "Everyone has the right to housing."

Part II: "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1 to promote access to housing of an adequate standard;

2 to prevent and reduce homelessness with a view to its gradual elimination;

3 to make the price of housing accessible to those without adequate resources."

27. Article E of the Revised Charter reads as follows:

> **Article E – Non-discrimination**
>
> "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

Preliminary remarks on the scope of Article 31

28. The Committee has consistently held that it is clear from the actual wording of Article 31 that it cannot be interpreted as imposing on states an obligation to achieve "results". However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, § 32).

29. This means that, for the situation to be in conformity with the Treaty, States Parties must:

a) adopt the necessary legal, financial and operational means of ensuring steady progress towards the goals laid down in the Charter,
b) maintain meaningful statistics on needs, resources and results,
c) undertake regular reviews of the impact of the strategies adopted,
d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

30. In connection with the means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

31. When one of the rights in question is exceptionally complex and particularly expensive to implement, a State Party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources (Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53).

Preliminary remarks on the interpretation of Article 31, in the light of other international instruments

32. The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied.

33. This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights' interpretation of the relevant provisions of the Convention.

34. In this respect, it is clear from several Court judgments that not all interference by a state in the relationship between landlord and tenant can be regarded as contrary to the Convention. For example, in the case *Mellacher and Others v. Austria*, the Court held that the amendments made to Austrian legislation on housing, which provided for a number of restrictions on the rights of private landlords with regard to existing leases (rents had been strictly controlled and it had been prohibited to terminate existing leases) did not, contrary to what the applicants maintained, amount to a de facto expropriation but amounted merely to a control of the use of the property with a view to finding a solution to the housing problems of a significant number of citizens, in the public interest, the interference being proportionate in terms of the balance to be struck between the public aim pursued and the interests of the owners concerned.

35. Likewise, in the case of *Thörs v. Iceland*, the Court, when assessing on the right of pre-emption conferred on tenants by existing Icelandic law, at a purchase price that was, moreover, regulated by statute, dismissed the owner's application as being manifestly ill-founded.

36. Further, the United Nations Covenant on Economic, Social and Cultural Rights is a key source of interpretation. Article 11 recognises the right to housing as one element of the right to an adequate standard of living: "*The States Parties to the present Covenant recognize the right of everyone to anadequate 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*."

37. The Committee also attaches great importance to General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights. The Committee has also paid close attention to and greatly benefited from the work of the United Nations Special Rapporteur on the Right to Adequate Housing, Miloon Kothari.

THE ALLEGED VIOLATION OF ARTICLE 31§1 WITH REGARD TO HOUSING OF AN ADEQUATE STANDARD

A – Submissions of the parties

a. The complainant organisation

38. FEANTSA states as follows: until 1991, the public housing fund in the Republic of Slovenia had approximately 230,000 flats administered by state institutions, municipalities, public enterprises and other legal entities governed by public law. These flats were owned by the community: the public administrators were not their owners and they were supposedly in social ownership ("*družbena lastnina*"). These were flats which the state had either built or rebuilt or acquired through purchase, nationalisation, confiscation or other forms of expropriation.

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

40. In accordance with the pre-transition legislation and case-law in all former republics of the SFRY, the Housing Right guaranteed permanent and uninterrupted usufruct of the dwelling in question. When the holder of the Housing Right passed away, this right was transferred according to the law to those family members who lived in that dwelling. The holders of the Housing Right carried the financial burden related to maintenance of these flats as they had to regularly pay a flat-rate charge to cover maintenance costs. The Housing Right could be revoked only in three cases determined by law: (i) inappropriate behaviour; (ii) failure to pay maintenance costs; or (iii) if the holder possessed an equivalent unoccupied flat. The sale of an occupied flat was null and void unless the buyer was the holder of the Housing Right. According to national case-law and the Constitutional Court, the status of a holder of the Housing Right was closer to the status of an owner than that of a leaseholder (see, for example, the decision of the Constitutional Court of the Republic of Slovenia No Up-29/98 delivered on 26 November 1998, para. 9 of the grounds).

41. In 1991, the Housing Right was abolished. According to the 1991 Housing Act, the ownership of former publicly-owned dwellings was transferred to the public entities that had administered the property until then. However, as compensation for the revoked Housing Right and a means of solving the housing problem now facing those who had held that Right, the law required the public entities as new owners to sell the flats to the former holders of the Housing Right – or, in cases where the holder had died, to the closest family members – in the two years that followed the adoption of these provisions. The selling price was set by the law at 5% to 10% of the market value of the flats and the holders of the Housing Right could opt to pay the purchase price in instalments over a period of 20 years. If a flat could not be sold because the building had to be pulled down, the new owner had to ensure that the former holder of the Housing Right was given an opportunity to purchase an alternative flat on the same advantageous terms. This system allowed former holders of the Housing Right to keep their allotted flats and to adapt to the new legal environment.

42. Section 117 of the 1991 Housing Act, however, allowed an exception from the general principle enabling the conversion of the Housing Right to an ownership right: the temporary transitional owners (previously the administrators) of once publicly-owned dwellings that had been transferred to public ownership through nationalisation, confiscation or other forms of expropriation were not bound by the obligation to sell their flats to the holders of the Housing Right. This exception applied to some 13,000 flats.

43. In such cases, the holders of the Housing Right could not purchase the flats, but the 1991 Housing Act guaranteed them the right to sign a contract with the new (transitional) owner for lease of the flat in respect of which they had previously enjoyed the Housing Right, for an indefinite period of time and for a non-profit rent, unless an adequate substitute flat could be offered to the tenant.

44. Another piece of legislation passed in 1991, the Denationalisation Act, offered former owners of nationalised, confiscated or otherwise expropriated properties two restitution options: restitution in integrum or just compensation. For flats that were occupied by holders of the Housing Right, the law provided that former owners or their heirs could demand a form of restitution in integrum, but that they would be bound to honour the lease contracts with current tenants (Section 29 of the Denationalisation Act). Some 9,000 requests for this form of restitution were filed.

45. The privatisation and denationalisation of the housing sector triggered numerous disputes before the Slovenian Constitutional Court. In Decision No U-I-95/91 of 10 July 1992, the Constitutional Court, responding to actions brought by numerous public enterprises that had become the owners of flatsunder the 1991 Housing Act, assessed whether or not the obligation to sell the newly acquired flats to the holders of the Housing Right was acceptable. The Constitutional Court ruled that this legal solution was not only constitutionally permissible and legitimate but also necessary. Thus, it was established that this was a measure protecting the public interest because it solved the housing problem of a significant number of citizens. The Court

reiterated that the Republic of Slovenia was bound to provide a solution to this problem in compliance with Article 11 of the International Covenant on Economic, Social and Cultural Rights, and that such a solution was the appropriate way to implement this right in the circumstances.

46. In the case of former holders of the Housing Right prevented from purchasing the flats they lived in because they had been returned to the owners from whom they had previously been expropriated, the Court found, in the same decision, that such persons had not been discriminated against as their situation was different from that of other holders of the Housing Right living in properties that had been transferred to public ownership by other means, and, in the case of expropriated flats, the rights of the former owners or their heirs must take priority over the rights of the current tenants.

47. In 1994, in an effort to resolve the difficulties over denationalised flats, various changes were made to the 1991 Act:

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

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

- following the example of the relevant section of the 1991 Housing Act, under which former holders of the Housing Right were entitled, in certain circumstances, to demand the right to purchase, on advantageous terms, a substitute flat from a public owner, a third provision granted the former holder of the Housing Right in a flat that had been expropriated an equal right to demand of the local community the allocation and the sale on advantageous terms of an equivalent substitute flat (the selling price being set, as prescribed in 1991, at 5% to 10% of the market value of the flat and the holders of the Housing Right also being entitled to pay in instalments over a 20-year period).

48. Only the third provision addressed the situation of former holders of the Housing Right who were renting privatised flats, but in decision no. U-I-268/96 delivered on 25 November 1999, the Slovenian Constitutional Court declared it unconstitutional.

49. On several occasions, in 1995 and then in 2000, the upper limit for non-profit rent was increased, first by 107% and then by 50%.

50. In 2003, following actions brought by the owners of restituted flats, the Constitutional Court partially repealed and amended the provisions of the legislation governing rents in such a way that the vulnerable group of tenants saw the ceiling for their statutory regulated rent increase by a further 37%. In its decision no. U-I-303/00 of 20 February 2003, the Court justified its decision, arguing that the protection of acquired rights and the prohibition of retroactivity did not protect tenants from increases in rent. Every rent increase should therefore be imposed on both the new and the previous generation of tenants in a uniform fashion.

51. In 2003, a new Housing Act was adopted (Housing Act-1, Official Gazette No. 69/2003), under which:

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

- a planning tax was integrated into the non-profit rent, resulting in an aggregate increase in the non-profit rent ceiling of 60%; that meant that the ceiling had risen by 613% since it was first set in 1991;

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

52. In 2005, the Slovenian Supreme Court deliberated in a case concerning the right of a family member to demand a new non-profit lease after the tenant of the denationalised flat in question had died. The Supreme Court reversed the case-law and decided that users of denationalised flats could not demand a continuation of a non-profit lease following the demise of the tenant; in the Court's view, they were entitled only to a lease, and that the owner must be free to determine the amount without any limitations, if there was to be no interference with the constitutionally protected right to private property.

53. In these circumstances, the situation of tenants in denationalised flats in the Republic of Slovenia is steadily becoming worse, and disputes between owners and tenants are multiplying. The reports of the Council for the Protection of Tenants' Rights, City of Ljubljana, and the reports of the National Association of Tenants indicate that these tenants are living under permanent pressure from the new owners, who are using all kinds of methods to get them to vacate their newly restituted flats so that they can sell the property on the open market.

54. In the view of FEANTSA, this clearly amounts to a violation of Article 31§1 of the Charter, in that the group of people in question no longer enjoy an effective right to housing.

55. In support of this view, FEANTSA cites the fact that since 1995, the Slovenian Ombudsman has been warning about the problem of "vulnerable" tenants in numerous reports, in particular the special report (no. 9.1-124/2001 <RO>), published on 8 January 2002, in which the Ombudsman stated that tenants in restituted flats had been unjustly discriminated against, in comparison with other holders of the Housing Right in respect of publicly-owned flats. He made a number of proposals but these have never been taken up because of the cost involved.

56. FEANTSA further submits that despite the fact that Slovenia, like the other successor states of the SFRY, has ratified the Agreement on Succession Issues (Official Gazette of the Republic of Slovenia – International Treaties No. 20 of 8 August 2002) signed in Vienna on 29 June 2001, and Annex G of which explicitly requires states not to use any form of discrimination in domestic legislation in the field of protection of and respect of "housing rights" ("stanarsko pravo / stanovanjska pravica"), Slovenia is the only successor state to have totally sacrificed the interests of tenants who rented their properties in good faith in favour of those of former owners.

57. FEANTSA goes on to state that on returning from a visit to Slovenia in 2003, the European Commissioner for Human Rights reported that Slovenian tenants in denationalised dwellings were one of the two typical groups of victims of human rights violations during the transitional period. In particular, he observed that: "*Apart from the fact that this is a one-off situation depriving them of the advantages on offer to the vast majority of their fellow-citizens as part of the privatisation of municipal housing, these tenants have had to face a completely unprecedented situation in which their rights were completely unprotected and the whole of their life's achievements jeopardised. Not only had most of them lived for many years in their flats in good faith, but also for decades they had repaired and improved their dwellings, investing in them as if they were their own property. Many of these tenants are now elderly and are finding this situation hard to bear and even unjust: they live in constant fear of no longer being able to afford possible rent increases or other types of renewed pressure. At the same time, the authorities are unable to come up with an equitable solution*."

b. The respondent Government

58. The Government's arguments, which are, for the most part, merely an account of the different laws introduced in Slovenia, very similar to those presented by the complainant organisation, denies that there has been any violation of Article 31.

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

60. The Government goes on to state that the majority of tenants in privatised flats did not take up the offer of material incentives available to them, but that 2,566 favourable decisions have been issued with regard to tenants wishing to vacate a denationalised flat and/or permanently resolve their housing problem by purchasing or buying a house (out of a total of 4,700 denationalised flats). Other applications are still pending.

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

62. According to the Government, the allegation that the Housing Act has led to evictions and an increase in homelessness is completely unsubstantiated and the 12 fault-based grounds on which the owner may unilaterally terminate a tenancy agreement by filing suit, provided he or she gives the tenant prior written notice, are legitimate.

63. The complainants' allegations that the 2003 Housing Act has introduced new prohibitions for tenants, including notably a prohibition on increasing the number of family members living in the flat once a tenancy agreement has been signed, are said to be completely unfounded. On the contrary, the new Housing Act states that the tenancy agreement may not be terminated on the ground that there has been an increase in the number of the tenant's family members.

64. The Government likewise refutes the complainant organisation's allegations that the tenancy agreement may also be terminated on the grounds of the tenant's absence from the flat for more than three months or failure to clean the flat, and maintains that these contested provisions apply only in limited circumstances.

65. In sum, the owner may terminate the tenancy agreement on a no-fault basis only exceptionally and on condition that the tenant is provided with an adequate substitute flat, with the costs of the move to be borne by the owner.

66. With regard to improvements made by the tenant to the flat, the Government maintains that under the terms of the Housing Act, the owner may not deny the tenant the right to make any alterations to the flat if these alterations are in compliance with the relevant technical requirements, if it is in the tenant's personal interest to make them, if they are made at the tenant's expense, if these alterations do not affect the interest of the owner and other flat owners in the building, and if they do not harm the common areas or appearance of the building. The tenant may, according to the household's needs, modernise or make improvements to the plumbing, electric and water heating system, gas, heating and sanitary appliances, make improvements that save energy and make the flat more functional, or install a telephone line, etc. The Government points out that under Section 97 of the Housing Act, a tenant who vacates a flat is entitled to reimbursement of the non-depreciated value of the improvements made to the flat at his/her own expense and with the owner's consent.

67. As regards non-profit rent, which it defines as a rent that is determined at national level, and which is much lower than a commercial rent as it covers only the maintenance costs associated with the flat and the common areas, the management costs, depreciation costs over a useful life of 60 years and the capital costs associated with the flat, and is subject to a ceiling, the Government also maintains that it cannot be adjusted according to the location of the property unless the municipality issues an ordinance to this effect, something which only two municipalities have done.

68. The increase in rent, furthermore, is said by the Government to have been far lower than that alleged by the complainant, and is around 128% rather than 613%, after allowing for inflation. It is further maintained that in 2008, rent expenses represented only 16.5% of average net income in Slovenia.

69. It is further maintained that tenants of non-profit flats on low incomes who, after paying the rent, could not afford to support themselves in a decent manner are entitled to a subsidised rent. Depending on their income, for instance, families are entitled to subsidies which can amount to as much as 80% of the non-profit rent.

B – Assessment of the Committee

70. The Committee has consistently held that the right to adequate housing means *inter alia* a right that is protected by law (Conclusions 2003, France, Article 31§1). In its view, the status conferred prior to the 1991 Act on tenants of non-profit flats in Slovenia clearly fitted this definition. The rules introduced by the 1991 Act to allow former holders of the Housing Right (which the Act abolished) to purchase, at an advantageous price, the flats in respect of which they had previously held this right, and whose ownership had been transferred, on a transitional basis, to public entities, are also deemed to ensure sufficient legal security in the occupation of their dwellings for the parties concerned. The Committee considers, however, that as regards former holders of the Housing Right over flats that have been restored to their private owners, the combination of insufficient measures for the acquisition or access to a substitute flat, the evolution of the rules on occupancy and the increase in rents, are, after the Slovenian Government's reforms, likely to place a significant number of households in a very precarious position, and to prevent them from effectively exercising their right to housing.

THE ALLEGED VIOLATION OF ARTICLE 31§3 ARISING FROM THE FAILURE TO PROVIDE AFFORDABLE HOUSING

71. The parties' arguments here do not differ significantly from those presented under Article 31§1.

72. The Committee considers that, in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income, something that is clearly not the case with former holders of the Housing Right, in particular elderly persons, who have been deprived not only of this right, but also of the opportunity to purchase the flat they live in, or another one, on advantageous terms, and of the opportunity to remain in the flat, or move to and occupy another flat, in return for a reasonable rent.

THE ALLEGED VIOLATION OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 31§3

73. Here again, the parties' submissions are not significantly different from those presented under Article 31§1.

74. The Committee considers that the treatment accorded to former holders of the Housing Right in respect of flats acquired by the state through nationalisation or expropriation, and restored to their owners, is manifestly discriminatory in relation to the treatment accorded to other tenants of flats that were transferred to public ownership by other means, there being no evidence of any difference in the situation of the two categories of tenants, and the original distinction between the forms of public ownership in question, of which, moreover, they were not necessarily aware, being in no way imputable to them, and having no bearing on the nature of their own relationship with the public owner or administrator.

THE ALLEGED VIOLATION OF ARTICLE 16, AND OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 16

75. The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16.

CONCLUSION

76. For these reasons, the Committee concludes

- unanimously that there is a violation of Article 31§1 of the Revised Charter;

- unanimously that there is a violation of Article 31§3 of the Revised Charter;

- by 9 votes against 5 that there is a violation of Article E of the Revised Charter, taken in conjunction with Article 31§3;

- by 13 votes against 1 that there is a violation of Article 16 of the Revised Charter;

- by 11 votes against 3 that there is a violation of Article E of the Revised Charter, taken in conjunction with Article 16.

Jean-Michel BELORGEY	Polonca KONČAR	Régis BRILLAT
Rapporteur	President	Executive Secretary