



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF SCHIRMER v. POLAND

(Application no. 68880/01)

JUDGMENT

STRASBOURG

21 September 2004

FINAL

21/12/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Schirmer v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Mr J. BORRERO BORRERO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 31 August 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 68880/01) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms Henryka Schirmer, a Polish national, who was born in 1915 and lives in Warsaw.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, and subsequently Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained under Article 1 of Protocol No. 1 about the alleged interference with her right to the peaceful enjoyment of her possessions. She submitted that the courts dismissed her claim for eviction against a tenant who occupied an apartment she owned, despite the fact that she had offered the tenant the lease of an alternative apartment.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 12 March 2002 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the alleged breach of the applicant's property rights to the Government. By a decision of 13 May 2003, the Court declared the remainder of the application admissible.

THE FACTS

A. The circumstances of the case

6. In 1996 the applicant filed with the Warsaw District Court (*sąd rejonowy*) an action in which she requested the eviction of Ms J. from a flat she owned. She also claimed payment of overdue rent, in the amount of 4,371.17 Polish zlotys (PLN). She submitted that she had given notice of termination of the lease contract after J's recurrent failure to pay the rent on time. J. had been occupying the flat on the basis of an administrative decision, given under a so-called special lease scheme (see § 18 below). This administrative decision had created a protected tenancy contract between the parties, on the basis of which controlled rent was to be paid by the tenant and the tenancy could not be terminated by the owner.

7. In January 1999 the applicant, having offered Ms J. an alternative flat, added a new eviction application, which was based on article 56 of the Law on the Lease of Dwellings and Housing Allowances (*Ustawa o najmie lokali mieszkalnych i dodatkach mieszkaniowych*). Subsequently, she withdrew the claim related to her tenant's failure to pay the rent.

8. On 6 August 1999 the court gave judgment. It ordered Ms J. to pay overdue rent in the amount of PLN 459,15 and dismissed the eviction application. The court admitted that the applicant had offered J. an alternative flat before seeking her eviction. It pointed out, however, that Article 56 § 7 of the 1994 Law on the Lease of Dwellings provided that a flat offered to a tenant as alternative lodging had to be owned by the person seeking eviction (see § 20 below). However, the flat which the applicant had offered J. was owned by a housing co-operative and the applicant had only a limited right to it. The court considered that:

“The plaintiff has a co-operative quasi-proprietorial right to that flat, which, although relatively extensive, is yet limited by a number of provisions of the Co-operative Law and cannot be equated with ownership. This court is bound by laws, and the relevant provision of the Law on the Lease of Dwellings [concerning the requirements that an alternative dwelling had to meet] is unequivocal.”

9. The court further considered that it was not empowered to assume that the legislature had made the reference to mandatory ownership of the alternative accommodation by mistake. Neither could it accept that this reference should be understood as covering also the quasi-proprietorial co-operative right to an apartment.

10. The court finally considered that, pursuant to the 1994 Law on the Lease of Dwellings, eviction of a tenant, if preceded by the offer of an alternative flat, was an exception to the general rule that an owner could not evict a tenant who complied with his or her statutory duties. Accordingly,

the provisions covering such exceptions could not be given an extensive interpretation.

11. In the same judgment the District Court discontinued the proceedings in so far as they related to the withdrawn application.

12. The applicant appealed. She submitted that the Law on the Lease of Dwellings should not have been interpreted in her case in the literal manner proposed by the District Court. She argued that the main objective of the provisions concerning eviction of tenants was to protect the property rights of owners. On the other hand, those provisions were also aimed at guaranteeing tenants an effective right to continued and peaceful enjoyment of accommodation and thus required the owners to secure alternative flats for them. In the light of that aim of the Law, the interpretation made by the court had been too restrictive. As a result, only the rights of the tenant were protected by the judgment under appeal, to the detriment of the owner's rights. The applicant pointed out that the alternative lodging which she had offered J. made it possible for her to enjoy peaceful accommodation. The purpose of the provision applied in the case was essentially to secure the position of tenant in an alternative dwelling and to prevent him or her being evicted from it. The apartment offered by the applicant guaranteed such certainty, notwithstanding the fact that she did not own that apartment, but had another right *in rem* to it, close in its nature to ownership. For those reasons the applicant considered that the dismissal of her eviction application, which made it impossible for her to live in her own apartment, amounted to an infringement of her property rights.

13. The applicant also resubmitted a declaration of the housing co-operative by which it had agreed that the applicant's apartment be let to Ms J. until the end of 2004, i.e. until the time-limit set by the 1994 Law on Lease of Dwellings for the prolongation of the system of protected tenancies.

14. On 20 December 1999 the Warsaw Regional Court (*sąd okręgowy*) dismissed the applicant's appeal. It pointed out that the underlying purpose of a law could be examined as an aid to its interpretation only if an analysis of a literal meaning of its text proved ineffective. Having regard to the clear wording of the provision at issue and to an unequivocal reference to 'ownership' of the alternative accommodation, the court found that this was not the case. The provision on which the District Court had relied conferred special rights on the owner, in that she was entitled to offer alternative accommodation to the tenant who had been fully complying with the conditions of the tenancy contract. These special rights could not be interpreted in an open-ended manner to the detriment of the tenant.

15. On 14 March 2000 the Warsaw Regional Court rejected the applicant's appeal against the judgment of 20 December 1999, as it was not provided for by law in that case.

16. On 28 February 2001 the Supreme Court dismissed her appeal against the Regional Court's decision of 14 March 2000.

B. Relevant domestic law

1. Termination of a lease

17. From 1945 on, under successive acts of housing legislation, housing matters were subject to state control. The most important characteristics of this system, called the 'special lease scheme' under the provisions of the 1974 Housing Law, was that tenancy contracts were created by administrative decisions. For all practical purposes, such decisions replaced civil law contracts between landlords and tenants. Under this system owners could not choose their tenants as they were imposed by the administrative authorities, tenants paid controlled rent and owners could not terminate leases by giving notice on a tenancy contract.

18. The "special lease scheme" was abolished by the Law of 2 July 1994 on the Lease of Dwellings and Housing Allowances. However, the system of protected tenancies was maintained in that the Law provided for protection against termination of leases concluded on the basis of administrative decisions.

19. Under transitional provisions of this Law, protected tenancies which had originated in administrative decisions given in the past under the special lease scheme were to be regarded as contractual leases concluded for indefinite period and governed by the provisions of the 1994 Law. Until 31 December 2004 rents paid for these leases were to remain controlled.

20. The Law of 2 July 1994 on the Lease of Dwellings and Housing Allowances provided, in so far as relevant:

"Article 32. 1. ... The owner can terminate the lease if the tenant: ...

(2) is in arrears of rent ... for at least two full terms of payment, despite a written notice of intent to terminate the lease and fixing an additional, one-month time-limit for the payment of overdue and current amounts. ...

Article 56. 1. Under this law, a lease which originated in an administrative decision on allocation of a flat, or had another legal basis [that existed] before in a given locality the state management of housing or special lease scheme was introduced, shall be treated as a contractual lease concluded for an indefinite period under the provisions of this law. ...

4. If the owner... intends to live in his flat and with that intention has vacated the flat which he has hitherto rented ... from the municipality, the tenant shall be obliged to vacate the owner's flat and to move into the flat [proposed to him], provided that the [condition of] the flat in question complies with the requirements laid down by this law in respect of alternative accommodation. If such is the case, the owner can terminate the lease under article 32 § 2. ...

7. If the landlord has offered the tenant the alternative accommodation he owns himself or if, at the owner's request, such alternative accommodation has been provided by the municipality, paragraph 4 shall apply by analogy."

21. The Law of 1994 was repealed by the Law of 21 June 2001 on the Protection of Tenants' Rights, the Commune Housing Reserve and the Amendment of the Civil Code (*Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego*), which entered into force on 10 July 2001.

22. Article 11 of that Law provides, in so far as relevant:

"... The owner can terminate the contract, if he or she intends to dwell in the flat owned by him, ... [and] provides [the tenant] with an alternative flat."

2. Co-operative quasi-proprietorial right to a flat

23. The Civil Code mentions the quasi-proprietorial right to a flat in a housing-co-operative (*spółdzielcze własnościowe prawo do lokalu*) in its chapter on limited property rights. The details are described in the Co-operative Law (*Prawo spółdzielcze*) enacted on 16 September 1982. That law provides:

"Article 213. § 1. In buildings owned by a housing co-operative its members have a right to use flats allocated to them ... (co-operative quasi-proprietorial right to a flat) ...

Article 223. § 1. The co-operative quasi-proprietorial right to a flat is a transferable right, it may be inherited and is subject to enforcement proceedings. It is a limited right *in rem*.

§ 2. The validity of transfer of the co-operative quasi-proprietorial right to a flat depends on admitting the acquirer as a member of the co-operative. ...

Article 226. § 1. The member is obliged to participate in the costs of construction, use and upkeep of the co-operative's property, ... and other obligations of the co-operative by bringing in a construction contribution (*wkład budowlany*) ... in the amount corresponding to the total costs of the construction due in respect of his flat, and by the payment of fees relating to the use of the flat. ..."

24. Under Articles 217 and 238 of the Co-operative Law, a person having the co-operative quasi-proprietorial right to an apartment could let this apartment to third parties or let them use it for free, but only if the co-operative gave its consent thereto. The Constitutional Court, in its judgment of 29 June 2001, found that these provisions were incompatible with the constitutional guarantees of peaceful enjoyment of property rights. This was so because they restricted the very essence of the co-operative quasi-proprietorial ownership right too significantly, in a manner incompatible with the nature of that right *in rem*, and conferred too strong a position on co-operatives *vis-à-vis* their members.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

25. The applicant complained about interference with her right to the peaceful enjoyment of her possessions. She submitted that although she had offered the lease of an alternative flat to her tenant, the domestic courts had dismissed her application for eviction only because she did not own that flat, but had a so-called co-operative quasi-proprietorial right to it. The applicant relied on Article 1 of Protocol No. 1 to the Convention, which reads:

“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.”

A. The submissions of the parties

26. The Government argued that the 1994 Law on the Lease of Dwellings on the basis of which the Warsaw District Court had given its decision contested in the present case, served the general interest and protected the legitimate rights of tenants.

27. They maintained that in the applicant's case the courts had refused to order Ms J's eviction to the alternative accommodation offered by the applicant, because the applicant did not own this flat. The applicant only had a co-operative quasi-proprietorial right to it. Therefore, it did not satisfy an unequivocal requirement set forth by the Law on the Lease of Dwellings as to replacement accommodation, which had to be owned by the person seeking an eviction.

28. The Government recalled that the ownership could not be construed as an absolute right. There were circumstances in which it could legitimately be restricted. They accepted that the provisions on which domestic courts had relied when giving the contested decisions restricted the applicant's property rights. However, in their argument these restrictions were not so serious as to be held incompatible with Article 1 of Protocol No. 1. The requirement for the landlord to be the owner of the apartment offered as alternative accommodation to a relocated tenant was designed to

secure the legal position of the tenant. Its purpose was to avoid that her or his situation in the new home became more precarious than it had been in the previous one, occupied on the basis of a contractual lease originating from an administrative decision. It aimed in particular at preventing a situation in which the relocated tenant would run the risk of eviction. The means chosen by the legislature to this end were proportionate, in the Government's argument, to that legitimate aim pursued by the housing legislation. The Government concluded that a fair balance had been struck between the applicant's rights and those of her tenant.

29. The applicant first pointed out that the alternative apartment she had offered to Ms J. was located in the same town as the apartment she occupied in the tenement house co-owned by the applicant and that it was equipped with the same technical facilities. She further stressed that it had not been in dispute between the parties that the applicant had an unchallenged co-operative quasi-proprietorial right to that apartment. The purpose of these provisions of the 1994 Law on the Lease of Dwellings, which concerned conditions that alternative accommodation had to satisfy, was to make the legal situation of a relocated tenant safe. The tenant should have a right to occupy the alternative apartment, which could not be challenged either by the owner of the apartment or by third parties. These were, the applicant concurred, perfectly legitimate considerations. She emphasised that the replacement apartment which she had offered to the tenant fully satisfied these conditions. While it was true that the quasi-proprietorial co-operative right to an apartment, provided for by the Law on Co-operatives of 1982, was not identical to full ownership within the meaning of the Civil Code, this was a right which clearly could be assimilated to that right: it was also a right *in rem*, which could be sold and bequeathed. Moreover, as long as Ms J. paid monthly rent to the co-operative for the alternative apartment, the law provided for practically no circumstances in which this right could be extinguished.

30. The applicant emphasised that the Law on Co-operatives in force at the material time made it imperative to obtain the consent of a co-operative for an apartment to be let by a member of the co-operative to a third party. However, it was not in dispute between the parties that the housing co-operative had given its consent to the applicant's apartment being taken over by Ms J.

31. The applicant finally argued that the domestic courts had interpreted the law literally, whereas it could not have been the intention of the legislature to secure alternative accommodation for the tenants without any regard to the legitimate interest of the owner to live in his or her own apartment.

B. The Court's assessment

32. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus (in *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; see also, among other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI):

“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, amongst other things, 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.”

33. In the present case, the Court considers that there has been neither *de facto* expropriation nor transfer of property. The measure complained of by the applicant, i.e. the refusal to order eviction of the tenant in the light of the fact that the alternative accommodation offered to her by the applicant was not the applicant's property in the civil law sense of the term, amounted to control of the use of property. Accordingly, the second paragraph of Article 1 is applicable to the circumstances of the case.

34. The Court recalls that the second paragraph 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 common 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. The Court will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation (*Spadea and Scalabrino v. Italy*, judgment of 28 September 1995, Series A no. 315-B, p. 24, § 28; *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 46, ECHR 1999-V and *Mellacher and Others v. Austria* judgment of 19 December 1989, Series A no. 169, p. 26, § 45).

35. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment

of 23 September 1982, Series A no. 52, pp. 26 and 28, §§ 69 and 73). In other words, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, for instance, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A. no. 98, p. 34, § 50).

36. The Court observes that as a result of the judgments complained of the tenant was permitted to remain in the apartment owned by the applicant, while the applicant could not live in it. Moreover, under housing legislation applicable at that time, the tenant was to continue to pay controlled rent for the applicant's apartment until at least the end of December 2004, determined in accordance with the provisions of the 1994 Law on the Lease of Dwellings and Housing Allowances. There has therefore been an interference with the applicant's rights protected by Article 1 of Protocol No. 1 to the Convention.

37. The Court notes the Government's argument that the 1994 Law on the Lease of Dwellings and Housing Allowances, and in particular the provisions on alternative accommodation, served the aim of protecting the rights of tenants. The decisions given in the present case, which were based on that Law, were lawful. The applicant is of the same opinion. The Court sees no grounds on which to hold otherwise.

38. As to the proportionality of the interference, the Court has just accepted that the guiding principle behind the provision of the 1994 Law on the Lease of Dwellings applied by the domestic courts was to secure the rights of a tenant in alternative accommodation. Such consideration must be regarded as legitimate, in particular in situations of housing shortage. This provision should also be assessed against the background of various forms of state control over housing matters in Poland over a period of many years (see §§ 17-20 above), which also applied to the apartment owned by the applicant and occupied by Ms J. Under these schemes, the property rights of owners were subject to serious restrictions. This administrative control over leases was in principle abolished by the 1994 Law, pursuant to which tenancies which had originated in administrative decisions given in the past under special lease schemes were to be regarded as contractual leases concluded for an indeterminate time. The Court observes that this gradual lessening of public control over private property, while in itself compatible with the tenets of a market economy, led to a situation obtaining at the time relevant for the present case in which the property rights of owners were in conflict with certain rights acquired over many years by tenants under successive legislation on these special lease schemes. The Court recognises that difficult legal and social issues may arise in connection with balancing the rights of owners against those of tenants in the ongoing process of gradually relaxing restrictive rules concerning the lease of privately owned dwellings, which rules had remained in force from 1945 until 1994 and were later replaced by a transitional regime provided for by the 1994 Law

and by the subsequent Law of 21 June 2001 (see above, § 18-22). These difficulties constitute a part of the process of transition from a socialist legal order and its property regime to one compatible with the rule of law and the market economy, the process which, by the very nature of things, is fraught with difficulties. However, these difficulties and the enormity of the tasks facing legislators having to deal with all the complex issues involved in such transition do not exempt the Member States from the obligations stemming from the Convention or its Protocols (see, *mutatis mutandis*, *Podbielski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII, p. 3397, § 38).

39. In the present case, the Court observes that in its judgment of 6 August 1999 the Warsaw District Court, when dismissing the eviction claim against J., admitted that the applicant had offered J. the alternative flat. It pointed out, however, that the 1994 Law on the Lease of Dwellings provided that a flat offered as alternative lodging had to be owned by the person seeking the eviction, whereas the applicant had only the co-operative quasi-proprietorial right to it. The court recalled that it was bound by that Law and that it could not interpret this provision extensively so as to make it cover also the latter right.

40. The Court further observes that later on the appellate court considered that the provision in question conferred a special right on the owner, that of relocating the tenant. This special right could not, in the opinion of the appellate court, be interpreted in an open-ended manner to the detriment of the tenant, because this could weaken his or her legal position in the alternative apartment.

41. The Court is of the view that in the assessment of whether this provision of the Law on the Lease of Dwellings as applied by the domestic courts was compatible with the requirement of fair balance formulated by Article 1 of Protocol No. 1 (see § 35 above) it is relevant to take into consideration the nature and scope of the co-operative right to the alternative apartment that the applicant offered to the tenant. It is not in dispute that the applicant possessed this right and that it was a quasi-proprietorial right *in rem*, which could be sold and bequeathed. It is also not in dispute that the co-operative had agreed that Ms J. could occupy that apartment, which agreement at the material time was required for the legal occupation of a co-operative flat by a person not being the member of the co-operative. Pursuant to the declaration made by the housing co-operative, Ms J. could occupy this apartment until the end of 2004, the time-limit which coincided with the time-limit set by the 1994 Act for the validity of the system of protected tenancies as governed by the 1994 Act. It is to be emphasised that Ms J. lived in the apartment owned by the applicant under the same system of protected tenancies. Thus, if she had moved to the alternative apartment offered by the applicant, her rights would have remained valid for exactly the same period, i.e. until the end of 2004.

42. The Court therefore considers that the legal situation of the alternative apartment and the applicant's right to it were sufficiently similar to ownership to serve one of the aims of the 1994 Law, i.e. to secure a stable position of the relocated tenant in the alternative apartment.

43. The Court finally observes that the domestic courts, when giving the contested decisions, applied the provision which required that the alternative apartment be owned by the person seeking the eviction. However, the Court notes that apart from this reference to a binding legal provision, no consideration was given as to whether it sufficiently safeguarded also the interests of the owner. Moreover, given the unequivocal text of Article 56 § 7 of the 1994 Act, the courts were not given any leeway to carry out this balancing exercise. As a result, the Court is of the view that the applicant's rights were not given sufficient attention and that, more generally, the drafters of the 1994 Law put too much emphasis on the rights of tenants, overlooking those of landlords.

44. The Court is aware of the fact that the legislation applied in the present case was repealed when the Law of 21 June 2001 on the Protection of Tenants' Rights entered into force on 10 July 2001. Consequently, the period during which the applicant was prevented from using her apartment on the basis of the 1994 Act lasted, at most, from 6 August 1999, the date on which the Warsaw District Court dismissed her claim for eviction, until 10 July 2001, i.e. for one year and eleven months. The Court further notes that the legal basis for the interference with the applicant's right to the peaceful enjoyment of her possessions ceased to exist on that date. Pursuant to Article 11 of the 2001 Law, the owner can terminate the contract if he or she intends to live in his or her flat, and if he provides the tenant with the alternative flat. Therefore, the legislator rectified the legal situation which had given rise to the interference with the applicant's rights and created a new legal framework which allows for balancing the rights of the owner against these of the tenant more evenly. However, the Court's task is to assess the actual circumstances of the applicant's case.

45. To sum up, the Court finds that as a result of the decisions complained of the applicant had to bear an individual and excessive burden that upset the fair balance that must be maintained between the demands of the general interest and protection of the right to the peaceful enjoyment of possessions. Consequently, there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

47. The applicant sought compensation for non-pecuniary damage in the sum of PLN 25,000.¹ She argued that as a result of the contested decisions she could not live in the apartment she owned, which caused her considerable anguish. She emphasised the distress she suffered as a result of these decisions which had frustrated her long efforts to restore a real meaning and value to her ownership of the apartment occupied by the tenant.

48. The Government were of the view that the amount claimed by the applicant was excessive.

49. As to non-pecuniary damage, the Court considers that the applicant sustained such damage on account of the violation of Article 1 of Protocol No. 1 to the Convention which would not be sufficiently compensated by the finding of a violation of the Convention (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, §§ 70-71, ECHR 2000-VIII). Having regard to the circumstances of the case and ruling on an equitable basis, taking into consideration, in particular, the relatively short period during which the applicant was deprived of the peaceful enjoyment of her possessions, the Court awards the applicant EUR 4,000.

B. Costs and expenses

50. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the Convention organs and this is not a matter which the Court has to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

51. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

¹ Approximately EUR 5,480.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President