



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF JENISOVÁ v. SLOVAKIA

(Application no. 58764/00)

JUDGMENT

STRASBOURG

3 November 2009

FINAL

03/02/2010

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 Jenisová v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 October 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 58764/00) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovakian national, Ms Jarmila Jenisová (“the applicant”), on 22 February 2000.

2. The applicant, who had been granted legal aid, was represented by Ms V. Danková, a lawyer practising in Bratislava, between 6 September 2005 and 12 December 2005. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. The applicant alleged, in particular, that her right to peaceful enjoyment of property had been violated as a result of the compulsory letting of her land and its envisaged transfer to the tenants and that she had been discriminated against in that respect.

4. By a decision of 12 September 2006 the Court declared the application partly admissible.

5. The applicant and the Government each submitted further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

6. The applicant was born in 1925 and lives in Bratislava.

7. In 1938 the applicant's father acquired land in Levoča. After the Second World War, when the communist regime was installed in Czechoslovakia, the State availed itself of the land and put it at the disposal of a State-owned agricultural farm in Levoča without the owner's consent and without paying any compensation. The applicant's father remained the owner of the land in name (*nuda proprietas*).

8. In 1983 the farm put the land, of which the applicant and her four sisters had become the owners in the meantime, at the disposal of the local organisation of the Slovak Union of Gardeners in Levoča for ten years. The owners were provided with no compensation.

9. In accordance with the provisions of the Land Ownership Act 1991, the gardeners' right to use the land was extended by ten years in 1993.

10. Levoča is nowadays a district town with approximately 15,000 inhabitants. According to the data in the land register, the applicant's land is situated outside the town's built-up area.

B. Proceedings concerning the payment of rent

11. On 23 June 1994 the applicant sued the users of the land for rent. She claimed that the tenants should pay her two Slovak korunas (SKK) per square metre of land a year for the period from 24 June 1991 to 31 December 1994.

12. On 15 May 2003 the Spišská Nová Ves District Court obliged the tenants to pay the applicant a rent of SKK 0.1 per square metre of land for the period from 24 June 1991 to 31 December 1991, and SKK 0.3 for the period from 1 January 1992 to 31 December 1994.

13. As to the former period, the rent due was up to 1.5% of the administrative value of the land. Part of the applicant's land was classified as pasture and its value under the applicable regulation was SKK 0.5 per square metre. The remaining part of the plot was classified as arable land and its value was SKK 0.65 per square metre. Under the law in force the applicant was thus entitled to a total sum of SKK 10.1 as rent for the above period in 1991. However, since the gardeners had agreed to pay SKK 0.1 per square metre for the use of the land the court accepted that sum as the

basis for determination of the rent. The rent due for that period was thus SKK 126.9.

14. As to the second period, that is from 1 January 1992 to 31 December 1994, valuation of land was governed by Regulation 465/1991. According to this, the arable part of the applicant's land had the value of SKK 0.5 per square metre and the remainder SKK 0.375. Compensation for temporary use of the land was to be agreed upon by the parties. Since no such agreement had been reached, the District Court considered it appropriate that the gardeners should pay SKK 0.3 per square metre per year. It had thereby also regard, as reference, to section 4(1) of Law no. 64/1997. The decision stated that the sum claimed by the applicant, namely SKK 2 per square metre, was too high, considering the location of the land and the gardeners' contribution to increasing its quality.

15. The applicant appealed. She argued that the first-instance court had not correctly determined the surface area of her share in the plot used by the gardeners and that the rent due had not been determined correctly.

16. On 30 October 2003 the Košice Regional Court granted the applicant's claim in part, in that it held that the gardeners were obliged to pay rent in respect of the overall land covered by the contract of 1983, that is also on its parts which, according to the gardeners, could not be used for gardening because of a steep slope. The surface area of the applicant's land for which rent was due was 2,804.4 square metres. As to the amount of rent due, the regional court upheld the first-instance judgment. Finally, the court of appeal drew the applicant's attention to the Constitutional Court's judgment PL ÚS 17/00 addressing conformity with the Constitution and Article 1 of Protocol No. 1 of certain provisions of Law no. 64/1997 (for further details concerning that judgment see *Urbárska obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, §§ 67-79, ECHR 2007-... (extracts)).

17. On 16 December 2008 the applicant informed the Court that the gardeners had paid SKK 11,030 to her for the use of her land between 1991 and 2008. That sum was based on a yearly rental value of SKK 0.1 per square metre initially and later on SKK 0.3 per square metre.

C. Proceedings under Law no. 64/1997

18. On 21 June 1999 the gardeners requested, under section 7(1) of Law no. 64/1997, that the ownership relationship in respect of their gardens be settled by the Levoča District Office in a land consolidation procedure under section 7(4) of that Act.

19. On 22 February 2000 the district office made a formal announcement under section 18(1) of Law no. 64/1997 of the commencement of the land consolidation procedure pursuant to section 7(4) of that Act. On 8 March 2000 it published a register of the original ownership and a surveyor's plan concerning the current state of the land

("the preliminary inventory"). By a decision of 11 May 2000 the administrative authority approved the preliminary inventory.

20. On 22 June 2001 the district office dismissed the applicant's objection to the preliminary inventory. On 5 November 2001, upon the applicant's appeal, the Prešov Regional Office quashed the contested decision due to procedural shortcomings.

21. In the subsequent proceedings, on 21 February 2003, the applicant objected to the inventory, in particular to the area of land covered by it. The district office dismissed the objection on 21 March 2003. On 20 July 2006 the Regional Land Office in Prešov dismissed the applicant's appeal. On 22 June 2006 the applicant sought a judicial review of that decision.

22. In a decision of 23 October 2006 the District Land Office in Poprad approved the preliminary inventory. In that context, the administrative value of the applicant's land was established at SKK 0.5 per square metre. Since the minimum amount for compensation was SKK 3, the administrative authority took the latter sum as a basis for assessment and increased the valuation of the applicant's land to SKK 6 on the ground of its location. The applicant appealed.

23. On 8 February 2007 the regional land office stayed the proceedings pending the determination by a court of the applicant's action against the regional land office's decision of 20 July 2006.

24. On 20 May 2008 the Prešov Regional Court quashed the last-mentioned decision. It granted the applicant's argument that the whole land put at the disposal of the association of gardeners should be taken into consideration in the consolidation procedure regardless of whether it was used for gardening purposes or not. The court further held that the administrative authorities had not established the relevant facts with sufficient certainty.

25. On 7 November 2008 the regional land office quashed the district office's decision of 21 March 2003 dismissing the applicant's objection to the preliminary inventory.

26. In the meantime, on 26 October 2006, the director of the district land office in a letter stated that, according to an inventory of the original state of the land, the value of the applicant's land was SKK 0.5 per square metre. Compensation under section 11 of Law no. 64/1997 was SKK 6 (the equivalent of approximately EUR 0.2) per square metre.

27. The land consolidation procedure under Law no. 64/1997 is pending before the administrative authorities.

28. On 2 April 2009, at the Government's request, the Forensic Engineering Institute in Žilina elaborated an opinion on the value of the applicant's land as of 20 March 2009. It noted that the applicant owned 2,804 square metres of land in the area concerned which, according to the zoning plan, was to be used exclusively for gardening purposes. The

institute estimated the general value of the land at EUR 6.47 per square metre and its general rental value at EUR 0.448 per square metre per year.

29. The applicant, with reference to several decisions on sale of real property approved by the Levoča municipal council, submitted that the current market value of her land was at least EUR 16.6 per square metre. She considered its annual rental value to be no less than EUR 0.664 per square metre.

D. Proceedings concerning the applicant's claim of 2001

30. On 13 July 2001 the applicant sued the gardeners' association before the Poprad District Court. She claimed that the defendant's right to use her land should be cancelled. The applicant argued that the gardeners had disregarded the contract on use of the land of 1983. In particular, the surface of certain individual gardens exceeded the limit of 200 square metres and the surface of some of the gardeners' huts exceeded 16 square metres contrary to what the 1983 contract stipulated.

31. On 11 September 2002 the District Court dismissed the action. It held that the use of the land was governed by the relevant provisions of the Land Ownership Act 1991 and of Law no. 64/1997. The applicant appealed. She argued that the gardeners were bound by the contract of 1983 and that they had failed to respect its provisions.

32. On 8 March 2004 the Prešov Regional Court upheld the first-instance judgment as being in compliance with the applicable law. The court of appeal further pointed out that individual gardeners had become tenants of the land after the entry into force of Law no. 64/1997 on 26 March 1997. The defendant association could therefore no longer be considered as a user of the applicant's land.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution and practice of the Constitutional Court

33. Article 152 § 4 of the Constitution provides that constitutional laws, laws and other generally binding legal regulations are to be interpreted and applied in conformity with the Constitution.

34. Pursuant to Article 154c § 1 of the Constitution, international treaties on human rights and fundamental freedoms which the Slovak Republic has ratified and were promulgated in the manner laid down by a law prior to the entry into force of Constitutional Act 90/2001 on 1 July 2001 form a part of its legal order and have precedence over laws where they provide for a larger scope of constitutional rights and freedoms.

35. In judgment I. ÚS 36/02 delivered on 30 April 2003 the Constitutional Court, with reference to Articles 152 § 4 and 154c § 1 of the Constitution, held that the Convention and the case-law of its bodies represent binding guidelines for national authorities on interpretation and implementation of legal provisions bearing on fundamental rights and freedoms. The Convention and the case-law of its organs thus set a framework which the national authorities cannot overstep when dealing with a case. The same view was expressed in its judgment I. ÚS 239/04 of 26 October 2005.

36. On 15 October 2003 the Constitutional Court delivered a judgment in proceedings III. ÚS 138/03. The case concerned alleged flaws in proceedings on implementation of a consolidation project under Law no. 64/1997. In particular, the plaintiff complained that by its decision to discontinue the proceedings concerning lawfulness of the administrative authorities' decisions a court had breached his rights to judicial protection and to own property.

37. The Constitutional Court granted the complaint considering that the court should have dealt with the merits of the case. It returned the case to the ordinary court for further proceedings.

B. The Land Ownership Act 1991

38. The Land Ownership Act 1991 (*Zákon o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku*) entered into force on 24 June 1991.

39. Paragraph 2 of section 22 provides that from the date of entry into force of the Act and unless a different agreement is reached with the owner, the user of the land shall acquire tenancy rights in respect of it.

40. Under section 22(3), as in force until 25 March 1997, in cases where the land was used by individual gardeners on an allotment site the tenancy could not be terminated before expiry of the period for which the land had been originally put at the disposal of the users. Unless the parties otherwise agreed, the tenants had the right to have the tenancy extended by another ten years. The rent and the purchase price in respect of such land were to be determined on the basis of the classification and quality of the land at the time when the gardeners' right to use it had been established.

C. Law no. 64/1997

41. Law no. 64/1997 on the use of plots of land in allotment gardens and arrangements as regards their ownership (*Zákon o užívaní pozemkov v zriadených záhradkových osadách a vyporiadani vlastníctva k nim*) governs the use of land within allotment gardens and the transfer of ownership rights in respect of such land. It entered into force on 11 March 1997 and took

effect on 26 March 1997. It repealed section 22(3) of the Land Ownership Act 1991.

42. Its relevant provisions, domestic practice as well as the general background to the use and consolidation of land used by garden communities are set out in *Urbárska obec Trenčianske Biskupice* (cited above, §§ 7-13, 49-65 and 67-79).

43. Pursuant to section 4(1), as in force until 31 October 2004, the yearly rent for the use of plots of land in allotment gardens is ten per cent of their value as established under section 15(5-7) of Regulation 465/91 of the Ministry of Finance, the minimum sum being SKK 0.3 per square metre.

44. Since 1 November 2004, when Regulation 465/1991 was repealed, section 4(1) of Law no. 64/1997 has fixed the rent in respect of the land in allotments at 10% of its value, as determined in accordance with a special law. Reference is made to the Land Consolidation Act 1991, as amended. Section 43(2) of that Act empowers the Ministry of Agriculture to issue a binding regulation in that respect (Regulation 38/2005, see below).

D. Regulation 456/1991

45. Regulation 465/1991 of the Ministry of Finance of 25 October 1991, as amended, governed determination of the price of buildings and plots of land and compensation for the use of land. It concerned the value of property for administrative purposes. It was repealed on 1 January 2004. Section 15(5-7) provides that the price of plots of land registered as arable land, orchards, vineyards, meadows or pasture is to be fixed in accordance with Annex 8 to the Regulation. In the case of meadows and pasture the price is 0.75% of the price indicated in Annex 8. The annex provides for prices per square metre ranging from SKK 12.1 to SKK 0.5 according to the quality and classification of the land.

E. Regulation 38/2005

46. Regulation 38/2005 of the Ministry of Agriculture governs valuation of plots of land and vegetation on it for the purpose of proceedings under the Land Consolidation Act 1991 (see *Urbárska obec Trenčianske Biskupice*, cited above, §§ 45-48). It was enacted with effect from 15 February 2005.

47. In its valuation is based on a scheme of “quality pedo-ecological units” (*bonitované pôdno-ekologické jednotky*) categorising agricultural land and other areas in Slovakia. Section 1(5) provides that such valuation is applicable also to gardens located outside a municipality's built-up area. The scheme provides for value of agricultural land within a range from EUR 0.0216 to EUR 0.402 (Annex 1). Pursuant to Annex 5, the value of a

particular plot is determined by multiplying the unitary value as set out in Annex 1 by its surface area.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AND THE SCOPE OF THE CASE

A. Government's objection relating to the complaint about the proceedings under Law no. 64/1997

48. The Government objected that the complaint concerning the transfer of land to the gardeners pursuant to Law no. 64/1997 was premature. They submitted that in the domestic proceedings no final decision had been given on the issues relevant for determination of this part of the application.

49. With reference to Article 154c § 1 of the Constitution the Government maintained that the domestic authorities, when determining those issues, were bound to have regard to the relevant part of the Court's judgment in *Urbárska obec Trenčianske Biskupice* concluding that the application of the relevant law had been in breach of the guarantees of Article 1 of Protocol No. 1. A Slovak translation of that judgment had been published in the law journal *Judicial Review* in April 2008; it had also been distributed to administrative authorities, ordinary courts and the Constitutional Court.

50. The applicant disagreed.

51. The Court reiterates that Article 35 § 4 of the Convention *in fine* enables it to dismiss an application it considers inadmissible “at any stage of the proceedings”. Thus, even at the merits stage the Court may reconsider a decision to declare an application admissible if it concludes that it should be declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see, for example, *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 262, 3 October 2008 or *Družstevní Záložna Píra and Others v. the Czech Republic*, no. 72034/01, § 101, 31 July 2008).

52. The Court has taken note of further relevant developments in the land consolidation proceedings complained of in the period subsequent to its decision on admissibility of the application of 12 September 2006 (see paragraphs 22-27 above). As a result of those developments, the issues relevant to an assessment of the position in the case, such as the compensation the applicant is to receive for her land (see also *Urbárska*

obec Trenčianske Biskupice, cited above, §§ 121-125 and 132), still remain to be determined with final effect by the domestic authorities.

53. In these circumstances, it is only after those issues have been determined at national level and in the event that the applicant considers the relevant decisions to be contrary to her rights under the Convention that the Court can examine this part of the application. Accordingly, the applicant's complaint under Article 1 of Protocol No. 1, both taken alone and in conjunction with Article 14 of the Convention, about the land consolidation proceedings pursuant to Law no. 64/1997 is premature.

54. In the light of the foregoing, the Court rejects this part of the application under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. The remaining part of the application – scope of the case

55. In her submissions the applicant maintained that the compulsory renting out of her land, under both the Land Ownership Act 1991 and Law no. 64/1997, was in breach of Article 1 of Protocol No. 1, both taken alone and in conjunction with Article 14 of the Convention.

56. The Court declared admissible the applicant's complaint concerning “the compulsory lease” of her land (see the operative part of the admissibility decision of 12 September 2006, p. 13 *in fine*). In the “Law” part of that decision the Court exclusively referred to “the compulsory lease of the land under section 3 et seq. of Law no. 64/1997” (see pp. 10-11).

57. Thus, as to the applicant's complaint about the lease of her land under the Land Ownership Act 1991, the Court made no specific decision on it at the admissibility stage.

58. In this respect, the Court notes that the proceedings before domestic courts initiated by the applicant concerned rent for the period from 1991 to 1994 (see paragraph 11 above). The proceedings were ended by the regional court's decision of 30 October 2003 (see paragraph 16 above). To the extent that the applicant may be understood as considering unlawful or erroneous the ordinary courts' decisions on her claim, it was open to her to seek redress before the Constitutional Court pursuant to Article 127 of the Constitution which had been enacted with effect from 1 January 2002 (for further details concerning that remedy see, for example, *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, 22 October 2002). Since the applicant failed to use that remedy, she did not exhaust domestic remedies as required by Article 35 § 1 of the Convention.

59. To the extent that the applicant can be understood as alleging that the breach of her rights resulted from the way in which the Land Ownership Act 1991 governed the renting out of her land, the Court notes that the relevant provisions of that Act ceased to be applicable on 25 March 1997 and were

replaced with effect from 26 March 1997 by sections 3 et seq. of Law no. 64/1997 (see paragraphs 40-41 above).

60. The applicant has had no remedy at her disposal in that respect since the Constitutional Court has held that it lacks jurisdiction to examine a complaint lodged by natural or legal persons when the determination of the point in issue involves the preliminary question of conflict of legal rules (see, for example, *Urbárska obec Trenčianske Biskupice*, cited above, § 80). In these circumstances, since the relevant law ceased to be applicable on 25 March 1997 and since the application was introduced on 22 February 2000, this part of it was submitted outside the six-month time-limit laid down in Article 35 § 1 of the Convention.

61. It follows that the applicant's complaints relating to the compulsory lease of her land under the Land Ownership Act 1991 must be rejected under Article 35 §§ 1 and 4 of the Convention, partly as having been introduced out of time and partly for non-exhaustion of domestic remedies.

62. Accordingly, the Court will further examine the complaints about the compulsory lease under Law no. 64/1997.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

63. The applicant complained that the lease of her land under Law no. 64/1997 was contrary to her rights under Article 1 of Protocol No. 1, which 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.”

64. The applicant maintained in particular that the interference complained of could not be justified in the general interest of a democratic society as it placed the gardeners at an advantage without any justified reason. The owners had been unable to use the land for forty years and the relevant law had impaired their situation in that it had allowed the gardeners to continue benefiting from the land on conditions which were detrimental to the owners. In particular, the applicant alleged that the rent which the gardeners had been obliged to pay for the use of her land was negligible compared with the market rent which could be received for the land.

65. The Government admitted that the compulsory lease of the land under sections 3 et seq. of Law no. 64/1997 constituted an interference with the applicant's rights under Article 1 of Protocol No. 1. It reflected the

legislator's position, according to which it was in the general interest that the rights of persons using the land for gardening purposes should prevail over the rights of the owners of the plots of the land in garden colonies. The work the gardeners had done had considerably increased the value of the land, which at the time the colonies were established had generally been unusable and of low quality. The Government argued that a fair balance had been struck between the general interest and the rights of the original land owners. Given the margin of appreciation which the Contracting States had in similar cases, the interference in issue with the applicant's right to peacefully enjoy her possessions was not contrary to the requirements of Article 1 of Protocol No. 1.

66. The Court reiterates that in *Urbárska obec Trenčianske Biskupice* (cited above, §§ 142-146) it held that the applicant association received particularly low compensation for letting out its land to the gardeners. It discerned no demands of the general interest sufficiently strong to justify such a low level of rent, bearing no relation to the actual value of the land. It therefore concluded that the compulsory letting of the land of the applicant association on the basis of the rental terms set out in the applicable statutory provisions was incompatible with the applicant's right under Article 1 of Protocol No. 1 to peaceful enjoyment of her possessions.

67. In the present case the Government argued that the actual rental value of the applicant's land was EUR 0.448 per square metre per year, whereas the applicant considered it to be no less than EUR 0.664 per square metre (see paragraphs 28-29 above).

68. Section 4(1) of Law no. 64/1997, as in force until 31 October 2004, entitled the applicant to a lease equal to 10% of the value of her land, determined in accordance with Regulation 465/1991, the minimum amount being SKK 0.3 per square metre (see paragraph 43 above).

69. The documents before the Court indicate that the administrative value of the applicant's land, for the purpose of Regulation 465/1991 in conjunction with Law no. 64/1997, was at the lower end of the applicable scale, which extended from SKK 0.5 to SKK 12.1 (see paragraphs 14, 22 and 26 above). In accordance with the law in force until 1 October 2004, the applicant was thus entitled only to the minimum rent of SKK 0.3 (equivalent to EUR 0.01) as foreseen by section 4(1) of Law no. 64/1997. That amount corresponds to approximately 2% of the actual rental value of the land, based on the valuation submitted by the Government.

70. The Court has taken into account that, due to the gradual increase in the value of real property in Slovakia, the above ratio has not been the same throughout the period during which Law no. 64/1997 has governed the rent of the applicant's land. It nevertheless considers that, similarly to the situation in *Urbárska obec Trenčianske Biskupice*, the rent to which the applicant was entitled during the above period bears no reasonable relation

to the market value of her land. It sees no justification for such a discrepancy.

71. As to the period from 15 February 2005, the rent due represented 10% of the value of the land as determined on the basis of Regulation 38/2005. It was thus within the range of EUR 0.002 to EUR 0.04 (see paragraph 47 above).

72. The parties have not specified the value of the applicant's land under that Regulation. Nevertheless, and even assuming that the applicant's land was classified within the highest category for the purpose of Regulation 38/2005, the rent due would represent approximately 9% of the market rental value, determined on the basis of the actual value of the applicant's land as acknowledged by the Government. There is thus no indication that the market value of the land has been taken into account for the purpose of valuation under Regulation 38/2005.

73. The foregoing considerations are sufficient to enable the Court to conclude that the compulsory letting of the applicant's land on the basis of Law no. 64/1997, similarly to the situation in *Urbárska obec Trenčianske Biskupice* (cited above, § 146), has been contrary to her right to peaceful enjoyment of her possessions.

There has accordingly been a violation of Article 1 of Protocol No. 1 on that ground.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

74. The applicant complained that she had been discriminated against in that under Law no. 64/1997 the gardeners were allowed to use her land to the detriment of her ownership rights without any relevant justification. She relied on Article 14 of the Convention, which provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] 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.”

The Government argued that the applicant had not shown that she had been subjected to different treatment from other owners of land situated in garden colonies.

75. In the light of its finding with regard to Article 1 of Protocol No. 1 (paragraph 73 above), the Court does not consider that a separate examination of the merits of the case under Article 14 is necessary.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. As regards pecuniary damage, the applicant claimed EUR 46,538 as compensation for the transfer of her land to the gardeners at a price below its market value. She also claimed EUR 33,141 in compensation for the compulsory renting out of her land for the period from 1991 to 2008. That claim was based on a market rental value of EUR 0.664 per square metre per year on an eighteen-year compulsory lease, and it took into account the sum of EUR 366 which the gardeners had paid to the applicant.

Finally, the applicant claimed EUR 13,278 in respect of non-pecuniary damage.

78. The Government contested the sums claimed by the applicant.

79. The Court declared inadmissible the applicant's complaint about the scheduled transfer of her land and its compulsory lease during a period prior to the coming into effect of Law no. 64/1997 (see paragraphs 54 and 61 above). There is therefore no call to make any award in that respect.

80. As to the claim concerning the compulsory lease under Law no. 64/1997, the Court reiterates that, as regards pecuniary damage, where the failure to strike a fair balance between the public interest and the individual's rights, rather than illegality, was the basis of the violation found, just satisfaction need not necessarily reflect the idea of wiping out all the consequences of the interference in question, and compensation need not always equal the full value of the property (for recapitulation of the Court's practice see, for example, *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, §§ 7-10, 24 April 2008, with further references).

81. Having regard to the sum paid by the gardeners (see paragraph 17), the fact that the rental value of the applicant's land did not remain the same during the relevant period (see paragraph 70), and in view of the documents before it and the above considerations, the Court awards the applicant EUR 9,000 in respect of pecuniary damage.

It further awards her EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant claimed EUR 760 in respect of postal and telecommunication costs, travel expenses, costs of translation and photocopying.

83. The Government objected that the applicant had not shown that she had incurred the whole amount claimed.

84. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

85. In the present case, the amount of EUR 715 has already been paid to the applicant by way of legal aid for her legal representation in a part of the proceedings (see paragraph 2 above). In these circumstances, and having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 300, plus any tax that may be chargeable to the applicant, in respect of the remaining part of the proceedings before it.

C. Default interest

86. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares inadmissible* the applicant's complaints about the compulsory letting of her land under the Land Ownership Act 1991 and its envisaged transfer to gardeners under Law no. 64/1997;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 as a result of the lease of the applicant's land under Law no. 64/1997;
3. *Holds* that it is unnecessary to examine the merits of the applicant's complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 concerning the lease of her land under Law no. 64/1997;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 9,000 (nine thousand euros) in respect of pecuniary damage;
- (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (iii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President