



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF ŠEFČÍKOVÁ v. SLOVAKIA

(Application no. 6284/02)

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 Šefčíková 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. 6284/02) 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 Slovak national, Mrs Mária Šefčíková (“the applicant”), on 26 November 2001.

2. 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 her possessions had been violated as a result of the compulsory letting of her land and its scheduled transfer to tenants pursuant to Law no. 64/1997.

4. On 27 March 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1926 and lives in Prešov.

A. Background information

6. The applicant's mother had a share in a plot of agricultural land. The land is located in the Bardejov area and is registered as plot number 2612.

7. In 1958 the Bardejov local authority (*Miestny národný výbor*) assigned the “right of use” in respect of the plot to the Bardejov State Property Enterprise (*Štátny majetok*).

8. The right of use was later conferred on the Bardejov Agricultural Cooperative and, under a 1980 contract on the Bardejov Union of Gardeners.

9. The area where the plot is located was turned into a “garden community” named *Kira-Juh* and consisting of individual gardens which were put at the disposal of members of the above Union (“the gardeners”). The plot has been used as such a garden area since. It is situated outside the built-up area of Bardejov and it has been entered in the land register as arable land.

10. On 9 October 1995 the Bardejov District Court issued an inheritance decree confirming that the ownership of 6,557.25 square metres of land in the above plot had devolved to the applicant.

11. On 26 March 1997 special legislation 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* – “Law no. 64/1997”) entered into force (see “Relevant domestic law and practice” below).

B. Proceedings concerning the rent

12. Pursuant to section 3 of Law no. 64/1997, if no other arrangement has been made between an owner and a tenant of land in a garden community, their relation would become *ex lege* that of the parties to a lease. The applicant attempted twice to terminate the lease of her land by notice. She argued that, despite her efforts, no fair agreement concerning the use of the plot had been reached and that the statute used for the calculation of the rent in the absence of an agreement was outdated. Moreover, the Union of Gardeners was in any event in default of payment.

13. In 1998 the applicant sued the gardeners before the Bardejov District Court. She claimed that the defendant should be obliged to conclude a lease contract with her and pay 19,671 Slovakian korunas (SKK) as rent. On 2 October 2000 the District Court rejected the action as the defendant, as indicated in the applicant's action, lacked standing in the case. On 14 February 2001 the Prešov Regional Court upheld the first-instance judgment.

14. On 30 October 2000 the Bardejov District Office informed the applicant, with reference to sections 3 and 4 of Law no. 64/1997, that rent

payable by the gardeners amounted to 10% of the value of the land, determined pursuant to Regulation 456/1991. In any event, the minimum rent was SKK 0.3 per square metre.

15. In 2000 the gardeners sent SKK 5,208 to the applicant as rent for the period from 1997 to 1999. In 2001 the gardeners paid another SKK 1,736.6 to the applicant as rent for 2000. Those sums correspond approximately to SKK 0.3 per square metre a year.

16. In letters of 9 October 2000 and 9 April 2001 the applicant informed the gardeners that the sums paid were inadequate in view of the actual value of her land and that no agreement had been reached between her and the gardeners as to the lease of the land. It appears from the applicant's submission of 22 August 2006 that between 1996 and 2005 the gardeners had paid to her the overall sum of SKK 15,629 as rent for the use of her land.

C. Proceedings concerning the transfer of ownership

17. On 20 November 1998, the gardeners requested that the ownership relations in respect of their gardens be settled in a procedure under section 7(1) of Law no. 64/1997.

18. On 27 September 1999 the District Office formally announced the commencement of a land consolidation procedure in respect of the gardens in question. The announcement contained a register of the original ownership and a surveyor's plan concerning the current state ("the preliminary inventory").

19. On 26 October 1999 the applicant challenged the preliminary inventory, opposing the consolidation procedure as such and claiming possession of the original plot.

20. The challenge was dismissed by the District Office on 12 January 2000. The administrative authority noted that the gardeners had proposed to buy the applicant's land for SKK 7.5 per square metre and that the applicant had declined that offer in that she had claimed SKK 10. As to the applicant's arguments under the Land Ownership Act 1991, the authority noted that that piece of legislation (and namely section 22(3)) had ceased to be applicable to the land issue following the entry into force of Law no. 64/1997 on 26 March 1997.

21. The applicant appealed. On 4 May 2000 the Prešov Regional Office quashed the District Office's decision on the ground that it had not checked whether there were valid contracts on the use of the land entitling the gardeners to request its transfer under Law no. 64/1997.

22. In a new decision of 25 May 2000 the District Office again dismissed the applicant's objection to the preliminary inventory. It was noted, *inter alia*, that the applicant had no power to terminate the lease. No agreement had been reached between the owner and the gardeners on the

transfer of the land in issue. On the basis of the contracts on use of the land included in the file the District Office was satisfied that the users of the land were entitled to request a consolidation procedure under Law no. 64/1997.

23. The applicant appealed. She claimed that the land should have been returned to her and requested that the rent payable by the gardeners should be determined.

24. On 13 December 2000 the Regional Office dismissed the appeal. The decision stated that the Land Ownership Act 1991 had ceased to be applicable after enactment of Law no. 64/1997. Any outstanding issues concerning the rent of the land fell to be determined by a court.

25. On 12 February 2001 the District Office approved the preliminary inventory. The applicant challenged the approval by an administrative appeal, arguing that Law no. 64/1997 was unconstitutional. She demanded that the consolidation be carried out according to market economy principles.

26. On 30 June 2001 the Regional Office upheld the decision of 12 February 2001. It noted that conformity with the Constitution of Law no. 64/1997 had been already examined and confirmed by the Constitutional Court and that the consolidation procedure had been conducted in compliance with that Act.

27. In a letter of 15 November 2001 the District Office invited the applicant to present her position by stating whether she preferred to be compensated for her title in the plot by being granted a substitute plot or paid an amount of money in lieu. The letter indicated that the applicant owned 5,720 square metres of land in the garden community concerned. The value of the land pursuant to section 11(5) and (6) of Law no. 64/1997 was SKK 3. Given that the land was located in a town which was a spa, the compensation was to be increased by 150% to reach SKK 7.5 per square metre.

28. In response, the applicant rejected the proposed options and reiterated her request for her plot to be restored to her. As to the proposed financial compensation, she objected that it was inadequate.

29. On 20 May 2002 the District Office ruled that the applicant was to be financially compensated for her title to the plot. It was observed that she had made no claim for substitute land in which case, under section 10(3)(a) of Law no. 64/1997, the compensation was automatically to be financial. The decision stated that the applicant owned 5,720 square metres of land in the area concerned and that she would receive SKK 42,900 (that is SKK 7.5, which is equivalent to EUR 0.249, per square metre) in compensation.

30. In November 2002 the District Office informed the land owners of the details of the consolidation project under Law no. 64/1997. On 9 July 2003 the Regional Office dismissed the applicant's objection to the project. On 11 May 2004 the Ministry of Agriculture dismissed the applicant's appeal against that decision. The authorities established that the

applicant had claimed that the Land Ownership Act 1991 be applied and that her purchase price should be determined on the basis of its market value.

31. On 10 June 2004 the applicant lodged an action with the Supreme Court in which she challenged the decision of the Ministry of Agriculture. On 30 May 2005 she extended her claim in that she challenged the above Regional Office's decisions of 13 December 2000, 30 June 2001 and 9 July 2003.

32. On 27 October 2005 the Supreme Court discontinued the proceedings concerning the Regional Office's decisions of 13 December 2000 and 30 June 2001 as the action had been lodged outside the statutory two-month time-limit. It dismissed the claim concerning the decision of the Ministry of Agriculture of 11 May 2004.

33. The Supreme Court noted that in her action the applicant had claimed that the contested administrative decisions were unlawful on the ground that the administrative authorities had failed to correctly and reliably establish the relevant facts. The decision stated that the applicant had failed to specify, as required by the law, on the basis of which particular facts she considered the law to have been breached in the proceedings leading to the decision of the Ministry of Agriculture. The applicant rather expressed her disagreement with the land consolidation procedure as such and the amount of compensation offered to her in that context.

34. In the meantime, on 26 October 2004, the Land District Office in Bardejov approved the land consolidation project under Law no. 64/1997. The decision became final on 25 November 2004.

35. On 4 October 2007 the same authority ordered implementation of the land consolidation project pursuant to section 15(1) of Law no. 64/1997. On 4 June 2008 the Regional Land Office in Prešov upheld that decision. It noted that the applicant had challenged the decision of 4 October 1997 without submitting any reason for her appeal. She had merely stated that she had made an application to the European Court of Human Rights. At a later stage the applicant had requested that the administrative authorities should proceed pursuant to the Land Ownership Act 1991 and that the ownership rights in respect of the land should be determined in accordance with the Civil Code.

36. The regional land office noted that in the context of the consolidation proceedings the compensation for the landowners had been determined by a decision which had become final on 25 November 2004. None of the land owners had sought judicial review. Adequacy and form of compensation to be provided to land owners could therefore no longer be addressed in the subsequent proceedings, which concerned the implementation of the consolidation project.

37. On 12 February 2009 a real estate agency issued a certificate, at the applicant's request, according to which the approximate value of the applicant's land is EUR 20 per square metre.

38. On 2 April 2009, at the Government's request, the Forensic Engineering Institute in Žilina submitted an opinion according to which the market value of the applicant's land is EUR 4.31 per square metre. The opinion states that the land is located in the area of the town of Bardejov and that it has not been planned to use it for construction purposes according to the current plans. Furthermore, the land is in a zone of environmental protection of water resources whereby its use for purposes other than gardening is considerably affected.

39. In a reaction to the latter valuation the applicant proposed that the Court should accept that the value of her land was EUR 13.28 per square metre.

II. RELEVANT DOMESTIC LAW AND PRACTICE

40. The relevant domestic law and practice, as well as the general background to consolidation of land used by garden communities, are set out in *Urbárska obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, §§ 7-13 and 40-80, ECHR 2007-... (extracts)).

41. As from 1 November 2004, after Regulation 465/1991 had been repealed (see *Urbárska obec Trenčianske Biskupice*, cited above, § 64), sections 4(1) and 11(2) of Law no. 64/1997 have provided for the value of the land in the allotments to be determined in accordance with a special law. In particular, section 4(1) has fixed the rent at 10% of its value thus determined. 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.

42. Such regulation was enacted with effect from 15 February 2005 (Regulation 38/2005). In it 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 constructed 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.

43. In addition, the following legal provisions and practice are relevant in the present case.

44. 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.

45. Pursuant to Article 154c § 1 of the Constitution, international treaties on human rights and fundamental freedoms which the Slovak Republic has ratified and which have been 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 broader array of constitutional rights and freedoms.

46. 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 with a bearing on fundamental rights and freedoms. The Convention and the case-law of its organs thus set a framework which the national authorities could not overstep when dealing with a case. The same view was expressed in its judgment I. ÚS 239/04 of 26 October 2005.

47. 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.

48. 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.

THE LAW

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

49. The applicant complained about the compulsory letting of her plot of land and its transfer to the tenants under Law no. 64/1997. She relied on 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.”

50. The Government contested that argument.

A. Admissibility

1. Arguments of the parties

51. The Government objected that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention.

52. As regards the proceedings under Law no. 64/1997 concerning the transfer of her land to the gardeners, the administrative authorities' decisions concerning the preliminary inventory were determining factors as regards the compensation to which the applicant was entitled. The applicant should have, firstly, challenged the administrative decisions concerning the approval of the preliminary inventory by means of an action before a civil court. The fact that the applicant had sought redress before the Supreme Court could not affect the position as that court had rejected her claim as having been submitted out of time.

53. Secondly, it was also open to the applicant, after having used the other remedies available, to lodge a complaint with the Constitutional Court pursuant to Article 127 of the Constitution, as in effect from 1 January 2002. Despite its earlier finding on compliance with the Constitution of Law no. 64/1997 the Constitutional Court was not prevented from finding a violation of a petitioner's fundamental rights in particular circumstances of a case. The Government relied in this respect on the Constitutional Court's judgment III. ÚS 138/03 (see paragraph 47 above).

54. Thirdly, the proceedings concerning land consolidation were still pending. With reference to Article 154c § 1 of the Constitution the Government maintained that the domestic authorities, when determining the issue, 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. Slovak translation of that judgment had been published in the law journal *Judicial Review* in April 2008; it had been also distributed to administrative authorities, ordinary courts and the Constitutional Court.

55. To the extent that the applicant challenged Law no. 64/1997 as such, the Government were of the opinion that the application had been submitted outside the six-month time-limit laid down in Article 35 § 1 of the Convention. In their view that time-limit had started running on 26 March 1997 when that piece of legislation had taken effect.

56. As regards the compulsory lease, in case that the applicant and the gardeners were unable to reach an agreement as to the rent, the Government maintained that the applicant could have sought redress before a civil court.

57. The applicant disagreed with the Government and maintained that her rights under Article 1 of Protocol No. 1 had been infringed.

2. *The Court's assessment*

(a) *As regards the consolidation proceedings under Law no. 64/1997*

58. The Court reiterates that the rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems (see *Aksoy v. Turkey*, 18 December 1996, § 51, *Reports of Judgments and Decisions* 1996-VI).

59. In order to exhaust domestic remedies as required by Article 35 § 1 of the Convention, applicants should use the remedies available in compliance with the formal requirements and time-limits laid down in domestic law, as interpreted and applied by domestic courts (see *Akdivar and Others v. Turkey*, 16 September 1996, § 60, *Reports* 1996-IV).

60. In *Urbárska obec Trenčianske Biskupice* (cited above, §§ 85-87), where the applicant association exclusively complained of the effects of the application of Law no. 64/1997, the Court held that the applicant had no directly accessible remedy at its disposal permitting determination of that aspect of the case. It noted, in particular, that ordinary courts called upon to review the relevant administrative decisions in proceedings under Law no. 64/1997 were unlikely to review issues other than the correct implementation of the relevant law.

61. In this respect the Court finds that the position in the present case is similar. It is true that in the context of the land consolidation proceedings in issue the applicant put forward a number of arguments and objections. However, those were legally irrelevant, such as the request for her case to be dealt with under the Land Ownership Act 1991 the relevant part of which had ceased to be applicable following the enactment of Law no. 64/1997. As to the other objections, they were of a general nature and the domestic authorities themselves concluded that the applicant, in substance, challenged the effects which the application of Law no. 64/1997 produced in respect of her land (see paragraphs 20, 22-25, 28, 30-31, 33 and 35 above).

62. While it is true that the land consolidation proceedings have formally not yet ended, the Court notes that the issues relevant to determination of the applicant's complaints, namely the nature and scope of compensation to which she is entitled, have been determined, in particular by the decision of 20 May 2002 (see paragraph 29 above). The remaining stage of the procedure exclusively concerns the practical implementation of the consolidation proceedings under sections 15-17 of Law no. 64/1997. It cannot affect the position in the case since issues such as adequacy and form of compensation can no longer be addressed at that stage. This was explicitly confirmed by the regional land office (see paragraph 36 above).

63. The Court therefore cannot accept the Government's argument according to which domestic authorities are bound to apply the principles which the Court set out in *Urbárska obec Trenčianske Biskupice*. Furthermore, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V, and *Babylonová v. Slovakia*, no. 69146/01, § 44, ECHR 2006-...). The Court does not see particular circumstances justifying a departure from the above general rule (see also *Pralica v. Bosnia and Herzegovina*, no. 38945/05, §§ 13-14, 27 January 2009).

64. Finally, as regards the argument that the application was lodged outside the time-limit of six months, the Court dismissed that objection in *Urbárska obec Trenčianske Biskupice* (cited above, §§ 92-93). It finds no reason for reaching a different conclusion in the present case. In particular, the application was introduced on 26 November 2001 and the applicant became aware of the practical implications of the land consolidation under Law no. 64/1997 in respect of her land on 20 May 2002 when the district office determined the compensation to which she was entitled.

65. The Government's objections must therefore be dismissed.

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) As regards the compulsory lease

(i) Rent to which the applicant is entitled under Law no. 64/1997

67. To the extent that the applicant complained that the gardeners had failed to pay rent to her to which Law no. 64/1997 entitled her, the Court concurs with the Government that it is open to her to seek redress before ordinary courts and, ultimately, the Constitutional Court.

68. The applicant lodged such an action, but the courts rejected it due to her failure to comply with the formal requirements (see paragraph 13 above). In this respect she has not, therefore, exhausted domestic remedies.

69. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(ii) As regards the determination of the rent under Law no. 64/1997

70. The applicant also complained that the rent to which she was entitled on the basis of Law no. 64/1997 was disproportionately low as it was determined in disregard of the actual value of her land. According to the information available, the compulsory letting of the applicant's land has not yet ended.

71. This aspect of the case is similar to that which the Court addressed in *Urbárska obec Trenčianske Biskupice*. For the reasons set out in that judgment (cited above, §§ 85-86 and 143-144) as well as in paragraphs 60-61 and 63-64, the Government's objections in respect of this part of the application must also be dismissed.

72. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

73. The applicant, with reference to the compulsory lease and the land consolidation procedure under Law no. 64/1997, maintained that her rights under Article 1 of Protocol No. 1 had been infringed. She pointed out, in particular, that the rent and compensation for her land which she was entitled to obtain under that Act were disproportionately low as they were determined in disregard of its actual value.

74. The Government contested that argument, mainly for reasons similar to those which they had submitted to the Court in *Urbárska obec Trenčianske Biskupice* (cited above, §§ 103-111 and 137).

2. The Court's assessment

(a) As regards the transfer of ownership

75. The Court reiterates that Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances. What Article 1 of Protocol No. 1 requires is that the amount of compensation granted for property taken by the State be "reasonably related" to its value. It is not for the Court to say in the abstract what would be a "reasonable" level of compensation in a given case (see also *Broniowski v. Poland* [GC], no. 31443/96, §§ 176 and 186, ECHR 2004-V). However, in similar matters there is a direct link between the importance or compelling nature of the public interest pursued and the compensation which should be provided in order for the guarantees of Article 1 of Protocol No. 1 to be complied with (see *Urbárska obec Trenčianske Biskupice*, cited above, § 126).

76. In *Broniowski* (cited above, §§ 186-187) the applicant's family had received a mere 2% of the compensation due under the legislation as

applicable before the entry into force of Protocol No. 1 in respect of Poland. The Court concluded that the applicant had to bear a disproportionate and excessive burden which cannot be justified in terms of the legitimate general community interest pursued by the authorities (judgment on the merits quoted above, §§ 186-187). Subsequently (see *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 43, ECHR 2005-IX), the Court approved a friendly settlement according to which the Government had undertaken to pay 20% of the agreed notional value of the applicant's property noting that it did not preclude the applicant from seeking and recovering further compensation in so far as domestic law allowed this in the future.

77. In *Urbárska obec Trenčianske Biskupice* (cited above, §§ 117-133) the Court found that there had been a breach of Article 1 of Protocol No. 1 on account of the transfer of ownership of the applicant association's land. In particular, the declared public interest in pursuing the relevant proceedings was not sufficiently broad and compelling to justify the substantial difference between the real value of the applicant's land and that of the land which it obtained in compensation. The effects produced by application of Law no. 64/1997 to that case had thus failed to strike a fair balance between the interests at stake.

78. In that case the value of the land which the applicant association received corresponded to approximately one-third of the general value of the land which was transferred to the gardeners. The Court took into account that the applicant association had received only 1.4097 hectares of land in compensation for the 2.5711 hectares of its land. Apart from the difference in surface area and the general value of the property, the Court also noted that the land transferred to the tenants had considerable development potential which the land given to the applicant did not possess.

79. In the present case the applicant is entitled to compensation amounting to EUR 0.249 per square metre of land (see paragraph 29 above). According to the expert opinion submitted by the Government, the current market value of that land was EUR 4.31 per square metre. The applicant contested that valuation and argued that the actual value of her land was no less than EUR 13.28 per square metre.

80. For the purpose of determination of the point in issue the Court finds relevant that the pecuniary compensation to which the applicant has a right under Law no. 64/1997 represents only 5.8% of the actual value of her land, as acknowledged by the Government. That ratio would be even smaller if the value of the land was higher, as the applicant alleged. The Court sees no ground for such a low level of compensation.

81. For reasons similar to those expressed in *Urbárska obec Trenčianske Biskupice* (cited above, §§ 116-133) the Court finds that the effects produced by application of Law no. 64/1997 to the present case failed to strike a fair balance between the interests at stake. The above considerations

are sufficient for the Court to conclude that the applicant has to bear a disproportionate burden contrary to her right to peaceful enjoyment of her possessions.

82. There has, therefore, been a violation of Article 1 of Protocol No. 1 on account of the land consolidation procedure under Law no. 64/1997.

(b) As regards the compulsory lease

83. In *Urbárska obec Trenčianske Biskupice* (cited above, §§ 142-146) the Court 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 its possessions.

84. The parties in the present case submitted no specific information as regards the amount for which the applicant's land could be let if the principles of a free-market economy were applied. On the basis of the information available from other cases concerning the same issue (see, for example, *Urbárska obec Trenčianske Biskupice*, cited above, § 38), the Court accepts that the actual rental value of the land corresponds to approximately 6-7% of its market value. It is thus between EUR 0.26 and 0.3 per square metre in the applicant's case if determined on the basis of the valuation submitted by the Government (see paragraphs 38 and 78 above).

85. 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 (equivalent to EUR 0.01 - see paragraphs 14 and 40 above, with further reference). Similarly as in *Urbárska obec Trenčianske Biskupice* (cited above, § 143) it is the last mentioned amount on which the gardeners had based the calculation of the rent.

86. 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. According to information available on internet¹, the land on which the applicant's plot is situated falls within a category valued at EUR 0.0216 per square metre. The rent due thus amounts to EUR 0.00216 per square metre.

87. In any event, the Court finds relevant that Regulation 465/1991 provided for valuation of arable land within a scale between EUR 0.017 and EUR 0.4 and Regulation 38/2005 provides for valuation of such land within a similar range, namely from EUR 0.0216 and EUR 0.402 per square metre.

¹ <http://www.podnemapy.sk/portal/verejnost/bpej/bpej.aspx>

88. Even assuming that the applicant's land was classified within the highest category for the purpose of the above regulations, namely EUR 0.4 per square metre, the rent due would be EUR 0.04 per square metre. That amount represents some 15% of the market rental value, determined on the basis of the actual value of the applicant's land as acknowledged by the Government (see paragraph 84 above). There is thus no indication that the market value of the land has been taken into account for the purpose of determination of the rent.

89. The Court has considered that, due to 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 finds that, similarly as 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.

90. 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 has been contrary to her right to peaceful enjoyment of her possessions.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

91. In her submission of 25 August 2006 the applicant complained that the facts of the case also gave rise to a breach of Articles 6 § 1 and 17 of the Convention.

92. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the above provisions on which the applicant relied.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant claimed 8,188 euros (EUR) in respect of pecuniary damage. That sum corresponded to the difference between the rent to which she considered herself entitled (EUR 8,706) and the sum which the gardeners had paid to her for the use of her land (EUR 518). She further claimed EUR 3,890. That sum comprised expenses relating to medical treatment (EUR 1,965) needed to treat the health problems she had encountered after she had inherited the land in issue. It also comprised EUR 1,925 representing the value of fruits and vegetables which the applicant had had to buy due to the fact that she was unable to grow them on her plot of land.

The Government objected to the applicant's claim.

95. The Court notes that, within the time-limit set for that purpose, the applicant submitted no specific claim in respect of the consolidation proceedings under Law no. 64/1997.

Having regard to the circumstances of the case (see paragraphs 14 and 85-89 above), the Court considers it appropriate to award the applicant the sum claimed, namely EUR 8,188 in respect of pecuniary damage resulting from the compulsory letting of her land under conditions laid down in Law no. 64/1997.

As to the remaining sums claimed, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the relevant parts of the claim.

96. The Court further considers it appropriate to award the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

97. The applicant also claimed EUR 576 for costs and expenses. That sum comprised the legal charges in domestic proceedings (EUR 20), compensation for travelling and time spent with a view to obtaining redress before various institutions and authorities in Slovakia (EUR 252), postal expenses (EUR 131) and costs of translation of her submissions to the Court (EUR 173).

98. The Government considered the claim overstated.

99. According to the Court's case-law, an applicant is entitled to the reimbursement of 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for the proceedings before it.

C. Default interest

100. 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* the complaints under Article 1 of Protocol No. 1 concerning compulsory letting of the applicant's land and the land consolidation under conditions laid down in Law no. 64/1997 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 on account of both the compulsory letting of the applicant's land and the land consolidation under Law no. 64/1997;
3. *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 8,188 (eight thousand one hundred and eighty-eight euros) in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 500 (five 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;
4. *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