



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF SALUS v. SLOVAKIA

(Application no. 28697/03)

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 Salus 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. 28697/03) 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, Mr Štefan Salus (“the applicant”), on 28 August 2003.

2. The applicant was represented by Ms Z. Môciková, a lawyer practising in Bratislava. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. The applicant alleged that his rights under Article 1 of Protocol No. 1 had been violated as a result of the compulsory letting of his land and its scheduled transfer to the tenants under Law no. 64/1997.

4. On 6 June 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 1952 and lives in Bratislava.

6. The applicant's family owned a plot of agricultural land located in the Prešov area. At the beginning of the 1960s the State put the land at the

disposal of an agricultural cooperative. The applicant's family remained the owners of the land in name (*nuda proprietas*).

7. In 1964 the right to use the land was conferred on the Slovakian Union of Fruiterers and Gardeners. The area where the plot is located was turned into a “garden community” consisting of individual gardens which were put at the disposal of third parties, members of the above Union (“gardeners”).

8. On 14 January 2000 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 Prešov District Office in a land consolidation procedure under section 7(4) of that Act.

9. On 10 January 2002 the District Office made a formal announcement under section 18(1) of Law no. 64/1997 of the commencement of the land consolidation procedure under section 7(4) of the Act. The announcement contained a register of the original ownership and a surveyor's plan concerning the current state of the land (“the preliminary inventory”).

10. Three land owners objected to the preliminary inventory. The applicant's legal predecessor, Ms J. Salusová, objected that she did not own one of the plots concerned. On 17 June 2002 the District Office dismissed the objection, as the propriety certificate clearly indicated that she co-owned the relevant plot.

11. On 3 October 2002 the District Office approved the preliminary inventory under section 9(4) of Law no. 64/1997.

12. On 27 October 2002 Ms J. Salusová died. On 20 May 2003 a notary authorised by a court confirmed that the applicant had inherited a share in Ms J. Salusová's land used by the gardeners.

13. On 13 February 2003 the applicant complained to the Constitutional Court that Law no. 64/1997 ran contrary to his constitutional right to own property. On 28 February 2003 a constitutional judge informed the applicant that individuals lack standing to initiate proceedings concerning conflict of laws.

14. In a letter of 21 March 2003 the District Office invited the applicant under section 10(1) of Law no. 64/1997 to state whether he preferred to be compensated by being granted a substitute plot or paid an amount of money in lieu in respect of his title to the plot. The letter contained a list of specific plots that the administrator of the State's real property, the Slovak Real Estate Fund, had proposed as possible substitute plots in the applicant's case. In response, on 9 May 2003, the applicant rejected the proposed plots.

15. On 5 August 2003 the District Office decided on the compensation for the landowners. The decision was not subject to appeal. It was envisaged that the gardeners would subsequently acquire title to their gardens.

16. On 27 January 2004 public prosecutor lodged an objection and proposed that the administrative authority quash its decision on the matter of compensation, since one of the landowners had been omitted from the

procedure. On 26 February 2004 the District Land Office in Prešov granted the objection. Subsequently it took further steps with a view to eliminating shortcomings in the procedure.

17. On 10 April 2006 the Slovak Real Estate Fund proposed new substitute lands as the release of the former substitute lands was suspended.

18. On 3 July 2007 two other heirs of Ms J. Salusová asserted their right in respect of their predecessor's land. On 18 September 2007 they informed the administrative authority that they did not accept the substitute land offered to them.

19. On 4 December 2008 the District Land Office delivered a new decision on compensation under sections 10(3)(a) and 11 of Law no. 64/1997. It indicates that the applicant is to receive 423.72 euros (EUR) for 1,702 square metres of land owned by him. That amount corresponds to EUR 0.249 per square metre.

20. The plots in issue have been entered in land register as arable land and grass-grown land. They were originally outside the town's built-up area. The Prešov municipality's zoning plan approved on 30 January 2008 indicates that the area including the applicant's land now falls within a zone designated for family housing. The relevant entry in the register was amended and indicates that the plots are within the built-up area of Prešov.

21. On 5 April 2009 the Forensic Engineering Institute in Žilina, at the Government's request, made a valuation of the applicant's land used by the gardeners. The opinion states, *inter alia*, that the land is situated within the constructible area of the town of Prešov, which is the seat of regional authorities and institutions. It is located some two kilometres from the bus and railway station. There is a fifteen metre-wide protection zone on the land along an aerial high-voltage line. Part of the land is situated on a steep slope.

22. The experts noted that four gardens in the area had been put up for sale at prices of between EUR 24.22 and EUR 39.25 per square metre. However, the price included also the gardeners' investments, such as huts, vegetation and other facilities. The institution concluded that the market value of the land was EUR 7.67 per square metre and its rental value EUR 0.532 per square metre a year.

23. The applicant disagreed with that valuation as it did not reflect the actual value of his land. In particular, he objected that only one method had been used. The experts had failed to take into account his land's development potential in view of the existing zoning plan. A contract submitted by the applicant indicates that on 27 August 2008 he and other co-owners had sold different land situated in the vicinity of that which the gardeners use, for the equivalent of EUR 33.19 per square metre. Finally, the applicant argued that the aerial power line had been erected without the consent of the landowners. It could not be ruled out that the line would be removed in the near future.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The relevant domestic law and practice and 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) – “*Urbárska obec*”).

25. As from 1 November 2004, after Regulation 465/1991 had been repealed (see *Urbárska obec*, 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.

26. 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.

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

28. 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.

29. 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.

30. 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 cannot overstep when dealing with a case. The same view was expressed in its judgment I. ÚS 239/04 of 26 October 2005.

31. 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.

32. 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

33. The applicant complained that the compulsory letting of his plot of land and its transfer to the tenants under Law no. 64/1997 were contrary to 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.”

34. The Government contested that argument.

A. Admissibility

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

36. Firstly, neither the applicant's legal predecessor nor the applicant had sought judicial review of the decisions delivered in the proceedings under Law no. 64/1997. It was further open to the applicant to seek redress in respect of those decisions before the Constitutional Court. Similarly, the applicant had not been shown to have sought redress before a court as regards the lease of his land to the gardeners.

37. Secondly, the proceedings concerning the transfer of land had not yet been concluded with final effect. With reference to Article 154c § 1 of the Constitution the Government maintained that the domestic authorities,

when determining the outstanding issues, were bound to have regard to the relevant part of the Court's judgment in *Urbárska obec*, cited above, 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 been also distributed to administrative authorities, ordinary courts and the Constitutional Court.

38. Finally, and 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.

39. The applicant disagreed with the Government. In his particular case the administrative authority, on 4 December 2008, decided on compensation for the landowners under the relevant provisions of Law no. 64/1997, notwithstanding that the Court's judgment on the merits in *Urbárska obec* had been delivered on 27 November 2007.

40. The Court notes that, as in *Urbárska obec*, the applicant in the present case exclusively complains of the effects of the application of Law no. 64/1997. He had no directly accessible remedy at his disposal permitting determination of that aspect of the case (see *Urbárska obec*, cited above, §§ 85-88).

41. As to the argument that the domestic authorities are bound to apply the principles which the Court set out in *Urbárska obec*, it has been noted that such was not the case as regards the above decision of 4 December 2008 on compensation payable to the applicant and the other landowners. 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 any 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).

42. While it is true that the land consolidation proceedings have not yet formally ended, the Court notes that the issues relevant to determination of the applicant's complaints, namely the nature and scope of compensation to which he is entitled, have been determined in particular by the decision of 4 December 2008. The remaining stage of the procedure exclusively concerns the practical implementation of the consolidation proceedings under sections 15-17 of Act 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.

43. Finally, as regards the argument that the application was lodged outside the six-month time-limit, the Court dismissed that objection in

Urbárska obec (§§ 92-93). It finds no reason to reach a different conclusion in the present case. Furthermore, the applicant's predecessor died in 2002 and a notary's certificate confirming his entitlement to the relevant land was established on 20 May 2003, which is less than six months before the introduction of the application on 28 August 2003.

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

45. The Court notes that the application 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. Merits

1. Arguments of the parties

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

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

2. The Court's assessment

(a) As regards the transfer of ownership

48. 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 a "reasonable" level of compensation would be 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*, cited above, § 126).

49. 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 had to bear a disproportionate

and excessive burden which could not be justified in terms of the legitimate general community interest pursued by the authorities (judgment on the merits quoted above, §§ 186-187). Subsequently 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 the future in so far as this was allowed under domestic law (see *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 43, ECHR 2005-IX).

50. In *Urbárska obec* (cited above, §§ 117-133) the Court found that there had been a violation of Article 1 of Protocol No. 1 on account of the transfer of ownership of the applicant'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 had 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.

51. In that case the value of the land which the applicant had received corresponded to approximately one-third of the general value of the land which had been transferred to the gardeners. The Court took into account that the applicant 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.

52. In the present case the applicant is entitled to compensation amounting to EUR 0.249 per square metre of land. According to the expert opinion submitted by the Government the current market value of that land is EUR 7.67 per square metre. The applicant contested that valuation and argued that the actual value of his land was no less than EUR 26.56 per square metre.

53. Whatever the position, the Court finds relevant that the pecuniary compensation to which the applicant has a right under Law no. 64/1997 represents only 3.25% of the actual value of his 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.

54. For reasons similar to those expressed in *Urbárska obec* (§§ 116-133) the Court finds that the effects produced by the 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 his right to peaceful enjoyment of its possessions.

55. 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

56. In *Urbárska obec* (§§ 142-146) the Court held that the applicant had 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 association's right under Article 1 of Protocol No. 1 to peaceful enjoyment of its possessions.

57. The expert opinion submitted by the Government indicates that the actual rental value of the applicant's land is EUR 0.532 per square metre a year (see paragraph 22 above). The applicant argued that the market value of his land and, accordingly also its rental value, was higher.

58. 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 his land, determined in accordance with Regulation 465/1991, the minimum amount being SKK 0.3 (equivalent to EUR 0.01 - see *Urbárska obec*, cited above, § 65).

59. From 15 February 2005 until at least 30 January 2008 (when the land was re-classified as being within the town's built-up area), the rent due represented 10% of the value of the land as determined on the basis of Regulation 38/2005.

60. For the purpose of determination of the point in issue 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.

61. 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 7-8% of the market rental value, 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 determination of the rent.

62. 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.

63. 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 his right to peaceful enjoyment of his possessions.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed EUR 135,564 in respect of pecuniary damage relating to the land consolidation under Law no. 64/1997. That claim concerned 5,106 square metres of land, the market value of which he considered to be EUR 26.56 per square metre.

He further claimed EUR 13,278 in respect of non-pecuniary damage.

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

67. In the present case the decision of 4 December 2008 (see paragraph 19 above) indicates that 1,702 square metres of land owned by the applicant are subject to transfer to gardeners in the consolidation procedure under Act 64/1997. Under the applicable statutory provisions the applicant is entitled to EUR 423.72 for his land.

68. The parties' views as regards the value of the applicant's land differed substantially (see paragraphs 21-23 above). The Court notes that, unlike the Government, the applicant submitted no valuation of the land established by an expert valuer.

69. However, it attaches a certain weight to the applicant's argument that he had sold a plot in the vicinity of the gardeners' community for EUR 33.19 in 2008 and that the land in issue had a development potential as it had been included in a zone designed for construction of residential family homes. It has also been noted that plots of land in the area have been put at sale at a price between EUR 24.22 and EUR 39.25 per square metre, it being understood that the price also included gardeners' property such as huts and vegetation. On the other hand, the existence of a zone for protection of an aerial high-voltage line undoubtedly has some effect on the value of part of the land.

70. The Court further 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 must 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).

71. Having regard to the documents before it and in view of the above considerations, the Court awards the applicant EUR 15,000 in respect of pecuniary damage.

72. It further considers that the applicant must have suffered non-pecuniary damage as a result of the violation found. Deciding on an equitable basis, the Court awards the applicant EUR 2,000 under that head.

B. Costs and expenses

73. The applicant submitted no claim for costs and expenses. The Court is therefore not called to make any award in this respect.

C. Default interest

74. 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 application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of both the compulsory lease of the applicant's land and the consolidation procedure 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, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage and EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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