CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF URBÁRSKA OBEC TRENČIANSKE BISKUPICE v. SLOVAKIA

(Application no. 74258/01)

JUDGMENT
(Just satisfaction)

STRASBOURG

27 January 2009

FINAL

24/04/2009

This judgment may be subject to editorial revision.

In the case of Urbárska obec Trenčianske Biskupice 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,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 6 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 74258/01) 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 Urbárska obec – pozemkové spoločenstvo Trenčianske Biskupice ("the applicant") on 7 September 2001.

2. In a judgment delivered on 27 November 2007 ("the principal judgment"), the Court held that there had been a violation of Article 1 of Protocol No. 1 as regards both the transfer of the applicant's property to members of the gardening association and the compulsory letting of the applicant's land on the rental terms set out in the applicable statutory provisions preceding that transfer (ECHR 2007-... (extracts)).

3. Under Article 41 of the Convention the applicant sought just satisfaction for pecuniary and non-pecuniary damage and costs.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

5. The applicant and the Government each filed observations.

THE LAW

6. 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

1. Pecuniary damage

a) As regards the transfer of ownership of the applicant's land

7. The applicant association claimed 7,021,246 Slovakian korunas (SKK) in respect of pecuniary damage resulting from the transfer of its land to the gardeners. That amount is equivalent to 233,063 euros (EUR). According to the applicant, it corresponds to the difference between the actual value of the land in the allotment at the time of transfer of its ownership to the gardeners and the administrative value of the land which the applicant had received in compensation. The former amounted to SKK 290 per square metre. As to the latter, the applicant association indicated that the administrative value of 1.5374 hectares of the land concerned equalled SKK 0.5 and that of the further 4.7437 hectares was SKK 9 per square metre. Finally, the applicant association challenged the expert opinion of 15 December 2006 on which the Government relied (see paragraph 37 of the principal judgment).

8. The Government objected arguing that the Court's award should be based on the difference between the market value of the applicant's land and that which it had received in compensation. They relied on the above expert opinion according to which the market value of the latter land was SKK 95.25 per square metre. The applicant association had actually received 1.4097 hectares of land. Its above indication as to the relevant surface area was erroneous as it concerned the whole plot from which the land transferred to it had been detached.

9. In the principal judgment 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 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

the present case thus failed to strike a fair balance between the interests at stake (paragraphs 116-123 of the principal judgment).

10. The Court accepts the Government's argument that its award should be principally based on the difference between the market value of the applicant's land and that of the land which it received in compensation.

11. It was not disputed between the parties that the market value of the applicant's land used by the gardeners with a surface area of 2.5711 hectares had been approximately SKK 290 per square metre at the time of the transfer of its ownership. That estimate is in line with expert valuations available (paragraphs 37 and 38 of the principal judgment) and corresponds to EUR 9.63. In compensation for that land the applicant association received 1.4097 hectares of land. Two experts determined the market value of that land at the relevant time at SKK 110 and 95 per square metre respectively (see paragraphs 36 and 37 of the principal judgment). The Government accepted the latter valuation (equivalent to EUR 3.15) and the Court finds no reason for reaching a different conclusion in that respect.

12. 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 has considerable development potential which the land given to the applicant association does not possess (paragraph 125 of the principal judgment).

13. In view of the above considerations, the Court awards the applicant association the sum of EUR 200,000 in respect of pecuniary damage related to the transfer of ownership of its land.

b) As regards the compulsory letting of the land

14. In the principal judgment on the merits the Court further found 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 to peaceful enjoyment of its possessions (paragraphs 140-146).

15. The applicant submitted documents indicating that it had paid the real property tax in respect of the land prior to its transfer to the gardeners and argued that under the relevant law it had been liable to pay that tax.

16. The Government disagreed on that point and maintained that in the particular circumstances of the case the land tax had been payable by the tenants, i.e. the gardeners.

17. The Court notes that the above arguments are a prolongation of the parties' post-hearing submissions as to who had been liable to pay the land tax prior to the transfer of ownership of the applicant's land. In the principal judgment the Court admitted that the above issue might be relevant for its decision under Article 41 of the Convention, if appropriate (paragraph 145).

18. However, such is not the case since the applicant claimed no specific sum in respect of pecuniary damage resulting from the compulsory lease of its land. The Court is therefore not required to make any award.

2. Non-pecuniary damage

19. The applicant association claimed EUR 17,000 in respect of non-pecuniary damage indicating that that sum corresponded to EUR 250 in respect of each of its 68 members. Its representative relied on the fact that the members of the association had suffered emotional distress as a result of the proceedings in issue and the ultimate transfer of ownership of the land.

20. The Government objected to that amount as being excessive.

21. The Court has accepted that compensation for non-pecuniary damage can be awarded under Article 41 of the Convention, in justified cases, to legal persons such as, for example, commercial companies (see *Sovtransavto Holding v. Ukraine* (just satisfaction), no. 48553/99, §§ 79-80, 2 October 2003 or *Meltex Ltd and Mesrop Movsesyan v. Armenia*, no. 32283/04, § 105, 17 June 2008) or political parties (*Freedom and Democracy Party* (*ÖZDEP*) *v. Turkey* [GC], no. 23885/94, § 57, ECHR 1999-VIII).

22. It considers that the applicant association, through the intermediary of its members, suffered non-pecuniary damage both as a result of the compulsory lease of the land and the subsequent transfer of its ownership in conditions which were contrary to Article 1 of Protocol No. 1. Having regard to the particular circumstances of the case and deciding on an equitable basis, the Court considers it appropriate to award to the applicant association the sum of EUR 7,000 under this head.

B. Costs and expenses

23. The applicant claimed EUR 12,667 in respect of costs and expenses incurred in the context of the proceedings before the Court. That sum comprised the lawyers' fees (EUR 7,542), travelling, accommodation and subsistence costs relating to participation in the hearing in Strasbourg (EUR 3,797), the costs of opinions on the value of the property, their translation and the photographing of the allotment (a total of EUR 928), as well as various expenses related to communication with the Court (a total of EUR 400).

24. The Government objected to the lawyers' fees as being excessive. They further objected to the claim in respect of the opinions submitted by a private company at the applicant's request and the related expenses arguing that that company had no official authorisation to value real property. They considered irrelevant the applicant's argument that the individual experts who had prepared the opinions as employees of that company had the same qualification as the expert who at the Government's request had valued the property on 15 December 2006.

25. 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 (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

26. In the present case, regard being had to the information in its possession, the complexity of the case including the fact that an oral hearing was held on the merits and the above criteria, the Court considers it reasonable to award the applicant association the sum of EUR 12,000 for costs and expenses.

C. Default interest

27. 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. *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 200,000 (two hundred thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,

(iii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(c) 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;

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

Done in English, and notified in writing on 27 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President