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

STRASBOURG

27 November 2007

FINAL

02/06/2008

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 Urbárska obec Trenčianske Biskupice v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 9 January 2007 and on 6 November 2007,

Delivers the following judgment, which was adopted on the last-mentioned 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. The applicant association was represented by Mr Ján Drgonec, assisted by Mr Marko Polakovič, lawyers practising in Bratislava. The Government of the Slovak Republic ("the Government") were represented by Mrs Marica Pirošíková, their Agent.

3. The applicant alleged, in particular, that its rights under Article 1 of Protocol No. 1 had been violated as a result of the compulsory letting of its members' land and the subsequent transfer of that land to the tenants.

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

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 9 January 2007 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mrs Marica PIROŠÍKOVÁ, *Agent*,
Ms Miroslava BÁLINTOVÁ, *Legal Adviser*.

(b) *for the applicant*
Mr Ján DRGONEC, *Counsel*,
Mr Marko POLAKOVIČ, *Legal Adviser*,
Mr Ján KRÁTKY, *Vice-president of the applicant association*.
The Court heard addresses by Mr Drgonec and Mrs Pirošíková.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a registered association of landowners (*pozemkové spoločenstvo*). It is a legal person with its registered office in Trenčín. It was entered in the official register with effect from 30 December 1996. Mr K. Rehák, its president, lodged the application on the applicant's behalf.

A. Background information

7. Under the communist regime in Czechoslovakia owners of land were in most cases obliged to put their land at the disposal of State-owned or cooperative farms. They formally remained owners of the land but in practice had no possibility of availing themselves of the property.

8. Some of the land in question was, for various reasons, not cultivated by the farms. It was the State policy to promote the use of such land for gardening. For that purpose allotment gardens (*záhradkové osady*) were established, mainly in the vicinity of urban agglomerations. Individual plots of land were put at the disposal of persons belonging to the Slovakian Union of Allotment and Leisure Gardeners (*Slovenský zväz záhradkárov*), who were allowed to cultivate the land as a pastime activity for their individual needs.

9. In the context of Czechoslovakia's[1] transition to a market-oriented economy following the fall of the communist regime, Parliament adopted the Land Ownership Act 1991 (for further details concerning the relevant law and practice see point II below), the purpose of which was to mitigate certain wrongs and to improve the care of agricultural and forest land.

10. Under the Land Ownership Act 1991 the plots of land on which allotment gardens had been established were not to be restored *in natura* to the original owner where ownership of the land had passed from the original owners to the State or a legal person. In such cases the original owners were entitled to compensation in kind or in pecuniary form. In this category of

[1] The Slovak Republic has been one of the successors to the Czech and Slovak Federal Republic since 1 January 1993.

cases the legislator gave precedence to legal certainty for the existing users of the property, as the use of land for gardening was considered to be of greater public interest than restoring the land *in natura* to its original owners.

11. In the second category of cases, where the original owners maintained their ownership rights, albeit in name only (*nuda proprietas)*, the Land Ownership Act 1991 established conditions enabling the owners to enjoy their property rights to a greater extent. In particular, it provided for the land to be let to the existing users, with a notice period expiring on the date when the temporary right to use the land came to an end. The tenants were, however, entitled to have the lease extended by ten years unless an agreement to the contrary was reached between the parties. The landowners were also entitled to request, within three years of the coming into effect of the 1991 Act, the exchange of their property for a different plot of land owned by the State.

12. The above approach, permitting the owners to recover full possession of their land after the expiry of the ten years for which the tenants had the right to have the lease extended, was modified with the adoption of Act 64/1997. As a result, owners have only a limited possibility of terminating the lease, mainly on the grounds of the tenants' failure to comply with their obligations. The position of the tenants has been strengthened in that they are entitled to acquire ownership of the land they use for gardening. As to the owners, Act 64/1997 gives them the right to obtain either a different plot of land or pecuniary compensation.

13. In introducing Act 64/1997 the legislator abandoned the philosophy of giving general priority to the rights of the owners of plots of land on allotment sites and took the position that it was in the general interest that the rights of persons who had been using the land for gardening should prevail.

B. Particular circumstances of the applicant's case

14. The land owned by the predecessors of the members of the applicant association was put at the disposal of the agricultural cooperative in Trenčín-Soblahov. The owners' formal title to the land remained unaffected, but they had no possibility of using it in practice.

15. On 24 November 1980 the cooperative farm let the land, free of charge, to the Trenčín branch of the Slovakian Fruit and Gardening Association (*Slovenský ovocinársky a záhradkársky zväz*), as the Union of Gardeners was known at the time. The contract was to expire on 31 December 2000 unless the parties reached an agreement on its extension. The tenant was to return the land to the lessor in its original state on termination of the lease.

16. On 31 March 1982 the authorities approved the establishment of the "Váh" allotment gardens on the land in question, located in an industrial area on the outskirts of the town of Trenčín. The project envisaged the apportionment of 74 individual plots with a surface area of approximately 300 square metres on which garden huts with a surface area of 12 square metres would be built. Re-cultivation of the land and communal facilities such as a road and a parking area, water supply and a fence at the allotment site's boundaries were also planned.

17. The local branch of the gardening association subsequently concluded separate contracts with its members. Individual plots of land were thereby put at the latter's disposal until 31 December 1999. The gardeners obtained a permit to build huts. Unless the lease contract was extended before 30 June 1999, the huts were to be entirely removed by the gardeners.

18. In 1995 the present members of the applicant association inherited the title to the land where the Váh allotment gardens had been established.

19. On 12 May 1997 the applicant association submitted a draft rent contract to a representative of the gardening association. On 21 May 1997 the president of the Váh allotments rejected the proposal as being unacceptable. Reference was made to negotiations about a one-year contract under Act 64/1997 pending a decision on the ownership of the land.

20. Between 1998 and 2002 the Trenčín municipality charged the applicant 11,260.92 Slovakian korunas (SKK) a year in real property tax in respect of the land used by the gardeners. The tax was based on municipal regulations fixing the tax on gardens at SKK 0.44 per square metre.

21. The applicant submitted copies of bank statements indicating that the Slovakian Union of Allotment and Leisure Gardeners had paid to it, following the entry into force of Act 64/1997, SKK 8,762.40 as a yearly rent for the use of 29,208 square metres of land. That amount corresponds to SKK 0.3 per square metre.

22. The applicant association unsuccessfully attempted to recover possession of the land. For that purpose it offered to compensate the gardeners for their existing property attached to the land.

23. On 22 July 1998 the allotment gardeners initiated proceedings under Act 64/1997 with a view to having the ownership of the land transferred to them.

24. On 24 September 1999 the Trenčín District Office granted the request to start proceedings under Act 64/1997. The Trenčín Regional Office upheld this decision on 24 November 1999.

25. On 6 September 2000 the Trenčín Regional Court dismissed an action which the vice-president of the applicant association and several other persons had lodged against the above decision of the Regional Office. The Regional Court found that the statutory requirements for bringing proceedings under sections 7 et seq. of Act 64/1997 had been met.

26. On 30 November 2001 the District Office in Trenčín made public the consolidation project pursuant to section 13 of Act 64/1997. The president of the applicant association as well as all the other landowners whose address was known were notified of the project and informed that the data contained therein could be challenged within fifteen days.

27. The letter stated, in particular, that one part of the applicant's land (1.5665 hectares) had been valued at SKK 6.1 per square metre and the other part (1.0046 hectares) at SKK 6.9 per square metre. The major part of the land to be provided to the applicant in compensation was valued at SKK 9 per square metre. The valuation had been carried out in accordance with the relevant administrative regulation. It was based on the classification of the land and its quality at the time when the tenants had acquired the right to use the land.

28. Some of the allotment gardeners submitted their comments on the project. The authorities approved the project on 11 February 2002.

29. On 4 June 2002 a decision was issued to carry out the consolidation project. On 6 August 2002 the Regional Office in Trenčín dismissed the appeal lodged by the landowners.

30. The gardeners subsequently paid the purchase price for the 2.5711 hectares of the applicant's land to the Slovakian Land Fund. On 1 October 2002 the applicant association received 1.4097 hectares of different land in compensation. On 2 December 2002 the District Office in Trenčín approved the manner in which the consolidation project had been implemented. Its decision became final on 14 February 2003. On that day the ownership of the relevant plots of land passed formally to the persons involved.

31. The zoning plan in respect of the area in which the Váh allotments are situated was approved in 1999. It indicates that the whole area forms part of a "production and services zone". The zoning plan does not foresee that the land on the allotment site will be used for its current purpose in the future. At present an industrial park is in the process of being established in the vicinity of the allotments. The land within the allotment site has not been included in the project at this stage.

32. According to information in the land register, at least eight gardeners from the Váh allotments sold their plots to other persons between 2004 and 2006.

33. On 17 May 2005 the District Land Office in Trenčín, at the Government's request, explained that the Váh allotment gardens in Zlatovce were situated on land which, at the time of their establishment, had been derelict and had served as a municipal dump. The surface area of the applicant's land which fell under Act 64/1997 was 2.5711 hectares. The surface area of the land which the applicant had received in compensation was smaller as it was arable land of higher quality and value. The document further indicated that the value of the applicant's land taken into account in

the consolidation proceedings had been the value on the date when the allotments were established. The same regulation relating to the value of real property for administrative purposes had been applied in valuing the substitute land.

34. In 2005 one of the representatives of the applicant association sold to a company a plot of land in the vicinity of the Váh allotments for SKK 380 per square metre. Prior to the sale, an expert had valued the land at SKK 288. On 10 January 2007, the same company offered to buy different plots belonging to the applicant association in the area for SKK 380 per square metre.

35. In August 2005, at the Government's request, an expert established the value on 1 October 2002 of both the land on the allotment site and the land which the applicant association had received in compensation. The expert calculated the value for general purposes of the land on the allotment site at SKK 1,166.40 per square metre. The location of the land in an industrial zone increased its value considerably according to the opinion.

36. The same expert assessed the general value of the other plot of land at SKK 110.16 per square metre. The opinion stated that the substitute plot of land was situated between a motorway and a slip road and that a high-voltage line was erected above it. As a result, multiple restrictions applied to the use of the plot. No construction activity was envisaged in the area.

37. On 15 December 2006 a different expert, at the Government's request, established the value in 1982 of the applicant's land at SKK 257,100, or approximately SKK 10 per square metre. The expert calculated the value of the land on 14 February 2003 at SKK 7.71 million, that is, approximately SKK 300 per square metre. The gardeners' investments (huts, fence, wells, permanent vegetation, etc.) were tentatively valued at SKK 241 per square metre of land in 2003. The general value of the land including the gardeners' investments was thus SKK 541 per square metre. Finally, the expert assessed the general value in 2003 of the arable land which the applicant association had obtained in compensation at SKK 95 per square metre.

38. On 21 December 2006, at the applicant's request, a private company assessed the value on 23 May 2002 of the applicant's land on the allotment site at SKK 7.6 million. That sum corresponds to approximately SKK 295 per square metre. In a document dated 16 January 2007, at the applicant's request, the company in question submitted comments on the above opinion of 15 December 2006. The view was expressed that the expert's conclusion was probably not in line with local market prices. Plots of land similar to those used by the gardeners, including gardeners' investments, were most frequently sold for between SKK 250 and 300 per square metre, whereas free plots of land outside allotments were being sold at SKK 350-380 per square metre in that area. The use of the land by gardeners had rather a

negative impact on its general value. Land in the area in question could be let out for at least SKK 20 per square metre yearly, its value for general purposes being between SKK 280 and 300 per square metre.

39. In a letter addressed to the Government's Agent on 14 March 2007, the Institute of Forensic Engineering in Žilina, having examined the comments submitted by the above private company, expressed the view that the expert who had submitted the opinion on 15 December 2006 had proceeded in accordance with the relevant law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Land Ownership Act 1991 (Act 229/1991 Coll.)

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

41. Section 19(1) provides that the purpose of land consolidation within specific areas is to establish integral economic units, in accordance with the needs of individual landowners and with their consent, in line with public needs as regards creation of the landscape, the environment and investment activities.

42. Paragraph 2 of section 22 provides that, as of the 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.

43. 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. The tenants had the right of pre-emption should the owner decide to sell the land.

44. Section 22(4) entitled the owners of land used by allotment gardeners to request, within three years of the entry into force of the Act, exchange of the land for a different plot of land owned by the State. The land to be proposed in exchange had to correspond, as regards both size and quality, to the original land and it was to be situated, where possible, in the same area.

B. The Land Consolidation Act 1991 (Act 330/91 Coll.)

45. The Land Consolidation Act 1991 (*Zákon o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách*) entered into force on 19 August 1991.

46. Section 1 provides that land consolidation consists of the rational arrangement of land ownership in a specific area in accordance with the requirements of the protection of the environment and the creation of ecologically stable territorial systems, the functions of agricultural land and economic and production criteria applicable to modern agriculture and forestry.

47. Under section 2(a), land consolidation pursues the aim, *inter alia*, of resolving issues and eliminating obstacles related to ownership and possession/occupancy of land which arose as a result of historical developments prior to the entry into force of the Act.

48. Section 29(1) provides for the possibility of transferring the ownership of land on allotment sites to the tenants, subject to compensation of the landowners.

C. Act 64/1997 Coll.

49. Act 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 vyporiadaní 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.

50. The government explanatory report of 10 December 1996 which was submitted to Parliament together with the draft Act indicates that some 5,700 hectares of land (approximately 0.22 per cent of all agricultural land in Slovakia) were used by 100,000 individual gardeners on 987 allotment sites at that time. Gardening served as relaxation and provided a partial supply of fruit and vegetables to at least 700,000 town dwellers in Slovakia.

51. According to the report, there was a public interest in land consolidation in Slovakia. In that context, it was in the general interest to transfer the ownership of land in allotment gardens to the existing tenants as it would provide greater legal certainty for both the gardeners and the owners.

52. The tenants would obtain ownership of the land which they used and would not risk losing the surplus value which they had added to the land through their work and investments. As to the owners, they were likely to continue to have their rights to avail themselves of the property restricted

for a considerable period of time; the allocation of appropriate alternative plots of land to them would resolve that problem. According to the explanatory report, compensation based on the surface area and quality of the land at the time when the owner had lost the possibility of using the land was appropriate. Pecuniary compensation was to be paid in exceptional cases only where the owner either asked for it or refused compensation *in natura*.

53. Under section 1(1), the aims of the Act are (i) regulation of the use of allotment land and (ii) definition of the procedure to be followed with a view to land consolidation on allotment sites under a special law (reference is made to section 29(1) of the Land Consolidation Act 1991).

54. Section 3(1) of Act 64/1997 provides that, unless the owner of the land and the gardeners concluded a tenancy agreement earlier under a special regulation, a tenancy comes into being between them as of the moment when the Act takes effect.

55. Paragraph 2 of section 3 enumerates the conditions under which the owner of the land is entitled to terminate the tenancy. Such entitlement is limited to cases where the tenant (i) is not using the land with due care, (ii) has constructed a building on the plot without a permit, (iii) has sub-let the land to a third person without the owner's consent or (iv) has failed to pay the rent, despite a prior warning, by 30 August following the year for which the rent is due. An owner who puts an end to a lease is obliged to compensate the tenant for buildings and permanent vegetation as well as for the tenant's share in the equipment jointly used by the gardeners within the allotments (section 3(3)).

56. Pursuant to section 4(1), 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. This provision does not affect the amount of rent which owners and tenants may have agreed under a special law at an earlier date.

57. The main purpose of Act 64/1997 is to permit the transfer of ownership of the land to tenants of allotments where the majority of tenants so request and where the owners have refused to sell the land at a price not below the level of compensation provided for under section 11. In such cases proceedings are brought, in the course of which a preliminary inventory of the land is prepared. The inventory can be challenged within thirty days of its publication. Once the proceedings have started, the competent district office invites the Slovakian Land Fund to select State-owned plots of lands to be offered as compensation to the owners of the land situated on the allotment sites (sections 7 and 8).

58. Section 10(1) provides that, prior to approval of such a land consolidation project, the district office involved has to ask the owners to inform it, within 60 days, whether they wish to be allocated a different plot

of land of corresponding surface and quality in the same area or to receive financial compensation for their land. Where the allotments are situated in a built-up area of a municipality, the owner can claim a different plot of land in a comparable area. Where the owners do not indicate their preference within 60 days, they are to receive financial compensation (section 10(3)).

59. Section 11 governs financial compensation for plots of land situated in allotments. It is to be determined on the basis of the quality and nature of the land at the time when the gardeners' right to use it was established. Section 11 further provides for an increase or decrease in compensation according to the location of the land and possible restrictions on its use.

60. A consolidation project comprises, *inter alia*, a recapitulation of the proceedings, a list of tenants with indication of the land they use and its value, a list of owners who have requested financial compensation and its amount and a proposal as regards the situation of the substitute land to be provided to the owners (section 12).

61. Under section 13, the district office must publish the consolidation project under the Act and notify the persons concerned thereof. If no objections are filed, the district office must approve the project. If the district office dismisses objections to the data included in the project, a regional administrative authority must re-examine them. Decisions on approval of land consolidation projects can be reviewed by an administrative court.

62. Sections 15-17 govern the implementation of land consolidation projects which have been approved. Under section 17(2), the entry in the land register must indicate that the new owner of the land on the allotment site is obliged to use it for the same purpose as previously until a different use has been approved.

63. Section 17(3) provided that, where the tenants did not pay the compensation due, the ownership of the land was transferred to the Slovakian Land Fund. The latter could not use the land but could let it to the person who used it. This provision ceased to have effect after the Constitutional Court declared it contrary to the Constitution.

D. Regulation 465/1991 of the Ministry of Finance

64. 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 and replaced by regulations on the determination of the general value of real property.

65. Section 15(5-7) provides that the price of plots of land registered as arable land, orchards, vineyards, meadows or pastures is to be fixed in accordance with Annex 8 to the Regulation. In the case of meadows and

pastures the price is 0.75 per cent 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. The Real Property Tax Act 1992 (Act 317/1992 Coll.)

66. Pursuant to section 2(1), real property tax is payable by the owner as entered in the land register. Where the owner has let another person use the land, the tenant is obliged to pay the tax where the lease has lasted or is to last five years at least, and subject to the registration of the tenant in the land register.

F. Practice of the Constitutional Court

1. Judgment PL. ÚS 17/00

67. Thirty-five members of Parliament and the Prosecutor General brought proceedings before the Constitutional Court claiming that several provisions of Act 64/1997 were contrary to the Constitution and Article 1 of Protocol No. 1. In particular, the members of Parliament relied on the Court's case-law (*James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 54, and *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, §§ 69 and 73), arguing that there existed no genuine public interest in the interference with the landowners' rights and that the compensation which the landowners were to receive under the relevant provisions of Act 64/1997 was not appropriate.

68. Both petitions were examined jointly at a plenary meeting of the Constitutional Court.

69. On 30 May 2001 the Constitutional Court concluded that section 17(3) of Act 64/1997 was contrary to, *inter alia*, the constitutional protection of ownership rights. It dismissed the remainder of the submissions.

70. The Constitutional Court noted that the regulation of relations in respect of land used for gardening in allotments mainly concerned, as in the case of restitution laws, the undoing or mitigation of the wrongs which had occurred in the past when the principle of the rule of law had not been respected. The legislator had a certain margin of appreciation when deciding on the relevant issues, provided the constitutional guarantees were upheld.

71. With regard to the compulsory letting of the land to the gardeners under section 3 of Act 64/1997, it was merely a temporary measure pending the transfer of its ownership to the gardeners in accordance with the provision of that Act. It pursued the aim of providing the users with legal certainty and of ensuring optimal use of the land in question with due regard

to the requirements of the landscape and the environment. It was as such in the public interest. The measure was limited in duration and it was not disproportionate as it filled the gap which arose following the quashing of section 22(3) of the Land Ownership Act 1991. Parliament, by obliging the owners to let the land to the gardeners, had not overstepped its margin of appreciation and had struck a fair balance between the general interest and the protection of individuals' rights. Section 3 was therefore not contrary to Article 1 of Protocol No. 1 to the Convention or its constitutional equivalent.

72. As to the argument that the rent payable under section 4 of Act 64/1997 was disproportionately low, the Constitutional Court held that Article 1 of Protocol No. 1 imposed on the Contracting Parties to the Convention no specific obligations as regards compensation for the use of property in the general interest. There was no appearance that the relevant provision was unconstitutional.

73. The plaintiffs also argued that the transfer of ownership of the land to the gardeners under sections 7 et seq. of Act 64/1997 was not in the general interest as it restricted the rights of the owners to the benefit of a different group of individuals without any relevant justification.

74. In the Constitutional Court's view, that transfer of ownership was to be seen in the broader context of land consolidation, the purpose of which was set out in section 19 of the Land Ownership Act 1991 and in section 2(a) of the Land Consolidation Act 1991. Consolidation pursued the aim of setting up integrated land entities in accordance with the needs of individual owners, with their consent, and with due regard to general requirements as regards the creation of the landscape, the environment and investment development. Land consolidation was also justified with a view to adjusting the existing relations between owners and users and eliminating any obstacles which had arisen as a result of past developments. Sections 7 et seq. of Act 64/1997 in no way affected the above general interest in land consolidation.

75. The plaintiffs further alleged that the compensation for land under section 11 of Act 64/1997 was inappropriate as it was substantially lower than the market value of the land.

76. The Constitutional Court noted that the owners had the choice between alternative plots of land and financial compensation. The gardeners could not be held liable and they should not be penalised for the fact that the owners had been deprived of the possibility of enjoying their property under a regime which had disregarded democratic principles. Furthermore, the users, by cultivating the land, had substantially increased its value. The Constitutional Court therefore accepted as just the relevant provisions under which compensation to the owners should be based on the value of the property at the time when the gardeners had started using it. The

compensation under Act 64/1997 was therefore appropriate and compatible with the requirements of Article 1 of Protocol No. 1.

77. Finally, the Constitutional Court found that section 17(3) of Act 64/1997 was unconstitutional as there was no justifiable public interest in transferring ownership of land to the State in cases where the user had failed to pay the amount due.

78. In a separate opinion three judges stated that the compulsory letting under section 3 of Act 64/1997 was unconstitutional and that the compensation payable under section 11 was not appropriate as it was based on the value of the property at the time when the gardeners had acquired the right to use the land.

79. The dissenting judges expressed the view that the parties to proceedings under Act 64/1997 were in an unequal position. In particular, the applicable law did not permit the administrative authorities or courts called upon to review their decisions to balance the interests of the persons involved, assess whether the transfer of ownership was justified in the particular circumstances of the case or examine the question whether the compensation provided to the owner was appropriate.

2. Other relevant practice

80. In accordance with its established practice, the Constitutional Court 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, I. ÚS 96/93, decision of 16 November 1993; II. ÚS 806/00, decision of 16 November 2000; II. ÚS 19/2001, decision of 22 March 2001; or IV. ÚS 11/04, decision of 22 January 2004). Such proceedings can be brought only by the persons enumerated in Article 130 § 1 of the Constitution including, *inter alia*, one-fifth of the members of Parliament and the Prosecutor General.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Exhaustion of domestic remedies

81. The Government objected, as they did at the admissibility stage, that it had been open to the applicant to raise an objection to the consolidation project arguing that the value of the land which it was to receive in compensation was disproportionately low. If the administrative authorities had dismissed the objection, the applicant could have sought a judicial

review of their decisions. Similarly, the applicant could have challenged before a court the administrative decision of 11 February 2002 on approval of the consolidation project. Ultimately, the applicant could have sought redress in that respect before the Constitutional Court by means of a complaint under Article 127 of the Constitution. It could not be excluded that either the ordinary courts or the Constitutional Court might conclude that, given the increase in value of the land due to the plans to establish an industrial zone in the area, the implementation of Act 64/1997 in the present case had violated the applicant's fundamental rights.

82. Finally, the Government drew the Court's attention to the fact that the persons who had initiated the proceedings leading to the Constitutional Court's judgment of 30 May 2001 had not claimed that section 10 of Act 64/1997 was contrary to the Constitution. The Constitutional Court had therefore not examined the conformity with the Constitution of that provision.

83. The applicant association maintained that it could not have obtained redress by means of the remedies referred to by the Government. An ordinary court could only determine whether the administrative authorities involved had correctly applied the law, namely Act 64/1997. However, it could not determine the issue of which the applicant association complained before the Court, namely whether the effects of the application of the relevant law were compatible with its rights under Article 1 of Protocol No. 1. With reference to the practice of the Constitutional Court, the applicant association submitted that natural or legal persons lacked standing to initiate constitutional proceedings in which the conformity of a law with the Constitution was to be determined as a preliminary issue.

84. The applicant further argued that the alleged violation of Article 1 of Protocol No. 1 stemmed directly from the provisions of Act 64/1997. In particular, the alleged harm resulted from the fact that the compensation for the land of the applicant's members had been determined in accordance with the provisions of the law.

85. In its decision on the admissibility of the application the Court took the following view as regards the Government's objection:

> "The Court notes that the applicant association has not argued that the domestic authorities incorrectly applied the relevant law. It accepts that the applicant association did not have at its disposal a directly accessible remedy permitting it to have a determination on whether or not the effects of the application of that law were contrary to its rights under Article 1 of Protocol No. 1. Furthermore, the arguments made by the ... applicant [association] were raised before the Constitutional Court in the context of different proceedings, and in its finding PL. ÚS 17/00 of 30 May 2001 the Constitutional Court found that the relevant provisions of Act 64/1997 did not run counter to the land owners' right to peaceful enjoyment of their possessions. In these circumstances, the Government's objection relating to non-exhaustion of domestic remedies must be dismissed."

86. In view of the documents available, the Court finds no reason for reaching a different conclusion at the present stage of the proceedings. In particular, it has not been established with a sufficient degree of certainty that ordinary courts called upon to review the relevant administrative decisions were likely to review issues other than the correct implementation of the relevant law, which the applicant association does not contest (see also paragraph 79 above).

87. The Court further notes that, on 30 May 2001, the Constitutional Court at a plenary meeting held that Act 64/1997 did not produce effects running counter to the constitutional protection of the ownership rights of landowners. In doing so it addressed issues which are relevant for determination of the present application. The fact that section 10 of Act 64/1997 was not among the provisions which were specifically challenged by those who initiated the proceedings before the Constitutional Court cannot affect that position.

88. The Court is not persuaded that the Constitutional Court or the ordinary courts were likely to reach a different conclusion on those issues in proceedings which the applicant might have initiated subsequently. More importantly, the Court finds relevant the applicant's argument according to which, in line with its established practice, the Constitutional Court has consistently refused to examine individuals' complaints where the conformity of a law with the Constitution is to be determined as a preliminary question.

89. This objection must therefore be dismissed.

B. Compliance with the six-month time-limit

90. The Government further objected that, to the extent that the alleged violation of the applicant's rights had resulted directly from the relevant provisions of Act 64/1997, the application should be rejected as having been lodged outside the time-limit of six months laid down in Article 35 § 1 of the Convention. In their view, that time-limit had started running when Act 64/1997 had become operative on 26 March 1997.

91. The applicant disagreed.

92. The Court notes that the administrative authorities decided on the implementation of the consolidation project in issue on 4 June 2002 and 6 August 2002. Subsequently the gardeners paid the purchase price and the applicant association received land in compensation. The District Court formally approved the manner in which the transfer of ownership had been carried out by a decision given on 2 December 2002 which became final on 14 February 2003. It is on the latter date that the applicant association became definitely aware of the repercussions of the application of sections 7 et seq. of Act 64/1997 to its case. As the application was lodged on 7 September 2001, this part of it cannot be rejected as having been lodged

outside the six-month time-limit (see *Danov v. Bulgaria,* no. 56796/00, § 56, 26 October 2006, and *Myroshnychenko v. Ukraine* (dec.), no. 10250/04, 3 April 2007, with further references).

93. The compulsory letting of the applicant's land was established *ex lege* under section 3(1) of Act 64/1997. It lasted until the transfer of ownership of the land to the gardeners on 14 February 2003. The applicant's complaint about the compulsory letting of its land relates to a continuing situation. Accordingly, the time-limit of six months laid down in Article 35 § 1 of the Convention could not start running before the termination of the lease (see *Danov*, cited above, § 57, and, by converse implication, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). As the application was lodged prior to termination of the lease, this part of it cannot be declared inadmissible as having been lodged out of time either.

94. It follows that the Government's objection must be dismissed.

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

95. The applicant complained that the compulsory letting of its members' land and the subsequent transfer of the land to the tenants had been 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."

A. As regards the transfer of ownership of the land

1. Arguments of the parties

(a) The applicant association

96. The applicant contended that the transfer of ownership complained of amounted to a deprivation of possessions within the meaning of the second sentence of Article 1 of Protocol No. 1. The interference had not been necessary in the public interest and an excessive individual burden had been imposed on the applicant.

97. The reasons for the transfer of ownership of the applicant's land indicated in the explanatory report to Act 64/1997 were not relevant in the applicant's view. In particular, the argument that the transfer would

reinforce the legal certainty of the owners of the land was inappropriate to justify the interference.

98. Persons engaged in individual gardening in allotment gardens represented 1.85 per cent of Slovakia's population, and 0.22 per cent of cultivated agricultural land in Slovakia was thus used. Those figures indicated that the importance of individual gardening was not substantial from the point of view of land cultivation or production of fruit and vegetables. In any event, the gardeners, including those who acquired the applicant's land, were not persons in need and they did not depend on cultivation of the allotment land for ensuring their subsistence. The owners of the land would probably have used the land for the same purpose if they had been able to recover its possession on expiry of the lease, as they had legitimately expected.

99. The compensation provided to the applicant was disproportionately low. It was based on the value of the land at the time when the allotment gardens had been established in 1982. That value had been determined, in accordance with a regulation, at SKK 9 per square metre, without regard to its actual market value which had been around SKK 290 per square metre at the time of the interference. Entirely different political and economic situations had existed when the allotments were established and at the time of the interference. It was therefore not appropriate to base the compensation on the value of the applicant's land in 1982. No account had been taken of the rate of inflation.

100. The land in the allotment gardens had become an investment asset with considerable development potential due to its location within the agglomeration of Trenčín and the establishment of an industrial park in its vicinity. Its value was likely to grow. It could not be ruled out that the land might be purchased for the purpose of extension of the industrial park.

101. As to the land which the applicant association had received in compensation, it was agricultural land situated in the vicinity of a motorway. Several restrictions applied to its use and it did not possess development potential comparable to that of the applicant's land in the allotment gardens.

102. Finally, the applicant challenged the conclusions reached by the experts who had submitted the above reports at the Government's request. The assessment of the increase in the value of the property attributable to the gardeners was unsubstantiated and overstated, in particular as regards the gardeners' property such as the huts or the watering system. In response to the Government's objection, the applicant argued that the three experts employed by the company which had submitted a valuation of the land at its request possessed the required qualifications.

(b) The Government

103. The Government argued that the transfer of ownership of the applicant's land had been carried out in the context of land consolidation, the general purpose of which had been, in accordance with sections 1 and 2 of the Land Consolidation Act 1991, a rational arrangement of land ownership in accordance with the requirements of the protection of the environment and the creation of ecologically stable territorial systems. It had been aimed at resolving issues and eliminating obstacles related to ownership and possession/occupancy of land which had arisen as a result of historical developments.

104. In introducing Act 64/1997 in the above context the legislator had pursued the aim of bringing the ownership of land in allotment gardens into line with that of the property built or planted on it. The transfer in issue had been in the public interest in bringing to an end the state of uncertainty of those involved. It had thus promoted legal certainty and ensured optimal use of the land in accordance with the requirements relating to creation of the landscape and protection of the environment. Preference was given to mutual agreement between owners and tenants as regards the future ownership of the land. Act 64/1997 provided for compulsory transfer of ownership to tenants, in circumstances set out therein, only where no agreement had been reached between those involved.

105. The legislator had accepted that in proceedings under Act 64/1997 the rights of individual gardeners should prevail over those of the owners, as the former had cultivated land which had originally been derelict. In the present case, in particular, the land had originally served as a municipal dump and the gardeners had re-cultivated it at their own expense. The gardeners had become attached to the land, whereas the owners had *de facto* been unable to use it for many years.

106. The value of the land for the purpose of proceedings under Act 64/1997 had been determined with reference to the date when it had been put at the disposal of the individual gardeners. It was justified by the fact that the gardeners had increased the quality of the land by cultivating it, by planting permanent vegetation and by constructing huts and various related facilities.

107. As to the compensation awarded to the applicant, the current market value of the land was irrelevant for its determination. The owners had lost the possibility of using the land many years ago when its value had been considerably lower. That interference could not be imputed to the gardeners and it would be inappropriate to request the latter to compensate the owners in that respect.

108. The location in a protected zone of the land which the applicant had received in compensation and the fact that no construction was envisaged in the area admittedly had a negative impact on its market value. This should,

however, not be taken into account as these were factors beyond the control of the persons involved.

109. With regard to the proportionality of the interference, the Government also argued, with reference to the above expert opinions, that the market value of the applicant's land at the time of its transfer to the gardeners had been around SKK 290-300 per square metre. An expert had valued the gardeners' investments such as huts, wells, vegetation and other facilities at SKK 241 per square metre, which was almost the same amount as the market value of the land itself. If the owners were to regain possession of the land and compensate the gardeners for their property at its market price, their net profit would amount to the difference between the market value of the land and the compensation payable to the gardeners, that is, approximately SKK 49-58 per square metre. However, in the expert opinions submitted in August 2005 and on 15 December 2006 the market value of the land which the applicant had received in compensation had been established at SKK 110 and 95 respectively. Hence, the actual value of the land which the applicant had obtained in compensation was double the net profit which the applicant was likely to realise if its original land was sold at its market price after reimbursement of the gardeners' investments.

110. When considering the different expert opinions submitted in the case, regard should be had to the fact that different indexes had been applied. Hence, the expert who had valued the land at SKK 1,166.40 per square metre in August 2005 had taken account of the establishment of an industrial park on the allotment land. Although plans to that effect existed, no formal decision had been taken yet. The Government submitted that that particular opinion should therefore be disregarded.

111. The Government concluded that the compensation obtained by the applicant was not disproportionately low in the circumstances.

2. The Court's assessment

(a) The relevant principles

112. Article 1 of Protocol No. 1 requires that a deprivation of property for the purposes of its second sentence must comply with the principle of lawfulness, be in the public interest and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, for example, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005).

113. The notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and will respect the legislature's judgment as to what is "in the public interest" unless

that judgment is manifestly without reasonable foundation. This necessarily applies, and perhaps to a greater extent, in the event of changes to a country's political system (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 67, ECHR 2002-IX, with further references). A taking of property effected in pursuance of legitimate social, economic or other policies may be "in the public interest" even if the community at large has no direct use or enjoyment of the property taken (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 45).

114. A "fair balance" must be struck between the demands of the public or general interest of the community and the requirements of the protection of the individual's fundamental rights. Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicants.

115. While it is true that in many cases of lawful expropriation only full compensation can be regarded as reasonably related to the value of the property, Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances. Legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value. Less than full compensation may also be necessary *a fortiori* where property is taken for the purposes of fundamental changes of a country's constitutional system or in the context of a change of political and economic regime. A total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see the exhaustive outline of the Court's case-law on this issue in *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 95-98, ECHR 2006-..., with further references).

(b) Application of the relevant principles to the present case

116. In the case under consideration the ownership of the land of the applicant association was transferred to the tenants. As a result, the applicant was deprived of its possessions within the meaning of the second sentence of Article 1 of Protocol No. 1. This has not been disputed between the parties.

117. The transfer of ownership of the applicant's land was carried out in the context of proceedings under sections 7 et seq. of Act 64/1997. The applicant did not object and the documents available do not indicate that the domestic authorities proceeded contrary to the relevant provisions of that Act. The interference was therefore "subject to the conditions provided for by law" as required by the second sentence of Article 1 of Protocol No. 1.

118. Act 64/1997 was adopted in the context of a broader reform aimed at consolidation of the ownership and use of agricultural land after the country's transition to a democratic society and a market-oriented economy.

In particular, consolidation pursues the aim of a rational arrangement of land ownership in accordance with the need for protection of the environment and the creation of stable ecological systems. The settlement of issues related to ownership and possession/occupancy of land which arose as a result of historical developments is one of its purposes (see sections 1 and 2(a) of the Land Consolidation Act 1991).

119. As regards agricultural land situated in allotment gardens, in introducing Act 64/1997 the legislator took the position that it was in the general interest that the rights of the persons using the land for gardening should prevail. Particular emphasis was laid on the fact that through their work and investments those persons had considerably increased the value of the land.

120. The Court finds pertinent several of the applicant's arguments as regards the declared public interest in transferring ownership of the land to the tenants. Notwithstanding, it accepts that in pursuit of its economic and social policies the respondent State was entitled to protect in a certain way the interests of individual gardeners using land on allotment sites. Considering the wide margin of appreciation which the Contracting States enjoy in similar matters, the interference with the applicant's rights to peaceful enjoyment of its possessions cannot be said to have been manifestly without reasonable foundation. The transfer of ownership complained of was therefore “in the public interest” within the meaning of the second sentence of Article 1 of Protocol No. 1.

121. It remains to be determined whether a reasonable relationship of proportionality existed between the means employed and the aim sought to be realised.

122. Pursuant to section 11 of Act 64/1997, the compensation payable for plots of land situated in allotments is to be determined on the basis of the quality and classification of the land at the time when the gardeners' right to use it was established. The owners of the land have the choice between financial compensation thus determined or the allocation of a different plot of land of corresponding surface area and quality (section 10(1) of Act 64/1997).

123. Both the value of the applicant's property in 1982 and the value of the land which it obtained in compensation in 2002 were established pursuant to a regulation which disregarded the actual value of the land at the latter time. In this respect the Court attaches importance to the fact that the value of real property increased significantly in Slovakia following the fall of the communist regime and the establishment of a market-oriented economy from the beginning of the 1990s.

124. The documents available indicate that the market value of the applicant's land transferred to the gardeners was between SKK 295 and 300 per square metre at the time of the transfer (see paragraphs 37 and 38 above). For the purpose of proceedings under Act 64/1997 the same land

was valued at between SKK 6.1 and 6.9 at the time when the gardeners' tenancy was established in 1982 (see paragraph 27 above). That sum corresponds to less than three per cent of the market value of the property in 2002. The latter valuation served as a basis for selection of the land which the applicant association was to receive in compensation pursuant to section 10(1) of Act 64/1997. In 2006 an expert established the value of the applicant's land, in 1982, at SKK 10 per square metre (see paragraph 37 above).

125. It appears that for general purposes the value of the land which the applicant association received is higher than the value determined pursuant to the relevant regulation. Two expert opinions of 2005 and 2006 determined the general value of that land at SKK 110 and 95 per square metre respectively (see paragraphs 36 and 37 above). Those sums correspond to approximately one-third of the general value of the land which was transferred to the gardeners. Furthermore, the applicant 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 notes that the land transferred to the tenants has considerable development potential which the land given to the applicant does not possess.

126. In these circumstances, the question arises whether a fair balance has been struck between the different interests at stake. While it is true that Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances, the Court takes the view that 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. A sliding scale should be applied in this respect, balancing the scope and degree of importance of the public interest against the nature and amount of compensation provided to the persons concerned.

127. In the present case the ideology and practice of the totalitarian regime existing in Czechoslovakia until 1989 had prevented the landowners – members of the applicant association or their predecessors – from using their property for decades. Following the enactment of the Land Ownership Act 1991 they were entitled to recover its full possession after expiry of the compulsory lease. However, the legislator changed the position by introducing Act 64/1997. As a result, priority was given to the rights of the tenants in that they were permitted if they so wished to obtain ownership of the land they used in the allotment gardens.

128. As to the argument that the value of the land in the allotments was increased as a result of the work and investment of the tenants, the Court considers that this was counterbalanced to a certain extent by the fact that the tenants could derive benefit from land which they did not own for a considerable period of time.

129. It is also relevant that, initially, the land was put at the disposal of the gardeners temporarily and free of charge. This follows from the lease contract of 24 November 1980, according to which the land of the applicant's members was to be returned to the lessor, in its original state, on 31 December 2000 unless the lease had been extended (see paragraph 15 above). It was only in the 1990s, after the country's transition to a market-oriented economy, that the legislation changed and obliged the gardeners to pay a rent to the owners and the owners to compensate the gardeners for their property situated on the land in the event of termination of the lease.

130. As to the Government's argument that the compensation payable for the gardeners' investments would decrease the sum which the applicants would obtain if they decided to sell their property subsequently, the Court takes note of the applicant's arguments challenging the actual value of the gardeners' property. More importantly, section 10(1) of Act 64/1997 permits the landowners to choose between pecuniary compensation and allocation of a different plot of land. The above argument of the respondent Government might have a bearing on the landowners' choice between the two options, but it cannot serve as an explanation why the compensation under Act 64/1997 should differ substantially from the general value of the land transferred to the gardeners.

131. Only 0.22 per cent of the agricultural land in Slovakia has been affected by consolidation under Act 64/1997. There is no indication that, in general, persons using land in allotment gardens belong to a socially weak or particularly vulnerable part of the population. As to the argument that the consolidation of ownership would reinforce legal certainty, that goal would undoubtedly be attained to a greater extent if the market value of the land in allotment gardens were taken into account when determining the compensation payable.

132. In view of the above considerations, the Court is not persuaded that the declared public interest in pursuing proceedings under Act 64/1997 was 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 Act 64/1997 to the present case thus failed to strike a fair balance between the interests at stake. As a consequence, the applicant association had to bear a disproportionate burden contrary to its right to peaceful enjoyment of its possessions.

133. There has, therefore, been a violation of Article 1 of Protocol No. 1 on account of the deprivation of the applicant association's property.

B. As regards the compulsory letting of the land

1. Arguments of the parties

(a) The applicant association

134. The applicant submitted that the yearly rent which the gardeners had paid under the relevant provisions of Act 64/1997 was lower than the real property tax payable in respect of the land. The interference complained of had therefore imposed a disproportionate burden on it.

135. With reference to the particular circumstances of the case the applicant association contested the Government's argument according to which the land tax should have been paid by the tenants. Firstly, the wording of section 2(1) of the Real Property Tax Act 1992 implied that real property tax was payable by the tenant only where the owner of the land had let it to the former of his own free will. Secondly, that provision required that the tenancy had lasted or was to last for five years as a minimum. Those conditions had not been met in the present case.

(b) The Government

136. The Government admitted that the compulsory letting of the land under sections 3 et seq. of Act 64/1997 constituted interference with the applicant's rights under Article 1 of Protocol No. 1.

137. Its purpose had been to ensure respect for the interests of the owners and gardeners pending a final settlement of the legal relations in respect of land in allotment gardens in proceedings under Act 64/1997. The interference had lasted for a limited period of time only. Compulsory letting under Act 64/1997 applied only to cases where the owners and tenants had not reached a different arrangement. With reference to the conclusions of the Constitutional Court and the Court's practice, the Government argued that a fair balance had been struck between the general interest and the rights of the landowners.

138. With reference to the applicant's case in particular, the Government also argued that under the Real Property Tax Act 1992 the land tax was payable by the tenants, contrary to what the applicant alleged. In any event, the applicant association had not shown that it had actually paid the tax charged by the municipality.

2. The Court's assessment

(a) Recapitulation of the relevant principles

139. Article 1 of Protocol No. 1 in its second paragraph reserves to the Contracting States the right to enact and enforce such laws as they deem necessary to control the use of property in accordance with the general interest. Such interference with the right of property must pursue, on the

facts as well as in principle, a "legitimate aim" in the "general interest". There must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised. In other words, the Court must determine whether a fair balance has been struck between the demands of the general interest and the interest of the individuals concerned. In determining whether a fair balance exists, the Court recognises that the State enjoys a wide margin of appreciation (for recapitulation of the relevant principles see, for example, *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 164-168, ECHR 2006-..., and *J.A. PYE (Oxford) Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-....).

(b) Application of the relevant principles to the present case

140. The Court notes, and it has not been disputed between the parties, that the compulsory letting of the applicant's land amounted to a control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, stemming directly from sections 3 and 4 of Act 64/1997. Its purpose was to lay down the conditions under which the gardeners were entitled to use the land and the amount of rent payable in cases where those issues were not governed by an earlier agreement or regulation. The interference therefore undoubtedly contributed to the legal certainty of the persons concerned. It was limited in duration pending the outcome of proceedings concerning the consolidation of ownership which the tenants were entitled to bring under Act 64/1997. The Court sees no reason to doubt that the interference pursued a "legitimate aim" in the "general interest".

141. The only point at issue is whether or not a fair balance was struck between the demands of the general interest and the interests of the applicant association.

142. Pursuant to section 4(1) of Act 64/1997, the rent payable yearly for the use of land in allotment gardens was ten per cent of its value, as established under sections 15(5-7) of Regulation 465/1991, as amended, the minimum amount being SKK 0.3 per square metre.

143. The documents submitted indicate that the rent which the gardeners in the Váh allotments paid to the applicant association had been calculated on the basis of that minimum amount, namely SKK 0.3 per square metre. During that period the Trenčín municipality charged SKK 0.44 per square metre yearly as tax on land used for gardening. This fact alone is indicative of the particularly low compensation which the applicant association received for letting out its land to the gardeners. In addition, in the opinion of 21 December 2006 prepared at the applicant's request, a private company stated that land in the area around the allotments could be let out for at least SKK 20 per square metre yearly.

144. The Court discerns 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.

145. In their post-hearing submissions the parties concentrated mainly on whether or not the real property tax was payable by the applicant association, as the owner of the land, or by the tenants. The amount of real property tax compared with the rent payable by the tenants is one of the relevant factors in determining whether a fair balance was struck between the general interest in compulsory letting of the land and the applicant's rights under Article 1 of Protocol No. 1. The fact of who actually paid or had to pay the tax may have a bearing on the Court's considerations in respect of Article 41 of the Convention, if appropriate. However, it is not decisive for determination of the point at issue.

146. The Court therefore concludes 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 (see paragraphs 56, 64 and 65 above) was incompatible with the applicant's right to peaceful enjoyment of its possessions.

There has accordingly been a violation of Article 1 of Protocol No. 1 in this respect.

III. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 46 of the Convention

147. Under this provision:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

148. The Court's conclusions as regards the complaints about the transfer of ownership of the applicant's land and about its compulsory letting suggest that the violation of the applicant's rights under Article 1 of Protocol No. 1 originated in a problem arising out of the state of the Slovakian legislation, which has affected a number of landowners whose land comes under the regime of Act 64/1997. It appears that the hindrance in obtaining compensation for the transfer of allotment land and in letting out the land at a rent reasonably related to the value of the property, which the Court has found contrary to Article 1 of Protocol No. 1, arises from the application of a law to a specific category of citizens. Several other applications concerning the same issue are pending before the Court. Without prejudging the merits of those cases, the above facts indicate that the problem in issue is of a systemic nature.

149. It has been the Court's practice in similar cases to identify such systemic problems and their source so as to assist the Contracting States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments (for further details see, for example, *Scordino v. Italy (no. 1)* [GC] judgment cited above, §§ 229-237, ECHR 2006-....; *Sejdovic v. Italy* [GC], no. 56581/00, §§ 119-127, ECHR 2006-...; *Lukenda v. Slovenia*, no. 23032/02, §§ 89-98, ECHR 2006-... or *Scordino v. Italy (no. 3)* (just satisfaction), no. 43662/98, §§ 11-16, ECHR 2007-...).

150. Having regard to the systemic situation which it has identified, the Court is of the opinion that general measures at national level appear desirable in the execution of the present judgment in order to ensure the effective protection of the right to property in accordance with the guarantees set forth in Article 1 of Protocol No. 1. Firstly, the respondent State should remove all obstacles to the letting of land in allotment gardens on rental terms which take account of the actual value of the land and current market conditions in the area concerned. Secondly, the respondent State should remove all obstacles to the award of compensation for the transfer of ownership of such land in an amount which bears a reasonable relation to the market value of the property at the date of transfer.

B. Article 41 of the Convention

151. 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."

1. Damage

152. Firstly, the applicant claimed SKK 7,021,246 in respect of pecuniary damage. That sum corresponds to the difference between the actual value of the land in the allotment gardens at the time of transfer of its ownership to the gardeners (SKK 290 per square metre) and the value of the land which the applicant received in compensation.

Secondly, the applicant association claimed EUR 17,000 in respect of non-pecuniary damage. That sum corresponded to EUR 250 for each of its 68 members.

153. The Government considered that the applicant association had not correctly calculated the pecuniary damage allegedly suffered. They invited the Court to adjourn this issue for later examination.

As to the non-pecuniary damage claimed by the applicant association, the Government considered the amount excessive.

154. In view of the documents before it, the Court is of the opinion that the question of the application of Article 41 is not yet ready for decision and

should be reserved, due regard being had to the possibility that on this point a friendly settlement may be reached between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

2. Costs and expenses

155. The applicant claimed EUR 12,639.45 in respect of costs and expenses. That sum comprised the lawyers' fees (EUR 7,542), travelling, accommodation and subsistence costs relating to participation in the hearing in Strasbourg (EUR 3,797.15), the costs of opinions from an organisation specialised in property valuation and their translation and the photographing of the allotments (a total of EUR 927.90), as well as various expenses related to communication with the Court (a total of EUR 372.40).

156. In the Government's view, the costs of legal representation claimed by the applicant were excessively high. The Government had no objection to the other sums claimed with the exception of the costs related to the opinions prepared by a private company at the applicant's request. According to the Government, that company was not authorised to carry out valuations of real property.

157. The Court considers that this part of the applicant's Article 41 claim is also not ready for decision. It therefore reserves its determination thereof, due regard being had to the possibility that on this point also a friendly settlement may be reached between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has 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;

3. *Holds* that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written

observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY	Nicolas BRATZA
Registrar	President