



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

THIRD SECTION

CASE OF HAGIESCU AND OTHERS v. ROMANIA

(Application no. 7901/02)

JUDGMENT
(Just satisfaction)

*This version was rectified on 2 September 2014
under Rule 81 of the Rules of Court.*

*This judgment was revised in accordance with Rule 80 of the Rules of Court in a
judgment of 15 November 2016*

STRASBOURG

18 March 2014

FINAL

18/06/2014

*This judgment has become final under Article 44 § 2 of the Convention. It may be
subject to editorial revision.*

In the case of Hagiescu and Others v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Kristina Pardalos,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 7901/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Romanian nationals, Mr Mircea Dumitru Grigore Hagiescu, Mr Andrei-Grigore¹ Alexandrescu and Ms Domnica-Suzana² Manicatide (“the applicants”), on 29 January 2002.

2. In a judgment delivered on 13 November 2008 (“the principal judgment”), the Court held that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 as a result of the infringement of their right of access to a court and the failure by the authorities to strike a fair balance between the public interest on the one hand and the applicants’ property right on the other (see *Hagiescu and Others v. Romania*, no. 7901/02, 13 November 2008).

3. Under Article 41 of the Convention the applicants sought just satisfaction of pecuniary and non-pecuniary damage sustained as a result of the above violations and reimbursement of costs and expenses.

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 applicants to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, paragraph 46, and point 4 of the operative provisions).

5. The applicants and the Government each filed observations.

¹ Rectified on 2 September 2014: the text was: “Andrei”.

² Rectified on 2 September 2014: the text was: “Dominica”.

6. On 23 July 2013, the Court invited both parties to submit updated claims for just satisfaction.

THE LAW

7. 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

8. In their updated claims for just satisfaction the applicants informed the Court that they have recovered the possession of the real estate, with the exception of 264 square meters. Therefore, they sought to obtain either the recovery of possession of the entire real estate or, failing that, the price of 264 square meters, estimated between EUR 378,223 and EUR 504,298.

They also claimed EUR 50,000 in respect of non-pecuniary damage for the distress and suffering due to the violations of their right of access to a court and with the peaceful enjoyment of their possession.

9. The Government submitted that the applicants have recovered the possession of the entire real estate as attested by the record of 14 January 2010 (“*protocolul de predare-preluare*”). Therefore, they sought dismissal of the pecuniary damage claim.

Further, the Government considered that the amount of the non-pecuniary damage was not justified and that the finding of a violation in the present case constituted in itself adequate just satisfaction.

10. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

11. The Court observes that the Government had taken steps in order to provide redress for the violations of the applicants’ Convention rights. More precisely, according to the record of 14 January 2010 (“*protocolul de predare-preluare*”), signed without any objections by the applicants’ legal representative, Mr F.A.D. Constantin, the applicants entered into the possession of the entire real estate.

12. The Court, however, considers that the interference with the applicants’ right of access to a court and with the peaceful enjoyment of

their possession caused moral prejudice to the applicants. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants jointly EUR 4,700 in respect of non-pecuniary damage.

B. Costs and expenses

13. Without submitting any invoices, the applicants claimed EUR 6,000 the equivalent of the costs and expenses incurred before the domestic courts and before this Court, representing lawyers' fee, postal service, translations, photocopies and transport.

14. The Government did not oppose to the reimbursement of the applicants' costs and expenses claim as long as these have been actually and necessarily incurred and have been supported by any documents.

15. In the lack of any supporting evidence, the Court rejects the applicants' claim for costs and expenses in accordance with Rule 60 of the Rule of the Court.

C. Default interest

16. The Court considers it appropriate that the default interest rate 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 to the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,700 (four thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President