



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

THIRD SECTION

CASE OF EVOLCEANU v. ROMANIA

(Application no. 37522/05)

JUDGMENT
(Just satisfaction)

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 Evolceanu v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Dragoljub Popović,

Luis López Guerra,

Johannes Silvis,

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. 37522/05) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Ms Eva Evolceanu and Ms Ioana Evolceanu (“the applicants”), on 13 October 2005.

2. In a judgment delivered on 9 February 2010 (“the principal judgment”), the Court held that there has been a violation of Article 1 of Protocol No. 1 to the Convention as a result of the applicants’ loss of possession over their property (see *Evolceanu v. Romania*, no. 37522/05, 9 February 2010).

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 six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, paragraph 37, and point 3 of the operative provisions).

5. The applicants and the Government each filed observations.

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. The applicants did not submit any updated claims for just satisfaction. However, in their submissions of 8 November 2010, the applicants informed the Court that they have recovered the possession of the real estate.

They claimed 39,200 euros (EUR) for loss of profit or benefit from their property for sixteen years.

Also, in respect of non-pecuniary damage they claimed EUR 20,000.

9. The Government submitted in their updated claims of 17 September 2013 that the applicants have recovered the possession of the real estate. Further, the Government considered that the claim for loss of profit should be dismissed.

With regard to the claim in respect of non-pecuniary damage, they submitted that it 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 firstly observes that the applicants have recovered the possession of the real estate.

12. As regards the amount of money claimed in respect of loss of profit or benefit from the applicant's possession, the Court rejects this claim in so far granting a sum of money on this basis would be a speculative process, having regard to the fact that profit derived from possession of property depends on several factors (see *Buzatu v. Romania* (just satisfaction), no. 34642/97, § 18, 27 January 2005, and *Dragomir v. Romania*, no. 31181/03, § 27, 21 October 2008).

13. The Court, however, considers that the interference with the applicants' 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 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

14. The applicants claimed EUR 9,505 the equivalent of the costs and expenses incurred before the domestic courts and before this Court representing lawyer's fee, postal service, translations, photocopies and transport. He also sent documents to support his claim.

15. The Government contested the claim on the ground that it was excessive and unsupported by documents.

16. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information and the documents in its possession, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

C. Default interest

17. 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 jointly to the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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