



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

FOURTH SECTION

**CASE OF VOD BAUR IMPEX S.R.L. v. ROMANIA**

*(Application no. 17060/15)*

JUDGMENT

*(Merits)*

Art 1 P1 • Positive obligations • Peaceful enjoyment of possessions • Failure to grant compensation after partial annulment of property sale contract with public authority that did not own the property • Domestic courts' overly rigid adjudication of applicant company's claims and failure to strike a fair balance between competing interests

STRASBOURG

26 April 2022

**FINAL**

**26/07/2022**

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



**In the case of Vod Baur Impex S.R.L. v. Romania,**

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

Yonko Grozev, *President*,

Tim Eicke,

Faris Vehabović,

Iulia Antoanella Motoc,

Armen Harutyunyan,

Pere Pastor Vilanova,

Jolien Schukking, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 17060/15) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian private limited company, Vod Baur Impex S.R.L. (“the applicant company”), on 24 June 2015;

the decision to give notice of the application to the Romanian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 30 November 2021 and 15 March 2022,

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

## INTRODUCTION

1. The applicant company’s complaint, lodged under Article 1 of Protocol No. 1, refers to the failure of the domestic authorities to grant it compensation after the partial annulment of a sale contract entered into with the City of Bucharest.

## THE FACTS

2. The applicant company is a Romanian company whose registered office is in Bucharest. It was represented by Ms M. Voicu, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently Ms O. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

### I. CONTRACT OF SALE

5. On 26 September 2006 the applicant company bought from the City of Bucharest (“the seller”), represented by the Bucharest First District Town

Hall, a property with a total floor surface of 283 sq. m, located in a multi-storey building with apartments for private use. The property itself comprised commercial premises arranged over two floors: the ground floor, measuring 151.58 sq. m, and used for retail purposes; and a basement area, measuring 131.62 sq. m, for storing merchandise. The sale also included the appurtenant land, measuring 23.47 sq. m. The price for the entire property was 600,788.56 Romanian lei (RON) (approximately 172,000 euros – EUR), which was principally paid for by means of monthly instalments over a period of three years.

6. On 14 February 2007 the applicant company entered into a ten-year lease with a private bank for the property. The rent was set at EUR 8,000 per month. Since the basement area was in a bad state of repair, the applicant company and the bank came to an arrangement whereby the latter had to carry out some necessary refurbishments in exchange for two months of rent.

## II. PROCEEDINGS BROUGHT BY A THIRD PARTY FOR THE PARTIAL ANNULMENT OF THE CONTRACT OF SALE

7. On 5 November 2007 the association of landlords representing the owners of the private apartments in the building in issue brought an action before the civil courts, requesting them to annul the contract of sale in respect of the basement area of 131.62 sq. m (see paragraph 5 above). It was alleged that the property in question had always been owned by the association of landlords.

8. Both parties to the contract of sale were summoned as defendants in the proceedings.

9. In a final judgment of 25 October 2010 the Bucharest Court of Appeal upheld the first-instance court's judgment of 18 February 2009 and partially annulled the contract of sale. It essentially held that the City of Bucharest had sold a property that it had not owned, because the basement area had always belonged to the association of landlords.

10. Consequently, the applicant company had to amend the lease entered into with the bank: as it could rent only the ground floor, the rent was reduced to EUR 6,000 per month.

11. The applicant company wrote to the Bucharest First District Town Hall, asking to be reimbursed for all costs (including the price) incurred in connection with the property it had lost as a result of the partial annulment of the contract of sale.

12. On 9 December 2011 the Bucharest First District Town Hall replied to the applicant company's last request submitted on 14 November 2011; it stated that, in view of the fact that the sale price referred to the whole property, as established in a valuation report, it firstly had to order another valuation report which would establish the corresponding value of the basement. The town hall was at that time in the process of hiring a new

valuation expert; nevertheless, as soon as it had obtained the new valuation report, it would reimburse the applicant company the amount corresponding to the part of the property of which it had been deprived.

### III. PROCEEDINGS BROUGHT BY THE APPLICANT COMPANY SEEKING COMPENSATION FOR DEPRIVATION OF PROPERTY

#### A. First-instance court

13. On 13 February 2012 the applicant company brought proceedings against the City of Bucharest, seeking compensation for the damage it had sustained on account of the partial annulment of the contract of sale of 26 September 2006. At a later date the applicant company amended its request by also bringing proceedings against the Bucharest First District Town Hall.

14. The applicant company argued that it was entitled to compensation for the property of which it had been deprived, alleging that the defendants had to be held liable for the dispossession (*evicțiune*) it had suffered. It further estimated the damage it had suffered as follows: RON 279,420 (equivalent to approximately EUR 65,000), corresponding to the amount paid for the lost property; RON 34,400 (equivalent to approximately EUR 8,000) for costs incurred during the refurbishment works; other costs related to the lost property, namely RON 6,645.45 (equivalent to approximately EUR 1,546) for legal expenses incurred in the annulment proceedings; RON 17,032.32 (equivalent to approximately EUR 3,960) for costs incurred when entering into the contract of sale (including property tax, notary's fees, valuation fees and land registration fees); and lastly RON 619,200 (the equivalent to approximately EUR 144,000) for loss of profit, corresponding to lost rental income as a consequence of the partial annulment of the contract of sale.

It relied on the provisions of Articles 1701-03 of the Civil Code (see paragraphs 32-33 below).

15. The City of Bucharest argued that it did not have *locus standi* in the proceedings, pointing out that the agreement had been entered into by the Bucharest First District Town Hall, which had also cashed in the price of the sold property; the latter argued that, on the contrary, it had been the City of Bucharest who had sold the property and thus had legal standing. Both entities argued that under the applicable law, namely the former Civil Code (see paragraph 33 below), a partially dispossessed buyer was entitled only to whatever the market value of the lost property was at the time of the dispossession, and not a proportionate part of the price, as had been requested.

16. On 14 March 2013 the court appointed an expert to produce two valuation reports: the first report, produced in October 2013, established that the market value of the lost property at the time of the dispossession was

EUR 102,830; the second report, produced in December 2013, established that the costs incurred for refurbishing the property had been EUR 63,691.

17. On 3 April 2014 the Bucharest County Court partially allowed the applicant company's claims.

18. It held that the City of Bucharest had legal standing in its capacity as the seller of the property. It further found that the applicant company was entitled to receive compensation as a consequence of the partial dispossession caused by the partial annulment of the contract of sale.

19. On the basis of Articles 1347-48 of the former Civil Code (see paragraphs 30-31 and 33 below), which was in force at the time of the dispossession and thus applicable to the case, and the evidence on file, including the two expert valuation reports (see paragraph 16 above), the court decided to grant the applicant company RON 279,420 (equivalent to approximately EUR 65,000 – the price of the lost property); an amount equivalent to EUR 17,464.50 (for the cost of refurbishment of the lost property); RON 7,027.87 (equivalent to approximately EUR 2,067 – notary's fees and valuation fees); and, lastly, EUR 16,000 for loss of profit. The court dismissed as unsubstantiated or unfounded the remainder of the claims for damages.

## **B. Appellate court**

20. The applicant company and the City of Bucharest appealed against the first-instance court's judgment. While the former criticised the amount granted by the court in compensation, the latter reiterated its arguments that it did not have legal standing and that, in any event, the buyer had been entitled to receive whatever the market value of the lost property had been at the time of the dispossession.

21. On 24 November 2014 the Bucharest Court of Appeal allowed the seller's appeal and consequently dismissed the applicant company's claims.

22. The court found that the first-instance court had been wrong in applying the legal provisions regulating the seller's liability for dispossession, in so far as those provisions were not applicable to the present case. The appellate court found that once the contract of sale had been annulled in part, that part was considered to have never existed, and the principle of *restitutio in integrum* applied; however, if no contract existed, liability for dispossession in connection thereto could not exist either.

## **C. High Court of Cassation and Justice**

23. The applicant company appealed against that judgment. It argued that dispossession was defined as the loss of property on account of a third party's act or deed; in that respect, the annulment of the contract of sale represented dispossession. Liability for the dispossession lay with the seller, which had

sold a property it did not own. The applicant company further alleged that the appellate court's interpretation of the legal provisions regulating liability for dispossession rendered it devoid of all meaning and prevented it from having any effect.

Furthermore, the defendants themselves accepted that the provisions on liability for dispossession were applicable and contested only the amount that was to be granted in compensation based on the relevant legislation. Therefore, the court had given an *ultra petita* judgment, by ruling on a matter that had not been raised by any of the parties to the proceedings. Such a decision was unlawful and an abuse of process.

24. On 4 March 2015 the High Court of Cassation and Justice dismissed the appeal and upheld the appellate court's reasoning.

25. The court considered that the annulment of the contract of sale represented more than mere dispossession; the annulment implied that the contract was considered to have never existed; as a consequence thereof, the parties were entitled to benefit from *restitutio in integrum*, namely, to be placed in the positions in which they had been before the contract was signed. Therefore, the applicant company was entitled to obtain the reimbursement of the price paid and damages, not on the basis of liability for dispossession, but on the basis of the *restitutio in integrum* principle. The legal provisions regulating the annulment of contracts and liability for dispossession were mutually exclusive and could not be applied simultaneously.

26. Furthermore, by dismissing the applicant company's claims, the appellate court had not proceeded *ultra* or *plus petita*, because it had given precedence to a matter of public order, namely the correct application of the law to the facts of the case.

#### IV. PROCEEDINGS BROUGHT BY THE APPLICANT COMPANY BASED ON THE *RESTITUTIO IN INTEGRUM* PRINCIPLE (ACTION IN TORT)

27. According to the Government, on 7 March 2018 the applicant company brought an action in tort (see paragraph 35 below) in the Bucharest County Court against the City of Bucharest, asking for reimbursement of the price paid for the lost property and of the costs for the refurbishment.

28. On 17 January 2019 the court dismissed the applicant company's action in tort as time-barred. The court considered that such an action had to be brought within the generally applicable period of the statute of limitations, namely three years (see paragraph 35 below), calculated from the moment when the judgment annulling the contract of sale became final, namely on 25 October 2010 (see paragraph 9 above).

29. That judgment was not appealed against and it therefore became final on 9 July 2019.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. CIVIL CODE

30. Articles 1695-1706 of the Civil Code reiterate, albeit with slight amendments, the content of Articles 1337-51 of the former Civil Code; they establish the seller's liability for dispossession.

31. Under Articles 1336-37 of the former Civil Code, the seller is liable *vis-à-vis* the buyer for ensuring that the latter peacefully enjoys the purchased possession. Article 1695 of the current Civil Code provides that the seller is liable as of right for any dispossession that would entirely or partially prevent the buyer from peacefully enjoying the purchased possession. Such liability could be triggered by a third party's claims, but only where such claims were based on a right of that third party which already existed before the contract of sale was signed, provided that the buyer had no knowledge of that right prior to the sale.

32. Articles 1701-02 of the current Civil Code (similar in content to Articles 1341-48 of the former Civil Code) provide that the dispossessed buyer may claim reimbursement of the price paid for the property and the payment of costs (including litigation costs, fees related to the conclusion of the contract of sale, and expenses incurred for the refurbishment of a property if those were necessary) and damages (including for loss of profit), regardless of whether the seller had been acting in good or bad faith.

33. Article 1703 provides that if the buyer is partially dispossessed and that the dispossession has not given rise to the termination of the contract (*rezoluțiunea*), the seller must return to the buyer the part of the price proportionate to the partial dispossession, and, if necessary, to pay damages, calculated in accordance with Article 1702. The corresponding Article 1348 of the former Civil Code provided that in that particular situation, if the sale was not abandoned (*nu se strică vânzarea*), the seller had to return to the buyer whatever the market value of the lost property had been at the time of the dispossession.

34. Concerning the effects of the annulment of legal acts and the related rules on compensation, while the former Civil Code did not contain any provisions regulating such matters, the current Civil Code deals with them in Articles 1254-60 and lays down the conditions for *restitutio in integrum* (*restituirea prestațiilor*) in Articles 1639-47. The latter Articles provide that any compensation due to the buyer is calculated having regard to the value of the property, either at the time of signing the contract of sale or at the time when the property was lost, depending on various circumstances described in detail by the law.

35. The relevant provisions concerning tort actions and the general statute of limitations are described in *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, §§ 68-69, 25 June 2019).



## II. RELEVANT DOMESTIC CASE-LAW

36. According to the information obtained *proprio motu* by the Court from public sources<sup>1</sup>, in particular concerning the relevant domestic practice, it appears that between 2013 and 2016 the High Court of Cassation and Justice delivered several judgments in which it accepted that the seller's liability for dispossession was relevant for the assessment of the case, whether in proceedings to annul the buyer's title owing to the pre-existence of a third party's title found to be valid by the court, or in proceedings where the third party's title took precedence over that of the buyer in an action for recovery of possession (*acțiune în revendicare*). Some examples illustrating the High Court's approach that are of relevance to the present case are set out below.

37. In a judgment of 29 October 2013, while accepting that the seller was generally liable for the dispossession of the buyer once the sale contract had been annulled, since the buyer could no longer peacefully enjoy the purchased possession, the High Court found that in the case before it, which concerned property falling under the laws of restitution, the *lex specialis* was applicable, hence the price paid for the property was to be returned to the buyer on the basis of that law, not Article 1337 of the Civil Code. That conclusion was reiterated in several other judgments delivered at the relevant time by the highest Romanian court.

38. In a judgment of 4 November 2014, the High Court allowed the claims lodged by the buyer, who had relied on the seller's liability for dispossession following the annulment of the sale contract. The court held as follows:

“Dispossession [*evicțiune*], starting from the etymology of the term ‘to evince’ (*evinco*) – to win in court – involves the total or partial loss of the property sold as a consequence of a court decision which recognises, in favour of a third party, the existence in respect of a property of a right *in rem*, which pre-existed that of the buyer.

Although the sale of another party's property gives rise to the sanction of the annulment of the sale contract, the seller's liability for dispossession in this case does not arise from the sale, but from the seller's intentional or negligent fault [*delict sau cvasi delict*] in having sold a property that he or she did not own.

Thus, in the event of the sale of another party's property, even if the sale is null and void, liability for dispossession arises from the act whose legal existence cannot be challenged, an act which the parties have treated as a sale; the sanction of annulment of the sale cannot alter the seller's liability under Article 1337 of the Civil Code, in so far as the other conditions imposed by the provisions governing liability for dispossession are fulfilled, such liability being determined by the retroactive cancellation of the sale.”

39. In a judgment of 7 April 2016, the High Court disagreed with the lower court's findings that once a sale contract was annulled, the buyer – in his claim for compensation – could no longer rely on the seller's liability for dispossession in so far as the very source of that obligation had been

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1. The information was found on the main Romanian legislation portal, which provides also access to some domestic case-law: <https://lege5.ro/>

extinguished, and hence it dismissed the buyer's compensation claim as inadmissible. The High Court considered that in such a situation, the seller's liability originated in his or her own fault, and was not based on the contract; moreover, the lower court should have made use of those legal provisions which supported the parties' access to a court, and not of those provisions which automatically prevented the court from assessing the case owing to a formalistic approach concerning admissibility requirements.

40. In a judgment of 31 October 2016 the High Court considered that in so far as the sale contract had been annulled, the buyer could no longer rely on the seller's liability for dispossession, because the very basis of such liability – the contract – was considered to have never existed. The buyer should have relied, in the claim for compensation, on the principles regulating unjust enrichment.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

41. The applicant company complained that the domestic courts had unfairly dismissed its claims relating to the reimbursement of the price paid and costs incurred for the property that it had been deprived of, in breach of 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. Admissibility

##### 1. *Compatibility ratione materiae – existence of possessions within the meaning of Article 1 of Protocol No. 1*

###### (a) The parties' submissions

42. The Government argued that the applicant company did not have a possession, as its right of property had been annulled by the courts, and that it had not had any legitimate expectation to have its compensation claims allowed either, considering that it had based its claims on the wrong legal provisions. Indeed, instead of bringing an action for the reimbursement of the money paid relying on the *restitutio in integrum* principle, it had erroneously based its claims on liability for dispossession. The Government was therefore of the opinion that the application was incompatible *ratione materiae* with the provisions of the Convention.

43. The applicant company did not submit any comments in that respect.

**(b) The Court's assessment**

44. The Court reiterates that, according to its established case-law, “possessions” can be “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right (see, among many other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

45. Where the proprietary interest takes the form of a claim, the Court has taken the view that it may be regarded as an “asset” only where it has a sufficient basis in domestic law, or where the applicants had “a claim which was sufficiently established to be enforceable”, or where the persons concerned were entitled to rely on the fact that a specific legal act would not be retrospectively invalidated to their detriment and where such legal acts could consist of a contract, for example (see *Kurban v. Turkey*, no. 75414/10, § 63, 24 November 2020, and the cases cited therein).

46. In the present case, the applicant company became the owner of two lots of property (the ground floor and a basement area) on the basis of a contract of sale entered into with a local authority (see paragraph 5 above). As a consequence of a domestic judgment, which became final on 25 October 2010, and which partially invalidated the contract of sale, the applicant company lost its title to the basement area. The domestic courts found at the time that a third party had been the rightful owner of that part of property, and that the local authority had sold it to the applicant company even though it had not owned it (see paragraph 9 above).

47. The Court notes that the parties do not disagree on the matter of the applicant company's having been deprived of its property in the proceedings terminated by the judgment of 25 October 2010. Indeed, the applicant company's complaint does not concern the deprivation of property, rather its claim for damages (see paragraph 41 above).

48. The parties' point of divergence does not appear to concern the entitlement to compensation either (see paragraph 42 above), but rather lies in whether the applicant company pursued its claims for compensation in the domestic courts in an inappropriate manner.

49. In that connection, the Court observes that both the seller (see paragraphs 15 and 20 above) and the domestic courts (see paragraphs 18, 22 and 25 above) acknowledged at all times that the above-mentioned loss of property entailed the right of the applicant company to be compensated for that loss, as provided for by domestic law. However, while the first-instance court considered that the compensation could be paid on the basis of the seller's liability for dispossession, and thus accepted the applicant company's claims in part (see paragraphs 18-19 above), the Court of Appeal and the High Court disagreed, the latter also indicating expressly that the compensation in

question could only be claimed by means of an action seeking reimbursement of the price paid following the annulment of the contract of sale (see paragraphs 22 and 25 above).

50. Therefore, in the Court's view, the applicant company could be considered to have a "legitimate expectation" that its claim would be dealt with in accordance with the applicable laws and that it would be able to obtain reimbursement of the disputed sum (see, for instance and *mutatis mutandis*, *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 31, Series A no. 332, and *S.A. Dangeville v. France*, no. 36677/97, § 48, ECHR 2002-III).

51. Accordingly, the applicant company had a pecuniary interest which was recognised under domestic law and which was subject to protection under Article 1 of Protocol No. 1.

52. It is true that the existence of such a claim does not exempt the applicant company from pursuing that claim diligently by relying on the appropriate legal provisions capable of offering appropriate redress. This issue, however, goes to the merits of the case and shall be examined at that stage (see, *mutatis mutandis*, *Plechanow v. Poland*, no. 22279/04, § 86, 7 July 2009).

53. Accordingly, the Government's objection in this regard must be dismissed.

## 2. Other grounds for inadmissibility

54. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## B. Merits

### 1. The parties' submissions

55. The applicant company argued that the domestic courts had deprived it of its property which it had acquired from the State in good faith, and then refused to grant it any compensation.

56. The Government contended that the measure complained of by the applicant company was lawful; in particular, the application of the principles regulating the annulment of legal acts had been foreseeable and accessible. Moreover, the measure had been aimed at protecting the general interest, including that of the other owners of the property in question, as well as public order.

57. The measure had also been proportionate; in dismissing the applicant company's claims, the domestic courts had given reasoned judgments and had correctly applied the law. Moreover, the High Court had also indicated to the applicant company which avenue it should have chosen to have its

claims allowed, namely by relying on the *restitutio in integrum* principle (see paragraph 25 above).

## 2. *The Court's assessment*

### (a) **General principles**

58. The Court reiterates that the effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, ECHR 2004-XII). The nature and the scope of the positive obligations vary, depending on the circumstances (*Kurşun v. Turkey*, no. 22677/10, § 114, 30 October 2018). However, as a general rule, the State must ensure that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained (see *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008). The measures which the State can be required to take in such a context can therefore be preventive or remedial (see *Kotov v. Russia* [GC], no. 54522/00, § 113, 3 April 2012, and *Kurşun*, cited above, § 114).

59. This means, in particular, that States are under an obligation to provide a judicial mechanism for settling effectively property disputes and to ensure compliance of those mechanisms with the procedural and substantive safeguards enshrined in the Convention. This principle applies with all the more force when it is the State itself which is in dispute with an individual. Accordingly, serious deficiencies in the handling of such disputes may raise an issue under Article 1 of Protocol No. 1 (see *Plechanow*, cited above, § 100).

60. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of (see, for instance, *Kotov*, cited above, § 115).

### (b) **Application of those principles to the present case**

61. Turning to the circumstances of the present case, the Court notes that the applicant company's claims failed because, in the view of the appellate court and of the High Court, it had relied on the wrong legal provisions to assert its rights (see paragraphs 22 and 25 above). More specifically, although none of the domestic courts denied the applicant company's right to obtain compensation as a consequence of the partial annulment of the contract of sale, its claims for compensation were dismissed at the appeal and further

appeal stage, because the courts interpreted the seller's liability for dispossession in a manner which excluded its application from the outset. The Court notes, however, that the domestic law did not expressly support that interpretation (see paragraph 31 above regarding the former Civil Code), in so far as liability for dispossession was established in favour of a buyer who was prevented from peacefully enjoying the purchased possession, no specifications as to how this could arise in practice being given in the law.

62. In this context, the Court reiterates that, under its well-established case-law, its task is not to review domestic law *in abstracto*, but to determine whether the manner in which it was applied to, or affected, the applicant gave rise to a violation of the Convention (see, for instance, *Kurban*, cited above, § 83).

63. In that connection, the Court observes that in the present case, the domestic courts' interpretation of the legal provisions relied on by the applicant company rendered its claims inadmissible, for failure to indicate the correct legal basis.

64. Furthermore, the High Court also indicated that in its view there was an alternative remedy which should have been pursued by the applicant company (see paragraph 25 above). However, the Court notes that at the time when the appellate and the High Court gave their judgments, including indications as to what was considered the correct legal avenue to be pursued, any new claims lodged by the applicant company seeking compensation following the annulment of its title to property lacked any prospect of success, because they were already time-barred. Indeed, as held by the Bucharest County Court, and not contested by the Government, the statute of limitation in respect of the tort law action brought by the applicant company had expired on 25 October 2013 (see paragraph 28 above), while the Bucharest Court of Appeal and the High Court gave their judgments on 24 November 2014 and 4 March 2015 respectively (see paragraphs 21 and 24 above).

65. It follows that by finding that the applicant company's claims for compensation did not rely on the appropriate legal provisions, while any other legal remedies were already ineffective as time-barred, the domestic courts deprived the applicant company of any possibility of obtaining appropriate compensation for the property it had been deprived of (see, *mutatis mutandis*, *Staibano and Others v. Italy*, no. 29907/07, §§ 54-57, 4 February 2014, and *Mottola and Others v. Italy*, no. 29932/07, §§ 54-57, 4 February 2014).

66. Furthermore, turning to the question whether the domestic authorities engaged in the balancing of interests in the case as required by the Convention, the Court also notes that the defendants in the proceedings accepted that the compensation claimed was due, on the basis of the seller's liability for dispossession (see paragraphs 15 and 20 above). Such an approach was not inconsistent with at least part of the existing domestic practice at the relevant time (see paragraphs 36-39 above). The courts, however, considered that in spite of those arguments, the correct

interpretation of the law should prevail (see paragraph 26 above), meaning in their viewpoint that dispossession and annulment were mutually exclusive (see paragraph 25 above).

67. At the outset, the Court notes that the law itself did not make any distinction between these two situations – dispossession being defined generally as a breach of the buyer’s peaceful enjoyment of his possession, without any exclusive or inclusive reference to annulment (see paragraphs 31 and 61 above), as indicated by the High Court’s rulings in cases similar to the present one, in which liability for dispossession was found to be pertinent even when the sale contract had been annulled (see paragraphs 36-39 above). While it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of the domestic law, the Court must however verify compatibility with the Convention of the effects of such an interpretation, and in particular whether that interpretation was made in a foreseeable and reasonable manner, without constituting a bar to the applicant company’s effective access to court (see, *mutatis mutandis*, *Kurşun v. Turkey*, no. 22677/10, § 95, 30 October 2018). Taking into account the above considerations, the Court finds that in the present case, the domestic courts’ interpretation of the applicable law does not appear to have had consistent precedential support at the material time and was therefore not foreseeable for the applicant company. In any event, it emptied a remedy offered by the domestic law of its practical aim, which was, as shown above, to protect the buyer in the event of a breach of its right to the peaceful enjoyment of its possession.

68. Furthermore, no assessment of proportionality as required by the Convention was carried out in the domestic proceedings, as the claims were dismissed in a straightforward manner as relying on an incorrect legal basis (see paragraphs 22 and 25 above). The Court will therefore assess for itself whether the result was disproportionate.

69. The Court reiterates that the proportionality test requires an overall examination of the various interests at stake, which may call for an analysis of such elements as the terms of compensation and the conduct of the parties to the dispute, including the means employed by the State and their implementation (see, *mutatis mutandis*, *Beyeler v. Italy* [GC], no. 33202/96, § 114, ECHR 2000-I).

70. In this connection the Court would refer to the Government’s plea that the impugned measure was aimed at protecting the general interest, including that of the other owners (see paragraph 56 above). Having regard, however, to the particular circumstances of the present case, the Court fails to see in what manner the granting of compensation to the applicant company as a consequence of the partial annulment of its title to property would have impeded the other owners’ rights, noting that their rights had already been acknowledged by the courts in the annulment proceedings (see paragraph 9 above), and that matter had not been disputed by the applicant company,

which amended its actions accordingly (see, for instance, paragraph 10 above).

71. Furthermore, as mentioned above, by dismissing the applicant company's claims, the domestic courts left it without any other viable alternative to assert its rights (see paragraphs 64-65 above).

72. The Court reiterates in this context that the risk of any mistake by a State authority – such as, in the present case, the sale to the applicant company of a property which it did not own – must be borne by the State and that such errors should not be remedied at the expense of the individual concerned (see, *mutatis mutandis*, *Dzirnis v. Latvia*, no. 25082/05, § 80, 26 January 2017 and the cases cited therein).

73. Notwithstanding the margin of appreciation allowed to a State in choosing the most appropriate response in such cases, the Court finds, in view of all the foregoing elements (see paragraphs 65, 67, 70 and 71 above), that the domestic courts' rigid manner of adjudicating the applicant company's claims, which deprived it of any possibility of obtaining compensation for the damage it had suffered, reflects serious deficiencies in the handling of the dispute and, in any event, was disproportionate and failed to strike a fair balance between the public interest and the applicant company's rights.

74. It follows that in the present case the State has not discharged its positive obligations under Article 1 of Protocol No. 1.

75. Accordingly, there has been a violation of that Article.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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.”

### **Damage**

77. The applicant company claimed 102,830 euros (EUR) in respect of pecuniary damage, representing the market value of the property of which it had been deprived. In support of its claim, the applicant company referred to an expert report produced in October 2013 during the relevant domestic proceedings, which concluded that the indicated amount had represented at the time the market value of the property in issue (see paragraph 16 above).

78. Under the head of costs and expenses, the applicant company further claimed EUR 63,691, representing the outlay incurred for the refurbishment of the property. This amount similarly relied on an expert report, namely the one completed in December 2013 (see paragraph 16 above).



The applicant company made no claim in respect of non-pecuniary damage.

79. The Government argued that there was no causal link between the compensation claimed as damage and the violation found.

80. In the circumstances of the present case, the Court finds that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant company (Rule 75 §§ 1 and 4 of the Rules of Court).

### FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;
2. *Holds*, by five votes to two, that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*, unanimously, that the question of the application of Article 41 of the Convention is not ready for decision and accordingly:
  - (a) reserves the said question in whole;
  - (b) invites the parties to submit, within six 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 26 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth  
Deputy Registrar

Yonko Grozev  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Eicke and Schukking is annexed to this judgment.

Y.G.  
I.F.

## DISSENTING OPINION OF JUDGES EICKE AND SCHUKKING

### Introduction

1. Unfortunately, for the reasons set out below, we were unable to agree with the majority that, in the circumstances of the present case, the applicant company had sufficiently established either that its claim was admissible or, even if admissible, that there has been a violation of its rights under Article 1 of Protocol No. 1.

### Background

2. Having bought a property from the City of Bucharest on 26 September 2006 (§ 5), by a final judgment of the Bucharest Court of Appeal of 25 October 2010 (§ 9) the underlying contract of sale was partially annulled on the basis that the City of Bucharest had never, in fact, owned the basement part of the property.

3. As a consequence, on 13 February 2012, the applicant company brought proceedings against the City of Bucharest, seeking compensation for the damage it had sustained on account of the partial annulment of the contract of sale. The applicant company argued that it was entitled to compensation on the basis that it had been “evicted” from part of the property it had purchased and was therefore entitled to compensation accordingly. While this claim was partially successful before the Bucharest County Court at first instance, both the Bucharest Court of Appeal and the High Court of Cassation and Justice rejected the applicant company’s claim. Both courts confirmed that, in fact, the legal provisions regulating a seller’s liability for eviction were not applicable to the applicant company’s situation but that, once the contract of sale had been annulled in part, it was to be considered to have never existed and a claim should, therefore, have been brought under the principle of *restitutio in integrum* (§§ 22 and 25).

4. However, it was then only by an action initiated on 7 March 2018, more than three years after either the Bucharest Court of Appeal first identified *restitutio in integrum* as the (only) appropriate cause of action (24 November 2014) or the High Court of Cassation and Justice finally rejected its claim on the basis of eviction on that basis (4 March 2015), that the applicant company brought an action on the basis of *restitutio in integrum* before the Bucharest County Court. That claim, however, was rejected at first instance as having been brought outside the three year limitation period (§ 28) and that decision was never appealed and became final on 9 July 2019.

## Disagreement

5. It is in this context that, as the judgment records in § 41, the applicant company complains that “the domestic courts had unfairly dismissed its claims relating to the reimbursement of the price paid and costs incurred for the property that it had been deprived of, in breach of Article 1 of Protocol No. 1”. The claim was therefore, ultimately, one of access to court in order to obtain compensation and this Court’s assessment of that complaint inevitably depended heavily on the interpretation of domestic law. That is, however, where our difficulties, not being qualified to interpret Romanian domestic law, arose.

6. After all, while the judgment asserts (§ 28) that the limitation period in relation to any claim on the basis of *restitutio in integrum* expired after three years calculated from the moment when the judgment annulling the contract of sale became final, this seems to be contradicted both by the Government’s observations as well as by the summary of the relevant law referred to in the judgment (§ 35).

7. The Government, in its observations, notes that the rejection of the applicant company’s claim for *restitutio in integrum* was based on Article 3 of Legislative Decree no. 167/1958 and asserts that, in fact, the relevant limitation period fell to be calculated from the date of the judgment of the High Court of Cassation and Justice. Unfortunately for us the applicant company never engaged with or contradicted this statement of domestic law nor did it explain why it had failed even to mention the *restitutio in integrum* proceedings in the context of its application to this Court. As a result, the applicant company also failed to explain why it had waited more than three years after the judgment of the High Court of Cassation and Justice before bringing such proceedings rather than do so either as soon as the Bucharest Court of Appeal had identified this as the appropriate cause of action (even if advanced at that stage only as an alternative to the appeal to the High Court of Cassation and Justice) or at the latest immediately after the appeal to the High Court of Cassation and Justice had been unsuccessful.

8. This failure to engage with the Government’s submissions on the relevant domestic law is further exacerbated by the fact that it appears to us that the Government’s assertions are very much in line with the summary of the relevant law as set out in *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, §§ 68-70, 25 June 2019 and, at least partly, adopted by the judgment in this case (§ 35):

“68. The former Romanian Civil Code, in force until 1 October 2011, provided that any person who was responsible for causing damage to another would be liable to make reparation for it regardless of whether the damage was caused through his or her own actions, through his or her failure to act or through his or her negligence (Articles 998 and 999).

69. Legislative Decree no. 167/1958 on the statute of limitations, in force until 1 October 2011, provided that the right to lodge an action having a pecuniary scope was time-barred unless it was exercised within three years (Articles 1 and 3). The time-limit for lodging a claim for compensation for the damage suffered as a result of an unlawful act started to run from the moment the person became, or should have become, aware of the damage and knew who had caused it (Article 8). However, the time-limit was interrupted by the lodging of a court action (Article 16). A new term of the statute of limitations started to run after its interruption (Article 17).

70. The new Romanian Civil Code, in force since 1 October 2011, provides that a person with discernment is liable for all damage caused by his actions or inactions and is bound to make full reparation (Article 1349). ... The right to lodge an action, including one with a pecuniary scope, is time-barred if not exercised within three years, unless the law provides otherwise (Articles 2500, 2501 and 2517). The time-limit for lodging a claim for compensation for the damage suffered as a result of an unlawful act starts to run from the moment the person becomes, or should become, aware of the damage and knows who caused it (Article 2528). The time-limit can be interrupted by the lodging of a court action or of a civil-party claim during the criminal proceedings instituted, or before the court, up to the moment when the court starts the judicial examination of the case (Article 2537). If the time-bar is interrupted by the lodging of a civil-party claim, the interruption remains valid until the order to close or suspend the criminal proceedings or the decision of the court to suspend the proceedings is notified, or until the criminal court has delivered a final judgment (Article 2541).” (underlined emphasis added)”

9. Furthermore, there is no indication that the applicant company has at any time in any of the legal proceedings pursued before the domestic court advanced, either in substance or in form, any argument that to dismiss his claim for compensation would have amounted to a violation of Article 1 of Protocol No. 1.

10. As a consequence, we were not satisfied that the applicant company, which had at all times been legally represented, had sufficiently established either that it had adequately or at all exhausted domestic remedies as required by Article 35 § 1 of the Convention or, in any event, that the domestic courts had, in fact, unfairly dismissed its claims relating to the reimbursement of the price paid and costs incurred for the property that it had been deprived of, in a manner amounting to a breach of Article 1 of Protocol No. 1.