



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

CASE OF BRUMĂRESCU v. ROMANIA

(Application no. 28342/95)

JUDGMENT
(Just satisfaction)

STRASBOURG

23 January 2001

In the case of Brumărescu v. Romania,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mrs E. PALM,

Mr C.L. ROZAKIS,

Mr J.-P. COSTA,

Mr L. FERRARI BRAVO,

Mr L. CAFLISCH,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Mr W. FUHRMANN,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mrs N. VAJIĆ,

Mr J. HEDIGAN,

Mrs W. THOMASSEN,

Mr T. PANȚÎRU,

Mr E. LEVITS,

Mr L. MIHAI, *ad hoc judge*,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 18 October 2000 and 10 January 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by a Romanian national, Mr Dan Brumărescu (“the applicant”), and by the European Commission of Human Rights (“the Commission”) on 3 and 6 November 1998 respectively, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). It originated in an application (no. 28342/95) against Romania lodged by Mr Brumărescu with the Commission under former Article 25 on 9 May 1995.

2. In its judgment of 28 October 1999 (“the principal judgment”) the Court held unanimously that there had been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. More specifically, as regards Article 1 of Protocol No. 1, it held that there had been no justification for the deprivation of property in issue and that at all events, a fair balance had been upset as the applicant had borne and continued to bear

an individual and excessive burden, incompatible with the right to the peaceful enjoyment of his possessions ([GC], §§ 79-80, ECHR 1999-VII).

3. Under Article 41 of the Convention, the applicant sought just satisfaction amounting to several hundred thousand United States dollars in respect of damage sustained and also for costs and expenses.

4. As the question of the applicability of Article 41 was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on the matter and, in particular, to notify it of any agreement that they might reach (*ibid.*, § 84 and point 4 of the operative provisions). Subsequently, the President extended the time allowed until 15 April 2000.

5. The Government submitted their observations on 28 January and 15 March 2000, and the applicant filed his on 25 January, 14 March and 14 April 2000.

6. On 8 June 2000, acting under Rule 61 § 3 of the Rules of Court, the President gave Mr Mircea Dan Mirescu leave to submit written comments on certain aspects of the case. Those comments had already been received at the Court, on 30 May 2000.

7. Under Rule 61 § 5, the Government replied in writing on 21 July 2000 and the applicant did so on 11 September, 2 October and 17 November 2000.

8. It appears from the documents submitted by the parties that the applicant's appeal against the judgment of 21 April 1999 (see the principal judgment, § 30) was dismissed by the Bucharest County Court on 28 February 2000. On an application made under Law no. 112/1995, that court held that it had jurisdiction only to award compensation, according to the criteria laid down in Law no. 112/1995. The applicant appealed against that decision to the Bucharest Court of Appeal as the court of last instance. His appeal was dismissed on 26 October 2000. However, he sought a stay of execution of the decision of six months.

THE LAW

9. 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. Pecuniary damage

1. Applicant's submissions

10. The applicant emphasised at the outset that the most appropriate way for the Government to redress the damage caused would be to return the whole of the property to him, namely the land and the building.

11. In the event of the Government's not being able to return the property, the applicant stated that he was willing to consider an award of compensation and claimed a sum representing the market value of the property. As the flat he occupied and the corresponding part of the land had already been returned to him, in accordance with the Administrative Board's decision of 24 March 1998 (see the principal judgment, § 28), only the question of the difference between the value of the property as a whole and the value of his flat together with the appurtenant land remained to be considered.

Since the rest of the house, except for Mr Mirescu's flat, had not been sold to tenants, the applicant submitted that the State could not put forward any justification for refusing restitution. It would therefore be required to pay him compensation only for Mr Mirescu's flat.

12. Relying on a report produced by D.S., an expert registered with the Romanian Institute of Technical Experts, the applicant put forward the sum of 5,757,000,000 Romanian lei (ROL), equivalent to 250,600 United States dollars (USD), as the value of the property at 1 September 2000. That sum was broken down as follows: USD 126,500 representing the value of the land, that is to say USD 251 per sq. m, and USD 124,100 representing the value of the building, that is to say USD 216 per sq. m. As to the flat he occupied, representing 39.3% of the whole house, he put forward the sum of USD 48,771.

13. The applicant pointed out that his property, consisting of 503 sq. m. of land and a building of 575 sq. m. (approximately 200 sq. m. ground area), was situated in the Cotroceni district of Bucharest, which was part of the “0” zone designated by the Bucharest City Council in several decisions relating to land prices in Bucharest. In each town property prices in the “0” zone were among the highest. The applicant indicated that in a number of

Bucharest City Council decisions the price of land similar to his own had been set at about USD 300 per sq. m.

As to the building, he said that the house, which had been built in 1930, contained a furnished basement, a ground floor and two storeys above, including an attic floor, and two garages. In order to determine its value, the expert's report he produced took as a basis the criteria laid down in the statutory provisions regulating the open property market. According to the applicant, the expert's valuation at USD 216 per sq. m. was corroborated by the property market, where prices often exceeded USD 300 per sq. m.

14. In this connection, the applicant criticised the Administrative Board's decision of 24 March 1998 and the Government's expert report, which, he said, were both based on the criteria laid down in Law no. 112/1995. Applying those criteria did not yield the real value of the property but a minimal value, the aim of Law no. 112/1995 having been to enable tenants of nationalised accommodation to buy at low prices the flats they occupied.

2. Intervener's submissions

15. The intervener, Mr Mirescu, said that he owned the flat on the ground floor of the house; the State had sold it to his uncles in 1973 and he had inherited it. Consequently, the State could not return it to the applicant without committing a fresh injustice. Mr Mirescu considered that the State should award the applicant compensation for the flat.

3. The Government's submissions

16. The Government submitted that the applicant's "possession" within the meaning of Article 1 of Protocol No. 1, the loss of which had led to the Court's holding that there had been a violation of that Article, could not include the flat of the intervener, Mr Mirescu. In that connection, they argued that the Bucharest Court of First Instance could not lawfully have held that the applicant was the owner of the whole house.

17. The Government also maintained that the applicant could secure the return of his property by bringing an action for recovery of possession in the domestic courts.

18. As to the valuation of the possession, the Government challenged at the outset both the relevance of the information on which the expert, D.S., had relied and the amounts he had arrived at.

They submitted their own expert report, drawn up by V.S., an expert registered with the Romanian Institute of Technical Experts. According to that expert's report, produced in accordance with the criteria laid down in Law no. 112/1995, the value of the property at 1 March 1999 had been USD 108,058, which represented USD 110 per sq. m. for the building and USD 87 per sq. m. for the land.

As to the Administrative Board's decision of 24 March 1998, the Government pointed out that the Board had returned to the applicant the flat he occupied and the appurtenant land, namely 168 sq. m. The Government put forward the sum of USD 38,578 as being the value of the flat and of the appurtenant land. Consequently, the applicant ought to be awarded compensation corresponding to the difference between the value of the property (USD 108,058) and the value of the flat and land already returned (USD 38,578), that is to say USD 69,480.

4. *The Court's assessment*

19. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach.

20. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

21. In the principal judgment the Court said: “The Court ... observes that no justification has been offered for the situation brought about by the judgment of the Supreme Court of Justice. In particular, neither the Supreme Court of Justice itself nor the Government have sought to justify the deprivation of property on substantive grounds as being 'in the public interest'. The Court further notes that the applicant has now been deprived of the ownership of the property for more than four years without being paid compensation reflecting its true value, and that his efforts to recover ownership have to date proved unsuccessful” (§ 79).

22. The Court considers that in the circumstances of the present case the return of the property in issue, as ordered in the final judgment of the Bucharest Court of First Instance of 9 December 1993, would put the applicant as far as possible in the situation equivalent to the one in which he would have been if there had not been a breach of Article 1 of Protocol No. 1.

In this connection, the Court cannot accept the Government's argument that the applicant should bring a fresh action for recovery of possession. It

points out that the Government raised that question earlier in the form of an objection that domestic remedies had not been exhausted, which the Court dismissed in the principal judgment (§ 55).

The applicant having had the flat he occupies returned to him and that restitution having been upheld in the final decision of the Bucharest Court of Appeal of 26 October 2000 (see paragraph 8 above), the State should therefore restore the applicant's title to the rest of the house. This is without prejudice to any claim which Mr Mirescu might have to ownership of the flat on the ground floor, which claim would fall to be determined in the domestic courts.

23. Failing such restitution by the respondent State within six months of the delivery of this judgment, the Court holds that the respondent State is to pay the applicant, for pecuniary damage, the current value of the house, from which the value of the property already returned to him will have to be deducted.

24. As to the determination of the amount of that compensation, the Court notes the considerable divergence between the methods of calculation employed for the purpose by the experts appointed by the parties.

Having regard to the information available to it on prices on the Bucharest property market, the Court assesses the current market value of the house and the land on which it is situated at USD 215,000, USD 78,795 of which represents the flat and the part of the land already returned to the applicant. The compensation which the Government should pay the applicant accordingly amounts to USD 136,205, including USD 42,100 representing the value of the flat occupied by Mr Mirescu. That amount is to be converted into Romanian lei at the rate applicable on the date of settlement.

B. Non-pecuniary damage

25. The applicant also sought USD 75,000 for non-pecuniary damage sustained on account of the “serious, unbearable and immeasurable” suffering which the Supreme Court of Justice had inflicted on him in 1995 by depriving him of his property for a second time, after he had managed, in 1993, to put an end to the communist authorities' breach of his right for a period of forty years. He also claimed compensation for the loss of use of his property from the Supreme Court of Justice's judgment in 1995 to date, but did not quantify it.

26. The Government resisted that claim, submitting that no non-pecuniary damage could be taken into account. Furthermore, they maintained that it would be contrary to the case-law of the Romanian courts to award compensation for loss of use and enjoyment under the head of non-pecuniary damage.

27. The Court considers that the events in question entailed serious interferences with Mr Brumărescu's right to the peaceful enjoyment of his possession, to a court and to a fair hearing, in respect of which the sum of USD 15,000 would represent fair compensation for the non-pecuniary damage sustained. That amount is to be converted into Romanian lei at the rate applicable on the date of settlement.

C. Costs and expenses

28. The applicant claimed reimbursement of USD 2,450, which he broke down as follows in a detailed account he submitted:

(a) USD 1,644 in fees for work done by his lawyers in the proceedings before the Court, both on the merits and in connection with the question of just satisfaction;

(b) USD 50 for various expenses (telephone, photocopies, notary, etc.);

(c) USD 700 for the costs of an expert report (USD 500 for the report proper and USD 200 for further work on valuing the property at 1 September 2000);

(d) 300 French francs (FRF) for the cost of the French visa required for his journey to attend the hearings in Strasbourg.

29. The Government did not object to the reimbursement of the costs incurred, provided that vouchers were submitted.

30. The Court considers that the costs and expenses claimed, for which vouchers have been produced, were actually and necessarily incurred and are reasonable as to quantum. That being so, it considers it appropriate to award the applicant the sum sought of USD 2,450, less FRF 3,900 received from the Council of Europe by way of legal aid. That amount is to be converted into Romanian lei at the rate applicable on the date of settlement.

D. Default interest

31. As the sums awarded are denominated in United States dollars, the Court considers it appropriate to set the rate of default interest applicable at 6% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the respondent State is to return to the applicant, within six months, the house in issue and the land on which it is situated, except for the flat and the corresponding part of the land already returned;

2. *Holds* that, failing such restitution, the respondent State is to pay the applicant, within the same period of six months, USD 136,205 (one hundred and thirty-six thousand two hundred and five United States dollars) in respect of pecuniary damage, to be converted into Romanian lei at the rate applicable on the date of settlement;
3. *Holds* that the respondent State is to pay the applicant, within three months, the following sums, to be converted into Romanian lei at the rate applicable on the date of settlement:
 - (a) USD 15,000 (fifteen thousand United States dollars) in respect of non-pecuniary damage;
 - (b) USD 2,450 (two thousand four hundred and fifty United States dollars), less FRF 3,900 (three thousand nine hundred French francs) received by way of legal aid, in respect of costs and expenses;
4. *Holds* that simple interest at an annual rate of 6% shall be payable on the sums in (2) and (3) from the expiry of the periods mentioned until settlement;
5. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 23 January 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar