



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

SECOND SECTION

CASE OF SMOLEANU v. ROMANIA

(Application no. 30324/96)

JUDGMENT

STRASBOURG

3 December 2002

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER,
WHICH DELIVERED JUDGMENT IN THE CASE ON
6 April 2006**

*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 Smoleanu v. Romania,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr Gaukur JÖRUNDSSON,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr M. UGREKHELIDZE

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 30324/96) against Romania lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mrs Elena Smoleanu (“the applicant”), on 22 November 1995.

2. The Romanian Government (“the Government”) were represented by their Agent, Mrs Cristina Iulia Tarcea, of the Ministry of Justice.

3. The applicant alleged in particular that the Ploiești Court of Appeal's finding that the courts had no jurisdiction to determine an action for recovery of possession and its refusal to determine a second action for recovery of possession breached Article 6 of the Convention. The applicant also complained that the judgment of the Court of Appeal of 13 June 1995, delivered in the first set of proceedings, and the judgment of 30 March 1998, delivered in the second set of proceedings for recovery of possession, had had the effect of infringing her right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 10 October 2000 the Chamber declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

8. The applicant and the Government each filed written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1922 and lives in Ploiești.

10. On 20 January 1944 the applicant received as a dowry from her father a house situated in Ploiești (hereafter called “the house”), composed of two flats and a garage plus the adjoining land.

11. In 1950 the State took possession of the property, allegedly under Decree no. 92/1950 on nationalisation. The applicant was never informed of the grounds or legal basis for that deprivation of property. She was, however, allowed to use one of the flats in the house as a tenant of the State.

12. Between 1950 and 1955 the applicant made several complaints to the authorities, arguing that the provisions of Decree no. 92/1950 were inapplicable to her case and requesting that the house be returned to her. She did not receive any reply.

13. In 1954 the State demolished the garage.

A. FIRST ACTION FOR RECOVERY OF POSSESSION

14. In 1994 the applicant brought an action in the Ploiești Court of First Instance for recovery of possession of the house. She submitted that she belonged to the category of persons whose property Decree no. 92/1950 exempted from nationalisation and requested that the State-owned company, R.P., which managed State-owned housing, be ordered to return her property. On 3 May 1994 the court dismissed her claim on the ground that she had not proved her allegations.

15. The applicant appealed against that judgment to the Prahova County Court. In a decision of 13 January 1995 the court allowed the appeal, declared the action to recover possession admissible and ordered the house to be returned. It found that, as a nurse and a war widow since 1941, the applicant belonged to the category of persons whose property the decree exempted from nationalisation.

16. R.P. appealed against that decision. In a judgment of 13 June 1995 the Ploiești Court of Appeal allowed the appeal, quashed the judgment of 13 January 1995 and dismissed the applicant's claim on the ground that the house had become State property pursuant to Decree no. 92/1950 and that the courts did not have jurisdiction to review whether the decree had been properly applied to her. The court added that provision as to redress for any wrongful seizure of property by the State would have to be made in new legislation.

17. On 26 July 1995 the applicant requested the Procurator-General of Romania to lodge an application to have that final judgment set aside, submitting that it was unfair because the court had refused to examine whether Decree no. 92/1950 was applicable to her.

18. The Procurator-General replied on 8 August 1995, informing her that an application to have a final court judgment set aside could be made only, *inter alia*, where the decision was *ultra vires*, which had not been the case here. He added that final decisions could not be challenged on grounds of lawfulness or on the merits.

B. PROCEEDINGS FOR RESTITUTION UNDER LAW NO. 112/1995

19. On 6 March 1996 the applicant lodged an application for restitution of the house with the administrative board established to deal with applications lodged in Ploiești pursuant to Law no. 112/1995 ("the Administrative Board"). She submitted that she had been dispossessed of her property in breach of Decree no. 92/1950 on nationalisation, and that the Ploiești County Court, in its decision of 13 January 1995, had held that the deprivation of property had been unlawful but that the Ploiești Court of Appeal had refused to entertain her claim and had indicated that she should bring administrative proceedings.

20. In a decision of 17 July 1996 the Administrative Board vested ownership of the flat rented by the applicant in her and awarded her financial compensation for the rest of the house and the land. Having regard to section 12 of Law no. 112/1995, which put a ceiling on compensation, the Administrative Board awarded the applicant 11,581,867 Romanian lei (ROL) for the second flat and ROL 19,156,500 for the adjoining land that had not been returned and rejected her claim for compensation for the garage. According to the applicant, the amount she had received was substantially less than the value of the property.

21. On an unknown date the applicant challenged that decision in the Ploiești Court of First Instance, arguing that she was claiming restitution of the actual house.

22. The proceedings were adjourned pending the outcome of the second action for recovery of possession, which the applicant had lodged concurrently.

23. The proceedings were resumed on an unknown date and ended on 23 April 1999 with a judgment of the Ploiești Court of Appeal upholding the decision of the Administrative Board.

24. In the meantime, on 10 September 1996, the State sold one of the flats in the house to the former tenants.

C. SECOND ACTION FOR RECOVERY OF POSSESSION

25. On an unknown date the applicant lodged a further action for recovery of possession with the Ploiești Court of First Instance.

26. In a judgment of 10 June 1997 the court dismissed the action on the ground that, by deciding to bring administrative proceedings, the applicant had acknowledged that the property had been nationalised with valid legal title and was consequently debarred from bringing an action for recovery of possession.

27. The applicant appealed. She stressed that she had consistently argued before the Board that her house had been wrongfully nationalised and that she had brought administrative proceedings under Law no. 112/1995 because the Ploiești Court of Appeal had refused to examine her first action for recovery of possession. The County Court dismissed her claim on 27 November 1997 on the same ground as the Court of First Instance.

28. The applicant appealed. On 30 March 1998 the Ploiești Court of Appeal dismissed her appeal in a final decision. It noted that the applicant had applied concurrently to the Board and the courts for restitution of the house and noted that the administrative proceedings had been adjourned. It concluded that the applicant, having chosen the remedy provided for in Law no. 112/1995, was now debarred from bringing an action for recovery of possession in the ordinary courts because that choice amounted to an implicit acknowledgment on her part that the nationalisation had been lawful.

29. On an unknown date the applicant applied for the judgment of the Ploiești Court of Appeal to be set aside on the ground that the Court of Appeal had denied her access to a tribunal for the determination of her action for recovery of possession. Her application was dismissed on 16 December 1998 by the Brașov Court of Appeal.

II. RELEVANT DOMESTIC LAW AND PRATICE

30. The relevant domestic legislation and case-law are set out in the *Brumărescu v. Romania* judgment ([GC], no. 28342/95, ECHR 1999-VII, pp. 250-56, §§ 31-44).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

31. According to the applicant, the judgments of 13 June 1995 and 30 March 1998 of the Ploiești Court of Appeal infringed Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

32. In her memorial, the applicant submitted that the Ploiești Court of Appeal's finding, in the first set of proceedings for recovery of possession, that the courts had no jurisdiction to determine an action for recovery of possession was contrary to the right of access to a court enshrined in Article 21 of the Romanian Constitution and Article 3 of the Romanian Civil Code, which deals with denial of justice. She also argued that the dictum that she was not the owner of the property at issue was in contradiction with the ground on which the court had allowed the other party's appeal, namely that the courts had no jurisdiction to deal with the merits of the case. With regard to the proceedings that had ended on 30 March 1998, she pointed out that she had expressly requested the return of the whole house, considering that the nationalisation had been unlawful, both in the action for recovery of possession and the proceedings instituted under Law no. 112/1995, and pointed out that she had never acknowledged before the Romanian authorities that the house had been nationalised with valid legal title. The applicant noted, moreover, that the proceedings for restitution under Law no. 112/1995 had still been pending on the date when the Court of Appeal had delivered its judgment in the second set of proceedings for recovery of possession and that it had not therefore been in a position to conclude that she had acknowledged, even implicitly, that the house had been nationalised with valid legal title.

33. The Government, referring to the aforementioned *Brumărescu v. Romania* judgment, acknowledged that the applicant had been denied access to a court, but submitted that this had been temporary regarding the first set of proceedings for recovery of possession. The Government did not comment on the second set of proceedings for recovery of possession.

34. The Court must therefore first determine whether the judgment of 13 June 1995 infringed Article 6 § 1 of the Convention.

35. The Court reiterates that in the aforementioned *Brumărescu* case (see p. 261, §§ 63-65), it concluded that the Supreme Court of Justice's finding that the courts had no jurisdiction to decide disputes such as the action for recovery of possession in the instant case infringed Article 6 § 1 of the Convention.

36. The Court considers that there is nothing in the present case to distinguish it from the aforementioned case. Accordingly, the Ploieşti Court of Appeal's decision of 13 June 1995, according to which the courts did not have jurisdiction to determine the applicant's action for recovery of possession, is in itself contrary to the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention.

There has thus been a violation of Article 6 § 1 of the Convention.

37. Secondly, the Court must determine whether the judgment of 30 March 1998 infringed Article 6 § 1 of the Convention.

38. The Court considers it unnecessary to determine the issue regarding the consequences under Romanian law of choosing one particular remedy to the detriment of another. Its task is confined to ascertaining whether, in the present case, the applicant had access to a tribunal to have her action to recover possession of the house determined.

39. The Court notes that, after the dismissal of the first action for recovery of possession, the applicant brought two concurrent sets of proceedings in respect of the property in question, one for restitution under Law no. 112/1995 and the other for recovery of possession. The Court is forced to acknowledge, in this situation, that it cannot be inferred that she chose one particular remedy alone, namely restitution, particularly as at the date on which the Ploieşti Court of Appeal gave judgment the other proceedings were still pending. Moreover, the applicant expressed her preference for the action to recover possession by requesting an adjournment of the proceedings for restitution pending the final decision in the proceedings for recovery of possession. Furthermore, it is not disputed that she consistently argued in all the domestic proceedings that her house had been unlawfully nationalised.

The Court considers that, in these circumstances, the fact that the Ploieşti Court of Appeal, in its judgment of 30 March 1998, held that it was not necessary to determine an action to recover possession, since another action in respect of the house in question was pending before the national courts, amounts to depriving the applicant of her right of access to a tribunal.

Accordingly, there has been a violation of Article 6 § 1 of the Convention in those two respects.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

40. The applicant complained that the judgments of 13 June 1995 and 30 March 1998 of the Ploiești Court of Appeal had had the effect of infringing her right to peaceful enjoyment of her possessions as secured by Article 1 of Protocol No. 1, which provides:

“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.”

41. The applicant maintained that she had been deprived of her property because the nationalisation of her house under Law no. 92/1950 had been unlawful and she had thus never lost title to her property.

42. The Government maintained that the applicant's complaint was incompatible *ratione materiae* with the provisions of Article 1 of Protocol No. 1. They referred to the Court's case-law according to which the Convention does not embody the right to restoration of ownership, since Article 1 of Protocol No. 1 protects only the peaceful enjoyment of existing possessions and does not guarantee the right to acquire possessions.

43. The Court notes, firstly, that one of the two flats in the house was returned to the applicant and that she was awarded damages for the second flat and the land by a final decision of 23 April 1999 of the Ploiești Court of Appeal. She cannot therefore claim to be a victim of a violation of her right of property in respect of that part of the property. Consequently, the complaint relates only to the part of the property that has not been returned.

44. The Court must therefore examine the complaint that the courts' refusal to determine the dispute relating to that part of the nationalised house amounted to an infringement of her right of property as guaranteed by Article 1 of Protocol No. 1.

45. In that connection the Court reiterates, firstly, that it can examine an application only in so far as it relates to events that have occurred after the Convention's entry into force in respect of the Contracting Party concerned. In the instant case the applicant's house was nationalised in 1950, that is well before 20 June 1994, when the Convention came into force in respect of Romania. The Court is not therefore competent *ratione temporis* to examine the circumstances of the nationalisation or the continuing effects produced by it up to the present date.

46. It reiterates and confirms its well established case-law according to which the deprivation of ownership or another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see, for example, *Lupuleț v. Romania*, application no. 25497/94, Commission decision of 17 May 1996, Decisions and Reports (DR) 85-B, p. 126). The applicant's complaint is therefore incompatible with the provisions of the Convention in so far as it can be construed as criticising as such the measures taken pursuant to Law no. 92/1950 regarding the applicant's house prior to the entry into force of the Convention in respect of Romania.

47. The applicant can therefore only complain of a violation of Article 1 of Protocol No. 1 in so far as the proceedings of which she complained related to her "possessions" within the meaning of that provision.

In that connection the Court reiterates that the notion of "possessions" contained in Article 1 of Protocol No. 1 can cover both "existing possessions" (see *Van der Musselle v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48) and pecuniary assets, such as debts, by virtue of which the applicant can claim to have at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, p. 23, § 51, and *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31). However, the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII), nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Mario de Napoles Pacheco v. Belgium*, application no. 7775/77, Commission decision of 5 October 1978, DR 15, p. 143, and *Lupuleț*, cited above, p. 133).

48. In the instant case the applicant lodged with the national authorities two sets of proceedings for recovery of possession and one set of administrative proceedings for restitution with a view to securing the return of the house. In bringing those proceedings, she sought to establish a right of ownership which, at the time of lodging the originating application, was no longer hers. Consequently, the proceedings did not relate to an “existing possession” of the applicant.

49. It remains to be examined whether she could have a “legitimate expectation” of securing the return of the house. The Court notes that the claim in the administrative proceedings related to a nationalisation with valid legal title and was subject to certain conditions. In so far as she met those conditions, her claims had been partly satisfied. She could have secured restitution of the actual property itself if the courts had decided, in assessing the circumstances of the case, that the house had been nationalised without valid legal title. That is a factual situation which is a matter first and foremost for the domestic courts, the Court being unable to speculate as what the outcome of the proceedings would have been if the domestic courts had determined the dispute. Even though the Prahova County Court found for the applicant in January 1995, her case remained before the Romanian courts until a final decision was obtained, and the proceedings for restitution of the house did not give rise to any right to a debt in the applicant's favour, but only to the possibility of securing payment of a debt (see *Ouzounis and Others v. Greece*, no. 49144/99, § 25, 18 April 2002).

It follows that the applicant has failed to establish a “legitimate expectation” regarding the part of the property in respect of which she did not obtain full satisfaction under domestic law.

Accordingly, there has not been a breach of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant sought restitution of the property at issue, comprising the house and land and the garage demolished by the State. Should restitution not be granted, she claimed a sum equivalent to the current value of her property – namely, according to the expert report she submitted to the Court, ROL 1,004,839,766 (33,968 euros (EUR)).

52. The Government submitted that any award for pecuniary damage would be unjust as she did not have title to property for the purposes of Convention case-law and, in any event, her claim to her house in the domestic courts could still succeed. In any event, the maximum sum which could be awarded was ROL 719,668,160 (EUR 24,328), which represented, according to the expert report she had submitted to the Court, the market value of the house less the value of the repairs to the flat occupied by a tenant and without taking into account the value of the garage, which had been demolished in 1954 prior to Romania's ratification of the Convention on 20 June 1994.

53. The Court notes that the sums claimed for pecuniary damage correspond to the value of the house, the land and a garage demolished by the State. Having regard to the fact that in respect of the complaint based on Article 1 of Protocol No. 1 the Court has not found a violation of the Convention and the Protocol, the only complaints which remained before it for determination on the merits were those relating to lack of access to a tribunal, within the meaning of Article 6 § 1 of the Convention. In that connection the Court states once again that it cannot speculate as to what the outcome of the proceedings for recovery of possession would have been if the domestic courts had dealt with her claim.

54. The Court therefore finds that the applicant has failed to establish a causal link between the pecuniary damage she has alleged and the violation of Article 6 § 1 of the Convention found by the Court. Consequently, the claim for pecuniary damage must be dismissed.

B. NON-PECUNIARY DAMAGE

55. Under the head of pecuniary damage the applicant sought ROL 300,000,000 (EUR 10,100) for the loss sustained on account of the Ploiești Court of Appeal's refusal, on two occasions, to determine the dispute relating to recovery of possession of her house and which deprived her of her right to enjoy her property.

56. The Government resisted that claim, submitting that no non-pecuniary damage could be taken into account.

57. The Court considers that the events in question entailed serious interferences with the applicant's right of access to a tribunal in respect of which the sum of EUR 5,000 would represent fair compensation for the non-pecuniary damage sustained. That amount is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement.

C. DEFAULT INTEREST

58. The Court considers that the annual default interest rate should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see *Meftah and Others v. France*, [GC] nos. 32911/96, 35237/97 and 34595/97, § 61, ECHR 2002).

FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention by reason of the refusal of the right of access to a tribunal in the first set of proceedings for recovery of possession;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention by reason of the refusal of the right of access to a tribunal in the second set of proceedings for recovery of possession;
3. *Holds* that there has not been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) for non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;
5. *Holds* that, from the expiry of the above-mentioned three months until settlement, simple interest shall accrue on the above-mentioned amount at a rate equivalent to the marginal lending rate of the European Central Bank applicable during that period, to which should be added three percentage points;
6. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 3 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President