CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF POPOVICI AND DUMITRESCU v. ROMANIA

(Application no. 31549/96)

JUDGMENT

STRASBOURG

4 March 2003

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 Popovici and Dumitrescu v. Romania,

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

Mr J.-P. COSTA, *President*
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr A. MULARONI,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 February 2003,

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

PROCEDURE

1. The case originated in an application (no. 31549/96) 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 three Romanian nationals, Mrs Irina Margaret Popovici, Mrs Sanda Popovici and Mrs Maria Margareta Dumitrescu ("the applicants"), on 5 April 1996. Following the death of Mrs Maria Margareta Dumitrescu on 10 November 1997, her heir, Mrs Maria Cristina Mauc Dumitrescu, a French and Romanian national, expressed her wish, on 9 May 2000, to continue the proceedings.

2. The Romanian Government ("the Government") were represented by their Agent, , of the Ministry of Justice.

3. The applicants alleged, in particular, that the Braşov Court of Appeal's finding, on 20 September 1995, that the courts had no jurisdiction to determine an action for recovery of possession and the change in the case-law following the decision of the Supreme Court of Justice were contrary to Article 6 § 1 of the Convention. The applicants also complained that the judgment had had the effect of infringing their right to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

4. The application was referred 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. By a decision of 10 October 2000, the Court (First Section) declared the application partly admissible.

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

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first two applicants are Romanian nationals who were born in 1930 and 1932 respectively and live in Bucharest. The third applicant, a Romanian and French national, lives in Villebon-sur-Yvette, France.

9. In 1934 S.D, the father of the first two applicants, bought a parcel of land in Predeal, Romania. In 1937 S.D. built a house on the land.

10. On 30 August 1946 the State requisitioned a room in the house, pursuant to a requisition order of Predeal Town Council, on the ground that it was needed by a third person, M.A.

11. On 22 May 1948, following an application by the Ministry of the Interior (MAI), the Braşov prefect ordered the property to be returned to the owner, S.D.

12. On 13 September 1965, as can be seen from the judgments delivered in the present case, the State nationalised the house.

13. On 17 August 1971 Braşov City Council (*Consiliul Popular Judeţean Braşov*) decided to transfer the administration of the property from the managing company of state-owned property (*Intreprinderea de gospodărie locativă Braşov*) to the Romanian Intelligence Service (*Consiliul securităţii statului*).

14. According to information provided by the applicants, in 1992 the property was transferred to the administration of the Romanian Intelligence Service (*Serviciul Român de Informatii* – "SRI").

A. The first action for recovery of possession

15. In 1992 the applicants, as heirs, lodged an application under Law no. 18/91 for the return of the land on which the house had been built. In a judgment of 25 November 1992 the Braşov Court of First Instance dismissed their application as ill-founded on the ground that they should have brought an action in the administrative courts in accordance with the provisions of Law no. 29/90.

16. On 8 January 1993 the first two applicants and Maria Margareta Dumitrescu brought an action for recovery of possession against Military Command Centre no. 05024 of the Ministry of Defence in the Braşov Court of First Instance. They argued that they were the heirs of S.D., that he had owned land of 2,686 m² in Predeal, on which he had built a house, and that in 1946 a room in that house had been requisitioned but that the State had subsequently illegally appropriated the property. They sought to establish their title to the house and land as heirs.

17. In a judgment of 25 May 1993 the court found that the house had belonged to S.D.; that a room had been requisitioned in 1946 for a specific period; that the house had subsequently been requisitioned in its entirety; and that since then the State had continued to occupy it despite the fact that the owner had protested at the requisition. Noting that the property claimed was now occupied by Command Centre no. 05007 of the SRI, and finding that the requisition order could not have had the effect of lawfully passing the property into the ownership of the State and that the house had been nationalised under Decree no. 92/1950, which had not been lawfully applied, the court held that the applicants were the legal owners of the house and adjoining land and ordered the State's property title to be struck out of the land register and the late S.D. to be registered as owner.

18. The SRI appealed against that judgment, submitting that, pursuant to section 5 of the Real Property Act (Law no. 18/1991), the property in question had definitively become state-owned property. It submitted, in the alternative, that the house had been nationalised in 1965 pursuant to Decree no. 92/1950.

19. On 9 December 1993 the Braşov County Court allowed the appeal, set aside the judgment of 25 May 1993 and dismissed the applicants' claim for recovery of possession on the merits.

20. The applicants lodged an appeal against that decision. In a judgment of 7 June 1994 the Braşov Court of Appeal allowed the applicants' appeal, noted that there had been procedural flaws, quashed the earlier decision and decided to remit the case to the Braşov County Court for a rehearing of the appeal.

21. On 21 December 1994 the Braşov County Court, rehearing the appeal by the SRI, dismissed it as ill-founded. It considered that requisition was not a means of transferring title to property, but an act by which a right of use could temporarily be conferred. In addition, Decree no. 92/1950 was not applicable to the property of S.D., who, on account of his profession, did not fall into the category of persons whose property could be nationalised.

22. The SRI appealed against the decision of 21 December 1994.

In a final judgment of 20 September 1995 the Braşov Court of Appeal allowed the appeal and dismissed the action for recovery of possession on the merits. It held that the courts had exceeded their jurisdiction when they

had examined the lawfulness of the nationalisation of the house and that the matter could only be settled by legislation.

B. The second action for recovery of possession

23. On 22 September 1999 the applicants brought a fresh action for recovery of possession against the Ministry of Finance, the SRI and Predeal Town Council.

24. In a judgment of 5 May 2000 the Braşov County Court granted the applicants' claim, found that they were the lawful owners of the property and ordered the defendants to cease interfering with their enjoyment of their property right.

25. According to information provided by the Government, an appeal by the SRI was dismissed as ill-founded in a decision of 14 November 2000 of the Braşov Court of Appeal.

26. According to information provided by the applicants, in a judgment of 4 December 2001 the Supreme Court of Justice decided to allow the appeal by the SRI and to quash the earlier decisions and dismiss the applicants' action for recovery of possession.

C. The application for restitution under Law no. 112/95

27. On an unspecified date the applicant lodged an application for restitution with the administrative board established to deal with applications lodged with Braşov City Council pursuant to Law no. 122/95 (“the Administrative Board”).

28. In an administrative decision of 29 June 1999 the Administrative Board granted the application and ordered the building to be returned to the applicants.

29. On 10 September 1999 the SRI lodged an objection to that decision.

30. In a judgment of 16 December 1999 the Braşov Court of First Instance dismissed the objection as ill-founded.

31. On 9 May 2000 the Braşov County Court dismissed an appeal by the SRI as being ill-founded.

32. According to information provided by the applicants, in a judgment of 2000 the Braşov Court of Appeal allowed the SRI's appeal and objection, thereby setting aside the decision ordering the return of the building.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. The relevant domestic legislation and case-law are set out in the *Brumărescu v. Romania* judgment ([GC], no. 28342/95, §§ 31, 34, 35, 40-44, ECHR 1999-VII).

THE LAW

I. THE MERITS

A. Alleged violation of Article 6 § 1 of the Convention concerning the right of access to a court

34. According to the applicants, the Braşov Court of Appeal's judgment of 20 September 1995 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 ..."

35. In their memorial, the applicants submitted that the Court of Appeal's finding 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.

36. The Government admitted that the applicant had been denied access to a court, but submitted that this had been temporary and in any event justified by the need to ensure compliance with procedural rules and to preserve the principle of the separation of powers.

37. The Court must therefore examine whether the judgment of infringed Article 6 § 1 of the Convention.

38. The Court reiterates that in the aforementioned *Brumărescu* case (see §§ 61-62), 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.

The Court observes that in the instant case the Braşov Court of Appeal took the same approach as the Supreme Court of Justice in the aforementioned *Brumarescu* case in that it found that the courts did not have jurisdiction to determine an action for recovery of possession.

39. Moreover, the decision by the Braşov Court of Appeal, in its judgment of 20 September 1995, to exclude the applicants' action for recovery of possession from the courts' jurisdiction is in itself contrary to the right of access to a court guaranteed by Article 6 § 1 of the Convention.

40. There has thus been a violation of Article 6 § 1 in this respect.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

41. The applicants complained that the Braşov Court of Appeal's judgment had had the effect of infringing their right to peaceful enjoyment of their possessions as guaranteed 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."

42. The applicants submitted that that judgment, by which their property was held to belong to the State and the earlier judgments were set aside, had amounted to a deprivation of their right to peaceful enjoyment of their possessions.

43. The Government reiterated their objection that the application was incompatible *ratione materiae,* which they had raised at the admissibility stage, and referred to the *Ioana Asikis v. Greece* decision (no. 48229/99, 22 June 2000) regarding the concept of "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. They submitted that only a final (and irrevocable) decision could be regarded as a possession for the purposes of the Convention and that the applicants did not have the benefit of such a decision.

44. The Court reiterates that the applicants can only allege a violation of Article 1 of Protocol No. 1 in so far as the proceedings of which they complained related to "possessions", within the meaning of that provision, purportedly belonging to them.

In the present case the applicants brought proceedings before the appropriate domestic authorities for recovery of possession of a house. In doing so they sought to establish a right of ownership over the property that had belonged to their father, but at the time of lodging the originating application was no longer the property of their father or of the applicants themselves. Consequently, the proceedings did not relate to an "existing possession" of the applicants (see *Malhous v. the Czech Republic* (dec.), [GC], no. 33071/96, p. 17).

45. The Court reiterates that the power to determine a factual situation and apply domestic law falls first and foremost to the national courts. Since the Court cannot speculate as to what the outcome of the proceedings would have been if the domestic courts had determined the dispute, it follows that the applicants have failed to establish that they had a "legitimate expectation" regarding ownership of the property claimed.

46. In these conditions the Court concludes that the applicants did not have title to a possession within the meaning of Article 1 of Protocol No. 1 cited above.

47. Accordingly, the Court concludes that there has not been a violation of Article 1 of Protocol No. 1.

C. Application of Article 41 of the Convention

48. 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."

1. Pecuniary damage

49. As their main claim the applicants sought restitution of the property at issue. Should restitution not be granted, they claimed a sum equivalent to the current value of their property – namely, according to the expert report they submitted to the Court, 108,400 US dollars (USD) (130,208 euros (EUR)) for the house and USD 98,400 (EUR 93,687) for the adjoining land. They claimed USD 381,996 (EUR 363,701) in unpaid rent for the period between 1946 and 2000.

50. The Government disputed those amounts and submitted that the true value of the building was USD 138,943 (EUR 132,288).

In respect of the unpaid rent the Government submitted that the amount was inflated and that, in any event, the Romanian State should not be held liable for measures taken prior to 20 June 1994, when the European Convention of Human Rights was ratified.

51. The Court reiterates that it did not find a violation of Article 1 of Protocol No. 1 to the Convention (see paragraph 46 above). Accordingly, the claims for relief under this head must be refused.

2. Non-pecuniary damage

52. The applicants also sought USD 50,000 (EUR 47,605) for non-pecuniary damage sustained on account of the "serious, unbearable and immeasurable" suffering which the Braşov Court of Appeal had inflicted on them.

53. The Government resisted that claim, submitting that no non-pecuniary damage could be taken into account. Furthermore, according to the Government, the applicants had not proved that they had suffered as stated or that there had been a causal link between that suffering and the alleged violations of the Convention.

54. The Court considers that the events in question entailed serious interferences with the applicants' right to respect for their right of access to a court, in respect of which the sum of EUR 6,000 would represent fair compensation for the non-pecuniary damage sustained.

3. Costs and expenses

55. The applicants claimed reimbursement of USD 1,105 (EUR 1,052), which they broke down as follows in a detailed account they submitted:

(a) USD 913 (EUR 869) for the expenses incurred in the domestic proceedings and the legal fees incurred in endeavouring to re-establish their property right;

(b) USD 44 (EUR 41) for having the building valued;

(c) USD 148 (EUR 140) for various expenses (telephone, photocopies, notary).

56. The Government did not object to the reimbursement of the costs incurred, provided that vouchers were submitted. They submitted that the sum of USD 913 was not "credible".

57. The Court observes that the applicants produced vouchers only for the expert report, the notary fees and other expenses (postage, telephone). In the circumstances, the Court considers it appropriate to award the applicants jointly EUR 192 under this head.

4. Default interest

58. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* 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 court;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1;

3. *Holds* that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
   (i) EUR 6,000 (six thousand euros) for non-pecuniary damage;
   (ii) EUR 192 (one hundred and ninety-two euros) for costs and expenses; and
   (iii) that these sums are to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;

4. *Holds* that, from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the amounts indicated under 3 (i) and (ii) at a rate equal to the marginal lending rate of the European Central Bank during that period, to which should be added three percentage points;

5. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 4 March 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President