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

SECOND SECTION

CASE OF CROITORIU v. ROMANIA

(Application no. 54400/00)

JUDGMENT

STRASBOURG

9 November 2004

FINAL

30/03/2005

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 Croitoriu 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 L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs A. MULARONI, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 54400/00) 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 national, Mr Viorel T. Croitoriu ("the applicant"), on 3 July 1999.

2. The Romanian Government ("the Government") were initially represented by Mrs C.I. Tarcea, who was succeeded by Mr B. Aurescu, Under-Secretary of State, and Mrs R. Rizoiu, Agents.

3. On 22 October 2002 the Court decided to communicate the application to the Government.

4. On 13 November 2003, under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1929 and lives in Bucharest.

6. On 26 September 1991, the local commission in Pătrăuţi for the application of Law no. 18/1991 ("the local commission") issued a certificate to the applicant recognising his ownership of a plot of land measuring 1,500 square metres.

7. In 1993, the Suceava county commission for the application of Law no. 18/1991 (“the county commission”) issued ownership titles to the applicant's neighbours for several plots of land which had become State property in 1944.

8. In 1993 the applicant brought an action in the Suceava District Court seeking the restitution of the aforementioned land, which he had inherited before the collectivisation. On 9 June 1993 the District Court ordered the restitution of part of the claimed land, measuring 3,087 square metres, on the site known by the name “*Acasă*”. Both litigants appealed against this decision. On 25 February 1994 the Bucharest County Court quashed the decision and remitted the case to the Suceava District Court. On 13 March 1995 the District Court ordered the same partial restitution to the applicant. No appeal was lodged and the decision became final.

9. On 9 November 1993 the applicant had filed an action with the Bucharest County Court seeking to compel the local commission to enforce the judgment of 9 June 1993 and the certificate of 26 September 1991. He also claimed compensation for the profits derived from the cultivation of the land by third parties.

10. On 25 January 1996 the County Court required the local commission to restore to the applicant the two plots of land (3,087 square metres and 1,500 square metres) as ordered in the final judgment of 13 March 1995 and the certificate of 26 September 1991. In the same decision, the County Court dismissed the applicant's claim for cultivation profits as the evidence produced was insufficient to make an evaluation. No appeal was lodged and the decision became final.

11. On 29 May 1998, in response to complaints by the applicant about the non-enforcement of the above judgment, the prefect of the county informed the applicant that, as long as there was a valid ownership title in respect of the land in question (issued to the applicant's neighbours) which had not been declared null and void, the judgment could not be enforced. The prefect suggested that the applicant lodge with the competent court an action for that purpose.

12. On 16 March 1999, the applicant brought an action seeking a declaration that the ownership title issued on 24 May 1993 in favour of H.M., one of the neighbours, was null and void.

13. In a judgment of 28 June 1999 given by the Suceava District Court, upheld by the final decision of 24 April 2001 of the Suceava Court of Appeal, the action was rejected on the ground that the applicant had not proven his ownership rights over the plot of land in question.

14. In 2000 the applicant brought an action in the Suceava District Court to compel the local commission to enforce the judgment of 13 March 1995. On 15 May 2001 the District Court dismissed the action because of the *res judicata* effect of the County Court's decision of 25 January 1996.

15. It appears from the parties' submissions that the judgments of 13 March 1995 and 25 January 1996 have to date not been enforced.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic legislation and case-law are set out in the case of *Sabin Popescu v. Romania* (no. 48102/99, §§ 42-46, 2 March 2004).

THE LAW

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

17. The applicant complained that his right to have his civil rights determined by a court had been violated by the authorities' failure to enforce the final judgments of 13 March 1995 and 25 January 1996. He based his arguments on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

18. From the outset, the Court observes that the alleged violation of the right of access to a court constitutes a continuous situation which persists until the relevant court decision is executed (see the *Sabin Popescu* judgment, cited above, § 50). Therefore, the six-month time limit cannot start until the continuous situation that gave rise to the alleged violation ends.

1. The Government's preliminary objection based on non-exhaustion of domestic remedies

19. The Government stated that the applicant had failed to exhaust the relevant domestic remedies on the ground that he had not brought an action against all the neighbours seeking a declaration that the ownership titles issued to them in 1993 were null and void. They submitted that such an action was a precondition for the authorities to be able to enforce the judgments in favour of the applicant. The one action he did bring was lost for failure to present the evidence in his favour. They therefore concluded that the State could not be held liable for the applicant's failures.

20. The applicant contested this argument.

21. The Court notes that it has already dismissed a similar objection raised by the respondent Government because such a remedy was not capable of directly redressing the alleged violation, and the obligation to enforce the original judgments fell on the authorities and not on the applicant (the *Sabin Popescu* judgment, cited above, §§ 56-60).

22. The Court sees no reason to reach a different conclusion in the present case. Indeed, as in the case of *Sabin Popescu*, the applicant's complaint refers to the non-enforcement of final judgments favourable to him. The action seeking to declare the ownership titles issued to the third parties null and void is a separate matter from the non-enforcement issue, and is not a remedy that would lead directly to the enforcement of the said judgments.

23. Accordingly, the Government's preliminary objection must be dismissed.

2. Whether the complaint is manifestly ill-founded

24. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The Government repeated that the authorities could not be held responsible for the non-enforcement of the judgments issued in favour of the applicant since the execution depended upon the applicant taking action in this respect, namely bringing an action seeking a declaration that the ownership titles issued to the third parties were null and void.

26. The applicant argued that it was for the domestic authorities to declare the said titles null and void and to allow him to take possession of the plots of land as ordered by the final judgments.

27. The Court recalls that, according to its established case-law, the execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 § 1 of the Convention, and that the right of access to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-511, § 40; *Burdov v. Russia* judgment, no. 59498/00, 7 May 2002, §§ 34-35; *Jasiuniene v. Lithuania* no. 41510/98, § 27, 6 March 2003 and *Sabin Popescu*, cited above, § 64).

28. The Court notes that in the current case, although the authorities had an obligation to execute the judgments of 13 March 1995 and 25 January 1996 by restoring the relevant land to the applicant, the

aforementioned judgments remain un-enforced to date (see paragraph 15 above). They are nevertheless still valid, no proceedings having been instituted under the Romanian law for their modification or annulment before the domestic courts.

29. The foregoing considerations are sufficient to enable the Court to conclude that, by failing to take the necessary measures to comply with the judgments of 13 March 1995 and 25 January 1996, the Romanian authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

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

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

31. The applicant complained of a violation of his property rights over the plots of land as a consequence of the non-enforcement of the final judgments of 13 March 1995 and 25 January 1996. He relied on Article 1 of Protocol No. 1 to the Convention which provides 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."

32. The Government contested this argument. In their view, the final judgments alone could not constitute an authorisation to transfer title. To have that effect, they should have been accompanied by a court decision declaring the ownership titles issued to the third parties null and void.

33. The Court notes that this complaint is linked to the one examined above and must likewise be declared admissible.

34. On the merits, the Court recalls that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention if it is sufficiently established as enforceable (see the *Jasiuniene* judgment cited above, § 44 and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). In the present case, it has already found that the authorities had an obligation to restore certain plots of land to the applicant (see paragraph 28 above) in accordance with the final judgments of 13 March 1995 and 25 January 1996. Therefore, the applicant has enforceable claims deriving from them.

35. In this context, the Court has previously held that, where the authorities have acknowledged an applicant's right, he does not cease to be a victim of the alleged violation until the national authorities have afforded effective redress in this respect (see, among other authorities, the *Brumărescu v. Romania* judgment of 28 October 1999 [GC], no. 28342/95, § 50, ECHR 1999-VII).

36. The Court considers that the failure of the domestic courts to enforce the judgments of 13 March 1995 and 25 January 1996 amounts to an interference with the applicant's right to the peaceful enjoyment of possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

37. By failing to comply with the final judgments, the authorities placed the applicant in a state of uncertainty as to the repossession of his property and, since 1995, have prevented him from actually enjoying his possessions. The Government have not provided a plausible justification for the interference which could be acceptable from the point of view of Article 1 of Protocol No. 1 to the Convention.

38. Accordingly, the Court considers that in the present case there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the final judgments of 13 March 1995 and 25 January 1996.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, about the unfairness of the proceedings in respect of compensation for the profits derived from the cultivation of the disputed land, and compensation for a demolished house which had allegedly existed on part of that land. He considered that the Suceava District Court, in rejecting by a final decision, on 15 May 2001, his fresh action to compel the local commission to enforce the judgment of 13 March 1995, had not given him a fair hearing, as required by Article 6 § 1 of the Convention. Lastly, he considered that the outcome of the court proceedings with respect to his compensation claims and the refusal of the authorities to enforce the final judgments favourable to him had infringed his rights under Articles 13 and 17 of the Convention.

40. The Court has examined the remainder of the applicant's complaints as submitted by him. However, having regard to all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

42. The applicant sought execution of the final judgments in his favour. In addition, he claimed 60,000 euros (EUR) in respect of pecuniary damage caused by the demolition of a house (see paragraph 39 above) and EUR 15,000 for the value of the crops he could have obtained from cultivating his land which the authorities failed to restore to him. Furthermore, he claimed EUR 100,000 in respect of non-pecuniary damage caused by the fact that it had been impossible for him and his mother to use the land following their eviction from it and from their house. Subsequently, he increased his claim to EUR 300,000, considering that sum more appropriate for the suffering they had endured from the date of expropriation to the present time.

43. The Government contended that no pecuniary or non-pecuniary damages could be awarded to the applicant for the demolished house since it was unconnected with the non-enforcement of the final judgments that had ordered the return of the plots of land to the applicant. Consequently, they considered the claims for EUR 60,000 and EUR 100,000 unjustified.

44. They further submitted that, in their view, the Court did not favour compensation for the loss of use, and therefore the EUR 15,000 claim should also be rejected. They cited *Papamichalopoulos and others v. Greece* (judgment of 30 October 1995 (former Article 50), Series A no. 330-B, pp. 60-61, §§ 38-39), and *Anghelescu v. Romania* (no. 29411/95, §§ 75-77, 9 April 2002).

45. In so far as the applicant sought enforcement of the final domestic judgments favourable to him, the Court reiterates that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Ilaşcu and others v. Moldova and Russia* [GC], no. 48787/99, § 487, 8 July 2004, and *Scozzari and*

Giunta v. Italy [GC], nos. 39221/98 and 41963/98, §§ 249-250, ECHR 2000-VIII). A similar approach is to be followed in the present case.

46. Concerning the compensation sought by the applicant, the Court reiterates that it has found violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of the final judgments ordering the authorities to return certain plots of land to the applicant. Therefore, only the pecuniary and non-pecuniary damage that has a causal link with this violation can be taken into account.

47. The Court considers that the applicant must have suffered pecuniary damage owing to the fact that the judgments of 13 March 1995 and 25 January 1996 have not been executed to date, as well as stress and frustration as a result of the non-enforcement, the more so given his advanced age.

48. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the global sum of EUR 5,000 for pecuniary and non-pecuniary damage.

B. Costs and expenses

49. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

50. The Government agreed to reimburse those legal costs and expenses that the applicant could prove he had actually incurred.

51. According to Rule 60 § 2 of the Rules of the Court, itemised particulars of all claims made, together with the relevant supporting documents, are to be submitted, failing which the Chamber may reject the claim in whole or in part.

52. Since the applicant did not submit such information, the Court decides not to make any award for costs and expenses (see *Amihalachioie v. Moldova*, no. 60115/00, § 48, 20 April 2004).

C. Default interest

53. 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. *Declares* the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the non–enforcement of the final judgments favourable to the applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
(a) 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) in respect of pecuniary and non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President