



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

GRAND CHAMBER

CASE OF SMOLEANU v. ROMANIA

(Application no. 30324/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

6 April 2006

This judgment is final but may be subject to editorial revision.

In the case of Smoleanu v. Romania,

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

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr C. BÎRSAN,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Mr K. HAJIYEV,
Mrs R. JAEGER, *judges*,

and Mr T.L. EARLY, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 29 March 2006,

Delivers the following judgment, which was adopted on that 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 applicant, who had been granted legal aid, was represented by Mr A. Vasiliu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mrs B. Ramaşcanu, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the Ploieşti Court of Appeal’s finding of 13 June 1995 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 had breached Article 6 of the Convention. The applicant also complained that the Ploieşti Court of Appeal’s judgment of 13 June 1995, delivered in the first set of proceedings for recovery of

possession, had had the effect of infringing her right to peaceful enjoyment of her possessions as secured 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 Court's First Section (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 a Chamber composed of Mrs E. Palm, President, Mrs W. Thomassen, Mr L. Ferrari Bravo, Mr C. Bîrsan, Mr J. Casadevall, Mr B. Zupančič and Mr T. Panțîru, judges, and Mr M. O'Boyle, Section Registrar, 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). The Chamber was composed of the following judges: Mr J.-P. Costa, President, Mr A.B. Baka, Mr Gaukur Jörundsson, Mr L. Loucaides, Mr C. Bîrsan, Mr M. Ugrekhelidze and Mrs A. Mularoni, and also of Mrs S. Dollé, Section Registrar.

8. On 3 December 2002 the Chamber gave judgment, holding unanimously that there had been a violation of Article 6 § 1 of the Convention because the applicant had been denied the right of access to a tribunal in respect of the two actions for recovery of possession, and no violation of Article 1 of Protocol No. 1 to the Convention because the applicant did not have a possession within the meaning of that Article. The Chamber also awarded the applicant 5,000 euros (EUR) for non-pecuniary damage.

9. On 27 December 2002 the applicant requested that the case be referred to the Grand Chamber, in accordance with Article 43 of the Convention and Rule 73.

10. On 24 September 2003 the panel of the Grand Chamber accepted this request.

11. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

12. The applicant and the Government each filed a memorial. The applicant also filed a memorial in reply to the Government's memorial.

13. A hearing scheduled for 23 June 2004 was adjourned in view of the fact that domestic proceedings of relevance to the Convention proceedings were pending. It was rescheduled for 7 December 2005. The hearing was again adjourned, given that the parties were actively pursuing a friendly settlement of the case with the assistance of the Registrar (Article 38 § 1 (b) of the Convention). The parties were given until 27 February 2006 to agree on the terms of a settlement, failing which a hearing would be held on 29 March 2006.

14. Following various exchanges of correspondence between the Registrar and the parties, the Government and the applicant submitted formal signed declarations accepting a friendly settlement of the case, on 21 and 22 February 2006 respectively.

15. Consequently, on 7 March 2006 the hearing scheduled for 29 March 2006 was cancelled.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

17. On 20 January 1944 she received, as a dowry from her father, a house in Ploiești (“the house”), consisting of two flats and a garage as well as the appurtenant land.

18. In 1950, when the applicant was an unemployed nurse and widow, 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 the expropriation, but was allowed to use one of the flats as a tenant of the State.

19. Between 1950 and 1955 the applicant applied to the authorities on many occasions, arguing that the provisions of Decree no. 92/1950 did not apply to her and requesting the return of the house. She did not receive any reply.

20. In 1954 the State demolished the garage.

A. First action for recovery of possession

21. By a “final and enforceable” decision of 13 January 1995 against R.P., a State-owned company responsible for the management of public housing, delivered on appeal, the Prahova County Court allowed an application for recovery of possession brought by the applicant in 1994 and ordered the house to be returned to her. It found that, as a nurse and war widow since 1941, the applicant belonged to a category of persons to whom the decree on nationalisation did not apply.

22. R.P. lodged an appeal on points of law (*recurs*) against that decision on the ground that the courts did not have jurisdiction to examine the application of Decree no. 92/1950 in the present case. 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 action 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 determine whether the decree had been properly applied to her. The court added that provision as to redress for the wrongful seizure of property by the State would be made in new legislation. The relevant passages of the judgment read as follows:

“The applicant’s allegation that Decree no. 92/1950 was wrongly applied to her is a question that cannot be determined by the courts. ... The County Court applied the law incorrectly in holding that it had jurisdiction to impugn the application of the statutory provisions relating to nationalisation in the applicant’s case. ... Furthermore, the applicant’s action is premature ... Provision for compensation for damage incurred as a result of nationalisation will be made in a special law, as envisaged in section 26(3) of Law no. 47/1992 and section 77 of Law no. 58/1991.”

B. Proceedings for restitution of property under Law no. 112/1995

23. On 6 March 1996 the applicant lodged an application for restitution of the house with the administrative board in Ploieşti responsible for the implementation of Law no. 112/1995 (“the Administrative Board”), submitting that she had been dispossessed of her property in breach of the above-mentioned Decree no. 92/1950 and that the Ploieşti County Court, in its judgment of 13 January 1995, had held that the deprivation of property had been unlawful.

24. In a decision of 17 July 1996 the Administrative Board vested ownership of the flat rented by the applicant in her and awarded her compensation for the other flat (“flat no. 2”) and the land, but did not award her compensation for the garage that had been demolished by the State. Having regard to section 12 of Law no. 112/1995, which placed a ceiling on the amount of compensation, the Administrative Board decided that the applicant was entitled to 11,581,867 Romanian lei (ROL) (EUR 3,016) for the flat that was not returned and ROL 19,156,500 (EUR 4,988) for the land that was not returned. The applicant never received those amounts.

According to the applicant, the amount of the proposed compensation was substantially less than the market value of the unreturned property.

25. On 17 August 1996 the applicant challenged the above decision in the Ploieşti Court of First Instance. She specified that she was applying for restitution of the whole house on the ground that it had been unlawfully nationalised.

26. On 10 September 1996, while the proceedings for restitution were pending, the State sold flat no. 2, which had not been returned, to the former tenants.

27. The restitution proceedings were stayed pending the outcome of the second action for recovery of possession, which the applicant had lodged in 1997 (see paragraphs 29-31 below).

28. The proceedings were resumed on an unknown date, after judgment had been given by the Ploiești Court of Appeal on 30 March 1998 in the second action for recovery of possession (see paragraph 31 below). The action brought by the applicant to have the Administrative Board's decision of 17 July 1996 set aside was dismissed successively by the Ploiești Court of First Instance on 3 September 1998, the Prahova County Court on 21 January 1999 and, at final instance, by the Ploiești Court of Appeal on 23 April 1999. All those courts upheld the Administrative Board's decision of 17 July 1996.

C. Second action for recovery of possession

29. On 3 April 1997 the applicant brought a further action for recovery of possession in the Ploiești Court of First Instance.

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

31. This judgment was upheld successively by the County Court on 27 November 1997, the Ploiești Court of Appeal on 30 March 1998 and the Brașov Court of Appeal on 16 December 1998.

D. Proceedings for restitution of property under Law no. 10/2001

32. On 5 July 2001 the applicant lodged an application with Ploiești City Council under Law no. 10/2001 seeking the return of flat no. 2.

33. On 7 August 2001 Ploiești City Council informed the applicant that the flat had been sold by the State to the former tenants on 10 September 1996, but that restitution was still possible if she succeeded in having the sale rescinded by court order (see paragraph 34 below).

E. Proceedings for rescission of the sale of the unreturned flat

34. On 6 February 2002 the applicant brought proceedings in the Ploiești Court of First Instance under Law no. 10/2001 to have the contract of sale of 10 September 1996 between the State and the former tenants rescinded on the ground that the sale had been made while legal proceedings were pending regarding the lawfulness of the nationalisation of the property. She accordingly sought restitution of flat no. 2, which was the subject of that contract of sale.

35. In a judgment of 22 September 2003 the Ploiești Court of First Instance allowed the application for rescission of the sale, but dismissed the application for restitution. Observing that the house had been unlawfully nationalised, it declared the contract of sale null and void for lack of good

faith on the part of the State and the former tenants in signing the contract. It dismissed the claim for restitution of flat no. 2, however, pointing out to the applicant that the administrative board established to deal with applications lodged pursuant to Law no. 10/2001 had the authority to deal with that restitution.

36. Both the applicant and the defendants appealed against the judgment of 22 September 2003.

37. In a judgment of 25 March 2004 the Ploiești Court of Appeal dismissed both the appeal by the defendants relating to the lawfulness of the sale and the applicant's appeal relating to the claim for restitution of flat no. 2. Regarding the appeal lodged by the applicant, the court held that any legal action for recovery of possession of nationalised property had been debarred following the entry into force of Law no. 10/2001, and that the appropriate remedy was to bring administrative proceedings for restitution under that Law.

38. The parties appealed on points of law against the judgment of 25 March 2004.

39. On 14 December 2004 the Court of Cassation (formerly the Supreme Court of Justice) dismissed the appeal lodged by the defendants and allowed the appeal lodged by the applicant in so far as it concerned the Court of Appeal's refusal to determine her claim for restitution. The part of the judgment of 25 March 2004 concerning rescission of the sale thus became final and immediately enforceable. Regarding the part of the appeal concerning the claim for restitution, the Court of Cassation noted that the administrative proceedings for restitution under Law no. 10/2001 had been adjourned (see paragraph 33 above) and that, accordingly, the applicant was entitled both to apply for the sale to be rescinded – which she had in fact done – and to seek restitution of the property following the rescission of the contract of sale. The Court of Cassation accordingly set aside the judgment of 25 March 2004 in so far as the court had refused to determine the claim for restitution, and remitted the case to the Court of Appeal for a fresh hearing on that point.

40. In a decision of 21 December 2004 the mayor of Ploiești ordered the return to the applicant, under Law no. 10/2001, of the entire property, consisting of a house with a floor area of 120.40 sq.m and 229 sq.m of land.

41. On 16 March 2005 the applicant's title was entered in the Land Register.

42. The Ploiești Court of Appeal gave judgment on 12 April 2005. It observed that the sale of flat no. 2 had been rendered null and void by the final judgment of 14 December 2004 and held that, consequently, the parties had to be restored to the position in which they had been prior to the sale and the flat had to be returned to the applicant. The judgment of 12 April 2005 was immediately enforceable.

43. The purchasers of flat no. 2 appealed to the Court of Cassation on points of law against the judgment of 12 April 2005. They sought and obtained a stay of execution of that judgment.

Pursuant to Law no. 219 of 6 July 2005, amending the Code of Civil Procedure, the Ploiești Court of Appeal was vested with jurisdiction to entertain the appeal on points of law. It dismissed the appeal in a final judgment of 4 November 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

44. The relevant domestic law and practice, referred to in the cases of *Brumărescu v. Romania* [GC] (no. 28342/95, §§ 31-44, ECHR 1999-VII) and *Străin and Others v. Romania* (no. 57001/00, §§ 19-26, ECHR 2005-...), is also relevant to the present case.

45. Law no. 10/2001 of 14 February 2001, whose relevant parts are quoted in the above-mentioned *Străin and Others* case, was amended by Law no. 247, published in the Official Gazette of 22 July 2005. The new law extends the types of compensation available by allowing those entitled to compensation to choose between compensation in the form of goods or services and pecuniary compensation equivalent to the market value, at the time of the award, of property that cannot be returned.

Law no. 247/2005 further provides, in Part VII, for the manner in which compensation for property that has wrongfully passed into State ownership shall be calculated and paid.

THE LAW

46. On 21 February 2006 the Court received the following declaration from the Government:

“1. I declare that the Government of Romania offer to pay to the applicant a global sum of EUR 10,000 (ten thousand euros) with a view to securing a friendly settlement of her application registered under no. 30324/96 and pending before the Grand Chamber.

This sum, which also covers legal expenses connected with the case, shall be free of any tax that may be applicable and shall be paid in euros, to be converted into Romanian lei at the rate applicable at the date of payment, to a bank account named by the applicant and/or her duly authorised representative. This sum shall be payable within three months from the date of the notification of the judgment delivered by the Grand Chamber pursuant to Article 39 of the European Convention on Human Rights. 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.

2. This payment, taken together with the final decision of the Ploiești Court of Appeal of 4 November 2005 recognising the applicant's title to the property which was the subject of the present application and ordering its restitution to her, constitute the final settlement of the case. The Government point out in this connection that as from 4 November 2005 the applicant effectively enjoys her possession of the property.

3. This declaration does not entail any acknowledgement by the Government of any violation of the Convention other than the one found by the Court's judgment of 3 December 2002.

4. The Government consider that the supervision by the Committee of Ministers of the Council of Europe of the execution of the Court's judgment in the present case is an appropriate mechanism for ensuring that improvements will continue to be made in the context of the issues raised by it."

47. On 22 February 2006 the Court received the following declaration signed by the applicant's representative:

"1. I, Elena Smoleanu, note that the Government of Romania are prepared to pay me the global sum of EUR 10,000 (ten thousand euros) with a view to securing a friendly settlement of my application registered under no. 30324/96 and pending before the Grand Chamber.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in euros, to be converted into Romanian lei at the rate applicable at the date of payment, to a bank account to be named by myself or my representative. The sum shall be payable free of any taxes which may be applicable, within three months from the date of the judgment delivered by the Grand Chamber pursuant to Article 39 of the European Convention on Human Rights. 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.

2. I accept the proposal and waive any further claims against Romania in respect of the facts of this application. I declare that this payment, taken together with the final decision of the Ploiești Court of Appeal of 4 November 2005 recognising my title to the property which was the subject of the present application and ordering its restitution to me, constitute the final settlement of the case.

3. This declaration is made in the context of a friendly settlement which the Government and I have reached."

48. The Court takes note of the friendly settlement reached between the parties (Article 39 of the Convention).

It notes that since the adoption of the Chamber judgment of 3 December 2002 the applicant has obtained restitution of the property which was the subject of this application (see paragraphs 42 and 43 above).

It also notes that a new law on restitution has been enacted, namely Law No. 247 of 22 July 2005. This law extends the types of compensation available and provides that compensation should be equivalent to the market

value, at the time of the award, of property that cannot be returned (see paragraph 45 above).

Moreover, the Court observes that it has already specified the nature and extent of the obligations which arise for the respondent Government in cases which relate either to delays in, or the impossibility of, obtaining a final domestic decision on claims of unlawful confiscation of property by the former communist regime (see *Brumărescu*, cited above, § 65) or to the sale by the State of such property to third parties (see *Străin and Others*, cited above, §§ 39-59). The question of the performance of those obligations is currently pending before the Committee of Ministers.

49. The Court further observes that under Article 37 § 1 (b) of the Convention an application may be struck out of its list of cases at any stage of the proceedings if it is satisfied that the matter has been resolved.

50. Moreover, the Court is satisfied that the settlement has been reached on the basis of respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

51. Accordingly, the case should be struck out of the Court's list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the friendly settlement reached and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 43 § 3 of the Rules of Court);
2. *Decides* to strike the case out of its list.

Done in English and in French, and notified in writing on 6 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER
President

T.L. EARLY
Deputy to the Registrar