



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

THIRD SECTION

CASE OF RADOVICI AND STĂNESCU v. ROMANIA

(Applications nos. 68479/01, 71351/01 and 71352/01 joined)

JUDGMENT
[Extracts]

STRASBOURG

2 November 2006

FINAL

02/02/2007

In the case of Radovici and Stănescu v. Romania,

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

Boštjan M. Zupančič, *President*,

John Hedigan,

Corneliu Bîrsan,

Vladimiro Zagrebelsky,

Alvina Gyulumyan,

Egbert Myjer,

Dauid Thór Björgvinsson, *judges*,

and Vincent Berger, *Section Registrar*,

Having deliberated in private on 12 October 2006,

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

PROCEDURE

1. The case originated in three applications (nos. 68479/01, 71351/01 and 71352/01) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Ms Ioana Cristina Radovici and Ms Elena Stănescu (“the applicants”), on 1 January and 5 June 2001 respectively.

2. The applicants were represented by their sister, Ms C. Ehrhardt. The Romanian Government (“the Government”) were represented by their Agent, Mrs B. Ramaşcanu, Director of the Ministry of Foreign Affairs.

3. The applicants alleged that there had been a breach of their right of property contrary to Article 1 of Protocol No. 1 on account of their prolonged inability to use immovable property that had been returned to them and to receive rent, which inability resulting from the implementation of emergency measures adopted by the government in the area of residential tenancies.

4. The applications were allocated to the Court’s First Section (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider them (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). The present applications were assigned to the newly composed Third Section (Rule 52 § 1).

6. By a decision of 5 April 2005, the Chamber decided to join the applications and declared them admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants were born in 1930 and 1933 respectively and live in Bucharest.

9. The facts of the case specific to each application, as submitted by the parties, may be summarised as follows.

1. Application no. 68479/01

(a) Action for recovery of possession

10. In 1996 the applicants brought before the Bucharest District Court an action for recovery of possession in respect of property that had been nationalised by Decree no. 92/1950. Situated in Bucharest, at 184-B Calea Griviței, the property consisted of a house divided into flats and the land on which it was built. At the time, one of the flats was occupied by E.D. under a tenancy agreement entered into with the State in 1986 and extended until 8 April 1999 pursuant to Law no. 17/1994 of 18 April 1994.

11. In a final judgment of 2 April 1997, the court allowed the applicants' action on the ground that the nationalisation of the property had been illegal and ordered the competent administrative authorities to return the property to them. On that date the applicants began to pay the rates and land taxes levied on their property.

(b) Steps taken to enter into a tenancy agreement with the tenant E.D.

12. On 26 August 1998 the applicants notified E.D. of the judgment of 2 April 1997 through the intermediary of a bailiff and by registered letter with return receipt, in accordance with Law no. 114/1996 of 11 October 1996. In their notice, the applicants requested E.D. to enter into a tenancy agreement with them, as the new owners of the flat that E.D. occupied, and informed her, for the payment of the rent, of the details of a bank account in their names with the Savings Bank.

13. In May 1999, after the entry into force of Government Emergency Ordinance no. 40/1999 of 8 April 1999, the applicants visited E.D., who had declined to respond to their request, with a view to entering into a tenancy agreement with her; they were faced with a categorical refusal on the part of E.D.

(c) First set of eviction proceedings against E.D.

14. On 25 August 1999 the applicants brought proceedings for the eviction of E.D. in the Bucharest District Court. They claimed that E.D. was

occupying their property without any right of tenancy and had refused to enter into a tenancy agreement with them or to pay them rent in that connection. They further complained that E.D. had been breeding pigs in the basement of the house, thus damaging it and rendering it insalubrious.

15. In a judgment of 9 January 2000, the District Court granted their application and ordered the eviction of E.D. from the disputed property. It found that E.D. had not requested an extension of her tenancy of the flat occupied by her and her family, which she had been entitled to do under Article 2 of Government Emergency Ordinance no. 40/1999 and which would have enabled her to enter into an agreement with the new landlords. The court further observed that the applicants had not complied with the obligation under Article 10 § 1 of the Ordinance to notify the tenant, within a period of thirty days from the entry into force of the Ordinance, through the intermediary of a bailiff and by registered letter with return receipt, of the date and place fixed for the signing of a tenancy agreement.

16. Whilst the court observed that, under Article 11 § 1 of the Ordinance, failure by a landlord to comply with those formalities resulted in the extension of the previous tenancy until the signing of a new agreement, it nevertheless considered that this provision was not applicable in the present case in view of the exception provided for by Article 13 (d) of the Ordinance whereby there was no extension in the event of a dispute arising from a tenant's refusal to enter into a tenancy agreement with the new landlord. The court thus considered that the applicants had adduced evidence of the refusal by E.D. to enter into such an agreement. Accordingly, it held that that existing tenancy agreement had not been extended and that E.D. was occupying the applicants' property without any right of tenancy.

17. In a judgment of 11 May 2000, the Bucharest County Court upheld the merits of that judgment on appeal. It considered that the court below had correctly applied Article 13 (d) of the Ordinance, finding that the existing tenancy agreement had not been extended in view of the refusal by E.D., as proven by the applicants, to enter into a new agreement with them as the new landlords.

18. In a final judgment of 26 September 2000, the Bucharest Court of Appeal granted an appeal by the defendant and dismissed the applicants' action. It found that the applicants had failed to comply, when serving their notice on E.D. requesting her to enter into a tenancy agreement, with the conditions and formalities laid down in Article 10 § 1 of the Ordinance, and accordingly held that the existing tenancy agreement between E.D. and the State had been automatically extended pursuant to Article 11 § 1 of the Ordinance. The reasoning in the judgment made no mention of the applicability in the present case of Article 13 (d) of the Ordinance.

(d) Action for damages against E.D. for deprivation of possession

19. On 9 August 2001 the applicants brought proceedings against E.D. seeking from her the payment of compensation for having deprived them of the enjoyment of the flat in their house that the defendant had occupied since 1998 without paying them any rent.

20. In a judgment of 30 November 2001, the Bucharest District Court dismissed their application on the ground that the defendant had a tenancy agreement with the State, which had been extended automatically as the applicants had failed to comply with the formalities provided for in Article 10 § 1 of the Ordinance. That judgment became final on an undetermined date, after being upheld by the Bucharest County Court on an appeal by the applicants.

(e) Second set of eviction proceedings against E.D.

21. On 8 August 2001 the applicants brought eviction proceedings against E.D. in the Bucharest District Court on the ground that she had been occupying a flat, of which they were the owners, without paying them any rent, and that her conduct was such that her cohabitation with the other occupants of the building had become impossible. The applicants indicated that, after they had been granted the return of their property by the final judgment of 2 April 1997, they had made a number of attempts to enter into a tenancy agreement with the defendant, who had constantly behaved aggressively towards them, but had been unsuccessful. They referred to a number of complaints that they had filed against E.D. with law-enforcement agencies. They relied on section 24(b) of Law no. 114/1996 taken in conjunction with Article 13 (i) of the Ordinance.

22. In a judgment of 14 September 2001, the Bucharest District Court dismissed their action as manifestly ill-founded. It considered that, as it concerned the termination of a tenancy agreement, they should have proved that they had entered into such an agreement with the defendant and that there were circumstances which rendered her cohabitation with the other occupants of the building impossible, but that they had failed to adduce such evidence. The reasoning in this judgment made no reference to the applicants' complaint concerning E.D.'s failure to pay rent.

23. The applicants appealed against that judgment. In a final judgment of 15 February 2002, the Bucharest County Court granted their application. It held that E.D. had been occupying their property without any right of tenancy, taking into account the fact that the defendant had prevented the connection of the flat to the town gas network and had impeded the use by the other tenants of the common parts of the building, as a result of which her tenancy agreement was not being automatically extended. The court consequently ordered her eviction from the flat that she had been occupying in the applicants' building.

24. On 13 September 2002 the applicants lodged an action for eviction against the members of E.D.'s family who had been living with her in the flat. Their application was granted by a final judgment of 11 November 2002, which ordered the eviction from the flat of the members of E.D.'s family.

25. On 23 September 2003 a bailiff from the Bucharest District Court's service for the execution of judgments went to the applicants' flat and restored possession of the premises to them after breaking the locks on the front door to gain access. The bailiff noted in the record drawn up that day that serious damage had been done to the flat, in which several window panes were missing or broken.

26. The applicants never received any rent for the flat which E.D. had occupied in their building between 2 April 1997 and 23 September 2003.

...

II. RELEVANT DOMESTIC LAW

53. The relevant provisions of domestic law read as follows at the material time.

1. Law no. 5/1973 on housing management and landlord-tenant relations

54. Section 24 of Law no. 5/1973 provided:

“The tenant shall lose the right to occupy the leased accommodation and shall be evicted in the following cases:

...

(d) If, in bad faith, he or she has failed for a period of three consecutive months to pay the rent or the service charges.

The tenant's eviction, in the cases provided for in this section, shall be ordered by a decision of the courts.”

2. Law no. 17/1994 of 18 April 1994 on the extension and renewal of residential tenancies

55. Section 1 of Law no. 17/1994 read as follows:

“Regardless of the type of landlord, any residential tenancy agreement concerning housing of which the lease is governed by Law no. 5/1973 ... , and which is in progress at the time of the entry into force of the present Law, shall automatically be extended for a period of five years under the same conditions [as those laid down in Law no. 5/1973].”

3. *Law no. 114/1996 of 11 October 1996 on housing (published in the Official Gazette of 31 December 1997)*

56. The relevant sections of Law no. 114/1996 read as follows:

Section 21

“The lease of residential premises shall be granted under an agreement between landlord and tenant recorded in writing and registered with the local tax authorities ...”

Section 23

“Should the parties fail to agree on the renewal of the tenancy agreement, the tenant shall be required to vacate the premises on the expiry of his or her tenancy.”

Section 24

“Tenancy agreements shall be terminated prior to their expiry date in the following cases:

...

(b) at the request of the landlord, should the tenant fail to pay the rent for three consecutive months;

...

(i) when the tenant’s conduct renders impossible his or her cohabitation with the other occupants of the building or prevents the normal use of the premises;

...”

4. *Government Emergency Ordinance no. 40/1999 of 8 April 1999 on the protection of tenants and the fixing of rent for residential premises*

57. The relevant Articles of the Ordinance read as follows:

Article 2

“The term of a residential tenancy agreement ... concerning premises that have been returned to their former owner shall be extended at the request of the tenant for a maximum period of three years from the date on which the present Ordinance comes into force.”

Article 9 § 1

“A new tenancy agreement shall be entered into between the landlord and the tenant at the tenant’s request. The private landlord shall register the new tenancy agreement with the local tax authorities. The legal entity that previously possessed or

administered the property shall inform the tenant under the existing tenancy agreement, by letter with return receipt, within a period of fifteen days after the return of the property, that he or she may from that date onwards enter into a new tenancy agreement with the landlord to whom the property has been returned.”

Article 10 § 1

“The landlord shall notify the tenant, within a period of thirty days following the entry into force of the present Ordinance and through the intermediary of a bailiff, of the date and place fixed for the signing of a new tenancy agreement. The notice shall be served by registered letter with return receipt. ...”

Article 11 § 1

“Failure by the landlord to comply with the provisions of Article 10 § 1 shall lead to the automatic extension of the existing tenancy agreement until the parties have entered into a new agreement. Failure by the tenant to pay rent until the signing of the new agreement may not be relied upon by the landlord as a ground for eviction.

In the event that, within a period of sixty days following the date of receipt of the notice, the tenant fails to reply in writing or refuses without justification to enter into a new tenancy agreement, the landlord shall be entitled to seek the unconditional eviction of the tenant ... by presidential decree.”

Article 13

“The tenancy agreement shall not be extended:

...

(d) in the event of a dispute resulting from the refusal of the tenant, after being notified pursuant to Law nos. 17/1994, 112/1995 or 114/1996, to enter into a new tenancy agreement with the landlord;

...

(i) where the tenant renders cohabitation impossible or impedes the normal use of the dwelling;

...”

Article 32

“The amount of the rent shall be fixed by negotiation between the tenant and the landlord at the time they enter into the new tenancy agreement. The rent shall not exceed 25% of the monthly net income of the household if this income does not exceed the average monthly net salary nationwide.”

58. Law no. 241/2001 of 16 May 2001 approved Government Emergency Ordinance no. 40/1999 and amended its Article 2, raising to five

years the term of the tenancy agreement extended at the request of the tenant where the property had been returned to its former owner. The Law also amended Article 32 of that Ordinance by providing that the rent to be paid by the tenant could not exceed 15% of the monthly net income of his household.

59. Government Emergency Ordinance no. 40/1999 ceased to be in effect on 8 April 2004. Under Government Emergency Ordinance no. 8/2004, only tenancy agreements concerning premises belonging to the State could be extended by five years, at the request of the tenant.

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

67. The applicants alleged that there had been a breach of their right to the peaceful enjoyment of their possessions contrary to Article 1 of Protocol No. 1 in view of their prolonged inability to use property which had been returned to them and to obtain rent, which inability resulting from the implementation of the emergency measures adopted by the government in the area of tenancy agreements. Article 1 of Protocol No. 1 reads:

“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.”

A. The parties’ submissions

68. The applicants submitted that the failure by the courts to penalise the tenants’ constant refusal to enter into a tenancy agreement with them represented a disproportionate interference with their right to the peaceful enjoyment of their possessions.

69. The Government submitted that there had been no breach of the applicants’ right to the peaceful enjoyment of their possessions and that the State’s responsibility had not been engaged on account of the refusal by the courts to order the tenants’ eviction. They declared that the impugned judicial decisions had been based on facts attributable to the applicants,

namely their failure to comply with the statutory procedure for notification of tenants provided for by Article 10 § 1 of Government Emergency Ordinance no. 40/1999, which had led to the automatic extension of the existing tenancy agreements pursuant to Article 11 § 1 of that Ordinance. Referring to *Robitu v. Romania* (no. 33352/96, Commission decision of 20 May 1998, unreported), they considered that the statutory extension of tenancy agreements – provided for in the Ordinance and noted in the present case by the domestic courts which entertained the applicants' eviction actions – pursued an aim that was in the general interest, namely the protection of tenants' interests in a situation characterised by a shortage of cheap housing. This statutory extension, in the Government's view, struck a fair balance between the general interest of the community and the requirements of the protection of individuals' fundamental rights.

70. In their further observations the Government accepted that the refusal by the domestic courts to grant the action for the tenants' eviction had constituted interference with the applicants' right to make use of their property, this interference being justified under the second paragraph of Article 1 of Protocol No. 1 as it amounted to control of the use of property. They considered that the interference had been provided for by law, had pursued a legitimate aim in the general interest, and had not been disproportionate to that aim. In that regard the Government reiterated the arguments on which they had based their preliminary objection, indicating that the applicants had been free to request the termination of the tenancy agreements in question for non-payment of rent, under section 24 of Law no. 114/1996. They further observed that there were other grounds on which the statutory extension of tenancy agreements could have been challenged and the eviction of the tenants justified, if need be with the assistance of the public authorities, for example where a tenant rendered cohabitation in the building impossible.

The Government pointed out the differences between the present case and that in *Hutten-Czapska v. Poland* ([GC], no. 35014/97, ECHR 2006-VIII) and explained that the statutory extension of the tenancy agreements in issue had been limited to five years, that the owners had been free to negotiate the amount of the rent with the tenants, under certain conditions, and that the cost of maintaining the building, under Law no. 114/1996, was divided between owners and tenants, with the latter being required to cover the cost of repairs if the building was damaged as a result of improper use on their part.

71. The applicants considered that the domestic regulations concerning relations between landlords and tenants, together with the decisions of domestic courts taken on that basis, had breached their property rights. They argued that the return of property to former owners was totally ineffective under the conditions imposed by the Government Emergency Ordinance. In their view, the social protection referred to by the Government was

regulated in such a way that, in practice, the burden of its implementation was exclusively placed on landlords, through their obligation to keep tenants in their properties for a period of five years in return for negligible rent. They submitted that owners were particularly powerless in a situation where, as in the present case, the tenants refused to recognise the new landlords and to enter into a tenancy agreement with them. In their case, they had thus been prevented from receiving any rent and from bringing any action before the courts to complain about the situation.

72. They pointed out that, since the final judgment of 2 April 1997 in which their action for recovery of possession had been granted, the occupants of their property had caused serious damage to it and had not paid them any rent, whereas they themselves, since that date, had been obliged to pay the rates and taxes levied on their property.

B. The Court's assessment

73. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. These rules are not, however, unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, which reiterates in part the principles laid down by the Court in *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; see also *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V, and *Hutten-Czapska*, cited above, § 157).

74. The Court notes that it is not in dispute that Government Emergency Ordinance no. 40/1999, the implementation of which by the courts had the effect of maintaining the tenants in the applicants' flats, amounted to control of the use of property and thus fell within the second paragraph of Article 1 of Protocol No. 1.

75. The Court accepts the Government's view that the emergency measures adopted in 1999 – for the purposes, firstly, of regulating rent increases, and, secondly, of extending the validity of ongoing tenancy agreements, except in a number of exceptional situations, in particular where the tenant refused to enter into a tenancy agreement with the new landlord – pursued an aim that was in the general interest, namely the protection of tenants during the housing crisis.

76. The system thus introduced by the domestic authorities cannot be criticised as such, particularly in view of the wide margin of appreciation afforded by the second paragraph of Article 1 of Protocol No. 1. However, since it carried with it the risk of imposing an excessive burden on landlords in terms of their ability to dispose of their property, the authorities were under an obligation to institute foreseeable and coherent procedures or statutory mechanisms providing certain safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights were neither arbitrary nor unforeseeable (see, *mutatis mutandis*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 49 and 54, ECHR 1999-V; *Scollo v. Italy*, 28 September 1995, § 40, Series A no. 315-C; and *Hutten-Czapska*, cited above, §§ 221-22).

77. The Court is not satisfied that the Government Emergency Ordinance introduced such safeguards in order to avoid the risks of unforeseeability or arbitrariness. It finds two provisions of that Ordinance to be of particular interest in this connection.

(a) Article 11 § 1 of the Government Emergency Ordinance and the consequences of its implementation by the domestic courts

78. In the present case, it should be noted first of all that the applicants never entered into a tenancy agreement with the occupants of their property (contrast *Hutten-Czapska*, cited above, § 224), who were living there by virtue of their tenancy agreements with the State, entered into in 1968, 1974 and 1986 respectively, and extended successively until 8 April 2004 pursuant to the law.

79. The applicants, who were granted recovery of possession by a final judgment of 2 April 1997, were unsuccessful in their first action for the eviction of the occupants from their property on account of their failure to comply with the formal requirements laid down in Article 10 § 1 of the Government Emergency Ordinance. This provision imposed a strict thirty-day deadline, running from the entry into force of the Ordinance, by which landlords whose property had been returned were required to notify their tenants – by registered letter with return receipt and through the intermediary of a bailiff – of the date and place fixed for the signing of a new tenancy agreement. Under Article 11 § 1 of the Ordinance, failure by a landlord to comply with these formalities led to the automatic extension of the “existing agreement” that the tenants, in the present case, had entered into with the State.

80. The Court cannot but note that the above-mentioned provision merely indicates, imprecisely, that tenancies were to be extended “until the parties have entered into a new agreement”, without stipulating under what conditions they would be able to do so. No information is given as to any remedies available to a landlord who has omitted, by ignorance or negligence, to comply with the formal requirements under Article 10 § 1 of

the Ordinance, that would enable him to enter into such a new agreement with the occupants of his property or to be subrogated to the rights of the State for the receipt of rent before the end of the statutory extension of the existing agreement, that is to say before the expiry of the five-year period from the entry into force of the Ordinance.

81. As a result, it was impossible for the applicants, for a number of years while the Ordinance remained in force, to claim any rent – even subject to a statutory ceiling – from the occupants of their property. This situation can be distinguished from that examined recently by the Court in *Hutten-Czapska*, referred to by the Government, which essentially concerned Polish legislative provisions for the regulation of rent levels and the absence of any legal mechanism making it possible for landlords either to offset or mitigate the losses incurred in connection with the maintenance of their properties (see *Hutten-Czapska*, cited above, § 224).

82. In the present case, the applicants were not only deprived of the obvious possibility of receiving rent, but in addition, in view of the tenants' refusal to consider them as the new landlords – with the resulting absence of any contractual relations between them – it cannot be alleged that they were free to claim, under Law no. 114/1996 indicated by the Government, the reimbursement of the costs incurred for the refurbishment of their property, which had most probably been damaged by improper use on the part of the occupants (see paragraph 25 ... above), since that Law exclusively governed legal relations between landlords and tenants.

(b) Article 13 (d) of the Government Emergency Ordinance and the consequences of its interpretation by domestic courts

83. The Court notes that the Government Emergency Ordinance provided for a number of exceptions to the automatic extension of existing agreements, in particular where a dispute arose from the tenant's refusal to enter into a tenancy agreement with the new landlord under Law no. 114/1996 (see paragraph 56 above). However, the relevant provisions of the Ordinance do not stipulate what type of "dispute" is concerned by such an exception, in other words whether the term refers to an action brought before a domestic court by a landlord in compliance with the prescribed formalities, or to a dispute existing on the date of entry into force of the Ordinance arising from the tenant's refusal – after notice duly served in compliance with Law no. 114/1996 – to enter into a tenancy agreement with the new landlord. This second hypothesis corresponds to the position taken by the applicants before the courts. The Court cannot but note that the domestic courts themselves, when dealing with the applicants' actions for eviction, interpreted this notion of "dispute" differently: whilst the decisions given in the first instance and on appeal generally attributed to this notion the meaning indicated by the applicants (see paragraphs 16-17 above), the

decisions given in the last instance reflect, for their part, the other interpretation (see paragraph 18 above).

84. It is not, of course, for the Court to interpret the terminology used in domestic legislation, but in the foregoing circumstances it would not be unreasonable to assume that the use of vague or insufficiently characterised notions such as that of “dispute” was capable of misleading certain owners of returned property who, like the applicants, had served notice under the conditions laid down in Law no. 114/1996, and of leaving some uncertainty as to whether it was appropriate or necessary to repeat this action in accordance with the Government Emergency Ordinance.

85. In view of the significant legal consequences arising from the obligation, in serving the notice, to comply with certain formal requirements – when non-compliance led to the automatic extension of tenancy agreements for a five-year period, without any real possibility for the landlords to obtain rent from the occupants (see paragraphs 81-82 above) – the statutory provisions indicating the exceptional situations in which the rule on automatic extension became inoperative should have been particularly precise or clarified as necessary by directions for their implementation. That would have removed any doubt as to the extent of landlords’ obligations in terms of compliance with formalities and deadlines and would have enabled them to foresee the consequences of non-compliance.

86. On this point it should be noted that the appellate courts having jurisdiction to rule in the last instance on the first set of eviction proceedings brought by the applicants confined themselves to observing that the existing agreements had been automatically extended (see paragraph 18 above), without, however, explaining the reasons why they dismissed the exception relied on by the applicants under Article 13 (d) of the Ordinance and without indicating what remedy was available to them, if any, to enable them to enter into a tenancy agreement with the occupants of their property before the expiry of the three-year period provided for in Article 2 of the Ordinance, increased to five years by Law no. 241/2001.

87. Lastly, there is no evidence in the case file to suggest that the occupants of the applicants’ flats deserved a particularly high level of protection, especially as – according to the applicants’ allegations, not disputed by the Government – they had seriously damaged their flats and had behaved in a manner that made their cohabitation with others in the building impossible. These facts resulted, moreover, after fresh eviction proceedings brought by the applicants, in the eviction of the occupants of two of the flats in the building (see paragraph 23 above).

88. In the light of the foregoing, the Court considers that the restrictions imposed on the applicants as regards the use of their property, and in particular the impossibility for them, over a period of several years, to oblige the occupants to pay them rent, on account of defective provisions

and omissions in the emergency housing legislation, failed to strike a fair balance between the protection of the individual's right to the peaceful enjoyment of his possessions and the requirements of the general interest.

The Court accepts that the Romanian State inherited from the communist regime an acute shortage of housing available for rent at an affordable level and had, as a result, to balance the exceptionally difficult and socially sensitive issues involved in reconciling the conflicting interests of landlords and tenants. It had, on the one hand, to secure the protection of the property rights of the former and, on the other, to respect the social rights of the latter. Nevertheless, the legitimate interests of the community in such situations call for a fair distribution of the social and financial burden involved in the transformation and reform of the country's housing supply. This burden cannot, as in the present case, be placed on one particular social group, however important the interests of the other group or the community as a whole (see, *mutatis mutandis*, *Hutten-Czapska*, cited above, § 225).

89. Even taking into account the wide margin of appreciation afforded to States under the above-mentioned Article 1 of Protocol No. 1, the Court considers that penalising landlords who had failed to comply with the formalities laid down in the Government Emergency Ordinance by imposing on them such a heavy obligation as the maintaining of tenants in their properties for five years, without any concrete or realistic prospect of receiving rent, placed them under an individual and excessive burden such as to upset a fair balance between the competing interests.

90. Consequently, there has been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. In terms of pecuniary damage, the applicants claimed compensation for the loss resulting from their inability to oblige the occupants of their property to pay them rent for the three flats that they had occupied free of charge and had seriously damaged, thus taking advantage of the shortcomings in the legislation on the extension of tenancy agreements. They further claimed the reimbursement of the 5 million Romanian lei (ROL) that they had had to pay I.V. as a removal indemnity so that she

would agree to vacate their property, together with the reimbursement of the water, gas and electricity bills that had not been paid by the occupants of the building, estimating the total amount of these bills at approximately ROL 20 million.

As to non-pecuniary damage, they sought compensation for the suffering and inconvenience caused by the ordeal they said they had endured since the return of their property, in view of all the steps that they had had to take, at their advanced age, in order to recover possession of their property, which had been seriously damaged by its occupants.

They indicated that they were unable to estimate the exact amount of their loss and left this to the Court's discretion.

93. The Government requested the Court not to award any sum for pecuniary damage, in view of the fact that the applicants had now recovered possession of the flats that were formerly occupied by E.D., I.M., I.V. and C.C., and had now been vacated. They observed that the amounts claimed in respect of the water, gas and electricity consumption of the former occupants of the building in question had no causal link with the three joined applications lodged by the applicants before the Court. They submitted that a finding by the Court of a violation of the rights relied upon by the applicants could constitute in itself sufficient redress for the non-pecuniary damage sustained by the two applicants.

94. The Court has found a breach of Article 1 of Protocol No. 1 on account of the applicants' inability to receive rent, for a number of years, as a result of the defective provisions and omissions in the emergency housing legislation (see paragraph 88 above). An award for the deprivation of the enjoyment of their property would therefore be directly related to the violation found by the Court in paragraph 90 above. The mere fact that the applicants recovered their property following fresh eviction proceedings before the domestic courts cannot in any way remove the consequences of the violation thus found, but may have a bearing on the extent of the pecuniary damage sustained by the applicants on account of the implementation of the emergency legislation on tenancy agreements. The Court nevertheless observes that the material in the case file is insufficient for an accurate evaluation of the pecuniary damage actually sustained by the applicants.

As regards their claim in respect of non-pecuniary damage, the Court cannot disregard either the numerous steps that the applicants have had to take, at their advanced age, to recover possession of their property, or the feelings of distress that must have been caused by their prolonged inability to enter into tenancy agreements with their tenants or to require them to use their property appropriately. The Court considers that the facts in issue have resulted in serious interference with the applicants' right to the peaceful enjoyment of their possessions, for which the finding of a violation in this judgment would not in itself provide sufficient redress.

95. In these circumstances, having regard to all the evidence before it and ruling on an equitable basis, in accordance with Article 41 of the Convention, the Court awards 23,000 euros to the applicants, jointly, in respect of all heads of damage taken together.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

...

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

3. *Holds*

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Romanian lei at the rate applicable at the date of settlement:

(i) EUR 23,000 (twenty-three thousand euros) in respect of pecuniary and non-pecuniary damage;

...

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

Vincent Berger
Registrar

Boštjan M. Zupančič
President