



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

THIRD SECTION

CASE OF RUSU AND OTHERS v. ROMANIA

(Application no. 4198/04)

JUDGMENT

STRASBOURG

19 July 2007

FINAL

19/10/2007

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 Rusu and Others v. Romania,

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

Mr B.M. ZUPANČIČ, *President*,
 Mr C. BÎRSAN,
 Mrs E. FURA-SANDSTRÖM,
 Mrs A. GYULUMYAN,
 Mr E. MYJER,
 Mr DAVID THÓR BJÖRGVINSSON,
 Mrs I. ZIEMELE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 28 June 2007.

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

PROCEDURE

1. The case originated in an application (no. 4198/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Romanian nationals, Mrs Gabriela Rusu, Mrs Maria Băjenaru and Mrs Ioana Poenaru (“the applicants”), on 13 December 2003.

2. The Romanian Government (“the Government”) were represented by their Agent, Mrs Ruxandra Pașoi, Co-Agent of the Government of Romania before the European Court of Human Rights.

3. On 27 February 2006 the Court decided to communicate the application to the Government. 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

4. The applicants were born in 1948, 1955 and 1976 respectively, and live in Oradea.

5. In 1950, the two-floors building and appurtenant land situated in Bucharest, W. Filderman no. 1, the property of the applicants' parents, was seized by the State under Decree no. 92/1950 on nationalisation.

6. On 13 April 1999 the applicants' action for recovery of possession of immovable property was upheld in part by an enforceable judgment which

acknowledged that the nationalisation of the building had been unlawful and ordered the administrative authorities to return the building and appurtenant land to the applicants, with the exception of a studio flat at the second floor, sold by the applicants' parents in 1945.

7. In spite of having the judicial recognition of their property right, the applicants were not able to recover possession over flat no. 1 because the State had sold it together with the appurtenant land to the tenants, under Law no. 112/1995.

8. On 11 October 1999 the applicants requested the court to find that the sale by the State was null and void. They considered that, as the nationalisation had been unlawful, the State was not the rightful owner and consequently it could not lawfully have sold any part of the building.

9. On 12 September 2000 the Bucharest Tribunal, by a final decision, dismissed the request for the rescission of the sale contract on the ground that the applicants brought the action for the recovery of possession after the sale of flat no. 1 by the State and that the tenants had made the purchase in good faith. The tribunal had not granted any compensation to the applicants.

10. On 28 June 2001 the Bucharest Court of First Instance admitted by a final decision the applicants' action to have acknowledged their right of property regarding the whole building.

11. On 13 February 2002 the applicants claimed compensation for the sale of flat no. 1 under the Law no. 10/2001 governing immovable property wrongfully seized by the State. At present, they have not received any compensation.

12. On 16 May 2002 the Bucharest Court of Appeal, by a final decision, dismissed the applicants' action for the recovery of possession of flat no. 1, considering that although the applicants were the rightful owners, the sale was performed in good faith and therefore the tenants could not be evacuated.

II. RELEVANT DOMESTIC LAW

13. The relevant legal provisions and jurisprudence are described in the judgments *Străin and Others v. Romania* (no. 57001/00, §§ 19-26, 21 July 2005), *Păduraru v. Romania* (no. 63252/00, §§ 38-53, 1 December 2005), *Porteanu v. Romania* (no. 4596/03, §§ 23-25, 16 February 2006), and *Radu v. Romania* (no. 13309/03, § 18-20, 20 July 2006).

THE LAW

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

14. The applicants alleged that the sale by the State of flat no. 1 and appurtenant land to a third party, for which they had received no compensation, entailed a breach of Article 1 of Protocol No. 1, which reads 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.”

A. Admissibility

15. 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

16. The Government, after specifying that in their view the application concerned flat no. 1 only, dwelt on the difficulties connected with the legislative evolution in the field of property and on the new developments occurred after 1989. In this respect, they considered that the latest reform regarding property, namely the Law no. 247/2005, had aimed at *restitutio in integrum* of immovable property wrongfully seized by the State during the communist regime and, when the property could have not be returned, at granting compensation. Law no. 247/2005 grants compensation at the market value in the form of participation in a common system of placing for movable securities, organised in the form of a joint stock company, *Proprietatea*. The persons having right to compensation will receive securities at face value which will be transformed into shares once *Proprietatea* is listed on the stock market. The Government considered that the compensation granted once *Proprietatea* will be put in place is in accordance with the requirements of Article 1 of Protocol No. 1 and that the delay in the effective payment does not impinge upon the fair balance that

must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

17. The applicants contested the Government's arguments. Insisting on the abuses of the authorities, which sold their good in spite of the fact that they were not the rightful owners, the applicants considered that the authorities should have declared null and void the sale of flat no. 1, especially taking into account the decision of 13 April 1999 which confirmed their title to the entire property, including flat no. 1. In their view, the non-execution of a judgment ordering the return of property to the applicants constituted a violation of their property right and the Government's thesis regarding compensation with shares in *Proprietatea* does not represent just satisfaction.

18. The Court has already dealt with similar cases and found a violation of Article 1 of Protocol No. 1 (see *Porteanu*, cited above, §§ 32-35). Therefore the Court does not see any reason to disregard the cases cited above, especially that the facts are very similar.

19. The Court reiterates that, according to its jurisprudence, the sale of other's possession by the State, even before the question of the ownership had been finally settled by the courts, will be analyzed as deprivation of possession. This deprivation, in combination with the total lack of compensation, is contrary to Article 1 of Protocol No. 1 (see *Străin and Others*, cited above, §§ 39, 43 and 59).

20. Moreover, in the case *Păduraru*, cited above, the Court founded that the State had not fulfilled its positive obligation to act efficiently and in due time as regards the issue of public interest which is *restitutio in integrum* and sale of property nationalized during the communist regime. The Court also considered that the general uncertainty so created had reverberated upon the applicants, who found themselves in the impossibility to recover their property although they had an enforceable judgment in their favour (*Păduraru*, cited above, § 112).

21. Regarding the Government's thesis that compensation will be available once the stock company *Proprietatea* will start to function, the Court recalls its previous finding, namely that *Proprietatea* does not function at present in a way that may effectively grant compensation to the applicants (see, among others, *Radu v. Romania*, no. 13309/03, § 34, 20 July 2006 and *Ruxanda Ionescu v. Romania*, no. 2608/02, § 39, 12 October 2006). Moreover, neither the Law no. 10/2001 nor the Law no. 247/2005 (which amends the former) takes into account the damage implied by the prolonged absence of any remuneration and despite of a final judgment granting *restitutio in integrum* (see, *mutatis mutandis*, *Porteanu*, cited above, § 34).

22. The foregoing considerations are sufficient to enable the Court to conclude that the deprivation in question, contrary to the rule of law which

underlie the Convention and together with the total lack of compensation caused the applicants a disproportionate and excessive burden in breach of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

There has accordingly been a violation of Article 1 of Protocol No. 1.

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

23. The applicants claimed that the non-execution of the enforceable decision of 13 April 1999 given by the Bucharest Court of First Instance had deprived them of the right to a fair trial. They relied on 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...”

A. Admissibility

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. Having regard to the findings in the paragraphs above (22-26), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 § 1 (see *Pais v. Romania*, no. 4738/04, § 39, 21 December 2006 and, *mutatis mutandis*, *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23, *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I, *Canea Catholic Church v. Greece*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 50).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

26. Lastly, the applicants complained in their observations of a violation of the Articles 13 and 14 of the Convention.

27. The Court notes that the applicants failed to produce any particular evidence in support of their allegations.

It follows that these complaints are manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants sought restitution of flat no. 1 and appurtenant land, as the most appropriate manner for the State to provide redress. 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, 78 846 euros (EUR). In respect of non-pecuniary damage they sought EUR 20 000 for each of them. They also claimed EUR 46 000 for the loss of profit or any benefit from their possession since 1999.

30. The Government considered that the claims were excessive and not supported by material evidence. In particular, they criticised the expert report because it did not take into account, when calculating the value, the surfaces that appear in the sale contract regarding flat no. 1. Therefore, having regard to the sale contract, the Government considered that the market value of flat no. 1 was EUR 59 848. Further, they considered that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered.

Regarding the loss of profit, they considered that, in the view of its jurisprudence (*Anghelescu v. Romania*, no. 29411/95, §§ 75-77, 9 April 2002, *Buzatu v. Romania* (just satisfaction), no. 34642/97, § 18, 27 January 2005), the Court should not grant it.

31. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation under the Convention to put an end to the breach and make reparation for its consequences. If the internal law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission that has led to the finding of a violation of the Convention. The Court enjoys a certain discretion in the exercise of that power, as the adjective “just” and the phrase “if necessary” attest.

32. Among the matters which the Court takes into account when assessing compensation are pecuniary damage, that is the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, that is reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss (see, among other

authorities, *Ernestina Zullo v. Italy*, no. 64897/01, § 25, 10 November 2004).

33. In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

34. The Court considers, in the circumstances of the case, that the return of the property in issue (flat no. 1 and appurtenant land), as ordered in the enforceable judgment of the Bucharest Court of First Instance of 13 April 1999, would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1.

35. Failing such restitution by the respondent State, the Court holds that the respondent State is to pay the applicants, in respect of pecuniary damage, an amount corresponding to the current value of the property. Having regard to the information at its disposal concerning real estate prices on the local market and to the expert reports submitted by the parties, the Court estimates the current market value of the property at EUR 64 000.

36. As regards the amount of money alleged by the applicants for the loss of profit or any benefit from their possession since 1999, the Court rejects this claim taking into account, on the one hand, that it has ordered *restitutio in integrum* as reparation under Article 41 of the Convention and on the other hand, that granting a sum of money on this basis would be a speculative process, having regard that the profit from a possession depends on several factors. However, the Court will take into account the deprivation of possession since 1999 when calculating the non-pecuniary damage (see, *mutatis mutandis*, *Radu v. Romania*, no. 13309/03, § 49, 20 July 2006).

37. The Court considers that the serious interference with the applicants' right to the peaceful enjoyment of their possessions could not be compensated in an adequate way by the simple finding of a violation of Article 1 of Protocol No. 1. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants EUR 3 500 for each of them in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicants claimed EUR 3 405 for the costs and expenses they had incurred in the proceedings in the domestic courts and before this Court, broken down as follows: EUR 2 000 for lawyer's fees, EUR 1 360 for sundry expenses (notary's fees, translations, transport), and EUR 145 for the expert report.

39. The Government considered that the applicants' claims were excessive.

40. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession, to the above criteria and to the low degree of complexity of the case, which follows a well established jurisprudence, and making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants EUR 800 in respect of costs and expenses.

C. Default interest

41. 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 concerning Article 1 of Protocol No. 1 and Article 6 § 1 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
3. *Holds* that there is no need to examine on the merits the complaint under Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to return to the applicants flat no. 1 and appurtenant land situated in Bucharest, W. Filderman no. 1, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
 - (b) that, failing such restitution, the respondent State is to pay the applicants, 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 (ROL) at the rate applicable at the date of settlement, plus any tax that may be chargeable:
 - (i) EUR 64 000 (sixty-four thousand euros) jointly in respect of pecuniary damage;
 - (ii) EUR 3 500 (three thousand five hundred euros) for each applicant in respect of non-pecuniary damage;

(iii) EUR 800 (eight hundred euros) jointly in respect of costs and expenses;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President