



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

1959 · 50 · 2009

THIRD SECTION

CASE OF HIRSCHHORN v. ROMANIA

(Application no. 29294/02)

JUDGMENT

STRASBOURG

26 July 2007

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

In the case of Hirschhorn v. Romania,

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

Elisabet Fura, *President*,
Corneliu Bîrsan,
Lucius Caflisch,
Alvina Gyulumyan,
Egbert Myjer,
David Thór Björgvinsson,
Ineta Ziemele, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 29294/02) 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 French national, Mr Carl Hirschhorn (“the applicant”), on 24 July 2002.

2. The applicant was represented by Mrs L. Andreiescu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mrs R. Rizoiu, and subsequently by Mrs B. Ramaşcanu, of the Ministry of Foreign Affairs.

3. On 3 May 2005 the Court (Third Section) decided to give notice of the application to the Government. By virtue of Article 29 § 3 of the Convention it decided to examine the admissibility and merits of the case at the same time. The French Government, which had been invited to submit written observations, decided not to avail itself of that option (Article 36 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1925 in Bucharest and lives in Le Cannet (France).

5. In 1952, under Decree no. 92/1950 on nationalisation, the State took possession of a building located at 16 Negustori Street in Bucharest which

belonged to the applicant's parents, Romanian citizens and members of the Jewish faith.

A. Action to recover possession

6. On 18 September 1998 the applicant lodged an action to recover possession of the property with the Bucharest District Court. The action was directed against Bucharest local council, the Rental Property Administration Department (*Departamentul de administrare a fondului locativ*) and the State company Titan, which managed such properties. He alleged that, under Decree no. 92/1950, property belonging to certain social categories had been exempt from nationalisation and that his parents had belonged to one such category.

7. In a judgment of 24 June 1999 the court allowed the action on the ground that the State had taken possession of the property without any valid title. It ordered the defendants to restore the building and the adjoining land to the applicant.

8. Following an appeal by the Bucharest mayor's office acting on behalf of the local council, the Bucharest County Court upheld the decision of the first-instance court in a judgment of 6 December 1999.

9. The mayor's office lodged a further appeal with the Bucharest Court of Appeal, which in a final judgment of 21 June 2000 declared the appeal inadmissible for failure to give reasons.

10. In a decision of 25 September 2000 the mayor of Bucharest ordered the return of the building to the applicant.

B. The applicant's attempts to obtain possession

1. Action to have the lease set aside

11. On 9 November 2000 the applicant, accompanied by a bailiff, went to the building with a view to taking possession and found that it was occupied by the United States Peace Corps under a lease concluded with the State company Locato, which managed the buildings placed at the disposal of diplomatic missions in Romania.

12. On 14 November 2001 the applicant brought an action against Locato and the United States Peace Corps seeking the setting-aside of the lease and an order requiring the Peace Corps to vacate the building.

13. In a judgment of 30 May 2001 the Bucharest District Court dismissed the action. It observed that in 1992, by a government decision, ownership of the building had been transferred from the Bucharest mayor's office to the company managing the buildings used by diplomatic missions in Romania. That company had been letting the building to the United

States Peace Corps since 1993. The latest lease, which had been concluded on 12 January 1999 and set the rent at 4,907 United States dollars (USD) per month, was due to expire on 31 March 2002. Taking the view that Locato had proper authority to manage the building, the court held that the disputed lease was valid.

14. In a judgment of 5 November 2001 the Bucharest County Court, on an appeal by Mr Hirschhorn, set aside the impugned decision and allowed the applicant's action. The County Court observed that in its final judgment of 24 June 1999 the Bucharest District Court had held that the State had appropriated the building without any valid title. Taking the view that the State could not dispose of a property which did not belong to it, the court set aside the lease and ordered the eviction of the tenant organisation. Locato appealed on points of law.

15. On 21 December 2001 the bailiff was authorised by the Bucharest District Court to evict the tenant organisation under the decision of 5 November 2001. On 31 January 2002 he directed Locato to comply with the decision.

16. In a letter of 6 February 2002 Locato informed the bailiff that the building was the property of the State and that the tenant organisation had diplomatic immunity. That being so, it considered that enforcing the eviction order would be inappropriate and liable to damage Romania's image internationally.

17. On 11 and 20 February 2002 the bailiff went to the building but was refused entry by a representative of the United States Peace Corps on the ground that the Peace Corps was a United States governmental organisation which had diplomatic immunity and could not therefore be evicted.

18. On 25 February 2002 the bailiff wrote to the President of the Bucharest Court of Appeal informing him of the difficulties encountered in enforcing the judgment of 24 June 1999 and the decision of the mayor of Bucharest, as Locato and the United States Peace Corps were invoking diplomatic immunity. The letter included the following passage:

“Given the applicability of certain international law conventions in situations such as this, we would be grateful if you could consider the possibility – and inform us accordingly – of taking specific enforcement measures, in view of the fact that the writ of execution is supposed to take effect and that the appeal by Locato against the Bucharest County Court judgment of 5 November 2001 is pending before your court and has been set down for hearing on 26 February 2002.”

19. On 4 March 2002 the President of the Bucharest Court of Appeal replied to the bailiff's letter and informed him that his concerns had been looked into by an inspecting judge, whose report he forwarded to the bailiff. The report indicated that under the Vienna Convention of 18 April 1961 the property of diplomatic missions was inviolable. As the immunity from jurisdiction extended to enforcement procedures, the inspecting judge concluded that the applicant could not regain possession of his building, and

asked the bailiff to advise him to apply for compensation corresponding to the value of the building on the ground that it was not possible to have the judgment of 24 June 1999 enforced.

20. Meanwhile, on 20 February 2002, the applicant, who lives in France, sent a fax to the registry of the Court of Appeal stating that he was dispensing with the services of his lawyer and requesting an adjournment of the hearing scheduled for 26 February so that he could instruct a replacement.

21. At the hearing of 26 February the Court of Appeal refused the request for an adjournment, taking the view that the applicant had had sufficient time to appoint a new lawyer. However, it adjourned delivery of the judgment, first until 5 March and then until 12 March 2002, in order to allow the applicant to submit conclusions in writing.

22. In a final judgment of 12 March 2002 the Civil Division of the Bucharest Court of Appeal, sitting as a bench of three judges, allowed Locato's appeal on points of law and dismissed the applicant's action. It confirmed the validity of the lease, finding that it had been entered into in good faith since, although the company had not in fact been the owner of the building in question at the time of signature of the lease, it had appeared to be.

23. On 21 March 2002 the Bucharest District Court rejected a complaint by the applicant against the bailiff alleging that the latter had failed to take action to enforce the judgment of 24 June 1999. The court observed that the bailiff had gone to the building but had been informed that the United States Peace Corps enjoyed immunity from jurisdiction. Accordingly, the court held that the bailiff could not be said to have failed to enforce the judgment in question.

2. Claim for restitution under Law no. 10/2001

24. On 9 August 2001, on the basis of Law no. 10/2001 on the rules governing immovable property wrongfully nationalised by the State between 6 March 1945 and 22 December 1989 ("Law no. 10/2001"), the applicant requested that Locato return the property to him. His request was rejected by a decision of 9 October 2001.

25. The applicant appealed against that decision to the Bucharest County Court and requested that Locato be evicted from the building. He argued that the building belonged to him by virtue of the judgment of 24 June 1999.

26. In a judgment of 13 May 2002 the County Court allowed the claim for restitution of the building but rejected the eviction request on the ground that the Peace Corps was not a party to the proceedings. Locato appealed on points of law.

27. By a governmental decision (no. 533) of 30 May 2002, Locato became the State Diplomatic Property Management Agency (*Regia autonoma Administratia patrimoniului protocolului de Stat* – "the

Agency”). The applicant's property continued to appear in the lists attached to that decision as State property managed by the Agency.

28. By judgment of 31 March 2004 the Bucharest Court of Appeal allowed the appeal and dismissed the applicant's claim on the ground that Mr Hirschhorn had not adduced evidence either that title to the building had passed to him as his parents' heir or that he had failed to be compensated contrary to the agreement concluded in 1959 between France and Romania concerning property formerly owned by French citizens and nationalised by the Romanian State.

29. An appeal on points of law by the applicant is currently pending before the High Court of Cassation and Justice.

3. Second action to recover possession

30. In an action to recover possession lodged with the Bucharest County Court on 15 August 2002, the applicant requested that the Agency return the building, that the lease concluded with the Peace Corps be set aside and the latter evicted, and that the rent received by the Agency under the lease be paid to him.

31. By judgment of 17 February 2003 the County Court declared the action inadmissible on the ground that the applicant could not lodge an ordinary action to recover possession while the action based on Law no. 10/2001 was still pending.

32. The applicant appealed to the Bucharest Court of Appeal, which upheld the judgment on 29 October 2003. The applicant then lodged an appeal on points of law with the High Court of Cassation and Justice. The latter, in a judgment of 7 July 2005, allowed the appeal and remitted the case to the Bucharest Court of Appeal. The proceedings are still pending.

C. Current situation regarding the building

33. The Agency was reorganised by Government Decision no. 60 of 21 January 2005. The applicant's building is still on the list of State-owned properties managed by the Agency.

34. Although the lease concluded with the United States Peace Corps expired on 31 March 2002, that organisation continues to occupy the building. The Government have not provided any details as to the legal basis for the occupancy.

35. The documents supplied by the applicant show that he has paid all the taxes and duties due on the building. However, in 2004 and 2005 the Agency also paid taxes and duties into the local budget in respect of the building.

II. RELEVANT LAW

A. Domestic law

36. Under the Administration of Justice Act (Law no. 92/1992) in force at the material time, the president of the court of appeal performed mainly administrative, organisational and supervisory duties. The relevant provisions of the Act read as follows:

Article 15

“The president [of the court of appeal] and, where appropriate, the presidents of the divisions [of that court] shall decide on the composition of the benches...”

Article 16

“Where the president, the vice-president or the division president is a member of the bench, he or she shall preside. In all other cases the president or division president shall appoint the presiding judge of the bench.”

Article 18

“The Minister of Justice shall be responsible for the proper organisation and operation of the justice system as a public service. The inspecting judges of the courts of appeal shall keep the Minister of Justice informed of the functioning of the courts and of any irregularities liable to compromise the standard of judicial activity and the application of the laws and regulations coming within the jurisdiction of the courts of appeal.

The presidents and vice-presidents of the courts shall monitor the organisation and quality of the service and compliance with the laws and regulations... The presidents of the courts of appeal may exercise this prerogative through the intermediary of the inspecting judges of the court of appeal.

In no circumstances may the monitoring activities entail interference in the conduct of proceedings in progress or call into question a decision already given...”

Article 66

“Promotion for judges shall be on the basis of merit, as attested by the appraisals carried out by their superiors. Appraisals shall be conducted annually and shall reflect the performance of the persons concerned, their conduct in the workplace and in society, their professional qualities and their career prospects.”

Article 115

“Judges shall be prohibited from providing advice, orally or in writing, concerning ongoing cases, even if the case in question is being heard by a court other than the one in which they sit. They may not express opinions in public concerning ongoing cases.”

Article 121

“Judges' disciplinary liability shall be incurred in the event of irregularities in the performance of their duties or conduct liable to damage the interests of the service or the reputation of the justice system.”

Article 124

“Disciplinary proceedings ... shall be initiated by the Minister of Justice...”

Article 125

“In order to initiate disciplinary proceedings..., a preliminary investigation ordered by the Minister of Justice shall be compulsory.

The investigation shall be carried out either by judges of at least the same ranking as the judge under investigation, by general inspectors or by other Ministry officials assimilated to judges.”

Article 126

“On receiving the findings of the investigation, the Minister may refer the matter to the Supreme Council of the Judiciary.

The Supreme Council shall give a decision accompanied by a statement of reasons...”

37. The position of inspecting judge at the court of appeal was abolished by Law no. 247 of 19 July 2005. However, the possibility for the president or vice-presidents of the court of appeal to appoint judges to carry out inspections was maintained. Nevertheless, these inspections must respect judges' independence and comply with final court decisions.

38. Article 66 of Law no. 92/1992 was repealed by the Status of Judges Act (Law no. 303/2004), which stipulates that judges' performance shall be assessed every three years by a committee under the authority of the Supreme Council of the Judiciary.

39. The method for designating the judges to sit on the benches of the courts of appeal was amended by the Administration of Justice Act (Law no. 304/2004), which states that the composition of the benches shall be decided by a panel within each court of appeal, made up of the president and six members elected by the general assembly of judges.

40. Under Law no. 317/2004 on the Supreme Council of the Judiciary, disciplinary proceedings are a matter exclusively for a disciplinary committee within the Supreme Council, to which any interested party may apply.

B. International law

41. The relevant international provisions are as follows:

1. Vienna Convention on Diplomatic Relations of 18 April 1961 (ratified by Romania via Decree no. 566/1968, published in the Official Journal of 8 July 1968)

Article 1

“For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

...

(i) The 'premises of the mission' are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.”

Article 3

“1. The functions of a diplomatic mission consist, *inter alia*, in:

- (a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

...”

Article 22

“1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.”

2. *European Convention on State Immunity (Basle, 16 May 1972) (not signed by Romania)*

Article 9

“A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to:

- a. its rights or interests in, or its use or possession of, immovable property; or
- b. its obligations arising out of its rights or interests in, or use or possession of, immovable property and the property is situated in the territory of the State of the forum.”

Article 23

“No measures of execution or preventive measures against the property of a Contracting State may be taken in the territory of another Contracting State except where and to the extent that the State has expressly consented thereto in writing in any particular case.”

3. *United Nations Convention on Jurisdictional Immunities of States and their Property, December 2004 (ratified by Romania on 15 February 2007 but not yet in force)*

42. The relevant provisions of this Convention read as follows:

Article 2 – Use of terms

“1. For the purposes of the present Convention:

...

(b) “State” means:

(i) the State and its various organs of government;

...

(iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State;

...”

Article 5 – State immunity

“A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.”

Article 6 – Modalities for giving effect to State immunity

“1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

- (a) is named as a party to that proceeding; or
- (b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.”

Article 13 – Ownership, possession and use of property

“Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

- (a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;
- (b) any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or
- (c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.”

Article 19 – State immunity from post-judgment measures of constraint

“No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) the State has expressly consented to the taking of such measures as indicated:

- (i) by international agreement;
- (ii) by an arbitration agreement or in a written contract; or
- (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or
- (b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or
- (c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum...”

4. Agreement Between the Government of the United States and the Government of Romania Concerning the Program of the United States Peace Corps in Romania, signed in Washington on 24 January 1992

Article IV

“The Peace Corps representative and his/her staff members will be granted the same treatment as personnel of comparable rank in the United States Embassy in Romania, except that they will not have diplomatic status and immunity.”

THE LAW

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

43. The applicant alleged a two-fold violation of Article 6 § 1 of the Convention. Firstly, he complained that the failure to enforce the final judgment of 24 June 1999 amounted to an infringement of his right of access to a court; secondly, he argued that the Civil Division of the Bucharest Court of Appeal had not been an “independent and impartial tribunal”, as the President of the Court of Appeal had appointed an inspecting judge during the proceedings in order to steer the outcome of the case pending before the court. Article 6 § 1 of the Convention, in its relevant part, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal ...”

A. Failure to enforce the judgment of 24 June 1999

1. Admissibility

44. 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 no other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

2. Merits

45. The Government pointed out at the outset that the United States Peace Corps was a United States government agency, created in 1961, which came under the authority of the Secretary of State. It was to be regarded as a “diplomatic mission” of the United States in Romania and enjoyed immunity on that basis. In the light of the provisions of public international law, the enforcement of the judgment of 24 June 1999 and the eviction of the organisation from the premises it occupied were not possible (see, *mutatis mutandis*, *Manoilescu and Dobrescu v. Romania and Russia* (dec.), no. 60861/00, ECHR 2005-VI).

46. The Government added that the outcome of the second action for recovery of possession and of the proceedings brought under Law no. 10/2001 could affect the validity of the applicant's title to the building in question.

47. The applicant contested these arguments, submitting that the United States Peace Corps was not a United States government organisation but simply an agency which did not enjoy diplomatic immunity.

48. In any event, the diplomatic immunity invoked by the Peace Corps did not act as a bar to the return of the building, as the lease had expired and the Romanian authorities could make other premises available to the organisation.

49. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18). That right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

50. Admittedly, the right of access to the courts is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent

that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

51. In the instant case it is the Court's task to determine whether the conduct of the Romanian State of which the applicant complained was justified in the light of the principles set out above.

52. The Court notes that, although the above-mentioned judgment became final and the mayor of Bucharest ordered the return of the building on 25 September 2000, the judgment remains unenforced owing to the objections raised by the company which manages the building, relying on the supposed diplomatic immunity of the United States Peace Corps.

53. In that connection the Court observes that the parties have differing views as to the status of the Peace Corps and, accordingly, as to its right to enjoy the privileges and immunities conferred on a State's governmental bodies by international law.

The Court further points out that the legal department of the organisation in question refused to comply with its request to provide the Court with information on its status and functions.

54. Nevertheless, in view of the specific circumstances of the present case, the Court does not consider it necessary to resolve this issue.

55. In *Manoilescu and Dobrescu*, cited above, the Court held that the objections to the return of the property in question to the applicants were justified by the fact that the Embassy of the Russian Federation was occupying the premises by virtue of a document of title dating back to 1962.

56. In the instant case the United States Peace Corps was merely a tenant of the disputed property and the last lease, concluded on 12 January 1999, expired on 31 March 2002. Hence, while the existence of a lease justified the delay in making the property available to the applicant, the Court cannot accept that the authorities' refusal to transfer ownership to the applicant continued to be justified once the lease had come to an end.

57. The Court reiterates in that connection that, in addition to possession of the property (*usus*), ownership also implies the right to dispose of the property and receive income from it (*abusus* and *fructus*). However, despite the final judgment referred to above and the fact that the lease came to an end, the applicant was and continues to be deprived of all these attributes, as the domestic authorities continue to regard the building as State property (see paragraph 33 above).

58. Nor is the Court persuaded by the Government's argument that the United States Peace Corps enjoys immunity from jurisdiction and that the judgment of 24 June 1999 cannot therefore be enforced.

59. The Court notes at the outset that this argument was first raised in the Government's observations. In the proceedings which ended in the

judgment of the Bucharest Court of Appeal dated 12 March 2002 the domestic courts, in dismissing the applicant's claims, based their decisions solely on the interpretation of the civil-law provisions concerning leases, without referring to the supposed immunity of the United States Peace Corps.

60. The Court further notes that, even if the organisation in question did indeed enjoy such immunity, this in no sense acted as a bar to the transfer to the applicant of ownership rights over the disputed property. As that transfer did not in itself entail the eviction of the tenant, it was open to the latter, in the event of a dispute over the occupancy of the building, to submit defence arguments, including arguments relating to its alleged immunity from jurisdiction.

61. As to the Government's allegations that the validity of the applicant's title to the property could depend on the outcome of the actions brought after the final judgment of 24 June 1999, the Court observes that those actions merely represented attempts by the applicant to secure compliance with the judgment by the authorities. Accordingly, they could not have any bearing on the validity of his title to the property. In any event, the Court has already held that it would be excessive to require an applicant who has obtained a final judicial decision against the State to bring further proceedings against the domestic authorities to secure performance of the obligation in question (see, *mutatis mutandis*, *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004, and *Roman and Hoge v. Romania* (dec.), no. 62959/00, 31 August 2004).

62. These considerations are sufficient for the Court to conclude that in refusing to comply with the final judgment ordering the return of the building to the applicant, the domestic authorities deprived him of effective access to a court.

63. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

B. Independence and impartiality of the Bucharest Court of Appeal

64. The applicant alleged that the Civil Division of the Bucharest Court of Appeal, which had examined Locato's appeal on points of law, could not be regarded as an "independent and impartial tribunal" within the meaning of Article 6 § 1 of the Convention. He argued that the President of the Court of Appeal had interfered with the proceedings through the intermediary of an inspecting judge, who had come out clearly in favour of Locato's appeal.

1. Admissibility

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

2. Merits

66. The Government contended that the court of appeal judges satisfied the independence requirement laid down in Article 6 § 1 of the Convention. They argued that the way in which the judges were appointed, and the irremovability and stability they enjoyed, afforded sufficient guarantees of independence from the executive.

67. As to the impartiality requirement, there was no evidence in the instant case capable of casting doubt on the subjective impartiality of the judges of the Bucharest Court of Appeal. With regard to that court's objective impartiality, the Government took the view that the letter from the President of the Court of Appeal to the bailiff could not be regarded as giving rise to legitimate fears on the part of the applicant.

68. In that connection the Government argued that the letter in question had been sent to the bailiff and not the applicant, that it had represented a reply to the points raised by the bailiff and that it had not been judicial in character. Lastly, they submitted that the role of the President of the Court of Appeal was confined to administrative duties and that the court's decision to allow Locato's appeal had in no sense been based on the position of the inspecting judge. Accordingly, the letter had had no influence on the outcome of the case.

69. The applicant maintained that he had not enjoyed the guarantees of a fair hearing before the Civil Division of the Court of Appeal.

70. The Court reaffirms the importance of the existence of guarantees against outside pressures in order to ensure that a court satisfies the "independence" requirement set forth in Article 6 § 1 (see, among many other authorities, *Findlay v. the United Kingdom*, 25 February 1997, § 73, Reports 1997-I).

71. With regard to the "impartiality" requirement, the Court reiterates that there are two aspects to it: the tribunal must be subjectively free of personal prejudice or bias and must also be impartial from an objective viewpoint, in that it must offer sufficient guarantees to exclude any legitimate doubt in this respect. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to the proceedings (see *Daktaras v. Lithuania*, no. 42095/98, § 32, ECHR 2000-X).

72. As the concepts of independence and objective impartiality are closely linked, the Court will examine these two issues together (see, *mutatis mutandis*, *Findlay*, cited above, § 73).

73. In the instant case the Court observes that the applicant did not adduce any evidence to suggest that any of the judges of the Court of Appeal had displayed bias or personal prejudice. It therefore remains to be ascertained whether the doubts expressed by the applicant regarding the independence and objective impartiality of the judges of the Court of Appeal can be said to have been justified in objective terms.

74. In that regard the Court notes that, in finding in his report that the applicant was not entitled to take possession of his property, the inspecting judge supported the position of the defendants, namely Locato and the United States Peace Corps.

75. Next, the Court is of the view that, in forwarding to the bailiff the report of the inspecting judge, who was acting at the behest of and under the authority of the President of the Court of Appeal, the latter endorsed the report's findings.

76. Admittedly, there is nothing to indicate that the President of the Court of Appeal designated the judges making up the bench which heard Locato's appeal, a task normally delegated to the President of the Civil Division of that court, or that the inspecting judge sat as a member of that bench (see, by converse implication, *Daktaras*, cited above, § 36, and *Buscemi v. Italy*, no. 29569/95, § 68, ECHR 1999-VI).

77. However, the Court observes that by virtue of the legal provisions in force at the time, inspecting judges played an important role in the internal organisation of the courts, and in particular of the courts of appeal. On the one hand, they kept the Minister of Justice informed of the operation of the courts and of any problems liable to compromise the quality of judicial activity and the application of the laws and regulations; on the other hand, they monitored, at the behest of the presidents and vice-presidents of the courts of appeal, the organisation and quality of the service and compliance with the laws and regulations.

78. In view of the vast judicial and administrative ground that the inspecting judges were expected to cover, and the fact that they answered both to the Minister of Justice and to the presidents of the courts of appeal, the question arises whether the members of the court hearing the appeal were not subject to undue influence, particularly given the power of the Minister of Justice to commence disciplinary proceedings and the organisational and administrative duties of the presidents of the courts of appeal.

79. In order to avert such a risk, the law barred judges from voicing opinions in public about proceedings in progress and also strictly prohibited any interference by inspecting judges in the conduct of proceedings.

80. The Court cannot overlook the fact that the inspecting judge infringed these prohibitions, as he stated during the consideration of Locato's appeal that the United States Peace Corps could not be evicted, whereas the disputed County Court judgment had ordered its eviction.

81. The Government's argument that the Court of Appeal had allowed the appeal on the basis of findings other than those made by the inspecting judge does nothing to alter this conclusion, since the inspecting judge and, by implication, the President of the Court of Appeal, had argued in favour of rejecting the applicant's claims.

82. In any event, the Court reiterates that any legitimate doubt as to the impartiality of a tribunal is itself sufficient to find a violation of Article 6 § 1 (see, *mutatis mutandis*, *Sramek v. Austria*, 22 October 1984, § 42, Series A no. 84).

83. In the light of the circumstances of the case, the Court considers that the applicant's doubts as to the independence and impartiality of the Court of Appeal can be said to have been objectively justified.

84. There has therefore been a violation of Article 6 § 1 of the Convention.

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

85. The applicant claimed a violation of his right to peaceful enjoyment of his possessions on account of his inability to secure enforcement of the final judgment of 24 June 1999 ordering the restitution of the building. He relied on Article 1 of Protocol No. 1, which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

1. Admissibility

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

2. Merits

87. The Government submitted that no violation of Article 1 of Protocol No. 1 could be established. The United States Peace Corps was to be regarded as equivalent to a diplomatic mission of the United States in Romania and the building in issue was used by the organisation “for the purposes of its diplomatic mission”.

88. Consequently, the principle of immunity of State bodies constituted the legal basis for non-enforcement of the judgment of 24 June 1999. The non-enforcement of the judgment corresponded to a legitimate aim in the general interest, namely the need to maintain good relations with the Government of the United States.

89. The applicant contested the Government's argument, maintaining that the failure to enforce the judgment in question amounted to a breach of his right of property for the purposes of Article 1 of Protocol No. 1.

90. The Court considers that the final judgment of 24 June 1999 recognising the applicant as the owner of the building in issue and ordering the local authorities to return it to him amounts to a claim against the Romanian State which is sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1.

91. According to the Court's case-law Article 1 of Protocol No. 1, which in substance guarantees the right of property, comprises three distinct rules (see *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98): 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, amongst other things, to control the use of property in accordance with the general interest. 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 general principle enunciated in the first rule (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

92. In the instant case the Court notes that the applicant was not only unable to take possession of his building but was also deprived of the possibility of selling it or of making any profit from it since, by virtue of the decisions of 30 May 2002 and 21 January 2005, the Government had entered it on the list of State-owned properties.

93. In the circumstances, the Court considers that the applicant's complete inability to enjoy any of the attributes of his ownership rights over the building amounted to *de facto* expropriation for the purposes of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see, conversely, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 46, ECHR 1999-V).

94. A taking of property within this second rule can only be justified if it is shown to be in the public interest and subject to the conditions provided for by law. Moreover, any interference with the enjoyment of the property must also satisfy the requirement of proportionality (see *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

95. In the instant case the Court notes that the Government reiterated their argument that the supposed diplomatic immunity of the United States Peace Corps justified the refusal to return the building to the applicant.

96. As regards the period before 31 March 2002, the date on which the lease expired, the Court reiterates its finding in relation to the complaint concerning the failure to enforce the judgment of 24 June 1999, namely that

the existence of the lease justified a delay in making the building available to the applicant. However, it observes that the rent continued to be collected by the local authorities rather than by the applicant, the actual owner of the property, despite the nullification of the State's property rights by virtue of the final judgment of 24 June 1999.

97. As to the period after the expiry of the lease, the Court notes that the State had and continues to have the use of the applicant's property despite having no title to it; Government decisions nos. 533 and 60 of 30 May 2002 and 21 January 2005 respectively did not confer valid title as they disregarded the final judgment of 24 June 1999.

98. On this basis and in view of the specific circumstances of the case, the Court considers that the principle of immunity of State bodies is not sufficient in itself to justify the failure by the Romanian authorities to transfer ownership of the building to the applicant (see, by converse implication, *Manoilescu and Dobrescu*, cited above).

99. The Court notes that the applicant, as a result, has been deprived of all the attributes of ownership of his property for several years now, without receiving compensation, and that his efforts to recover the property have hitherto remained unsuccessful. Accordingly, even assuming that it could be demonstrated that the authorities' refusal to return the building had a legal basis and was in the public interest, the Court is of the view that the fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights has been upset and that the applicant has borne and continues to bear an individual and excessive burden.

100. There has therefore been and continues to be a violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS

101. Under Article 6 § 1 of the Convention the applicant alleged a breach of the principle of equality of arms on account of the refusal of the Court of Appeal to adjourn the hearing scheduled for 26 February 2002.

102. He further alleged that he had been subjected to discrimination contrary to Article 14 of the Convention on account of his Jewish origins.

103. In view of all the information in its possession, and in so far as it has jurisdiction to consider the allegations in question, the Court does not find any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols. In this connection it observes, firstly, that the applicant was lawfully given notice to appear and was aware of the date of the hearing in advance, and that the Court of Appeal twice adjourned the delivery of the judgment to enable him to make written submissions. Secondly, the applicant did not adduce evidence of any discrimination.

104. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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. Pecuniary damage

106. The applicant submitted that the most appropriate means for the Government to afford redress for the damage caused would be to return the entire property, in other words the building and the land, to him.

107. Should the Government object to restitution, the applicant was prepared to consider an award of compensation in the amount of 3,000,000 euros (EUR) which, he maintained, was equivalent to the market value of the property. In support of his claim, he referred to an expert report compiled by a member of the Romanian association of technical experts which estimated the value at EUR 2,438,240.

108. The Government disagreed with the amount claimed. They referred to a different expert report, also prepared by a certified expert, according to which the market value of the property was EUR 1,329,982. The Government also pointed out that the State had invested EUR 66,294 in improvements which had enhanced the value of the property.

109. In his observations in reply, the applicant contested the findings of the expert report submitted by the Government. The difference in the amounts put forward by the two experts resulted in particular from the fact that the Government-appointed expert had calculated the value of the property on the basis that it was located in “zone 1” in Bucharest, whereas in reality it was in “zone 0”, where property prices were higher.

110. The applicant also claimed EUR 288,000 for loss of earnings on account of the loss of the rent collected by the State since November 2000.

111. Lastly, he claimed EUR 2,000 in respect of the taxes and duties paid on the property since 2000.

112. Relying, *inter alia*, on *Popescu Nasta v. Romania* (no. 33355/96, § 62, 7 January 2003), the Government took the view that if the Court were to order the return of the property to the applicant it should not make any award for loss of earnings.

113. 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 national 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.

114. The Court considers, in the circumstances of the present case, that assigning possession of the disputed property to the applicant, as ordered by the Bucharest District Court judgment of 24 June 1999, would put the applicant as far as possible in a situation equivalent to the one in which he would have been if there had not been a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

115. The Court rules that if the respondent State does not return the property within three months from the date on which the present judgment becomes final, it must pay the applicants, in respect of pecuniary damage, a sum corresponding to the current value of the property.

116. As to the determination of that sum, the Court notes the considerable discrepancy between the figures advanced by the parties' experts.

117. In view of the information in its possession concerning immovable property prices in Bucharest, the Court estimates the current market value of the building and appurtenant land at EUR 1,900,000.

118. As regards the sum claimed for loss of earnings, the Court considers that the refusal to enforce the above-mentioned final judgment caused pecuniary damage to the applicant, who was deprived of the enjoyment of his possession and of any possibility of making use of it or deriving profit from it, as the State continued to collect the rent paid by the United States Peace Corps. Consequently, the Court deems it reasonable, as proposed by the applicant, to assess the loss sustained by him as a result of the non-enforcement of the judgment of 24 June 1999 on the basis of the monthly rent paid by that organisation. As the Government did not dispute the fact that the State is continuing to collect the rent laid down in the 1999 lease, the Court will take this as its point of reference.

119. However, in order to make a realistic assessment, the Court must also take account of the fact that the applicant would have had to invest some sums in the upkeep of the building, and that the rental income would have been subject to tax (see, *mutatis mutandis*, *Prodan v. Moldova*, no. 49806/99, § 74, ECHR 2004-III (extracts)).

120. In view of the foregoing, the Court, ruling on an equitable basis, awards the applicant the sum of EUR 200,000 for loss of earnings on account of the non-enforcement of the final judgment of 24 June 1999.

121. Finally, as to the reimbursement of the taxes and duties paid since 2000, the Court notes that the applicant discharged his obligations as the owner of the property and that his title to the property is still valid. Accordingly, it considers that the violations it has found of Article 6 § 1 of

the Convention and Article 1 of Protocol No. 1 do not justify reimbursement of the sums in question. The fact that the Agency also paid taxes and duties on the property does nothing to alter that finding.

B. Non-pecuniary damage

122. The applicant claimed EUR 300,000 for the non-pecuniary damage he had allegedly sustained on account of the authorities' refusal to return the property to him. The refusal had caused him considerable psychological suffering, leading to a deterioration in his health and a heart attack.

123. The Government contested this claim, taking the view that there was no direct link between the violations and the non-pecuniary damage alleged. They further argued that the finding of a violation by the Court would constitute in itself sufficient redress.

124. The Court cannot overlook the numerous attempts made by the applicant, at an advanced age, to recover possession of his property, or the feelings of distress he must have experienced owing to his prolonged inability to secure compliance with the final judgment of 24 June 1999. It considers that the facts in issue resulted in serious interference with the applicant's right to peaceful enjoyment of his possessions, his right to a court and his right to a fair hearing, for which a sum of EUR 10,000 represents just compensation in respect of non-pecuniary damage.

C. Costs and expenses

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

126. The Government pointed out that the applicant had not provided any documentary evidence in support of his claims and that, as far as the costs and expenses incurred before the domestic courts were concerned, he could have applied to the courts concerned for reimbursement.

127. The Court reiterates that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

128. In view of the fact that the applicant has not itemised his claims or provided documentary evidence of the amount claimed for costs and expenses, the Court decides not to award any sum under this head.

D. Default interest

129. 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 application admissible with regard to the complaints under Article 6 § 1 of the Convention concerning the failure to enforce the judgment of 24 June 1999 and the independence and impartiality of the Bucharest Court of Appeal, and to the complaint under Article 1 of Protocol No. 1, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the failure to enforce the judgment of 24 June 1999;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as the applicant did not receive a hearing before an independent and impartial tribunal;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
5. *Holds*
 - (a) that the respondent State is to return to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the building situated at 16 Negustori Street, Bucharest, in accordance with the judgment of the Bucharest District Court of 24 June 1999;
 - (b) that, failing such restitution, the respondent State is to pay the applicant, within the same three-month period, EUR 1,900,000 (one million nine hundred thousand euros) in respect of pecuniary damage;
 - (c) that, in any event, the respondent State is to pay the applicant EUR 200,000 (two hundred thousand euros) in respect of pecuniary damage and EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;
 - (d) that the amounts in question are to be converted into the 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Elisabet Fura
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Caflisch, joined by Judge Ziemele, is annexed to this judgment.

E.*.
S.*.

CONCURRING OPINION OF JUDGE CAFLISCH,
JOINED BY JUDGE ZIEMELE

(Translation)

1. I agree with the Chamber's conclusions as to the violation of Article 6 § 1 in the present case. I do so mainly on the basis of the finding set forth in paragraph 60 of the judgment, where the Court states:

“... even if the [Peace Corps] did indeed enjoy such immunity, this in no sense acted as a bar to the transfer to the applicant of ownership rights over the disputed property. As that transfer did not in itself entail the eviction of the tenant, it was open to the latter, in the event of a dispute over the occupancy of the building, to submit defence arguments, including arguments relating to its alleged immunity from jurisdiction.”

2. It would appear from paragraphs 402 and 403 of its judgment of 26 February 2007 concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) that the International Court of Justice is not very favourably disposed towards specialised international courts – a category which includes this Court – ruling on issues of public international law. Despite the reservations of the main judicial body of the United Nations, I would have liked to see the majority of this Court adopt a position on the immunity issues raised by the ongoing presence of the United States Peace Corps in the building which is the subject of the present case, rather than leaving these matters to the Romanian courts. On this subject I have to say, moreover, that I fail to understand the refusal of the legal department of the Peace Corps to provide the Court with information on its status, particularly as it may have stood to benefit from so doing.

3. The Agreement of 24 January 1992 between the Government of the United States and the Government of Romania concerning the program of the United States Peace Corps in Romania says nothing about the status of the organisation as such. It merely states, in Article IV, as follows:

“The Peace Corps representative and his/her staff members will be granted the same treatment as personnel of comparable rank in the United States Embassy in Romania, except that they will not have diplomatic status and immunity.”

4. Two conclusions can be drawn from this wording: (1) Peace Corps staff enjoy the same status as members of the United States Embassy, although the Peace Corps as such is not placed on the same footing as the Embassy; (2) the similarity in treatment does not extend to diplomatic privileges and immunities. While the 1992 Agreement tells us nothing about the situation of the Peace Corps as such, the information possessed by the Court in this case – the refusal of the Peace Corps legal department to provide it with details, the fact that the Peace Corps as such is not placed on the same footing as the Embassy and the explicit exclusion of Peace Corps

personnel from diplomatic privileges and immunities – suggest that the organisation does not have diplomatic status in Romania.

5. This preliminary finding is confirmed by the definition of diplomatic functions contained in the Vienna Convention of 18 April 1961 on diplomatic relations and by the activities carried out by the Peace Corps. Article 3 of the Vienna Convention states:

“1. The functions of a diplomatic mission consist, *inter alia*, in:

- (a) Representing the sending State in the receiving State;
- (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) Negotiating with the Government of the receiving State;
- (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.”

This provision makes it clear that diplomatic missions must perform a series of tasks which fall mainly within the sphere of official inter-State relations with the possible exception, at least to some extent, of those which consist in promoting friendly relations and developing economic, cultural and scientific relations with the receiving State (Article 3 (1) (e)). Diplomatic missions perform all the functions listed. It is abundantly clear that an organisation, even an official one, whose sole task consists, for instance, in promoting friendly and cultural relations between the States concerned does not have the character of a diplomatic mission.

6. Leaving aside the reference to the performance of “mutually agreed tasks” in Romania (Article I, first paragraph), the Agreement of 24 January 1992 between the United States and Romania does not enter into details about the activities of the Peace Corps. However, on the basis of publicly accessible information, it can be said that the aim of this organisation is to help in training men and women in the host countries in order to contribute to the development of the latter, and to promote better understanding between the people of the States concerned. Americans sent abroad with the Peace Corps work in the following spheres: education, development of community activities and business, environmental protection and agriculture, health and medical care and information technologies. This brief description of the tasks of the Peace Corps shows us in any event that the organisation is not a diplomatic mission and cannot therefore enjoy the

privileges and immunities conferred on such missions by the 1961 Vienna Convention.

7. The matter does not, however, end there. There can be no doubt that the Peace Corps is an instrumentality of the United States Government. It is therefore the latter, through the Peace Corps, which is the tenant of the property claimed by the applicant. It is true that the last written lease concluded with the Romanian Government ended on 31 March 2002, as noted by the Court in its judgment (paragraph 56); however, the Peace Corps continues to occupy the building, seemingly wholly undisturbed, that is to say, with the consent of the Romanian Government, which is presumably collecting rent. Hence, the Peace Corps is far from being a “squatter”, but is occupying the building on the basis of a tacit lease of indeterminate duration. No doubt the Romanian Government could put an end to this state of affairs, observing if necessary the notice period laid down by Romanian law for indefinite-term leases. But so long as they do not do so, the presence of the Peace Corps is perfectly lawful and the United States, through the intermediary of that organisation, has a legitimate interest in continuing to use the premises.

8. Is that interest protected by international law and if so, in what way? In the instant case the United States could seek to rely on the rules of customary international law governing State immunity, codified by the Convention of 2 December 2004 on Jurisdictional Immunities of States and their Property (United Nations General Assembly, Resolution 59/38 of 2 December 2004).

9. Article 13 of the 2004 Convention, which lists the exceptions to jurisdictional immunity, provides:

“Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(b) any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or (c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up.”

Under the terms of (a) above, the United States (or Romania, with a view to avoiding any internationally unlawful conduct *vis-à-vis* the United States) cannot invoke immunity from jurisdiction before the Romanian courts. Paragraph (a) prevents the foreign State from invoking such immunity, as it does not cover any right or interest of that State in immovable property, or its use thereof. Hence neither the United States nor Romania can invoke immunity from jurisdiction in the present case. What is more, this case

extends beyond the judicial phase and is concerned with the execution of a judgment.

10. Article 19 of the 2004 Convention, meanwhile, deals with State immunity in relation to post-judgment measures of constraint, and hence to immunity from execution. It provides:

“No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum...”

11. This provision appears to be more appropriate to the situation envisaged here, which relates to a dispute resolved by a judgment whose execution is being sought. In such situations, according to Article 19, no measure of execution may be taken against the foreign State unless one of the conditions set forth in subparagraphs (a) to (c) is met; this is clearly not the case. Romania cannot therefore take any measure of constraint against the United States as the *de facto* tenant.

12. Romania could therefore consider one or both of the following measures: (1) it could request the United States to vacate the premises in order to return the property to the applicant. Should the United States refuse, this would have no effect, since no measure of constraint is possible; and/or (2) it could transfer ownership of the property to the applicant without granting him possession (see, on this subject, paragraph 60 of the judgment). Were this to be done, the applicant would be entitled to compensation in respect of the entire period during which he was unlawfully deprived of the use of his property. If, on the other hand, the transfer of ownership were to be accompanied by restitution, compensation would be due only in respect of the deprivation of property to which the applicant was subjected prior to restitution.

13. Were neither of these measures to be taken, the compensation to be paid by the Romanian Government would have to be calculated on the basis

of the market value of the property and the length of time for which the applicant was deprived of his possession.