



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

THIRD SECTION

CASE OF SUCIU WERLE v. ROMANIA

(Application no. 26521/05)

JUDGMENT

STRASBOURG

13 December 2007

FINAL

13/03/2008

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 Suci Werle 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 DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 22 November 2007.

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

PROCEDURE

1. The case originated in an application (no. 26521/05) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mrs Mariana Suci Werle (“the applicant”), on 13 July 2003.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr R. H. Radu.

3. On 31 August 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 applicant was born in 1927 and lives in Cornu.

5. In 1950, the real estate made up of two apartments and the appurtenant land situated in Bucharest, Regina Maria blvd. nos. 36-38, the property of the applicant's parents, was seized by the State under Decree no. 92/1950 on nationalisation. The applicant continued to live in a flat situated in building no. 38 as a tenant of the State.

6. On 15 January 1996 the applicant claimed *restitutio in integrum* of building no. 38 and compensation for building no. 36. On 15 June 2000, the

Bucharest Town Council rejected her demand. The applicant contested the decision before the courts.

7. On 2 March 2001, the Bucharest District Court upheld the applicant's action by a final judgment, declaring void the decision of the Town Council and ordering the administrative authorities to return to the applicant the real estate no. 38, made of three buildings and appurtenant land of 208 m².

8. In 2001, on an unknown date, the applicant claimed from the administrative authorities the restitution in kind of 450 m² of land appurtenant to buildings nos. 36 and 38. By a decision of 12 July 2002, the Bucharest Town Council allowed the application and granted *restitutio in integrum* of the appurtenant land of 314 m² for no. 36 and 136 m² for no. 38.

9. In spite of obtaining judicial recognition of her property right, the applicant was not able to recover possession of flats nos. 1 and 2 of building no. 38 because on 30 September 1996 the State had sold them to the tenants, under Law no. 112/1995, together with the land appurtenant to each flat.

10. On 6 February 2002, the applicant requested the court to find that the sale by the State was null and void. She considered that the State did not have a right of property, that it had not observed the legal provisions of Law no. 112/1995 and that the purchasers were in bad faith.

11. On 1 February 2005, the Bucharest Court of Appeal, by a final decision, dismissed the request for the rescission of the sale contracts on the ground that the State had complied with the provisions of Law no. 112/1995 and that the tenants had made the purchase in good faith.

II. RELEVANT DOMESTIC LAW

12. 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

13. The applicant alleged that the sale by the State of flats nos. 1 and 2 and the appurtenant land to third parties 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

14. 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

15. The Government specified that in their view the application concerned only the part of building no. 38 which had been sold, without the appurtenant land and without the flat where the applicant lives, emphasising that the applicant could also have claimed compensation for this part. Then the Government dwelt on the difficulties connected with the legislative evolution in the field of property and on the new developments which had 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 not be returned, at granting compensation. Law no. 247/2005 grants compensation at 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 a 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* is 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.

16. The applicant contested the Government's arguments; she specified that she had not claimed compensation for the two flats which had been sold because she had already obtained *restitutio in integrum* for the whole building no. 38. Insisting on the abuses of the authorities, which had sold her goods in spite of the fact that they were not the rightful owners, the

applicant considered that the authorities should have declared null and void the sale of the two flats, especially taking into account the decision of 2 March 2001 which confirmed her title to the entire property, including the two flats. In her view, the non-execution of a judgment ordering the return of property to the applicant constituted a violation of her property right.

17. 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 since the facts are very similar.

18. The Court reiterates that, according to its jurisprudence, the sale of another's possessions by the State, even before the question of the ownership had been finally settled by the courts, will be analysed as a deprivation of possessions. 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).

19. Moreover, in the case of *Păduraru*, cited above, the Court found 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 a situation where it was impossible to recover their property although they had an enforceable judgment in their favour (*Păduraru*, cited above, § 112).

20. Regarding the Government's submission that compensation will be available once the stock company *Proprietatea* starts to function, the Court recalls its previous finding, namely that *Proprietatea* does not function at present in a way that may effectively provide 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 Law no. 10/2001 nor Law no. 247/2005 (which amends the former) takes into account the damage implied by the prolonged absence of any remuneration and despite a final judgment granting *restitutio in integrum* (see, *mutatis mutandis*, *Porteanu*, cited above, § 34).

21. The foregoing considerations are sufficient to enable the Court to conclude that the deprivation in question, contrary to the rule of law which underlies the Convention and together with the total lack of compensation, imposed on the applicant a disproportionate and excessive burden in breach of her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant sought restitution of flats nos. 1 and 2 and the appurtenant land, as the most appropriate manner for the State to provide redress. Should restitution not be granted, she claimed a sum equivalent to the current value of her property, 100 000 euros (EUR). In respect of non-pecuniary damage she sought EUR 5 000.

24. The Government considered that the claims were excessive and not supported by an expert report. Therefore, having regard to their own expert report, the Government considered that the market value of flats nos. 1 and 2 was EUR 18 816, respectively, EUR 27 232. Further, they considered that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered. In any event, they considered that the amount claimed in this respect was too high.

25. The applicant replied to the Government's expert report and submitted the sale contracts for the two flats, agreements entered into by the former tenants on 13 December 2006. The two flats and the land appurtenant to each flat were sold for, respectively, EUR 49 000 and EUR 53 000.

26. 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.

27. 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).

28. 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).

29. The Court considers, in the circumstances of the case, that the return of the property in issue (flats nos. 1 and 2 and the land appurtenant to each flat), as ordered in the enforceable judgment of 2 March 2001 of the Bucharest District Court, would put the applicant as far as possible in a situation equivalent to the one in which she would have been if there had not been a breach of Article 1 of Protocol No. 1.

30. Failing such restitution by the respondent State, the Court holds that the respondent State is to pay the applicant, 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 information submitted by the parties, the Court considers the claim justified and, consequently, awards the full amount, namely EUR 100 000.

31. The Court considers that the serious interference with the applicant's right to the peaceful enjoyment of her 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 applicant EUR 2 000 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant did not claim costs and expenses.

33. The Government did not comment on this aspect.

34. Since the applicant did not claim costs and expenses, the Court sees no reason why an award in this respect should be made.

C. Default interest

35. 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;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to return to the applicant flats nos. 1 and 2 and the land appurtenant to each flat, situated in 2nd District Bucharest, Regina Maria blvd. no. 38, 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amount of EUR 100 000 (hundred thousand euros) in respect of pecuniary damage, to be converted into Romanian lei (RON) at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (c) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amount of EUR 2 000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Romanian lei (RON) at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (d) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President