



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

THIRD SECTION

CASE OF URBANOVICI v. ROMANIA

(Application no. 24466/03)

JUDGMENT

STRASBOURG

23 September 2008

FINAL

23/12/2008

This judgment may be subject to editorial revision.

In the case of Urbanovici v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 24466/03) 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 Erzebet Gyongyike Urbanovici (“the applicant”), on 11 July 2003.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, from the Ministry of Foreign Affairs.

The applicant alleged that the quashing of a final and enforceable decision favourable to her by means of an extraordinary appeal had violated her right to a fair hearing and her property right.

3. On 29 June 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

4. The applicant was born in 1959 and lives in Oradea.

A. Action for recovery of possession

5. On 14 May 1999, the applicant lodged with the Oradea District Court an action for recovery of possession (*acțiune în revendicare*) of a plot of land that, although recorded in the land register (*cartea funciară*) as belonging to the Oradea Local Council, she claimed she had inherited it from E.S. who had received it from the State in exchange for another plot of land.

The three courts that dealt with the case found in favour of the applicant. The District Court gave its decision on 4 July 2000. Upon appeals by the Local Council, the Bihor County Court upheld it on 16 February 2001 and the Oradea Court of Appeal on 21 May 2001, the latter by means of a final and irrevocable decision.

6. Before all the courts that dealt with the case, the Local Council argued that certificate no. 10524 of 14 May 1955, used by the applicant in order to prove her ownership title, was false as it contained a series of irregularities.

7. The first-instance court and the appeal court rejected the argument on the ground that the defendant had not brought evidence to prove the allegations. Moreover, the courts noted that, according to the information in their possession, no criminal proceedings had been started on the matter.

8. The court of last resort rejected the Local Council's request that the proceedings be stayed until the courts had ruled on the nullity of the certificate (procedure described at paragraphs 10 to 12 below). On the merits, it noted as follows:

“The [defendant's] allegations about the existence of irregularities in certificate no. 10524 of 14 May 1955 ... seem well-founded. However, this certificate established a *prima facie* case [*început de probă scrisă*] which entitled the first-instance court to examine additional evidence; witness testimonies confirmed that the property title in dispute had been transferred from the State to E.S., who exercised public and peaceful possession without causing any nuisance ... This situation is also confirmed by the evidence on the consolidations of land that had taken place. The fact that the exchange of land occurred is undoubtedly proved by letter no. 28182 of 18 October 1949, issued by the Ministry of Agriculture ..., which cannot be contested...”

It also noted that the criminal investigation into the alleged forgery of the 1955 certificate had been terminated on 17 March 2001 as the time-limits for criminal responsibility had expired. However, the Court of Appeal considered that the evidence adduced, in particular the letter of 18 October 1949, rendered that investigation devoid of relevance in any case.

9. On an unspecified date the applicant's ownership title was recorded in the land register.

B. Action for the nullity of the 1955 certificate

10. On 19 April 2001 the Oradea Local Council lodged with the Oradea District Court an action against the applicant, seeking that the 14 May 1955 certificate above be set aside because it contained irregularities. The applicant argued that the issue was *res judicata* in so far as the courts ruling on the action for recovery of possession had already dealt with the matter.

11. The case was transferred to the Arad District Court which, on 28 March 2002, allowed the action, established that the document was false and set it aside.

12. Appeals by the applicant were rejected successively by the Arad County Court, on 10 July 2002, and by the Timișoara Court of Appeal, in a final decision of 3 December 2002.

C. Extraordinary appeals against the 21 May 2001 decision

13. Following the ruling of the Timișoara Court of Appeal, the Oradea Local Council sought the revision of the final decision of 21 May 2001 (*cerere de revizuire*). It also asked the Procurator General to lodge an application with the Supreme Court of Justice to have that decision set aside (*recurs în anulare*).

14. In a final decision of 19 February 2003, the Supreme Court of Justice allowed the Procurator General's request, noted that the 1955 certificate had been declared false, quashed all the decisions rendered in the action for recovery of possession and, ruling on the merits, rejected the initial action on the ground that the applicant had failed to prove her ownership title.

The Supreme Court considered as follows:

“Although according to Article 129 (5) of the Civil Procedure Code the judges have an obligation to use all legal means in order to prevent any error in establishing the truth, by a correct determination of facts and application of law, the court of last resort rejected as ill-founded the request for a stay in the proceedings, although the ruling in the [parallel] action for nullity was essential for adopting a lawful decision.”

15. On 20 March 2003, at the Local Council's request, the Oradea District Court took note of the Supreme Court's decision and struck off the request for revision.

II. RELEVANT DOMESTIC LAW

16. The relevant provisions of the Code of Civil Procedure read as follows:

Article 322

“A final decision ... shall be revised in the following cases:

...

4. ... if the decision was adopted based on an act which was declared false either during or after the proceedings.”

Article 330

“The Procurator General may, of his own motion or on an application by the Minister of Justice, apply to the Supreme Court of Justice for a final decision to be quashed on any of the following grounds: ...

2. when the decision in question has seriously infringed the law by giving a wrong solution on the merits of the case, or when the decision is manifestly ill-founded; ...”

17. Article 330 has been repealed by Article I § 17 of the Government’s Emergency Ordinance no. 58 of 25 June 2003.

THE LAW**I. ALLEGED VIOLATION OF ARTICLES 6 § 1 OF THE CONVENTION AND 1 OF PROTOCOL NO. 1 TO THE CONVENTION**

18. Under Articles 6 § 1 of the Convention and 1 of Protocol No. 1, the applicant complained that her right to a fair hearing and her property right had been breached in so far as the final decision of 21 May 2001 of the Oradea Court of Appeal had been quashed and reversed by means of an extraordinary review.

Article 6 § 1 reads as follows, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 1 of Protocol No. 1 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

19. Relying on *Stoicescu v. Romania* ((revision), no. 31551/96, 21 September 2004), the Government contended that the applicant was not a victim of a violation of the above provisions, in so far as she could not prove that she had inherited an ownership title.

20. The applicant contested this position and reiterated that the evidence presented during the domestic proceedings had confirmed her inheritance rights.

21. The Court considers that the Government’s plea of inadmissibility raises issues that are closely linked to the merits of the application.

Therefore it joins the preliminary objection to the merits of the case.

22. The Court notes that the application 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

1. The parties’ submissions

23. The Government reiterated the Court’s principles with regard to extraordinary appeals whereby final and irrevocable decisions had been cancelled. They informed the Court that the extraordinary procedure used in the case had been repealed from the Civil Code.

24. They also averred that in so far as the applicant had failed to prove her property title, she could not claim to have a “possession” within the meaning of Article 1 of Protocol No. 1. Therefore, no interference with her property right occurred as a consequence of the quashing of the final decision.

However, should the Court consider that the applicant had a “possession”, the Government contended that the interference had been provided by law and had pursued a legitimate aim, to which it had been proportionate. In particular they pointed out that, as the certificate used by the applicant had been declared false, the Supreme Court of Justice had quashed the final decision only in order to correct a judicial error committed by the ordinary courts.

25. The applicant contested the Government’s position. She contended that by allowing the extraordinary appeal, the Supreme Court had set at naught all the previous decisions that had been favourable to her, which had

infringed her right to a fair hearing and had also caused her to lose her property title over the land in question.

2. The Court's assessment

a) General principles

26. The Court reiterates that, under its settled case-law, the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (*Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

27. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case, as it has considered that the extraordinary appeal under review infringed the principle of legal certainty in so far as it was not open to the parties to the procedure but to the Procurator General alone and as by allowing the application, the Supreme Court of Justice set at naught an entire judicial process which had ended in a judicial decision that was *res judicata* and which had, moreover, been executed (see, among many others, *Brumărescu*, cited above, § 62; *SC Maşinexportimport Industrial Group SA v. Romania*, no. 22687/03, § 36, 1 December 2005; and *Cornif v. Romania*, no. 42872/02, §§ 29-30, 11 January 2007).

28. It also considered that quashing such a decision after it had become final and irrevocable constituted deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1, which could only be justified if it was shown, *inter alia*, to be “in the public interest” and “subject to the conditions provided for by law”. Moreover, any interference with the property must also satisfy the requirement of proportionality (see *Brumărescu* §§ 77-78; *Maşinexportimport Industrial Group SA*, § 44; and *Cornif*, §§ 39-40, judgments cited above).

29. The Court reiterates that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

30. Even if such a review were justified, certain special circumstances of the case may reveal that the actual manner in which it was used impaired the very essence of a fair trial. In particular, the Court has to assess whether, in a given case, the power to launch and conduct a supervisory review was exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests at stake (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, § 57, ECHR 2004-VIII).

b) Application of these principles to the present case

31. In the case at hand, the courts found in favour of the applicant in an action for recovery of possession and considered irrelevant to the case the fact that one of the documents used as evidence was possibly false.

Therefore, the Court considers that the Supreme Court's intervention was not necessary in order to address this issue, the ordinary courts having had enough opportunities to remedy the alleged error in their interpretation.

32. Even assuming, as the Government argues, that the judges were wrong in refusing to suspend the appeal proceedings, such an oversight is not imputable to the applicant, who moreover informed the courts of the existence of the two parallel sets of proceedings (see, in particular, paragraph 10 above).

33. On this point the Court emphasises that the State should organise the legal system in such a way as to identify related proceedings and where necessary to join them or prohibit further institution of new proceedings related to the same matter, in order to circumvent reviewing final adjudications treated as an appeal in disguise, in the ambit of parallel sets of proceedings (see, *mutatis mutandis*, *Roşca v. Moldova*, no. 6267/02, § 25, 22 March 2005; *Gjonbocari and Others v. Albania*, no. 10508/02, § 59, 23 October 2007; and *Driza v. Albania*, no. 33771/02, § 69, ECHR 2007-... (extracts)).

34. Furthermore, the Court notes that, while the ordinary courts, in particular the court of last resort, based their decisions on several documents and witness testimonies, the Supreme Court rejected the action on the sole ground of the nullity of the false act, without expressing an opinion on the other elements of proof or, at least, explaining why it set them aside.

35. For the same reason, the Court considers that the present case differs significantly from *Stoicescu*, cited above, where the applicant's only entitlement to the property in dispute, namely the inheritance certificate, was subsequently annulled (see *Stoicescu*, cited above, §§ 57-58).

36. The Court cannot speculate on what the outcome of the case would have been should the Supreme Court (or ordinary courts in a new action for recovery of possession) have reconsidered the remaining evidence in the file. It notes, however, that the situation created is not imputable to the applicant and considers that lodging a new action for recovery of possession

would place a disproportionate burden on her which is not justified in the particular circumstances of the case.

37. The foregoing considerations are sufficient to enable the Court to conclude that the quashing of the final decision of 21 May 2001 is nothing more than an appeal in disguise and by using it the authorities failed to strike a fair balance between the interests at stake and thus infringed the applicant's right to a fair hearing.

38. Furthermore, as by means of the final decision of 21 May 2001 the applicant was recognised as the owner of the land in dispute, the applicant can claim to have a "possession" for the purpose of Article 1 of the Additional Protocol, and the quashing of that decision after it became final and irrevocable and was executed will constitute an interference with the decision's beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74). Even assuming that such an interference may be regarded as serving a public interest, the Court finds that it was not justified since a fair balance was not preserved and the applicant was required to bear an individual and excessive burden (*Brumărescu*, cited above, §§ 75-80).

39. For all these reasons, the Court dismisses the Government's preliminary objection, and concludes that there has been a violation of Article 6 § 1 of the Convention as well as a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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."

41. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account (see, *mutatis mutandis*, *Arsenovici v. Romania*, no. 77210/01, § 55, 7 February 2008).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits and *rejects* the Government's preliminary objection;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President