



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

THIRD SECTION

CASE OF CLOȘCĂ v. ROMANIA

(Application no. 6106/04)

JUDGMENT

STRASBOURG

30 September 2008

FINAL

30/12/2008

This judgment may be subject to editorial revision.

In the case of Cloșcă v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 9 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 6106/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Modest Cloșcă (“the applicant”), on 16 December 2003.

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

3. On 3 January 2008 the President of the Third Section decided to give notice of the application to the Government. It was 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 1937 and lives in Frătăuții Vechi.

5. On 24 June 1993 the applicant, together with C.V. and B.V., his relatives, lodged a civil action against third parties claiming *restitutio in integrum* of a 0,26 ha piece of land situated in a place called “Ionești”.

On 10 July 1998 the Suceava Court of Appeal by a final decision rejected the action, as the third parties had the land titles for the relevant piece of land, which had been obtained in 1995.

The applicant lodged a criminal complaint alleging that the expert in the civil action had given false evidence. On 1 September 1999 the public prosecutor found no grounds for initiating criminal proceedings against the expert.

6. On 10 March 1999 the Rădăuți Court of First Instance by a final decision dismissed the applicant's claim to have the land title of the third parties annulled.

7. On 5 January 2000 the Rădăuți Court of First Instance allowed the civil action brought by the applicant together with C.V. and B.V. and ordered the Mayor of Frătăuții Vechi village, in his capacity as the chairman of the local administrative authorities, to allow them to take possession of 0,26 ha of land situated in Frătăuții Vechi village, in a place called "Ionești". That judgment became final.

8. On 16 November 2000 the applicant informed the local authorities that he was claiming the plot of land at Ionești, which had been occupied by the third parties, and that he would not accept another plot.

9. On 22 January 2001 the applicant together with C.V. brought proceedings against the Mayor claiming damages for the unjustified refusal to allow them to take possession of the 0,26 ha of land at Ionești.

10. On 15 February 2001 the local administrative authorities certified in an official record that the applicant had been allowed to take possession of a 0,26 ha plot of land in a place called "Măleni" and that he would be provided with a land title for this plot. The applicant did not sign the official record.

11. On 2 April 2002 the Suceava Court of Appeal by a final decision rejected the action against the Mayor, considering that there had been no unjustified refusal given that the applicant had been granted possession of another plot of land. The court also noted that the applicant's action for the annulment of the land title of the third parties who had possession of the land at Ionești had been rejected.

12. The applicant lodged criminal complaints against the Mayor alleging abuse of authority. On 26 April 2001 and 18 March 2003 respectively the public prosecutor found no grounds which would justify initiating a criminal action against the Mayor. On 16 May 2001 and 24 November 2003 respectively these decisions were upheld by the senior prosecutor.

13. On 15 July 2004 the local administrative authorities certified in an official record that the applicant had been allowed to take possession of a 0,26 ha plot of land in a place called "Popovici" and that he would be provided with a land title for this plot of land. The applicant did not sign the official record.

14. The applicant brought proceedings for the annulment of the official record of 15 July 2004. On 25 October 2004 the Rădăuți Court of First Instance dismissed the applicant's action, considering that the local authorities would not have been able to ensure performance of the judgment

of 5 January 2000 and that the decision to grant the applicant an alternative plot of land had been a justified measure.

15. On 8 March 2005 the Suceava Regional Court allowed an appeal by the applicant and annulled the official record. The court held that by the final decision of 5 January 2000 the applicant had been entitled to the 0,26 ha plot of land at Ionești, that the authorities were required to grant him possession of that plot and that the fact that land titles had already been granted in relation to that plot was not a reason to disregard the provisions of the final decision.

That judgment became final.

16. On 6 June 2008 the applicant informed the Court that at the end of 2007 he had been allowed to take possession of an alternative 0,26 ha plot of land in a place called “Măleni”, and that the situation had been sorted out *de facto* in January 2008, when he received the land title.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law is summarised in the judgment of *Sabin Popescu v. Romania* (no. 48102/99, §§ 42-46, 2 March 2004).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

18. The applicant complained that the non-enforcement of the judgment in his favour had infringed his rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which read, in so far as relevant, as follows:

Article 6 § 1

“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

“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. 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

20. The Government submitted that, as third parties had been given the land granted to the applicant by the judgment of 5 January 2000 and as the applicant had not accepted an alternative plot of land, the authorities had been put in a position where performance of that judgment was effectively impossible. They also considered that, if the Court were to find an interference with the applicant’s right of property, the alleged interference had been justified and proportionate.

21. The applicant disagreed.

22. The Court notes that, although the authorities had an obligation to enforce court judgments, i.e. by restoring the relevant land to the applicant and to his relatives in the instant case, the judgment of 5 January 2000 remains unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under Romanian law for its modification or annulment before the domestic courts. Apart from enforcement, it is only by such an annulment or substitution by the courts with an equivalent obligation that the continuous situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

23. Having regard to its case-law on the subject (*Mihai-Iulian Popescu v. Romania*, no. 2911/02, § 46, 29 September 2005), the Court considers that, in the present case, the authorities have failed to inform the applicant, by a formal decision, of the alleged objective impossibility of *ad litteram* performance of the above-mentioned judgment and to take all necessary steps for its equivalent enforcement. Moreover, the national courts did not rule that the *ad litteram* enforcement of the judgment of 5 January 2000 was bound to fail due to the fact that third parties had the land titles for the plot in question (see paragraph 15 above).

24. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among others, *Sabin Popescu*, cited above, and *Dragne and Others v. Romania*, no. 78047/01, 7 April 2005).

25. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. After having been requested by the Court to submit his claim for just satisfaction, the applicant stated in his observations that he had received another plot of land and that the situation had been sorted out. He claimed compensation in respect of pecuniary damage for the fact that he had been prevented from taking possession of his land and that he had not been able to use the land between 1991 and 2008, in addition to non-pecuniary damage.

28. The Government submitted that the applicant had claimed in his application form the amount of 10,000 euros (EUR) per year starting from 1991 and running until such time as he could take possession of the land.

They considered that the applicant could no longer claim an amount of money for pecuniary damage, as he had been granted land on another plot. Regarding the loss of profit, it had not been supported by documents. 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.

29. The Court observes that the applicant has been allowed to take possession of an alternative plot of land of an equivalent size, and that he has consented to this course of action. Therefore it considers that the applicant has recovered the loss sustained (*damnum emergens*) (see *Sabin Popescu*, cited above, § 91).

30. As regards the amount of money alleged by the applicant for the loss of profit or any benefit (*lucrum cessans*) from his possession since 1991, the Court notes that the applicant did not submit any supporting documents to substantiate his claim. In the absence of any evidence, the Court will not speculate as to the loss of profit or any benefit and, therefore, will not make

an award under this head (see *Dragne and Others v. Romania* (just satisfaction), no. 78047/01, § 18, 16 November 2006).

31. The Court considers that the serious interference with the applicant's right of access to a court and to the peaceful enjoyment of his possessions could not be adequately compensated for by the simple finding of a violation of Article 6 § 1 of the Convention and 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 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

33. 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 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) 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, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 30 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President