CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF FRIEDRICH v. ROMANIA

(Application no. 18108/03)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Friedrich 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,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 18108/03) 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, Ms Gabriela Edit Friedrich ("the applicant"), on 8 May 2003.

2. The applicant was represented by Mrs Claudia Vasii-Kolla, a lawyer practising in Timişoara. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu.

3. On 27 February 2006 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 1932 and lives in Timişoara.

5. In 1950, a building situated in Timişoara, Spl. N. Titulescu no. 7, which was the property of the applicant's husband and mother-in-law, was seized by the State under Decree no. 92/1950 on nationalisation.

6. On 26 May 1999 by a final decision the Timişoara Court of Appeal ("the Court of Appeal") allowed an action by the applicant for rectification in the Land Register, acknowledged that the nationalisation of the building

had been unlawful and ordered *restitutio in integrum* through the registration of the applicant's right of property. It considered that the fact that some apartments in the building had been bought by the tenants had no influence on the solution, as the object of the proceedings was the validity of the State's title and the titles of the buyers were therefore to be evaluated in another set of proceedings.

7. On 30 September and 30 November 1999 the Timişoara Town Council certified in an official record signed by the applicant that the latter had been allowed to take possession of the building, made up of thirty-one apartments, and of 29.28 sq. m piece of appurtenant land.

8. On 26 January 2000 the applicant sold flat no. 11 of the building to M.M. and M.D.

9. On 27 April 2000 O.E., the then tenant of flat no. 11, requested the court to declare the sale null and void, as on 16 January 1997 she had bought that flat from the State under Law no. 112/1995. She also claimed the registration of her right of property in the Land Register.

The applicant lodged a counterclaim requesting the court to declare the sale by the State null and void.

10. On 20 November 2001 by a final decision the Court of Appeal declared the sale made by the applicant null and void, as it contravened O.E.'s rights, and dismissed the claim by O.E. to register her right of property, as she had not expressly applied to remove the applicant's title from the Land Register. It also dismissed the applicant's request for the rescission of the sale by the State on the grounds that O.E. had made the purchase in good faith.

11. On 4 November 2002 by a final decision the Court of Appeal allowed O.E.'s action for rectification in the Land Register, registered her right of property in respect of flat no. 11 and removed the applicant's title from the Land Register. The court compared the land titles and considered that the sale by the State had complied with the provisions of Law no. 112/1995 and that O.E. had made the purchase in good faith.

II. RELEVANT DOMESTIC LAW

12. The relevant legal provisions and jurisprudence are described in the judgments *Brumărescu v. Romania* ([GC], no. 28342/95, §§ 31-33, ECHR 1999-VII); *Străin and Others v. Romania* (no. 57001/00, §§ 19-26, ECHR 2005-VII); *Păduraru v. Romania* (no. 63252/00, §§ 38-53, 1 December 2005); and *Tudor v. Romania* (no. 29035/05, §§ 15-20, 17 January 2008).

THE LAW

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

13. The applicant alleged that the sale by the State of flat no. 11 to O.E. 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 reiterated the arguments they had previously submitted in similar cases. In particular, they submitted that the applicant could have claimed compensation under Law no. 10/2001, amended by Law no. 247/2005.

16. The applicant disagreed.

17. The Court reiterates that, according to its jurisprudence, the sale of another’s possessions by the State, even before the question of 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, and *Porteanu v. Romania*, no. 4596/03, § 35, 16 February 2006).

18. Having examined all the material in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The sale by the State of the applicant’s possession still prevents her from enjoying her right of property acknowledged by a final decision. The Court considers that such a situation amounts to a *de facto* deprivation of

possession and notes that it has continued for more than nine years, in the absence of any compensation.

19. The Court notes that at the material time there was no effective means in Romanian law capable of providing the applicant with compensation for this deprivation (see *Străin and Others*, cited above, §§ 23, 26-27, 55-56, and *Porteanu*, cited above, §§ 23-24 and 34-35). Moreover, it observes that to date the Government have not demonstrated that the system of compensation set up in July 2005 by Law no. 247/2005 would allow the beneficiaries of this law to recover damage reflecting the commercial value of the possessions of which they had been deprived, in accordance with a foreseeable procedure and timetable.

20. Having regard to its case-law on the subject, the Court considers that in the instant case the deprivation of the applicant's possession, 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The applicant complained under Article 6 § 1 of the Convention of an unfair trial and about the outcome of the case.

22. The Court observes that the allegations in respect of abuses of process by the authorities are unsubstantiated, whereas the complaint regarding the outcome is of a "fourth-instance" nature. Moreover, the Court considers that in the proceedings complained of, seen as a whole, there is no appearance of unfairness or arbitrariness which would infringe the guarantees of a fair hearing within the meaning of Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 56,366 euros (EUR) in respect of pecuniary damage, representing the value of flat no. 11 and of the land appurtenant to it, on the basis of an expert report. On 5 September 2007, after the Government's comments on the applicant's claims for just satisfaction, the applicant submitted another expert report, updating the amount to EUR 66,620, and also asked the Court to determine the amount of compensation in respect of non-pecuniary damage.

25. The Government criticised the expert report and, having regard to their own expert report, considered that the market value of flat no. 11 and of the land appurtenant to it was EUR 37,772. They also submitted that the applicant had not claimed non-pecuniary damage, considering that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered.

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. Having regard to the information at its disposal concerning real estate prices on the local market and to the expert reports submitted by the parties, the Court estimates the current market value of the property at EUR 45,000.

29. As regards non-pecuniary damage, the Court notes that the applicant, who was represented by a lawyer, did not submit any claim under that head within the time allowed. According to its settled case-law (see, most recently, *Giniewski v. France*, no. 64016/00, § 59, 31 January 2006), the Court does not make any award by way of just satisfaction where quantified claims and the relevant documentation have not been submitted within the time-limit fixed for that purpose by Rule 60 § 1 of the Rules of Court.

In those circumstances, the Court considers that the applicant has failed to comply with her obligations under Rule 60. As no valid claim for just satisfaction in respect of non-pecuniary damage has been submitted, the Court considers that no award should be made in this connection.

B. Costs and expenses

30. In her letter of 5 September 2007, the applicant also claimed 4,000 New Romanian Lei for the costs and expenses incurred before the domestic courts and before the Court, representing the fees for the lawyer, expert report and translations.

31. The Government considered that the applicant had not claimed costs and expenses.

32. The Court notes that pursuant to Rule 60 §§ 1 and 2 of the Rules of Court an applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of a finding of a violation of his or her Convention rights must make a specific claim to that effect within the time-limit fixed for the submission of the applicant's observations on the merits. Since in the present case the applicant's representative failed to specify the claim for costs and expenses within the time allowed, the Court makes no award under this head (Rule 60 § 3).

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 complaint concerning Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

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 45,000 (forty-five thousand euros), plus any tax that may be chargeable, in respect of 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 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Josep Casadevall President