



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

THIRD SECTION

CASE OF CRAIU v. ROMANIA

(Application no. 26662/02)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Craiu 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 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 26662/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Gheorghe Craiu and Ms Viorica Craiu (“the applicants”), on 28 April 2000.

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

3. On 25 May 2007 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicants were born in 1940 and 1946 respectively and live in Nicolae Bălcescu.

5. On 9 December 1992 the second applicant bought from M.I. a property consisting of 3,000 sq. m of land and the buildings on it.

6. On 20 April 1993 the second applicant brought an action against C.M. and R.S. seeking recovery of possession of the property. She also requested that R.S. be ordered to demolish what he had built on 1,000 sq. m of land.

The defendants lodged a counterclaim against the local administrative authorities, seeking to be certified as the owners of the property.

7. On 4 March 1994 the Constanța Court of First Instance (“the Court of First Instance”) allowed the second applicant’s action and ordered C.M. to leave 2,000 sq. m of land and the buildings on it in her possession, considering R.S. to be the owner of 1,000 sq. m of land.

8. On 12 January 1995 the Constanța Regional Court (“the Regional Court”) upheld an appeal by C.M., quashed the previous judgment and sent the case back for a fresh examination, as the first-instance court had not considered the case on the merits as regards the 2,000 sq. m of land after an adversarial argument by the local administrative authorities.

9. On 3 May 1995 the Constanța Court of Appeal (“the Court of Appeal”) rejected as inadmissible an appeal on points of law by the second applicant against the judgment of the Regional Court.

10. After the retrial, on 29 April 1996 the Court of First Instance allowed the second applicant’s action and ordered C.M. to leave the house and the 2,000 sq. m of land in her possession, considering R.S. to be the owner of 1,000 sq. m of land.

11. On 26 March 1997 the Regional Court upheld an appeal by C.M., quashed the judgment of the first-instance court and sent the case back for fresh consideration. It found that the original judgment had not been signed by the registrar.

12. After the fresh examination, on 10 September 1997 the Court of First Instance, after comparing the land titles, dismissed the second applicant’s action. It found that M.I. had not been the owner of the property when he had sold it to the second applicant.

13. On 1 July 1998 the Regional Court dismissed an appeal lodged on 8 January 1998 by the first applicant as being brought by a person with no capacity to take part in court proceedings, due to the fact that he had not participated in the trial before the first instance.

14. On 20 April 1999 the Court of Appeal allowed an appeal on points of law by the second applicant, quashed the judgment of the Regional Court, changed the judgment of the first-instance court and sent the case back for a fresh examination. Taking into account the community of property between spouses, the court considered that the property under discussion belonged to both applicants and noted that the first instance had not also summoned the first applicant. It ordered both of them to be summoned during the trial on the merits.

15. After the retrial, on 1 March 2000 the Court of First Instance, after comparing the land titles, rejected the applicants’ action, considering that their title had not come from an owner.

16. On 14 February 2001 the Regional Court dismissed an appeal by the applicants. That decision was upheld on 4 July 2001 by a final decision of the Court of Appeal.

THE LAW

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

17. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

18. 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

1. Period to be taken into consideration

19. The Government submitted that the period to be taken into consideration began on 20 June 1994 for the second applicant and on 8 January 1998 for the first applicant, the date when he lodged an appeal against the judgment of 10 September 1997.

20. The applicants did not express an opinion on the matter.

21. The Court reiterates that its case-law on the intervention of third parties in civil proceedings makes the following distinction: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir, he or she can complain of the entire length of the proceedings (see, in particular, *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-...).

22. The Court notes that the applicants were under the regime of the community of property between spouses and that the domestic courts quashed a judgment which assumed that the first applicant had no capacity to take part in court proceedings (see paragraph 14 above). In any case, the Court must take into consideration the ensemble of the proceedings.

23. The period to be taken into consideration therefore began on 20 June 1994, when Romania ratified the Convention. However, in assessing the reasonableness of the time which elapsed after that date, account must be taken of the state of the proceedings at the time.

The period in question ended on 4 July 2001. It thus lasted seven years and fourteen days for three levels of jurisdiction.

2. Reasonableness of the length of the proceedings

24. The Government submitted that the case had been complex and that the authorities had showed due diligence when examining the case.

25. The applicants maintained their allegations.

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-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 (see *Frydlender*, cited above).

Moreover, the Court has already found that, although it is not in a position to analyse the juridical quality of the case-law of the domestic courts, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system. Moreover, this deficiency is imputable to the authorities and not the applicants (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

28. Having examined all the material submitted to it, 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicants complained under Article 6 § 1 of the Convention of an unfair trial and of the outcome of the case. They also claimed to be victims of a violation of Article 1 of Protocol No. 1 in so far as the proceedings had not allowed them to recover their property.

30. As regards the first part of the applicants' complaints, 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.

31. In so far as Article 1 of Protocol No. 1 is concerned, the Court considers that the applicants have not shown that they had a claim which was sufficiently established to be enforceable, and they therefore cannot argue that they had a "possession" within the meaning of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, ECHR 2002-VII).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicants claimed 25,000 euros (EUR) in respect of pecuniary damage, representing the value of the property they had lost. They also claimed EUR 25,000 in respect of non-pecuniary damage.

34. The Government contested these claims.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them jointly EUR 2,000 under that head.

B. Costs and expenses

36. The applicants also claimed EUR 3,000 for the costs and expenses incurred before the domestic courts, representing lawyer's fees, stamp duties and transport. They submitted that the bills are in the file.

37. The Government contested the claim as unsubstantiated.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court considers that the applicants have not shown that the legal costs and expenses claimed by them were incurred in order to prompt domestic courts to comply with the requirements of Article 6 § 1 (see *Zimmermann and Steiner v. Switzerland*, 13 July 1983, § 37, Series A no. 66). It therefore rejects the claim for costs and expenses.

C. Default interest

39. 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 the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay jointly to the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two 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 applicants' 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