



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

THIRD SECTION

CASE OF GRIGORAŞ v. ROMANIA

(Application no. 19188/03)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Grigoraş 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,

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. 19188/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Tiberiu Cristian Grigoraş and Ms Anca Grigoraş (“the applicants”), on 26 May 2003.

2. The applicants were represented by Mr Bogdan-Nicolae Bulai and Ms Daniela-Anca Deteşeanu, two lawyers practising in Bucharest. 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 applicants were born in 1956 and live in Bad Neuenahr.

5. On 28 September 1989 Apartment 14, 108 Turda Street, Bucharest, the applicants’ property, was seized by the State under Decree no. 223/1974, with payment of compensation, following their decision to leave the country. It appears from the file that the applicants received 131,538 Romanian Lei in compensation.

6. On 14 November 1996 the R.V. company, a State-owned company responsible for the management of property belonging to the State, sold the flat to the then tenants, under Law no. 112/1995.

7. On 29 November 1996 the Bucharest Regional Court, by a final decision, allowed an action by the applicants, annulled the seizure as being unlawful and ordered *restitutio in integrum*.

8. On 5 September 1997 the Bucharest Town Council ordered *restitutio in integrum* of the apartment and on 15 September 1997 informed the R.V. company of this.

9. On 14 May 2001 the Bucharest Court of Appeal, by a final decision, dismissed the action lodged by the Town Council and joined by the applicants against both the R.V. company and the former tenants of the apartment, to have the sale declared null and void. The court considered that the sale had complied with the provisions of Law no. 112/1995 and had been made in good faith. It also stated that the applicants would receive compensation under Law no. 10/2001.

10. On 25 July and 14 November 2001 the applicants claimed restitution in kind of the apartment under the Law no. 10/2001 governing immovable property wrongfully seized by the State. So far they have not received any answer.

11. On 27 February 2003 the Supreme Court of Justice dismissed an application (*recurs în anulare*) by the Procurator-General, acting at the instance of the applicants, to have the judgment of 14 May 2001 quashed on the grounds that it was contrary to the provisions of Article 1 of Protocol No. 1 of the Convention and to the principle of legal certainty. The court considered that the sale had been made in good faith and observed that the principle of legal certainty had not been infringed, as the sale had preceded the final judgment which ordered *restitutio in integrum* and, moreover, the former tenants had not been parties in that set of proceedings, therefore the final judgment was not opposable by them.

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 applicants alleged that the sale by the State of Apartment 14 to a third party 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 their arguments previously submitted in similar cases. In particular, they considered that the applicants had already received a considerable amount of money in compensation at the time of nationalisation, namely the equivalent of 8,815 United States Dollars (USD).

16. The applicants disagreed. They also submitted that the compensation received was not just and fair.

17. 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 deemed to be 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 applicants' possession still prevents them from enjoying their 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 twelve years, in the absence of compensation reflecting the commercial value of their possession (see, *mutatis mutandis*, *Konnerth v. Romania*, no. 21118/02, § 76 *in fine*, 12 October 2006). In that regard, the Court notes that the applicants received the equivalent of USD 8,815 at the time of nationalisation.

19. The Court also reiterates that at the material time there was no effective means in Romanian law capable of providing the applicants with compensation for this deprivation (see *Străin and Others*, cited above, §§ 23, 26-27, 55-56; *Porteanu v. Romania*, 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 applicants' possession, together with the lack of compensation reflecting the commercial value of their possession, imposed on the applicants a disproportionate and excessive burden in breach of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

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

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

21. The applicants claimed that the non-execution of the final decision of 29 November 1996 given by the Bucharest Regional Court had deprived them of the right to a fair trial. They relied on Article 6 § 1 of the Convention, which provides:

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

A. Admissibility

22. 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

23. Having regard to the findings in the paragraphs above (17-20), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 § 1 (see *Pais v. Romania*, no. 4738/04, § 39, 21 December 2006, and, *mutatis mutandis*, *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23; *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I, and *Canea Catholic Church v. Greece*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 50).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicants sought restitution of Apartment 14, as the most appropriate manner for the State to provide redress. Should restitution not be granted, they claimed a sum equivalent to the current value of their property which, according to the expert report they submitted to the Court, amounted to 62,500 euros (EUR). They also claimed EUR 7,000 in respect of non-pecuniary damage.

26. The Government considered, in accordance with their own expert report, that the market value of Apartment 14 was EUR 35,896. Further, they considered that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered. In any event, they considered that the amount claimed in this respect was too high.

27. 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.

28. 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).

29. The Court considers, in the circumstances of the case, that the return of the property in issue (Apartment 14), as ordered by the final decision of 29 November 1996 of the Bucharest Regional Court, would put the applicants as far as possible in a situation equivalent to the one in which they 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 applicants, in respect of pecuniary damage, an amount which takes into account the current value of the property and the compensation that the applicants have already received (see paragraph 5 above). Having regard to the information at its disposal concerning real estate prices on the local market, to the expert reports submitted by the parties and to the amount of money that the applicants received at the time of nationalisation, the Court awards them EUR 36,000 in respect of pecuniary damage.

31. The Court considers that the serious interference with the applicants’ right to the peaceful enjoyment of their 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 them jointly EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicants also claimed EUR 9,438 for costs and expenses incurred before the domestic courts and before this Court, broken down as follows: EUR 3,000 for lawyers’ fees in the proceedings before the Court, EUR 3,639.15 for travel from Germany to Romania during proceedings, EUR 144 for the expert report, and the rest, detailed in a table, for sundry expenses (lawyer’s fees in internal proceedings, notary’s fees, stamp duties, translations). They submitted invoices for lawyers’ fees, for expert’s fees, stamp duties and travel.

33. The Government contested the applicants' claims and considered they were excessive.

34. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads.

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* that there is no need to examine on the merits the complaint under Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to return to the applicants Apartment 14, 108 Turda Street, Bucharest, 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 jointly to the applicants, within the same three months, the amount of EUR 36,000 (thirty-six thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (c) that, in any event, the respondent State is to pay jointly to the applicants, within the same three months, the amounts of EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (d) that the aforementioned amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(e) 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;

5. *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