



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

THIRD SECTION

CASE OF CHIOREAN v. ROMANIA

(Application no. 20535/03)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

21/01/2009

This judgment may be subject to editorial revision.

In the case of Chiorean 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,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 30 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 20535/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Romanian nationals, Mr Viorel Chiorean, Mr Vintilă Chiorean and Ms Maria Chioreanu (“the applicants”), on 3 June 2003.

2. The applicants were represented by Ms Anca Ioana Chiorean, a lawyer practising in Cluj-Napoca. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu 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 are brothers, who were born in 1941, 1933 and 1937 respectively and live in Cluj-Napoca.

5. In 1950, a property situated in Cluj-Napoca, 15-17 Someșului Street, which was the property of the applicants’ parents, was seized by the State under Decree no. 92/1950 on nationalisation. The property was made up of ten apartments and appurtenant land.

6. On 31 January 2001 the Cluj Court of Appeal, by a final decision, allowed an action by the applicants, annulled the seizure as being unlawful and ordered *restitutio in integrum*.

7. Although they had judicial recognition of their property right, the applicants were not able to recover possession of Apartments 5 to 9 because the State had sold them in 1996-1997 to the then tenants under *Păduraru v. Romania*, no. 63252/00, § ..., ECHR 2005-... (extracts) Law no. 112/1995.

8. On 12 July 2001 the applicants claimed restitution in kind of the property under Law no. 10/2001 governing immovable property wrongfully seized by the State. So far they have not received any answer.

9. On 6 December 2002 the Cluj Court of Appeal, by a final decision, upheld in part an action by the applicants to declare the sale by the State of Apartments 5 to 9 null and void. The court declared the sale of Apartments 8 and 9 null and void, striking the third parties off the Land Register, on the ground that the sale was made after the entry into force of Government Decision no. 11/1997 prohibiting the sale by the State of property to which it had no lawful title. As for Apartments 5 and 6, it considered that the third parties had made the purchase in good faith.

10. On 16 December 2002 the applicants took possession of Apartments 1-4, 7 and 10 and of 1,490 sq. m of appurtenant land.

II. RELEVANT DOMESTIC LAW

11. 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, ECHR 2005-...(extracts)); and *Tudor v. Romania* (no. 29035/05, §§ 15-20, 17 January 2008).

THE LAW

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

12. The applicants alleged that the sale by the State of Apartments 5 and 6 to third parties 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

13. 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

14. The Government reiterated the arguments they had previously submitted in similar cases. In particular, they submitted that the applicants could have claimed compensation under Law no. 10/2001, amended by Law no. 247/2005.

15. The applicants submitted that their claim for restitution in kind of the property under Law no. 10/2001 had not been resolved and disagreed with the system of compensation by shares in various State-owned companies.

16. 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).

17. 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' possessions 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 seven years, in the absence of any compensation.

18. 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.

19. Having regard to its case-law on the subject, the Court considers that in the instant case the deprivation of the applicants' possessions, together with the total lack of compensation, 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicants complained under Article 6 § 1 of the Convention of an unfair trial, that judges had not been impartial and about the outcome of the case.

21. 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

22. 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

23. In their application form, the applicants sought restitution of Apartments 5 and 6, as the most appropriate manner for the State to provide redress. Should restitution not be granted, they claimed the amount of

50,000 euros (EUR). They also claimed EUR 5,000 in respect of non-pecuniary damage.

In response to the Government's observations, the first applicant sought restitution of the two apartments or, if not possible, EUR 150,000 in respect of pecuniary damage.

In a letter of 20 September 2007, submitted by the first applicant after the Government's comments on the claims for just satisfaction, it is stated that the applicants claimed EUR 120,000 in respect of pecuniary damage and submitted an expert report mentioning that the current value of the two apartments was EUR 123,857.

24. The Government considered, in accordance with their own expert report, that the market value of Apartments 5 and 6 was EUR 35,385. They submitted that their expert report was technical and theoretical and that the expert did not see the apartments. 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 their supplementary observation on Article 41 of 27 June 2007 the Government noted that the claim for just satisfaction had been submitted only by the first applicant, who had no power of authority from the other two applicants. They considered that the first applicant may claim only a part of the pecuniary damage.

25. 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.

26. 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).

27. The Court notes that the present application has been introduced by the three applicants and that all of them claimed damage in the application form. It also notes that the applicants' observations and claims for just satisfaction have been submitted by one of the applicants only, in spite of the fact that all of them had a common representative. Having regard to the wording of the letter of 20 September 2007, submitted by the first applicant, but referring to all the three applicants, the Court is not persuaded that in the

instant case the first applicant claimed just satisfaction only on his own behalf rather than on behalf of his brothers as well.

Therefore the Court will not make use in the instant case of excessive formalism and will consider that the claim for damage was introduced on behalf of all the applicants.

28. The Court considers, in the circumstances of the case, that the return of the property in issue (Apartments 5 and 6), as ordered by the final decision of 31 January 2001 of the Cluj Court of Appeal, 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.

29. 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 corresponding to the current value of the property. 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 awards EUR 90,000 to the applicants jointly.

30. 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 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

31. In their application form, the applicants claimed reimbursement of the costs and expenses, without quantifying them or submitting any supporting documents.

32. The Government contested the claim as unsubstantiated.

33. The Court reiterates that under Article 41 of the Convention it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum (see *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

34. In the instant case, the Court observes that the applicants have not substantiated their claim in any way, as they had neither quantified their costs nor submitted any supporting documents. Accordingly, the Court does not award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

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 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 return to the applicants Apartments 5 and 6, 15-17 Someşului Street, Cluj-Napoca, 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 the applicants, within the same three months, the amount of EUR 90,000 (ninety 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 the applicants, within the same three months, the amount of EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President