



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

THIRD SECTION

CASE OF DRAGOMIR v. ROMANIA

(Application no. 31181/03)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

21/01/2009

This judgment may be subject to editorial revision.

In the case of Dragomir v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

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. 31181/03) 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, Mr Toma-Leonida Dragomir (“the applicant”), on 30 July 2003.

2. The applicant was represented by Mr Otto Eckstein Covaci, 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 applicant was born in 1945 and lives in Timișoara.

5. In 1960, the plots of land situated in Cluj-Napoca, E. Murgu Street nos. 15-21 and 40, which were the property of the applicant’s father, were seized by the State under Decree no. 92/1950 on nationalisation.

6. On 8 September 1998 the Cluj Court of Appeal, by a final decision, allowed an action by the applicant, annulled the seizure as being unlawful and ordered *restitutio in integrum*.

7. Although there had been judicial recognition of his property rights, the applicant was not able to recover possession of some of these plots of land because on 14 March 1996 the authorities had issued ownership titles to third parties under Law no. 18/1991. These titles concerned the plots of land situated on E. Murgu Street nos. 17, 19 and 21 and registered in the Land Register under nos. 13956/9/2, 13958/4/2, 13956/10/2, 13958/5/2, 13956/11/3, 13958/6/3, 13957/9/3, 13956/11/2, 13958/6/2 and 12957/9/2, with a total surface of 1,088 sq. m.

8. On 17 May 2001 the applicant brought proceedings against the third parties for the Land Register to be rectified. On 3 July 2003 the Cluj Court of Appeal, by a final decision, dismissed the action. The court noted that the final decision of 8 September 1998 had certified the applicant's right of property, but refused to annul the land titles of the third parties on the grounds that the applicant had neither registered that action in the Land Register nor lodged an action under Laws nos. 18/1991 and 169/1997 to annul these titles.

9. On 12 November 2001 the applicant claimed restitution in kind of the land under Law no. 10/2001 governing immovable property wrongfully seized by the State. So far he has not received any response.

II. RELEVANT DOMESTIC LAW

10. 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

11. The applicant alleged that the transfer of parts of his land 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

12. 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

13. The Government reiterated the arguments they had previously submitted in similar cases.

14. The applicant disagreed.

15. 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).

16. 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 allocation by the State of the applicant's possessions to third parties still prevents him from enjoying his rights of property which have been acknowledged by a final decision. The Court considers that such a situation amounts to a *de facto* deprivation of possession and notes that this has continued for more than nine years, in the absence of any compensation.

17. 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.

18. Having regard to its case-law on the subject, the Court considers that in the instant case the deprivation of the applicant's possessions, together with the total lack of compensation, imposed on the applicant a disproportionate and excessive burden in breach of his right to the peaceful enjoyment of his 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

19. The applicant complained under Article 6 § 1 of the Convention of an unfair trial, of the length of proceedings, that the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law and had not been impartial, and about the outcome of the case.

20. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in 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

21. 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

22. The applicant claimed 330,000 euros (EUR) in respect of pecuniary damage, representing the value of the property on the basis of an expert's report. He also claimed EUR 1,500 for the loss of profit or any benefit from his possessions. In respect of non-pecuniary damage he sought EUR 8,000.

On 13 April 2007, after the Government's comments on the applicant's claims for just satisfaction, the applicant noted that their expert's report was a theoretical one, written without the expert having seen the property. He further considered that EUR 250,000 would be an equitable amount of compensation for pecuniary damage.

23. The Government submitted an expert report which stated in its conclusions that the value of the property was 768,056 new Romanian lei (RON), the equivalent of EUR 216,208.

Regarding the loss of profit, the Government considered that, in the view of its jurisprudence, the Court should not grant it. 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.

24. 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.

25. 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).

26. 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 230,000.

27. As regards the amount of money claimed in respect of loss of profit or benefit from the applicant’s possessions, the Court rejects this claim because granting a sum of money on this basis would be a speculative process, having regard to the fact that profit derived from possession of property depends on several factors. However, the Court will take into account the deprivation of possession when calculating the non-pecuniary damage (see, *mutatis mutandis*, *Radu v. Romania*, no. 13309/03, § 49, 20 July 2006).

28. The Court considers that the serious interference with the applicant’s right to the peaceful enjoyment of his 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 him EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed 2,850 (RON) for the costs and expenses incurred before the domestic courts and before the Court, representing the

fees for the lawyer, expert's report, translations and postal fees. He submitted invoices.

30. The Government noted that the applicant had not submitted the contract for legal representation.

31. 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 800 covering costs under all heads.

C. Default interest

32. 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 Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 230,000 (two hundred and thirty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) 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 applicant's 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