



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

THIRD SECTION

CASE OF OLIMPIA-MARIA TEODORESCU v. ROMANIA

(Application no. 43774/02)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Olimpia-Maria Teodorescu v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 43774/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms Olimpia-Maria Teodorescu (“the applicant”), on 18 November 2002.

The applicant died on 31 August 2004. On 12 June 2007, her son, Mr Mircea-Decebal-Nicolae Teodorescu, expressed his wish to pursue the application. For practical reasons, Ms Olimpia-Maria Teodorescu will continue to be called “the applicant” in this judgment, although Mr Mircea-Decebal-Nicolae Teodorescu is now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI).

2. The applicant was represented by Mr S. Diaconescu, a lawyer practising in Cluj-Napoca. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 11 April 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1908 and lived in Sebeș.

5. In 1950, a house and 1,460 sq. m of appurtenant land situated in Cluj-Napoca, Calea Turzii no. 26, the property of the applicant's parents, were seized by the State under Decree no. 92/1950 on nationalisation.

6. On 24 July 1996 the applicant claimed compensation for the property under Law no. 112/1995. She states that she has not received any compensation.

7. On an unknown date the property was divided into several parts. It appears from the documents in the file that the property, made up of two constructions and appurtenant land, was divided into five apartments and two plots of appurtenant land of 1,058 sq. m and 116 sq. m respectively.

8. On 31 October, 15 November and 10 December 1996, and 3 February and 27 March 1997 the State sold the five apartments to the then tenants. It appears from the file that the two plots of appurtenant land were not made the object of a sale.

9. On 3 March 2000 the Cluj Court of Appeal by a final decision allowed the applicant's action for annulment of the State's title to property, acknowledged that the nationalisation of the building and of the 1,460 sq. m of land appurtenant to it had been unlawful and ordered restoration in the name of the applicant's parents.

10. On 4 June 2001 the applicant requested the court to find that the sales by the State on 10 December 1996 and 3 February 1997 of apartments nos. 1 and 2 respectively, situated on Calea Turzii no. 28, were null and void. According to the applicant, she did not request the annulment of the sale of the other apartments, considering the action pointless in so far as the constant practice was to dismiss this kind of action.

On 4 September and on 27 November 2002 respectively the Cluj Court of Appeal by final decisions dismissed the two actions by the applicant to declare null and void the sales by the State. The court considered that the sales had complied with the provisions of Law no. 112/1995 and that the former tenants had made the purchase in good faith.

11. On 2 August 2001 the applicant made two different requests under the Law no. 10/2001 governing immovable property wrongfully seized by the State, seeking restitution in kind or compensation of the parts of her property situated in Cluj, Calea Turzii nos. 26 and 28 and of the appurtenant land.

12. On 12 June 2007 the Cluj-Napoca Town Council, by two decisions, proposed that the applicant be given compensation under Law no. 247/2005. The Town Council mentioned that the apartments and the land claimed in kind were in the possession of third parties.

So far, she has not received any compensation.

II. RELEVANT DOMESTIC LAW

13. 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. PRELIMINARY OBJECTION

14. The Government submitted in their observations of 11 July 2007 that the case should be struck out of the Court's list of cases on the ground that the applicant's son, after her decease, had not manifested his clear intention to pursue the application.

15. The Court observes that Mr Mircea-Decebal-Nicolae Teodorescu, the applicant's son, expressed his wish to continue the application in a letter of 12 June 2007.

16. In view of the above, the Court holds that the applicant's son has standing to continue the present proceedings in the applicant's stead. Consequently, the Government's objection that the case should be struck out is dismissed.

II. SCOPE OF THE APPLICATION

17. The Government submitted that the two plots of appurtenant land of 1,058 sq. m and 116 sq. m, which belong to the courtyard of the building, were in the applicant's possession and therefore were not to be included in the object of the present application.

18. The applicant did not contest that she was in the possession of the courtyard of the building. However, she considered herself to have no objective possibility to make use of this land as long as she was not in the possession of the apartments to which this land was appurtenant.

19. The Court notes that these plots of land appurtenant to the building were not the object of the sales by the State (see paragraph 8 above) and that the applicant did not contest the Government's assertions. Therefore it considers that the applicant is the owner of this land in accordance with the final decision of 3 March 2000 and that the two plots of land are not to be considered included in the object of the present application.

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

20. The applicant alleged that the sale by the State of her property 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

21. The Court notes that the application 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

22. The Government reiterated their arguments previously submitted in similar cases. In particular, they submitted that the administrative authorities proposed that the applicant be given compensation under Law no. 247/2005.

23. The applicant disagreed, considering the system of compensation under Law no. 247/2005 ineffective and uncertain.

24. 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 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).

25. 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 eight years in the absence of any compensation.

26. 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 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 damages reflecting the commercial value of the possessions of which they had been deprived, in accordance with a foreseeable procedure and timetable.

27. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant's successor sought restitution of the property as the most appropriate manner for the State to provide redress. Should restitution not be granted, he claimed a sum equivalent to the current value of the property which, according to the expert report he had submitted to the Court, amounted to 470,000 euros (EUR). He also claimed at least EUR 500 monthly for the loss of profit or any benefit from the applicant's possession since the judgment certifying her right of property and until the restitution in kind. In respect of non-pecuniary damage he sought EUR 100,000.

30. The Government contested the claims. Having regard to their own expert report, based on a theoretical assessment of the value, they considered that the market value of the property was EUR 390,330. Regarding the loss of profit, the Government considered that, in the view of its jurisprudence, the Court should not grant it. Further, they submitted that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

31. 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.

32. 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).

33. In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

34. The Court considers, in the circumstances of the case, that the return of the property in issue (two constructions and remaining appurtenant land situated in Cluj-Napoca, Calea Turzii nos. 26-28), as ordered in the final decision of 3 March 2000 of the Cluj Court of Appeal, would put the applicant as far as possible in a situation equivalent to the one in which she would have been if there had not been a breach of Article 1 of Protocol No. 1.

35. Failing such restitution by the respondent State, the Court holds that the respondent State is to pay the applicant’s successor, 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 430,000.

36. As regards the amount of money alleged by the applicant’s successor for the loss of profit or any benefit from the applicant’s possession, the Court rejects this claim taking into account, on the one hand, that it has ordered *restitutio in integrum* as reparation under Article 41 of the Convention and on the other hand, that granting a sum of money on this basis would be a speculative process, having regard to the fact that the profit from a possession depends on several factors.

37. The Court considers that the serious interference with the applicant’s right to the peaceful enjoyment of her 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 the applicant's successor EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

38. The applicant's successor also claimed EUR 1,000 for the costs and expenses before the Court, representing lawyer's and postal fees. He submitted a contract for legal representation, stating that the applicant had paid 6,500,000 old Romanian lei for the filling in of the application form.

39. The Government contested the claim as unsubstantiated.

40. 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 1,000 for the proceedings before the Court.

C. Default interest

41. 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*
 - (a) that the respondent State is to return to the applicant's successor the property made up of two constructions and appurtenant land, situated in Cluj-Napoca, Calea Turzii nos. 26-28, 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 the applicant's successor, within the same three months, the amount of EUR 430,000 (four hundred and thirty 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 the applicant's successor, within the same three months, the amounts of EUR 3,000

(three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant's successor, in respect of costs and expenses;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President