



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

THIRD SECTION

CASE OF POPESCU AND DIMECA v. ROMANIA

(Application no. 17799/03)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

09/03/2009

This judgment may be subject to editorial revision.

In the case of Popescu and Dimeca v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 17799/03) 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, Mrs Matilda Lelia Popescu and Mr Simionel Dimeca (“the applicants”), on 7 April 2003.

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

3. On 3 July 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 applicants are brothers, who were born in 1931 and 1925 respectively and live in Bucharest and Aachen (Germany) respectively.

5. In 1932 the applicants’ parents bought a 596 sq. m plot of land with a one-storey building on it. In 1936 they built a three-storey building, linked to the existing one. The property is situated in Constanța, at the crossroad of two streets, Dacia no. 1 and Răscoala din 1907 no. 38.

6. In 1967 the property of the applicants' parents was seized by the State under Decrees nos. 218/1960 and 712/1966.

7. In 1974 two of the then tenants bought two of the flats.

8. On 30 September and 18 October 1976 respectively, the Constanța Court of First Instance declared the two sales null and void on the ground that they had ignored the legal provisions. However, on 9 February 1978 and 24 November 1992 respectively the two sales were deemed valid by court decisions.

9. On 10 April 1996 the first applicant brought an action for the recovery of possession of immovable property, requesting the court to declare the nationalisation of her property unlawful and to order its return to her. The second applicant and the former tenants intervened in the proceedings. The former tenants claimed to be the owners of the two flats bought in 1974 and sought a declaration that they had acquired a right of property through acquisitive prescription, being in good faith.

10. On 23 July 2001 the applicants lodged an application with the administrative authorities for 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.

11. On 15 October 2002 the Supreme Court of Justice, in the operative part of a final decision, allowed in part the applicants' action for recovery of possession, excepting the two flats bought by the former tenants, who were considered as being their owners. In the reasoning of the judgment the court stated that the seizure had been unlawful, that the State had no title to property since the two decrees had been contrary to the Constitutions of 1952 and 1965 respectively, and that the entire property belonged to the applicants' parents, the applicants being their sole heirs. However, it considered that the former tenants, although buying from a non-owner, the State, had been in good faith and had acquired a right of property through acquisitive prescription. It would have been exaggerated and manifestly unfair to have requested the former tenants to question the validity of the State's title at that moment.

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, ECHR 2005-XII (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

13. The applicants alleged that the sale by the State of the two flats 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

14. The Government raised an objection of incompatibility *ratione materiae* in respect of this complaint. They considered that the judgment of 15 October 2002 did not represent a “possession” within the meaning of the Convention, because the court admitted the unconstitutionality of the two decrees only in its reasoning part, which did not have the status of *res judicata*. The Government submitted that in Romanian law the principle of *res judicata* applied only to the operative part of a judgment, which was also enforceable, but not to the reasoning part.

15. The Government also considered that the applicants had no legitimate expectation because they did not have the benefit of an irrevocable decision acknowledging their right of property over the two flats. In this respect, they were “merely claimants” (see *Pentia and Pentia v. Romania* (dec.), no. 57539/00, 23 March 2006).

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

17. The Court considers that the objection raised by the Government is very closely linked to the substance of the applicants’ complaint under Article 1 of Protocol No. 1. It therefore considers it appropriate to join this objection to the merits.

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

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

20. The applicants disagreed.

21. The Court notes that the final judgment of 15 October 2002 of the Supreme Court of Justice acknowledged the unlawfulness of the seizure of the entire property, which belonged to the applicants' parents. However, the applicants recovered only a part of it. The Court considers that the finding, in a final decision which has not been quashed or challenged to date, that the nationalisation of the property was unlawful, had the effect of recognising, indirectly and with retrospective effect, that the applicants had title to the entire property, including the two flats in question. That finding was irrevocable (see, among others, *Străin and Others*, cited above, § 38; *Sebastian Taub v. Romania*, no. 58612/00, § 37, 12 October 2006; and *Gabriel v. Romania*, no. 35951/02, §§ 25-26, 8 March 2007).

22. The Court in its settled case-law on matters similar to that in the present case has examined whether the unlawfulness of the nationalisation in question has been acknowledged in a final decision, either in its reasoning or in its operative part. The Court did not make any distinction as regards the part of the final decision in which the lawfulness of the seizure had been considered. Therefore, it is not persuaded by the Government's argument that the fact that the unlawfulness of the nationalisation had been acknowledged only in the reasoning part of a final judgment may justify a different approach in the instant case.

23. Unlike the Government, the Court considers that the present case is different from the case of *Pentia and Pentia*, cited above, in so far as in the latter the domestic courts considered the nationalisation lawful, whereas in the instant case they acknowledged its unlawfulness.

24. The Court therefore considers that the applicants had a "possession" within the meaning of Article 1 of Protocol No. 1 and dismisses the Government's objection of incompatibility *ratione materiae*.

25. The Court reiterates that, according to its case-law, the sale of another's possessions by the State, even before the question of ownership has been finally settled by the courts, amounts to 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).

26. 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 possessions and notes that it has continued for more than six years, in the absence of any compensation.

27. The Court notes 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 and 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 were deprived, in accordance with a foreseeable procedure and timetable.

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

29. The applicants complained that the domestic courts had been partial, had failed to assess the facts correctly and had misinterpreted the domestic law. 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 an ... impartial tribunal ...”

A. Admissibility

30. 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

31. Having regard to the findings in the paragraphs 21-28 above, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 § 1 (see, among others, *Davidescu v. Romania*, no. 2252/02, § 57, 16 November 2006; *Pais v. Romania*, no. 4738/04, § 39, 21 December 2006; and, *mutatis mutandis*, *Zanghi v. Italy*, 19 February 1991, § 23, Series A no. 194-C; *Laino v. Italy* [GC],

no. 33158/96, § 25, ECHR 1999-I; and *Canea Catholic Church v. Greece*, 16 December 1997, § 50, *Reports of Judgments and Decisions* 1997-VIII).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. Lastly, the applicants complained, without explanation, of a violation of the Article 13 of the Convention.

33. Having carefully considered the applicants' 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 set out in the Article 13 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed 179,000 euros (EUR) in respect of pecuniary damage, representing the value of the two flats, on the basis of an expert report. They also claimed EUR 20,000 in respect of non-pecuniary damage.

36. The Government did not express an opinion regarding the pecuniary damage, having previously submitted an expert report assessing the market value of the two flats at EUR 155,570 and of the land appurtenant to them at EUR 77,622.48. Further, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicants might have suffered. In any event, they considered that the amount claimed in this connection was too high.

37. 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.

38. 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).

39. 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 considers the claim in respect of pecuniary damage justified and, consequently, awards the full amount, namely EUR 179,000.

40. The Court considers that the serious interference with the applicants' right to the peaceful enjoyment of their possession 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

41. The applicants did not claim costs and expenses.

C. Default interest

42. 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. *Joins to the merits* the Government's preliminary objection of incompatibility *ratione materiae* in respect of the complaint under Article 1 of Protocol No. 1 and *dismisses* it;
2. *Declares* the complaints concerning Article 1 of Protocol No. 1 and Article 6 § 1 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;

4. *Holds* that there is no need to examine on the merits the complaint under Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay jointly the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts of EUR 179,000 (one hundred and seventy-nine thousand euros) in respect of pecuniary damage and EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President