



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

THIRD SECTION

CASE OF NICOLESCU v. ROMANIA

(Application no. 31153/03)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Nicolescu 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,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 31153/03) 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 Alexandru Nicolescu (“the applicant”), on 19 August 2003.

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

3. On 11 January 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 1926 and lives in Bîra.

1. Recovery of land

5. On 21 November 1990 the applicant brought an action against the Bîra agricultural cooperative for the recovery of possession of 5,000 sq. m of land.

6. On 16 July 1991 the Roman Court of First Instance authorised the applicant to recover possession of a 5,000 sq. m plot of land situated in Bîra village at a place called “Cimitir” (“the cemetery”). The land had boundaries with the cemetery (to the north), a road (to the south), pastureland (to the east) and land belonging to B.A., a third party (to the west). The court ordered the agricultural cooperative to enable the applicant to take possession of the land. That judgment became final.

On 5 December 1991 the bailiff certified in an official record that the applicant had been able to take possession of the land and that some constructions built by the former agricultural cooperative, including a stable and part of a shed, were situated on it.

7. On 9 August 1991 the county commission in Neamţ for the application of Law no. 18/1991 (“the county commission”) authorised the applicant to recover possession of 52,600 sq. m of land.

8. On 5 October 1992 the applicant contested the administrative decision before the court on the ground that he was also entitled to recover possession of a further 11,200 sq. m approximately of land.

9. On 15 December 1992 the Court of First Instance allowed the applicant’s action, taking the view that he was entitled to recover possession of a total surface area of 63,800 sq. m of land, and ordered the administrative authorities to issue him with a document of title for that land, situated in Bîra village. That judgment became final.

10. On 17 January 1994 the local commission in Bîra for the application of Law no. 18/1991 (“the local commission”) certified in an official record that the applicant had been able to take possession of a 6,152 sq. m plot of land at Cimitir. The applicant signed the official record.

2. First administrative action

11. On 18 September 1997 the applicant brought an administrative action against the local commission seeking to have it perform the procedure for enabling him to take possession of the land and to prepare the documentation pertaining to the issuance of a document of title for the 63,800 sq. m of land.

12. On 26 January 1998 the Neamţ Regional Court upheld the applicant’s action and ordered the local commission to implement the procedure for enabling him to take possession of the 63,800 sq. m of land situated in Bîra village, to issue the official record and to provide him with a title document, in accordance with the judgment of 15 December 1992. That judgment became final.

3. Second administrative action

13. On 3 April 2000 the applicant brought an administrative action against the local commission seeking a daily pecuniary penalty for the

refusal to enable him to take possession of the entire surface area of 63,800 sq. m of land in Bîra village, and to prepare the documentation pertaining to the acquisition of title, as ordered by the judgment of 26 January 1998.

14. On 27 November 2000 the Regional Court, by an enforceable decision, upheld the applicant's action and ordered the local commission to pay a daily pecuniary penalty of 100,000 Romanian lei (ROL). The court noted that the applicant had taken possession of 59,400 sq. m of land and that the local commission had refused to enable him to take possession of the plot of 5,000 sq. m of land situated at Cimitir, thus preventing the preparation of the necessary documentation for the acquisition of title. The court also noted that the plot of 5,000 sq. m of land had been leased by Bîra town council to a private company.

The expert report produced during the proceedings mentioned the plot of 5,000 sq. m of land at Cimitir, which was expressly referred to in the judgment of 16 July 1991, as part of the total of 63,800 sq. m of land for which the authorities were supposed to prepare the documentation pertaining to the acquisition of title. It also mentioned that on 5 December 1991 the applicant had been able to take possession of the land in question at Cimitir, in a location situated in the yard of the former agricultural cooperative, but that subsequently the local commission had allocated to him a 5,000 sq. m plot of land next to the yard.

4. Authorities' approach

15. On 28 December 2000 the town council invited the applicant to take possession of a plot of 5,000 sq. m of land as provided for by the judgment of 27 November 2000, in one of three locations proposed by the authorities, none of them at Cimitir.

16. On 10 January 2001 the local commission certified in an official record that the applicant had been able to take possession of a 5,000 sq. m plot of land in a place called "Arie", which was not one of the three above-mentioned locations. The applicant refused to sign the official record, as it did not relate to the original location.

17. On 11 and 22 January 2001 the town council invited the applicant to sign the official record and the forms for the issuance of the document of title. The applicant refused, claiming the land in the original location.

18. On 28 July 2005 the Neamţ prefecture, in a written note following an interview with the applicant, acknowledged that the latter's right of ownership over the plot of 5,000 sq. m had been certified by the judgment of 16 July 1991 and that the bailiff had enabled him to take possession in 1991. The prefecture further admitted that the applicant could not enjoy possession, as the local authorities had refused several times to take that judgment into account. Hence, the buildings on the land had been systematically leased out, without the question of ownership of the land

being examined, and were currently leased to a third party, with the town council receiving a lease tax for the land. Finally, the note mentioned that the prefecture had informed the mayor that according to the law it was the applicant who should have entered into the lease contract as the owner of the land and of the buildings on it. Therefore, the applicant was directed to lodge either an application for determination of ownership or an application concerning the obligation to take action.

5. Objection to execution by the local authorities

19. On 7 November 2002 the bailiff, at the applicant's request, directed the local commission to execute the judgment of 27 November 2000 and to pay the daily pecuniary penalty with effect from 1 January 2001.

20. On 19 November 2002 the local commission lodged an objection to execution, alleging that the failure to enable the applicant to take possession of 63,800 sq. m of land and to issue him with a document of title was due to his own refusal.

21. On 3 December 2002 the Court of First Instance dismissed the objection as groundless, stating that the acts performed by the local commission were not in conformity with the judgments given in the applicant's favour and that his claim to take possession of the 5,000 sq. m plot of land in the original location at Cimitir was justified.

22. On 6 March 2003 the Regional Court, by a final decision, upheld an appeal by the local commission and annulled the bailiff's injunction. The court noted that the establishment of the location of plots of land fell within the exclusive competence of the local commission and that the authorities had made several proposals to the applicant with a view to providing him with equivalent land in compensation. It also considered that the evidence proved that the applicant was already in possession of a 5,400 sq. m plot of land at Cimitir, in accordance with the judgment of 16 July 1991.

6. Fresh attempt by the applicant to obtain a document of title

23. On 12 April 2005 the applicant brought proceedings against the local authorities seeking to obtain a document of title for the 5,000 sq. m plot of land at Cimitir as granted by the judgment of 16 July 1991, with the following boundaries: the road (to the north and south), pastureland (to the east) and buildings belonging to the town council (to the west). He submitted that he was the owner of that land according to the judgment of 16 July 1991 and that he had been granted possession by the bailiff on 5 December 1991, but that the authorities were planning to prepare documentation for the acquisition of title for land in other locations.

24. On 30 November 2005 the Court of First Instance, taking into consideration an expert report produced in the proceedings and refusing a request by the applicant for a new expert report, dismissed the action on the

ground that the land claimed by the applicant within those boundaries included the stables of the former agricultural cooperative and had no connection with the plot of land awarded by the judgment of 16 July 1991, being adjoining to it. The court acknowledged the applicant's interest in claiming that land, as it had the stables of the former agricultural cooperative on it.

25. On 26 June 2006 the Regional Court, by a final decision, dismissed as groundless an appeal by the applicant in which he had contested the location on which the expert report produced before the first-instance court was based and the dismissal of his request for a new expert report.

26. On 12 April 2007 the town council informed the Agent of the Government that the applicant was in possession of a plot of land at Cimitir, certified by the official record of 17 January 1994 and, according to an expert report of 16 November 2005, with a surface area of 6,002 sq. m. That land was the land mentioned by the judgment of 16 July 1991.

27. So far the applicant has not received a document of title.

II. RELEVANT DOMESTIC LAW

28. The relevant domestic law is summarised in the judgments in *Sabin Popescu v. Romania* (no. 48102/99, §§ 42-46, 2 March 2004) and *Drăculeț v. Romania* (no. 20294/02, § 29, 6 December 2007).

THE LAW

I. SCOPE OF THE APPLICATION

29. The Government submitted that the present application concerned only the plot of 5,000 sq. m of land claimed by the applicant in order to complement the plot of 63,800 sq. m granted by the judgment of 15 December 1992, situated in a location having as its boundaries the road (to the north and south), buildings belonging to the town council (to the west) and pastureland (to the east).

30. The applicant did not express an opinion on the matter. In his first letter to the Court he complained that the judgment of 6 March 2003 of the Neamț Regional Court had been unlawful. He referred to the land leased by the Town Council, which had buildings on it, and to the fact that there was no court judgment allowing the authorities to give him another plot of land in compensation. He also mentioned that the judgment of 16 July 1991 had been enforced by the bailiff in 1991.

31. In his application form the applicant referred to a 5,000 sq. m plot of land wrongfully possessed since 1962. He enumerated the judgments of 16 July 1991, 26 January 1998, 27 November 2000, 3 December 2002 and 6 March 2003 and stated that the last two judgments were “unlawful and groundless”.

In a letter of 14 February 2007 the applicant contested the authorities’ assumption that he had been in possession of the land at Cimitir since 1991, and referred to the letter from the prefecture certifying the existence of buildings on the 5,000 sq. m plot of land.

In his observations of 23 May 2007 the applicant referred to the official record of 5 December 1991, alleging that he was not in possession of the land at Cimitir. He also alleged that the town council had not granted him possession of 55,000 sq. m of forest and 45,000 sq. m of land, for which he had a supporting document. In letters of 16 November 2007, 3 March and 19 May 2008 he alleged that the town council had so far not issued him with a document of title. He did not submit to the Court a copy of the judgment of 15 December 1992.

32. The Court notes that the applicant did not make express reference to the judgment of 15 December 1992, either in his application form or in his observations. Even if the Court were to consider that the applicant’s reference in his observations to the 55,000 sq. m of forest and 45,000 sq. m of land related to the land mentioned in the judgment of 15 December 1992, it recalls that it has already decided that there is no need to give a ruling on complaints raised after the communication of an application to the Government (see *Vigovskyy v. Ukraine*, no. 42318/02, § 14, 20 December 2005). However, the applicant has the possibility of lodging a new application in respect of a possible complaint related to that judgment.

33. Having regard to the fact that the applicant’s complaints revolve around the plot of 5,000 sq. m of land at Cimitir, the Court considers that land as being covered by the present application.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

34. The applicant alleged in substance that the non-enforcement of the judgment in his favour had infringed his rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which read, in so far as relevant, as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“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.”

35. The Government contested that argument.

A. Admissibility

36. The Government submitted that the Court had no jurisdiction *ratione temporis* to examine the alleged non-enforcement of judgments in the period before 20 June 1994.

37. The applicant did not express an opinion on the matter.

38. The Court’s jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or its Protocols by the respondent State. From the ratification date onwards, all the State’s alleged acts and omissions must conform to the Convention or its Protocols and subsequent facts fall within the Court’s jurisdiction even where they are merely extensions of an already existing situation. The Court may, however, have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, ECHR 2002-X).

39. The Court considers in the present case that the alleged impossibility for the applicant to enjoy his right of property acknowledged by a final decision involves a continuing situation (see *Funke v. Romania*, no. 16891/02, § 20, 26 April 2007). The Government’s plea of inadmissibility on the ground of lack of jurisdiction *ratione temporis* must accordingly be rejected.

40. 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

41. The Government submitted that the applicant had a right to recover possession of 5,000 sq. m of land and that on 5 December 1991 and 17 January 1994 he had been granted possession of 5,000 sq. m of land in

the place mentioned by the judgment of 16 July 1991. They considered that the source of the applicant's entitlement was the judgment of 15 December 1992. As the court had not established the location of the land in that judgment, the applicant's entitlement was subject to determination of the location by the local commission. While the applicant had possession of 5,000 sq. m as provided by the judgment of 16 July 1991, only the local commission could establish the location of the 5,000 sq. m needed to make up the full surface area of 63,800 sq. m mentioned by the judgment of 15 December 1992.

42. The Government further considered that the partial non-enforcement of the judgment of 15 December 1992 was due to objective reasons, namely the applicant's refusal to sign the official record granting him possession of the land, in order for the authorities to issue him with a document of title. The applicant had also attempted to change the location of the land.

43. The applicant disagreed. In particular, he submitted that he still had no document of title and that his land at Cimitir was currently divided into three parts. He also made reference to the official record of 5 December 1991 which certified the existence of buildings on the land.

44. The Court notes that on 21 November 1990 the applicant brought an action for the recovery of possession of a plot of land. It may be reasonably assumed that the applicant sought a court decision allowing him to enjoy all the prerogatives of a property right over that land, which involves not only taking possession of the land but also acquiring ownership title, as provided by the internal legislation (see the relevant domestic law in *Drăculeț*, cited above, § 29).

The judgment of 16 July 1991 of the Roman Court of First Instance allowed the applicant's action and thus conferred on him a legitimate expectation of being able to take possession of the 5,000 sq. m of land mentioned in that judgment and of acquiring, subsequently, title to the land. While on 5 December 1991 and 17 January 1994 the applicant was granted possession of the land to which he was allegedly entitled (see paragraphs 6 and 10 above) and while he consented at least to the first course of action (see paragraph 23 above), he has still not received a document of title for the land specified in that judgment.

45. The Government alleged that the applicant had a right to receive a document of title to 5,000 sq. m of land in accordance with the judgment of 15 December 1992, which had not specified the location of the land, whereas the applicant claimed the land in the location specified by the judgment of 16 July 1991. Having regard to its findings in paragraphs 32, 33 and 44 above, the Court considers that the applicant has a right to be issued with a document of title as a result of the judgment of 16 July 1991.

46. The Court cannot but notice that the enforceable decision of 27 November 2000 of the Neamț Regional Court recorded the local authorities' refusal to enable the applicant to take possession of the

5,000 sq. m of land at Cimitir and their use of the applicant's land in their own interest, thus preventing the issuance of a document of title (see paragraph 14 above). Further, the Neamț prefecture also acknowledged in 2005 the refusal of the local authorities to comply with the judgment of 16 July 1991 and the fact that they had leased out the land (see paragraph 18 above). The Court is therefore concerned at the fact that the local administrative authorities not only refused to comply with a court decision for so long, but also disposed of the applicant's land, despite clear findings in this connection by the judiciary and other administrative bodies.

47. The Court considers therefore that although the authorities have an obligation to enforce court judgments, in this case by restoring the relevant land to the applicant, the judgment of 16 July 1991 remains unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under Romanian law to have it amended or annulled by the domestic courts. Apart from enforcement, it is only by means of such annulment or amendment by courts with an equivalent obligation that the continuous situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

48. The Court notes that, in the present case, the authorities failed to inform the applicant, by a formal decision, of the alleged objective impossibility of *ad litteram* performance of the above-mentioned judgment and to take all necessary steps for its enforcement. Moreover, the national courts never ruled that the *ad litteram* enforcement of the judgments of 16 July 1991 was bound to fail. On the contrary, they noted the authorities' refusal to execute that judgment (see paragraph 14 above).

49. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among others, *Sabin Popescu*, cited above, and *Dragne and Others v. Romania*, no. 78047/01, 7 April 2005).

50. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant sought to recover possession of the 5,000 sq. m plot of land at Cimitir. He also claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government considered that the applicant should not be awarded pecuniary damage, as he had not specified the amount and had not submitted any supporting documents. Further, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant might have suffered. In any event, they considered that the amount claimed in that connection was too high.

54. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

55. The Court considers, in the circumstances of the case, that the *ad litteram* enforcement of the judgments of 16 July 1991 would put the applicant as far as possible in a situation equivalent to the one in which he would have been if there had not been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

56. The Court considers that the serious interference with the applicant's rights of access to a court and to the peaceful enjoyment of his possessions has caused a moral prejudice to the applicant. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed costs and expenses incurred before the domestic courts and before this Court, representing lawyers' fees and postage and translation costs. He quantified these costs in part, in the amount of 280 new Romanian lei (RON) for translation costs, alleging that he had submitted four invoices in that connection. However, there are no invoices in the file.

58. The Government contested the claim as being unsubstantiated.

59. 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 500 covering costs under all heads.

C. Default interest

60. 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 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the enforcement of the judgment of 16 July 1991 of the Roman Court of First Instance;
 - (b) that the respondent State is to pay the applicant, within the same three months, 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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (c) 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 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President