



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

THIRD SECTION

CASE OF DIMITRIU AND DUMITRACHE v. ROMANIA

(Application no. 35823/03)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Dimitriu and Dumitrache 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. 35823/03) 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, Mr Șerban Alexandru Dimitriu and Mrs Rosemarie (Roza Maria) Barbara Dumitrache (“the applicants”), on 11 September 2003. The second applicant also has German nationality.

2. The applicants were represented by Ms E. Crângariu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu. The German Government did not make use of their right to intervene (Article 36 § 1 of the Convention).

3. On 5 September 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 were born in 1947 and 1960 respectively and live in Bucharest and Wuppertal (Germany) respectively.

5. On 3 October 1941 the Botoșani County Court, following a division of an inheritance, assigned to N.M., *inter alia*, 151,005 sq. m of forest land

situated on the Buneni estate and 100,000 sq. m of forest land situated on the Dângenii estate.

6. On 4 October 2000 the applicants, together with Z.D., as inheritors of N.M., brought proceedings to annul an administrative decision and to recover possession of 5,229 sq. m and 10,480 sq. m of forest land respectively.

On 26 February 2001 the Săveni Court of First Instance dismissed the action as groundless, considering that the applicants had not followed the procedure provided for by Law no. 18/1991 in its original wording, but had introduced their request after Law no. 169/1997 came into force.

7. The applicants appealed. On 19 June 2001 the County Court upheld the action in respect of the first applicant, allowing him to recover possession of 5,229 sq. m of forest in Dângenii village, and dismissed it regarding the second applicant, as she had not proved her Romanian citizenship.

8. The second applicant continued the proceedings with a further appeal. On 12 March 2002 the Suceava Court of Appeal upheld the appeal, stating that the lower courts had not considered the case on the merits in respect of the second applicant, and quashed the previous judgment in part, sending the case back for retrial.

9. On 14 November 2002, after a fresh examination in respect of the second applicant, the County Court allowed her to recover possession of 9,542 sq. m of forest land in Dângenii village.

10. The second applicant lodged an appeal on points of law alleging, *inter alia*, that she had not received the costs of the proceedings and that she had received a smaller area of land. On 11 March 2003 the Court of Appeal by a final decision dismissed her appeal as groundless.

11. On 29 May and 17 July 2003 the applicants requested the Dângenii Town Council and Botoşani Prefecture respectively to enforce the judgments in their favour. On 5 August 2003 the Town Council informed them that it had submitted the documentation to the competent authorities in order to issue the ownership titles.

12. On 9 September 2005 the applicants together with Z.D. claimed before the Town Council recovery of possession of 78,460 sq. m of forest land under Law no. 247/2005, of which 20,917 sq. m was for the first applicant and 41,834 sq. m for the second. They submitted a certificate of inheritance issued on 29 July 2002, which confirmed them as inheritors of N.M., with a quota of one-twelfth and two-twelfths respectively, together with Z.D., E.K., I.M. and A.M. They did not mention the judgments of 19 June 2001 and 14 November 2002 in their request.

13. On 12 January 2007 the Botoşani county commission for the application of property laws ("the county commission"), at the proposal of the local commission in Dângenii for the application of property laws ("the local commission"), decided to recover possession of 78,100 sq. m of forest

land at Dângeni in favour of the applicants, together with Z.D., I.M. and A.M., as inheritors of N.M. However, the county commission rejected the proposal to allow the same beneficiaries to recover possession of a further 125,837 sq. m plot of forest land at Buneni.

An official record of 30 January 2008 signed by the first applicant also in his capacity as legal representative of the other four beneficiaries, certified that the five inheritors had been allowed to take possession of 78,102 sq. m of forest land, as provided in the decision of 12 January 2007 of the county commission.

14. The applicants together with Z.D., I.M. and A.M. contested before the court the refusal of the county commission to allow them to recover possession of the plot of 126,000 sq. m of forest land at Dângeni.

15. On 25 April 2007 the Court of First Instance upheld the action, noted that the place called Buneni was situated in Dângeni village, annulled in part the administrative decision and allowed the applicants together with the three other persons to recover possession of 126,000 sq. m of forest land at Dângeni. The court also noted that the applicants had been allowed to recover possession of forest land before Law no. 247/2005 came into force and also under the same law by the administrative decision of 12 January 2007.

On 25 September 2007 the County Court dismissed in a final decision an appeal by the county commission.

16. On 24 January 2008 the local commission certified in an official record that the applicants together with Z.D., I.M. and A.M. had been allowed to take possession of the 78,102 sq. m of forest land and that it would prepare the necessary documentation and transmit it to the county commission to approve the allocation of the 125,837 sq. m of forest land.

17. On 30 January and 22 September 2008 the National Forest Administration informed the Agent of the Government that by the official record of 30 January 2008 the applicants were allowed to take possession of 8,333 sq. m and 16,666 sq. m of forest land respectively and that these areas included the two plots provided in the judgments of 19 June 2001 and 14 November 2002 respectively. The two plots of 8,333 sq. m and 16,666 sq. m represented the applicants' quota out of the 100,000 sq. m of forest land situated on the Dângeni estate, which had belonged to N.M.

18. On 8 February 2008 the first applicant requested the county commission to enforce the judgment of 25 April 2007.

19. So far the applicants have not received an ownership title.

II. RELEVANT DOMESTIC LAW

20. The relevant domestic law is summarised in the judgments of *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

21. In their observations of 30 January 2008 the Government mentioned the judgment of 25 April 2007 of the Săveni Court of First Instance, considering that the plot of 127,500 sq. m of forest land at Buneni was not to be included in the object of the present application.

In their supplementary observations of 29 September 2008, the Government submitted that the subject matter of the present application was represented only by the judgments of 19 June 2001 and 14 November 2002.

22. In their observations of 21 March and 24 July 2008 the applicants also complained of the non-enforcement of the judgment of 25 April 2007 of the Săveni Court of First Instance.

23. The Court reiterates that the present application has been communicated following the decision to examine its merits at the same time as its admissibility, as provided by Article 29 § 3 of the Convention. It further recalls that it has already decided that there is no need to give a ruling on the complaints raised after the communication of an application to the Government (see *Vigovskyy v. Ukraine*, no. 42318/02, § 14, 20 December 2005).

24. Since the complaint in question was not raised before the communication of the present application, it is not part of the case referred to the Court. However, the applicants have the opportunity to lodge a new application in respect of that complaint.

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

25. The applicants complained that the non-enforcement of the judgments of 19 June 2001 and 14 November 2002 respectively had infringed their 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.”

26. The Government contested that argument.

A. Admissibility

27. 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

28. The Government considered that the two plots of forest land claimed and granted to the applicants by the two judgments had also been included in the applicants’ request of 9 September 2005 and therefore the authorities had enforced the two judgments by allowing the applicants to take possession on 30 January 2008 of even larger areas of land than provided in the two judgments. They mentioned that the difference of land that had not been returned to N.M.’s inheritors belonged to E.K., who had not claimed it. They also submitted that the authorities had been diligent and that the delay in enforcement was due to objective reasons.

29. The applicants disagreed. In particular, they submitted that in their request of 9 September 2005 they had not included the land claimed on 4 October 2000, but only the difference of land to which they had a right of inheritance. The land granted by the two judgments was not included in the land of which they had been allowed to take possession on 30 January 2008, and in any event they have not received an ownership title. They also submitted that the Government had not cited any exceptional circumstances that could have made the judgments objectively impossible to enforce.

30. The Court notes that the judgments of 19 June 2001 and 14 November 2002 respectively allowed the applicants to recover possession of forest land. It thus conferred on the applicants a legitimate expectation of being allowed to take possession of the land mentioned in those judgments and of subsequently obtaining an ownership title, as

provided by the internal legislation (see the relevant domestic law in *Drăculeț*, cited above, § 29).

31. There is disagreement between the parties as to whether the plots of land granted by the two judgments were also claimed on 9 September 2005 and subsequently included in the land of which the applicants were allowed to take possession on 30 January 2008. In this respect, the Court notes that on 9 September 2005 the applicants claimed 20,917 sq. m and 41,834 sq. m of forest land respectively (see paragraph 12 above) and that those lands represented the areas to which they were entitled out of the total area which belonged to N.M., according to their inheritance quota of one-twelfth and two-twelfths respectively. Therefore the Court agrees with the Government that the applicants claimed on 9 September 2005 the whole land to which they were allegedly entitled in accordance with their inheritance quota, including thus the land that they had already recovered in their capacity as inheritors of N.M.

32. The Court further notes that by the administrative decision of 12 January 2007 and the judgment of 25 April 2007 the applicants together with the other inheritors of N.M., excepting E.K., obtained recognition of their entitlement to all the forest land they had claimed as inheritors of N.M. (see paragraphs 13 and 15 above). The Government argues that the two plots of land mentioned in the judgments of 19 June 2001 and 14 November 2002 had been included in the land of which the applicants have been allowed to take possession on 30 January 2008. In this respect, the Court notes that those two judgments authorised the applicants to recover possession of forest lands in Dângeni village, without specifying a particular location, and that on 30 January 2008 the applicants were allowed to take possession, in the same Dângeni village, of larger surfaces of forest land than provided by those two judgments. Therefore the Court accepts the Government's argument that the applicants were allowed to take possession of the forest lands granted by the 2001 and 2002 judgments.

33. However, in order for the applicants to fully enjoy the prerogatives conferred by the right of property over their lands, they must have not only a *de facto* possession, but also ownership titles certifying their right. Having regard to the fact that the applicants have not received an ownership title, the Court therefore considers, to this extent, that although the authorities had an obligation to enforce court judgments, namely by allowing the applicants to take possession of the relevant land and by providing them with a document of title to their land in the instant case, the judgments of 19 June 2001 and 14 November 2002 remain unenforced to date. Those judgments are nevertheless still valid, no proceedings having been instituted under Romanian law for their modification or annulment before the domestic courts. Apart from enforcement, it is only by such an annulment or substitution by the courts with an equivalent obligation that the continuing

situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

34. The Court notes that, in the present case, the authorities have failed to inform the applicants, by a formal decision, of the alleged objective impossibility of *ad litteram* performance of the above-mentioned judgments and to take all necessary steps for its equivalent enforcement. Moreover, the national courts have never ruled that the *ad litteram* enforcement of the judgments of 19 June 2001 and 14 November 2002 was bound to fail.

35. 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).

36. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicants relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, complaining that the solution was unfair, that the domestic courts had failed to assess the facts correctly, had misinterpreted the domestic law and had not given reasons for their decisions, that the proceedings had lasted too long and that they had not recovered the costs of the proceedings.

38. 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 and freedoms set out in the Convention or its Protocols.

39. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants sought enforcement of the judgments of 19 June 2001 and 14 November 2002, namely to be allowed to take possession of those lands and to receive ownership titles. They also claimed jointly 2,432 euros (EUR) for the loss of profit or any benefit from their possessions, representing the value of the wood that could have been obtained and taking as reference a forest situated in the same place, five tables by the National Forest Administration for the productivity of different surfaces of forest land and an order of the Minister of Agriculture regarding the prices for 2008 for wooden materials.

Were the Government continue not to enforce the two judgments, they claimed EUR 3,750 and EUR 7,500 respectively representing three times the value of their land, on the basis of a minimum amount of EUR 2,500 for one hectare, as provided by the National Agency for Cadastre and Land Registration. In respect of non-pecuniary damage, they claimed EUR 5,000 for each of them.

42. The Government noted that the applicants had already been allowed to take possession of their land and that they can no longer claim an equivalent amount for the value of their land.

Regarding the loss of profit, the applicants did not submit relevant supporting documents such as an expert's report or a court decision certifying a certain amount. Further, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered.

43. 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).

44. The Court considers, in the circumstances of the case, that the *ad litteram* enforcement of the judgments of 19 June 2001 and 14 November 2002 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 6 § 1 of the Convention and Article 1 of Protocol No. 1. In this connection, the Court considers that the applicants have been enabled to take possession of their forest lands specified in those judgments. Therefore it holds that the respondent State is to provide the applicants with title in respect of that land.

45. As regards the amount of money alleged by the applicants for the loss of profit or any benefit from their possessions, 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 (see *Luca v. Romania*, no. 1204/03, § 40, 13 May 2008).

46. The Court considers that the serious interference with the applicants' right of access to a court and to the peaceful enjoyment of their possessions has caused a moral prejudice to the applicants. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards them jointly EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicants also claimed EUR 1,510 for costs and expenses incurred before the domestic courts and before this Court, representing the fees for the lawyer, postal service, photocopies and transport, broken down in several tables. They submitted invoices in respect of these fees.

48. The Government contested the claim on the ground that they were partly unsubstantiated, that no causal link between the payment of some fees and the present case could be found, and that the applicants had not submitted contracts for legal services.

49. 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 covering costs under all heads.

C. Default interest

50. 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 complaints concerning Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
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 judgments of 19 June 2001 and 14 November 2002 of the Botoşani County Court by providing them with ownership titles;

(b) that the respondent State is to pay jointly the applicants, 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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, 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 applicants' 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