



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

THIRD SECTION

CASE OF DUMBRAVĂ v. ROMANIA

(Application no. 25234/03)

JUDGMENT

STRASBOURG

17 February 2009

FINAL

17/05/2009

This judgment may be subject to editorial revision.

In the case of Dumbravă 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 27 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 25234/03) 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. Tudor Dumbravă (“the applicant”), on 7 July 2003.

2. 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 1946 and lives in Bucharest.

5. In 1984 the house, which was the property of the applicant’s mother and was where they had been living was demolished by the State without compensation. Therefore on 18 October 1984 the applicant’s mother was authorised to take on the tenancy of Apartment 18 situated at 2 Valea Călugărească Street in Bucharest.

6. On 25 March 1991 the applicant’s mother made a request to the O. company, a State-representative company responsible for the management of property belonging to the State, to buy the apartment under

Decree-law no. 61/1990 and Law no. 85/1992 regarding the sale to the population of dwellings built with State funds. She died on 9 July 1993, the applicant being her only heir.

7. On 26 January 1994 V.V. took on the tenancy of Apartment 18. According to the applicant, he was living in the apartment at that time.

On 29 March 1994 the applicant was evicted from that apartment, as he had no tenancy. The goods in the apartment were entrusted to the keeping of V.V., most of them being placed under a seal in one room. At the latest on 7 December 2000 the O. company demanded that the applicant take the goods removed from the apartment, as it had no suitable place to keep them.

8. On 17 March 1994 the applicant requested the court to oblige both O. and R. companies, as State-representative companies responsible for the management of property belonging to the State, to sell him Apartment 18.

9. On 11 May 1998 the Bucharest Court of First Instance allowed the applicant's action, considering that he had inherited his mother's right to buy that apartment, and ordered the two companies to conclude a sale contract with the applicant for Apartment 18.

10. On 30 September 1999 the Bucharest Court of Appeal, by a final decision, dismissed as groundless an appeal by the two companies, which sought to declare the apartment governed by Law no. 112/1995, not by Decree-law no. 61/1990 and Law no. 85/1992.

11. Although there had been judicial recognition of the authorities' obligation to sell Apartment 18 to the applicant, the latter was not able to buy it, being informed that on 27 January 1997 the former had sold the apartment to V.V., the then tenant, under Law no. 112/1995.

12. On 12 February 2001 the applicant requested the court to find the sale of Apartment 18 null and void and to oblige the authorities to perform the sale as provided by the judgment of 30 September 1999.

On 5 February 2003 the Bucharest Court of Appeal, by a final decision, dismissed the action, considering that the property was governed by Law no. 112/1995, not by Decree-law no. 61/1990 and Law no. 85/1992, and that V.V. had made the purchase in good faith.

13. On 27 February 2002 the applicant lodged a criminal complaint against the two managers of the O. company for damaging his personal interest in the course of their duties as civil servants and for giving false information for inclusion in a document. On 5 November 2003 the public prosecutor decided not to initiate criminal proceedings because of the prescription of criminal liability. However, the prosecutor considered that the constitutive elements of both criminal offences had been met because, on the one hand, the apartment had been sold despite being the object of pending proceedings and before a final decision on the matter and, on the other hand, the two representatives had been in bad faith when they had signed the sale contract with V.V.

II. RELEVANT DOMESTIC LAW

14. A description of the relevant domestic law which is pertinent to the present case can be found in *Suciu v. Romania* (dec.) (no. 49009/99, 9 September 2003); *Străin and Others v. Romania* (no. 57001/00, §§ 20-22, ECHR 2005-VII); and *Păduraru v. Romania* (no. 63252/00, §§ 38-39 and 49-53, 1 December 2005).

15. Article 16 of Decree-law no. 61/1990 provides that the sale and purchase agreement and the official record authorising the purchaser to take possession of a dwelling confirm the right of property over the dwellings purchased under the present decree-law and constitute ownership title.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

16. The applicant alleged that the sale by the State of Apartment 18 to a third party 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.”

17. The Government contested that argument.

A. Admissibility

18. The Government raised an objection of incompatibility *ratione materiae* in respect of this complaint. They considered that the applicant had neither a “possession” within the meaning of the Convention, nor a legitimate expectation because he had not had the benefit of either a legislative provision or of an irrevocable decision recognising his right of property. The judgment of 11 May 1998 represented a conditional claim, depending on the payment of the price. The applicant was “merely a claimant” (see *Pentia and Pentia v. Romania* (dec.), no. 57539/00, 23 March 2006), the present matter being different from that in the cases of *Străin and Others v. Romania* (cited above, § 38); *Păduraru v. Romania*

(cited above) and *Porteanu v. Romania* (no. 4596/03, § 33, 16 February 2006).

19. The applicant contested that argument.

20. The Court reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his “possessions” within the meaning of this provision. According to the established case-law of the Convention organs, “possessions” can be “existing possessions” or assets, including claims, in respect of which the applicant can argue that he has at least a “legitimate expectation” of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82 and 83, ECHR 2001-VIII).

21. However, in certain circumstances, a “legitimate expectation” of obtaining an “asset” may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a “legitimate expectation” if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (*Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004 IX).

22. In the present case the Court notes that the applicant brought an action to oblige two State-representative companies responsible for the management of property belonging to the State to sell him Apartment 18. In its final decision of 30 September 1999 the Bucharest Court of Appeal established the applicant’s right to buy that apartment and ordered the authorities to conclude the sale contract, in accordance with the provisions of Decree-law no. 61/1990 and Law no. 85/1992.

23. It is true that the right of property would only come into being when the price of the apartment was paid by the applicant. Nevertheless, when he brought his action to be authorised to buy the apartment, the applicant was entitled to expect that it would be examined under the applicable legislation if he satisfied the other relevant substantive and procedural conditions. When the courts established the legal obligation of the authorities to sell that apartment, the applicant clearly expected to be able to buy it and thus to acquire a right of property, as provided under Romanian legislation (see, *mutatis mutandis*, *Stretch v. the United Kingdom*, no. 44277/98, § 34, 24 June 2003). However, he was not able to carry out the purchase, as the authorities had sold the apartment to V.V. during the trial.

24. The Court considers, in the circumstances of this case, that the applicant must be regarded as having at least a legitimate expectation to

perform the purchase. Indeed, the sale did not occur because of an act of the authorities, not because of any failure by the applicant to satisfy the legal requirements related to his entitlement to perform the purchase (see, *per a contrario*, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 126, ECHR 2004-XII). It therefore dismisses the Government's objection.

25. 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

26. The Government considered that the courts' refusal to declare null and void the sale to a third party had not represented an interference with the applicant's right. Were the Court to hold that there had been interference, the Government submitted that it had been provided for by law and proportionate to its aim. The sale to the third party was legally performed, in accordance with Law no. 112/1995 and with his valid title to property.

27. The applicant disagreed. In particular, he referred to the public prosecutor's finding that the sale to V.V. had been performed in bad faith.

28. The Court considers, unlike the Government, that the matter in the present case is similar to a certain extent to its settled case-law concerning properties unlawfully nationalised by the communist regime and sold to tenants (see *Străin and Others* and *Păduraru*, cited above), where the applicants were the owners of the possessions thus sold. Thus, it notes that the final judgment of 30 September 1999 of the Bucharest Court of Appeal acknowledged the applicant's legal right to buy – and thus to obtain a right of property – the apartment used by his mother and by himself since 1984. The Court considers that the finding, in a final decision which has not been quashed or challenged to date, that the applicant had a right provided under Romanian law to acquire that property, had the effect of recognising, indirectly and with retrospective effect, that the applicant had a substantial interest to the apartment in question. That finding was irrevocable (see, *mutatis mutandis*, *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).

29. 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).

30. The Court considers that this principle may be applied *mutatis mutandis* in the present case. The national authorities also acknowledged that, as it was the object of pending proceedings, the sale of the apartment should have not been performed before a final decision as to who could claim a right over it (see paragraph 13 above).

31. 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 to a third party of the apartment which it was obliged by a court final decision to sell to the applicant still prevents the latter from enjoying his proprietary right 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 nine years, in the absence of any compensation.

32. 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 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

33. The applicant complained under Article 6 § 1 of the Convention that his trial had been unfair, that the domestic courts had failed to assess the facts correctly and had misinterpreted the domestic law, and about the outcome of the proceedings. He also complained, without relying on any Article, that all the goods which were in the apartment when he was evicted in 1994 had been deposited by the State-representative company in unsuitable places, which had caused deterioration and disappearance of the valuable goods.

34. 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 the Convention or its Protocols.

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

35. 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

36. The applicant sought Apartment 18 to be sold to him, evaluating it at 65,000 euros (EUR). He also claimed non-pecuniary damage, asking the Court to determine the amount.

37. The Government submitted that the applicant had not claimed any amount in respect of pecuniary or non-pecuniary damage. Having regard to their own expert report based on a theoretical assessment of the value, they considered that the market value of the apartment was EUR 45,135. Further, they considered that an eventual finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage the applicant may have suffered.

38. 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.

39. 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).

40. 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).

41. The Court considers, in the circumstances of the case, that the performance of the sale of the property in issue (Apartment 18 situated in Bucharest, Valea Călugărească Street no. 2), as ordered in the judgment of 11 May 1998 of the Bucharest Court of First Instance, which became final, 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 1 of Protocol No. 1.

42. Failing such performance by the respondent State, the Court holds that the respondent State is to offer the applicant the sale of an apartment of equivalent surface and value, or if the applicant does not find the offer acceptable, a sum of compensation for loss of opportunity of EUR 10,000.

43. 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

44. The applicant claimed reimbursement of the costs and expenses he had incurred in the proceedings in the national courts, without quantifying them or submitting any supporting documents. He left it to the Court's discretion to determine the amount to be awarded under this head.

45. The Government considered that the applicant had not made a claim in this respect.

46. The Court reiterates that under Article 41 of the Convention it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum (see *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

47. In the instant case, the Court observes that the applicant has not substantiated his claim in any way, as he has neither quantified his costs nor submitted any supporting documents. Accordingly, the Court does not award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

C. Default interest

48. 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 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 performance of the sale to the applicant of Apartment 18 situated in Bucharest, Valea Călugărească Street no. 2, as ordered in the judgment of 11 May 1998 of the Bucharest Court of First Instance;
 - (b) that, failing such performance, the respondent State is to offer the applicant, within the same three months, the sale of an apartment of equivalent surface and value, or if the applicant does not find the offer acceptable, a sum of compensation for loss of opportunity of EUR 10,000 (ten thousand euros), plus any tax that may be chargeable;
 - (c) that, in any event, the respondent State is to pay the applicant, within the same three months, the amount of EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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 17 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President