



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

THIRD SECTION

CASE OF FORNA v. ROMANIA

(Application no. 34999/03)

JUDGMENT
(merits)

STRASBOURG

5 May 2009

FINAL

05/08/2009

This judgment may be subject to editorial revision.

In the case of Forna 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 7 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 34999/03) 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, Mrs Norina Consuela Forna (“the applicant”), on 18 September 2003.

2. The applicant was represented by Mr Gheorghe Șuhan, a lawyer practising in Iași. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 5 March 2008 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 1961 and lives in Iași.

5. On 21 December 2000 the county commission in Iași for the application of Law no. 18/1991 (“the county commission”) authorised the applicant, as inheritor of C.C., to recover possession of 20.4 ha of land situated in Rediu and ordered the local administrative authorities to enforce that decision.

6. The applicant's submissions to the town council to execute that decision were to no avail. The mayor's refusal to prepare the documentation pertaining to the acquisition of title prevented the applicant from obtaining an ownership title.

7. In 2001 the applicant brought proceedings against the Mayor of Rediu village and against the local commission in Rediu responsible for the application of Law no. 18/1991 seeking to have them ordered to prepare the documentation pertaining to the acquisition of title. She also claimed a daily pecuniary penalty until execution.

The local authorities of Rediu village stated that it was impossible to ensure the execution of the decision of the county commission on the ground that third parties had been allowed to take possession of that land. An expert's report produced in the proceedings certified that the surface of 20.4 ha had been allocated to thirty-four persons.

8. On 3 February 2003 the Iași Court of First Instance allowed the action and ordered the Rediu local commission to provide the applicant with the cadastral plan and with the official record certifying that she had been able to take possession of the 20.4 ha of land, as specified by the decision of 21 December 2000. It also ordered the Mayor of Rediu to pay the applicant a pecuniary penalty of 300,000 Romanian lei for each day's delay in enforcement. The court dismissed the local authorities' plea that it was impossible to execute that decision due to the fact that the land had been attributed to third parties, considering that the applicant could not be held responsible for what was the authorities' fault.

That judgment became final on 26 May 2003.

9. On 31 July 2003 the bailiff, at the applicant's request and following a meeting with the mayor in his capacity as the chairman of the local commission, certified in an official record that the latter had not executed the judgment of 3 February 2003. The bailiff enjoined the mayor to enforce that judgment.

10. On 1 July and 24 November 2005 the applicant requested the Iași Prefecture to identify 20.4 ha of land in a location adjoining Rediu village, as there was a lack of available land in Rediu. Eventually, the applicant changed her request, claiming only 16 ha of land.

11. The State Property Authority (*Agencia Domeniilor Statului*) informed the county commission, at the latter's request, that it had identified an unoccupied plot of land of 16 ha, with the cadastral identification T6, T8 and T9, placed under the administration of the Agromixt company, a company that used to be responsible for the management of property belonging to the State.

12. On 26 July 2006 the county commission upheld the request and varied the decision of 21 December 2000, authorising the applicant to recover possession of the 16 ha of land situated in Miroslava village, which was under the administration of the Agromixt company. It further stated that

the provisions of the present decision were to be carried out by the local commission in Miroslava responsible for the application of property laws.

13. The Miroslava local commission and the Mayor of Miroslava brought proceedings for the annulment of that decision on the ground, *inter alia*, of an existing final decision ordering the Rediu local commission to allow the applicant to take possession of land and of the fact that the issuing authority, namely the county commission, may not itself annul a previous decision.

The county commission submitted that by the contested decision it had offered the Miroslava local commission land in a location that was vacant from a judicial point of view, with the aim of proceeding to the enforcement of the judgment of 3 February 2003. It also submitted that the proposed plot of 16 ha of land had been offered from the reserve of the State Property Authority, and not from that of the Miroslava local commission. As provided by Law no. 268/2001 regarding the privatisation of the companies having under their administration lands from the private and public property of the State, that land was to be transmitted, at the request of the county commission and on the basis of a protocol, to the local commission.

On 18 May 2007 the Iași County Court, by a final decision, dismissed the request of the Miroslava local authorities.

14. According to the applicant, P.R.V., the then Prefect of Iași and head of the county commission, and I.F., the then head of the State Property Authority in Iași, claimed from her 3 ha of land out of the area of 16 ha as a “condition” of enforcement of the administrative decision of 26 July 2006. Following a complaint lodged by the applicant and her husband with the Anti-Corruption General Directorate within the Ministry of Administration and Interior and with the National Anti-Corruption Directorate within the General Prosecutor’s Office attached to the High Court of Cassation and Justice, the two officials and two other persons were first arrested for a thirty-day period and then committed for trial for corruption. The criminal proceedings are pending.

15. On 23 August 2007 and 7 March 2008 the applicant requested the county commission and the Miroslava local commission to enforce the administrative decision of 26 July 2006.

An exchange of official letters also took place between the Mayor of Miroslava and the State Property Authority in Iași with regard to the enforcement of that decision. The Mayor of Miroslava informed the Authority that in reality the location of the 16 ha plot of land, with the cadastral identification T6, T8 and T9, was not vacant, but was claimed by third parties entitled to receive that land and also by the Miroslava Town Council. He also stated that the administrative decision of 26 July 2006 did not mention an obligation on the Miroslava local commission to allow the applicant to take possession of that land.

16. So far the applicant has not received her land.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law is summarised in *Sabin Popescu v. Romania* (no. 48102/99, §§ 42-46, 2 March 2004).

THE LAW

I. SCOPE OF THE APPLICATION

18. In her application form the applicant referred to the 20.4 ha plot of land. In a letter of 10 May 2008 to the Court the applicant complained that the Miroslava local commission had refused to enforce the administrative decision of 26 July 2006 and to enable her to take possession of the plot of 16 ha of land.

In her observations of 31 July 2008 the applicant complained of serious abuses by the Miroslava local commission in respect of her right over the 16 ha plot of land, but her claims for just satisfaction were related to the plot of 20.4 ha. However, in a letter of 1 September 2008 she complained that she had not been allowed to take possession of her plot of land of 16 ha.

On 4 November 2008, after receiving the Government's comments on her claims for just satisfaction, the applicant complained that she had not been able to recover the plot of 20.4 ha.

19. In their observations, the Government referred to both areas. However, as to the applicant's claim in respect of pecuniary damage, they referred to the value of the land situated in Rediu village.

20. The Court notes that the applicant changed her request before the national authorities and agreed to claim a plot of 16 ha of land instead of the surface of 20.4 ha to which she had been entitled. Following her request, the national authorities varied the administrative decision. The applicant did not contest the administrative decision as it was thus varied and insisted on its enforcement. Moreover, she referred to the plot of 16 ha in subsequent correspondence with the Court, with the exception of the alleged pecuniary damage, which she reported in respect of the bigger area of 20.4 ha.

21. Having regard to the fact that the applicant complained before the Court of the non-enforcement of a final decision closely connected with an administrative decision which had been varied in agreement with her request, the Court considers the plot of 16 ha of land as 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

22. The applicant complained that the non-enforcement of the judgment in her favour had infringed her rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read 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.”

23. The Government contested that argument.

A. Admissibility

24. 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

25. The Government considered that the non-enforcement of the judgment of 3 February 2003 of the Iași Court of First Instance, which became final on 26 May 2003, was due to objective conditions, not to the authorities' fault. The local authorities were not acting in bad faith. The State Property Authority had identified an unoccupied plot of land of 16 ha, but the Miroslava local commission was not able to allow the applicant to take possession of that land because the entire area of 16 ha was claimed both by third parties entitled to receive it and by the local authorities.

26. The applicant disagreed. In particular, she submitted that the plot of 16 ha of land belonged to the State and that the State Property Authority had

transferred that land to the local authorities with the very purpose that it be allocated to her. There was no connection between that land and the potential claims from third parties lodged with the local authorities.

27. The Court notes that, although the authorities had an obligation to enforce court judgments, namely by restoring the relevant land to the applicant in the instant case, the judgment of 3 February 2003 remains unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under Romanian law for its 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 continuous situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

28. Having regard to its case-law on the subject (see *Pânteă v. Romania*, no. 5050/02, § 36, 15 June 2006), the Court considers that, in the present case, the authorities failed to inform the applicant by means of a formal decision of the alleged objective impossibility of performance of the above-mentioned judgment or to take the necessary steps for its enforcement. Thus, the national courts never ruled that the enforcement of the judgment of 3 February 2003 was bound to fail due to the fact that the land had been assigned to third parties (see paragraphs 7 and 8 above). Moreover, in spite of the fact that the State Property Authority had identified a specific and unoccupied plot of 16 ha of land to be allocated to the applicant, the local authorities alleged that that land was actually claimed by third parties. Although it is not the Court's task to assess whether the location of that land had been correctly established, it considers that it was up to the authorities to take specific steps to avoid concurrent decisions that they have to enforce or at least to clarify the situation thus created (see *Popescu and Daşoveanu v. Romania*, no. 24681/03, § 36, 19 July 2007). Therefore the Court cannot accept that in the present case the authorities were not at fault and took all necessary steps for the enforcement of that judgment.

29. 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).

30. 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

31. 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.”

32. The applicant sought to recover possession of her land. She further claimed 2,448,000 euros (EUR) for the current value of 20.4 ha of land situated in Reditu, on the basis of information from a real estate company, EUR 642,104 for the loss of profit or any benefit, representing the value of the bank interest for the previous amount, and 17,907 United States dollars (USD), representing the equivalent of the pecuniary penalty fixed by the judgment of the Iași Court of First Instance of 3 February 2003. She also claimed non-pecuniary damage, asking the Court to determine the amount.

33. The applicant also claimed EUR 11,000 for the fee for the lawyer on the basis of a contract of judicial assistance and, without specifying an amount or submitting invoices, the equivalent of the costs and expenses incurred before the domestic courts and before this Court, representing postal service, translations, photocopies and transport.

34. The Government considered, in line with the information provided by the Chamber of Notaries Public, that the price of one square metre in Reditu varies between EUR 5.5 for land *extra muros* and EUR 10 for land *intra muros*. Regarding the loss of profit, there is no causal link between the supposed violation of the Convention and the pecuniary damage alleged. However, the applicant calculated the bank interest with reference to the value of the land at present, not in 2003.

The Government submitted that the coercive fine had the nature of a civil penalty, with the purpose of guaranteeing the execution of an obligation and not of granting compensation; the applicant had the opportunity to request the court to convert it into damages for delayed enforcement. 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.

35. The Government contested the claim for costs and expenses on the ground that it was partly unsubstantiated, that no causal link between the payment of some fees and the present case could be found, that the contract of judicial assistance was not accompanied by a “time sheet”, that the stipulated amount, as the applicant admitted, had not already been paid by her, and that the fee for the lawyer was excessive, having regard to the low degree of complexity of the case, which follows the well-established jurisprudence of the Court.

36. In the circumstances of the case and having regard to the parties’ submissions, the Court considers that the question of the application of

Article 41 of the Convention is not ready for decision and reserves it in whole, due regard being had to the possibility that an agreement between the respondent State and the applicant may be reached (Rule 75 § 1 of the Rules of Court).

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* that the question of the application of Article 41 is not ready for decision;
accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicant to submit, within six months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 5 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President