



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

1959 · 50 · 2009

THIRD SECTION

CASE OF ENYEDI v. ROMANIA

(Application no. 32211/02)

JUDGMENT

STRASBOURG

2 June 2009

FINAL

02/09/2009

This judgment may be subject to editorial revision.

In the case of Enyedi v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 12 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 32211/02) 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 Vasile Enyedi (Enyedy) (“the applicant”), on 20 August 2002.

The applicant died on 16 March 2006. However, his widow, Ms Elena Enyedi (Enyedy), his son, Mr Sándor Enyedi (Enyedy) and his daughter, Ms Katalin-Erzsébet Csibi, expressed their wish to pursue the application. For practical reasons Mr Vasile Enyedi (Enyedy) will continue to be called “the applicant” in this judgment, although Ms Elena Enyedi (Enyedy), Mr Sándor Enyedi (Enyedy) and Ms Katalin-Erzsébet Csibi are now to be regarded as such (*Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI).

2. The applicant was represented by Mr Francisc Püsök from Zalău. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 9 February 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 1924 and lived in Baia Mare.

5. In 1950, a house and 1,867 sq. m of appurtenant land situated in Zalău, Andrei Șaguna no. 20, the property of the applicant's mother, were seized by the State under Decree no. 92/1950 on nationalisation.

6. The property was subsequently divided into two apartments. In 1973 the applicant's father bought Apartment 1 and in 1974 the applicant's uncle bought Apartment 2.

A. Recovery of property

7. On 18 September 1997 the applicant brought court proceedings for recovery of property, including restitution in kind of the appurtenant land of 1,617 sq. m and compensation for the remaining plot of 250 sq. m, which had been allocated to a third party as building land. He also sought to have the sales of the two apartments declared null and void.

8. On 4 February 1999 the Zalău Court of First Instance allowed the action in part and awarded the applicant the equivalent value of Apartment 2 and the updated amount paid by his father for Apartment 1. The court refused to declare the sale of Apartment 2 null and void, as the applicant had been given compensation, and dismissed his demand for restitution in kind of the 1,617 sq. m of appurtenant land on the ground that it had not satisfied the conditions required by Law no. 18/1991.

9. On 3 August 1999 the Sălaj County Court upheld an appeal by the applicant and by the town council, quashed the judgment of the first-instance court and sent the case back for fresh consideration.

10. During retrial, on 7 December 1999 the Court of First Instance decided that the case was within the competence of the County Court.

11. On 20 October 2000 the Sălaj County Court awarded the applicant the equivalent value of Apartment 2, the updated amount paid by his father for Apartment 1 and dismissed his request to have the sale of Apartment 2 declared null and void.

12. The applicant and the Ministry of Public Finance ("the Ministry") appealed, the former claiming restitution in kind of Apartment 2 as well.

13. On 11 May 2001 the Cluj Court of Appeal dismissed the two appeals. It held that the applicant's uncle had acquired a right of property over Apartment 2 by acquisitive prescription. The court also held that the seizure of the property had been unlawful and following the decease of his father Apartment 1 had entered into the ownership of the applicant and of his father's sister, being thus registered in the Land Register. It

further confirmed that there were no allegations that Apartment 1 was in the ownership of the State or of third parties.

14. On 25 June 2003 the Supreme Court of Justice allowed a further appeal by the applicant and by the Ministry, quashed the previous judgment and sent the case back for a fresh examination. It found that the lower courts had not been concerned with the precise description of the property which was the object of the applicant's action.

15. After the retrial, on 14 April 2004 the Cluj Court of Appeal allowed the appeal by the Ministry and rejected the applicant's action, considering that the buyers of the two apartments were in good faith. It held that the appurtenant land of 1,617 sq. m belonged to the private domain of the State and therefore it was the Mayor who should have been brought to trial, not the Ministry. The court also considered that, for the plot of 250 sq. m of appurtenant land, the third party should have been brought to trial, and that the claim for damages for the two apartments had been time-barred, and was anyway incidental to the request for the annulment of the sales.

16. On 10 October 2005 the Cluj Court of Appeal, by a final decision, upheld in part a further appeal by the applicant and declared null and void the sale of Apartment 1. It considered that the seizure of the whole property which had belonged to the applicant's mother was unlawful and that his father had clearly been in bad faith when he had bought Apartment 1. It ordered the State to pay the applicant pecuniary damages in respect of Apartment 1, representing the updated amount paid by his father.

As for Apartment 2, the court considered that the applicant's uncle had made the purchase in good faith, trusting the content of the Land Register. However, it held that the applicant expressly requested only restitution in kind, not alternative compensation, hence the first-instance court was at fault when it awarded compensation for Apartment 2.

With reference to Apartment 1, the court considered impossible to rectify the situation in the Land Register by establishing a right of property for the applicant's mother over that apartment, as the applicant had failed to bring to trial his father's sister, who owned a portion of it.

B. First administrative action

17. On 8 November 2001 the applicant made a request under Law no. 10/2001 governing immovable property wrongfully seized by the State, seeking restitution in kind of his property, namely the house and the 1,867 sq. m of appurtenant land.

18. On 6 June 2005 the Mayor of Zalău rejected his request on the ground that the applicant had not submitted all necessary documents to substantiate his claims.

19. The applicant contested the mayor's decision before the courts. There is no evidence in the file as to the course of the proceedings.

C. Second administrative action

20. In 2005 the applicant lodged an administrative request for *restitutio in integrum* of the appurtenant land of 1,867 sq. m.

21. On 25 August 2006 the county commission in Sălaj responsible for the application of property laws rejected that request. The applicant's wife contested that decision before the courts, claiming the plot of 1,867 sq. m in the original location.

22. Two expert reports of 23 May and 13 July 2007 certified that the applicant's quota of Apartment 1 was in the ownership of his three heirs, as also mentioned in the certificate of inheritance, that the appurtenant land of 1,367 sq. m was in the State's ownership and that 250 sq. m of appurtenant land were in the ownership of a third party. Apartment 2, having an area and therefore situated on a plot of land of 75 sq. m, together with two plots of appurtenant land of 82 sq. m and 93 sq. m, were in the ownership of the heirs of the applicant's uncle.

23. On 11 October 2007 the Zalău Court of First Instance, on the basis of the expert reports, allowed the action, authorised the applicant's wife to recover possession of 1,867 sq. m of land, and ordered the local authorities to enable her to take possession of the 1,367 sq. m of land appurtenant to the house and to allocate her a plot of 500 sq. m in another location, as provided by Article 10 of Government Ordinance no. 890/2005.

An appeal by the applicant's wife, claiming restitution in kind of the plot of 250 sq. m inherited by the heirs of the buyers of Apartment 2, was subsequently dismissed and that judgment became final.

24. On 10 June 2008 the applicant's wife requested the courts to declare that the judgment of 11 October 2007 could be enforced.

II. RELEVANT DOMESTIC LAW

25. The relevant legal provisions and jurisprudence are described in the judgments *Brumărescu v. Romania* [GC], no. 28342/95, §§ 31-33, ECHR 1999-VII *Străin and Others v. Romania*, no. 57001/00, §§ 19-26, ECHR 2005-VII; *Păduraru v. Romania*, no. 63252/00, §§ 38-53, 1 December 2005, and *Tudor v. Romania*, no. 29035/05, §§ 15-20, 17 January 2008.

THE LAW

I. SCOPE OF THE APPLICATION

26. In a letter of 26 September 2005 the applicant claimed before the Court restitution in kind for the house and for the 1,617 sq. m of appurtenant land and compensation for the remaining 250 sq. m of appurtenant land. He also claimed the updated amount paid by his father for Apartment 1.

After the Cluj Court of Appeal gave its final decision of 10 October 2005 by which, *inter alia*, granted the applicant compensation for the amount paid by his father for Apartment 1, the applicant claimed before the Court, in a letter of 29 November 2005, restitution in kind of the whole property situated in Zalău, Andrei Șaguna no. 20.

Following the communication of the present application to the Government, the representative of the applicant's heirs alleged in a letter of 16 July 2007 that the successors had not been authorised to take possession of the property. He also submitted that, in the event he was authorised by the courts to take possession of the two plots of 82 sq. m and 93 sq. m of appurtenant land (see paragraphs 21 and 22 above), he would claim from the respondent Government only compensation for Apartment 2 and for the land under that apartment, as well as for the plot of 250 sq. m of appurtenant land which had been allocated to a third party for construction.

On 27 November 2008, in reply to a plea of no victim status raised by the Government (see below), the representative of the applicant's heirs maintained that they had not received any compensation for the property.

27. In their observations of 28 May 2007 the Government considered that the applicant had no victim status in so far as Apartment 1 was concerned because, *inter alia*, he had been awarded the updated amount paid by his father for that apartment (see below).

28. The Court notes that following the final decision of 10 October 2005 of the Cluj Court of Appeal the applicant has no longer expressly complained before the Court of the amount awarded as compensation for the price paid by his father for Apartment 1. The Court finds no reason to examine it.

Therefore it considers the property made up of the house divided into two apartments and the appurtenant land of 1,867 sq. m as being covered by the present application. However, the applicant has the opportunity to lodge a new application in respect of a possible complaint related to the amount awarded as compensation for Apartment 1.

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

29. The applicant alleged that the sale by the State of his property to third parties entailed a breach of Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

30. The Government submitted that the applicant had no victim status as far as Apartment 1 was concerned on the ground that, on the one hand, the applicant was in the possession of that apartment and, on the other hand, the applicant had been awarded the updated amount paid by his father for that apartment.

31. The applicant responded that he had not received any compensation for the whole property.

32. The Court notes that the applicant alleged a breach of Article 1 of Protocol No. 1 entailed by the sale by the State of his property to third parties. Having regard the fact that the domestic courts declared null and void the sale of Apartment 1 and certified that that apartment was in the ownership of the applicant and of the other heir of his father (see paragraphs 13, 16 and 22 above), the Court upholds the Government’s preliminary objection in respect of Apartment 1 and this part of the application, which is incompatible *ratione personae* with the provisions of the Convention, must be rejected pursuant to Article 35 §§ 3 and 4. However, as mentioned above (see paragraph 28 above), the Court does not consider it necessary to pronounce as to the issue of compensation awarded by the courts for that apartment.

33. 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

34. The Government reiterated their arguments previously submitted in similar cases.

35. The applicant disagreed.

36. The Court notes that the final judgment of 10 October 2005 of the Cluj Court of Appeal acknowledged the unlawfulness of the seizure of the entire property, which belonged to the applicant's mother. However, the applicant recovered only a part of it. The Court considers that the finding, in a final decision which has not been quashed or challenged to date, that the nationalisation of the property was unlawful, had the effect of recognising, indirectly and with retrospective effect, that the applicant had title to the entire property, including Apartment 2 and the land appurtenant to the entire house. That finding was irrevocable (see, among others, *Străin and Others*, cited above, § 38; *Sebastian Taub v. Romania*, no. 58612/00, § 37, 12 October 2006, and *Gabriel v. Romania*, no. 35951/02, §§ 25-26, 8 March 2007).

37. The Court reiterates that, according to its jurisprudence, the sale of another's possessions by the State, even before the question of the ownership had been finally settled by the courts, will be deemed to be 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).

38. Having examined all the material in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The sale by the State of the applicant's possessions still prevents him from enjoying his right of property 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 three years, in the absence of any compensation.

39. The Court notes that 1,367 sq. m of the land appurtenant to the house was not transferred to a third party and that the courts ordered that plot to be returned in kind to the applicant and that the applicant be compensated for the remaining 500 sq. m with land in another location (see paragraph 23 above). However, there is no evidence that the applicant has in fact been given possession of any land. This situation may therefore be regarded as akin to those cases where properties were unlawfully nationalised by the communist regime and sold to tenants (see *Străin and Others* and *Păduraru*, cited above) and where the applicants were the owners of the possessions thus sold.

40. The Court notes that at the material time there was no effective means in Romanian law capable of providing the applicant with

compensation for this deprivation (see *Străin and Others*, cited above, §§ 23, 26-27 and 55-56, and *Porteanu*, cited above, §§ 23-24 and 34-35). Moreover, it observes that to date the Government have not demonstrated that the system of compensation set up in July 2005 by Law no. 247/2005 would allow the beneficiaries of this law to recover damage reflecting the commercial value of the possessions of which they were deprived, in accordance with a foreseeable procedure and timetable.

41. Having regard to its case-law on the subject, the Court considers that in the instant case the deprivation of the applicant's possessions, 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.

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

42. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

43. The Government contested that argument.

44. The period to be taken into consideration began on 18 September 1997 and ended on 10 October 2005. It thus lasted eight years and twenty-four days for three levels of jurisdiction.

A. Admissibility

45. 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

46. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

47. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

Moreover, the Court has already found that, although it is not in a position to analyse the juridical quality of the case-law of the domestic courts, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system. This deficiency is imputable to the authorities and not the applicants (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

48. Having examined all the material submitted to it, 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. In a letter of 16 July 2007 (see paragraph 26 above) the applicant’s successors submitted to the Court an expert report according to which the value of the entire property, namely the house and the land appurtenant to it, amounted to 196,000 euros (EUR). In a letter of 7 July 2008 the applicant’s representative informed the Court that the applicant’s heirs had managed to obtain judicial recognition of their right over the appurtenant land and that they were expecting to be effectively allowed to take possession of that land.

In their observations of 27 November 2008 the applicant’s successors claimed EUR 50,000 in respect of pecuniary damage, representing the value of the “construction” situated in Zalău, Andrei Șaguna no. 20.

In his application form, the applicant claimed EUR 7,000 in respect of non-pecuniary damage.

51. The Government submitted an expert report valuing only the constructions situated on that property at EUR 27,242 without the VAT. Further, they considered that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

52. 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.

53. 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).

54. Having regard to the information at its disposal concerning real estate prices on the local market and to the expert reports submitted by the parties, the Court estimates the current market value of Apartment 2 at EUR 30,000.

55. As regards non-pecuniary damage, the Court notes that the representative of the applicant’s successors did not submit any claim under that head within the time allowed. According to its settled case-law (see, most recently, *Friedrich v. Romania*, no. 18108/03, § 29, 7 October 2008), the Court does not make any award by way of just satisfaction where quantified claims and the relevant documentation have not been submitted within the time-limit fixed for that purpose by Rule 60 § 1 of the Rules of Court.

In those circumstances, the Court considers that the applicant’s successors have failed to comply with their obligations under Rule 60. As no valid claim for just satisfaction in respect of non-pecuniary damage has been submitted, the Court considers that no award should be made in this connection.

B. Costs and expenses

56. The applicant’s successors did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

57. 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 1 of Protocol No. 1 in respect of Apartment 2 and 1,867 sq. m of appurtenant land and Article 6 § 1 in respect of the length of proceedings 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* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay jointly to the applicant's successors, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Santiago Quesada
Registrar

Josep Casadevall
President