



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

1959 · 50 · 2009

THIRD SECTION

CASE OF PETROIU v. ROMANIA

(Application no. 33055/09)

JUDGMENT
(merits)

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 7 February 2017.*

STRASBOURG

24 November 2009

FINAL

24/02/2010

*This judgment will become final in the circumstances set out in Article 44 § 2 of the
Convention. It may be subject to editorial revision.*

In the case of Petroiu v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 33055/09) 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 Florica-Maria Petroiu (“the applicant”), on 5 August 2005.

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

3. On 10 November 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 1932 and lives in Bucharest.

5. In 1952, a property situated in Bucharest at 10 Negustori Street and belonging to I.A. was seized by the State under Decree no. 224/1951, following an alleged unpaid debt. I.A.’s only heir was his wife, the applicant being the latter’s sole legatee.

The property consisted of a building placed on a 458 sq. m plot of land. The building was divided into five apartments.

6. On 10 July 1996 the applicant requested the authorities to authorise her to recover the whole property and to refrain from selling it to the tenants under Law no. 112/1995. However, on 9 December 1996, 12 March, 30 September and 7 October 1997 and 22 October 1998 the F. company, a State-owned company responsible for the management of property belonging to the State, sold the five apartments with the appurtenant land to the then tenants under Law no. 112/1995.

7. On 5 June 2001 the applicant, in her capacity as legatee of I.A.'s wife, claimed restitution or compensation, under Law no. 10/2001 governing immovable property wrongfully seized by the State, for a plot of 460 sq. m of land and for the constructions on it situated in Bucharest at 10 Negustori Street. It appears from the file that she did not receive any answer.

8. On 6 August 2002 the applicant brought court proceedings to have the sales of the five apartments declared null and void. She considered that the seizure by the State had been unlawful.

9. On 16 June 2003 the Bucharest Court of First Instance dismissed the action, considering that the third parties had made the purchase in good faith, although the authorities were in bad faith since they had sold the property before resolving her request to recover it. The court also acknowledged that the seizure by the State of the whole property had been unlawful and that the applicant was the legatee of I.A.'s wife. However, relying on section 46 § 2 of Law no. 10/2001, it considered that the applicant had not also proved the buyers' bad faith.

10. Two subsequent appeals by the applicant were dismissed, on 14 October 2003 by the Bucharest County Court and on 11 February 2005 by a final judgment of the Bucharest Court of Appeal.

II. RELEVANT DOMESTIC LAW

11. 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).

12. In particular, section 46 § 2 of Law no. 10/2001 provides that the sale or donation of immovable property unlawfully seized by the State shall be declared null and void, save where these transactions have been concluded in good faith.

THE LAW

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

13. The applicant alleged that the sale by the State to third parties of the five items of immovable property 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

14. The Government raised an objection of incompatibility *ratione materiae* in respect of this complaint. They submitted that the courts had dismissed the applicant’s allegations by a final judgment and had upheld the findings of the lower courts regarding the State’s title to the seizure. They considered that the applicant had no “possession” within the meaning of Article 1 of Protocol No. 1 and that the courts had not settled the issue of the lawfulness of the seizure or conferred any property right in the operative part of a final judgment.

15. The Government also considered that the applicant had no legitimate expectation because, unlike in the cases of *Străin and Others* (cited above, § 38) and *Porteanu v. Romania* (no. 4596/03, § 33, 16 February 2006), she did not have the benefit of an irrevocable decision acknowledging that the seizure had been unlawful. The applicant was “merely claimant” (see *Pentia and Pentia v. Romania* (dec.), no. 57539/00, 23 March 2006) and had no legitimate expectation based on a court decision or on a legal provision of recovering the properties at issue.

The Government pointed out that the final judgment of 11 February 2005 (see paragraph 10 above) did not acknowledge that the seizure had been unlawful. They invoked that the higher courts had examined the applicant’s requests also from the perspective of the provisions of section 46 of Law no. 10/2001 regarding the validity of sales performed in good faith and in compliance with the laws in force at that moment.

16. The applicant disagreed.

17. The Court notes that a similar objection by the Government was dismissed in the *Reichardt v. Romania* (no. 6111/04, §§ 14-20, 13 November 2008) and *Popescu and Dimeca v. Romania* (no. 17799/03, §§ 21-24, 9 December 2008) judgments. In particular, the Court observes that the final judgment of 11 February 2005 invoked by the Government upheld the first-instance judgment of 16 June 2003, which had acknowledged the unlawfulness of the seizure (see paragraph 9 above).

18. The Court reiterates that in its settled case-law on matters similar to that in the present case it has examined whether the unlawfulness of the nationalisation in question has been acknowledged in a final decision, either in its reasoning or in its operative part. The Court did not make any distinction as regards the part of the final decision in which the lawfulness of the seizure was considered. Therefore it finds no reasons to depart from its conclusion in those above-mentioned cases and dismisses the Government's objection.

19. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. The Government reiterated the arguments they had previously submitted in similar cases.

21. The applicant disagreed with those arguments.

22. 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. Such deprivation, in combination with a 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*, cited above, § 35).

23. 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 inherited from I.A. still prevents her from enjoying her right of property as acknowledged by a final decision. The Court considers that such a situation amounts to a *de facto* deprivation of possessions and notes that it has continued for more than four years without any compensation being paid.

24. The Court 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 system to recover damages reflecting the commercial value of the possessions of which they

have been deprived, in accordance with a foreseeable procedure and timetable.

25. 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 her right to the peaceful enjoyment of her 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

26. The applicant complained under Article 6 § 1 of the Convention that the proceedings and the solution had been unfair, and that the domestic courts had failed to assess the facts correctly and had misinterpreted the domestic law.

27. 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.

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

28. 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."

29. The applicant sought to recover possession of her property made of "building and land" or, if that would be impossible, the sum of 1,464,000 euros (EUR), on the basis of an expert report from February 2007. According to that expert report, which was also signed by an expert from the Ministry of Culture, the building had been included on the 2004 List of Historical Monuments, as an historic monument of "B" category. The applicant alleged that the Government had not taken into account that aspect. She further claimed EUR 422,496 for loss of profit or benefit from her property for three years. In respect of non-pecuniary damage she claimed EUR 500,000.

In a letter of 30 November 2007 the applicant alleged that the expert report submitted by the Government had not taken into account the plots of appurtenant land.

30. The applicant also claimed 9,053 Romanian lei for the fee for the lawyer and for the expert report. She submitted invoices and copies of contracts for judicial assistance.

31. The Government considered, in line with their own expert report from September 2007 based on a theoretical assessment of the value, that the value of the property before VAT was EUR 259,603.

They also considered that the claim for loss of profit should be dismissed. Further, the claim in respect of non-pecuniary damage was highly excessive.

32. The Government contested the claim for costs and expenses on the ground that it was unsubstantiated, that the applicant had not submitted copies of the contracts for judicial assistance, which would have allowed the Court to determine whether the costs were incurred in domestic proceedings or in the proceedings before the Court. Moreover, the amount claimed in lawyer's fee was excessive.

33. 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 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* that the question of the application of Article 41 is not ready for decision;
accordingly,
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the applicant to submit, within three 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 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President