



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

1959 · 50 · 2009

THIRD SECTION

CASE OF PETROIU AND OTHERS v. ROMANIA

(Application no. 30105/05)

JUDGMENT
(merits)

This version was rectified on 2 February 2015 under Rule 81 of the Rules of Court.

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 and Others 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 Naimith, *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. 30105/05) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by twelve Romanian nationals, Mrs Florica-Maria Petroiu, Mrs Maria-Alexandra Sterian, Mrs Mihaela-Iuliana Vintilescu, Mrs Ana-Maria Apetrei, Mrs Ena Rizescu (Georgescu), Mrs Paraschiva Vintilescu, Mr Constantin Petroiu, Mr Florin-Constantin Stăncescu, Mrs Lidia Peicev, Mrs Maria Peicev, Mr Mircea-Constantin Sterian and Mr Doru Dănuț Dumitru Popescu (“the applicants”), on 9 October 2005.

Mrs Maria-Alexandra Sterian died on 23 April 2007. However, her son and only heir, Mr Bogdan-Andrei Sterian, expressed the wish to pursue the application.

Mr Florin-Constantin Stăncescu died on 10 March 2006; his daughter and only heir, Mrs Ruxandra-Marina Stavre¹, expressed the wish to pursue the application.

Mr Doru Dănuț Dumitru Popescu died on 20 January 2006; his cousin and only heir, Mrs Didona Emilia Didea, expressed the wish to pursue the application.

For practical reasons Mrs Maria-Alexandra Sterian, Mr Florin-Constantin Stăncescu and Mr Doru Dănuț Dumitru Popescu will continue to be called “the applicants” in this judgment, although Mr Bogdan-Andrei Sterian, Ms Ruxandra-Marina Stavre² and Mrs Didona Emilia Didea are now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI).

1. Rectified on 2 February 2015: the text was ‘Mrs Ruxandra-Mariana Stavre’.

2. Rectified on 2 February 2015: the text was ‘Mrs Ruxandra-Mariana Stavre’.

2. The applicants were 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 applicants were born in 1932, 1944, 1957, 1955, 1968, 1928, 1925, 1932, 1955, 1945, 1942 and 1944 respectively. They lived in Bucharest and Ploiești.

5. On an unknown date in the 1960s a property situated in Bucharest at 6 Theodor Aman Street, belonging to H.P., was seized by the State under Decree no. 409/1955 and Council of Ministers Decision (*HCM*) no. 8/1960. The applicants together with E.P. are H.P.'s heirs of different degrees. According to them, the property consisted of an 824 sq. m plot of land with a building on it.

6. By three letters of 22 and 28 July 1996 the heirs of H.P. sought from the H. company, a State-owned company responsible for the management of property belonging to the State, recovery of the immovable property situated in Bucharest at 6 Theodor Aman Street.

7. On 9 December 1996 the H. company sold Apartment no. 1+2 of that building and 59.79 sq. m of appurtenant land to the then tenants under Law no. 112/1995.

8. On 5 June 2001 the applicants Florica-Maria Petroiu, Maria-Alexandra Sterian, Ena Rizescu (Georgescu), Constantin Petroiu, Florin-Constantin Stăncescu, Mircea-Constantin Sterian and Doru Dănuț Dumitru Popescu claimed restitution under Law no. 10/2001 for Apartments 1+2 and 3, with the appurtenant land, situated at 6 Theodor Aman Street. On 7 February 2002 the applicants Lidia Peicev and Maria Peicev claimed restitution of the same apartments, with 796 sq. m of appurtenant land. It appears from the file that they did not receive any answer.

9. On 7 August 2002 all the applicants except Mrs Mihaela-Iuliana Vintilescu, Mrs Ana-Maria Apetrei and Mrs Paraschiva Vintilescu, together with M.C.V. and E.P., brought court proceedings to have the sale declared null and void. The plaintiffs, as heirs of H.P., considered that the State had

no title to that property and invoked the provisions of section 46 § 2 of Law no. 10/2001.

The applicants Mihaela-Iuliana Vintilescu, Ana-Maria Apetrei and Paraschiva Vintilescu are the heirs (wife and daughters) of M.C.V. who, according to a certificate of inheritance, died on 15 April 2002.

10. On 15 May 2003 the Bucharest Court of First Instance, in the operative part of its judgment, dismissed as groundless the action introduced by the applicants Florica-Maria Petroiu, Constantin Petroiu, Florin-Constantin Stăncescu, Maria Peicev, Lidia Peicev, Mircea-Constantin Sterian, Maria-Alexandra Sterian and Doru Dănuț Dumitru Popescu. The court acknowledged that the plaintiffs were the heirs of H.P., but considered that they had not proved that the State had no title to the seizure. Therefore it held that since the State had a valid title, the case came under the provisions of section 46 § 4 of Law no. 10/2001, and considered that the sale had been lawfully performed. The court also declared null and void the action introduced by the applicant Ena Rizescu (Georgescu) and by E.P., for lack of signature.

The judgment made no reference to the plaintiff M.C.V., except to mention him among the plaintiffs who had lodged the action.

11. All the applicants appealed. However, the only reasoned appeal was that of the first applicant, who had lodged it in the name of all the plaintiffs, alleging that the seizure had been unlawful, that the sale had been performed in bad faith and that they had claimed that property before the sale.

12. On 28 June 2004 the Bucharest County Court, in the operative part of its judgment, allowed the appeal by all the applicants and varied the first-instance judgment in part by upholding the action lodged by the applicants Florica-Maria Petroiu, Constantin Petroiu, Florin-Constantin Stăncescu, Maria Peicev, Lidia Peicev, Mircea-Constantin Sterian, Maria-Alexandra Sterian and Doru Dănuț Dumitru Popescu and by declaring the sale null and void. The court found that the two normative acts (see paragraph 5 above) concerned the granting of orders and medals and the reorganisation of transportation of goods and passengers, therefore the State had no valid title to that seizure. It also considered that the then tenants had been in bad faith when they bought that apartment.

It is not mentioned in that judgment whether the applicants Mihaela-Iuliana Vintilescu, Ana-Maria Apetrei, Paraschiva Vintilescu and Ena Rizescu (Georgescu) had made any reference in their appeal to the fact that the previous judgment had not mentioned M.C.V. either in its operative part or in its reasoning, or that it had declared their action null and void.

13. The defendants lodged a further appeal on points of law, alleging that the parties to the sale had been in good faith, as provided by section 46 of Law no. 10/2001.

14. On 4 April 2005 the Bucharest Court of Appeal, in the operative part of a final decision, allowed the appeal by the opposing parties, varied the previous judgment in part and consequently dismissed the appeal introduced by the applicants against the first-instance judgment. In the reasoning part of the judgment the court relied on section 46 § 2 of Law no. 10/2001 to find groundless the request to have the sale declared null and void, considering that at the time of the sale the then tenants had been in good faith and had not been aware of the “invalidity of the [State's] property title” (*nevalabilitatea titlului de proprietate*).

II. RELEVANT DOMESTIC LAW

15. 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).

16. 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. Section 46 § 4 of the same law provides that a sale or donation of immovable property lawfully seized by the State shall be declared null and void if it has been performed in violation of the imperative provisions of the laws in force at that moment.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

17. The Government submitted that the courts had considered the merits of the case only in respect of the applicants Florica-Maria Petroi, Constantin Petroi, Florin-Constantin Stăncescu, Maria Peicev, Lidia Peicev, Mircea-Constantin Sterian, Maria-Alexandra Sterian and Doru Dănuț Dumitru Popescu. The other four applicants, namely Ena Rizescu (Georgescu), Mihaela-Iuliana Vintilescu, Ana-Maria Apetrei and Paraschiva Vintilescu, were removed from the proceedings for procedural errors such as rendering the action void for lack of signature.

18. The applicants disagreed, invoking the transmission of the inheritance and the internal law (Article 48 § 2 of the Code of Civil Procedure).

19. The Court reiterates that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A). Thus the complaint intended to be made subsequently to the Court must first have been made - at least in substance - to the appropriate domestic body in compliance with the formal requirements and time-limits laid down in domestic law (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). As soon as the Court is satisfied that the domestic legal system provided such a remedy and that the applicant has not used it, it falls to the applicant to establish that the remedy was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him from the requirement (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). A mere doubt as to the prospect of success is not sufficient to exempt an applicant from submitting a complaint to the competent court (see, for example, *Elsanova v. Russia* (dec.), no. 57952/00, 15 November 2005).

20. The Court notes that the action lodged by the applicant Ena Rizescu (Georgescu) was declared null and void by the judgment of 15 May 2003 of the Bucharest Court of First Instance for lack of signature (see paragraph 10 above). The higher court upheld her appeal in the operative part of its judgment, but did not vary that ruling. In her appeal that applicant did not challenge the decision of the first-instance court to render her action void, but only invoked grounds related to the seizure and the sale of the property. The Court observes that the Bucharest County Court on the one hand upheld her appeal, but on the other hand had neither varied the finding of the lower court in her respect nor included that applicant among the plaintiffs whose action had been allowed (see paragraph 12 above).

21. The Court further notes that the applicants Mihaela-Iuliana Vintilescu, Ana-Maria Apetrei and Paraschiva Vintilescu are the heirs of M.C.V., who had introduced the action together with other plaintiffs (see paragraph 9 above). According to the certificate of inheritance submitted to the Court, M.C.V. had died by the time the action was lodged (see paragraph 9 above, *in fine*). However, the judgments delivered in the proceedings made no reference to M.C.V., except to mention him as among those who had introduced the action, and confined their operative part to the other plaintiffs. Moreover, an appeal by his three heirs, who are the above-mentioned applicants, was upheld by the Bucharest County Court, but even so that court did not mention them among those whose action had been admitted (see paragraph 12 above). Those three applicants also made no reference in their grounds for appeal to the fact that M.C.V. had not been mentioned in the operative part of the first-instance court; they only appealed on grounds related to the seizure and the sale of the property.

22. A further appeal on points of law was introduced only by the opposing parties, and the Bucharest Court of Appeal eventually confirmed the first-instance judgment, which had declared null and void the action lodged by the applicant Ena Rizescu (Georgescu) and had not mentioned M.C.V. in its operative part. If the fact that a court had allowed an appeal by the four applicants but had not varied its previous judgment in respect of them had amounted to a material error in the courts' judgments, the Court considers that those four applicants have not raised that issue as a ground for their appeal (see paragraph 12 above, *in fine*) ; neither have they lodged an appeal on points of law or made use of extraordinary remedies to request annulment of a final decision, or at least they have not submitted to the Court any evidence to the contrary.

23. The Court does not find any special circumstances in the present case which would absolve those four applicants from having recourse to any of those remedies. It follows that, in so far as the applicants Ena Rizescu (Georgescu), Mihaela-Iuliana Vintilescu, Ana-Maria Apetrei and Paraschiva Vintilescu are concerned, the application must be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1, 3 and 4 of the Convention. The applicants Florica-Maria Petroiu, Constantin Petroiu, Florin-Constantin Stăncescu, Maria Peicev, Lidia Peicev, Mircea-Constantin Sterian, Maria-Alexandra Sterian and Doru Dănuț Dumitru Popescu are therefore the sole applicants for the purposes of this application.

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

24. The applicants alleged that the sale by the State to third parties of the immovable property situated at 6 Theodor Aman Street 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

25. The Government raised an objection of incompatibility *ratione materiae* in respect of this complaint. They submitted that the courts had dismissed the applicants' 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 applicants 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.

26. The Government also considered that the applicants 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), they did not have the benefit of an irrevocable decision acknowledging that the seizure had been unlawful. The applicants were “merely claimants” (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 property at issue.

The Government pointed out that the judgment of 28 June 2004 of the Bucharest County Court (see paragraph 12 above), which had declared the sale null and void, was invalidated by a subsequent judgment. They invoked that the higher courts had examined the applicants' 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.

27. The applicants disagreed.

28. 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 4 April 2005, which had invalidated the judgment of 28 June 2004 invoked by the Government and which had thus upheld the solution of the first instance, based its reasoning on section 46 § 2 of Law no. 10/2001, and not on § 4 of the same section, as the first-instance court had (see paragraphs 14 and 16 above). That judgment also considered that the tenants had not been aware of the invalidity of the State's property title. Therefore the Court considers that the unlawfulness of the nationalisation in question has been acknowledged by the courts.

29. 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.

30. 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

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

32. The applicants disagreed with those arguments.

33. 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).

34. 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 applicants' possessions inherited from H.P. still prevents them from enjoying their 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.

35. 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.

36. Having regard to its case-law on the subject, the Court considers that in the instant case the deprivation of the applicants' possessions, together with the total lack of compensation, imposed on the applicants a disproportionate and excessive burden in breach of their right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1.

There has accordingly been a violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. The applicants 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. They also relied on Article 13 of the Convention.

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.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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.”

40. The applicants sought to recover possession of their property made of “land and building” or, if that would be impossible, the sum of 239,200 euros (EUR), on the basis of an expert report from February 2007. They further claimed EUR 90,000 for loss of profit or benefit from their property for three years. They also claimed EUR 2,472,000 for not being able to sell the 824 sq. m plot of land, alleging that the apartment unlawfully sold by the State was located on this land and included a shared area of 60 sq. m out of the entire appurtenant land, which “renders impossible the eventual sale of the building”. In respect of non-pecuniary damage they claimed EUR 2,000,000.

In a letter of 30 November 2007 the applicants alleged that the expert report submitted by the Government had not taken into account the plot of land appurtenant to that apartment.

41. The applicants also claimed 4,486.21 Romanian lei for the fee for the lawyer and for postal services. They submitted invoices and copy of a contract for judicial assistance from 28 September 2005.

42. 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 199,409.

They also considered that the claim for loss of profit should be dismissed, as well as the claim related to the plot of 824 sq. m of land, which has no connection with the object of the present application. Further, the claim in respect of non-pecuniary damage was highly excessive.

43. The Government contested the applicants' claims for costs and expenses and considered that the amount claimed in lawyer's fee was excessive.

44. 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 applicants 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 in so far as the applicants Florica-Maria Petroiu, Constantin Petroiu, Florin-Constantin Stăncescu, Maria Peicev, Lidia Peicev, Mircea-Constantin Sterian, Maria-Alexandra Sterian and Doru Dănuț Dumitru Popescu are concerned, 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 applicants 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