



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

THIRD SECTION

**CASE OF SECELEANU AND OTHERS v. ROMANIA**

*(Application no. 2915/02)*

JUDGMENT

STRASBOURG

12 January 2010

**FINAL**

*12/04/2010*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Seceleanu 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,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 8 December 2009,

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

## PROCEDURE

1. The case originated in an application (no. 2915/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Romanian nationals, Ms Ana Maria Oana Seceleanu, Mr Andrei Nicolae Seceleanu and Ms Maria Alina Biji (“the applicants”), on 7 August 2001.

The first applicant died on 2 February 2006. The second and third applicants are her children and only heirs. For practical reasons, Ms Ana Maria Oana Seceleanu will continue to be referred to as “the applicant” in this judgment, although her heirs are now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI).

2. The applicants were represented by Mr Daniel Tintoiu, a lawyer practising in Bucharest. 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 first applicant was born in 1922 and died in 2006. The other two applicants were born in 1948 and 1946 respectively and live in Bucharest.

5. In 1950, Apartments nos. 203 and 215 situated in Bucharest, Vasile Conta no. 7-9, the property of B.M., were seized by the State under Decree no. 92/1950 on nationalisation. B.M. was S.D.'s stepfather, S.D. being the husband of the first applicant and the father of the other two applicants.

#### **A Recovery of property**

6. In 1994 S.D. together with his brother B.R. sought to have the seizure declared null and void and to recover ownership of the two apartments.

7. On 8 February 1995 the Bucharest Court of First Instance allowed the action by S.D. and ordered *restitutio in integrum* of the two apartments. However, on the basis of an inheritance certificate, it held that B.R. had no standing in the proceedings.

An appeal by the authorities was dismissed on 20 November 1995 by the Bucharest County Court, which considered the seizure as being unlawful. That judgment became final.

8. On 12 May 1997, at the request of S.D., the Bucharest Town Council, having regard to the fact that the judgment of 8 February 1995 had become enforceable, ordered the restitution of Apartments 203 and 215.

9. Although S.D. had secured judicial recognition of his property right, he was not able to recover possession of those apartments because the State had sold them on 23 December 1996 and 13 January 1997 respectively to the then tenants, under Law no. 112/1995.

10. In 1998 S.D. lodged two requests to have the sales by the State declared null and void. S.D. died in 2000 and the applicants continued the proceedings.

11. On 7 February 2001 the Bucharest Court of Appeal, by a final decision, dismissed the action regarding Apartment 215, considering that the sale had complied with the provisions of Law no. 112/1995 and that the former tenants had made the purchase in good faith.

12. On 13 August 2001 the applicants applied to the administrative authorities for restitution of Apartment 215 under Law no. 10/2001 governing immovable property wrongfully seized by the State. By a letter of 12 April 2006 the Town Council informed the Agent of the Government that the file was incomplete as it lacked some of the necessary documents.

13. On 12 December 2002 the Court of Appeal, by a final decision, upheld the other action lodged by S.D. in 1998 and declared the sale of Apartment 203 null and void.

14. On 22 February 2008 the Bucharest Court of First Instance allowed a request by the second and third applicants to have the former tenants of Apartment 203 evicted from that apartment.

On 4 December 2008 the Bucharest County Court dismissed an appeal by the former tenants. The latter lodged a further appeal on points of law. The proceedings are still pending.

**B. First attempt by the authorities to have the judgment of 8 February 1995 revised**

15. On 20 September 1999 the Bucharest Town Council, at the request of the former tenants of Apartment 203, sought the revision of the judgment of 8 February 1995 (*cerere de revizuire*), on the basis of alleged new documents attesting the lawfulness of the 1950 nationalisation. The former tenants also intervened in the proceedings.

16. The Bucharest Court of Appeal dismissed that request as being out of time, by a final decision of 20 September 2001.

**C. Second attempt by the authorities to have the judgment of 8 February 1995 revised**

17. On 12 June 2002 the Town Council again sought to have that judgment revised, following a request by the same former tenants of Apartment 203, alleging that there were new documents proving that S.D. was not the only heir of B.M. The former tenants intervened in the proceedings.

18. On 20 November 2002 the Bucharest Court of First Instance dismissed the action as being out of time. There is nothing in the file to say that an appeal was lodged against that judgment.

**D. Third attempt by the authorities to have the judgment of 8 February 1995 revised**

19. On 22 November 2002, at the request of the former tenants, the Prosecutor's Office attached to the Bucharest Court of First Instance brought proceedings to have that judgment revised, on the basis of an inheritance certificate from 1958, considered to be a new document attesting that S.D. was not the only heir.

20. On 31 January 2003 the Bucharest Court of First Instance found that request inadmissible, since that certificate could have been obtained by the

authorities, which were defendants in those proceedings, with minimum diligence.

21. The prosecutor, the town council and the former tenants of Apartment 203 appealed. Eventually, on 14 February 2006 the Bucharest County Court dismissed their appeals as groundless or for lack of interest.

22. All the parties lodged a further appeal on points of law. According to the documents in the file, the proceedings are still pending.

#### **E. Fourth attempt by the authorities to have the judgment of 8 February 1995 revised**

23. On 27 April 2005 the Bucharest Town Council made a fresh attempt, at the request of the same former tenants who had intervened in the proceedings, to have the judgment of 8 February 1995 revised. The former tenants informed the Town Council that the prosecutor had found that the signatures on the 1994 application form (see paragraph 6 above) were forged, since they belonged to the plaintiffs' lawyer, although it had been alleged that they belonged to the plaintiffs themselves. However, the prosecutor acknowledged that the lawyer's criminal responsibility had become time-barred.

24. On 30 September 2005 the Bucharest Court of First Instance upheld the action and declared null and void the action introduced by those plaintiffs in 1994, for lack of a valid signature.

25. On 18 January 2006 the Bucharest County Court considered an appeal by the applicants as being out of time.

26. On 6 November 2006 the Bucharest Court of Appeal allowed a further appeal, on points of law, by the second and third applicants, quashed the previous judgment and sent the case back for fresh consideration of the applicants' appeal against the judgment of 30 September 2005.

27. On 13 March 2007 the Bucharest County Court allowed the applicants' appeal against that judgment and dismissed the request for revision, considering that the application form had not represented relevant evidence in delivering that judgment.

28. The Bucharest Town Council lodged a further appeal on points of law. By a letter of 18 March 2009 the Government informed the Court that the proceedings were still pending.

## **II. RELEVANT DOMESTIC LAW**

29. 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

30. In their application form, the applicants stated that the scope of the present application was to recover Apartment 215. They complained about the sale by the State of that apartment on 13 January 1997.

Following the communication of the present application to the Government, the applicants referred to both Apartments 215 and 203, submitting expert valuations of both of them.

31. In their observations, the Government considered that the present application concerned only Apartment 215, as claimed by the applicants in their application form. However, they too submitted expert valuations of both of them.

32. The Court reiterates that the present application was communicated following the decision to examine its merits at the same time as its admissibility, as provided for by Article 29 § 3 of the Convention. It further observes that it has already decided that there is no need to give a ruling on complaints raised after the communication of an application to the Government (see *Vigovskyy v. Ukraine*, no. 42318/02, § 14, 20 December 2005).

33. Since a potential complaint in respect of Apartment 203 was not raised before the communication of the present application, it is not part of the case referred to the Court. However, the applicants have the opportunity to lodge a new application in respect of that complaint (see, *mutatis mutandis*, *Dimitriu and Dumitrache v. Romania*, no. 35823/03, § 24, 20 January 2009).

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

34. The applicants alleged that the sale by the State of Apartment 215 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

35. The Government considered that the complaint should be rejected as out of time, since the final decision for the purposes of Article 35 § 1 of the Convention was that of 7 February 2001 of the Bucharest Court of Appeal and the present application was lodged on 13 March 2002, the date on the application form.

36. In their same observations of 18 May 2006 the Government also raised an objection of incompatibility *ratione materiae* in respect of this complaint, considering that the applicants’ right of property had been contested before the courts. Thus, the applicants’ “possession”, represented by the judgment of 8 February 1995, had been challenged with revision proceedings. The revision was allowed on 30 September 2005, the applicants’ appeal being dismissed on 18 January 2006. Therefore the applicants did not have a “possession” within the meaning of the Convention.

37. The applicants pointed out that their first communication with the Court dated back to 7 August 2001, when they had complained about the judgment of 7 February 2001.

38. As regards the objection of incompatibility *ratione materiae*, the applicants agreed that a revision of the judgment of 8 February 1995 had been allowed on 30 September 2005, but underlined that a further appeal by them had been allowed against the judgment of 18 January 2006. Therefore they still had a title deed; the Government had not invoked an enforceable decision proving the contrary.

39. As far as the six-month time-limit under Article 35 § 1 of the Convention is concerned, the Court notes that a similar objection by the Government was dismissed in the judgments in the cases of *Ciobotea v. Romania* (no. 31603/03, §§ 19-24, 25 October 2007), *Capetan-Bacscai v. Romania* (no. 10754/04, §§ 21-26, 25 October 2007); and *Episcopia Română Unită cu Roma Oradea v. Romania* (no. 26879/02, §§ 17-22, 7 February 2008) and finds no reason to depart from its conclusion in those cases. It therefore dismisses the Government’s objection.

40. As far as the plea of incompatibility *ratione materiae* is concerned, the Court notes that the revision proceedings invoked by the Government are still pending (see paragraph 28 above). Hence the judgment of 8 February 1995, which is not contested by the Government as being a “possession”, is nevertheless still valid. The Court therefore dismisses the Government’s objection.

41. 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**

42. The Government referred to the arguments they had previously submitted in similar cases.

43. The applicants disagreed with those arguments.

44. 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 v. Romania*, no. 4596/03, § 35, 16 February 2006).

45. 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 S.D. 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 fourteen years, without any compensation having been paid.

46. 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 were deprived, in accordance with a foreseeable procedure and timetable.

47. 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**

48. The applicants complained under Article 6 § 1 that the outcome of the proceedings in which they sought to have the sale of Apartment 215 declared null and void had been unfair and that the domestic courts had failed to assess the facts correctly and had misinterpreted the domestic law.

49. 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 Article 6 § 1 of 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.

50. The applicants also complained under Article 6 § 1 about the non-enforcement of the judgment of 8 February 1995.

51. Having regard to the findings in paragraphs 44-47 above, the Court does not find it necessary to rule separately on the admissibility and merits of this complaint.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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**

53. The applicants claimed 35,000 euros (EUR) in respect of pecuniary damage, representing the value of the property according to an expert's report from May 2006. They also claimed EUR 18,000 for the loss of profit or any benefit from their possessions, representing the alleged rent for June 1997 – May 2006, on the basis of the same expert's report. The applicants further asked the Court to determine the amount of compensation in respect of non-pecuniary damage.

54. The Government considered, in line with their own expert report from April 2007 which had assessed the expert report submitted by the applicants, that the current value of the property before VAT was EUR 20,203.21.

Regarding the loss of profit, the Government considered that, in the light of its jurisprudence, the Court should not grant it. Further, they considered that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered.

55. 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 domestic 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.

56. 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).

57. The Court holds that the respondent State is to pay the second and third applicants, in respect of pecuniary damage, an amount corresponding to the value of the property. Having regard to the information and to the expert reports submitted by the parties concerning real estate prices on the local market, the Court awards them jointly EUR 26,000.

58. As regards the amount of money claimed in respect of loss of profit or benefit from the applicants’ possessions, the Court rejects this claim because granting a sum of money on this basis would be a speculative process, having regard to the fact that profit derived from possession of property depends on several factors (see *Buzatu v. Romania* (just satisfaction), no. 34642/97, § 18, 27 January 2005, and *Dragomir v. Romania*, no. 31181/03, § 27, 21 October 2008).

59. The Court considers that the serious interference with the applicants’ right to the peaceful enjoyment of their 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 jointly to the second and third applicants EUR 4,000 in respect of non-pecuniary damage.

## **B. Costs and expenses**

60. The applicants also claimed costs and expenses incurred before the domestic courts and before this Court. They did not quantify them, but submitted invoices for costs and expenses before this Court, representing fees for the expert report, translations and postal service.

61. The Government considered that the applicants had not submitted a request in that respect.

62. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 250 covering costs under all heads.

### **C. Default interest**

63. 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 complaints under Article 6 § 1 of the Convention related to the proceedings for annulment of the sale of Apartment 215 inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 § 1 of the Convention about the non-enforcement of the judgment of 8 February 1995;
4. *Holds*
  - (a) that the respondent State is to pay jointly to the second and third applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of Convention, the following amounts, plus any tax that may be chargeable to the applicants, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
    - (i) EUR 26,000 (twenty-six thousand euros) in respect of pecuniary damage;
    - (ii) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
    - (iii) EUR 250 (two hundred and fifty euros) in respect of costs and expenses;

(b) 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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada  
Registrar

Josep Casadevall  
President