



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

THIRD SECTION

CASE OF VENIAMIN v. ROMANIA

(Application no. 19438/05)

JUDGMENT

STRASBOURG

26 January 2010

FINAL

26/04/2010

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

In the case of Veniamin 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 Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 19438/05) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Nicolae Veniamin and Mr Lascăr Veniamin (“the applicants”), on 28 April 2005.

2. The applicants were represented by Mr A. Vasiliu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 1 September 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).

4. The French Government, to whom a copy of the application was transmitted under Rule 44 § 1 (a) of the Rules of Court, did not exercise their right to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Both applicants, who are brothers, were born in 1946: Mr Nicolae Veniamin lives in Boulogne and Mr Lascăr Veniamin in Paris.

6. On an unspecified date, the State seized possession of an apartment belonging to the mother of the applicants, on the 4th floor of no.43, Dacia Street, in Bucharest.

7. By a final decision of 19 June 1998, the Bucharest District Court allowed the action brought by the applicants against the State for recovery of possession (*acțiune în revendicare*). The applicants were granted possession of the apartment on 19 January 1999.

8. Within less than one month from the final decision favourable to the applicants, on 6 July 1998, the State sold the apartment to the tenants under Law no. 112/1996. Subsequently, on 11 February 1999 the Mayor of Bucharest issued a decision for the restitution of the apartment to the tenants who had bought it.

9. The applicants lodged an action against the tenants, seeking to have the contract of sale concluded by them with the State set aside and the restitution of ownership of the apartment. By a final decision of 2 November 2004, the High Court of Cassation and Justice dismissed the action on the ground that the buyers had concluded the contract in good faith.

II. RELEVANT DOMESTIC LAW

10. 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).

11. 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 the transactions have been concluded in good faith.

THE LAW

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

12. The applicants complained that the sale by the State of their apartment to the tenants, validated by the final decision of the High Court of Cassation and Justice of 2 November 2004, without any compensation

entails a violation of Article 1 of Protocol No.1 of the Convention, 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

13. The Court notes that the 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

14. The Government reiterated the arguments they had previously submitted in similar cases. Furthermore, they contended that the applicants had not followed the procedure provided by Law no. 10/2001.

15. The applicants disagreed with those arguments. They argued that they did not see any reason to follow the procedure provided by Law no. 10/2001, as long as they had obtained the restitution of their apartment by a final decision. Furthermore, they had lodged an action for the annulment of the sale contract against the former tenants, which had already been pending when Law no. 10/2001 entered into force. They added that until 2 November 2004, when they obtained a final decision dismissing their claim for annulment and restitution, they had still been the owners of the apartment. Besides, they noted that they could not follow the procedure provided by Law no. 10/2001 for obtaining compensation since such a procedure did not envisage the situation of former owners of immovable property restored by a final decision and then sold by the State to third parties after 22 December 1989.

16. The Court reiterates that, according to its case-law, the sale of another's possessions by the State 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).

17. 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' apartment 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 10 years without any compensation being paid.

18. 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 market value of the possessions of which they have been deprived, in accordance with a foreseeable procedure and timetable.

19. 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicants complained under Article 6 § 1 of the Convention about the outcome of the proceedings, the allegedly incorrect assessment of the facts and a lack of impartiality on the part of the domestic judges.

21. 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 this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

22. Under the same Article of the Convention, Article 6 § 1, the applicants complained about the impossibility to obtain the execution of a final decision, that is, of the decision of 19 June 1998 of the Bucharest District Court.

23. Having regard to the fact that this issue has been analysed above under Article 1 of Protocol No. 1 of the Convention and to the finding relating to it, the Court considers that it is not necessary to examine the admissibility or the merits of this complaint under Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicants sought to recover possession of their apartment or, if that proved impossible, the sum of 213,472 Euros (EUR), on the basis of an expert report dated 27 November 2006. They further claimed EUR 50,000 for the loss of profit or other benefits deriving from their property as of 1998. In respect of non-pecuniary damage, they claimed EUR 30,000.

26. The Government considered, in line with their own expert report drawn up in March 2007, that the value of the property was EUR 36,818. The low value established by the expert appointed by the Government was justified by the precarious condition of the building in which the apartment is situated, which needed extensive restoration.

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

27. 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 degree of discretion in the exercise of that power, as the adjective “just” and the phrase “if necessary” attest.

28. 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, 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).

29. The Court considers, in the circumstances of the case, that the return of the property in issue (the flat and the appurtenant land) would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol no. 1.

30. Failing such restitution by the respondent State, the Court holds that the respondent State is to pay jointly to the applicants, in respect of pecuniary damage, an amount corresponding to the current value of the

property. Having regard to the information at its disposal concerning real estate prices on the local market and to the expert report submitted by the parties, the Court estimates the current market value of the property at EUR 120,000.

31. The Court considers that the serious interference with the applicants' right to the peaceful enjoyment of their possession 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 applicants EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicants also claimed 3,600 Romanian lei (RON) (equivalent to EUR 1000) for the fees paid to their lawyer. They submitted an invoice in this respect.

33. The Government contested the claim for costs and expenses on the ground that the applicant had not submitted copies of the contracts for legal assistance, which would have allowed the Court to determine the connection between the legal assistance received and the invoice submitted.

34. 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 fact that the applicant submitted relevant documents for proving his expenses and the above criteria, the Court considers it reasonable to award the sum of EUR 1000 for costs and expenses incurred before the Court.

C. Default interest

35. 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 complaint concerning Article 6 § 1 regarding the outcome of the proceedings and the lack of impartiality of the domestic judges inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the admissibility or the merits of the complaint raised under Article 6 § 1 regarding the non-execution of the final decision of 19 June 1998;
4. *Holds*
 - (a) that the respondent State is to return to the applicants flat no. 4, situated on the 4th floor of 43, Dacia Street, Bucharest, and the appurtenant land, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
 - (b) that, failing such restitution, the respondent State is to pay jointly to the applicants, within the same three months, the amount of EUR 120,000 (one hundred and twenty thousand Euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (c) that, in any event, the respondent State is to pay jointly to the applicants, within the same three months, the amount of EUR 4,000 (four thousand Euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (d) that, in any event, the respondent State is to pay jointly to the applicants, within the same three months, the amount of EUR 1,000 (one thousand Euros), plus any tax that may be chargeable, in respect of costs and expenses;
 - (e) that the aforementioned amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (f) 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 26 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President