



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

THIRD SECTION

CASE OF MLĂDIN v. ROMANIA

(Application no. 5381/04)

JUDGMENT

STRASBOURG

9 February 2010

FINAL

09/05/2010

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

In the case of Mlădin 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,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 19 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 5381/04) 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 Arestia Mladin (“the applicant”), on 29 December 2003.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 5 September 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 1929 and lives in Bucharest.

5. The applicant inherited a 300 sq. m plot of land situated in Eforie Sud at 11 Vlad Țepeș Street.

6. On 13 February 2001 the applicant brought civil proceedings to have removed an electrical transformer which occupied 25 sq. m of her land or to be allocated land in the neighbouring plot. She submitted that her intent was to build a house, but she had not obtained an authorisation to build on that land because of that transformer.

7. On 18 March 2002 the Constanța District Court, considering that the applicant was prevented from enjoying the prerogatives conferred by her right of property, ordered the local administrative authorities to give her in compensation a plot of land with the same area and characteristics as her land. That judgment became final.

8. On 22 April 2003 the Constanța District Court, at the applicant's request, ordered the local administrative authorities to pay a pecuniary penalty for each day's delay in enforcement of that judgment.

9. On 15 December 2003 the local council decided to compensate the applicant with land in another location than the plot adjacent to her land. The applicant sought annulment of that decision and on 19 May 2005 the Constanța County Court allowed her action, considering that the land offered to the applicant was not equivalent to her land. Therefore it ordered the local administrative authorities to allocate the applicant another plot of 300 sq. m of land with the same characteristics as her land, as provided by the judgment of 18 March 2002. That judgment became final.

10. On 30 November 2005, at the applicant's request, the Constanța District Court, by an interlocutory decision, declared that the judgment of 19 May 2005 could be enforced. On 22 December 2005 the bailiff ordered the local administrative authorities to issue a new decision allowing the applicant to take possession of 300 sq. m of land as provided by the judgment of 18 March 2002.

11. On 17 March 2006 the local council decided to draw up evaluation reports in respect of the applicant's land and of a plot of 676.67 sq. m in a different location. The applicant declined that offer, considering that the land proposed had not the same characteristics as her land.

12. On 10 April 2006 the applicant lodged a criminal complaint against the mayor alleging abuse of authority and non-compliance with court decisions. On 18 April 2007 she requested the prosecutor to inform her about the solution. On 21 February 2008 the Government informed the Court that the proceedings were still pending.

13. On 8 August 2006 the town council decided to draw up evaluation reports in respect of the applicant's land and of the same area of land in the neighbouring plot.

14. In 2008 the local administrative authorities informed the applicant that they would compensate her with land from the plot adjacent to her land.

15. By a decision of 31 July 2009 the town council ordered compensation with land from the neighbouring plot. The applicant agreed with that decision.

16. So far the applicant has not received an ownership title for the land allocated in compensation.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law is summarised in the judgments of *Sabin Popescu v. Romania*, no. 48102/99, §§ 42-46, 2 March 2004, and *Drăculeț v. Romania*, no. 20294/02, § 29, 6 December 2007.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

18. The applicant complained that the non-enforcement of the judgment in her favour had infringed her rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 1 of Protocol No. 1

“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.”

19. The Government contested that argument.

A. Admissibility

20. The Court notes that the application 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

21. The Government submitted that the authorities had made three attempts to enforce the judgment of 18 March 2002. The delay in enforcement had been due to objective reasons, namely the difficulty in identifying an equivalent land, as well as the fluctuant conduct of the applicant, who requested only in 2006 compensation with land in the neighbouring plot. They also argued that there had been no interference with the applicant's right to the peaceful enjoyment of her possessions, since the authorities had offered her different lands in compensation. Were the Court to hold that there had been interference based on delay in enforcement of the judgment of 18 March 2002, the Government submitted that the alleged interference had been justified and proportionate.

22. The applicant disagreed. In particular, she submitted that she had requested from local authorities compensation with land in the neighbouring plot even before introducing the civil proceedings in 2001.

23. The Court notes that the judgment of 18 March 2002 authorised the applicant to receive in compensation a plot of land with the same area and characteristics as her land. It thus conferred on the applicant a legitimate expectation of being able to take possession of the land referred to in that judgment and of subsequently obtaining title to the land, as provided by the internal legislation (see the relevant domestic law in *Drăculeț*, cited above, § 29). After several attempts by the authorities to offer the applicant land in compensation, which were contested by the applicant, they decided on 31 July 2009 to allocate her land in the plot adjacent to her land. The applicant consented to that way of enforcement of the judgment of 18 March 2002. However, she has yet to take effective possession of that land and to receive a document of title. Having regard to the fact that the administrative proceedings are still pending, the Court considers that the above-mentioned judgment has not been enforced. In order for the applicant to fully enjoy the prerogatives conferred by the ownership of her land, she must have *de facto* possession and a document of title certifying her ownership (see *Dimitriu and Dumitrache v. Romania*, no. 35823/03, § 33, 20 January 2009, and *Hîrgău and Arsinte v. Romania*, no. 252/04, § 31, 20 January 2009).

24. The Court considers therefore that although the authorities have an obligation to enforce court judgments, in this case by compensating the applicant with a plot of land with the same area and characteristics as her land, the judgment of 18 March 2002 remains unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under Romanian law to have it varied or annulled by the domestic courts. Apart from enforcement, it is only by means of such annulment or amendment by courts with an equivalent obligation that the continuing

situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

25. The Court does not accept the Government's argument that the applicant requested only in 2006 land in the neighbouring plot. The applicant sought from the beginning, in her action introduced in 2001, to recover her entire land or to be allocated land in the neighbouring plot (see paragraph 6 above). Thus, the applicant's claims were clearly specified in the judgment that the authorities had to enforce.

26. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among others, *Sabin Popescu*, cited above, and *Dragne and Others v. Romania*, no. 78047/01, 7 April 2005).

27. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. 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."

A. Damage

29. The applicant sought enforcement of the judgment of 18 March 2002, as decided by the administrative decision of 31 July 2009. She also claimed 100,000 euros (EUR) representing the loss of profit or any benefit from her possession between 1990 and 2008, the rent that she had paid where she had lived, as well as non-pecuniary damage that she had suffered.

30. In their observations of 31 July 2008 the Government considered *restitutio in integrum* as the most appropriate manner to make reparation but, if restitution was not possible, compensation might be awarded. They submitted that, in line with their own expert report, the value of that land amounted to EUR 34,740. Further, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant might have suffered.

31. The Court reiterates that, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences in

such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI).

32. The Court considers, in the circumstances of the case, that the enforcement of the judgment of 18 March 2002 would place the applicant as far as possible in a situation equivalent to the one in which she would have been if there had not been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In this connection, the Court observes that the applicant has agreed with the authorities' decision of 31 July 2009 to compensate her with land in the neighbouring plot. Therefore it holds that the respondent State is to enable the applicant to take effective possession of that land and to provide her with title in respect of that land.

33. As regards the amount of money alleged by the applicant for the loss of profit or any benefit from her possession, the Court notes that the applicant did not submit any supporting documents to substantiate her claim. In the absence of any evidence, the Court will not speculate as to the loss of profit or any benefit and, therefore, will not make an award under this head (see *Dragne and Others v. Romania* (just satisfaction), no. 78047/01, § 18, 16 November 2006).

34. The Court considers that the serious interference with the applicant's right of access to a court and with the peaceful enjoyment of her possession caused an important moral prejudice to the applicant. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards her EUR 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant submitted that the above-mentioned amount of EUR 100,000 also included reimbursement of the costs and expenses she had incurred in the proceedings in the national courts, without quantifying them or submitting any supporting documents.

36. The Government considered that the applicant had not claimed a particular amount in this respect.

37. The Court reiterates that under Article 41 of the Convention it will reimburse only the costs and expenses that are shown to have been actually and necessarily incurred and are reasonable as to quantum (see *Arvelakis v. Greece*, no. 41354/98, § 34, 12 April 2001). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

38. In the instant case, the Court observes that the applicant has not substantiated her claim in any way, as she has neither quantified her costs nor submitted any supporting documents. Accordingly, the Court does not

award any sum under this head (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

C. Default interest

39. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the enforcement of the judgment of 18 March 2002 of the Constanța District Court, as proposed by the administrative decision of 31 July 2009, by enabling the applicant to take effective possession of that land and also by providing her with a document of title to her land;
 - (b) that the respondent State is to pay the applicant, within the same three months, EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (c) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President