



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

THIRD SECTION

CASE OF CIOBANIUC v. ROMANIA

(Application no. 13067/03)

JUDGMENT

STRASBOURG

16 February 2010

FINAL

16/05/2010

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

In the case of Ciobaniuc v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 26 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 13067/03) 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, Ms Vasilica Ciobaniuc (“the applicant”), on 24 January 2003.

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

3. On 12 May 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 1936 and lives in Iași.

5. In 1985, Apartment 8 situated in Constanța at 17 Aleea Hortensiei, the property of the applicant and of her husband, was seized by the State under Decree no. 223/1974, following their decision to leave the country. No compensation was paid and no copy of the decision to seize the property was sent to them. The applicant's husband later died in 1998, the applicant being his only heir.

6. On 2 October 1991 and 15 September 1995 the applicant and her husband informed the Constanța Town Council that they intended to recover their property, requesting the eviction of the tenants.

7. On 29 October 1996 the State sold that apartment to the then tenants under Law no. 112/1995.

8. On 18 August 1997 the applicant and her husband sought to have the seizure declared null and void, to recover ownership of Apartment 8 and to have the former tenants evicted; they also sought damages in respect of the furniture which had been in the apartment and which had allegedly been destroyed.

9. On 17 November 1997 the Constanța Court of First Instance allowed the action in part and annulled the seizure as unlawful, but dismissed the claim for *restitutio in integrum* on the grounds that the apartment was in the possession of third parties who were not party to those proceedings. It also dismissed the claim for damages in respect to the furniture for lack of payment of stamp duty.

Eventually, on 20 March 2000, the Constanța Court of Appeal upheld that ruling in a final decision.

10. On 17 October 2001 the Constanța Court of Appeal, by a final decision, dismissed an action by the applicant for recovery of possession of immovable property lodged against those who had bought the apartment. The court considered that when proceedings are brought by a former owner against those who have acquired ownership under Law no. 112/1995, preference is given to the protection of the good faith principle. Thus, the former tenants had made the purchase in good faith and had complied with the provisions of Law no. 112/1995.

On 11 October 2002 the Prosecutor's Office attached to the Supreme Court of Justice informed the applicant that there were no reasons to lodge an application for review (*recurs în anulare*) against that final decision.

11. On 19 October 2001 the applicant sought to recover Apartment 8 under Law no. 10/2001 governing immovable property wrongfully seized by the State.

On 16 May 2005 the Constanța Town Council dismissed her request, since that apartment had been sold in accordance with Law no. 112/1995, but proposed compensation in the equivalent of 11,074 euros (EUR). Then the file was sent to the Constanța Prefecture and subsequently to the Secretariat of the Central Commission for Compensation.

On 28 May 2008 the Central Commission for Compensation decided to award the applicant 235,076.09 Romanian lei, the equivalent of EUR 64,025 according to the rate of exchange displayed on that day by the National Bank of Romania.

According to the documents in the file, the applicant has neither contested that decision nor has she followed the administrative procedure provided under Law 247/2005, as amended by Government Emergency

Ordinance no. 81/2007, for opting between cash compensation or shares in the fund *Proprietatea*.

12. On 14 February 2005 the Constanța Court of Appeal, by a final decision, dismissed a request by the applicant to have the sale declared null and void, considering that the former tenants had made the purchase in good faith.

II. RELEVANT DOMESTIC LAW

13. The relevant legal provisions and jurisprudence are described in the following 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); *Tudor v. Romania* (no. 29035/05, §§ 15-20, 17 January 2008); and *Viașu v. Romania* (no. 75951/01, §§ 38-46, 9 December 2008).

THE LAW

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

14. The applicant alleged that the sale by the State of Apartment 8 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

15. The Government considered that the application should be rejected as out of time, since the final decision for the purposes of Article 35 § 1 of the Convention was that of 17 October 2001 of the Constanța Court of Appeal and the present application was lodged on 24 January 2003.

16. The applicant considered that the six-month time-limit should start on 11 October 2002, when her request for an extraordinary appeal was refused.

17. The Court notes that a similar objection by the Government was dismissed in the judgments in the cases of *Todicescu v. Romania* (no. 18419/02, §§ 15-16, 24 May 2007; see also *Horia Jean Ionescu v. Romania*, no. 11116/02, §§ 22-24, 31 May 2007); *Ciobotea v. Romania* (no. 31603/03, §§ 21-22, 25 October 2007); *Capetan-Bacskai v. Romania* (no. 10754/04, §§ 23-24, 25 October 2007); and *Episcopia Română Unită cu Roma Oradea v. Romania* (no. 26879/02, §§ 19-20, 7 February 2008), and finds no reason to depart from its conclusion in those cases. It therefore dismisses the Government's objection.

18. The Court concludes that the application 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

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

20. The applicant disagreed with those arguments.

21. 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).

22. 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 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 nine years, without any compensation being paid.

23. 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 (see, among many others, *Enyedi v. Romania*, no. 32211/02, § 40, 2 June 2009, and *Roman v. Romania*, no. 30453/04, § 28, 7 July 2009).

The Court recalls that the applicant made no response whatever to the administrative decision of 28 May 2008 of the Central Commission for Compensation (see paragraph 11 above). However, given the Court's findings as to the malfunctioning of the system of compensation, the applicant's situation has not been effectively redressed by this decision.

24. Having regard to its case-law on the subject cited above, 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. In her observations of 9 March 2008 the applicant claimed 60,900 euros (EUR) in respect of pecuniary damage, representing the value of Apartment 8, on the basis of an expert report from September 2007. She further claimed EUR 9,000 for the goods which were in that apartment at the time it was seized and EUR 13,100 for the rent that she had paid on the place where she had been living for the last eleven years. In respect of non-pecuniary damage she sought EUR 6,000.

27. On 21 October 2009, in their comments on the applicant's claims for just satisfaction, the Government submitted that as far as the value of Apartment 8 was concerned the applicant was the beneficiary of an administrative decision of 28 May 2008, which had awarded her an amount equivalent to EUR 54,758, according to the rate of exchange displayed on 21 October 2009 by the National Bank of Romania. Since the applicant had neither contested that decision nor continued the administrative procedure, that amount was not to be brought up to date (see *Naghi v. Romania*, no. 31139/03, § 33, 21 July 2009).

Were the Court to hold that the applicant had the right to receive in compensation the value established by the expert report from September 2007, the Government referred to their own expert report from August 2007 which had assessed the value of that apartment before VAT as EUR 47,112.

Further, the Government contested the claim in respect of the rent as unsubstantiated and also considered that the applicant could not invoke a “possession” in respect of the goods existing in that apartment at the moment of the seizure. They also contested any causal link between the alleged violation and the alleged non-pecuniary damage and submitted that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant might have suffered. In any event, they considered that the amount claimed in this connection was too high.

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

29. The Court holds that the respondent State is to pay the applicant, in respect of pecuniary damage, an amount corresponding to the value of the property. In that connection, the Court notes that the applicant has not contested the amount established in compensation by the administrative decision of 28 May 2008 (see paragraph 11 above). Therefore, the Court considers the claim justified and, consequently, awards the amount she claimed for the real estate, namely EUR 60,900.

30. As regards the applicant's claim in respect of the goods existing in that apartment at the moment of the seizure, the Court notes that a claim in that respect was dismissed by the domestic courts for lack of payment of stamp duties (see paragraph 9 above) and also that a potential complaint in that respect was not raised before the communication of the present application. Therefore, it is not part of the case referred to the Court. However, the applicant has 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).

31. As regards the amount of money claimed by the applicant as the equivalent of the rent that she had paid, the Court considers it to be a claim in respect of loss of profit or any benefit from her possessions. However, 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).

32. The Court considers that the serious interference with the applicant's right to the peaceful enjoyment of her possessions could not be compensated adequately 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 her EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

33. The applicant also claimed EUR 6,000 for costs and expenses incurred before the domestic courts, representing the fees for the lawyers, stamp duties, transportation from Iași to Constanța and accommodation in Constanța. She did not provide any supporting documents.

34. The Government contested the claim as unsubstantiated.

35. The Court reiterates that under Article 41 of the Convention it will reimburse only 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.

36. The Court notes that the applicant did not submit any supporting documents or particulars to substantiate her claim. Accordingly, the Court does not award any sum under this head.

C. Default interest

37. 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 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable to her, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 60,900 (sixty thousand nine hundred euros) in respect of pecuniary damage;
- (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
- (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President