



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

THIRD SECTION

CASE OF MARIA VIOLETA LĂZĂRESCU v. ROMANIA

(Application no. 10636/06)

JUDGMENT

STRASBOURG

23 February 2010

FINAL

23/05/2010

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

In the case of Maria Violeta Lăzărescu 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,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 2 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 10636/06) 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 Maria Violeta Lăzărescu (“the applicant”), on 8 March 2006.

2. The applicant was represented by Mr George Tudor Laurențiu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 23 March 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 1926 and lives in Bucharest.

5. In 1950 the State seized under Decree no. 92/1950 on nationalisation the building situated in Bucharest, Cobălcescu no. 36, property of the applicant's ancestor.

6. On 1 June 1999 company R.V., a State-owned company responsible for the management of property belonging to the State, sold a 104,98 sq. m.

flat of the building and the appurtenant land to the tenants, V.D and D.M., under Law no. 112/1995.

7. On 20 November 2002, the applicant sought annulment of the contract before the Bucharest Court of First Instance requesting the court to declare the nationalisation of her property unlawful and to order its return to her.

8. On 9 September 2005, the Bucharest Court of Appeal, in the operative part of a final decision, dismissed as groundless an appeal on points of law by the applicant. In the reasoning of the judgment the court considered that although the seizure was null and void the *bona fide* principle should apply to the tenants who bought the flat from the State, who at that time was its legal owner.

9. On an unknown date the applicant lodged an application with the administrative authorities for restitution in kind of the property under Law no. 10/2001 governing immovable property wrongfully seized by the State. Since she had not received any answer, she brought court proceedings against the Mayor of Bucharest seeking to have him ordered to issue a reasoned decision upon her request. She also claimed a daily pecuniary penalty until execution.

10. On 25 January 2007 the Bucharest County Court upheld in part her action and ordered the Mayor to issue a reasoned decision regarding the restitution of the building located in Bucharest, Cobălcescu no. 36 as the applicant requested. On 22 May 2007 the Bucharest Court of Appeal dismissed the Mayor appeal. There is no evidence in the file as to the course of the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. The relevant legal provisions and jurisprudence are set forth 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, ECHR 2005-XII (extracts)); and *Tudor v. Romania* (no. 29035/05, §§ 15-20, 17 January 2008).

12. Measures in order to urge the award of compensation through the *Proprietatea* company have recently been adopted by the national authorities, especially in accordance with the Emergency Ordinance no. 81/2007.

THE LAW

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

13. The applicant alleged that the sale by the State of her property to a third party 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

14. The Government raised an objection of incompatibility *ratione materiae* in respect of this complaint. They considered that the applicant had not had the benefit of an irrevocable decision recognising her right of property. The Government submitted that in Romanian law the principle of *res judicata* applied only to the operative part of a judgment, which was also enforceable, but not to the reasoning part.

Therefore the judgment of 9 September 2005 did not represent a “possession” within the meaning of Article 1 of Protocol No. 1 as the courts had not settled the issue of the lawfulness of the seizure in an irrevocable manner in the operative part of a judgment.

15. 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), *Popescu and Dimeca v. Romania* (no. 17799/03, §§ 21-24, 9 December 2008), *Filipescu v. Romania* (no. 34839/03, § 19, 30 September 2008) judgments and finds no reasons to depart from its conclusion in those cases. It therefore dismisses the Government's objection.

16. 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

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

18. The applicant disagreed with those arguments.

19. 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).

20. 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, without any compensation having been paid.

21. The Court notes that at the material time there was no effective means in Romanian law capable of providing the applicant with compensation for this deprivation (see *Străin and Others*, cited above, §§ 23, 26-27 and 55-56, and *Porteanu*, cited above, §§ 23-24 and 34-35).

Moreover, it 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 law to recover damage reflecting the commercial value of the possessions of which they were deprived, in accordance with a foreseeable procedure and timetable (see *Reichard*, cited above, § 26).

22. This conclusion does not prejudice upon any subsequent positive development of the financing mechanisms provided by the special law in order to provide compensation to those who, just like the applicant, had had their property right acknowledged by a final decision.

23. Having regard to its case-law on the subject, 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 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained under Article 6 § 1 of the Convention that the outcome of the proceedings had been unfair and that the domestic courts had failed to assess the facts correctly and had misinterpreted the domestic law.

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

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

26. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

27. The Court notes that the above finding of a violation in respect of Article 1 of Protocol No. 1 discloses a widespread problem in the legal framework for recovery of nationalised properties which have been sold by the State to third parties. The Court considers therefore that the State should adjust as soon as possible the procedure set up by the restitution laws (currently Laws nos. 10/2001 and 247/2005) in order to render it genuinely coherent, accessible, rapid and foreseeable (see *Viașu v. Romania*, no. 75951/01, § 83, 9 December 2008, *Faimblat v. Romania*, no. 23066/02, §§ 48-54, 13 January 2009, *Katz v. Romania*, no. 29739/03, §§ 30-37, 20 January 2009).

IV. 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 restitution in kind of the property, as the most appropriate manner for the State to provide redress. Should restitution not be granted, she claimed a sum equivalent to the current value of the property. She considered that the current value of the property amounted to 251,266 euros (EUR). She did not submit an expert report in this matter. She also claimed EUR 3,000 in respect of non-pecuniary damage.

30. The Government considered, in line with their own expert report based on a theoretical assessment of the value, that the current value of the

property was EUR 104,229 without the VAT. 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. They considered that there is not a casual link between the alleged non-pecuniary damage and the breach of the Convention.

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

32. 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).

33. The Court considers, in the circumstances of the case, that the return of the property in issue (the 104,98 sq. m. flat and the appurtenant land) would put 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 1 of Protocol No. 1.

34. Failing such restitution by the respondent State, the Court holds that the respondent State is to pay the applicant, 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 Government, the Court estimates the current market value of the property at EUR 104,229.

35. 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 the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

36. The applicant did not claim costs or expenses.

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 complaint concerning Article 1 of Protocol No. 1 admissible 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*
 - (a) that the respondent State is to return to the applicant the flat and the appurtenant land situated in Bucharest, Cobălcescu no. 36, 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 the applicant, within the same three months, the amount of EUR 104,229 (one hundred and four thousand two hundred twenty nine euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (c) that, in any event, the respondent State is to pay to the applicant and, within the same three months, the amount of EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (d) that the aforementioned amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(e) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President