



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

THIRD SECTION

CASE OF MARTON v. ROMANIA

(Application no. 22960/06)

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 Marton v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

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. 22960/06) 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 Anna Marton (“the applicant”), on 25 May 2006.

2. The applicant was represented by her son, Mr Barnabas Marton. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. On 15 June 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 1923 and lives in Miercurea Ciuc.

5. The applicant lodged a complaint under Law 18/1991 for the recovery of 1.45 hectares of land that had belonged to her ancestor, N.L. In 2001 the Harghita County Commission for the application of Law 18/1991 rejected the applicant's complaint for restitution of the land and established her entitlement to damages.

6. The decision of the Commission was challenged by the applicant before the Miercurea Ciuc District Court. By a judgment of

14 October 2004, the applicant's claim was dismissed. An appeal filed by the applicant was allowed and by a decision of 22 March 2005 the Harghita County Court ordered the restitution of 1.45 ha of land situated in Szeradai Rat.

7. By a final decision of 30 November 2005, the Târgu-Mureş Court of Appeal allowed an appeal on points of law filed by the local commission and ordered the restitution of other land on the original site of 9,300 square meters and the payment of damages for the 5,200 sq. m of land that could not be returned.

8. So far the applicant has not received any title deed to the 9,300 sq. m of land and has not obtained any compensation for the remaining 5,200 sq. m.

II. RELEVANT DOMESTIC LAW

9. The relevant domestic law is summarised in *Sabin Popescu v. Romania* (no. 48102/99, §§ 42-46, 2 March 2004).

THE LAW

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

10. The applicant complained that the non-enforcement of the decision of 30 November 2005 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.”

11. The Government contested that argument.

A. Admissibility

12. 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

13. The Government considered that the Romanian authorities had taken the necessary steps to enforce the final decision of 30 November 2005. They contended that on 30 March 2006 the local commission had given approval for the applicant to take possession of the 9,300 sq. m plot of land and the registration of the applicant's right to damages in an annex to Government Decision no. 890/2005, published in the Official Gazette on 11 August 2005.

14. The applicant disagreed. In particular, she submitted that the local commission had offered her a plot of land close to the Olt river in an area at high risk of flooding that did not correspond to the plot of land to which she was entitled in accordance with the decision of the Târgu Mureş Court of Appeal. Further, she noted that she had not received any compensation for the remaining 5,200 sq. m of land, as provided for by the same final decision.

15. The Court notes that, although the authorities had an obligation to enforce court judgments, namely, by returning the relevant land and paying compensation for the land that could not be returned to the applicant in the instant case, the decision of 30 November 2005 remains unenforced to date. That decision is nevertheless still valid as no proceedings have been instituted under Romanian law for its modification or annulment before the domestic courts. Apart from enforcement, it is only by such an annulment or substitution by the courts with an equivalent obligation that the continuing situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

16. Having regard to its case-law on the subject (see *Pânteă v. Romania*, no. 5050/02, § 36, 15 June 2006), the Court considers that, in the present case, the authorities failed to take the necessary steps to enforce the decision.

17. 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).

18. 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

19. 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.”

20. The applicant sought to recover possession of the land previously belonging to her ancestor. She did not estimate the value of the plot of land to which she was entitled. Further, she also claimed an award in respect of non-pecuniary damage, asking the Court to determine the amount, but did not claim any amount for costs and expenses.

21. The Government considered, in line with the information provided by the Miercurea Ciuc City Hall, that the price of one square metre of land in the area where the applicant was entitled to obtain recovery and compensation was 3 Euros (EUR). 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.

22. 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).

23. The Court considers, in the circumstances of the present case, that the restitution of the 9,300 sq. m of other land on the original site, as ordered by the final decision of 30 November 2005, as well as the payment of compensation for the remaining 5,200 sq. m of land, would put the applicant as far as possible in a situation equivalent to the one in which she would have been had there not been a breach of Article 6 § 1 and Article 1 of Protocol No. 1.

24. Failing such restitution and the payment of compensation for the land that could not be returned in kind 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 72,500.

25. The Court considers that the serious interference with the applicant's right of access to a court and to the peaceful enjoyment of her possessions has caused her to sustain significant non-pecuniary loss. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards her EUR 2,400 in respect of non-pecuniary damage.

26. 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 and Article 1 of Protocol No. 1 to the Convention;
3. *Holds*
 - (a) that the respondent State is to return to the applicant a plot of land of 9,300 sq. m in Miercurea Ciuc in the place called Szeredai Ret and to pay damages for 5,200 sq. m of land, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
 - (b) that failing restitution and the payment of damages, the respondent State is to pay the applicant, within the same three months, the sum of EUR 72,500 (seventy-two thousand five hundred Euros), plus any tax that may be chargeable in respect of pecuniary damage;
 - (c) that in any event, the respondent State is to pay the applicant, within the same three months, the sum of EUR 2,400 (two thousand four hundred 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 on 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.

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