

# EUROPEAN COURT OF HUMAN RIGHTS

592  
28.10.99

Press release issued by the Registrar

## JUDGMENT IN THE CASE OF BRUMĂRESCU v. ROMANIA

In a judgment delivered at Strasbourg on 28 October 1999 in the case of *Brumărescu v. Romania* (application no. 28342/95), the European Court of Human Rights held unanimously that there had been a violation of Article 6 (right to a fair trial and right of access to a tribunal) of the European Convention on Human Rights and of Article 1 of Protocol No. 1 to the Convention (protection of property). The Court held unanimously that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision.

### 1. Principal facts

The case concerns an application lodged with the European Commission of Human Rights by a Romanian national, Dan Brumărescu, who was born in 1926 and lives in Bucharest.

In 1950 the applicant's parents' house in Bucharest was nationalised without payment of compensation. On 9 December 1993, in proceedings brought by the applicant, the Bucharest Court of First Instance held that the nationalisation had been unlawful. As there was no appeal, the judgment became final and irreversible, since it could no longer be challenged by way of an ordinary appeal. In May 1994 the applicant regained possession of the house, whereupon he stopped paying rent on the flat he was occupying within it and began paying land tax on the house.

On an unknown date the Procurator-General of Romania lodged an application to have the judgment of 9 December 1993 quashed. On 1 March 1995, the Supreme Court of Justice quashed the judgment of 9 December 1993 on the ground that the house had passed into State ownership under a legislative instrument and that the manner in which such an instrument was applied could not be reviewed by the courts, that being a matter for the executive or the legislature. Thereupon, the tax authorities informed the applicant that the house would be reclassified as State property with effect from 2 April 1996.

On an unknown date the applicant lodged an application for restitution of the house under Law no. 112/1995. On 24 March 1998 the Board responsible for implementing that Law decided that ownership of the flat rented by the applicant should be returned to him and awarded him financial compensation for the rest of the house. The applicant challenged that decision in an application dismissed by Bucharest Court of First Instance on 21 April 1999. The applicant's appeal against the judgment of 21 April 1999 is currently pending in the Bucharest County Court.

## 2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 9 May 1995. Having declared the application admissible, the Commission adopted a report on 15 April 1998 in which it expressed the unanimous opinion that there had been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. It referred the case to the Court on 6 November 1998. The applicant also brought the case before the Court, on 3 November 1998.

Under the transitional provisions of Protocol No. 11 to the Convention, the case was transmitted to the Grand Chamber of the European Court of Human Rights. Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,  
Elisabeth **Palm** (Swedish),  
Christos **Rozakis** (Greek),  
Nicolas **Bratza** (British),  
Luigi **Ferrari Bravo**<sup>1</sup> (Italian),  
Lucius **Caflich**<sup>2</sup> (Swiss),  
Loukis **Loucaides** (Cypriot),  
Jean-Paul **Costa** (French),  
Willi **Fuhrmann** (Austrian),  
Karel **Jungwiert** (Czech),  
Boštjan **Zupančič** (Slovenian),  
Nina **Vajić** (Croatian),  
John **Hedigan** (Irish),  
Margarita **Tsatsa-Nikolovska** (FYROMacedonia),  
Tudor **Panțiru** (Moldovan),  
Egils **Levits** (Latvian), *Judges*  
Lucian **Mihai** (Romanian), *ad hoc Judge*,

and also Maud **de Boer-Buquicchio**, *Deputy Registrar*.

## 3. Summary of the judgment<sup>3</sup>

### Complaints

The applicant complained that his right of access to a court, as secured by Article 6 § 1 of the Convention, had been violated in that the Supreme Court of Justice had held that the lower courts had no jurisdiction to deal with a claim for recovery of possession such as his. He also complained that the Supreme Court of Justice's judgment had deprived him of one of his possessions, contrary to Article 1 of Protocol No. 1 to the European Convention on Human Rights.

---

<sup>1</sup> Elected as the judge in respect of San Marino.

<sup>2</sup> Elected as the judge in respect of Liechtenstein.

<sup>3</sup> This summary by the registry does not bind the Court.

## **Decision of the Court**

### Government's preliminary objections

#### **A. Whether the applicant was a "victim"**

The Court rejected the Government's argument that the new developments which had occurred since the admissibility decision of 22 May 1997 meant that the applicant was no longer a "victim" within the meaning of Article 34 of the Convention.

It reiterated that a decision or measure favourable to an applicant was not in principle sufficient to deprive him of his status as a "victim" unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention.

The Court noted that the applicant was currently in the same situation as he had been on 1 March 1995, since there had been no final decision acknowledging, at least in substance, and redressing any violation of the Convention caused by the judgment of the Supreme Court of Justice.

The Court therefore considered that the applicant was still affected by the ruling of that court and continued to be the victim of the violations of the Convention which he asserted flowed from that judgment.

#### **B. Whether domestic remedies had been exhausted**

The Court likewise rejected the Government's argument that the applicant had failed to exhaust domestic remedies in that he had not brought a fresh action for recovery of possession although it had been open to him to do so.

The Court took the view that the Government, which were responsible for the quashing of a final judgment determining an action for recovery of possession, could not subsequently rely on the argument that the applicant had failed to exhaust domestic remedies by failing to bring a fresh action for recovery of possession, the outcome of which would be uncertain, regard being had to the principle of *res judicata*.

### Article 6 § 1 of the Convention

The Court reiterated that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention had to be interpreted in the light of the Preamble to the Convention, which declares that part of the common heritage of the Contracting States is the rule of law, one aspect of which is the principle of legal certainty.

The Court noted that at the material time the Procurator-General of Romania had had a power under Article 330 of the Code of Civil Procedure to apply for a final judgment to be quashed at any time.

By allowing the application lodged under that power, the Supreme Court of Justice had set at naught an entire judicial process which had ended in a judicial decision that was "irreversible" and thus *res judicata* – and which had, moreover, been executed.

In applying the provisions of Article 330 in that manner, the Supreme Court of Justice had infringed the principle of legal certainty. On the facts of the case, that action had breached the applicant's right to a fair trial under Article 6 § 1 of the Convention.

The Court noted, moreover, that the *ratio* of the Supreme Court of Justice's judgment was that the courts had no jurisdiction whatsoever to decide civil disputes such as the action for recovery of possession in the instant case.

It considered that such an exclusion was in itself contrary to the right of access to a tribunal guaranteed by Article 6 § 1 of the Convention, so that there had been a violation of Article 6 § 1 in that respect also.

#### Article 1 of Protocol No. 1 to the Convention

It was common ground in the proceedings before the Court that the judicial recognition of the applicant's title on 9 December 1993 represented a "possession" for the purposes of Article 1 of Protocol No. 1 and that the judgment of the Supreme Court of Justice had amounted to interference with the applicant's right of property as guaranteed by that Article.

The Court found that the interference fell under the second sentence of the first paragraph of Article 1 of Protocol No. 1. The effect of the Supreme Court of Justice's judgment had been to deprive the applicant of the rights of ownership of the house vested in him by the final judgment in his favour at first instance.

A taking of property within this second rule could be justified only if it was shown, *inter alia*, to be "in the public interest" and "subject to the conditions provided for by law". Moreover, any interference with the property had also to satisfy the requirement of proportionality.

The Court observed that no justification had been offered for the situation brought about by the judgment of the Supreme Court of Justice. In particular no plausible argument had been advanced to show that the deprivation of property had been justified "in the public interest". Further, as at the date of the judgment the applicant had been deprived of ownership of the property for more than four years without the payment of compensation reflecting its true value and his efforts to recover ownership had proved unsuccessful.

The Court found that in those circumstances, even assuming that the taking could be shown to serve some public interest, the requisite fair balance had been upset since the applicant had borne and continued to bear an individual and excessive burden.

There had accordingly been, and continued to be, a violation of Article 1 of Protocol No. 1 to the Convention.

#### Article 41 of the Convention

The Court considered that the question of the application of Article 41 was not ready for decision and should therefore be reserved, regard being had to the possibility of an agreement between the respondent State and the applicant.

Judges Rozakis, Sir Nicolas Bratza and Zupančič expressed concurring opinions and these are annexed to the judgment.

The Court's judgments are accessible on its Internet site ([www.echr.coe.int](http://www.echr.coe.int)).

**Registry of the European Court of Human Rights**  
**F – 67075 Strasbourg Cedex**

**Press contacts: tel: +33 3 90 21 42 08**  
**Emma Hellyer: tel: + 33 3 90 21 42 15**

*The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*