

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

THIRD SECTION

CASE OF IRIMIA v. ROMANIA

(Application no. 12334/03)

JUDGMENT

STRASBOURG

17 June 2008

FINAL

17/09/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Irimia v. Romania,

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 27 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 12334/03) 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, Mr Constantin Irimia ("the applicant"), on 4 April 2003.

2. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu.

3. On 15 June 2007 the Court decided to give notice of the application to the Government. It 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 Paşcani.

5. On 24 March 1992 the Paşcani Court of First Instance allowed the applicant's action and recognized his property right, together with his brothers, for a land of 8,64 ha situated in the Stolniceni-Prăjescu village. That judgment became final.

6. On 17 March 1993 the district administrative authority acknowledged the applicant's property right and ordered the local authorities to allow him to take possession of 8,64 ha of agricultural land. The local authorities had not performed the task and therefore the applicant brought administrative proceedings.

7. On 18 November 1994 the Iaşi Court of Appeal, by a final decision, ordered the local authorities to provide the applicant and his brothers with a land of 8,64 ha in the Stolniceni-Prăjescu village.

8. On 10 November 1998 the applicant and his two brothers were given the possession of 5 ha of land in the Stolniceni-Prăjescu village, namely 0,9 ha *intra muros* and 4,1 ha *extra muros*. However, on 4 June 2001 the local authorities annulled these transfers, on the grounds that they had been illegal and that third persons had already been given these lands.

9. On 27 October 2000 the district administrative authority acknowledged again the applicant's property right.

10. On 5 February and 19 March 2007 the Stolniceni-Prăjescu Town Council informed both district and central authorities that they needed to assign land to several persons, including the applicant. As the land in question was in possession of a local company, the Town Council requested the transfer of this land into its own name for subsequent allocation to the entitled persons.

11. The judgment of 18 November 1994 remains unenforced.

II. RELEVANT DOMESTIC LAW

12. The relevant domestic law is summarised in the judgment of *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

13. The applicant complained that the non-enforcement of the judgments in his favour had infringed his rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which read, insofar as relevant, 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."

A. Admissibility

14. 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

15. The Government submitted that, as third persons had been given the land which belonged to the applicant's father, the local authorities made considerable effort to obtain other land from the central authorities and to give it to the applicant in order to enforce the judgment.

16. The applicant disagreed.

17. The Court notes that, although the authorities had an obligation to enforce courts' judgments, i.e. by restoring the relevant land to the applicant and to his brothers in the instant case, the judgment of 18 November 1994 remains unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under the 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 continuous situation of non-enforcement may come to an end (see *Sabin Popescu*, cited above, § 54).

18. Having regard to its case-law on the subject (*Mihai-Iulian Popescu v. Romania*, no. 2911/02, § 46, 29 September 2005), the Court considers that, in the present case, the authorities have failed to inform the applicant, by a formal decision, of the alleged objective impossibility of *ad litteram* performance of the abovementioned judgment and to take all necessary steps for its equivalent enforcement. Moreover, the national jurisdictions have never ruled that the enforcement of the judgment of 18 November 1994 was bound to fail due to the lack of available land at local level.

19. 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; *Dragne and Others v. Romania*, no. 78047/01, 7 April 2005).

20. 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

21. 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

22. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage. He submitted an expert report assessing the loss of profit for 5,10 ha, between 2001 and 2007, to 59,135 New Romanian Lei (RON) and considered that the value of 8,64 ha is RON 100,144.

23. The Government alleged that the amounts claimed were excessive. They criticized the expert report, as it did not mention either the amount of RON 100,144, or the surface of land mentioned in the judgment of 24 March 1992. The Government also pointed out that the applicant was not in a position to claim the loss of profit for the whole surface of 8,64 ha, as he was not the only successor.

24. The Government submitted an expert report assessing the minimum values of land in the Stolniceni-Prăjescu village at EUR 2-3 per m² for land *intra muros* and EUR 0,2-0,3 per m² for arable land *extra muros*.

Regarding the loss of profit, in the view of the Court's jurisprudence (*Anghelescu v. Romania*, no. 29411/95, §§ 75-77, 9 April 2002, *Buzatu v. Romania* (just satisfaction), no. 34642/97, § 18, 27 January 2005), this should not be granted. Further, they considered that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

25. 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).

26. The Court considers, in the circumstances of the case, that the *ad litteram* enforcement of the judgment of 18 November 1994 would put the applicant as far as possible in a situation equivalent to the one in which he would have been if there had not been a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

27. Failing such enforcement by the respondent State within three months from the date on which this judgment becomes final, 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 fact that the judgment of 24 March 1992 recognized the applicant's property right together with his brothers, the Court holds that the respondent State is to pay to the applicant the amount of EUR 20,000 in respect of pecuniary damage.

28. As regards the amount of money alleged by the applicant for the loss of profit or any benefit from his possession since 2001, the Court rejects this claim taking into account, on the one hand, that it has ordered *restitutio in integrum* as reparation under Article 41 of the Convention and, on the other hand, that granting a sum of money on this basis would be a speculative process, since profit from possession depends on several factors. However, the Court will take into account the deprivation of possession when calculating the non-pecuniary damage (see, among others, *Rusu and Others v. Romania*, no. 4198/04, § 36, 19 July 2007).

29. The Court considers that the serious interference with the applicant's right of access to court and to the peaceful enjoyment of his possessions could not be compensated in an adequate way by the simple finding of a violation of Article 6 § 1 of the Convention and 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

30. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

31. 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 November 1994 of the Iaşi Court of Appeal;
   (b) that, failing such enforcement, the respondent State is to pay the applicant, within the same three months, the amount of EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
   (c) that the respondent State is to pay the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Josep Casadevall President