

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

THIRD SECTION

DECISION

Application no. 25714/04
Dan Costin PETRESCU against Romania
and 3 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 26 March 2013 as a Committee composed of:

Alvina Gyulumyan,
Kristina Pardalos,
Johannes Silvis,

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above applications lodged on various dates, as indicated in the Annex,

Having regard to the declarations submitted by the respondent Government on 4 February 2013 requesting the Court to strike the applications out of the list of cases and the applicants' reply to these declarations,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicants are all Romanian nationals whose particulars are included in the appended table. In application no. 876/06 the applicant also holds German citizenship, while the applicant in application no. 1057/07 also holds Hungarian and American citizenship. The Romanian Government ("the Government") were represented by their Agents, Ms Irina Cambrea and Ms Catrinel Brumar, from the Ministry of Foreign Affairs.

The German and Hungarian Governments, having been informed by the Registrar of the right to intervene (Article 36 § 1 of the Convention and Rule 44 § 2 (a) of the Rules of the Court), did not avail themselves of this right.

All applications concern the legislation on rental leases which placed the applicants in the impossibility to fully exercise their property rights. The facts and legal situation in all cases are similar, if not identical, to those presented in the leading case of *Radovici and Stănescu v. Romania* (nos. 68479/01, 71351/01 and 71352/01, ECHR 2006-...XIII (extracts)). More precisely, despite having a final decision acknowledging their ownership over nationalised real estate, the applicants were hindered in the enjoyment of their possessions, as the pre-existing lease agreements concluded between the tenants and various State bodies have been prolonged either without the payment of any rent or with a rent fixed at a substantially low level.

The essential information relating to each applicant is to be found in the annex.

COMPLAINTS

1. The applicants complained under Article 1 of Protocol No. 1 to the Convention of the prolonged inability to use property that had been returned to them and/or to obtain rent from it.

2. Some of the applicants also raised various other complaints in respect of the same sets of proceedings, the details of which are to be found in the annex.

THE LAW

Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them.

A. Complaints under Article 1 of Protocol No. 1 to the Convention concerning the inability to fully exercise property rights

The applicants complained about the inability to dispose of their property under Article 1 of Protocol No. 1 to the Convention. This provision provides 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."

1. The Government's unilateral declarations

After the failure of attempts to reach a friendly settlement, by letters sent on 14 November 2012 and 4 February 2013 respectively, the Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issues raised by the applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

By these declarations the Romanian authorities acknowledged that the legislation on rental leases had infringed on the applicants' rights to dispose of their property, contrary to the guarantees set down in Article 1 of Protocol No. 1 to the Convention. They also declared that they were ready to pay the applicants the sums tabulated below. The relevant part of each declaration reads as follows:

"The Government declare, by way of this unilateral declaration, their acknowledgement of the existence of a violation of Article 1 of Protocol No. 1 to the Convention regarding the applicant's right to dispose of [his/her] property.

The Government are prepared to pay to the applicant as just satisfaction the sum of EUR 2,700, amount which they consider reasonable in the light of the Court's case-law.

This sum is to cover all damage as well as the costs and expenses and will be free of any taxes that may be applicable. This sum will be payable [in Romanian lei] to the personal account indicated by the applicant within three months from the date of the notification of the decision pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. Therefore, the Government respectfully invite the Court to rule that the examination of the present application is no longer justified and to strike the application out of its list of cases, pursuant to Article 37 § 1 (c) of the Convention."

2. The applicants' positions

In reply, the applicants expressed the view that the sums mentioned in the Government's declarations were unacceptably low and therefore refused the amounts proposed by the Government.

3. The Court's assessment

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has already had the opportunity to examine the impugned legislation on rental leases in several applications against Romania. It held that the system, as introduced by the Government Emergency Ordinance no. 40/1999, had imposed an excessive burden on landlords in terms of their ability to dispose of property and had found a violation of Article 1 of Protocol No. 1 to the Convention on this account (see *Radovici and Stănescu v. Romania*, nos. 68479/01, 71351/01 and 71352/01, § 90, ECHR 2006-...XIII (extracts), *Popescu and Toader v. Romania*, no. 27086/02, § 38, 8 March 2007, and *Postolache v. Romania*, no. 24171/02, § 35, 16 December 2008).

Having regard to the nature of the admissions contained in the Government's declarations, as well as the amounts of compensation proposed – which are consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the applications (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the applications (Article 37 § 1 *in fine*).

Accordingly, this part of the applications should be struck out of the list.

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declarations, the applications could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

B. Other complaints

Referring to other Articles of the Convention and its protocols, some of the applicants complained of further aspects related to the above proceedings.

Having regard to all the materials in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in that respect. It follows that this part of the applications must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Joins the applications;

Takes note of the terms of the respondent Government's declarations under Article 1 of Protocol No. 1 to the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike this part of the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the applications inadmissible.

Marialena Tsirli	Alvina Gyulumyan
Deputy Registrar	President

ANNEX

No.	Application no. Introduction date	Applicant's name, date of birth, place of residence, name of representative (if any)	Eviction proceedings	Date of the unilateral declaration and compensation offered (Euros)	*Other complaints*
1.	25714/04 Lodged on 7 April 2004	**Dan Costin PETRESCU** 3 August 1968, Bucharest.	- The applicant became the owner of the flat in 1995; - Final decision of 8 October 2003 of Bucharest Court of Appeal rejecting the applicant's action.	14 November 2012 and 4 February 2013 **2,700**	**Article 6 § 1** (fairness of the proceedings); **Article 8** **Article 14**
2.	876/06 Lodged on 13 December 2005	**Cristina CRINTEANU** 19 January 1941, Solingen, Germany. Represented by S.C.A. "Bîrsan, Popescu and Associates", (law firm in Bucharest).	- The applicant became the owner of the house in 1996; - Final decision of 14 June 2005 of the High Court of Cassation and Justice rejecting the applicant's action.	14 November 2012 and 4 February 2013 **2,700**	**Article 6 § 1** (length of the proceedings).
3.	48342/06 Lodged on 23 November 2006	**Elena Cornelia PURCAREA** 1 May 1977, Braşov, Braşov County.	- The applicant became the owner of the house at issue in 2003; - Final decision of 25 October 2006 of Brasov County Court rejecting the applicant's action.	14 November 2012 and 4 February 2013 **2,700**	-
4.	1057/07 Lodged on 20 October 2006	**Ana-Maria TÎRU (now MOT)** 17 August 1945, Seattle, USA. Represented by Edith Sărăcuţiu, lawyer practising in Târgu-Mureş, Mureş County.	- The applicant became the owner of the flat in 2003; - Final decision of 25 April 2006 of the Târgu-Mureş Court of Appeal rejecting the applicant's action.	14 November 2012 and 4 February 2013 **2,700**	-