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

THIRD SECTION

DECISION

Application no. 22120/04
Ides REICHER
against Romania

The European Court of Human Rights (Third Section), sitting on 1 July 2014 as a Committee composed of:
Dragoljub Popović, *President,*
Luis López Guerra,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar*,
Having regard to the above application lodged on 30 May 2004,
Having regard to the observations submitted by the parties,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ides Reicher, is an Israeli and Romanian national, who was born in 1920 and lives in Rehovot.

The Romanian Government ("the Government") were represented by their Agent, Mr R.-H. Radu, of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Proceedings before the courts

3. On 6 November 2000 the applicant lodged a claim with the domestic courts for restitution of a property located in the city of Fălticeni, which had been nationalised by the State in 1950. She relied on the provisions of ordinary civil law concerning respect for the right of property and alleged that the nationalisation had infringed her legal rights. In the course of these

proceedings, the Fălticeni city council had asked the court to take into account that the property was used by the local school and therefore belonged to the public domain.

4. On 25 April 2001 the Fălticeni District Court dismissed the applicant's claim and declared her action inadmissible. It considered that, following the entry into force of Law no. 10/2001 on restitution of nationalised immovable property, the applicant could claim restitution of her property only in the circumstances and in accordance with the procedure laid down by that special law.

5. The applicant, represented by a lawyer of her choice, appealed against this judgment. Her appeal was allowed by the Suceava County Court on 14 March 2002. The court held that, in accordance with the provisions of Law no. 10/2001, the applicant had the right to choose between the court proceedings and the administrative proceedings in order to secure restitution of her property. Therefore, since the applicant chose to pursue the claim lodged based on the provisions of the ordinary law her claim should be analysed by the courts accordingly. Therefore, having in mind that the property had been nationalized in breach of the legal provisions in force in 1950, namely without a valid title, the court obliged the Fălticeni city council to return the disputed property to the applicant.

6. The Fălticeni city council submitted an appeal on points of law (*recurs*) against this judgment. They contended that the property under dispute had been nationalized in accordance with the law in force at the relevant time; therefore, since it currently belonged to the public domain and was used by the local school, it should be excluded from restitution in accordance with the provisions of Article 16 of Law no. 10/2001.

7. On 31 January 2003 the Suceava Court of Appeal allowed the appeal on points of law and sent the case back for a re-trial of the appeal due to procedural errors in the summonses.

8. During the re-trial of the appeal, the applicant's lawyer argued that the applicant's claim should be allowed by the courts since Law no. 10/2001 did not exclude the possibility to seek restitution of one's property based on the ordinary civil law provisions. On 5 June 2003 the Suceava County Court ordered the restitution of the property to the applicant. The court considered that Article 16 of Law no. 10/2001 did not apply to property which had been nationalized without a valid title, such as in the applicant's case.

9. The Fălticeni city council submitted again an appeal on points of law underlining that, in accordance with the newly modified provisions of Article 16 of Law no. 10/2001, any property belonging to the public domain could only be subject to an award of compensation and not to restitution in kind. They pointed out that this provision applied no matter whether the property had been nationalized with a valid title or not.

10. On 16 December 2003 the applicant's claim was finally rejected by the Suceava Court of Appeal. The court held that according to the

amendment brought in 2002 to Article 16 of Law no. 10/2001, the property belonging to the public domain may only be subject to compensation awarded under the procedure laid down by Law no. 10/2001. The court therefore considered that the applicant should follow the administrative procedure provided by Law no. 10/2001 in order to seek compensation for her property.

2. Administrative procedure

11. Immediately after the adoption of Law no. 10/2001, the applicant submitted a request for compensation for the property in question, relying on the provisions of this law.

12. On 12 January 2005, the request submitted and signed on behalf of the applicant by a representative, was rejected for non-compliance with the formal requirements, namely the lack of an authorisation for the representative to act on the applicant's behalf, the failure to submit authentic copies of the supporting documents and the failure to join an authentic statement on whether or not the applicant had received any compensation at the moment of the nationalisation.

13. The applicant did not contest this decision before the courts as provided by Law no. 10/2001.

B. Relevant domestic law and practice

14. A detailed general description of the relevant law and practice concerning the restitution of nationalised property in Romania can be found in the leading case of *Maria Atanasiu and Others v. Romania* (nos. 30767/05 and 33800/06, §§ 44-76, 12 October 2010).

15. Article 16 of Law no. 10/2001 on restitution of nationalised immovable property, in force until 12 December 2002, read as follows in its relevant parts:

> "(1) In the case of immovable property occupied by budgetary entities in the field of education ... necessary for the continuation of their public interest activities ... the former owners shall receive compensation, under the conditions of the current law.
>
> ...
>
> (4) The provisions of paragraph (1) ... shall not apply to property nationalised without a valid title."

16. On 12 December 2002 Emergency Ordinance no. 184 was adopted in order to clarify and rectify certain provisions of several laws concerning nationalised property, including Law no. 10/2001. On this occasion paragraph 4 of the above mentioned Article 16 was repealed.

COMPLAINTS

17. The applicant complained under Article 6 § 1 of the Convention that her right to a fair trial had been breached during the proceedings finalised with the dismissal of her action to recover possession of her property.

18. Under Article 1 of Protocol No. 1 to the Convention the applicant complained that her inability to obtain restitution of her nationalised property amounted to a breach of her right to the peaceful enjoyment of her possessions.

THE LAW

A. On the complaint under Article 6 § 1 of the Convention

19. The applicant complained that the application of newly adopted legal provisions to the proceedings which were already pending before the domestic courts breached the principle of equality of arms and her right to a fair trial. She relied on Article 6 § 1 of the Convention which reads as follows in its relevant part:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

20. The Government submitted that the domestic courts have made a correct interpretation of the applicable legal provisions and observed the applicant's right to a fair trial.

21. The applicant submitted that an amendment to Article 16 of Law 10/2001 had been adopted on 12 December 2002 prohibiting the restitution of property which was classified as belonging to the public domain. These provisions had been wrongly applied to her civil action which had been filed to the court before December 2002. In addition, their application put her in a position of disadvantage compared to the adverse party in the trial in breach of the principle of equality of arms guaranteed by Article 6 § 1 of the Convention.

22. The Court reaffirms that while in principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature – other than on compelling grounds of the general interest – with the administration of justice designed to influence the judicial determination of a dispute. However, Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are a party (see *Zielinski and Pradal Gonzalez*

and Others v. France [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, 28 October 1999).

23. Further on, the Court reiterates that the principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires each party to be given a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage vis-à-vis its opponent (see *Clinique des Acacias and Others v. France*, nos. 65399/01, 65406/01, 65405/01 and 65407/01, § 37, 13 October 2005).

24. In the current case the Court notes that the State adopted amendments to a law which was already in force and had already been applied to the proceedings to which the applicant was a party. The Court also notes that the amendments in question were of general interest in the context of the restitution laws in Romania and had been applied to numerous proceedings pending at the time (see *Maria Atanasiu and Others*, cited above, § 73). The Court further observes that the arguments raised by the amendments in question, namely the existence of a valid title for the nationalization or the property's appurtenance to the public domain had been discussed all along the proceedings before the domestic courts and the applicant, who was represented by a lawyer of her own choice, had several opportunities to present her counter-arguments in reply. Therefore, the Court considers that applying the provisions of a new law to a pending dispute, as far as the new law was known to the applicant and she had the opportunity to put forward her arguments before the courts, had not been contrary to the procedural rules in civil matters and did not breach the applicant's right to a fair trial. The Court also notes in this respect that in a similar case concerning compensation for damages incurred during the Communist regime, it has found no arbitrariness in the fact that the domestic courts applied to pending proceedings the relevant legal provisions as they were in force at the time of the adoption of the decision (see *Dolca v. Romania* (dec.), no. 59282/11 and four other applications, § 23, 4 September 2012).

25. Further on, the Court has previously held that the dismissal of an action for recovery of possession based on ordinary civil law on grounds of the need to ensure consistency in the application of the reparation laws does not in itself disclose a problem as regards the right of access to a court under Article 6 § 1 of the Convention, provided that the procedure laid down by Law no. 10/2001 can be shown to constitute an effective legal remedy (see *Maria Atanasiu and Others,* cited above, § 118).

26. In the current case the Court notes that the effectiveness of the procedure laid down by Law no. 10/2001 cannot be analysed since the applicant failed to observe the procedural requirements for this procedure (see paragraphs 12 and 13 above).

27. In view of the above, the Court concludes that the applicant cannot in the circumstances justifiably complain that she was denied the right to a fair trial.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B. On the complaint under Article 1 of Protocol No. 1 to the Convention

28. The applicant also complained that her right to peaceful enjoyment of her possession had been breached by the final judgment of 16 December 2003 of the Suceava Court of Appeal.

She invoked Article 1 of Protocol No. 1 to the Convention 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."

29. The Government submitted that the applicant failed to exhaust the domestic remedies in respect to this complaint, namely she failed to fulfill the formal requirements for her application based on Law no. 10/2001. In addition, she failed to contest before the courts the administrative decision rejecting her application, as provided by the said law.

30. The applicant maintained that she pursued the avenue with most prospects of success in her opinion, namely the civil action filed before the courts.

31. The Court notes that no domestic court or administrative authority gave a final decision recognising the applicant as being entitled to restitution of the property in question or to compensation. Therefore, the property in question does not constitute an "existing possession" which could be claimed by the applicant for the purposes of Article 1 of Protocol No. 1 to the Convention.

It follows that this complaint must be rejected as being incompatible *ratione materiae* with the provisions of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Dragoljub Popović
President