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

GRAND CHAMBER

CASE OF POPOVICI AND DUMITRESCU v. ROMANIA

(Application no. 31549/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

6 April 2006

This judgment is final but may be subject to editorial revision.

In the case of Popovici and Dumitrescu v. Romania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mr L. WILDHABER, *President*,
Mr C.L. ROZAKIS,
Mr J.-P. COSTA,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr C. BÎRSAN,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Mr K. HAJIYEV,
Mrs R. JAEGER, *judges*,

and Mr T.L. EARLY, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 29 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 31549/96) against Romania lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Romanian nationals, Mrs Irina Margareta Popovici, Mrs Sanda Popovici and Mrs Maria Margareta Dumitrescu ("the applicants"), on 5 April 1996. Following the death of Mrs Maria Margareta Dumitrescu on 10 November 1997, her heir Mrs Maria Cristina Mauc Dumitrescu, a French and Romanian national, expressed her wish, on 9 May 2000, to continue the proceedings. For practical reasons, the present judgment will continue to name Mrs Maria Margareta Dumitrescu as one of the applicants, even though that capacity should now be attributed to Mrs Maria Cristina Mauc Dumitrescu.

2. The applicants were represented by Mr A. Vasiliu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mrs B. Ramaşcanu, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the Braşov Court of Appeal's finding on 20 September 1995 that the courts had no jurisdiction to determine an action for recovery of possession and the change in the case-law following a leading judgment of the Supreme Court of Justice on 2 February 1995 were contrary to Article 6 § 1 of the Convention. The applicants also complained that the Court of Appeal's judgment had had the effect of infringing their right to peaceful enjoyment of their possessions as secured by Article 1 of Protocol No. 1.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 27 June 2000 a Chamber of the Court's First Section composed of Mrs E. Palm, President, Mrs W. Thomassen, Mr Gaukur Jörundsson, Mr R. Türmen, Mr C. Bîrsan, Mr J. Casadevall and Mr R. Maruste, judges, and Mr M. O'Boyle, Section Registrar, declared the application partly admissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1). The Chamber was composed of the following judges: Mr J.-P. Costa, President, Mr L. Loucaides, Mr C. Bîrsan, Mr K. Jungwiert, Mr V. Butkevych, Mrs W. Thomassen and Mrs A. Mularoni, and also of Mrs S. Dollé, Section Registrar.

7. On 4 March 2003 the Chamber gave judgment, holding unanimously that there had been a violation of Article 6 § 1 of the Convention, because the applicants had been denied the right of access to a tribunal, and no violation of Article 1 of Protocol No. 1 to the Convention, because the applicants did not have a possession within the meaning of that Article. It further held that the respondent State should pay the applicants 6,000 euros (EUR) for non-pecuniary damage and EUR 192 for costs and expenses.

8. On 30 May 2003 the applicants requested that the case be referred to the Grand Chamber, in accordance with Article 43 of the Convention and Rule 73.

9. On 24 September 2003 the panel of the Grand Chamber accepted this request.

10. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

11. The applicants and the Government each filed a memorial. The applicants also filed a memorial in reply to the Government's memorial.

12. A hearing scheduled for 24 June 2004 was adjourned in view of the fact that domestic proceedings germane to the case were pending. It was rescheduled for 7 December 2005. The hearing was again adjourned, given that the parties were actively pursuing a friendly settlement of the case with the assistance of the Registrar (Article 38 § 1 (b) of the Convention). The

parties were given until 7 March 2006 to agree on the terms of a settlement, failing which a hearing would be held on 29 March 2006.

13. Following various exchanges of correspondence between the Registrar and the parties, on 7 March 2006 the Government and the applicants submitted formal signed declarations accepting a friendly settlement of the case.

14. Consequently, on 7 March 2006 the hearing scheduled for 29 March 2006 was cancelled.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

15. The first two applicants were born in 1930 and 1932 respectively and live in Bucharest. The third applicant lives in Villebon-sur-Yvette, France.

16. In 1934 S.D., the applicants' father, a university lecturer, purchased a plot of land of 1,690 sq.m in Predeal, Romania. In 1937 S.D. had a house built on the land.

17. On 30 August 1946 a room in the house was requisitioned pursuant to an order of Predeal Town Council.

18. On 22 May 1948 the Braşov prefect ordered the restitution of the house and land ("the property") to the owner, S.D., but the property was never returned.

19. On 13 September 1965 the Braşov notarial bureau recorded that the property had been nationalised under Decree no. 92/1950 on nationalisation.

20. On 17 August 1971 the Braşov prefect decided to place the property under the administration of a branch of the Department of State Security (*Securitate*).

21. In 1992 the management of the property was transferred to the Romanian Intelligence Service (*Serviciul Român de Informatii* – "the SRI"), successor to the *Securitate*.

A. The first action for recovery of possession

22. On 8 January 1993 the first two applicants and Maria Margareta Dumitrescu brought an action for recovery of possession in the Braşov Court of First Instance against SRI Military Command Centre no. 05024. They argued that they were the heirs of S.D., that he had owned 2,686 sq.m of land in Predeal on which he had had a house built, and that in 1946 a room in that house had been requisitioned but that subsequently the State

had unlawfully seized the entire property. They sought to establish their title to the house and land as heirs.

23. In a judgment of 25 May 1993 the court found that the requisition order could not have had the effect of lawfully vesting ownership of the property in the State and that the nationalisation of the property under Decree no. 92/1950 had been unlawful. The court accordingly held that the applicants were the rightful owners of the house and land and ordered the State's property title to be struck out of the land register and the late S.D. to be registered as owner.

24. In a final judgment of 20 September 1995 the Braşov Court of Appeal allowed an appeal by the SRI on points of law and dismissed the applicants' action for recovery of possession, holding that the courts below had exceeded their jurisdiction when they had examined the lawfulness of the nationalisation, since such matters could only be settled by statute.

B. The application for restitution under Law no. 112/95

25. On an unspecified date the applicants lodged an application for restitution of the property with the Braşov City Council's administrative board established to deal with the implementation of Law no. 122/1995 ("the Administrative Board").

26. In an administrative decision of 29 June 1999 the Administrative Board allowed the application and ordered the property to be returned to the applicants.

27. On 10 September 1999 the SRI lodged an application to have the administrative decision of 29 June 1999 set aside.

28. In a final and enforceable judgment, on appeal, the Braşov County Court upheld the administrative decision, finding in particular that the lawfulness of the nationalisation could not be dealt with under the objection procedure provided for by Law no. 112/1995.

29. In a judgment of 24 October 2000 the Braşov Court of Appeal allowed an appeal by the SRI on points of law, setting aside the decision of the Administrative Board in which it had ordered the return of the property. It found that the Administrative Board had not been entitled to give a decision but had been under an obligation to defer its findings until a fresh action for recovery of possession, brought on 22 February 1999, had been dealt with by the courts.

C. The second action for recovery of possession

30. On 22 February 1999 the applicants brought a fresh action for recovery of possession against the State (represented by the Ministry of Finance) and Predeal Town Council.

31. On 21 February 2003 the Braşov County Court allowed the applicants' action for recovery of possession.

32. In a final and irreversible judgment of 15 November 2005, the Court of Cassation upheld the judgment of 21 February 2003.

33. Since 20 February 2006 the applicants have enjoyed effective possession as a consequence of concluding an act of delivery and receipt of the house with the former occupants, the SRI.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. The relevant domestic law and practice, referred to in the cases of *Brumărescu v. Romania* [GC] (no. 28342/95, §§ 31-44, ECHR 1999-VII) and *Străin and Others v. Romania* (no. 57001/00, §§ 19-26, ECHR 2005-...), is also relevant to the present case.

35. Law no. 10/2001 of 14 February 2001, whose relevant parts are quoted in the above-mentioned *Străin and Others* case, was amended by Law no. 247, published in the Official Gazette of 22 July 2005. The new law extends the types of compensation available by allowing those entitled to compensation to choose between compensation in the form of goods or services and pecuniary compensation equivalent to the market value, at the time of the award, of property that cannot be returned.

Law no. 247/2005 further provides, in Part VII, for the manner in which compensation for property that has wrongfully passed into State ownership is to be calculated and paid.

THE LAW

36. On 7 March 2006 the Court received the following declaration from the Government:

> "1. I declare that the Government of Romania offer to pay to the applicants an all-inclusive amount of EUR 13,000 (thirteen thousand euros) with a view to securing a friendly settlement of their application registered under no. 31549/96 and pending before the Grand Chamber.
>
> This sum, which also covers legal expenses connected with the case, shall be free of any tax that may be applicable and shall be paid in euros, to be converted into Romanian lei at the rate applicable at the date of payment, to a bank account named by the applicants and/or their duly authorised representative. This sum shall be payable within three months from the date of the notification of the judgment delivered by the Grand Chamber pursuant to Article 39 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

2. This payment, taken together with the final decision of the Court of Cassation of 15 November 2005, recognising the applicants' right to the property which was the subject of the present application, constitute the final settlement of the case.

3. The Government further undertake to implement fully the above-mentioned judicial decision, so as to ensure the applicants' unimpeded enjoyment of their right to the property in question. To this end, I point out that:

(a) as from 20 February 2006, the applicants effectively enjoy their possession as a consequence of concluding an act of delivery and receipt of the house with the Romanian Intelligence Service, the former possessor of the building;

(b) the Ministry of Finance, which represented the Government in the domestic proceedings, shall, in the immediate future, sign, according to the domestic law, the act of delivery and receipt of the property thus confirming the applicants' exclusive title to the property.

4. This declaration does not entail any acknowledgement by the Government of any violation of the Convention other than the one found by the Court's judgment of 4 March 2003.

5. The Government consider that the supervision by the Committee of Ministers of the Council of Europe of the execution of the Court's judgment in the present case is an appropriate mechanism for ensuring that improvements will continue to be made in the context of the issues raised by it."

37. On 7 March 2006 the Court received the following declaration signed by the applicants:

"1. We, Irina Margareta Popovici, Sanda Popovici and Maria Cristina Dumitrescu, note that the Government of Romania are prepared to pay us the global sum of EUR 13,000 (thirteen thousand euros) with a view to securing a friendly settlement of our application registered under no. 31549/96 and pending before the Grand Chamber.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in euros, to be converted into Romanian lei at the rate applicable at the date of payment, to a bank account to be named by us and/or our representative. The sum shall be payable free of any taxes which may be applicable, within three months from the date of the judgment delivered by the Grand Chamber pursuant to Article 39 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

2. We accept the proposal and waive any further claims against Romania in respect of the facts of this application. We declare that this payment, taken together with the final decision of the Court of Cassation of 15 November 2005, recognising our right to the property, which was the subject of the present application, constitute the final settlement of the case.

3. We also take note of the Government's undertaking to implement fully the final decision of the Court of Cassation of 15 November 2005 recognising our ownership

title to the property which was the subject of the present application. To this end, we note that:

(a) as from 20 February 2006, we effectively enjoy our possession as a consequence of concluding an act of delivery and receipt of the house with the Romanian Intelligence Service, the former possessor of the building;

(b) the Ministry of Finance, which represented the Government in the domestic proceedings, shall, in the immediate future, sign, according to the domestic law, the act of delivery and receipt of the property, thus confirming our exclusive title to the property.

4. This declaration is made in the context of a friendly settlement which the Government and we have reached."

38. The Court takes note of the friendly settlement reached between the parties (Article 39 of the Convention).

It notes that since the adoption of the Chamber judgment of 4 March 2003 the applicants have obtained restitution of the property which was the subject of this application (see paragraphs 30-32 above).

It also notes that a new law on restitution has been enacted, namely Law No. 247 of 22 July 2005. This law extends the types of compensation available and provides that compensation should be equivalent to the market value, at the time of the award, of property that cannot be returned (see paragraph 34 above).

Moreover, the Court observes that it has already specified the nature and extent of the obligations which arise for the respondent Government in cases which relate either to delays in, or the impossibility of, obtaining a final domestic decision on claims of unlawful confiscation of property by the former communist regime (see *Brumărescu*, cited above, § 65) or to the sale by the State of such property to third parties (see *Străin and Others*, cited above, §§ 39-59). The question of the performance of those obligations is currently pending before the Committee of Ministers.

39. The Court further observes that under Article 37 § 1 (b) of the Convention an application may be struck out of its list of cases at any stage of the proceedings if it is satisfied that the matter has been resolved.

40. Moreover, the Court is satisfied that the settlement has been reached on the basis of respect for human rights as defined in the Convention and its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

41. Accordingly, the case should be struck out of the Court's list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the friendly settlement reached and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 43 § 3 of the Rules of Court);

2. *Decides* to strike the case out of its list.

Done in English and in French, and notified in writing on 6 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER
President

T.L. EARLY
Deputy to the Registrar