



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

THIRD SECTION

CASE OF OCTAVIAN POPESCU v. ROMANIA

(Application no. 20589/04)

JUDGMENT
(Just satisfaction)

STRASBOURG

8 April 2014

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 Octavian Popescu v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Dragoljub Popović,

Luis López Guerra,

Johannes Silvis,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 20589/04) 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 Octavian Popescu (“the applicant”), on 5 August 2005.

2. In a judgment delivered on 30 June 2009 (“the principal judgment”), the Court held that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention as a result of the non-enforcement of a final judgment in the applicant’s favour (see *Octavian Popescu v. Romania*, no. 20589/04, 30 June 2009).

3. Under Article 41 of the Convention the applicant sought just satisfaction of pecuniary and non-pecuniary damage sustained as a result of the above violation and reimbursement of costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, paragraph 51 and point 3 of the operative provisions).

5. The applicant and the Government each filed observations.

6. On 23 July 2013 the Court invited the parties to submit updated observations.

THE LAW

7. 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

8. In his updated claims, the applicant sought to recover possession of his property consisting of 33 ha of land in the Vernești village as awarded by the judgment of 6 November 2003 delivered by Buzău District Court. In the alternative, the applicant claimed the sum of 1,826,581 euros (EUR), as documented by an expert report of December 2009.

He further claimed EUR 47,371.59 for loss of profit or benefit from his property for nine years.

In respect of non-pecuniary damage he claimed EUR 365,316.

9. The Government contended in their updated submissions that the applicant failed to use the domestic remedies at his disposal and submitted that the new mechanism which had been introduced by Law no. 165/2013 constituted an effective domestic remedy capable of providing sufficient redress to the applicant

In any event, in line with the evaluation of September 2013 provided by the National Authority for the Restitution of Properties, they contended that the value of the real estate was of 49,500 lei (RON), without, however submitting any supporting document. They also considered that the claim for loss of profit should be dismissed and that the claim in respect of non-pecuniary damage was highly excessive.

10. The Court recalls that the merits of the case have already been decided and that it had found a violation of Article 6 and Article 1 of Protocol No. 1 (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 37, 7 December 2006).

11. 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).

12. The Court notes further that the Government did not submit any evidence which would indicate that the applicant recovered possession of his property or that he received any compensation for the deprivation of his possession.

13. The Court considers, therefore, that the enforcement of the judgment of 6 November 2003 of the Buzău District Court would place 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. Therefore it holds that the respondent State is to enable the applicant to take effective possession of the entire land and to provide him with title in respect of that land. Failing to do so, the Court, having regard to the information at its disposal, holds that the respondent State is to pay the applicant EUR 200,000 for pecuniary damage.

14. As regards the amount of money claimed in respect of loss of profit or benefit from the applicant's possession, the Court rejects this claim in so far as granting a sum of money on this basis would be a speculative process, having regard to the fact that profit derived from possession of property depends on several factors (see *Buzatu v. Romania* (just satisfaction), no. 34642/97, § 18, 27 January 2005, and *Dragomir v. Romania*, no. 31181/03, § 27, 21 October 2008).

15. The Court considers that the serious interference with the applicant's right of access to a court and with the peaceful enjoyment of his possession caused moral prejudice to the applicant. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 4,700 in respect of non-pecuniary damage.

B. Costs and expenses

16. The applicant claimed EUR 10,398.35 the equivalent of the costs and expenses incurred before the domestic courts and before this Court representing lawyer's fee, postal service, translations, photocopies and transport.

17. The Government contested the claim on the ground that it was excessive.

18. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

C. Default interest

19. The Court considers it appropriate that the default interest rate 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. *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 6 November 2003 of the Buzău District Court in its entirety, by enabling the applicant to take effective possession of the land and also by providing him with a document of title to his land;

(b) that, failing to enforce the judgment of 6 November 2003 of the Buzău District Court in its entirety, as set out under (a) above, the respondent State is to pay the applicant, within the same period of three months, EUR 200,000 (two hundred thousand euros) for pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) that the respondent State is to pay the applicant, within the same three months, EUR 4,700 (four thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(d) that the respondent State is to pay the applicant, within the same three months, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of costs and expenses, to 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;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President