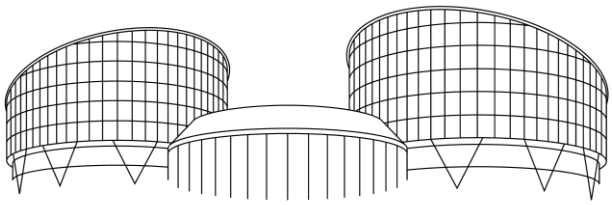

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GRIDAN AND OTHERS v. ROMANIA

(Applications nos. 28237/03, 24386/04, 46124/07 and 33488/10)

JUDGMENT

STRASBOURG

4 June 2013

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

In the case of Gridan and Others v. Romania,

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

Ján Šikuta, *President,*
Luis López Guerra,
Nona Tsotsoria, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 14 May 2013,

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

PROCEDURE

1. The case originated in four applications (nos. 28237/03, 24386/04, 46124/07 and 33488/10) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Romanian nationals.

2. The applicant G. in application no. 46124/07 died on 3 August 2008. The application was pursued in his name by G. and M., heirs to the applicant's estate.

3. The Romanian Government ("the Government") were represented successively by their Agents, Mr Răzvan-Horaţiu Radu, Mrs Irina Cambrea and Mrs Catrinel Brumar, from the Ministry of Foreign Affairs.

4. On 10 July 2007 the application no. 24386/04 was communicated to the Government. The other applications were communicated to the Government on 5 October 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. All applicants obtained favourable decisions concerning various possessions by means of final judgments. These judgments have later been quashed following extraordinary appeals: review, annulment or supervisory review proceedings initiated by the adverse parties or the Procurator-General of Romania.

Detailed information concerning the applicants and their proceedings are set out in the table appended hereto.

II. RELEVANT DOMESTIC LAW

6. Some relevant domestic provisions on extraordinary appeals are summarised in the cases of *Ştefănică and Others v. Romania*, no. 38155/02, § 19, 2 November 2010 (request for supervisory review), *Androne v. Romania*, no. 54062/00, § 36, 22 December 2004 (request for review), and *Mitrea v. Romania*, no. 26105/03, § 14, 29 July 2008 (request for annulment).

Moreover, Article 322 of the Code of Civil Procedure provides that a final decision may be revised where, *inter alia*, a disciplinary sanction has been ordered against a magistrate for the exercise in bad-faith of his or her function or severe negligence in the examination of a case (Article 322 § 4), or written evidence which has been withheld by the opposing party or which it was not possible to submit for a reason beyond the parties' control is discovered after the decision has been delivered (Article 322 § 5).

THE LAW

I. JOINDER OF THE APPLICATIONS

7. Having regard to the similar subject matter of the application, the Court finds it appropriate to join them in a single judgment.

II. LOCUS STANDI

8. The Court considers that the heirs of G. in the application no. 46124/07 (see paragraph 2 above) have standing to pursue the application on his behalf (see, among other authorities, *Mironov v. Ukraine*, no. 19916/04, § 12, 14 December 2006). However, where relevant, the Court will continue to refer to G. as "the applicant".

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

9. The applicants complained that the quashing of their final decisions by means of revision or an application for supervisory review was in breach of Articles 6 of the Convention and 1 of Protocol No. 1 to the Convention, which read as follows:

Article 6

"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

10. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

11. The applicants claimed that the principle of legal certainty enshrined in Article 6 § 1 of the Convention had been breached in their case, due to the quashing of final domestic court decisions.

They further claimed that their right to property as guaranteed by Article 1 of Protocol No. 1 to the Convention had been equally breached.

They contended that the review and annulment proceedings initiated by the adverse parties and the supervisory review proceedings initiated by the Procurator-General were used as an appeal in disguise, since they merely aimed at obtaining a change in the outcome of the first set of proceedings.

In addition, the applicant in the case no. 28237/03 argued that the evidence submitted by the Town Hall did not qualify as new evidence capable of leading to the reopening of a case within the meaning of Article 322 § 5 of the Code of Civil Procedure.

The applicant in case no. 46124/07 submitted that the disciplinary sanction imposed on the president of the civil section of the High Court of Cassation and Justice ("HCCJ") for breach of the internal regulation concerning the attribution of a case to a chamber, was a mere excuse destined to proceed to the quashing of the final decision of 30 September 2005 and to change the outcome of the case already adjudicated. It stressed, in this respect that, contrary to the appeal chamber that had adjudicated the case in the first set of proceedings, the new chamber which reopened the proceedings did not even conduct a hearing to examine the appeal. It merely changed the outcome of the case by reassessing the evidence adduced in the first set of proceedings.

12. The Government underlined in the first place that following *Brumărescu v. Romania* case ([GC], no. 28342/95, ECHR 1999-VII), the Romanian Civil Procedure Code has been modified, so that the current Romanian legislative framework does not allow for an application for supervisory review to be lodged with the HCCJ (former Supreme Court). In the case no. 24386/04, however, the quashing of a final decision was necessary in order to protect public interests, having regard to the fact that the interpretation of the evidence by the courts in the first set of proceedings was contrary to the public interests.

The Government further argued that the review and annulment requests were used in the other applications in order to correct the following judicial errors and miscarriages of justice: in application no. 28237/03, new facts were discovered after the judgment had become final; in application no. 46124/04, disciplinary measures were taken against the President of the civil section of the HCCJ for breach of the internal regulations concerning the attribution of the case to the appeal chamber which had adjudicated the matter by a final judgment; and in application no. 33488/10, the court which had adjudicated the matter by a final judgment had wrongly interpreted the evidence and, therefore, had wrongly established the facts.

In sum, the Government considered that the neither the principle of judicial certainty nor the right to the respect of possessions had been infringed.

2. The Court's assessment

13. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu*, cited above, § 61).

14. Legal certainty presupposes respect for the principle of *res judicata* (ibid., § 62), that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

15. However, the requirements of legal certainty are not absolute; in certain circumstances, reopening of proceedings may be the most appropriate reparatory measure where Article 6 requirements have not been satisfied (see *Mitrea*, cited above, § 25). In any case, the power to conduct an extraordinary review should be exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests at stake (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, § 57, ECHR 2004-VIII).

16. The Court recalls that it has repeatedly found that the reopening of proceedings under Article 330 of the Romanian Code of Civil Procedure by way of an application for supervisory review lodged by the Procurator-General of Romania was an infringement of the principle of legal certainty, and therefore breached Article 6 § 1 of the Convention (see, among many others, *Brumărescu*, cited above, § 62; *Bîrlă v. Romania*, no. 18611/04, §§ 15 to 20, 27 May 2010).

It has also held that quashing a final and binding decision for the mere reason that there were different views as to the interpretation of the evidence adduced was not justified and infringed the applicant's right to a fair hearing (see *Mitrea*, cited above, §§ 27 to 30).

The reopening of proceedings based on new evidence has also been found to be in breach of Article 6 § 1 of the Convention, where the domestic court's decision allowing such reopening failed to indicate why either the information or the new evidence could not be obtained during the first set of proceedings (see *Popov v. Moldova (no. 2)*, no. 19960/04, §§ 50 to 54, 6 December 2005).

17. On the facts of the present applications, the Court holds the view that nothing distinguishes them from the above-mentioned case-law.

The Court considers that it has not been shown that the miscarriages of justice or judicial errors allegedly committed by the courts in the first set of proceedings of the present cases were such as to justify the quashing of final and binding judgments.

It finds thus a violation of Article 6 § 1 of the Convention in respect of legal certainty principle.

18. In relation to the applicants' complaint concerning their property rights, the Court finds, in accordance with its constant case-law on the matter (see, for instance, *Tăutu v. Romania*, no. 17299/05, §§ 20 and 21, 9 February 2010) and in the light of the circumstances of the case, that the decision of the domestic authorities to quash the final judgments acknowledging the applicants' property rights upon various goods and to reconsider these rights violated their rights as guaranteed by Article 1 of Protocol No. 1 to the Convention.

Hence, there has been a violation of that provision, too.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. Lastly, the applicant in application no. 24386/04 complained under Articles 2 and 3 of the Convention and Article 1 of Protocol No. 1 to the Convention about the confiscation of his house and the appurtenant land in 1976.

20. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

21. It follows that those complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicants claimed the following amounts in respect of pecuniary and non-pecuniary damage:

No.	Case no.	Pecuniary damage (EUR)	Non-Pecuniary damage (EUR)
1.	28237/03	120,000	7,700
2.	24386/04	Return of the unreturned plot of land of 237 square meters or 72,000	1,550
3.	46124/07	Applicant G.: 130,900 Applicant P.: 119,130	Applicant G.: 20,000 Applicant P.: 20,000
4.	33488/10	none	10,000

24. The Government contested the requested amounts, save for application no. 46124/07.

1. Pecuniary damage

25. The Court, taking into account the circumstances of the applications nos. 28237/03, 24386/04 and 46124/07, holds the view that the return of the possessions would place the applicants in the position in which they would

have found themselves had the violations not occurred (see *Răţeanu v. Romania*, no. 18729/05, §§ 26-31, 7 February 2008).

Failure to return the possessions in issue, the respondent State is to pay to the applicants, within six months of the present judgment, an amount of money representing the current value of those possessions (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 23, ECHR 2001-I), as follows, plus any tax that may be chargeable on these amounts:

- EUR 90,000 in application 28237/03;
- EUR 50,000 in application no. 24386/04;
- EUR 130,900 to applicant G. and EUR 119,130 to applicant P. in application no. 46124/07.

26. The Court notes that in case no. 33488/10 the impugned decision of 24 November 2009 by the Craiova Court of Appeal has not, to date, been enforced. The Court therefore considers that no pecuniary damage should be awarded in this case, provided that applicant shall not be obliged to pay back the amount of 3,015.25 Romanian lei which he was granted by virtue of the final decision of 12 June 2008.

2. Non-pecuniary damage

27. Making its assessment on an equitable basis, the Court awards, EUR 5,000 per applicant in the applications nos. 28237/03, 46124/07 and 33488/10 and EUR 1,550 to the applicant in the application no. 24386/04 for non-pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

28. The applicants in the following applications also claimed amounts for the costs and expenses incurred before the domestic courts and before the Court:

No.	Case no.	Costs and expenses (EUR)
1.	28237/03	5,000
2.	24386/04	112,000

29. The Government contested the requested amounts, considering that they were only partly justified.

30. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award each applicant in applications nos. 28237/03 and 24386/04 the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable on that amount.

C. Default interest

31. 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. *Joins* the present applications;

2. *Declares* the applications admissible insofar as they concern the applicants' complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention with regard to the quashing of final and binding court decisions, and the remainder of the application no. 24386/04 inadmissible;

3. *Holds* that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*

(a) that the respondent State is to return to the applicants in the applications nos. 28237/03, 24386/04 and 46124/07, within three months, the possessions as acknowledged by the final and binding court decisions prior to their quashing;

(b) that, failing such restitution, the respondent State is to pay the applicants, within the same three-month period, in respect of pecuniary damage, the following amounts :

(i) *in application no. 28237/03*, EUR 90,000 (ninety thousand euros);

(ii) *in application no. 24386/04*, EUR 50,000 (fifty thousand euros);

(iii) *in application no. 46124/07*, EUR 130,900 (one hundred thirty thousand and nine hundred euros) to applicant G. and EUR 119,130 (one hundred nineteen thousand and one hundred thirty euros) to applicant P.;

(c) that in any event, the respondent State is to pay to the applicants within the same three-month period, the following amounts:

(i) *in application no. 28237/03*:

- EUR 5,000 (five thousand euros) in respect of non-pecuniary damages, and
- EUR 2,000 (two thousand euros) in respect of costs and expenses;

(ii) *in application no. 24386/04*:

- EUR 1,550 (one thousand five hundred and fifty euros) in respect of non-pecuniary damages, and
- EUR 2,000 (two thousand euros) in respect of costs and expenses;

(iii) *in application no. 46124/07*:

- EUR 5,000 (five thousand euros) per applicant in respect of non-pecuniary damages;

(iv) *in application no. 33488/10*:

- EUR 5,000 (five thousand euros) in respect of non-pecuniary damages;

(d) that the amounts in question are to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Ján Šikuta
President

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence	Represented by lawyer	Final decision	Extraordinary appeal
1.	28237/03	31/07/2003	**Aurel Iosif GRIDAN** 12/03/1937 Bucharest	Mihaela DOBRESCU	Final decision of 3 February 1998 of Bucharest Court of Appeal admitting the applicant's action lodged against the Bucharest Town Hall; it acknowledged the applicant's property rights upon immovable property, unlawfully taken by the State.	Decision of 14 February 2003 of Bucharest Court of Appeal admitting the review request (*revizuire*) lodged by Bucharest Town Hall based on further evidence dating back to 1949 and which had been found in the State National Archives as to the legal basis of the State's taking of the immovable property at issue. The Court of Appeal quashed the final decision of 3 February 1998 and reassessing the new evidence submitted by the Town Hall, rejected the applicant's action.
2.	24386/04	31/03/2004	**Alexandru BARBU** 08/10/1933 Cerbu-Albota (Arges)	None	Final decision of 12 October 2001 of Pitesti Court of Appeal ordering the Local Commission for enforcement of Law no. 18/1991 to return the applicant a plot of land of 314 square meters. Only 77 square meters were returned to the applicant.	Decision of 19 November 2003 of the High Court of Cassation and Justice granting the application for supervisory review (*recurs în anulare*) lodged by the General Prosecutor. The HCCJ re-opened the proceedings, quashed the final decision of 12 October 2001 and rejected the applicant's action for return of the immovable property at issue.
3.	46124/07	23/10/2007	**G.** 29/10/1924 Bucharest and **P.** 15/12/1936 Bucharest	Nicoleta POPESCU	Final decision of 30 September 2005 of the High Court of Cassation and Justice finding that in 1996 the applicants had lawfully and in good faith acquired the immovable property at issue, in accordance with Law No. 112/1995, thus acknowledging their property rights.	Decision of 24 April 2007 of the High Court of Cassation and Justice admitting the review request (*revizuire*) lodged by A.M.P. on the ground that a disciplinary measure had been taken against the president of civil section of HCCJ on 28 November 2006, for having authorised in bad faith the transfer of the case to be decided on appeal from one chamber to another within the same section, and thus, for having breached the internal regulations of the HCCJ. The review request was

						granted and the final decision of 30 September 2005 was quashed. A new chamber of the HCCJ re-interpreted the evidence in the file and considered that the applicants had acted in bad faith when they acquired the property rights upon the immovable at issue. It therefore declared null and void the 1996 contracts by which the applicants had acquired it.
4.	33488/10	20/05/2010	**Ion COLCEA** 26/10/1949 Craiova	None	Final decision of 12 June 2008 of Craiova Court of Appeal ordering the General Direction of Public Finances (*Directia Generala de Finante Publice*) to pay back the applicant an amount of 3 015.25 RON, representing undue tax. The above decision was enforced on 10 August 2008.	Decision of 24 November 2009 of Craiova Court of Appeal admitting the extraordinary appeal (*contestatie in anulare*) lodged by the General Direction of Public Finances on the ground that the previous courts had wrongly interpreted the adduced evidence. It quashed the final decision of 12 June 2008 and rejected the applicant's action for the return of the tax. The decision has not yet been enforced.