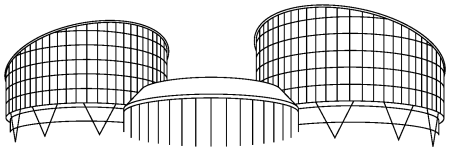

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PETROIU v. ROMANIA

(Application no. 33055/09)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

25 March 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 Petroiu v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 6 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 33055/09) 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, Ms Florica-Maria Petroiu ("the applicant"), on 5 August 2005.

2. In a judgment delivered on 24 November 2009 ("the principal judgment"), the Court held that there has been a violation of Article 1 of Protocol No. 1 as a result of the non-enforcement of a final judgment in the applicant's favour (see *Petroiu v. Romania*, no. 33055/09, 24 November 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 33 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 the claims submitted on 28 April 2010, the applicant sought to recover possession of her property made of "building and land" or, if that were impossible, the sum of 1,464,000 euros (EUR), as documented by an expert report of February 2007, validated also by an expert from the Ministry of Culture, in so far as the building was an historic monument.

She further claimed EUR 422,496 for loss of profit or benefit from her property for three years.

In respect of non-pecuniary damage she claimed EUR 500,000.

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

In any event, in line with the evaluation provided by the National Authority for the Restitution of Properties, they indicated that the value of the property was EUR 149,190 for the building and EUR 312,356 for the land. 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 applicant has not submitted any updated claims.

11. Regarding the Government's preliminary objection of non-exhaustion of domestic remedies, the Court shall disregard it view of the fact that the merits of the case have already been decided (see *Xenides-Arestis v. Turkey* (just satisfaction), no. 46347/99, § 37, 7 December 2006).

12. 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).

13. Further, the Court notes that the Government did not submit any evidence which would indicate that the applicant received any compensation for the deprivation of her possession.

14. The Court considers that the interference with the applicant's peaceful enjoyment of her possession caused her pecuniary and non-pecuniary damage.

15. In the circumstances of the case, the Court holds that the respondent State is to pay the applicant EUR 462,000 covering damages under all heads.

16. 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).

B. Costs and expenses

17. The applicant claimed 9,053 Romanian lei for the lawyer's fee and for the expert report. She submitted invoices and copies of contracts for judicial assistance.

18. The Government contested the claim for costs and expenses on the ground that it was unsubstantiated, that the applicant had not submitted copies of the contracts for judicial assistance, which would have allowed the Court to determine whether the costs were incurred in domestic proceedings or in the proceedings before the Court. Moreover, the amount claimed in lawyer's fee was excessive.

19. 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 as requested. Therefore, it awards the applicant EUR 2,025.

C. Default interest

20. 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 is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 462,000 (four hundred sixty two thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 2,025 (two thousand and twenty five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President