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

THIRD SECTION

CASE OF TOȘCUȚĂ AND OTHERS v. ROMANIA

(Application no. 36900/03)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

3 March 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Toșcuță and Others v. Romania,

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

Josep Casadevall, *President*,
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Grițco,
Iulia Antoanella Motoc, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 10 February 2015,

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

PROCEDURE

1. The case originated in an application (no. 36900/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Romanian nationals, Mr Adrian Toșcuță, Mr Paul Ion Șerban Toșcuță, Mr Dănuț Negulescu, Mr Gheorghe Negulescu, Mr George Negulescu, Ms Maria Negulescu and Ms Sevastița Negulescu ("the applicants"), on 5 September 2003.

2. In a judgment delivered on 25 November 2008 ("the principal judgment"), the Court held that there has been a violation of Article 1 of Protocol No. 1 with regard to the applicants' property rights (see *Toșcuță and Others v. Romania*, no. 36900/03, 25 November 2008).

3. As the sixth applicant, Ms Maria Negulescu, died in 2011, her heirs, Mr Dănuț Negulescu and Ms Sevastița Negulescu, the third and seventh applicant respectively, expressed their wish to pursue the proceedings on her behalf. For practical reasons, Ms Maria Negulescu will continue to be referred to in this judgment as "the sixth applicant", although Mr Dănuț Negulescu and Ms Sevastița Negulescu are now to be regarded as such (see *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI and *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 97-101, ECHR 2013).

4. Under Article 41 of the Convention the applicants sought just satisfaction of pecuniary damage sustained as a result of the above violation.

5. 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 applicants to submit, within three months, their written

observations on that issue and, in particular, to notify the Court of any agreement they might reach (see the principal judgment, paragraph 46 and point 4 of the operative provisions).

6. The applicants and the Government each filed observations.

7. On 23 July 2013, the Court invited these parties to submit updated observations, which they did.

THE LAW

8. 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

9. In their updated claims of 22 November 2013, the applicants maintained that the value of 1 sq. m was of EUR 750, as documented by an expert report of June 2009. Therefore, the applicants M Adrian Toșcuță and M Paul Ion Șerban Toșcuță claimed that the value of the 6,581 sq. m they were entitled to was of 4,935,750 euros (EUR). The other applicants claimed that the value of the 2,500 sq. m they were entitled to was of EUR 1,875,000. The applicants have not claimed non-pecuniary damage.

10. The Government contended in their updated submissions of 17 September 2013 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 applicants. For this reason the Government submitted that the applicants have failed to exhaust domestic remedies.

Further they indicated that, according to the evaluation of September 2013 provided by the National Authority for the Restitution of Properties, the value of the 6,581 sq. m was of EUR 1,664,993, while the value of the 2,500 sq. m was between EUR 597,500 and EUR 632,500.

11. Regarding the Government's preliminary objection of non-exhaustion of domestic remedies, the Court rejects it in view of the fact that the merits of the case have already been decided holding that there has been a violation of Article 1 of Protocol No. 1 (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 and *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 80, 19 February 2009).

13. The Court notes that the Government did not submit any evidence which would indicate that a title of property for the land has been issued to the applicants or that they have received any compensation for the loss of their property.

14. Consequently, the Court considers that the return of the 6,581 sq. m and of the 2,500 sq. m of land would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1. Therefore, it holds that the respondent State is to enable the applicants to take effective possession of the land in issue and to provide them with a property title in respect of that land. If they fail to do so, the Court holds that the respondent State is to pay the applicants Mr Adrian Toșcuță and Mr Paul Ion Șerban Toșcuță jointly EUR 1,665,000 and to the other five applicants jointly EUR 630,000 in respect of pecuniary damage.

The Court notes that the applicants did not claim non-pecuniary damage.

B. Costs and expenses

15. The applicants claimed EUR 4,000, the equivalent of the costs and expenses incurred before the domestic courts and before this Court representing fees charged by the lawyers and the expert.

16. The Government contested the claim for costs and expenses on the ground that it was unsubstantiated and excessive.

17. 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 2,300 covering costs under all heads.

C. Default interest

18. 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 enable, 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 first two applicants to take effective possession of the 6,581 sq. m of land and the other five applicants to take effective possession of the 2,500 sq. m of land, and that all applicants shall be provided with a document of title to their land;

(b) that, in the absence of such arrangements, as set out under (a) above, the respondent State is to pay the first two applicants, within the same period of three months, jointly EUR 1,665,000 (one million six hundred sixty five 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, in the absence of such arrangements, as set out under (a) above, the respondent State is to pay the third, fourth, fifth, sixth and seventh applicants, within the same period of three months, jointly EUR 630,000 (six hundred thirty 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;

(d) that the respondent State is to pay the applicants jointly, within the same three months, EUR 2,300 (two thousand three hundred 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 3 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President