



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

THIRD SECTION

CASE OF TROFIM v. ROMANIA

(Application no. 1193/08)

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.

LUMEA JUSTITIEI.RO

In the case of Trofim v. Romania,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Dragoljub Popović,

Kristina Pardalos,

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. 1193/08) 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 Violeta Trofim, (“the applicant”), on 19 December 2007.

2. In a judgment delivered on 30 March 2010 (“the principal judgment”), the Court held that there has been a violation of Article 6 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 *Trofim v. Romania*, no. 1193/08, 30 March 2010).

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 violations.

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 22 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 her updated claims of 23 October 2013, the applicant reiterated that she sought to obtain the enforcement of the judgment of 29 March 2005 delivered by the Constanța District Court, which involved taking effective possession of the four ha of land and also the delivery of an ownership title. In the alternative, the applicant claimed 5,025,600 euros (EUR) for the value of the four ha of land and submitted an expert report dated November 2008.

She also claimed the equivalent of the coercive fine fixed by the judgment of the Constanța District Court of 15 June 2007 (see paragraph 7 in the principal judgment).

Further, she claimed EUR 12,500 in respect of non-pecuniary damage.

9. The Government contended that the applicant has failed to exhaust domestic remedies, since the Law no. 165/2013 provided a remedy enabling her to obtain damages in case of non-enforcement.

In any event, they alleged that, according to the evaluation of September 2013 provided by the National Authority for the Restitution of Properties, the value of the four ha of land was of EUR 120,000.

Further, they submitted that the coercive fine had the nature of a civil penalty, with the purpose of guaranteeing the execution of an obligation and not of granting compensation; the applicant had the opportunity to request the court to convert it into damages for delayed enforcement, which she had not done.

Lastly, as regards the applicant's claims in respect of non-pecuniary damage, the Government submitted that the amounts claimed were excessive and that the finding of a violation in the present case constituted in itself adequate just satisfaction.

10. The Court cannot accept the Government's argument, that the applicant should now be required at this stage of the proceedings where the Court has already decided on the merits to use the new remedy provided by Law no. 165/2013 in order to seek reparation for her damages (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 and *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 80, 19 February 2009).

12. The Court notes that the Government did not submit any evidence which would indicate that the applicant was issued a title of property for the land in issue or that she has received any compensation for the loss of her property.

13. Consequently, the Court considers that the enforcement of the judgment of 29 March 2005 delivered by the Constanța District Court would place the applicant as far as possible in a situation equivalent to the one in which she would have been if there had not been a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1. Therefore, it holds that the respondent State is to enable the applicant to take effective possession of the four ha of land and to provide her with a property title in respect of that land. Failing to do so, the Court, holds that the respondent State is to pay the applicant EUR 1,600,000 for pecuniary damage.

14. As regards the amount claimed by the applicant as the equivalent of the periodic pecuniary penalty, the Court reiterates that under Romanian law a coercive fine is of a provisional nature and therefore cannot be enforced in the absence of a new court decision establishing the actual level of damage caused by the delay in enforcement (see *Gavrileanu v. Romania*, no. 18037/02, § 66, 22 February 2007 and *Foundation Hostel for Students of the Reformed Church and Stanomirescu v. Romania*, nos. 2699/03 and 43597/07, § 90, 7 January 2014). In the present case, as the applicant has not made full use of the judicial mechanism of the coercive fine, the Court will not speculate as to its amount and, therefore, will not make an award under this head.

15. The Court further considers that the interference with the applicant's right of access to a court and with the peaceful enjoyment of her possession caused her moral prejudice. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

16. The applicant claimed EUR 5,000 the equivalent of the costs and expenses incurred before the domestic courts and before this Court. In support of her claim, the applicant submitted invoices.

17. The Government contested the claim for costs and expenses on the ground that it was unsubstantiated and 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 (see *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). In the present case, regard being had to the information in its possession, the Court considers it reasonable to award the applicant EUR 1,795.

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 29 March 2005 of the Constanța District Court, by enabling the applicant to take effective possession of the land mentioned in the domestic court decision and by providing her with a respective title deed;

(b) that, failing to enforce the judgment of 29 March 2005 of the Constanța District Court, as set out under (a) above, the respondent State is to pay the applicant, within the three months, EUR 1,600,000 (one million and six 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 in any event, the respondent State is to pay the applicant, within the same three months, mentioned under (a) above, 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 3,600 (three thousand and six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,795 (one thousand seven hundred and ninety five euros), plus any tax that may be chargeable, in respect of costs and expenses;

(d) 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

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