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

THIRD SECTION

CASE OF STRĂIN AND OTHERS v. ROMANIA

(Application no. 57001/00)

JUDGMENT

STRASBOURG

21 July 2005

FINAL

30/11/2005

In the case of Străin and Others v. Romania,

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

Mr B. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs A. GYULUMYAN,
Mrs R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 30 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 57001/00) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Romanian nationals, Mrs Delia Străin, Mr Horia Stoinescu, Mrs Felicia Stoinescu and Mrs Maria Tăucean ("the applicants"), on 22 November 1999.

2. The applicants were represented by Mrs A. Razvan-Mihalcea, a lawyer practising in Timişoara. The Romanian Government ("the Government") were represented by their Agent, Mrs R. Rizoiu, Director at the Ministry of Foreign Affairs.

3. On 23 April 2002 the Court (Second Section) decided to communicate the application to the Government. In accordance with Article 29 § 3 of the Convention, it decided that the admissibility and merits of the case would be examined at the same time.

On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1914, 1920, 1921 and 1945 respectively. The first lives in Timişoara, the second in Delémont (Switzerland) and the others in Arad.

5. The first two applicants and their deceased brother, Mircea Stoinescu, whose heirs are the other two applicants, were the owners of a house in Arad. In 1950 the State took possession of that house under Decree no. 92/1950 on nationalisation. The house was converted into four flats intended for rental.

6. On 27 September 1993 the first two applicants and Mircea Stoinescu brought an action for the recovery of possession of immovable property in the Arad Court of First Instance against Arad Town Council and R., a State-owned company responsible for the management of property belonging to the State. After the death of Mircea Stoinescu, the action was pursued by his heirs, Mrs Felicia Stoinescu and Mrs Maria Tăucean. The applicants sought a declaration that they were the rightful owners of the house and appurtenant land that the State had, in their opinion, wrongfully seized in 1950. They claimed that, under Article 2 of Decree no. 92/1950, property belonging to persons in certain social categories was not subject to nationalisation, and that they fell within such a category. In their view, the nationalisation of the house in question had therefore been improper and unlawful.

7. In a judgment of 12 April 1994, the Arad Court of First Instance dismissed the applicants' action, refusing to rule on the merits on the ground that they could not obtain redress for the damage they had sustained until the enactment of special legislation introducing reparation measures. The judgment was upheld by the Arad County Court on 3 November 1995. The applicants appealed against that decision.

8. In 1996 the tenants of the flats making up the house applied to purchase them, relying on Law no. 112/1995. Arad Town Council informed the R. company that a dispute was pending concerning the title to the house and instructed it not to pursue the sale of the flats in question.

9. Consequently, the tenants of three flats had their purchase applications rejected, but not H.D. (a former football player and international celebrity) and his wife, to whom the R. company sold flat no. 3 on 18 December 1996.

10. On 25 February 1997 the Timişoara Court of Appeal upheld an appeal by the applicants and remitted the case to the Arad Court of First Instance for a decision on the merits.

11. On 12 May 1997 Mr and Mrs D. applied to intervene in the Court of First Instance proceedings on the ground that they had been the owners of flat no. 3 since its sale on 18 December 1996.

12. Further to the couple's application to intervene, the applicants requested the court to find that the sale of flat no. 3 was null and void. In their view, as the nationalisation had been improper and unlawful, the State could not have been the rightful owner of the property and thus could not lawfully have sold any part of it. The applicants relied in particular on

Article 966 of the Civil Code, whereby an undertaking entered into on an erroneous or unlawful basis could not produce any useful effect.

13. On 7 June 1997 the Arad Court of First Instance held that the nationalisation of the house had been unlawful and that the applicants were therefore the rightful owners. However, the court rejected the request for the rescission of the contract of sale between the State and Mr and Mrs D., on the ground that the couple had made the purchase in good faith.

14. The applicants appealed against that judgment. On 28 November 1997 the Arad County Court allowed the appeal and remitted the case to the Court of First Instance for reconsideration.

15. In a judgment of 6 July 1998, the Arad Court of First Instance held that the nationalisation of the house had been unlawful, that the applicants were the rightful owners and that the contract of sale between the State and Mr and Mrs D. was null and void.

16. On 2 February 1999 the Arad County Court allowed an appeal by Mr and Mrs D. and dismissed the applicants' action, finding that the nationalisation had been lawful and that, consequently, the sale by the State of flat no. 3 was also lawful.

17. The applicants appealed to the Timişoara Court of Appeal, which gave its judgment on 30 June 1999. It partly allowed the applicants' appeal in so far as it found the nationalisation to have been unlawful and acknowledged that they had remained the rightful owners of the property. However, it dismissed the appeal as regards the rescission of the sale of flat no. 3, considering that the State had been presumed to be the owner of the property at the time of the sale, in spite of the dispute over the property that was pending in the courts. It moreover relied on the fact that Law no. 112/1995, which had formed the statutory basis for the sale of the property, did not provide for any penalty in respect of property sold when the title to it was in dispute before the courts. The Court of Appeal did not address the applicants' argument relating to the principle of unjust enrichment (see paragraph 27 below).

18. On 20 August 2001 the applicants again requested the Arad Court of First Instance to order the rescission of the sale of flat no. 3, contending that the purchasers had broken the law. Their action was dismissed on 13 December 2001 on the ground that the matter had become *res judicata*.

II. RELEVANT DOMESTIC LAW

19. The relevant provisions of Decree no. 92/1950 on the nationalisation of certain immovable property are as follows:

Article I

"... in order to ensure the proper management of dwellings which wealthy capitalists and exploiters who possess a large number of properties have allowed to fall into dilapidation as a means of sabotage; [and]

In order to deprive exploiters of an important means of exploitation;

The immovable property appearing in the schedules ... annexed to and forming part of this Decree shall be nationalised. The listed property comprises:

(1) immovable property belonging to former industrialists, owners of large estates, bankers, owners of large trading enterprises and other representatives of the wealthy capitalist class;

(2) immovable property belonging to real-estate exploiters ..."

Article II

"The immovable property of workers, civil servants, small artisans, persons working in intellectual professions and retired persons shall be excluded from the scope of this Decree and shall not be nationalised."

20. The relevant provisions of Law no. 112/1995 of 23 November 1995 regulating the legal status of certain residential property, which came into force on 29 January 1996, read as follows:

Section 1

"Individuals who formerly owned residential property which passed lawfully into the ownership of the State or of another artificial person after 6 March 1945 and which was still in the possession of the State or another artificial person on 22 December 1989 shall be entitled to benefit, by way of reparation, from the measures in this Law.

The provisions of this Law shall apply equally to the successors in title of such former owners, subject to existing statutory provisions."

Section 2

"The persons referred to in section 1 shall be entitled to restitution in the form of the restoration to them of their ownership of flats in which they currently live as tenants or which are vacant. In respect of other flats, those persons shall receive compensation as provided in section 12 ..."

Section 9

"The tenants of flats which are not returned to the former owners or their successors in title [in accordance with the procedure laid down in this Law] may opt, after the expiry of the period provided for in section 14, to purchase such flats by payment in full or in instalments.

..."

Section 14

"Persons entitled to claim restitution or compensation shall lodge an application for such purpose within a period of six months after this Law comes into force."

21. On 23 January 1996 the Government adopted decision no. 20/1996 implementing Law no. 112/1995. The decision provided that immovable property that had passed into State ownership under a legislative provision was to be regarded as immovable property legally vested in the State. It also specified that Law no. 112/1995 did not apply to immovable property held by the State where its right of property was not based on any legislative provision.

22. On 18 February 1997 the Government adopted decision no. 11/1997, supplementing decision no. 20/1996. Paragraph 1 (3) of decision no. 11/1997 provided that, in order for property to be defined as having been acquired by the State under Decree no. 92/1950, it had to have been acquired in accordance with the decree and the person referred to as the owner in the lists enumerating nationalised property had to have been the true owner at the time of the nationalisation.

23. The relevant provisions of Law no. 10/2001 of 14 February 2001 on the rules governing immovable property wrongfully seized by the State between 6 March 1945 and 22 December 1989 read as follows:

Section 1

"(1) Immovable property wrongfully seized by the State ... between 6 March 1945 and 22 December 1989 and property expropriated under the Requisitions Act (Law no. 139/1940) that has not been returned shall be subject to restitution, normally consisting of the return of the property in question ...

(2) Where the property cannot be returned, alternative measures of redress shall be taken. Such measures may consist of compensation in the form of other items or services ..., the allotment of shares in commercial companies listed on the stock market, securities at face value used exclusively in the privatisation process or pecuniary compensation."

Section 21

"(1) Within a period of six months after the entry into force of the present Law, the claimant shall serve notice on the artificial person in possession of the property and seek the return of that property ..."

Section 40

"A special law shall be enacted within one year of the expiry of the six-month period fixed for the service of notice. That law, on the basis of the estimates, shall provide for the payment of compensation, stipulating the conditions, amounts and procedures and possibly fixing a ceiling."

Section 46

"(1) The sale or donation of immovable property unlawfully seized by the State shall be declared null and void, save where such transactions were entered into in good faith.

..."

24. The relevant provisions of Legislative Decree no. 115/1938 on land registers read as follows:

Article 17

"Rights *in rem* vested in immovable property may be acquired if it is so agreed between vendor and purchaser and if the corresponding creation or conveyance of such a right is entered in the land register."

Article 26

"Rights *in rem* shall be acquired without being entered in the land register by means of succession, accession, sale in execution or expropriation; however, the holder of the right shall have the capacity to alienate his or her property, by virtue of the land register, only after the right has been entered therein."

Article 33

"Save in respect of statutory restrictions or exceptions, the entries in the land register shall be regarded as correct for the benefit of the person who has acquired a right *in rem* through a legal transaction for valuable consideration if, at the time the right was acquired, the land register did not mention any action whereby the information therein might be challenged or if the person concerned has not, in any other manner, become aware of an inaccuracy."

25. Article 966 of the Civil Code reads:

"An obligation without legal basis or based on an erroneous or unlawful ground cannot produce any useful effect."

26. Under Romanian law, an action for recovery of possession is one of the principal remedies for the protection of a right of property. Such action is not governed *per se* by statute but has emerged from case-law. An action for recovery of possession can be defined as the bringing of proceedings to enforce a right *in rem* in which a dispossessed owner claims back his or her property from the person currently in possession of it. The main outcome of such an action, if successful, is the acknowledgment by the court of the claimant's title to the property, with retrospective effect, thus obliging the defendant to return the property. If physical restitution is no longer possible, that obligation is replaced by an obligation to pay compensation on the basis of an equivalent sum (see, for example, Liviu Pop, *Dreptul de proprietate şi dezmembrămintele sale* (Ownership and its Attributes), Lumina Lex, Bucharest 1997, pp. 278-90, and Ion Dogaru and T. Sâmbrian, *Elementele dreptului civil, vol. 2, Drepturile reale* (Elements of Civil Law, vol. 2, Rights *in rem*), Oltenia, Craiova 1994, p. 160).

27. In legal systems derived from Roman law there is an equitable rule that when a person has been unjustly enriched at the expense of another, the latter may claim compensation in the amount by which that person has been enriched (see François Terré, Philippe Simmler and Yves Lequette, *Droit civil : les obligations* (Civil Law: Obligations), Dalloz, 5th edition, 1993, pp. 742-44, and Ion Filipescu, *Drept civil : Teoria generală a obligaţiilor* (Civil Law: General theory of obligations), Editura Actami, Bucharest 1994, p. 98). Whilst an action for tortious liability enables the injured party to claim *exact reparation* for the loss sustained as a result of negligence on the part of an enriched person, in an action for unjust enrichment the claimant can only seek an *amount corresponding to the other party's gain*, provided that some pecuniary benefit has been obtained, without just cause, at the expense of the claimant (see Terré, Simmler and Lequette, op. cit., p. 744, and Filipescu, op. cit., p. 98).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

28. The applicants alleged that the sale of their flat to a third party, which had been validated by the judgment of the Timişoara Court of Appeal on 30 June 1999 and for which they had received no compensation, entailed a breach of Article 1 of Protocol No. 1, which provides:

> "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

29. The Court observes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover observes that no other ground for declaring it inadmissible has been established and therefore declares it admissible.

B. Merits

30. The Government submitted that the applicants did not have a possession within the meaning of Article 1 of Protocol No. 1, as their right of property had not been acknowledged by a final judicial decision prior to the sale of the property in question to third parties. In this connection, they relied on the precedents of *Malhous v. the Czech Republic* ((dec.) [GC], no. 33071/96, ECHR 2000-XII), and *Constandache v. Romania* ((dec.), no. 46312/99, 11 June 2002). They contended that the property had been nationalised in accordance with Decree no. 92/1950 and had not therefore been part of the applicants' estate at the time when they had brought their action for recovery of possession in the Arad Court of First Instance on 27 September 1993. Moreover, the applicants had failed to have their title entered in the land register before the property was sold by the State. Under Legislative Decree no. 115/1938 on land registers, which had been applicable in Transylvania, such an omission amounted to an absence of valid title.

31. The Government considered that, in any event, the applicants had been entitled to claim compensation under Law no. 10/2001.

32. The applicants pointed out that in its final decision of 30 June 1999 the Timişoara Court of Appeal had acknowledged, with retrospective effect, that the nationalisation of their property had been unlawful and that they were therefore the rightful owners.

33. They submitted that the *Brumărescu* case-law (*Brumărescu v. Romania* [GC], no. 28342/95, § 65, ECHR 1999-VII) was relevant in the present case and that the courts could not refuse to rule on the compensation due to them for the deprivation of their possession without impairing their right to a hearing under Article 6 § 1 of the Convention.

34. The applicants claimed that the impugned deprivation had resulted from the sale by the State of flat no. 3, of which they claimed possession and in respect of which proceedings had been pending at the time of the sale. Under Law no. 112/1995, on the basis of which the sale had been agreed, the State was only entitled to sell property it had acquired legally. As the proceedings brought by the applicants had resulted in a declaration that the nationalisation had been unlawful, their title to the flat had accordingly been acknowledged, with retrospective effect. Given that at the time of the sale the applicants had already brought an action against the State, asserting that the nationalisation had been unlawful, and that the existence of the proceedings was indicated in the land register, the sale could not have been lawful. As evidence of the unlawfulness of the sale, the applicants pointed out that the other flats in the house had not been sold to their tenants, precisely because an action was pending in the courts. Those flats had been returned to the applicants as a result of their action for

recovery of possession. It was only because of the influence of the tenant in flat no. 3, H.D., that the flat had been sold to him unlawfully.

Accordingly, the decision of 30 June 1999 in which the Court of Appeal had dismissed the claim for recovery of possession of the flat even though the applicants' title had been acknowledged amounted to an expropriation.

35. The applicants pointed out that, at the time they had lodged their application with the Court, Law no. 10/2001 had not yet been enacted. As that Law was not retrospective in its effect, any compensation they might have been entitled to claim would not have made good the loss they had sustained until such compensation was awarded to them. In any event, they contended that the compensation provided for by Law no. 10/2001 consisted in an award of shares in various State-owned companies, which fell far short of the property's value. Through an action for recovery of possession, by contrast, they would be entitled to the return of the property or in any event to reparation representing the actual value of the property.

36. In line with a number of previous findings, the Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, citing part of the Court's analysis in *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 24, § 61; see also *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 31, § 56, and *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

1. Whether there was a possession

37. The Court notes that the parties disagreed as to whether the applicants had a property interest eligible for protection under Article 1 of Protocol No. 1. Accordingly, the Court must determine whether the applicants' legal position is such as to attract the application of Article 1.

38. It observes that the applicants brought an action for the recovery of possession of immovable property, requesting the court to declare the nationalisation of their property unlawful and to order its return to them. In its final judgment of 30 June 1999, the Timişoara Court of Appeal

established that the property in question had been nationalised in breach of Decree no. 92/1950 on nationalisation, declared that the applicants had remained the lawful owners of the property and ordered the return of virtually the entire premises. The Court of Appeal admittedly refused to order the return of one flat. Nevertheless, the finding – with retrospective effect – that the applicants had title to the property, including flat no. 3, was irrevocable. Moreover, it has not been quashed or challenged to date. The Court therefore considers that the applicants had a "possession" within the meaning of Article 1 of Protocol No. 1.

2. Whether there was interference

39. The Court reiterates that the domestic courts found that the nationalisation of the property belonging to the applicants had been unlawful (see paragraphs 17 and 34 above). By selling one of the flats in the building to a third party before the question of the lawfulness of the nationalisation had been finally settled by the courts, the State deprived the applicants of any possibility of recovering possession (see *Guillemin v. France*, judgment of 21 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 164, § 54). Subsequently, whilst finding the nationalisation unlawful and thus upholding the applicants' right of property, the Court of Appeal refused, since flat no. 3 had in the meantime been sold, to order its return to the applicants. By its refusal, it confirmed with final effect that the applicants were unable to recover the property in question.

40. In view of the foregoing, the Court considers that the applicants' inability to recover possession of their flat undoubtedly constitutes interference with their right to the peaceful enjoyment of their possession.

3. Whether the interference was justified

41. It remains to be ascertained whether or not the interference found by the Court violated Article 1 of Protocol No. 1.

42. In determining whether there has been a deprivation of possessions within the second "rule", it is necessary not only to consider whether there has been a formal taking or expropriation of property but to look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are "practical and effective", it has to be ascertained whether the situation amounted to a *de facto* expropriation (see *Sporrong and Lönnroth*, cited above, pp. 24-25, § 63; *Vasilescu v. Romania*, judgment of 22 May 1998, *Reports* 1998-III, p. 1078, § 51; and *Brumărescu*, cited above, § 76).

43. The Court notes that the situation arising from the combination of the sale of the flat and the 30 June 1999 judgment of the Timişoara Court of Appeal – which confirmed the applicants' title to the entire property whilst

refusing to order the return of flat no. 3 – had the effect of depriving the applicants of the benefit of the judgment in so far as it established their title to the flat. They were no longer able to take possession of the property or sell, devise, donate or otherwise dispose of it. In these circumstances, the Court finds that the effect of the situation was to deprive the applicants of their possession within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

44. A taking of property within this second rule can only be justified if it is shown, *inter alia*, to be in the public interest and subject to the conditions provided for by law. Moreover, any interference with the enjoyment of the property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the search for such a fair balance being inherent in the Convention as a whole. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth*, cited above, pp. 26-28, §§ 69-74).

(a) "Provided for by law"

45. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Iatridis*, cited above, § 58). The principle of lawfulness also presupposes that the provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, pp. 19-20, § 42, and *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 47, § 110). The Court's power to review compliance with domestic law is, however, limited (see *Håkansson and Sturesson v. Sweden*, judgment of 21 February 1990, Series A no. 171-A, p. 16, § 47).

46. The Court observes that Romanian law, as applicable at the material time, including the case-law, was lacking in clarity as regards the consequences of the recognition of a private individual's title to property which had passed into the ownership of the State but had been sold by the State to a third party.

47. It notes that at the material time there were two different situations in which private individuals could seek the return of residential property that the communist regime had taken from them and placed under State ownership:

(a) The situation where the State had a document of title (*cu titlu*). The statutory framework for this type of situation was laid down in Law no. 112/1995, which was a *lex specialis* in that it created an exception to the general law of the Civil Code (section 24 of the Law). The Law, which on 8 February 2001 was superseded by Law no. 10/2001, set up an

administrative body responsible for examining applications for restitution. As a further exception to the general law, section 9 of Law no. 112/1995 allowed the State to sell residential property to its tenants who were occupying that property. Section 9 also provided that the property could only be sold to the tenants after a period of six months, during which time the former owners were entitled to apply for the return of the property or to claim compensation.

In the Court's view, the intention behind that provision was clearly to prevent the sale of property in respect of which an application for restitution had been lodged before the matter of restitution was settled. The Court notes, however, that section 9 did not contain any express or precise provision for cases where property was sold to tenants after the expiry of the six-month period but before an administrative decision on the application for restitution.

(b) The situation where the State had no document of title (*fără titlu*). Before the entry into force of Law no. 10/2001 that type of situation had been governed by the ordinary law, that is to say by the property-law provisions of the Civil Code, incorporating the case-law concerning actions for recovery of possession.

Accordingly, as Law no. 112/1995 only applied to property in respect of which the State had a document of title, the Court observes that no other domestic provision entitled the State to sell property that fell *de facto* under its ownership, that is to say for which it had no document of title, or property that was being disputed in the courts by a party claiming that no such document existed. Moreover, neither the applicants nor the Government claimed that there was any statutory basis at the material time for the sale to a private individual of property that had been confiscated or nationalised *de facto*.

48. In the present case, the Court notes that the action for recovery of possession lodged by the applicants in the domestic courts was founded on the Civil Code and its purpose was to obtain a ruling that the State had no statutory title to the property. It is accordingly of the view that the applicants could legitimately consider that their property did not fall within the scope of Law no. 112/1995, the *lex specialis*, and that the property could not therefore be put up for sale by the State as lessor. That was precisely the reasoning adopted by the Arad authorities when they refused to sell most of the flats in the applicants' house (see paragraphs 8 and 9 above).

Accordingly, the Court finds certain inconsistencies between, on the one hand, the refusal of the Arad local authorities – on the basis of domestic law – to sell the flats making up the property until such time as the lawfulness of the nationalisation had been determined by the courts and, on the other, the same authorities' decision to allow an exception by selling flat no. 3, and the Court of Appeal's decision of 30 June 1999 in which it declared the sale

lawful whilst finding unlawful the deprivation of property sustained in 1950.

49. However, in view of the margin of appreciation enjoyed by the domestic authorities, and more particularly by the courts, in the interpretation and application of domestic law, the Court considers that it is not necessary to give a categorical answer to the question whether the sale by the State of the applicants' property was "provided for by law", or in other words whether the domestic law in such matters satisfied the requirements of foreseeability and precision, and whether or not that law was construed arbitrarily in the present case.

The Court is accordingly prepared to accept that the interference in question was "provided for by law". Its role is nevertheless to verify whether the consequences of the interpretation and application of the domestic law, even when statutory requirements were complied with, were compatible with the principles of the Convention. From that perspective, the element of uncertainty in the law and the wide discretion that the law confers on the authorities will have to be taken into account when examining whether the impugned measure strikes a fair balance.

(b) Aim of the interference

50. As regards the aim of the interference, the Government did not put forward any justification. However, the Court is prepared to accept that in the present case the interference pursued a legitimate aim, namely the protection of the rights of others – the "others" here being the purchasers who were acting in good faith – taking into account the principle of legal certainty.

(c) Proportionality of the interference

51. Interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth*, cited above, p. 26, § 69). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole including, therefore, in the second sentence which is to be read in the light of the principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his or her possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38).

52. Compensation terms under the relevant domestic legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this connection, the Court has previously held

that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and that a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see *The Holy Monasteries*, cited above, p. 35, § 71; *The former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII; and *Broniowski v. Poland* [GC], no. 31443/96, § 176, ECHR 2004-V).

53. In any event, the Court reiterates that whilst a radical reform of a country's political and economic system, or the state of the country's finances, may justify stringent limitations on compensation, such circumstances cannot be relied on to the detriment of the fundamental principles underlying the Convention, such as the principles of lawfulness and the authority and effectiveness of the judiciary (see *Broniowski*, cited above, §§ 175 and 183-84). *A fortiori*, a total lack of compensation cannot be considered justifiable, even in exceptional circumstances, where there is a breach of the fundamental principles enshrined in the Convention.

54. In the present case, the Court notes that no provision of domestic law gives a clear and authoritative indication of the consequences for an individual's right of property when his or her possession is sold by the State to a third party acting in good faith.

More precisely, domestic law does not provide any clear or precise answer to the question whether, or how, an owner thus deprived of his possession can obtain compensation.

Whilst an action for recovery of possession, according to legal theory, appears to render the State liable to pay full compensation, where it has sold the property and is unable to return it (see paragraph 26 above), the principle of unjust enrichment releases a vendor who has been enriched by the sale from any obligation to pay compensation when the enrichment is the result of a legal transaction (in the present case, a sale).

In addition, an action for tortious liability can only be brought where there has been negligence on the part of the person who caused the damage (see paragraph 27 above). In the present case, the conclusion of the Court of Appeal that the sale had been lawful, since the parties had been acting in good faith, thus rules out, in theory, any liability of the State for negligence.

55. To sum up, in cases similar to that of the applicants it is doubtful whether at the material time domestic law would have provided for any compensation. Moreover, the Government did not argue that the applicants had such a possibility under domestic law or that there was any case-law to show that a means of obtaining compensation existed under domestic law as it was construed or applied.

56. The Government contended, however, that Law no. 10/2001 afforded the applicants a right of compensation.

In this connection, the Court observes firstly that, at the time Law no. 10/2001 came into force on 8 February 2001, the applicants had already

been deprived of their possession without compensation since June 1999, having also lodged their application with the Court in November 1999.

Secondly, the Court notes that section 1 of Law no. 10/2001 affords a right of restitution or compensation to persons who were unlawfully deprived of their property between 6 March 1945 and 22 December 1989 (see paragraph 23 above). However, the Law contains no specific provision on entitlement to compensation where the unlawfulness of such deprivation had been recognised by a court before the legislation's entry into force, or where the deprivation originated in the sale of property after 22 December 1989, as in the present case.

However, even assuming that Law no. 10/2001 constitutes a statutory basis for a compensation claim, as the Government have argued, the Court observes that section 40 provides that subsequent legislation is to lay down the conditions, amounts and procedures applicable to such claims (see paragraph 23 above). No such law on compensation has been passed to date. Consequently, the Court considers that Law no. 10/2001 does not enable the applicants to obtain compensation for the deprivation in question.

57. It remains to be determined whether a total lack of compensation could be justified in the circumstances of the case.

58. Firstly, no exceptional circumstance was relied upon by the Government to justify the total lack of compensation.

Secondly, the State sold the property despite the fact that an action brought by the applicants, claiming to be the victims of an unlawful nationalisation, was pending against it and that it had recently refused to sell the other flats in the same building. In the Court's view, such an attitude on the part of the State cannot be explained in terms of any legitimate public interest, be it political, social or financial, or by the interests of the community at large. Not only did that attitude give rise to discrimination between the various tenants who wished to acquire their respective flats, it was also capable of undermining the effectiveness of the court which the applicants had requested to protect the title they claimed to have to the property in question.

59. Consequently, in view of the fact that the deprivation in question infringed the fundamental principles of non-discrimination and the rule of law which underlie the Convention, the total lack of compensation caused the applicants to bear a disproportionate and excessive burden in breach of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

Accordingly, there has been a violation of that Article in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Length of the proceedings

60. The applicants complained of the length of the proceedings concerning their property, which began on 27 September 1993 and were concluded with final effect by the judgment of 30 June 1999. They considered that such a length was contrary to Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

1. Admissibility

61. The Court observes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It moreover observes that no other ground for declaring it inadmissible has been established and therefore declares it admissible.

2. Merits

(a) Period to be taken into consideration

62. The Court notes that the proceedings began on 27 September 1993, when the case was brought before the Arad Court of First Instance, and ended on 30 June 1999 with the final judgment of the Timişoara Court of Appeal. The proceedings therefore lasted almost six years.

63. However, since the Convention came into force in respect of Romania on 20 June 1994, the period prior to that date falls outside the Court's jurisdiction *ratione temporis*. The Court can only take into consideration the period of some five years which has elapsed since that date, although it will have regard to the stage reached in the proceedings by that date (see, for example, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999).

(b) Whether the length of the proceedings was reasonable

64. The Government considered that the requirement of expedition under Article 6 § 1 of the Convention had not been disregarded, in view of the fact that the case had been examined by seven courts in succession. In their submission, the case had been of a certain complexity, since it had concerned a nationalised building and a number of questions had therefore had to be studied: the entries in the land register and the interpretation of various expressions used in the relevant legislation, namely "nationalisation with a document of title" and "nationalisation without a document of title". Moreover, the legislation had been amended during this period and this had

made the case even more complex to examine. In this connection, the Government relied on the precedents of *Calvelli and Ciglio v. Italy* ([GC], no. 32967/96, §§ 65-66, ECHR 2002-I), and *Constandache* (cited above), and on the fact that the length of proceedings had been reasonable in each of the seven courts, to show that the period taken into consideration had been reasonable. With regard to the applicants' conduct, they considered that the successive adjournments requested by the parties – including the applicants – to instruct a lawyer, to prepare their defence or to involve the heirs in the proceedings had resulted in the determination of the case being delayed by over one year and eight months.

65. The applicants submitted that the slowness of the proceedings could be explained by the courts' initial refusal to address the merits of the case and by the lack of impartiality and independence of the courts, being under the influence of the authorities. They contended that the delivery of decisions in open court had been adjourned several times. As to their own conduct, they admitted having requested an adjournment, but only because the court had not properly summoned the other party, and since a hearing held in the absence of a party who had not been properly summoned might be declared null and void.

66. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria enshrined in its case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Hartman v. the Czech Republic*, no. 53341/99, § 73, 10 July 2003).

67. In the Court's view, the present dispute was not particularly complex, since it originated simply in an action for recovery of possession.

68. The Court notes that the action was brought in September 1993 before the Arad Court of First Instance, which took four years to rule on the merits of the case. It did so on 7 June 1997 after initially refusing to deal with the merits. It was precisely because of this delay that the property claimed by the applicants was sold to third parties, so that the applicants were obliged to lodge a further claim for the annulment of the sale.

Moreover, the case file shows that a number of hearings were adjourned because the parties had not been lawfully summoned. Such a defect cannot be imputed to the applicants.

In general terms, and having regard to the evidence before it, the Court considers that the applicants cannot be criticised for any lack of diligence.

69. The above considerations suffice for the Court to conclude that the applicants' case was not heard within a reasonable time.

There has accordingly been a violation of Article 6 § 1 of the Convention.

B. Impartiality and independence of the courts

70. The applicants alleged that the courts had lacked independence and impartiality, claiming that they had been swayed by political discourse at that time and by the personal influence of H.D., a national celebrity.

71. The Government made no comment in this connection.

72. The Court notes that the applicants failed to produce any particulars in support of their allegations. Moreover, it has not found any evidence in the case file that could cast doubt on the impartiality, be it subjective or objective, or independence of the courts that dealt with their case.

73. It follows that this complaint is manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicants pointed out that flat no. 3, which had not been returned to them, was part of a house designed as a single unit. They accordingly considered that the most appropriate manner for the State to provide redress for their pecuniary damage was to return flat no. 3 to them as well, since they had obtained the return of the other flats in the house. The applicants claimed in the alternative, if the State was unable to return the flat, that they should receive compensation amounting to the market value of the property. They indicated that the house was located in Arad town centre, that the flat in question occupied the first floor of the house (260 sq. m) and the basement, and that the basement had been leased to a number of firms and to a political party which was using it as its head office. The applicants provided the Court with a copy of the advertisement that Mr and Mrs D. had published in the local newspaper, proposing to sell the flat for 72,000 euros (EUR). Also taking into account the existing goodwill attached to the business premises, the applicants claimed EUR 150,000 in respect of pecuniary damage.

Moreover, they claimed EUR 50,000 in respect of non-pecuniary damage, for the inconvenience caused to them by the excessive media interest in their dispute, because it involved the celebrity H.D., and for the frustration resulting from the excessive length of their proceedings and from the breach of their right to the peaceful enjoyment of their possession.

76. The Government made no observations under that head.

77. The Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation under the Convention to put an end to the breach and make reparation for its consequences. If the internal law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission that has led to the finding of a violation of the Convention. The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest.

78. Among the matters which the Court takes into account when assessing compensation are pecuniary damage, that is the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, that is reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss (see, among other authorities, *Ernestina Zullo v. Italy*, no. 64897/01, § 25, 10 November 2004).

79. In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

80. The Court considers, in the circumstances of the case, that the return of the property in issue, as ordered in the final judgment of the Timişoara Court of Appeal of 30 June 1999, 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.

81. Failing such restitution by the respondent State within three months from the date on which this judgment becomes final, the Court holds that the respondent State is to pay the applicants, in respect of pecuniary damage, an amount corresponding to the current value of the property.

82. As regards the amount of such compensation, the Court notes that the applicants failed to submit a valuation report for the purposes of determining the value of the flat, and simply indicated the price for which it had been put up for sale in 2002. Moreover, the Government did not make any observations to dispute the applicants' claim.

83. Having regard to the information at its disposal concerning real estate prices on the local market and to the fact that the flat in question is used for commercial purposes, the Court estimates the current market value of the property at EUR 80,000.

However, the Court observes that the applicants failed to submit any particulars concerning the value of the goodwill that had allegedly become attached to the business premises, and accordingly dismisses their claim under that head.

84. Moreover, the Court considers that the events in question entailed serious interference with the applicants' right to the peaceful enjoyment of

their possession and to proceedings within a reasonable time, in respect of which the sum of EUR 5,000 would represent fair compensation for the non-pecuniary damage sustained.

B. Costs and expenses

85. The applicants also claimed EUR 2,000 for the costs and expenses they had incurred in the proceedings in the domestic courts and before this Court, broken down as follows: EUR 1,030 for lawyer's fees paid between 1999 and 2003, and EUR 970 for sundry expenses (court costs and fees, telephone, photocopying, notary's fees, etc.).

86. The Government considered that the applicants' claims were excessive.

87. In accordance with the Court's case-law, an award can be made to an applicant in respect of costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicants filed invoices for lawyer's fees paid between 1999 and 2003, for a total amount of EUR 1,030.

As to the other costs, they have only been substantiated in part, as the applicants failed to submit itemised particulars of all the amounts incurred in respect of court fees, postage, telephone calls and the photocopying of all the documents. The Court will therefore determine an amount under that head on an equitable basis.

The Court further notes that the applicants failed to obtain the reimbursement of the expenses that they had incurred in the domestic proceedings, since the domestic courts considered that the application for intervention by the purchasers of flat no. 3 was well-founded and that the costs owed to the applicants accordingly offset the costs that they owed to the D. family.

Having regard to the information in its possession and to the criteria set out above, the Court considers it reasonable to award the aggregate amount of EUR 1,600 to the applicants in respect of costs and expenses.

C. Default interest

88. The Court considers it appropriate that the default interest 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

1. *Declares* unanimously the complaints relating to the right of property and to the length of the proceedings admissible, and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* unanimously
   (a) that the respondent State is to return the immovable property belonging to the applicants within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
   (b) that failing such restitution the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable:
      (i) EUR 80,000 (eighty thousand euros) in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
      (iii) EUR 1,600 (one thousand six hundred euros) in respect of costs and expenses;
   (c) 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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 21 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan ZUPANČIČ
President