

APPLICATION N° 25497/94

Dorin LUPULET v/ROMANIA

DECISION of 17 May 1996 on the admissibility of the application

Article 1, paragraph 1 of the First Protocol :

- a) *Deprivation of ownership or another right in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right"*
- b) *This provision does not recognise any right to become the owner of property, it applies only to "existing possessions". Anyone who complains of an interference with one of his property rights must show that such a right existed*

Property can be either "existing possessions" or assets, including claims, which the applicant can, at least arguably, "legitimately expect" to see realised

- c) *Law No 181/1991 (Romania) on real property provides for the restitution of confiscated property in certain circumstances. In the present case, no violation of the right to peaceful enjoyment of possessions, since the application does not concern an "existing possession" owned by the applicant*

Article 1, paragraph 1 of the First Protocol and competence *ratione temporis* :

The Commission cannot examine complaints concerning the confiscation of property prior to the date on which the Convention entered into force with respect to the relevant Contracting Party.

However, the Commission is competent to examine the proceedings commenced by the applicant to have his title restored, in so far as they took place after the Convention entered into force.

THE FACTS

The applicant is a Romanian citizen. He was born on 15 January 1941 and is an economist. He lives in Târgu-Jiu in Romania.

A *Particular circumstances of the case*

The facts, as submitted by the parties, may be summarised as follows

The applicant owned a piece of land left to him by his grandfather in 1944 (as recorded in the Land Register on 20 November 1953). He was dispossessed of this land by the State in 1953, without any deed of transfer or other formality. Subsequently, the applicant learned that he was deemed to have gifted the land to the State under Executive Decree No. 308/1953 (hereinafter called "Decree No. 308/1953").

Following the events of 1989, the applicant took possession of the land, which he still considered as his.

1. The action for recovery

In 1991 a summons against the applicant was issued by C.C., who claimed to have been given part of the land by the State.

In a judgment of 19 July 1991 Târgu-Jiu District Court (*judecătoria*) held that the applicant was the rightful owner of the land claimed by C.C. The court held that, on the basis of the witness evidence and of a statement from the State archives certifying that Decree No. 308/1953 had never been applied in the applicant's village, neither the applicant nor his father (who had acted as his representative at law) had transferred the land under Decree No. 308/1953 and that any grant of the land to a third party was null and void.

This decision was set aside on appeal by Gorj Regional Court (*tribunalul*) on 20 November 1991 on the ground that the applicant had gifted his land to the State under Decree No. 308/1953 and that C.C. had been given part of this land under the same decree.

2. The proceedings under Law No. 18/1991

The applicant then sued the local administrative authorities for restitution of his land, relying on Law No. 18/1991 on Real Property, which provides for land held by agricultural cooperatives or the State to be restored to its former owners

On 23 September 1991, the Regional Agricultural Board attached to Dragotești District Council awarded the applicant title over part of his old land but refused to order that the rest of it [hereinafter called "the land"] be restored to him, on the ground that Law No. 18/1991 did not apply to him. According to the Board, the applicant had gifted his land to the State under Decree No. 308/1953 and it had subsequently been granted to third parties.

The applicant appealed to the courts against the decision of 23 September 1991, invoking Law No. 18/1991, and seeking restitution of his land.

In a judgment of 30 November 1992 Târgu-Jiu District Court held that Law No. 18/1991 was not applicable to the applicant, since he had gifted his land to the State under Decree No. 308/1953. The court further held that the land claimed by the applicant was in the ownership of third parties and that, in any event, he could apply, under Law No. 18/1991, to be granted title to an alternative piece of land by way of compensation for the land he had lost.

The applicant appealed against this judgment. Before Hunedoara Regional Court he argued that he had not gifted his land to the State but had been wrongfully dispossessed of it without any deed of transfer and that, moreover, there was no evidence of the alleged "gift", since the State archives had certified that there was no documentary evidence of Decree No. 308/1953 having been applied in the applicant's village. He added that, in any event, this decree had not been published, on the ground that its contents were secret, and that, therefore, it did not qualify as a law. The applicant also demonstrated that his claim was based on replies received from the Ministries of Justice and Agriculture confirming that Decree No. 308/1953 had been repealed; that, given its temporary nature, any gift of land made under it was void, and that land which had passed into State ownership in this way should be restored to its former owners under Law No. 18/1991. He also relied on the Ministry of Justice's reply to his request for disclosure of the content of Decree No. 308/1953, which stated that the decree had not been published and was not in the Ministry's archives.

Lastly, the applicant argued that, since the State had acquired possession of his land unlawfully, a third party could not lawfully have been granted title to it, but merely a right of use and occupation.

In a judgment of 21 July 1994, Hunedoara Regional Court rejected the applicant's appeal in the following terms:

"In 1953, the late Ioan Lupulet transferred to the State, under Executive Decree No. 308/1953, 8.26 hectares of agricultural land, title to which was subsequently granted to eleven peasants from the village ..

In a judgment of 3 December 1975, Târgu Jiu District Court ordered that the rest of the applicant's agricultural land should be transferred to the State, also under Executive Decree No 308/1953

An examination of the facts reveals that it is not possible to apply Law No. 18/1991 so as to establish or re-establish title in favour of the applicant over the parcels of land which were gifted to the State.

Moreover, on the facts, the applicant cannot invoke either section 8 of the said Law - since the land did not belong to the former agricultural cooperatives - or section 35 (last paragraph) thereof, since the management of certain parcels was not transferred to the local authority under Decree No 712/1966 ..

In the present circumstances, the applicable provisions are those of section 37 of Law No. 18/1991 as regards the area of 4 05 hectares. This section provides that agricultural land .. which had passed into State possession and was being managed by the local authority at the date when this Law entered into force, shall be restored to the former owners or their heirs subject to a maximum area of 10 hectares per family.

This Law has been rigorously enforced.

Title to 3.80 hectares of agricultural land, plus 1 hectare of woodland, has been restored to the applicant ..

No other parcels of land are now being managed by Dragotești District Council

For all the above reasons, the applicant's appeal must be dismissed as ill-founded "

B. *Relevant domestic law*

1. Section 34 para 1 of Law No. 18/1991 of 19 February 1991 on Real Property defines state-owned land as follows:

"State-owned land is land over which the State acquired title in accordance with the legal provisions in force up to 1 January 1990 and which was registered as such in the National Land Register ..."

The position regarding state-owned agricultural land is governed by sections 35 and 37 of Law No 18/1991. Section 35 provides, *inter alia*, that

"Unbuilt-up land within the boundary of a local authority, which is being managed by that authority and which is deemed to be state property under the provisions of Decree No 712/1966, shall be restored to its former owners or their heirs, as applicable, on request "

Under section 37 para 1, "agricultural land which has passed into state ownership and which at the date of this Law is being managed by the local authority, shall be restored to the former owners or their heirs, subject to a maximum of 10 hectares per family"

2 Decree No 712/1966 has only one section, which provides

"Property in the category referred to in section III of Decree No 218/1960 and in the possession of a socialist organisation shall be considered as state property from the date on which it passed into the possession of the State or another socialist organisation "

3 Section III of Decree No 218/1960 provides

"No action for recovery of property which passed into the possession of the State before this Decree was published, either without any deed of transfer, or under the procedure referred to in Decree No 111/1951, may be brought after the expiry of two years from the date on which the State took possession thereof "

4 Executive Decree No 308/1953 was issued under National Assembly Decree No 70/1953, which governs the transfer of privately-owned agricultural land to the State Executive Decree No 308/1953 laid down the procedure to be followed where land was gifted to the State

5 National Assembly Decree No 444/1953 authorised the transfer of State agricultural land to certain peasants

COMPLAINTS (Extract)

1 The applicant complains that he was deprived of his property other than in the public interest He considers that the courts' refusal to examine the circumstances in which he was dispossessed of his land by the State in 1953, and to restore the land to him on the basis of Law No 18/1991, amount to a violation of Article 1 of Protocol No 1

THE LAW (Extract)

1 The applicant complains, invoking Article 1 of Protocol No 1 to the Convention, that he was deprived of his property by the courts' refusal to restore title to him

Article 1 of Protocol No 1 to the Convention reads as follows (in so far as relevant)

"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 applicant claims that at the point at which he commenced proceedings under Law No 18/1991, the land in question belonged to the State, which had granted use and occupation of it - not title to it - to other natural persons under Decree No 444/1953. He adds that Law No 18/1991 did apply to him, especially as it repeals any legislative provision contrary to it, including, implicitly, Decree No 308/1953.

The Government claim that, at the point at which the applicant commenced proceedings under Law No 18/1991, the land was owned by other individuals, not the State, so that Law No 18/1991 did not apply to the applicant. The Government conclude that the applicant was not entitled to have the land restored to him.

a) The Commission must first examine the question of its competence *ratione temporis*.

The Commission can examine applications only to the extent that these relate to events occurring after the Convention entered into force with respect to the relevant Contracting Party.

The Commission notes, firstly, that Romania ratified the Convention on 20 June 1994. The same day, it also recognised the competence of the Commission to receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by Romania of a right set forth in the Convention.

The Commission then notes that the applicant was dispossessed of his land in 1953, long before Romania ratified the Convention. It follows that the Commission is not competent, *ratione temporis*, to examine the circumstances of the dispossession.

Further, the Commission recalls its established case-law according to which deprivation of ownership is in principle an instantaneous act which does not produce a continuing situation of "deprivation of a right" (see No 7742/76, Dec 4 7 78, D R 14, p 146)

Nor, therefore, is the Commission competent in the instant case to examine the continuing effects produced by the dispossession in 1991, when the applicant sought to avail himself of the restitution measures provided for in Law No 18/1991

However, the Commission notes that the applicant commenced proceedings for restitution of title under Law No 18/1991, and that those proceedings commenced on 23 September 1991 with the decision of the Board attached to Dragotești District Council and ended on 21 July 1994 with the judgment of Hunedoara Regional Court

In these circumstances, the Commission is bound to consider the judicial proceedings in so far as they continued after 20 June 1994, the date on which the Convention entered into force with respect to Romania. It cannot, therefore, reject this part of the application for lack of temporal jurisdiction

b) The Commission must then examine whether the applicant, who alleges a violation of his right to peaceful enjoyment of his possessions, had a property right within the meaning of Article 1 of Protocol No 1 to the Convention

The Commission recalls that Article 1 of Protocol No 1 to the Convention does not guarantee a right to acquire possessions, it "applies only to existing possessions" (see No 11628/85, Dec 9 5 86, D R 47, p 270 at p 273). Moreover, anyone who complains of an interference with one of his property rights must show that such a right existed (see No 7694/76, Dec 14 10 77, D R 12, p 131)

The Commission recalls that, according to the established case law of the Convention organs, "possessions" can be either "existing possessions" (see Eur Court H R , Van der Musselle judgment of 23 November 1983, Series A no 70, p 23, para 48), or assets, including claims, in respect of which there may be at least a "legitimate expectation" that they will be realised (see Eur Court H R , Pine Valley Developments Ltd and Others judgment of 29 November 1991, Series A no 222, p 23, para 51, and Pressos Compania Naviera S A and Others judgment of 20 November 1995, Series A no 332, para 31)

On the facts, the applicant, having failed to obtain title in the recovery action, brought proceedings before the competent internal authorities for restitution of title under Law No 18/1991 on Real Property. In bringing this action, the applicant was seeking to obtain title to a piece of land which had once belonged to him but which, at the time when proceedings commenced, no longer did. Therefore, the proceedings did not relate to an existing possession"

The Commission must now examine whether the applicant could nevertheless claim to have a "legitimate expectation" of seeing his claim under Law No. 18/1991 enforced. The Commission notes that, under the domestic legal provisions, those who could benefit from the restitution measures included the former owners of land which, at the time of their claim, was owned by the State. However, the recovery action had established as *res judicata* that the land at issue belonged to other individuals and not to the State. The applicant did not succeed in demonstrating that the land belonged to the State and so he failed, from the outset, to qualify for restitution under this Law.

It is true that, according to the 30 November 1992 judgment of Târgu-Jiu District Court, the applicant could have obtained title to a piece of land equivalent to the one he had lost, had he requested this. However, the Commission is not called upon to decide whether this could constitute a claim under Law No. 18/1991 and within the meaning of the Commission's case-law, since the applicant did not make any such request.

It follows that the applicant, who no doubt harboured the hope that the land would be restored to him, has not proven that he owned an existing possession or had a claim which he could legitimately expect to see realised.

Further, the Commission recalls that the Convention does not guarantee a right to restitution of property (see, *mutatis mutandis*, No. 23131/93, Dec. 4.3.96, D.R. 85 p. 65 above).

Therefore, the matters raised by the applicant fall outside the scope of Article 1 of Protocol No. 1 to the Convention.

Hence, this part of the application must be rejected as being incompatible, *ratione materiae*, with the provisions of the Convention in accordance with Article 27 para. 2 of the Convention.

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