

## ***Viașu v. Romania* - 75951/01**

Judgment 9.12.2008 [Section III]

### **Article 1 of Protocol No. 1**

#### **Article 1 para. 1 of Protocol No. 1**

#### **Peaceful enjoyment of possessions**

Failure to return land confiscated by the State or to provide equivalent redress:  
*violation*

### **Article 46**

#### **Article 46-2**

#### **Execution of judgment**

#### **Measures of a general character**

Obligation on State to take general measures to secure the right to restitution in kind of confiscated land or to an award of compensation in lieu

*Facts:* The applicant, now deceased, had owned a piece of land which he had been obliged to transfer to the State in 1962. In 1989 he lodged an action to recover the land, under Law no. 18/191. Part of the land he had owned was returned to him, but the remainder could not be restored because it was being used by a State-run mining company. Law no. 18/191 was amended several times, and in the last instance by Law no. 1/2000. Early in 2000, having still not recovered all of his land, the applicant brought several actions seeking to recover another, equivalent piece of land or to obtain compensation for the part he had not recovered. In June 2000 the municipality informed the applicant that his claim had been allowed and that should no land be available he would be entitled to pecuniary compensation. He was subsequently informed that no land was available. The applicant lodged several requests for compensation, but they were rejected, in particular because no provision had been made concerning the ways and means of paying the compensation provided for in the implementing Act for Law no. 1/2000. Two administrative decisions of 2002 confirmed the applicant's entitlement to compensation from the State.

The applicant applied to the authorities on several occasions to secure effective payment of the compensation. In March 2007 the applicant was informed that the land to which he was entitled might be returned to him before the end of 2007, whereupon his compensation claim against the State would no longer be enforceable. Thus far the land had not been returned and no compensation had been paid.

*Law:* Article 1 of Protocol No. 1 – The applicant had a “proprietary interest” which was sufficiently established under domestic law, was certain, irrevocable and enforceable, and which fell within the concept of a “possession”. The Court had to

examine whether the time it had taken the authorities to restore the applicant's land to him or pay him compensation had not placed a disproportionate and excessive burden on him. Several years had passed without the applicant being able to secure the enforcement of the decisions in his favour or any compensation for the land or for the delays. By their conduct the authorities had interfered with the applicant's peaceful enjoyment of his rightful possessions. The organisational difficulties of the competent authorities advanced by the Government as justification were the result of a series of changes to the legislation governing the restitution process. The fact that the changes were ineffective in practice had created a climate of legal uncertainty. As a result, the fair balance that must be struck between the requirements of the general interest and the applicant's right to the peaceful enjoyment of his possessions had been upset and the applicant had had to bear an individual and excessive burden.

*Conclusion:* violation (unanimously).

Article 46 – The facts of the case revealed the existence of a deficiency in the Romanian legal order as a result of which a whole category of individuals had been or were being deprived of the peaceful enjoyment of their possessions. Referring also to its judgment in the case of *Brumărescu v. Romania* [GC] (no. 28342/95, ECHR 1999-VII), the Court found that there was an accumulation of identical violations which reflected a continuing situation that had still not been remedied and in respect of which litigants had no domestic remedy. Furthermore, over a hundred applications pending before the Court lodged by people affected by the restitution laws could in future give rise to further findings of violations of the Convention. There was no doubt that general measures needed to be taken by Romania in connection with the execution of the present judgment. The respondent State must therefore take the appropriate legal and administrative measures in order to guarantee effective and rapid implementation of the right to restitution of property or the payment of compensation. These objectives could be achieved, for example, by amending the present restitution procedure, in which the Court has detected certain shortcomings, and setting in place, as a matter of urgency, simpler, effective procedures based on coherent legislative and regulatory measures, capable of striking a fair balance between the various interests at stake.

Article 41 – EUR 115,000 to Mr Viașu's son in respect of pecuniary and non-pecuniary damage.

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