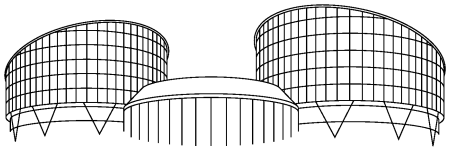

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF COSTACHE AND OTHERS v. ROMANIA

(Application no. 30474/03)

JUDGMENT

STRASBOURG

11 April 2017

This judgment is final but it may be subject to editorial revision.

In the case of Costache and Others v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Vincent A. De Gaetano, *President,*
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 21 March 2017,

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

PROCEDURE

1. The case originated in an application (no. 30474/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Romanian nationals, Mr Ion Costache, Mr Ştefan Costache, Ms Otilia Costache and Ms Anghelina Costache ("the applicants") on 28 August 2003.

2. The first applicant died on 30 January 2009. Ms Floarea Costache, his widow and heir, expressed her wish to pursue the proceedings in his stead.

3. Ms Anghelina Costache died on 22 June 2008. Mr Ştefan Costache and Ms Otilia Costache died on unspecified dates before 2015. No heirs of these three applicants have expressed their wish to pursue the application in their stead.

4. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of the Foreign Affairs.

5. On 8 March 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On an unspecified date in 1995 the applicants brought an action against the Bucharest Municipal Council and the Local Council of the Sixth District of Bucharest, seeking the recovery of property rights over 1,761 sq. m of land located at no. 37-39, Valea-Lungă Str., District No. 6, Bucharest.

7. By a decision of 9 April 1998 the Bucharest County Court allowed the applicants' action on the merits. The decision was not appealed against by the parties and thus became final.

8. On 27 January 1999 the office of the Mayor of Bucharest, relying *inter alia* on Article 322 § 5 of the Romanian Code of Civil Procedure (hereinafter "the RCCP" – see paragraph 13 below), brought extraordinary appeal proceedings against the applicants, seeking review (*revizuire*) of the final judgment of 9 April 1998, and submitting that a new document had appeared concerning the land claimed by the applicants. They referred to a report drafted on 29 December 1998 by the Management Agency for Markets of District No. 6 (*Administraţia Pieţelor sectorul 6 Bucureşti*), which stated that the land claimed by the applicants was occupied by a marketplace.

9. By a decision of 24 September 1999 the Bucharest County Court allowed the action brought by the office of the Mayor of Bucharest on the ground that the document had not been in the file during the first set of proceedings and that it showed that the land claimed by the applicants was occupied by a marketplace.

10. By a decision of 29 January 2002 the Bucharest Court of Appeal allowed an appeal by the applicants on the ground that the document invoked by the office of the Mayor of Bucharest was a document which did not comply with the requirements set out in Article 322 § 5 of the RCCP, since it had not existed at the time when the final decision of 9 April 1998 was delivered. Furthermore, the court found that the domestic authorities had failed during the first set of proceedings to raise the issue of the legal situation of the land before the court without an objective reason and could have recovered the investment made on the land claimed by the applicants by bringing separate proceedings against the applicants and seeking recovery of the money.

11. By a final decision of 14 January 2003 the Supreme Court of Justice allowed the appeal (*recurs*) lodged by the office of the Mayor of Bucharest on the ground that although the document had not existed during the proceedings which had ended by the final judgment of 9 April 1998, it concerned a pre-existing situation. Furthermore, the court found that the provisions of Article 322 § 5 of the RCCP had to be interpreted as referring to documents used by one party to prove, in the light of new elements, facts which generally had not been known by the court which had delivered the judgment under review. In the light of the above, the court held that the concept of "document" had to be interpreted restrictively. Lastly, it considered irrelevant the fact that the document relied on by the party seeking review had been obtained by means of the undertaking of research into other documents which had existed at the time of the judgment of 9 April 1998 and which attested to the same facts, but had not been brought before the court delivering the judgment in question.

12. On 12 February 2002 the applicants filed a request pursuant to Law no. 10/2001 on the rules governing immovable property wrongfully seized by the State between 6 March 1945 and 22 December 1989; they requested the *restitutio in natura* of the plot of land of 1,761 sqm. It appears from the file that in 2010, the request was still pending before the administrative authorities, in so far as further documentation needed to be submitted.

II. RELEVANT DOMESTIC LAW

13. Insofar as relevant and as in force at the time, Article 322 of the RCCP read as follows:

Article 322

"The revision of a judgment in a second-instance court which has become final or [in respect of which] no appeal has been lodged or of a judgment on the merits given by a third-instance court may be requested in the following cases:

...

5. If, following the delivery of the judgement, conclusive documents were discovered which had been withheld by the opposing party or which could not have been brought before the court due to events beyond the parties' control ... ."

THE LAW

I. PRELIMINARY ISSUES

14. The Court notes that Mr Ştefan Costache, Ms Otilia Costache and Ms Anghelina Costache had died after lodging their application (see paragraph 3 above). No person expressed the wish to support their claims in respect of the present application.

15. In view of the above and in so far as there are no special circumstances regarding respect for human rights, as defined in the Convention and its Protocols, which require the continued examination of these applicants' complaints, the Court decides to strike out from its list of cases the application lodged by Mr Ştefan Costache, Ms Otilia Costache and Ms Anghelina Costache, in accordance with Article 37 § 1 a) of the Convention.

16. The Cour further observes that the first applicant, Mr Ion Costache, had died on 30 January 2009 and that his wife and heir, Ms Floarea Costache, has expressed her wish to continue the proceedings in his stead (paragraphe 2 ci-dessus).

17. The Court normally permits the next-of-kin to pursue an application, provided he or she has a legitimate interest, where the original applicant has

died after lodging the application with the Court (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000‑XII; *Larionovs and Tess v. Latvia* (dec.), nos. 45520/04 and 19363/05, § 172, 25 November 2014; and *Paposhvili v. Belgium* [GC], no. 41738/10, § 126, ECHR 2016). Having regard to the subject matter of the application and all the elements in its possession, the Court considers that the first applicant's wife has a legitimate interest in pursuing the application and that she thus has the requisite *locus standi* under Article 34 of the Convention (see, for instance, *Carrella v. Italy*, no. 33955/07, §§ 48-51, 9 September 2014, and *Murray v. the Netherlands* [GC], no. 10511/10, § 79, ECHR 2016).

18. For practical reasons, Mr Ion Costache will continue to be called "the first applicant" in this judgment, even though Ms Floarea Costache should now be regarded as such.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

19. The first applicant complained that the quashing of the final judgment of 9 April 1998 had breached his right to a fair hearing. He invoked Article 6 § 1 of the Convention, which reads in its relevant parts as follows:

Article 6

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

A. Admissibility

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The first applicant claimed that the principle of legal certainty enshrined in Article 6 § 1 of the Convention had been breached in his case, on account of the quashing of the final domestic decision given in his favour.

He further argued that the evidence submitted by the office of the Mayor of Bucharest did not qualify as new evidence capable of leading to the reopening of a case within the meaning of Article 322 § 5 of the RCCP.

22. The Government disagreed. They essentially argued that the review request had been used in order to correct a judicial error and a miscarriage

of justice, so as to ensure that the interests of the third party who was the real owner of the land were taken into account. They further stated that the review procedure had been conducted in a fair and adversarial manner, and in full compliance with the requirements of Article 6 of the Convention.

23. The Court reiterates that the right to a fair hearing before a tribunal, as guaranteed by Article 6 § 1 of the Convention, must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, that the rule of law is part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

24. Legal certainty presupposes respect for the principle of *res judicata* (ibid., § 62), that is to say the principle of the finality of judgments. This principle emphasises the fact that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. A review should not be treated as an appeal in disguise and the mere possibility of two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see for instance *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

25. However, the requirements of legal certainty are not absolute; in certain circumstances, reopening of proceedings may be the most appropriate reparatory measure where Article 6 requirements have not been satisfied (see *Mitrea v. Romania*, no. 26105/03, § 25, 29 July 2008). In any case, the power to conduct an extraordinary review should be exercised by the authorities so as to strike, to the maximum extent possible, a fair balance between the interests at stake (see, *mutatis mutandis*, *Nikitin v. Russia*, no. 50178/99, § 57, ECHR 2004-VIII).

26. The Court also reiterates that it has repeatedly found that the reopening of proceedings based on new evidence has been found to be in breach of Article 6 § 1 of the Convention, where the domestic court's decision allowing such reopening failed to indicate why either the information or the new evidence could not be obtained during the first set of proceedings (see *Popov v. Moldova (no. 2)*, no. 19960/04, §§ 50 to 54, 6 December 2005).

27. The Court notes that in the present case, the Supreme Court of Justice held the report submitted by the office of the Mayor of Bucharest to be a document complying with the requirements of Article 322 § 5 of the RCCP (see paragraph 11 above), even though this report had not existed at the time of the final judgment of 9 April 1998, as required by the said

provision of the RCCP. Moreover, that court re-examined the merits of the ordinary proceedings, making a different interpretation of the evidence already assessed by the lower-instance court.

28. The Court is therefore of the view that in the present case there was a breach of the two principles stated in its case-law: that the review should not be treated as an appeal in disguise and that the domestic court allowing reopening should indicate why the new evidence could not be obtained during the first set of proceedings (see paragraphs 24 and 26 above). In this latter respect, the Court notes that the Supreme Court of Justice stated that there were other documents which had existed at the time of the final judgment of 9 April 1998 and which attested to the same facts as the report of 29 December 1998. While observing that these other documents had not been brought before the court delivering the final judgment in question, the Supreme Court of Justice did not examine the reasons for this failure (see paragraph 11 above).

29. The Court finally considers that it has not been shown that the miscarriage of justice or judicial error allegedly committed by the court in the first set of proceedings in the present case were such as to justify the quashing of the final and binding judgment.

30. The foregoing considerations are sufficient to enable the Court to conclude that, by allowing the final decision of 9 April 1998 to be quashed, the authorities failed to strike a fair balance between the interests at stake and thus infringed the first applicant's right to a fair hearing.

There has accordingly been a violation of Article 6 § 1 of the Convention as a consequence of the non-respect of the legal certainty principle.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

31. The first applicant complained that by quashing the judgment of 9 April 1998, which had recognised his ownership of the land in question, the domestic authorities had deprived them of his possessions. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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."

32. Having regard to its finding relating to Article 6 § 1 (see paragraphs 28-30 above), and in view of the fact that the first applicant has the possibility to ask for the reopening of the proceedings before the

domestic courts (see paragraph 38 below), the Court considers that it is not necessary to examine the admissibility and the merits of the first applicant's complaint under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Stanca Popescu v. Romania*, no. 8727/03, § 112, 7 July 2009; *S.C. IMH Suceava S.R.L. v. Romania*, no. 24935/04, § 45, 29 October 2013; *Rozalia Avram v. Romania*, no. 19037/07, § 46, 16 September 2014; and *S.C. Britanic World S.R.L. v. Romania*, no. 8602/09, § 50, 26 April 2016).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. Lastly, the first applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the length of the proceedings brought by him under the restitution laws and that by not hearing his claims, the domestic authorities had deprived him of his right of access to court and of his possessions (see paragraph 12 above).

34. The Court has examined these complaints, as submitted. However, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention and its Protocols (see *Preda and Others v. Romania*, nos. 9584/02, 33514/02, 38052/02, 25821/03, 29652/03, 3736/03, 17750/03 and 28688/04, §§ 136, 139, 142 and 154, 29 April 2014).

It follows that these complaints must be rejected, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The first applicant claimed 900,000 euros (EUR) in respect of pecuniary damage, this amount representing the value of the plot of land measuring 1,761 sq. m. He further claimed EUR 100,000 in respect of non-pecuniary damage.

37. The Government stated that the claim in respect of pecuniary damage were speculative and unsubstantiated. They furthermore argued that the amount claimed in respect of non-pecuniary damage was highly excessive.

38. The Court has found a violation of Article 6 § 1 of the Convention on account of a breach of the legal certainty principle and, for the reasons outlined in paragraph 32 above, it has considered that it was not necessary to examine the admissibility and the merits of the complaint under Article 1 of Protocol No. 1. In similar cases, account was taken to the fact that Article 509 § 10 of the Code of Civil Procedure allows the applicant to address the national courts with an extraordinary appeal (*revizuire*) in order to restore the situation existing before the breach of the Convention (see among many other authorities, *Sfrijan v. Romania*, no. 20366/04, §§ 48 and 49, 22 November 2007, and *S.C. IMH Suceava S.R.L,* cited above, § 56). Having regard to the principle of subsidiarity, the Court considers that in the circumstances of the present case, the first applicant should firstly address the national courts with an appeal in respect of the violation found. It therefore rejects the first applicant's claims in respect of pecuniary damage (see for instance *Rozalia Avram v. Romania* (just satisfaction), no. 19037/07, § 13, 5 April 2016).

On the other hand, it considers that the first applicant must have sustained non-pecuniary damage and awards him EUR 3,600 under this head.

B. Costs and expenses

39. The first applicant also claimed EUR 50,000 for the costs and expenses incurred before the domestic courts and before the Court.

40. The Government argued that no relevant documents were submitted in support of these claims. In any event, they considered that the amount was speculative and excessive.

41. The Court notes that the first applicant has not submitted any bill in respect of costs and fees. It accordingly dismisses his claim.

C. Default interest

42. 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. *Decides* to strike the application insofar as lodged by Mr Ștefan Costache, Ms Otilia Costache and Ms Anghelina Costache out of its list of cases;

2. *Decides* that Ms Floarea Costache has standing to pursue the application in the stead of her late husband, Mr Ion Costache;

3. *Declares* the complaint brought by Mr Ion Costache under Article 6 § 1 concerning the quashing of the final decision of 9 April 1998 admissible;

4. *Holds* that there is no need to examine the admissibility and merits of the complaint brought by Mr Ion Costache under Article 1 of Protocol No. 1 to the Convention concerning the quashing of the final decision of 9 April 1998;

5. *Declares* the remainder of the application inadmissible;

6. *Holds* that there has been a violation of Article 6 § 1 of the Convention by reason of the quashing of the final decision of 9 April 1998;

7. *Holds*
(a) that the respondent State is to pay Ms Floarea Costache, within three months, EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

8. *Dismisses* the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 11 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Vincent A. De Gaetano
Deputy Registrar	President