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Sfantul Vasile Polona Greek Catholic Parish v. Romania

Press release issued by the Registrar (07.04.2009) / HRWF (08.04.2009) - Website: <http://www.hrwf.org> - Email: info@hrwf.net - The European Court of Human Rights has today notified in writing its Chamber judgment^{1[1]} in the case of **Sfântul Vasile Polonă Greek Catholic Parish v. Romania (application no. 65965/01) concerning two sets of proceedings relating to eviction from and recovery of possession of a church, a parish building and the land on which they stood.**

The Court held unanimously that there had been:

- **a violation of Article 6 § 1** of the European Convention on Human Rights (right to a fair trial within a reasonable time) on account of the length of the proceedings brought by the applicant church; and,
- **a violation of Article 13** of the Convention (right to an effective remedy) on account of the fact that in Romanian law there was no effective remedy whereby the applicant could have complained of the excessive length of the domestic proceedings.

The Court held that it was not necessary to examine the merits of the complaints under Article 9 and Article 1 of Protocol No. 1, whether taken separately or together with Articles 13 and 14.

Under Article 41 of the Convention (just satisfaction), the Court awarded the applicant 4,400 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 for costs and expenses.

1. Principal facts

The applicant is the Sfântul Vasile Polonă Greek Catholic parish, which owes obedience to the Romanian Uniate archdiocese of Alba Iulia and Făgăraș, whose seat is in Bucharest (Romania).

The eviction proceedings

On 19 February 1992 the applicant brought proceedings seeking the eviction of the Orthodox parish from a church, a parish building and the land measuring 2,160 square metres on which they stood, claiming that it was still their rightful owner despite losing them in 1948, when the Greek Catholic church in Romania was dissolved.

^{1[1]} Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The case went through a number of procedural stages and was remitted five times to the court of first instance, the Bucharest County Court and the Bucharest Court of Appeal for failure to examine a complaint, lack of reasoning, and incorrect findings concerning the applicant's capacity to act and the courts' jurisdiction to rule on the applicant's action.

On 24 November 2005 the Court of Appeal held that the applicant had never lost title to the property and ordered the orthodox parish to surrender possession of the church bell-tower, the parish building and the land.

By a judgment of 15 June 2006 the Court of Cassation ruled an appeal by the Orthodox parish null and void for late submission of the grounds of appeal.

The Orthodox archbishopric gave up possession of the church to the applicant parish on 28 December 2006 and of the parish building and the land on 1 February 2007. The applicant parish now enjoys possession of these properties.

While these proceedings were pending the applicant conducted services in a Roman Catholic church in accordance with a strict timetable and in return for payment.

The recovery proceedings

On 18 July 2000 the applicant applied to the Bucharest County Court seeking recovery of the church, the parish building and the land. Its action was declared inadmissible by the County Court on 7 March 2001 on the ground that the courts did not have jurisdiction to rule on the legal situation of the disputed property.

Following an unsuccessful appeal, the applicant parish appealed on points of law. After a number of adjournments the Court of Cassation quashed the judgment of the Court of Appeal and remitted the case to it. Following a second appeal on points of law the Court of Cassation decided to stay its examination of the case on account of the parties' failure to appear despite the summonses which had been sent to them.

The applicant parish then abandoned that claim, having recovered possession of the properties.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 January 2001 and declared admissible on 29 November 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), **President**,
Elisabet **Fura-Sandström** (Sweden),
Corneliu **Bîrsan** (Romania),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Ineta **Ziemele** (Latvia),
Ann **Power** (Ireland), **judges**,

and also Santiago **Quesada**, **Section Registrar**.

3. Summary of the judgment^{2[2]}

^{2[2]} This summary by the Registry does not bind the Court.

Relying in particular on Article 6 § 1 and Article 13, the applicant complained of the excessive length of the two sets of proceedings to recover possession of its property and alleged the infringement of its right to an effective remedy in Romanian law to complain of such length.

Complaints

Decision of the Court

Article 6 § 1

Length of the eviction proceedings

The Court emphasised that the case had been referred to the Romanian courts more than two years before the Convention came into force in respect of Romania, and that the period to be considered in connection with the length of the proceedings was therefore 12 years at four levels of jurisdiction.

The Court considered that neither the complexity of the case nor the conduct of the applicant explained the length of the proceedings and noted that the case had been remitted five times to the court of first instance, the county court or the Court of Appeal and that there were no legal provisions to prevent the case being repeatedly referred back in that way.

Length of the recovery proceedings

The recovery proceedings had lasted more than six years and ten months, at three levels of jurisdiction.

The Court considered that neither the complexity of the case nor the three adjournments requested by the applicant explained the length of these proceedings. It pointed out that the procedural documents did not justify the long intervals, extending to several months, between hearings.

Moreover, for more than six years the Romanian courts had not examined the merits of the case but had only ruled the action inadmissible. Indeed one judgment had been quashed by the Court of Cassation on account of the lower courts' refusal to look into the merits.

The Court concluded that the length of both the eviction and recovery proceedings had been excessive and failed to satisfy the "reasonable time" requirement, in breach of Article 6 § 1.

Article 13

The Romanian Government referred to two remedies available to the applicant parish, namely a disciplinary complaint to the High Council of the Judiciary and an action in the courts.

The Court observed that the first of the remedies mentioned by the Government did not seem to be expressly designed for the solution of a length-of-proceedings problem. It was not certain that such an application by the applicant parish would have had a direct effect on the length of the proceedings and the High Council of the Judiciary could not grant it any compensation for the delays that had already occurred. Disciplinary proceedings against judges could only affect the personal situations of the judges in question, so that such a complaint could not be regarded as an effective remedy.

As regards the second remedy mentioned, the Court noted that there was no relevant case-law, which showed that this theoretical remedy was uncertain in practice. It emphasised the vagueness as to the procedure to be followed and the outcome.

The Court concluded that the Government had not provided sufficient proof that the applicant parish had an effective remedy for the purposes of Article 13 of the Convention whereby it could have raised a complaint relating to the length of the proceedings.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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***The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*

Full judgments:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=65965/01%20%7C%2065965/01&sessionId=21809200&skin=hudoc-pr-en>
