



A Few Considerations with Regard to the Case-Law of the ECHR in Connection to the Enforcement of Final Judgements in the Matter of Land Resources

Szilárd Sztranyiczki

PhD, Associate Professor

Sapientia Hungarian University of Transylvania (Cluj-Napoca, Romania),

Department of Law

E-mail: sztranyiczki@kv.sapientia.ro

Abstract. The case-law of the ECHR, but also national jurisprudence, clearly states that each state must enforce a final and binding court decision in the matter of land ownership within a reasonable time in order for there to be an effective remedy and a just and equitable satisfaction, avoiding a sanction for the violation of Art. 6 of the Convention. In accordance with the case-law of the ECHR, the present study shows that the right to a court would be illusory if the legal order were to allow for a final court ruling to impair the litigant's right to enforcement of the judgment. In accordance with the case-law of the ECHR, the enforcing of a judicial decision must be viewed as part of the lawsuit, and an unreasonably long delay in the enforcement of a binding judgment may breach the Convention. I have reached the conclusion that a person who has obtained a final and binding judgment against the State may not be expected to bring separate enforcement proceedings at the end of legal proceedings. In such instances, State authorities carry the burden to ensure compliance with a judgment against the State.

Keywords: European Convention on Human Rights, lawsuit, land resources, enforcing a final court ruling, fair hearing within a reasonable time, judicial proceedings, sanction, impossibility to enforce

1. Introduction

Regarding disputes in the matter of land resources¹ that are in relation to a conflict between a private entity and a state authority, the latter being represented by the Land Resource Committees, the ECHR has imposed the re-evaluation of national dispute procedures by applying the civil limb of the provisions of Art. 6, paragraph 1 of the Convention.²

The ECHR has established the principle according to which when a civil dispute arises between a public authority and a private entity: in determining whether the provisions of Art. 6 of the Convention are applicable or not, it is irrelevant whether the State is acting in the capacity of a legal entity under private law or public law, the only relevant aspect being the legal nature of the disputed right.³

A significant number of decisions pronounced by the ECHR aim to enforce civil court rulings in the matter of land rights. In compliance with the provisions of Art. 6 of the Convention, states must enforce final domestic judgements without delay in the sense that the right of access to a court must also reflect in the possibility of enforcing a final, binding court decision, which cannot remain without effect to the detriment of the interested party under the rule of law. Consequently, the enforcement of a court judgement cannot be hindered, invalidated, or excessively delayed; it is each state's responsibility to create adequate and sufficient judicial support to allow for court decisions to be implemented within a reasonable, optimal, and foreseeable time.⁴ The ECHR has rightfully stated that the public administration is part of the rule of law with a direct interest in a fair administration of justice. Therefore, if the public administration refuses or omits to enforce a judgement or delays to enforce a judgement, the procedural guarantees provided by the provisions of Art. 6 afforded to the litigant in the judiciary phase remain without reason.⁵

1 The Romanian expression 'fond funciar' (as defined by Art. 1 of Law no 18/1991) refers to the totality of land within the borders of Romania, regardless of use or ownership status. This expression may be translated into English in several different ways such as national land assets, land fund, or land resources. For the purposes of this paper, we have opted to use the translation given by Katherine Verdery (see: Verdery 2003. 96), that of *land resources*.

2 See Pătulea 2006. 190.

3 See Bîrsan 2005. 428 (first footnote and ECHR decision of 12.07.2001, the case of *Farazzini versus Italy*, as cited).

4 See the case of *Burdov versus Russia*, Judgement of 07.05.2002; the case of *Ruianu versus Romania*, Decision of 17.06.2003, published in the Official Gazette of Romania no 1139/02.12.2004; the case of *Costin versus Romania*, Decision of 26.05.2005, published in the Official Gazette of Romania no 367/27.04.2006. Also, see Deleanu 2005. 425.

5 See the case of *Costin versus România*, Decision of 26.05.2005, published in the Official Gazette of Romania no 367/27.04.2006.

2. The Jurisprudence of the ECHR

In addition to the previously mentioned, the ECHR decided that the enforcement of a final and binding court ruling passed by a competent civil court must be considered as part of the 'right to a court' referred to by Art. 6 of the Convention, and if the state administration were to omit or delay the execution of a final court ruling, the rights guaranteed by Art. 6 of the Convention would be deprived of all useful effects, which is inadmissible.⁶

Also, in regard to enforcing judgements in the matter of land resources, it is important to note that Art. 6, paragraph 1 of the Convention only protects final, binding judicial decisions and not decisions which may be subject to review by a higher national court with the possible outcome of being overturned.⁷

In regard to determining which authorities are competent to enforce a final court ruling in the matter of land resources, the ECHR stated that Land Resource Committees have the obligation to put prospective owners (usually the beneficiaries of restitution) in possession on the basis of final court rulings establishing rights *in rem*. In the same way, regarding the requirement of bringing a separate court action before the administrative court against the refusal of a public authority to enforce a final court ruling in the matter of land resources, the ECHR stated that requiring the plaintiff to undertake other steps that would only lead to the same outcome, that of the court ordering competent authorities yet again to enforce a final court decision, would be too expensive and would breach the provisions of Art. 6, paragraph 1 of the Convention.⁸ Moreover, the European Court of Human Rights stated that it would be excessive for a person who has obtained a final judgment against the State to be expected to bring separate enforcement proceedings at the end of the legal proceedings.⁹

In another case, the Court specifies that the right to a court guaranteed by the provisions of Art. 6, paragraph 1 of the Convention also protects the enforcing of a final court ruling, which cannot deprive the litigant's rights of all useful effect in a state that respects the rule of law. Consequently, the enforcing of a court ruling cannot be stopped, annulled, or postponed for a long period of time. In the light of the obligations states have as entities, which, if necessary, must uphold judicial decisions even by the use of force, in matters of enforcing rulings, the Court stated that Romanian authorities have not sanctioned any of the debtors for

6 See Pătulea 2006. 252.

7 See Bîrsan 2005. 478 (Footnote 3).

8 See the case of *Popescu versus Romania*, published in the Official Gazette of Romania no 770/24.08.2005.

9 See the case of *Costin versus Romania*, Decision of 26.05.2005, published in the Official Gazette of Romania no 367/27.04.2006.

failing to comply with final, enforceable court decisions, depriving the provisions of Art. 6, paragraph 1 of the Convention of all useful effect.¹⁰

The right to a court – in the context of Art. 44, paragraph 7 of the Constitution and Art. 603 of the Civil code – conditions the exercise of one's property rights to the tasks of complying with environmental protection laws and ensuring good neighbourliness. Compliance with environmental protection laws and the jurisprudence of the European Court of Human Rights play an important role in the present context.

The burden of environmental risks falls on the provider of public services or on the concessionaire of the services if held accountable for damaging the environment in the course of providing his services and for breaching his obligations regarding the environment that are set forth in the conditions of the concession, which must include the environmental goals of the concession provider and the obligations relating to the protection of the environment by the concessionaire, in accordance with the law. Also, the concession provider can set forth a condition which calls for specific investments that need to be made regarding the protection of the environment. These investments can be defined or can be definable based on the environmental goals that have been set forth.¹¹

The leading principle in environmental law is that the 'polluter pays' for damaging the immediate environment; consequently, the concessionaire will answer for all damages that occur during the period of the concession, regardless of the object of concession.¹²

10 See the case of *Ruianu versus Romania*, Decision of 17.06.2003, published in the Official Gazette no 1139 of 02.12.2004. In this case, the plaintiff invoked the state's lack of enforcing a court ruling under which his neighbours had the obligation to demolish a building they had built on a side of his land. The building had spread farther from the limit of the property by 20 meters in length and 0.90 meters in width. Moreover, a wall and part of the roof of the home were found to occupy land owned by the plaintiff. The defendant refused to demolish the building and used up all of his practical and legal resources, formulating an appeal against the enforcing of the final judicial decision, the court dismissing the appeal. There was a dissenting opinion on this judgement, which argued that the case is about a procedure between two neighbours, who are private individuals, therefore the responsibility of the state cannot be engaged. On the contrary, the plaintiff has given up his right to ask for authorization to demolish the wall himself, at the expense of his debtors, on account of dealing with health issues and not being able to be represented by a member of his family. The state authorities have tried to persuade the neighbours of the plaintiff several times to demolish their house, by use of ordinances, sentences, summations, and bailiffs coming out to the property, wherefore state authorities cannot be accused of not being active enough. Moreover, it is argued in the dissenting opinion that in the present case the disputed right is one that has been attributed by national courts in order to demolish the house of a neighbour, such right not being protected by the Convention, unlike the rights in Art. 6. State authorities cannot be obliged to execute any kind of civil court ruling under the right to court, regardless of the circumstances of the case; the court ruling can be deprived of all useful effect due to circumstances that are independent of the State, such as the insolvency of the private debtor. Therefore, State responsibility cannot be engaged due to these circumstances.

11 See Sărau 2009. 270–271.

12 Id. 271.

The jurisprudence of the ECHR has also incurred the issue of liability concerning environmental issues, an issue that falls under the provisions of Art. 8 of the Convention, according to which:

1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Even though the right to a healthy environment is not guaranteed by the provisions of Article 8 – as it has been duly noticed –, ¹³ this right has become indirectly protected by the Convention, becoming a component of the right to a private life.

The guarantee of the right to a healthy environment places a series of positive and negative obligations upon the State, which can only be fulfilled by the latter taking all adequate and reasonable measures to protect the rights under Article 8, paragraph 1 of the Convention and mainly by following the obligation to put into place a legislative and administrative framework that is capable of efficiently preventing all prejudice against the environment and public health. ¹⁴

In a case ¹⁵ where there had been a violation of the right to a healthy environment, the ECHR found that Romania had breached this right. The court stated in the ruling that the serious and substantial danger to the health of the plaintiffs imposed upon domestic authorities the obligation to fulfil their positive obligation to adopt reasonable and adequate measures that are capable of protecting the interested parties' rights to private life, a home, and a healthy environment.

The Court underlined the great importance of local residents' right to be informed, which implies having access to the conclusions of the preliminary

¹³ See Radu–Cristea 2009. 217–223.

¹⁴ Id. 219.

¹⁵ The case of *Tătar versus Romania* – court ruling pronounced on the date of 27.01.2009. In this case, the plaintiffs claimed that the technological process utilized by S.C. T.S.A. Baia Mare factory posed a threat to their lives, stating that state authorities had remained completely passive. In the ruling pronounced by the ECHR, the court stated that Romania had breached Art. 8 of the Convention by failing to comply with the positive obligation to inform the citizens of Baia Mare and the plaintiffs; this way, it was impossible for the latter to know the potential measures that could have been taken to prevent a similar accident or the way they should handle themselves if a similar accident were to happen again. In this respect, domestic authorities have an obligation to inform the citizens not only before authorizing the production but also after the occurrence of an accident.

study – that assesses an industrial plant’s impact on the environment –, and their right to access to information related to the dangers that local residents can be subjected to. The Court held that Romania had ratified the Aarhus Convention on public participation in the decision-making process and on access to justice in matters concerning the environment.

The unitary character of the civil lawsuit imposes compliance with the guarantees of the right to equitable proceedings in the phase of the trial and in the phase of a forced enforcement action.

In one case,¹⁶ the Court stated that there was no doubt that the local land resource committee – that only invoked the impossibility to enforce the court ruling (due to the lack of available land) after the enforcement proceedings had started – had the obligation to inform the plaintiffs about the motives for the lack of enforcement through a formal decision and to take all necessary measures to start enforcing proceedings of the monetary equivalent.

On the other hand, it was impossible for the plaintiffs to obtain the immediate enforcement of the said ruling, which gave them legitimate hopes of coming into the possession of the land, which ultimately led them to being deprived without justification of the satisfaction and benefit of enjoyment of their property rights over the land. In this context, a delayed enforcement of a court ruling, including an obvious delay in emitting a title of ownership, violates the right to a fair trial and does not respect property rights. Therefore, the ECHR reasonably and justly ruled that the defendant state must pay a monetary award to the interested party under the time limit and imperative provisions set forth by Art. 44, paragraph 2 of the Convention. The monetary award will be calculated to cover all prejudices, and the amount must be converted to Romanian lei at the date of payment; the taxes that are owed can also be added to the final sum. An interest will be added to the resulting sum; the percentage of the interest will be equal to the marginal interest rate used by the Central European Bank, to which three percentage points will be added.

In accordance with the case-law of the ECHR, state authorities that have the obligation to enforce a court ruling cannot create situations that make the enforcement impossible. This way, the court stated in a case¹⁷ that even though the plaintiffs had obtained a final judicial decision from the national courts, which imposed the obligation on state authorities to put the plaintiffs in possession of a precisely identified plot of land, the court ruling was neither enforced nor annulled nor modified as a result of admitting an application for judicial review. The Court notes that only an annulment of the impugned decision or changing the initial obligation with an equivalent obligation could

16 See the case of *Tăculescu and others versus Romania*, Decision of 11.03.2008.

17 See the case of *S. Popescu versus Romania*, Decision of 02.06.2004, published in the Official Gazette of Romania no 770/24.08.2005.

cease the ongoing lack of enforcement. Considering the case-law in the matter, the Court stated that state authorities have failed to put in all necessary effort to enforce a final court ruling in favour of the plaintiff. In conclusion, Art. 6 of the Convention was breached in this case.

In another case,¹⁸ taking under consideration the fact that the initial court ruling was not enforced, the plaintiffs have obtained a new judicial decision, which imposed the obligation on local state authorities to put the plaintiffs in possession and issue property titles to them. Motivated by an impairment of their right to enforcement of both judgments, the plaintiffs stated that Art. 6, paragraph 1 of the Convention and Art. 1 of Protocol no 1 of the Convention had been breached. The court held that the rights to a fair trial and to property had been breached as a result of the authority's lack of enforcing a court ruling on the matter of restitution of property. The court came to the conclusion that state authorities had failed to put in all necessary effort to enforce a final court ruling in a reasonable time in relation to the full and effective restitution of the plots of land to the plaintiffs and mainly in relation to the rest of the land that had been awarded by the court. This way, Art. 6, paragraph 1 of the Convention and Art. 1 of Protocol no 1 of the Convention were breached. Concerning just satisfaction, the Court imposed the obligation on state authorities to effectively return the pieces of land that had not been given back to the plaintiffs and to issue them their property titles and, in the absence of these, to pay the plaintiffs a compensation for material and moral damages. Also, the Court dismissed the Government's argument relating to their budget, meaning that a state authority cannot refuse to pay an enforceable debt as a result of its insolvency as a debtor.

Resolution no 1787 of 26 January 2011 of the Parliamentary Assembly of the Council of Europe with the title of Implementation of Judgments of the European Court of Human Rights brings attention to Romania¹⁹ in matters related to the lack of enforcing a final court ruling as a structural problem. Consequently, state authorities are asked to take all necessary measures to resolve the aforementioned issues.²⁰

According to the interpretation of the European Court of Human Rights, the right to a fair trial, set forth by Art. 6 of the Convention, not only implies that a court ruling is pronounced in a reasonable time but that it is the object of an effective enforcement in the favour of the litigant who has won the case. It is true that the Convention does not only protect human rights in theory – in this case, by awarding damages – but also imperatively orders the actual enforcement of the claim, including the monetary claim.

18 See the case of *Giuglan and others versus Romania*, Decision of 02.12.2008, published in the Official Gazette of Romania no 408/16.06.2009.

19 Together with the issues presented in the case of *Maria Atanasiu and others versus Romania*, Decision of 12.10.2010, published in the Official Gazette of Romania no 778/22.11.2010.

20 Points 7.6 and 10.3 of the Resolution.

Final civil court rulings would be useless without an effective and efficient enforcement procedure. This way, according to the provisions of Art. 6 of the Convention, an efficient procedure that allows the enforcement of court rulings is essential to maintain the rule of law. Thus, Romanian state authorities must adopt all necessary norms and use due diligence *ex officio* in order to ensure that state authorities will comply with court rulings because delaying the enforcement is not acceptable. Also, Romanian state authorities must possess adequate and sufficient legal and monetary tools that guarantee the enforcement of court rulings.

The case-law of the ECHR, but also the case-law of national courts, and the applicable laws clearly and undoubtedly claim that state authorities must enforce court rulings *ex officio*, in a reasonable time in order for there to be an effective remedy and just and equitable satisfaction, in accordance with the provisions of Art. 13 of the Convention in order to avoid court rulings for the violation of Art. 6 of the Convention. The right to a court would be illusory if the legal order of a contracting state were to allow for a final court ruling to remain unenforced and impair the litigant's right to enforcement of the judgment. The enforcing of a judicial decision must be viewed as part of the lawsuit according to Art. 6 of the Convention, and an unreasonably long delay in the enforcement of a binding judgment may breach the Convention. Under these circumstances, a person who has obtained a final and binding judgment against the State may not be expected to bring separate enforcement proceedings at the end of legal proceedings. In such instances, state authorities, who have knowledge of the enforceable title, must act with due diligence and take all necessary measures to ensure compliance with a judgment against the State, including voluntary enforcement.

3. Conclusions

To summarize, we can state the following principles that derive from the case-law of the ECHR in cases related to the enforcement of final court rulings in the matter of land resources:

- if the State administration refuses or omits to enforce a court ruling or delays the enforcing of a ruling, the guarantees set forth by Art. 6 of the Convention that the plaintiff benefited from lose their meaning;
- the passivity of state authorities cannot justify the failure to comply with an enforcement judgement because it is unreasonable to require from a person who has obtained a judgment against state authorities to bring separate enforcement proceedings or separate action against authorities to obtain the execution of an obligation;
- in some cases, the creditor may be required to undertake certain procedural steps in order to allow or speed up the execution of a judgment. The requirement

of the creditor's cooperation must not, however, go beyond what is strictly necessary and does not relieve the authorities of their obligations set forth by the European Convention on Human Rights to act from their own initiative and within a reasonable time, based on the information that they already have in order to comply with the court ruling that has been pronounced against them;

- the beneficiary's obligation required by the law to hand in a written enforcement request together with a copy of their identity card and a copy of the final court ruling invested with a declaration of enforceability are reasonable obligations. These documents are not sufficient if the creditor does not hand in the topographical/cadastral documents required by the law; however, it is important for state authorities to notify him regarding the necessity to hand in these documents;

- if the creditor denies fulfilling these reasonable legal formalities necessary for the enforcement of the court ruling – providing the topographical/cadastral documents –, it gives reason for an objective impossibility to enforce. The creditor's refusal to cooperate when state authorities cannot fulfil their obligations without his cooperation gives reason for an objective impossibility to enforce (for example, refusing to sign a report of putting into possession or the refusal of the creditor to allow access to his land for the measurement of the base area);

- it also gives cause for an objective impossibility to enforce when the court ruling forces state authorities to do something that is too late to be done or cannot be done in the moment of enforcement (for example, carrying out a procedure of putting into possession of an immovable property that has already been transferred to the state's public domain). Also, an impossibility to determine the exact measurements of the base area is another motive for an objective impossibility to enforce (for example, carrying out a procedure of putting into possession of a land without being able to measure the base area); on the other hand, state authorities' refusal to enforce a final court ruling based on arguments that have not been previously brought to the attention of the court cannot give motive for an objective impossibility to enforce. Also, a refusal to enforce, which is based on facts that have previously been analysed and dismissed by the court cannot represent motives for an objective impossibility to enforce.

- a new court ruling that orders state authorities to pay a monetary award calculated for each day of delay in enforcing the court ruling is proof that the enforcement was possible at that time, irrespective of the debtor's claims that he was in an impossibility to execute;

- state authorities cannot get out of enforcing a final court ruling on the grounds of claiming that the national law was not interpreted in the right way or on the grounds of a factual situation on behalf of national courts, calling the merits of the case into question. Even if there were a divergence in interpretation, on the basis of the rule of law in a democratic society, the final ruling of the national

courts takes precedence over the opinion of state authorities or third parties, state authorities being obligated to fully cooperate. Furthermore, in certain situations where state authorities have brought up these arguments, the European Court of Human Rights reminded them that they had not introduced the forms of appeal that the national law required against the aforementioned court ruling.

- state authorities cannot successfully invoke that there is motive for an objective impossibility to enforce a court ruling if the impossibility has not been previously established within a judicial or administrative proceeding, opposable to the creditor. A simple letter/notice/memo from the debtor in which he informs the interested party of the impossibility to execute is not motive for exoneration;

- in the event of obtaining an official order that establishes the impossibility to execute, state authorities have to take all necessary measures to ensure the execution of restitution by equivalent in accordance with land resource laws;

- in the event that state authorities invoke an impossibility to enforce because the legal situation is unclear (for example, the legal situation of the immovable property that the plaintiff needs to be put in possession of is unclear), the ECHR states that it is the state authorities' job to clarify the legal situation, and not the creditor's;

- state authorities have to refrain from acts that lead to an impossibility to execute (for example, selling the land while there is an ongoing dispute over it);

- even though the court ruling does not expressly state in the disposition that state authorities have a certain obligation (for example, there is a ruling that annuls a title of property), the ruling must be enforced because the obligation to execute a court ruling is not limited to its disposition; the reasons given by the court must also be taken into account. If the final court ruling cannot be enforced, there is a need for a separate procedure to determine the details of the enforcement; it is the duty of the state authorities to take all necessary measures.

- the faulty execution of a final court ruling, concluded by the national courts or directly by the ECHR, breaches the Convention (for example, a new court ruling for the reconstitution of a title of property over some land that was later annulled by the court);

- even if the lack of enforcement of a court ruling is the fault of a different state authority, and not the fault of the debtor authority, the state remains responsible for breaching the Convention;

- a simple statement of a state authority saying that they have already executed the court ruling is not sufficient if it is not corroborated with other means of proof;

- a procedure of appeal against enforcement cannot lead to a discussion about the substance of the dispute, calling a final decision into question;

- suspending the enforcement of a court ruling that has been pronounced against the state is in essence not contrary to the provisions of the Convention

because the state also needs to have the possibility to invoke facts that occurred after the final court ruling had been pronounced. Nonetheless, state authorities need to act with due diligence to ensure the swift execution of the ruling;

- in the absence of a court ruling that suspends the execution of a judgement, a refusal to execute a court ruling cannot be justified by the fact that there is a procedure in progress. A state authority's written decision to suspend the enforcement does not justify the lack of enforcement.

- if the creditor is unhappy with the way the enforcement was handled, state authorities have the obligation to exercise necessary diligence in establishing whether state authorities have fulfilled their obligations correctly during the course of a judiciary procedure previously initiated by the unhappy creditor;

- a state's debt that resulted from a final court ruling stays valid and has to be enforced even if the time limit for the right to request forced execution has passed according to national laws. Even if the court establishes that the time limit has passed, it does not remove the state's obligation to enforce a national ruling, taking into consideration that the ruling has not been annulled or modified.

- it is not open to a State authority to cite lack of funds or other resources as an excuse for not honouring a judgment;

- if the creditor and the debtor, who is a state authority, have mutual claims, the claims can be compensated. In this case, it is not necessary to make a distinction between local and state budget.

- formulating an appeal to enforcement in order to establish the exact sum of the debt is not contrary to the provisions of the Convention.

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