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CASES BEFORE THE ECHR INVOLVING ISSUES OF PUBLIC INTERNATIONAL LAW

CASE HIRSCHHORN V. ROMANIA (2007)

Document submitted by
the delegation of Romania

CASE HIRSCHHORN V. ROMANIA (2007)¹

One of the most recent cases against Romania decided by the European Court of Human Rights, *Hirschhorn c. Roumanie*, addresses problems of diplomatic and state immunity in the context of a dispute concerning the restitution of private property abusively nationalised. The Court refers in its decision to the provisions of the *Vienna Convention on Diplomatic Relations* (1961), of the *European Convention on State Immunity* (1972) and of the *UN Convention on Jurisdictional Immunities of States and of their Property* (2004). It is to be noted that Romania is not a party to the European Convention on State Immunity, but it ratified the UN Convention on Jurisdictional Immunities, which is not, yet, in force.

The case concerns the situation of an estate abusively taken over by the State under the previous, communist regime. The former owner claimed back the property rights over this estate and the Romanian courts decided in his favour in 1999. However, due to the fact that the estate was being used as the headquarters of the “United States – Peace Corps”, which rented it from the Romanian Government, the judicial decision was not enforced. The reason invoked both by the organisation and by the Romanian Government was that “United States – Peace Corps” enjoyed diplomatic immunity on the territory of Romania and, thus, the court decision could not be enforced against it. The applicant referred the case to the European Court of Human Rights in 2002, invoking violation of Article 6 para. 1 of the Convention and of Article 1 of Protocol 1 to the Convention.

Even if the Court does not address the problematic issue of the legal regime enjoyed in Romania by the “United States – Peace Corps”, it underlines, as a matter of general rule, that the diplomatic immunity this organisation might enjoy does not preclude at all the transfer, in the patrimony of the applicant, of the property rights on the estate in dispute, rented by the organisation from a Romanian governmental agency. In the view of the Court, the transfer of the property rights does not conflict with the immunity of jurisdiction and inviolability of premises the organisation might enjoy as effect of its potential diplomatic immunity, since it does not in itself involve the expulsion of the tenant, that is of “United States – Peace Corps”. The Court concludes that, given the circumstances of the case, the principle of immunity of state organs is not in itself sufficient to legitimise the inaction of the Romanian authorities, concerning the transfer of the property rights on the estate in the patrimony of the applicant.

The concordant opinion of Judge Caflisch, joined by Judge Ziemele, tries to bring more clarity into the issue of the applicable immunity regime in this case. Judge Calfisch proves in his reasoning that, in view of the provisions of the Vienna Convention and of a bilateral agreement between Romania and US, “United States – Peace Corps” does not enjoy diplomatic immunity on the territory of Romania. At the same time, however, “United States – Peace Corps” is an instrumentality of the US Government, and, thus, it is the US Government that, through the Peace Corps, occupies the premises in dispute. Having reached this conclusion, judge Caflisch argues that the applicable provisions in this case are those comprised in the 2004 UN Convention, which, in itself, codifies the customary international law in the field of State immunities. He refers more in detail to the provisions concerning the immunity from execution and, more specifically, to the exceptions thereto, and concludes that Romania can take no action against the US Government, who is the *de facto* tenant. In his view there are only two ways the Romanian Government can act in this case: either to ask the US Government to evacuate the premises before they are transferred to the applicant – a solution that has no practical effect in case the US Government refuses – or, the solution of the Court, to transfer the property rights to the applicant.

¹ N.B.: *Hirschhorn c. Roumanie* (Requête n° 29294/02), Judgment of 26 July 2007. The text of the decision is available in French only from <http://www.echr.coe.int/echr/- HUDOC database>.