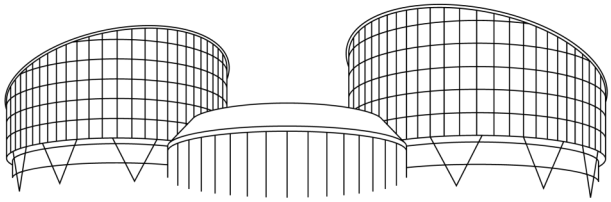

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BUSINESS SUPPORT CENTRE v. BULGARIA

(Application no. 6689/03)

JUDGMENT

STRASBOURG

18 March 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Business Support Centre v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 6689/03) against the Republic of Bulgaria lodged on 13 February 2003 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the "Business centre for assisting small and medium-sized enterprises – Ruse" ("the Business Support Centre"), a Bulgarian non-profit organisation registered in 1996 and based in the town of Ruse.

2. The applicant organisation was represented by Mr K. Donchev, a lawyer practising in Ruse. The Bulgarian Government ("the Government") were represented by their Agents, Ms M. Dimova and Ms S. Atanasova, of the Ministry of Justice.

3. The applicant organisation alleged, in particular, that in spite of its full compliance with its statutory VAT reporting obligations, the domestic authorities had deprived it of the right to deduct an input VAT of 11,400 Bulgarian levs (BGN: 5,828 euros (EUR)) it had paid on a supply solely because the supplier had failed to comply with its own VAT reporting and payment obligations.

4. On 27 November 2007 the Court declared the application partly inadmissible and decided to communicate the above complaint to the Government under Article 1 of Protocol No. 1 to the Convention. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. On 14 December 1998 the Business Support Centre entered into an agreement with the Austrian Ministry of Foreign Affairs to set up a business incubator for small and medium-sized enterprises in the town of Ruse. In the course of implementing the project, the applicant organisation undertook to renovate a property of the Ruse municipal council against being granted the right to use it for the needs of the business incubator for a period of ten years. The renovation was completed on 9 February 2000 and cost BGN 192,761 (EUR 98,558) all of which was paid by the applicant organisation.

B. The taxable transaction

6. On 20 July 1999, apparently in the course of renovating the municipal property, the Business Support Centre received a supply from a sole trader ("the supplier"). It is unclear whether the transaction was for a supply of goods or services. As both entities were registered under the Value Added Tax Act of 1999 ("the VAT Act") the transaction constituted a taxable supply under the said Act.

7. The total cost of the received supply was BGN 68,400 (EUR 34,972), of which BGN 57,000 (EUR 29,144) was the value of the goods or services and BGN 11,400 (EUR 5,828) was value-added tax ("VAT"). The supplier issued invoice no. 126/20.07.1999 to the applicant organisation, which the latter paid in full, including the VAT. The applicant organisation recorded the supply in its accounting records for the month of July 1999 and filed its VAT return for that period on 16 August 1999. The supplier, on the other hand, failed to record the transaction in its accounting records, to file a VAT return and to settle its obligations with the State budget.

C. The tax audit

8. On 11 April 2000 the tax authorities initiated an audit of the applicant organisation, covering, in respect of VAT, the period from 1 July 1999 to 29 February 2000. In the course of the inspection a cross-check of the supplier was conducted in order to ascertain whether it had properly reported and recorded the supply in its accounting records. As a result, its

failure to comply with its VAT reporting and payment obligations was discovered (see paragraph 7 above).

9. On 31 August 2000 the Central Tax Office of the Ruse Territorial Tax Directorate issued the applicant organisation with a tax assessment. In respect of VAT it found that the Business Support Centre had mistakenly deducted five payments it had made to suppliers for input VAT amounting to BGN 25,944.80 (EUR 13,265) and had failed to charge output VAT, in the amount of BGN 38,552.30 (EUR 19,711), on a taxable service it had provided.

10. In particular, in respect of the transaction under invoice no. 126/20.07.1999 the tax authorities refused the applicant organisation the right to deduct the input VAT it had paid, amounting to BGN 11,400 (EUR 5,828), because the supplier had failed to record the transaction in its accounting records, to file a VAT return and to settle his obligations towards the State budget. Thus, they considered that no VAT had been "charged" on the supply in question and that the applicant organisation could not therefore deduct the input VAT.

11. Based on the above conclusions, the tax authorities adjusted the applicant organisation's input and output VAT for the relevant reporting period. In respect of the supply under invoice no. 126/20.07.1999, this had the effect that the applicant organisation had to pay a second time the input VAT of BGN 11,400 (EUR 5,828). In addition, it was ordered to pay interest of BGN 1,396.83 (EUR 714) on that amount.

D. The appeal proceedings

12. On 4 October 2000 the applicant organisation appealed against the tax assessment. In a decision of 6 November 2000 the Ruse Territorial Tax Directorate confirmed in full the findings in the tax assessment in respect of the input VAT of BGN 11,400 (EUR 5,828). The applicant organisation appealed to the courts.

13. On 28 May 2001 the Varna Regional Court found against the applicant organisation, which appealed further. In a final judgment of 13 August 2002 the Supreme Administrative Court upheld the lower court's findings and those of the tax authorities in respect of the input VAT of BGN 11,400 (EUR 5,828). In reaching their decisions, the courts likewise concluded that in so far as the supplier had failed to file VAT returns and to settle his obligations towards the State budget, the applicant organisation had no right to deduct the said input VAT.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. VAT Act of 1999

14. The relevant provisions of the VAT Act have been summarised in the case of *Bulves AD v. Bulgaria* (no. 3991/03, §§ 20-28, 22 January 2009).

B. The possibility of administrative proceedings being reopened as a result of a judgment of the European Court of Human Rights

15. Article 239 (6) of the Code of Administrative Procedure of 2006, provides that an interested party may request the reopening of administrative proceedings in cases where a "judgment of the European Court of Human Rights has found a violation of the Convention". The Supreme Administrative Court has already had occasion to use it to reopen proceedings subsequent to Court judgments for violations of Articles 6, 8 and 13 of the Convention (решение № 2476 от 5.03.2008 г. на ВАС по адм. д. № 12127/2007 г., 5-членен с-в, and определение № 4293 от 10.04.2008 г. на ВАС по адм. д. № 9178/2007 г., III о.).

III. COMMUNITY LAW

16. The relevance of the *acquis communautaire* and the findings of the Court of Justice of the European Communities in joined cases C 354/03, C-355/03 and C-484/03, *Optigen Ltd (C-354/03), Fulcrum Electronics Ltd (C-355/03) and Bond House Systems Ltd (C 484/03) v Commissioners of Customs & Excise* and in joined Cases C 439/04 and C-440/04, *Axel Kittel v Belgian State (C-439/04) and Belgian State v Recolta Recycling SPRL (C-440/04)* (ECR 2006, page I 06161) have also been summarised in the case of *Bulves AD* (§§ 29 32, cited above).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

17. The applicant organisation complained under Article 1 of Protocol No. 1 that, in spite of its full compliance with its own VAT

reporting obligations, the domestic authorities had deprived it of the right to deduct the input VAT of BGN 11,400 (EUR 5,828) solely because its supplier had failed to comply with its VAT reporting and payment obligations. The applicant organisation considered that it had a "legitimate expectation", within the meaning of Article 1 of Protocol No. 1, to the right to deduct the input VAT, which had arisen once it had fully complied with its own VAT reporting and payment obligations and once the prerequisites for making use of such a VAT deduction had been met.

Article 1 of Protocol No. 1 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."

18. The Government considered the complaint to be of a fourth-instance nature and stated that Bulgarian tax legislation had been harmonised over the last few years with European standards.

A. Admissibility

19. The Court notes that the applicant organisation's complaint under Article 6 of the Convention in respect of the alleged unfairness of the appeal proceedings was declared inadmissible by the Court on 27 November 2007 (see paragraph 4 above). Accordingly, the Government's reliance on the fourth-instance doctrine has no bearing on the complaint currently before the Court, which does not concern the assessment of evidence before the domestic courts or the result of the proceedings, but rather whether the actions of the authorities amounted to interference contrary to Article 1 of Protocol No. 1 to the Convention.

20. Accordingly, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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 Court notes at the outset that in the leading case of *Bulves AD* (cited above) it found a violation of the applicant company's right to peaceful enjoyment of its possession and concluded as follows:

> "71. Considering the timely and full discharge by the applicant company of its VAT reporting obligations, its inability to secure compliance by its supplier with its VAT reporting obligations and the fact that there was no fraud in relation to the VAT system of which the applicant company had knowledge or the means to obtain such knowledge, the Court finds that the latter should not have been required to bear the full consequences of its supplier's failure to discharge its VAT reporting obligations in timely fashion, by being refused the right to deduct the input VAT and, as a result, being ordered to pay the VAT a second time, plus interest. The Court considers that this amounted to an excessive individual burden on the applicant company which upset the fair balance that must be maintained between the demands of the general interest of the community and the requirements of the protection of the right of property."

22. In view of the similarity of the facts and the complaint, the Court relies entirely on its analysis and conclusions in the judgment in the case of *Bulves AD* (§§ 33-71, cited above) which it finds to be just as pertinent.

23. The Court notes that the only discernible difference between the two cases is the uncertainty as to whether the supplier did eventually settle his obligations towards the State budget stemming from the payment by the applicant organisation of the input VAT of BGN 11,400 (EUR 5,828) (unlike in *Bulves AD*, §§ 11, 13 and 67, cited above). It observes, however, that that depended entirely on the actions of the tax authorities who, once they had discovered the supplier's failure to fully and timely discharge its VAT reporting and payment obligations, could have initiated a tax audit and instituted proceedings against it in order to collect any such late payments together with interest. Accordingly, this does not have a direct bearing on the Court's assessment in respect of the applicant organisation.

24. In addition, there are no assertions that there was fraud in relation to the VAT system of which the applicant organisation had knowledge or the means to obtain such knowledge.

25. In conclusion, the Government have not put forward any fact or argument capable of persuading the Court to reach a conclusion in the present case different from that in the leading case of *Bulves AD* (cited above).

26. There has accordingly been a violation of Article 1 of Protocol No. 1 in respect of the input VAT of BGN 11,400 (EUR 5,828).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant organisation claimed 285,541.70 Bulgarian levs (BGN : 145,997 euros (EUR)) in respect of pecuniary damage. The amount claimed comprised (a) BGN 52,535.37 (EUR 26,861) representing the value of the adjustments of the input and output VAT ordered by the tax authorities (see paragraphs 9 and 11 above); (b) BGN 2,221.07 (EUR 1,135) representing the interest charged by the tax authorities; (c) BGN 56,523.51 (EUR 28,900) representing the statutory interest on the claimed amounts from 1 January 2001 to 30 June 2008; (d) BGN 151,744.27 (EUR 77,586) representing the present-day market value of an office in the centre of Ruse that the applicant organisation was planning to purchase at the time of the events but was allegedly unable to as a result of the tax assessment; and (e) BGN 22,517.48 (EUR 11,513) representing the rental payments incurred over the period.

29. The Government challenged the amounts claimed and considered that if a violation was found by the Court then the most appropriate redress would be for the applicant organisation to request a reopening of the administrative proceedings under Article 239 (6) of the Code of Administrative Procedure (see paragraph 15 above).

30. The Court considers it necessary to point out that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. In the case of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of this provision not been disregarded (see *Lungoci v. Romania*, no. 62710/00, § 55, 26 January 2006; *Yanakiev v. Bulgaria*, no. 40476/98, § 89, 10 August 2006; and *Kostadin Mihaylov v. Bulgaria*, no. 17868/07, § 59, 27 March 2008). The Court has therefore held on certain occasions that the most appropriate form of redress in cases where it finds a breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see *Lungoci*, § 56; *Yanakiev*, § 90; and *Kostadin Mihaylov*, § 60, all cited above).

31. In the present case, while the Court considers the possibility of reopening the proceedings at the domestic level an appropriate and a preferred form of redress in cases where it also finds a breach of Article 1 of Protocol No. 1 to the Convention, it considers that in the special

circumstances of the present case that would not be possible. In particular, given the already excessive length of the domestic proceedings and the practice of the domestic courts to apply and interpret strictly the legislation in question, the Court finds that a reopening of the proceedings and a re-examination the case would not be a sufficient and adequate redress for the particular violation found in the present case.

32. Accordingly, in view of the violation found in respect of the input VAT of BGN 11,400 (EUR 5,828: see paragraph 26 above), the Court considers that, as regards pecuniary damage the most suitable form of reparation would be to award the value of the said VAT, plus the interest that was charged on the aforesaid amount of BGN 1,396.83 (EUR 714 : see paragraph 11 above) (see *S.A. Dangeville v. France*, no. 36677/97, § 70, ECHR 2002-III, and *Bulves AD*, § 82, cited above).

Thus, the Court awards the sum of EUR 6,542 for pecuniary damage.

B. Costs and expenses

33. The applicant organisation claimed BGN 1,283.14 (EUR 656) in respect of costs and expenses incurred in the proceedings before the domestic courts. The amount claimed comprised the court fee for appealing against the tax assessment (BGN 50 (EUR 26)), travel expenses for lodging the said appeal (BGN 28 (EUR 14)) and the lawyer's fees before the domestic courts (BGN 1,200 (EUR 613)). In support of its claim, the applicant organisation furnished receipts for payment of the court fee and the travel expenses, and a legal-fees agreement with its lawyer.

34. The Government did not directly comment on the applicant organisation's claim for costs and expenses.

35. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award in full the sums incurred for costs and expenses, which total EUR 656.

C. Default interest

36. The Court considers it appropriate that the default interest 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. *Declares* admissible the complaint under Article 1 of Protocol No. 1 to the Convention regarding the input VAT of BGN 11,400 (EUR 5,828);

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay to the applicant organisation, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) in respect of pecuniary damage – EUR 6,542 (six thousand five hundred and forty-two euros);
      (ii) in respect of costs and expenses – EUR 656 (six hundred and fifty-six euros);
      (iii) any tax that may be chargeable to the applicant organisation on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's organisation's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President