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

FIFTH SECTION

CASE OF KUSHOGLU v. BULGARIA

(Application no. 48191/99)

JUDGMENT
(just satisfaction)

STRASBOURG

3 July 2008

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 Kushoglu v. Bulgaria,

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Volodymyr Butkevych,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 48191/99) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mrs Ayten Kushoglu and Mr Mehmet Kushoglu ("the applicants"), on 28 September 1998. The applicants have both Bulgarian and Turkish nationality.

2. In a judgment delivered on 10 May 2007 ("the principal judgment"), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention (*Kushoglu v. Bulgaria*, no. 48191/99, 10 May 2007).

3. Under Article 41 of the Convention the applicants sought just satisfaction for pecuniary and non-pecuniary damage and costs.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within six months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 69, and point 3 of the operative provisions).

5. The applicants, but not the Government, filed observations.

THE LAW

6. 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

1. Pecuniary damage

7. The applicants sought restitution of their property or, if that was not possible, its market value which in their view was between 50,000 and 60,000 euros (EUR). The applicants also claimed 20,500 Bulgarian levs (BGN) (the equivalent of approximately EUR 10,400) in respect of loss of profit, calculated on the basis of the rent the applicants would allegedly have earned for the period 1989-2008.

8. In their submissions prior to the adoption of the principal judgment the Government stated that the applicants could have sought restitution under the Law on Restitution of Real Property of Bulgarian Citizens of Turkish Origin Who Sought to Travel to Turkey or to Other Countries in the Period May-September 1989, if they met the relevant conditions. The Government also stated that the applicants could not expect to recover property belonging to third persons.

9. In accordance with the Court's case-law, where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest. In particular, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

10. In so far as the Government may be understood as arguing that the internal law allowed for reparation to be made, the Court notes that the legislation referred to by the Government was not applicable in the applicants' case as they did not return to Bulgaria within the relevant period (see paragraphs 7, 8 and 34 of the principal judgment).

11. In its principal judgment in the present case the Court found that there had been a violation of the general rule of peaceful enjoyment of possessions, enshrined in the first sentence of Article 1 § 1 of Protocol No. 1 to the Convention, in that the authorities failed to assist the applicants in recovering their property from third persons. This was the result of judicial decisions which did not meet the Convention requirement of lawfulness.

12. The Court cannot accept the applicants' claim for restitution. It notes that the present case does not concern an illegal dispossession of property by the State. Therefore, the State duty to wipe out the consequences of the violation of the Convention does not encompass an obligation to return the real estate at issue to the applicants. Furthermore, the Court's judgments in the present case are without prejudice to the rights of Ms A. and Mr N. who possess the property (see paragraphs 10-26 of the principal judgment).

13. Having regard to the facts of the case and the nature of the violation found, the Court considers that the payment of a sum of money to the applicants will provide redress for the pecuniary damage suffered by them as a consequence of the breach of the Convention.

14. As far as can be established from the information and documents submitted by the parties, the property at issue is a two-storey house of approximately 120 square metres and a 330 square-metre yard. The house is unfinished in that the external walls have no coating. The property is located in Dulovo, a small town in north-eastern Bulgaria. The Court notes that the applicants have not submitted a valuation report and has had regard to information at its disposal about real estate prices in Bulgaria.

15. In the Court's view, however, the pecuniary damage suffered by the applicants as a direct result of the violation of the Convention for which the authorities were responsible was less than the value of the disputed house and yard. It reiterates that the present case does not concern a deprivation of property in the sense of Article 1 of Protocol No. 1. It also notes that even if the authorities had acted in conformity with that provision the applicants would not have been entitled to unconditional recovery of possession since under Bulgarian law Ms A. and Mr N. could retain the property pending payment by the applicants of compensation for improvements, increase in value and costs (section 72 of the Bulgarian Property Act). The Court also notes that in July 1989 the applicants received 19,288 Bulgarian levs (BGL) for the property and they have not claimed that the municipality had ever sought restitution of this amount following the judgment of 17 January 1995 declaring the July 1989 transaction null and void (see paragraphs 9 and 15 of the principal judgment).

16. As to the applicants' claim for loss of profit, the Court finds that it is speculative and unsubstantiated: it is unclear whether the applicants would have been able to enter into possession of the property and, if so, when, and it is unclear whether the applicants would have rented out the property.

17. Having regard to the above considerations, the Court awards to the applicants EUR 9,000 in respect of all pecuniary damage.

2. Non-pecuniary damage

18. The applicants stated that they had suffered distress as a result of the violation of their rights and asked the Court to award an equitable amount under this head. The Government considered that the applicants had not suffered any damage.

19. The Court considers that the authorities' unlawful refusal to recognise the applicants' property rights must have caused them distress. Ruling on an equitable basis, it awards them jointly EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

20. The applicants stated that they should be compensated for the court fees and lawyers' fees they had had to pay in the proceedings before the domestic courts between 1992 and 1998. The amount paid by them had been BGL 23,350 ("old" Bulgarian levs). The applicants submitted a detailed account of the sums paid. The Government stated that only costs before the Court could be recovered.

21. Having regard to the facts of the case (see paragraphs 15-26 of the principal judgment), the Court accepts that a significant part of the costs incurred by the applicants before the domestic courts has been necessarily incurred in their attempt to obtain redress for the domestic courts' failure to recognise their property rights and, therefore, directly relates to the violation of the Convention found in this case.

22. The Court also observes that, owing to the depreciation of the Bulgarian currency in the period 1992-1999, the amount claimed by the applicants is currently the equivalent of approximately EUR 13. It is evident, however, that the real value of the sums spent by the applicants was more significant at the time they were spent. The Court also notes that the applicants sought recovery of the real costs incurred by them.

23. In these specific circumstances, the Court must determine an amount reasonably related to the value of the expenses incurred. Having regard to the relevant facts, it awards EUR 100 in respect of costs and expenses.

C. Default interest

24. 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. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs (BGN) at the rate applicable at the date of settlement:

(i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

2. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President