FIRST SECTION[1]

# CASE OF KEHAYA AND OTHERS v. BULGARIA

*(Applications nos.47797/99 and 68698/01)*

JUDGMENT
(just satisfaction)

STRASBOURG

14 June 2007

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

---

1 . In its composition before 1 April 2006

**In the case of Kehaya and Others v. Bulgaria,**

The European Court of Human Rights (First Section[1]), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 24 May 2007,

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

# PROCEDURE

1. The case originated in two applications (nos. 47797/99 and 68698/01) against the Republic of Bulgaria. Application no. 47797/99 was lodged on 25 May 1998 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 Mr Aliosman Ahmed Kehaya (born on 17 January 1947). It was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

2. Application no. 68698/01 was lodged with the Court on 7 February 2001 by Mr Ahmed Halil Bozov (born on 4 January 1938), Mr Ahmed Rahmanov Bozov (born on 29 November 1956), Ms Aishe Rahmanova Kachanova (born on 24 September 1951), Mr Halil Rahman Bozov (born on 26 January 1961), Mr Mustafa Halil Bozov (born on 4 July 1935), Ms Gulfize Halilova Osmandjikova (born on 10 October 1945), Mr Redjep Salihov Musov (born on born on 21 March 1954), Ms Aishe Mustafova Kestendjieva (born on 23 October 1932), Mr Bairyam Ahmed Bairyam (born on 18 December 1944) , Mr Halil Ahmed Kehaya (born on 18 May 1949), Mr Salih Nebi Boza (born on 29 October 1951), Mr Redjep Nebi Boza (born on 12 July 1954), Mr Kadri Nebi Boza (born on 7 January 1965) and Mr Halil Salih Musov (born on 11 November 1958).

3. Initially, applicants under application no. 68698/01 were also Mrs Fatme Nebi Trampova (born in 1949), Mr Ahmed Ahmed Kehaya (born in 1954), Mr Mihail Damianov Tanev (born in 1955), Mr Milen Damianov Tanev (born in 1957), Mr Stoyan Damianov Tanev (born in 1948), Mr Djemile Damianova Zaimova (born in 1950) and Mr Ahmed Sali

[1] . In its composition before 1 April 2006

Musov (born in 1961). In November 2003 they all declared that they did not maintain their applications and did not maintain their claims concerning land in the Okusha area, near Sarnitza.

4. In a judgment delivered on 12 January 2006 ("the principal judgment"), the Court held that there had been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In particular, as regards Article 1 of Protocol No. 1, the Court found that there had been no justification for the deprivation of property in issue (*Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, 12 January 2006).

5. Under Article 41 of the Convention the applicants had sought just satisfaction of approximately 250,000 euros (EUR) for damage sustained and costs and expenses.

6. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary and non-pecuniary damage and the costs incurred for a valuation report, the Court reserved it and invited the Government and the applicants to submit, within two months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid*., §§ 91 and 97, and point 5 of the operative provisions).

7. The applicants and the Government each filed observations. Three of the applicants were represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Government were represented by their co-agent Ms M. Kotseva, of the Ministry of Justice.

# THE LAW

8. 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*

#### a) The applicants' claims

9. In respect of pecuniary damage, the applicants stated that they should be given back their land.

10. The applicants presented a valuation report prepared by an expert, who had been asked to assess the value of 25.6 ha of land (all the land that

was the subject matter of the 1997-2000 *rei-vindicatio* proceedings), including the 14 ha that are the subject matter of the present case (see paragraphs 15-19 and 20-26 of the principal judgment). The expert found that the "fair value" of the 25.6 ha he assessed was 237,955 euros (EUR). As far as it can be deducted from the information provided by the expert, the value of the 14 ha that are the subject matter of the present case was assessed by him at approximately EUR 133,000.

11. The expert relied on the characteristics of the land, which was located in the Rhodoppi mountains, in an area of natural beauty in which tourism was developing rapidly. The plots were located along the road between Sarnitza and Dospat and some of them bordered the Dospat reservoir. The expert also relied on information about prices paid in four recent transactions involving land in the region (without providing details of these transactions). Having regard to the above criteria, the expert determined a "comparative market price" per square metre (between EUR 0.75 and EUR 2.25, depending on the quality of the respective part of the land). He then calculated the overall "comparative market price" and then the "fair value" of the land. The figure given as "fair value" of the land, approximately EUR 133, 000 for the 14 ha under consideration, represents approximately 68 % of the land's "comparative market price" as determined by the expert.

**b) The Government's position**

12. In reply to the applicants' claims, the Government submitted a valuation report prepared by another expert.

13. The expert noted that in accordance with the latest area map, issued by the municipal authorities, the land at issue covered 13.3 ha, not 14 ha. The expert also criticised the approach used in the report submitted by the applicants, stating, *inter alia*, that in the absence of reliable market data, the land's value should be assessed in accordance with the prices fixed by legislation for tax purposes. Also, since there had not been an official decision declaring the area "a resort", no surcharge on account of the area's attractiveness for tourism should be applied. Using prices determined under the Basis Prices Regulations 2003, adopted by Council of Ministers Decision no. 252 of 6 November 2003, amended in 2004 and 2005, the expert arrived at the conclusion that the land's value was the equivalent of approximately EUR 54,000.

**c) The Court's assessment**

*(i) The land at issue and each applicant's share*

14. In so far as the Government alleged that the surface of the plots of land at issue was 13.3 ha and not 14 ha, the Court considers that it is not necessary to decide this issue in the present judgment, in so far as there is

no dispute about the identity of the plots. The decisive document in this respect must be the applicants' notary deed (no. 50, book VII in notary case 1771/1997, executed on 20 August 1997 by the notary Veselin Angelov Petrichev).

15. The notary deed also sets out the co-owners' shares and the Court will use this information as a basis for its decision. The total number of shares in the property was 108 and the following applicants had the following number of shares:

Mr Ahmed Halil Bozov – 12
Mr Ahmed Rahmanov Bozov – 4
Ms Aishe Rahmanova Kachanova – 4
Mr Halil Rahman Bozov – 4
Mr Mustafa Halil Bozov – 12
Ms Gulfize Halilova Osmandjikova – 12
Ms Aishe Mustafova Kestendjieva – 12
Mr Bairyam Ahmed Bairyam- 3
Mr Halil Ahmed Kehaya – 3
Mr Salih Nebi Boza – 3
Mr Redjep Nebi Boza – 3
Mr Kadri Nebi Boza – 3
Mr Aliosman Ahmed Kehaya - 3

16. The remaining two applicants, Mr Halil Salih Musov and Mr Redjep Salihov Musov, submitted that they were the heirs of Mrs Zeinena Halilova Musova who, according to the above mentioned notary deed, had had twelve shares in the property. The Government did not comment. The Court will therefore proceed on the basis that Mr Halil Salih Musov and Mr Redjep Salihov Musov owned six shares each.

*(ii) The Court's award*

17. The Court reiterates that, in principle, a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

18. In the principal judgment the Court found that the applicants had been deprived of their property by virtue of the Supreme Court of Cassation's judgment of 10 October 2000, which was contrary to the principle of legal certainty as it disregarded the final nature of the Supreme Court's judgment of 20 September 1996, determining the applicants' property rights. The deprivation of property was thus unlawful in the sense

of the Convention and contrary to Article 1 of Protocol No. 1 thereto (see paragraphs 74-77 of the principal judgment).

19. In cases concerning unlawful dispossession of property, the Court ordered the return to the applicants of the property that had been taken away from them and, failing such restitution, the payment of a sum of money reflecting the value of the property (see the above cited, *Papamichalopoulos and Others v. Greece* judgment and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, ECHR 2001-I).

20. Having regard to the nature of the violation of Article 1 of Protocol No. 1 to the Convention found in the present case, the Court considers that the restoration of the applicants' ownership rights and the return of their part of the land in their possession would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1.

21. In making this holding the Court takes into account the fact that the land at issue was the joint property of the heirs of Mrs Fatma Bozova and that not all her heirs are among the applicants. While the return of the whole property to all heirs of Mrs Fatma Bozova will constitute compliance with the present judgment, the Court only has jurisdiction to order the restoration of the applicants' part of the plots as described in the notary deed mentioned in paragraph 14 above.

22. Failing such restitution within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the Court holds that the respondent State is to pay each of the applicants, for damage, a sum of money representing his or her share of the current value of the land.

23. As to the determination of this amount, the Court takes into account the experts' reports submitted by the parties and information available to it about property prices in Bulgaria. The Court notes that the expert report presented by the applicants does not provide sufficient detail and considers, therefore, that the final figure arrived at by the expert cannot be accepted as fully reliable. On the other hand, the Court cannot accept the Government's position that in the absence of a developed market of agricultural land in the area it should use the price fixed by legislation for tax purposes. It has not been claimed by the Government that the price used for tax purposes represented the real value of the land. Also, in so far as it is not disputed that the land is located in an area of natural beauty in which tourism is developing, the fact that it had not been declared “a resort” is not of significant importance.

24. Having regard to the above, the Court determines that the amount representing the value of the whole property at issue in the instant case (the plots of land of approximately 13.3 or 14 ha in the Okusha area) is EUR 95,000. The property was co-owned in 108 shares. The value of each share is therefore determined at EUR 880.

25. Having regard to the shares held by each applicant, as described in paragraphs 15 and 16 above, the Court holds that failing restitution of the land, those of the applicants who owned twelve shares each should be paid EUR 10,560 each, the applicants who owned six shares each should be paid EUR 5,230 each, the applicants who owned four shares each should be paid EUR 3,520 each and the applicants who owned three shares each should be paid EUR 2,640 each.

26. The total amount to be paid to the applicants for pecuniary damage in case of non-restitution of their land is thus EUR 79,200.

*2. Non-pecuniary damage*

27. In respect of non-pecuniary damage, each of the applicants claimed EUR 20,000 for the violations of Article 6 and Article 1 of Protocol No. 1 related to the effects of the judgment of 10 October 2000 of the Supreme Court of Cassation and the taking of the applicants' land. Mr Aliosman Kehaya claimed an additional EUR 3,000 in respect of the violations of the Convention related to the fines imposed on him.

28. The Government did not comment.

29. The Court considers that the applicants have suffered distress on account of the violations of their right to a fair trial and their right to peaceful enjoyment of their property. Deciding on an equitable basis, it awards EUR 1,500 in respect of non-pecuniary damage to each of the applicants except Mr Aliosman Kehaya, to whom it awards EUR 2,000 for non-pecuniary damage, having regard to the additional violation of Article 1 of Protocol No. 1 found in his case (see paragraphs 79-84 of the principal judgment).

## B. Costs and expenses

30. In its principal judgment the Court reserved its decision on the applicants' claim for costs and expenses in so far as it concerned the cost allegedly incurred for a valuation report. The applicants claimed in this respect the sum of EUR 1,400. The applicants did not claim costs in respect of the proceedings under Article 41 of the Convention. The Government did not comment.

31. The Court considers that the expenses made by the applicants for a valuation report have been actually and necessarily incurred, but cannot accept them as reasonable as to quantum. The applicants have not shown that the amount claimed is justified with regard to the average experts' fees in Bulgaria.

32. Deciding on an equitable basis the Court awards to all applicants jointly EUR 500 in respect of the costs for a valuation report.

### C. Default interest

33. 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* that the respondent State is to return to the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the ownership and possession of their part of the land at issue;

2. *Holds* that, failing such restitution, the respondent State is to pay the applicants, within the same period of three months, EUR 79,200 (seventy nine thousand two hundred euros) in respect of pecuniary damage, payable as follows:
   (i) EUR 10,560 (ten thousand five hundred and sixty euros) to each of the following four applicants: Mr Ahmed Halil Bozov, Mr Mustafa Halil Bozov, Ms Gulfize Halilova Osmandjikova and Ms Aishe Mustafova Kestendjieva;
   (ii) EUR 5,230 (five thousand two hundred and thirty euros) to each of the following two applicants: Mr Halil Salih Musov and Mr Redjep Salihov Musov;
   (iii) EUR 3,520 (three thousand five hundred and twenty euros) to each of the following three applicants: Mr Ahmed Rahmanov Bozov, Ms Aishe Rahmanova Kachanova and Mr Halil Rahman Bozov;
   (iv) EUR 2,640 (two thousand six hundred and forty euros) to each of the following six applicants: Mr Aliosman Ahmed Kehaya, Mr Bairyam Ahmed Bairyam, Mr Halil Ahmed Kehaya, Mr Salih Nebi Boza, Mr Redjep Nebi Boza and Mr Kadri Nebi Boza;
   (v) any tax that may be chargeable on the above amounts.

3. *Holds* 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:
   (i) in respect of non-pecuniary damage, EUR 2,000 (two thousand euros) to Mr Aliosman Kehaya and EUR 1,500 (one thousand five hundred euros) to each of the remaining fourteen applicants;
   (ii) in respect of costs and expenses, EUR 500 (five hundred euros) jointly to all applicants;

(iii) any tax that may be chargeable on the above amounts;

4. *Holds* that from the expiry of the periods mentioned under (2) and (3) above until settlement simple interest shall be payable on the amounts under (2) and (3) at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President