



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

FIRST SECTION

CASE OF KEHAYA AND OTHERS v. BULGARIA

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

JUDGMENT¹

STRASBOURG

12 January 2006

FINAL

12/04/2006

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 This version was rectified on 29 November 2006 under Rule 81 of the Rules of Court

In the case of Kehaya and Others v. Bulgaria,

The European Court of Human Rights (First Section), 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. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 8 December 2005,

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.

2. 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).

3. 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 21 March 1954), Ms Aishe Mustafafova 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).

4. All applicants are Bulgarian nationals. In December 2004 they retained Mr M. Ekimdjiev, a lawyer practising in Plovdiv, as their counsel.

In April 2005 two of the applicants, apparently acting on behalf of all applicants, stated that they were no longer represented by Mr Ekimdjev.

5. The Bulgarian Government (“the Government”) were represented by their agents Ms Margarita Dimova and Ms Mariana Karadjova of the Ministry of Justice.

6. The applicants alleged, in particular, that by disregarding a final judgment establishing their property rights over several plots of land, the courts decided arbitrarily in the 1997-2000 civil proceedings against them and thus deprived them of their property. The applicants also complained that they had been fined for having used their own land and could not obtain adequate redress as the courts had arbitrarily upheld most of the fines. Mr Aliosman Kehaya complained, in addition, that he had never been summoned to the proceedings concerning the fines against him.

7. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the cases (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

8. The Chamber decided to join the proceedings in the applications (Rule 42 § 1).

9. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

10. By a decision of 9 December 2004, the Court declared the applications admissible.

11. The applicants, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The restitution proceedings

12. All applicants live in Sarnitza, the region of Velingrad. They are the heirs of Mrs Fatma Bozova, who possessed land in the vicinity of Sarnitza until the collectivisation of agricultural land in the 1950s.

13. In 1991 Parliament adopted the Agricultural Land Act which provided for the restitution of “collectivised” agricultural land. The former owners, or their heirs, could request the restoration of their right under certain conditions (see paragraphs 34 and 35 below).

14. On unspecified dates the applicants requested the restitution of several plots of land.

15. By decision of 19 February 1993, the local agricultural land commission partially refused the applicants' requests. The refusal concerned, *inter alia*, plots covering 14 ha in the Okusha area, adjacent to the Dospat reservoir, in the vicinity of Sarnitza, which are the object of the present case, as delimited by the applicants' complaints and the Court's admissibility decision in the present case.

16. Upon the applicants' appeal against the land commission's decision, on 29 June 1995 the Velingrad District Court set aside the commission's decision and restored the applicants' title on part of the plots of land claimed, including those covering 14 ha in the Okusha area. On the basis of documentary evidence and testimony of witnesses, the court found that in the 1940s and at the time of the collectivisation Mrs Fatma Bozova had been the owner, by virtue of acquisitive prescription, of a part of the land claimed, and that the conditions for restitution under the 1991 Agricultural Land Act had been met in respect of that part of the land. The agricultural land commission, the respondent in these proceedings, was summoned but did not take part.

17. On an unspecified date the Chief Public Prosecutor instituted review (cassation) proceedings before the Supreme Court against the District Court's judgment. At the relevant time and until 1998 the Chief Public Prosecutor could institute review (cassation) proceedings under former Article 225 of the Code of Criminal Procedure, thus intervening in a civil dispute.

18. The Supreme Court examined the case on the merits and by judgment of 20 September 1996 upheld the District Court's judgment. The Supreme Court dismissed the prosecutor's arguments that the property rights of Mrs Fatma Bozova, whom the applicants inherited, had not been proven, that the land in question was not agricultural, could not be restored under the Agricultural Land Act and had therefore remained State property. In particular, the Supreme Court found that even if part of the land may have been forested after the collectivisation, that was not an obstacle to restitution under the Act, only protected forests being excluded from restitution.

19. In compliance with these judgments, on 3 February 1997 the local agricultural land commission ordered the restitution of the applicants' land to them. On 4 April 1997 they formally entered into possession thereof. On 20 August 1997 they obtained a notary deed.

B. *Rei vindicatio* proceedings brought by the forest authority.

20. In 1997 the local forest authority brought an action for *rei vindicatio* against the applicants, claiming that they had unlawfully entered into possession of State forest land. The claim concerned plots covering 25.6 ha, including the plots of 14 ha in the Okusha area relevant in the present case.

21. On 30 April 1998 the Velingrad District Court found that the disputed land had remained state owned and ordered the applicants to vacate it. To reach that conclusion, the District Court re-examined one of the issues determined in the 1995 and 1996 proceedings and found that the applicants' ancestor had not been the owner of the disputed land at the time of the collectivisation. Therefore, they were not entitled to restitution under the Agricultural Land Act. Addressing the applicants' objection that that issue was a *res judicata*, the court stated that under Article 220 § 1 of the Code of Civil Procedure third persons who had not been parties to previous judicial proceedings were not bound by the *res judicata* effect of final judgments delivered in such proceedings. The forest authority had not been a party to the 1995 and 1996 proceedings.

22. The applicants appealed. On 28 November 1999 the Regional Court set aside the judgment of 30 April 1998 and dismissed the *rei vindicatio* claim. The court found that the plaintiff, the local forest authority, had not established that the disputed land was state owned. That finding was based on a fresh examination of the relevant facts and evidence and not on the *res judicata* effect of the 1995 and 1996 judgments.

23. The forest authority filed an appeal on points of law to the Supreme Court of Cassation.

24. On 10 October 2000 the Supreme Court of Cassation set aside the Regional Court's judgment of 28 November 1999 and granted the *rei vindicatio* claim, ordering the applicants to vacate the land.

25. The Supreme Court of Cassation stated that the 1995 and 1996 judgments had been pronounced in proceedings which were administrative by their nature and that therefore the plaintiff in the *rei vindicatio* proceedings was not bound by them. Furthermore, in the 1995 and 1996 proceedings the applicants had been trying to prove that their ancestor, Mrs Fatma Bozova, had been the owner of the disputed land at the time of the collectivisation on the basis of declarations made before a notary and statements of witnesses. Re-examining that question, the Supreme Court of Cassation found that the ownership rights of Ms Fatma Bozova had not been established. Also, it was not true that the disputed land was agricultural and that the conditions for restitution under the Agricultural Land Act had been met. The Supreme Court of Cassation further found that the disputed land belonged to the State. The forest authority had acted on its behalf.

26. On 30 July 2002, an enforcement judge effected the forest authority's entry into possession of the disputed land, including the plots of 14 ha in the Okusha area.

C. The fines imposed on the applicants and other events

27. In the period January - September 1997 the local forest authority fined two or more of the applicants, including Mr Aliosman Kehaya (application no. 47797/99) and Ms Gulfeze Osmandjikova (application no. 68698/01) on the basis that they had “unlawfully used land for pasture”, “built a cattle-pen on state forest land” and “constructed a hut without a building permit”. Mr Mustafa Kestendjiev, the son of one of the applicants in application no. 68698/01 (Mrs Aishe Kestendjieva), was also fined. The amounts of the fines varied between 5,000 and 50,000 old Bulgarian leva (BGL) (BGL 5,000 being the equivalent of approximately EUR 2.5).

28. Mr Kestendjiev was fined by order no. 264 of 5 September 1997. On appeal the Velingrad District Court upheld the fine on an unspecified date. On 28 September 1999 the Pazardjik Regional Court quashed the lower court's judgment and set aside the fine, considering that it had been imposed in breach of the law. Mr Kestendjiev allegedly tried unsuccessfully to obtain reimbursement of the fine.

29. Mr Aliosman Kehaya was also fined and complained to the local prosecutor. In February and March 1998 the prosecutor, acting in accordance with her powers to request review (cassation) of judicial and administrative decisions, instituted such proceedings before the Pazardjik Regional Court in respect of three separate fines imposed on Mr Kehaya (nos. 190, 197 and 223 of 1997). The prosecutor stated, *inter alia*, that the forest authority had acted in breach of the law, as they had been aware that the applicants had become the owners of the land they were using.

30. By two final judgments of the Regional Court of 20 March 1998 two of the fines (nos. 197 and 223 of 1997) were upheld, as there was insufficient proof that the land for the use of which the Mr Kehaya had been fined was the same as that which had been restored to the applicants. The court considered that it was for the appellant (the prosecutor) to prove that fact.

31. Mr Kehaya was not summoned to these proceedings. Copies of the judgments were not served on him. On 9 August 1999 he was invited by the fiscal authorities to pay the fines. Thereupon, on 28 September 1999 he obtained copies of the judgments.

32. In respect of the third fine against Mr Aliosman Kehaya (no. 190 of 1997), it is unclear whether a judicial decision was taken on the prosecutor's appeal.

33. On 24 May 2000 the applicants reported to the police that their hut had been set on fire.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Restitution of agricultural land after 1991

34. The Agricultural Land Act of 1991 provides, *inter alia*, that persons, or their heirs, whose land had been collectivised, may request restoration of their ownership rights under certain conditions (section 10 of the Act). On the basis of certain statutory criteria, such as whether or not the plot of land once owned by the claimant or his or her ancestors had remained unaffected by urban construction, restitution may be “in actual boundaries” or through a redistribution plan.

35. Two possible ways of obtaining restitution are provided for: (a) administrative proceedings, within a period of seventeen months following the Act's entry into force, through a request to the local Agricultural Land Commission (section 11 § 1 of the Act) whose decision is subject to appeal before the courts (section 14 § 3), or, (b) after the expiry of that time limit, through a civil claim to the competent court against the respective land commission (section 11 § 2).

1. Restitution under sections 11 § 1 and 14 § 3 of the Agricultural Land Act

36. At the relevant time land commissions were state bodies whose members were appointed by the Minister of Agriculture (section 33 of the Act). In 2002 the commissions were replaced by the local Agriculture and Forestry Departments, whose members are appointed by the Minister of Agriculture and Forestry.

37. The commission's task when seized with a request for restitution under section 11 § 1 of the Act was to establish whether the relevant statutory conditions were met and, if so, to issue a decision restoring ownership.

38. In deviation from general evidentiary rules, section 12 §§ 2, 3 and 5 of the Act provides that a wide range of evidence, including declarations before a notary, are admissible before the land commissions.

39. Land commissions may not revoke their decisions. Favourable decisions are not subject to appeal and are final. Under an amendment of 1995 to the Agricultural Land Act, in certain circumstances, such as newly discovered facts or evidence, the land commissions may modify their decisions within certain time limits (section 14 § 7).

40. Some courts have stated that the decisions of the land commissions have characteristics similar to those of certifications in *ex parte* notary proceedings (opred. 10333-2002-VAS; opred. 1020-2003-VAS). It has also been stated that land commissions' decisions are administrative decisions (1832-93-III).

41. A person whose request for restitution has been refused by the competent land commission may appeal to the respective District Court (section 14 § 3 of the Act). The District Court has jurisdiction to examine the matter on the merits, i.e. to determine whether or not the claimant has the right to restitution under the Agriculture Land Act. The court may need to establish, *inter alia*, whether the claimants or their ancestors owned land at the time of the collectivisation (3319-94-III). If it finds that the relevant statutory criteria for restitution are established, the court shall set aside the land commission's refusal and order restitution (section 14 §§ 1-3 of the Act). The District Court's judgment is amenable to review (cassation).

42. The special evidentiary rules of section 12 §§ 2, 3 and 5, according to which declarations made before a notary are admissible, are also applicable in judicial proceedings under section 14 § 3 of the Act. Statements of witnesses are also admissible (930-94-III; 2648-94-III).

43. The proceedings before the courts under section 14 § 3 of the Act (on appeal against land commissions' refusals) are judicial administrative proceedings *suis generis*, their object being control of lawfulness of the commissions' decisions; these proceedings cannot be characterised as non-contentious (1832-93-III). Parties to these proceedings are the land commission and the claimant. A third party claiming title of its own may not intervene (179-97-VAS). The scope of the proceedings before the District Court is circumscribed by the disputed grounds for the land commission's refusal (3319-94-III).

44. No disputes other than those concerning the relevant statutory criteria for restitution may be examined in the proceedings before the land commissions or on appeal against its decisions. If there are disputes on other matters, such as, for example, objections by third persons claiming rights in respect of the land or disagreement between heirs, they must be determined by the courts in separate civil proceedings (section 12 § 4 and 14 § 3 of the Act).

45. The prevalent judicial practice appears to consider that judgments under section 14 § 3 of the Act (on appeal against land commissions' refusals) do not have *res judicata* effects (1198-93-III; 1467-93-III; 179-97-96). The contrary has been stated in a recent decision of the Supreme Administrative Court (opred. 1021-2003-VAS).

2. Restitution through general civil action under section 11 § 2 of the Act

46. Persons claiming restitution of agricultural land who have missed the seventeen months' time limit under section 11 § 1, may bring an action for a declaratory judgment against the local land commission. In these proceedings the courts determine whether or not the claimant has the right to restitution.

47. The lenient evidentiary rules of section 12 §§ 2, 3 and 5 of the Agricultural Land Act, which deviate from the stricter general rules of evidence, do not apply. Declarations made before a notary and other evidence that would be admissible in administrative restitution proceedings under sections 11 § 1 and 14 § 3 of the Act, are not admissible in proceedings under section 11 § 2 (671-97-IV).

48. In the civil proceedings under section 11 § 2, if the courts decide in favour of the claimant, the land commission must comply and issue the necessary restitution decision (TR 2-96-OSGK). Where the judgment has become final after the publication of the local land distribution plan, the land commission shall allocate to the claimant other available land.

49. The proceedings under section 11 § 2 of the Act being ordinary civil proceedings for a declaratory judgment, they determine, with effect of *res judicata*, the claimant's property right.

3. Evidence in rei vindicatio proceedings

50. In such proceedings the lenient evidentiary rules under section 12 §§ 2, 3 and 5 of the Agricultural Land Act are inapplicable. The general, stricter, rules of evidence apply.

B. Res judicata and binding character of judgments under Bulgarian civil procedure law

51. Judgments of the civil courts are binding on the parties, their successors, the courts and all other State organs (Article 220 § 1 of the Code of Civil Procedure).

52. The issue determined in the court's holding on the merits is a *res judicata*. In order to establish the content of the issue determined in the holding, regard must be had to the scope of the dispute and, therefore, to the court's reasoning. In addition, certain decisive findings on elements directly determinative of the disputed right or obligation may also be seen as *res judicata* (201-91-I, 987-90-I, 433-90-I, 30-64-OSGK).

53. Final judgments preclude any re-examination of the same dispute between the same parties (Articles 221 and 224 of the Code). They are not conclusive in respect of disputes on the same subject between different parties or between the same parties on a different subject matter. The *res judicata* effect of a judgment thus has a limited scope *ad personam* and a limited subject-matter scope (except for several particular categories of judgments, such as those concerning civil status, which are binding *erga omnes*).

54. In judicial administrative proceedings, courts' judgments setting aside administrative decisions and deciding the disputed matter on the merits are binding on the parties and constitute *res judicata* in respect of the rights and obligations that formed the subject matter of the proceedings.

C. Other relevant law

55. Local forest authorities are state administrative bodies subordinate to the regional forest authorities and the National Forest Authority at the Ministry of Agriculture and Forestry (section 24 of the Forests Act 1997 and section 12 of the Forests Act 1958, in force until 31 December 1997).

56. Under section 86 of the Property Act, as in force since 1996, state property, if it is of the category of “public state property”, may not be acquired by private persons through adverse possession. Under section 2 § 2 of the State Property Act, state property falls within the category of “public state property” where, *inter alia*, it serves public needs of national importance. The Council of Ministers may declare certain state property as falling within that category. As a result of these provisions, there is no limitation in time of the possibility of a State body bringing a *rei vindicatio* action against private persons for the recovery of state property of the category of “public state property”. Such an action against private persons in possession of state land may be unsuccessful in respect of state property other than “public state property”, if the relevant period of acquisitive prescription under section 70 of the Property Act has expired (five or ten years).

THE LAW

I. ALLEGED VIOLATIONS OF THE CONVENTION CONCERNING THE PROPERTY DISPUTE

57. The applicants complained that the courts decided arbitrarily in the 1997-2000 proceedings, disregarding the judgments of 1995 and 1996 and thus in violation of one of the fundamental principles of the rule of law – the final nature of judicial decisions. The applicants also submitted that they had been deprived of their property by way of arbitrary decisions. They relied on Article 6 of the Convention and also on Article 1 of Protocol No. 1 to the Convention.

A. Alleged violation of Article 6 of the Convention

58. Article 6 § 1 of the Convention provides, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

59. The Court observes that in 1996, in proceedings against the local land commission, a state administrative body, the applicants obtained a final

judicial decision restoring to them full title to, *inter alia*, plots covering 14 ha in the Okusha area, near Sarnitza (see paragraphs 14-19 and 36 above).

60. However, in 2000, in proceedings concerning the same land, the Supreme Court of Cassation found that the 1996 judgment did not have *res judicata* effect and granted a *rei vindicatio* action brought by the local forest authority, which was also a state body and had argued that the disputed land belonged to the State (see paragraphs 20-25 and 55 above).

61. As the Court has stated in previous cases, the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of rule of law and legal certainty, encompasses the requirement that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumarescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

62. In the present case, unlike *Brumarescu*, the 1996 final judgment was not quashed. It was rendered devoid of any legal effect, however, as in separate proceedings the question whether the State or the applicants were the owners of the same land was re-examined and decided differently.

63. In the Court's view the principle according to which a final judgment is a *res judicata* and resolves the dispute between the parties with final effect is a fundamental element of the right to a fair trial guaranteed by Article 6 of the Convention in civil matters.

64. The thrust of the Supreme Court of Cassation's approach in the applicants' case was the view, apparently prevalent in domestic practice, according to which judgments delivered in proceedings under sections 11 § 1 and 14 § 3 of the Agricultural Land Act have no *res judicata* effects. That view was based on the fact that such proceedings only concerned the lawfulness of the land commissions' decisions, which were administrative bodies and applied special lenient evidentiary rules. Proceedings under sections 11 § 1 and 14 § 3 of the Act were characterised by the courts as "administrative *suis generis*" (see paragraphs 36-50 above).

65. The Agricultural Land Act 1991 was apparently a complex piece of legislation which attempted to strike a difficult balance between various interests involved, in the conditions of economic and societal changes (see paragraphs 34-50). It is not the Court's task to assess *in abstracto* the legal theory underlying a piece of legislation. It must limit its examination to the question whether or not the application of the law in the particular circumstances of the case resulted in a violation of the applicants' rights under the Convention.

66. The Court observes that in all legal systems the *res judicata* effects of judgments have limitations *ad personam* and as to material scope.

67. In the present case, however, both sets of proceedings determined the property rights of the same legal subjects – the State and the applicants, and the core of the dispute was the same. In both sets of proceedings the courts examined the same issues: whether the person from whom the

applicants had inherited, Mrs Fatma Bozova, had owned land prior to the collectivisation and whether or not the statutory conditions for restitution under the Agricultural Land Act had been fulfilled (see paragraphs 15-18 and 20-25 above).

68. Furthermore, the final judgment of 20 September 1996 was the result of contentious proceedings before two levels of jurisdiction, including the Supreme Court. Regardless of their theoretical classification, those proceedings had the effect of determining the applicants' property rights vis-à-vis the State. The principle of legal certainty dictates that where a civil dispute is examined on the merits by the courts, it should be decided once and for all. There was no justification for requiring the applicants to prove again, in the 1997-2000 proceedings, the fact that they were the owners of the disputed land vis-à-vis the State. They had done so in the 1995-1996 proceedings. Since in accordance with the relevant Bulgarian law at the pertinent time land commissions' decisions determined entitlement to restitution and property rights vis-à-vis the State, and since those decisions were subject to appeal to all levels of court, it would be contrary to the principle of legal certainty if it were accepted that the resulting final judgments did not even bind the State. The fact that special lenient evidentiary rules applied in proceedings under the Agricultural Land Act was a matter of legislative choice and cannot in itself justify such a far reaching exception from the fundamental rule that final judgments are a *res judicata*.

69. The approach of the Supreme Court of Cassation in its judgment of 10 October 2000 had, moreover, the effect of providing a "second chance" for the State to obtain a re-examination of a dispute already determined by way of final judgments in contentious proceedings to which another emanation of the State, a specialised administrative authority in charge of restitution – the land commission –, had been a party and had been afforded all procedural means to defend the State interest. Such re-examination was apparently possible without any limitation in time and could only be barred after the expiry of the relevant period of acquisitive prescription (see paragraph 56 above). That approach was unbalanced and created legal uncertainty.

70. The Court finds, therefore, that the applicants' rights under Article 6 § 1 of the Convention were jeopardised as the Supreme Court of Cassation's judgment of 10 October 2000 set at naught an entire judicial process which had ended in a final judicial decision of 20 September 1996 and which had, moreover, been executed (see paragraph 19 above). By depriving of any legal effect the final judgment of 20 September 1996 in the applicants' case, the authorities acted in breach of the principle of legal certainty inherent in Article 6 § 1 of the Convention. It follows that there has been a violation of that provision.

B. Alleged violation of Article 1 of Protocol No. 1 to the Convention

71. Article 1 of Protocol No. 1 to the Convention provides:

“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.”

72. The Court notes that by final judgment of 20 September 1996 the applicants were recognised as the owners of plots of land of 14 ha, adjacent to the Dospat reservoir, in the Okusha area, near Sarnitza. On 3 February 1997 the local agricultural land commission ordered the restitution of the applicants' land to them. On 4 April 1997 they formally entered into possession thereof. On 20 August 1997 they obtained a notary deed (see paragraphs 18 and 19 above). It follows that the applicants had a “possession” within the meaning of Article 1 of Protocol No. 1. That provision was therefore applicable.

73. It is also evident that the events of 1997-2002 constituted a State interference with the applicants' possessions in that their land was taken by the State pursuant to judicial decisions delivered in proceedings instituted by the local forest authority, a State body (see paragraphs 24-26 and 55 above).

74. As to whether that interference was a deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention, the Court observes that the effect of the judgment of the Supreme Court of Cassation of 10 October 2000 was to deny to the applicants the fruits of the final judgment of 20 September 1996 in their favour. The State was declared the owner of the disputed land, the forest authority entered into possession thereof and the applicants were accordingly deprived of their title, including the rights to possess, use or dispose of the property (see paragraphs 24-26 above). In these circumstances, the Court finds that the effect of the judgment of 10 October 2000 the Supreme Court of Cassation was to deprive the applicants of their possessions (see *Brumarescu*, cited above, §§ 76 and 77).

75. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 45, ECHR 2002-VIII, with further references). The principle of lawfulness also presupposes that the applicable provisions

of domestic law are sufficiently accessible, precise and foreseeable in their application (see *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V). Furthermore, a deprivation of property can only be justified if it is shown to be “in the public interest” and if it satisfies the requirement of proportionality by striking a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26-28, §§ 69-74).

76. In the present case the Court already found that by depriving of any legal effect the final judgment of 20 September 1996, the authorities acted in breach of the principle of legal certainty inherent in Article 6 § 1 of the Convention (see paragraph 70 above). It cannot be maintained, therefore that the deprivation of property at issue was lawful, in the sense of the Convention. The present case does not concern reopening of civil proceedings, within time-limits and under conditions regulated by law, but a failure to recognise the *res judicata* effect of a final judgment delivered in contentious proceedings. It cannot be considered that a public interest overriding the fundamental principle of legal certainty and the applicants' rights justified a re-examination of the dispute and the resulting deprivation of property without compensation.

77. The Court finds, therefore, that the applicants were deprived of their property in violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATIONS OF THE CONVENTION IN RESPECT OF THE FINES IMPOSED ON SOME OF THE APPLICANTS

78. The applicants complained that the forest authority had launched a campaign against them and had fined some of them for having used their own land. Mr Aliosman Kehaya complained, in addition, that he had not been summoned to the 1998 proceedings concerning the fines against him. Mr Kestendjiev complained that he could not obtain reimbursement despite the fact that the fine imposed on him had been set aside. The applicants relied on Article 1 of Protocol No. 1 to the Convention and also on Article 6 of the Convention.

A. The fines imposed on Mr Aliosman Kehaya

1. Alleged violation of Article 1 of Protocol No. 1 to the Convention

79. The Court observes that in 1997 the local forest authority fined Mr Aliosman Kehaya and other applicants for, *inter alia*, alleged “unlawful use of land for pasture” and “building a cattle-pen on state forest land”. That happened after the entry into force of the final judgment of 20 September

1996 which established that the applicants, not the State, were the lawful owners of a plot of 14 ha (see paragraphs 24-27 above).

80. As the property dispute between the applicants and the forest authority apparently concerned land in excess of the 14 ha that are the subject matter of the present case (see paragraph 20 above), it is necessary to establish whether Mr Aliosman Kehaya was fined for the use of the plots covering 14 ha, which belonged to the applicants, or for unlawful use of other land, which belonged to the State. The Court notes in this respect that the Pazardjik Regional Court, which ruled on appeal against the fines, found that the appellant had not proven that the fines concerned use of the applicants' own land, as claimed by Mr Kehaya (see paragraph 30 above).

81. For purposes of the present case the significance of the Regional Court's finding is weakened, however, by the fact that the forest authority, which had imposed the impugned fines, was not required to prove that the fines concerned the use of State land. Also, it is noteworthy that the fine imposed in similar circumstances on Mr Kestendjiev, the son of one of the applicants, was set aside as being unlawful (see paragraphs 28-30 above). Having regard to those facts, the Court considers that the applicants' allegation that some of them were fined for having used their own land is at least plausible.

82. The Court also observes that the Government did not submit observations in the present case and did not reply to any of the questions put by the Court. In these circumstances, it is appropriate to draw inferences from the Government's failure to take part in the proceedings (see, *mutatis mutandis*, *Trubnikov v. Russia*, no. 49790/99, §§ 54-57, 5 July 2005).

83. The Court thus finds it established in respect of Mr Aliosman Kehaya that he was fined for having used land that at the relevant time belonged lawfully to him and the other applicants, not to the State. Also, it has not been shown that using private land for pasture or building a cattle-pen on it was unlawful under Bulgarian law. The fines which were imposed on those grounds amounted, therefore, to an arbitrary interference with the right of Mr Kehaya to peaceful enjoyment of his possessions.

84. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

2. Alleged violation of Article 6 of the Convention

85. Having regard to its conclusions above, the Court considers that it is not necessary to examine whether Article 6 of the Convention applied in the proceedings leading to the imposition of the fines and, if so, whether those proceedings were conducted in breach of that Article.

B. Other fines

86. In view of its conclusion in paragraphs 83 and 84 above, the Court considers that it is not necessary to examine the remaining complaints concerning the other fines imposed on some of the applicants.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicants presented a valuation report prepared by an expert, who had been asked to assess the value of 25.6 ha of land in the vicinity of Sarnitza. The expert found that their “fair value” was 237,955 euros (EUR). While they initially claimed that amount jointly in respect of pecuniary damage, the applicants later declared that they insisted on actual restitution of their land. It appears that the 25.6 ha referred to in the expert's report concern 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 above).

89. In addition to the above amount claimed jointly, each of the applicants claimed EUR 20,000 in non-pecuniary damages in respect of the violations of Article 6 and Article 1 of Protocol No. 1. Mr Aliosman Kehaya claimed an additional EUR 3,000 in respect of the fines imposed on him.

90. The Government did not comment.

91. In the circumstances of the case, the Court considers that the question of the application of Article 41, in so far as pecuniary and non-pecuniary damage is concerned, is not ready for decision and reserves it, due regard being had to the possibility that an agreement between the respondent State and the applicants will be reached (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

92. The applicants claimed EUR 1,785 in respect of 25 hours and 30 minutes of work on the case by their lawyer, Mr M. Ekimdjiev, whom they retained in December 2004, at the hourly rate of EUR 70 per hour. The applicants also claimed EUR 195 in respect of translation costs, photocopying, postal and telephone expenses. They submitted copies of a

legal fees' agreement between them and their lawyer, a time-sheet and receipts. The applicants requested that the above amounts, EUR 1,990 in total, be paid directly into their lawyer's bank account.

93. The applicants claimed, in addition, EUR 1,400, the amount charged by the valuation expert who had prepared a report on the value of the disputed land (see paragraph 88 above).

94. The Government did not comment.

95. The Court considers that the number of hours of legal work claimed is excessive, regard being had to the fact that the applicants' lawyer was retained after the present case was declared admissible.

96. Having regard to the above and taking into account EUR 808 paid in legal aid from the Council of Europe, the Court awards EUR 500 in respect of legal fees, translation costs, photocopying, postal and telephone expenses and dismisses the remainder of the claim concerning those fees and expenses.

97. As to the amount claimed in respect of the valuation report, the Court considers that this part of the applicants' claims for just satisfaction is closely linked to their claims for pecuniary and non-pecuniary damages and is not ready for decision. Therefore, the Court reserves the question of the application of Article 41 of the Convention in so far as the costs incurred for a valuation report are concerned.

C. Default interest

98. 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 there has been a violation of Article 6 of the Convention in respect of the civil proceedings that ended on 10 October 2000;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in that the applicants were deprived of their land;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention with regard to the fine imposed on Mr Kehaya;
4. *Holds* that it is not necessary to examine the remaining complaints of the applicants regarding the fines imposed on them;
5. *Holds* that the question of the application of Article 41 is not ready for decision in so far as pecuniary and non-pecuniary damage and the costs incurred for a valuation report are concerned;
accordingly,

- (a) *reserves* the said question;
- (b) *invites* the Government and the applicants to submit, within two months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
- (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;

6. *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, EUR 500 (five hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, payable into the bank account of the applicant's lawyer, Mr M. Ekimdjiev;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claims for costs and expenses.

Done in English, and notified in writing on 12 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President