

Press release issued by the Registrar

**CHAMBER JUDGMENT
OSMAN v. BULGARIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Osman v. Bulgaria* (application no. 43233/98).

The Court held:

- unanimously that there had been **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the ill-treatment to which the applicants had been subjected;
- unanimously that there had been **a violation of Article 3** on account of the lack of an effective investigation;
- unanimously that there had been **no violation of Article 14** (prohibition of discrimination) with regard to the allegations that the ill-treatment was motivated by racial prejudice;
- by five votes to two that it was not necessary to examine separately the complaint submitted under Article 14 with regard to the lack of an effective investigation into a possible racist motive for the alleged ill-treatment;
- unanimously that there had been **a violation of Article 1 of Protocol No. 1** (protection of property).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants jointly 6,000 euros (EUR) for non-pecuniary damage and EUR 2,340 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicants, Mohamed Ahmed Osman and his wife Ilmie Hasan Osman, are Bulgarian nationals who belong to the Turkish ethnic minority. They were born in 1941 and 1942 respectively and live in Brani Pole, in the Plovdiv region (Bulgaria).

The applicants had been living in a building belonging to an agricultural cooperative in the village Brani Pole since 1983; they were also entitled to use the adjacent land. At the beginning of the 1990s, in application of the new laws on restitution, the land on which the house was located was restored to the individuals who had owned it prior to collectivisation. The latter, who wished to recover possession of their property, asked the prosecutor to bring

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

proceedings against the applicants for a patently unlawful action. The prosecutor, who took the view that the matter was one for the civil courts, refused to bring criminal proceedings against the applicants.

On 12 May 1995 the mayor of Brani Pole, accompanied by the secretary of the district council, the mayors of two neighbouring villages, two police officers and the new owners of the land, went to the applicants' home. The subsequent events are disputed by the parties.

The applicants alleged that they were verbally and physically assaulted when they refused to leave the house and opposed the destruction of their fence and vegetable garden. Mrs Osman claimed to have been struck on the face with a post by one of the owners and alleged that a police officer pushed her head against the ground; Mr Osman alleged that he was thrown to the ground by one of the police officers, who pinned him down by pushing his knee into Mr Osman's back and simultaneously uttering an obscene insult describing him as a Gypsy. Mr Osman and his wife then left the scene after being threatened by the police officers and travelled to Plovdiv.

According to the Bulgarian Government, when the applicants were requested to leave the premises in application of an eviction order, Mr Osman began to shout and to throw clods of earth at those present; he was overcome by one of the police officers. While resisting the destruction of the fence, Mrs Osman was accidentally wounded by a post, then deliberately scratched her own forehead and threw stones and earth at one of the police officers. Once they realised that their gardens had been destroyed, the applicants re-entered their house before leaving for Plovdiv.

On the same date, Mrs Osman was examined by a doctor, who found that she had a bruise with a cutaneous abrasion, four centimetres in diameter, in the middle of the forehead, an oedema and a three-centimetre wide bruise on the back of her head. On the following day her husband was examined by a doctor, who found a 5 cm x 3 cm bruise in the middle of his back and a 2-cm cutaneous abrasion near the right eyebrow.

The applicant filed a complaint with the prosecutor of the Plovdiv district on the day of the incident. He subsequently filed several complaints in connection with the incident in question. The investigation was assigned to the Plovdiv military prosecutor, who found in April 1997 that there was no case to answer.

At the same time, proceedings were brought against the applicants, and in November 1998 they were convicted of disturbing public order and ordered to pay a fine of 50 leva each (equivalent to less than one American dollar at the rate applicable at that time).

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 2 June 1998 and transferred to the European Court of Human Rights on 1 November 1998. The application was declared partly admissible on 6 May 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Françoise **Tulkens** (Belgian),
Nina **Vajić** (Croatian),
Snejana **Botoucharova** (Bulgarian),
Anatoli **Kovler** (Russian),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicants complained about the ill-treatment to which they had been subjected and the lack of an investigation into their allegations. They also complained about the breach of their right to peaceful enjoyment of their possessions and claimed to be victims of discrimination on account of their ethnic origin. They relied on Articles 3 and 14, and on Article 1 of Protocol No. 1.

Decision of the Court

Article 3

As to the allegations of ill-treatment

Given that the facts were in dispute between the parties, it was very difficult for the Court to establish the origin of some of the injuries observed and, consequently, the proportionate nature of the force which had perhaps been necessary to overcome resistance or aggression on the part of the applicants, who had clearly thrown clods of earth at their “visitors”.

Accordingly, in the light of the evidence available to it, the Court could not conclude “beyond reasonable doubt” that the injuries sustained by the applicants had resulted from the excessive use of force on the part of the authorities and had in themselves entailed a breach of Article 3 of the Convention.

On the other hand, the Court noted that the attempt to evict the applicants had not been lawful under domestic law, since an eviction order had never been served on them. In addition, the mayor of the village had clearly attempted to mislead the applicants by presenting them with a document which was allegedly an eviction order, when it was in fact something completely different. In spite of the unlawfulness of the operation and the applicants’ resistance, the mayor and the police officers had persisted in their attempt to evict them. They had not hesitated to use physical force to bring the applicants under control, to utter insults and to destroy their property. The Court also noted certain factors that tended to indicate that the operation at the applicants’ home had been prepared with the aim of intimidating or even humiliating them. More specifically, it failed to see the necessity, in evicting the applicants, of bringing a tractor to the site to destroy their fence and vegetable gardens.

¹ This summary by the Registry does not bind the Court.

In the Court's opinion, the authorities' actions could have caused the applicants to experience feelings of fear and humiliation beyond those inherent in an eviction, even if it was accompanied by resistance on their part. Accordingly, the Court considered that the circumstances of the operation on 12 May 1995, taken as a whole, had amounted to degrading treatment. It therefore concluded that there had been a violation of Article 3.

As to the effectiveness of the operation

The Court noted that the Bulgarian authorities had opened an investigation following the applicants' complaint. It noted, however, that in concluding that there was no case to answer the prosecutor responsible for the investigation into the police officers' actions had clearly relied only on statements by those witnesses summoned in connection with the criminal proceedings brought against the applicants for disturbing public order.

Equally, the order finding that there was no case to answer contained no reference to the injuries recorded in the medical certificates, nor any conclusion as how exactly these injuries had been sustained. In those circumstances, the finding that the police officers had not exceeded their powers did not appear to be based on the factual evidence. The Court also noted that there had been no investigation into the actions of the property owners, which had also been challenged in the applicants' complaints.

In addition, the authorities had done nothing to substantiate the applicants' statements about the insults to which they had allegedly been subjected. Yet the mere suggestion of such comments, unacceptable on the part of members of the security forces, ought to have alerted the authorities responsible for the investigation and induced them to verify the authenticity of the allegations.

The Court also noted that the prosecutor had ruled that there was no case to answer almost 23 months after the events, although the witnesses had been heard shortly after the incident and no other investigatory measure would appear to have been taken. Finally, it noted that the applicants had not received any response to their appeal against the order finding that there was no case to answer, since the military prosecutor's office had apparently neglected to transmit it to the authority with jurisdiction to rule on the matter.

In those circumstances, the Court concluded that there had been a violation of Article 3 on this point too.

Article 14

Having regard to the circumstances of the case, the Court considered that even if the statements uttered were manifestly insulting and thus unacceptable, they did not enable the Court to conclude that the acts of violence complained of by the applicants had been motivated by racial prejudice. Accordingly, the Court concluded that there had not been a violation of Article 14 taken together with Article 3 in its substantive aspect.

Furthermore, in the particular circumstances of the present case, and especially in the absence of evidence indicating the existence in Bulgaria of a general context of discrimination towards those belonging to the Turkish ethnic minority, the Court considered that, having regard to its finding of a violation of Article 3 on account of the lack of an effective investigation following the applicants' allegations of ill-treatment, particularly with regard to

the police officer's insult, it was not necessary to examine this complaint separately under Article 14 taken together with Article 3 in its procedural aspect.

Article 1 of Protocol No. 1

The evidence in the case file did not show that the destruction of the applicants' property had been carried out in application of an administrative act or judicial decision adopted in conformity with the relevant legislation. In consequence, the interference with the applicants' right to peaceful enjoyment of their possessions appeared to have been illegal under Bulgarian law and thus incompatible with the requirements of Article 1 of Protocol No. 1.

Accordingly, the Court concluded that there had been a violation of Article 1 of Protocol No. 1.

Judges Vajic and Spielmann expressed a joint dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.