

## **Osman v. Bulgaria (Application No. 43233/98)**

**From DADEL**

### **1) Reference Details**

Jurisdiction: European Court of Human Rights

Date of decision: 16 February 2006

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Osman%20%7C%20Bulgaria&sessionid=17798084&skin=hudoc-en>

### **2) Facts**

The applicants claimed that they were subjected to ill-treatment by the authorities during an operation to secure their removal from the house in which they resided. They also alleged a lack of investigation into their allegations and the violation of their right to peaceful enjoyment of their possessions. They claimed to be victims of discrimination on the basis of their ethnic origin. They relied on Articles 3, 13, 14, and Article 1 of Protocol No. 1 (protection of property) of the Convention.

The applicants, Mohamed Ahmed Osman and his wife Ilmie Hasan Osman, are Bulgarian nationals of Turkish ethnic origin, living in the Plovdiv region.

The applicants had been living in a building belonging to an agricultural cooperative in the village Brani Pole since 1983, and were entitled to use the adjacent land. In the early 1990s, due to application of new restitution laws, the land on which the house was located was restored to the individuals who had owned it prior to collectivization. Those individuals, who wished to recover possession of their property, asked the prosecutor to bring 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 neighboring villages, two police officers, and the new owners of the land, visited 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 traveled to Plovdiv.

According to the Government, when the applicants were requested to leave the premises to comply with an eviction order, Mr. Osman began to shout and to throw clods of earth at those present. 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 realized 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 numerous injuries to her head. On the following day, her husband was examined by a doctor, who found a bruise in the middle of his back and facial injuries. 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 same incident. 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 U.S. dollar at the rate applicable at that time).

### **3) Admissibility**

The Application was found admissible.

### **4) Merits**

Given that the facts were in dispute between the parties, it was difficult for the Court to establish the origin of some of the injuries and, consequently, the proportionate nature of the force which may have been necessary to overcome resistance or aggression by the applicants, who had clearly thrown clods of earth at their "visitors." Accordingly, in the light of the available evidence, 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 violation of Article 3.

On the other hand, the Court noted that the attempt to evict the applicants had not been lawful under domestic law, since they had not been served with an eviction order. The mayor of the village had 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. Despite the unlawfulness of the operation and the applicants' resistance, the mayor and police officers had persisted in their eviction attempt. They had not hesitated to use physical force to bring the applicants under control, nor 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 carried out with the aim of intimidating or humiliating them. Specifically, the Court failed to see the necessity, in evicting the applicants, of bringing a tractor to the site to destroy their fence and vegetable gardens.

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 when taken as a whole, the circumstances had amounted to degrading treatment. It therefore concluded that there had been a violation of Article 3 in this respect. The Court noted that the Bulgarian authorities had opened an investigation following the applicants' complaint. It stated, however, that in concluding that there was no case to answer the prosecutor responsible for the investigation into the police officers' actions had relied solely on statements by those witnesses summoned in connection with the criminal proceedings brought against the applicants. Additionally, the order finding that there was no case to answer contained no reference to the injuries recorded in the medical certificates, nor any

explanation as how those injuries had been sustained. The finding that the police officers had not exceeded their powers did not, therefore, appear to be based on factual evidence. The Court also noted that there had been no investigation into the actions of the original property owners, which were also challenged in the applicants' complaints.

In addition, the authorities did not respond to the applicants' statements about the insults to which they had allegedly been subjected. Yet the Court found that 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 not ruled that there was no case to answer until almost 23 months after the events, although the witnesses had been heard shortly after the incident and no other investigatory measure appeared to have been taken. Finally, it stated 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. The Court concluded that this lack of effective investigation was also a violation of Article 3. The applicants alleged a violation of Article 14, on the grounds that they had been discriminated against due to their Turkish ethnicity. However, 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. The Court therefore concluded that there had not been a violation of Article 14 taken together with Article 3 in its substantive aspect. Furthermore, the Court considered the particular circumstances of the present case, and the absence of evidence indicating the existence in Bulgaria of a general context of discrimination towards those of Turkish ethnicity. The Court concluded that, with regard to its finding of a violation of Article 3 on account of the lack of effective investigation, it was not necessary to examine this complaint separately under Article 14 taken together with Article 3 in its procedural aspect.

The Court found that the evidence did not show that the destruction of the applicants' property had been carried out in accordance with an administrative act or judicial decision adopted in conformity with the relevant legislation. The interference with the applicants' right to peaceful enjoyment of their possessions, therefore, appeared to have been unlawful under Bulgarian law and thus incompatible with the requirements of Article 1 of Protocol No. 1. The Court concluded that there had been a violation of Article 1 of Protocol No. 1.

## **5) Decision**

The Court unanimously held:

1. that there had been a violation of Article 3 with respect to the ill-treatment of the applicants by the authorities and with respect to the lack of effective investigation
2. that there had been no violation of Article 14 with respect to the allegations that the ill-treatment was motivated by racial prejudice
3. that there had been a violation of Article 1 of Protocol No. 1.

The Court held 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.

The Court awarded the applicants jointly EUR 6,000 in non-pecuniary damages and EUR 2,340 for costs and expenses.

## **6) Dissenting Opinion**

N. Vajić and D. Spielmann, dissenting, insisted that the complaint with respect to the lack of effective investigation into a possible racist motive for the alleged ill-treatment should have been examined separately under Article 14. Although the officer's insult did not refer directly to the applicants' Turkish ethnicity, the circumstances of violence and humiliation in which the insult was made should have prompted the authorities to investigate and verify whether the ill-treatment was motivated by racial prejudice. The two judges opined that the Court's decision not to examine this complaint separately under Article 14 taken together with Article 3 in its procedural aspect contradicts the Court's decision in *Nachova v. Bulgaria*, where the Court held that any evidence of racist verbal abuse by law enforcement officers during an operation involving the use of force against people from an ethnic or other minority was highly relevant to the question of whether unlawful, racially-induced violence had taken place. As stated in *Nachova*, where government authorities are implied in such an incident of violence, the duty of the authorities to thoroughly investigate the possible racist motives is implicit not only in the procedural aspects of Articles 2 and 3, but also of Article 14. Where such evidence came to light in the investigation, it must be verified and, if confirmed, a thorough examination was required in order to uncover any possible racist motives.