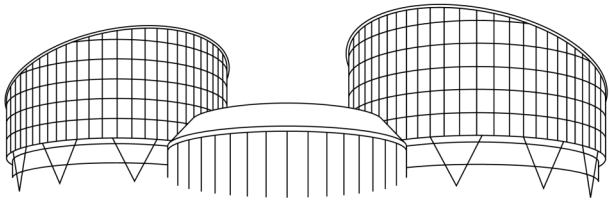

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KAUSHAL AND OTHERS v. BULGARIA

(Application no. 1537/08)

JUDGMENT

STRASBOURG

2 September 2010

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 Kaushal and Others v. Bulgaria,

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

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

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 1537/08) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Rajesh Kaushal, Ms Kristina Stoyanova Boneva-Kaushal, Ms Viktoria Rajesh Kaushal and Ms Elena Rajesh Kaushal ("the applicants"), on 15 December 2007. The first applicant is an Indian national who lives in Thessaloniki, Greece. The second, third and fourth applicants are Bulgarian nationals who live in Sofia.

2. The applicants were represented by Ms G. Stoyanova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Ms S. Atanasova and Ms M. Kotseva, of the Ministry of Justice.

3. The applicants alleged that the first applicant's expulsion from Bulgaria on national security grounds violated their right to respect to family life and that they did not have effective remedies in that regard. The first applicant also complained that the respondent State had not provided the necessary procedural guarantees related to his expulsion.

4. On 6 April 2009 the President of the Fifth Section decided to give priority to the application under Rule 41 of the Rules of Court. On 12 May 2009 he decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, Mr Rajesh Kaushal, born in 1967, settled in Bulgaria in 1990. Soon after that he met the second applicant, born in 1974. Their first daughter, the third applicant, was born on 13 November 1992. The first and second applicants married on 17 April 1994. Their second daughter, the fourth applicant, was born on 19 February 1998. On an unspecified date Mr Kaushal was granted a permanent residence permit in Bulgaria. He learned Bulgarian and started his own business. He owns a hotel and a restaurant in Sofia.

A. Expulsion of the first applicant

6. On 28 November 2005 the head of the Ministry of the Interior's National Security Service ordered the expulsion of Mr Kaushal. He also deprived him of the right to reside in Bulgaria and excluded him from Bulgarian territory for a period of ten years. The order, which was based on sections 42 and 44(1) of the 1998 Aliens Act (see paragraph 17 below), relied on

> "the reasons set out in proposal no. M-2886/22.11.2005 and the fact that [Mr Kaushal's] presence in the country represent[ed] a serious threat to national security".

No factual grounds were given. It was indicated in the order that it was immediately enforceable, as provided for in section 44(4) of the Aliens Act (see paragraph 17 below).

7. On 28 November 2005 Mr Kaushal was detained. On 1 December 2005 he was deported to India. Subsequently he settled in Thessaloniki, Greece, where his wife and daughters visit him.

B. Judicial review of the first applicant's expulsion

8. Once abroad, Mr Kaushal retained a lawyer who lodged with the Sofia City Court an application for judicial review of the expulsion order of 28 November 2005. He argued that no reasons had been given for the order and that the relevant factual circumstances had not been duly established. Furthermore, he pointed out that he had a family in Bulgaria.

9. In the course of the ensuing proceedings the Sofia City Court accepted in evidence the classified proposal referred to in the impugned order (see paragraph 6 above). The proposal apparently stated that Mr Kaushal was suspected of affiliation to extremist groups and trafficking

in human beings. It is unclear whether Mr Kaushal's representative was also given an opportunity to familiarise himself with the document.

10. The Sofia City Court gave judgment on 16 December 2006. Relying on the Court's judgment in the case of *Al-Nashif v. Bulgaria* (no. 50963/99, 20 June 2002), it found that the bar to judicial review set out in section 46(2) of the Aliens Act (see paragraph 17 below) was contrary to Article 13 of the Convention and was thus to be disregarded.

11. Examining Mr Kaushal's application on the merits, the Sofia City Court found that the order of 28 November 2005 was lawful as it had been issued by a competent authority and in accordance with the law. Referring to different legal provisions relating to national security, it continued as follows:

> "As can be seen from the text of proposal no. M-2886/22.11.2005, the measures imposed [on Mr Kaushal] by virtue of the disputed order are aimed at the prevention of unlawful activity, as described in [the provisions on national security], namely affiliation of Rajesh Kaushal to extremist groups and participation in organised trafficking in human beings into countries of the European Union. The data related to these activities have been collected lawfully, by operational means within the competence of the Ministry of the Interior's National Security Service."

12. Lastly, the Sofia City Court found that it was not necessary to examine Mr Kaushal's arguments relating to his family life in Bulgaria. It held:

> "In view of the issues raised in the present case, the arguments set out in [Mr Kaushal's] application referring to his lawful residence in the country and his being married to a Bulgarian citizen are irrelevant. The administrative measures [at issue] are not of a punitive character, but aim at the prevention of the alien's unlawful activity described above. Collecting objective data related to unlawful activity suffices to justify the [impugned] order. The administrative body was competent to assess in each specific case the extent to which the country's security was threatened and the effectiveness of the measures to be applied".

13. On an unspecified date Mr Kaushal appealed against the Sofia City Court's judgment. He argued that he had been unable to understand which actions on his part had been deemed to threaten national security and that the conclusions about his alleged unlawful activity set out in the proposal of 22 November 2005 had no evidentiary value as they needed themselves to be proven. Once again, he pointed out that he had a family in Bulgaria.

14. In a final judgment of 28 June 2007 the Supreme Administrative Court dismissed the appeal and upheld the Sofia City Court's judgment. It found that the data relating to the first applicant's alleged unlawful activity had been collected in accordance with the law and that the impugned expulsion order had been "reasonably related to the facts set out in the proposal". It held that

> "the burden to disprove these facts rested on [Mr Kaushal] who has not presented evidence in support of his arguments".

15. Furthermore, the Supreme Administrative Court found that Mr Kaushal had been able effectively to challenge the impugned order as he had been represented by counsel in the judicial proceedings. The measures against him had been based on grounds of national security, which necessitated "certain restrictions of the possibilities to defend oneself".

16. The Supreme Administrative Court examined the first applicant's arguments about his right to family life and dismissed them. It noted that the right to family life was protected under Article 8 of the Convention; however, under paragraph 2 of Article 8 it was acceptable to interfere with a person's right to family life in the interests of national security. Furthermore, it held:

> "The right to respect for one's family life is not an absolute right, which always has to prevail ... The interference with the alien's family life is the result of the coercive administrative measure [which Mr Kaushal] has to endure in case the family does not settle in the country he has chosen to reside in after his expulsion from the Republic of Bulgaria. The coercive administrative measure prevents the person from exercising the unlawful activity which justified its imposition, and the separation itself, if it poses a problem for the family, can be resolved by the spouses".

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice have been summarised in the Court's judgments in the cases of *C.G. and Others v. Bulgaria* (no. 1365/07, §§ 18-28, 24 April 2008) and *Raza v. Bulgaria* (no. 31465/08, §§ 30-36, 11 February 2010).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 8 AND 13 OF THE CONVENTION

18. The applicants complained that the first applicant's expulsion from Bulgaria and the ensuing separation of their family entailed a violation of their right to family life guaranteed in Article 8 of the Convention, and that they had no effective remedies in this respect, as provided for in Article 13.

19. Article 8 of the Convention, in so far as relevant, reads:

> "1. Everyone has the right to respect for his ... family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

20. The applicants argued that they had had a genuine family life in Bulgaria, which had been disrupted by the first applicant's expulsion. They conceded that this expulsion had been formally in line with the applicable provisions of the 1998 Aliens Act, but argued that domestic law failed to provide sufficient safeguards against arbitrary action on ostensible national security grounds. In particular, although the first applicant had been able to challenge before a court the order for his expulsion, the courts had failed to properly scrutinise that order and to exercise full judicial review. The first applicant had not been informed of the factual grounds that had led the authorities to the conclusion that he represented a threat to national security and in the judicial proceedings he had not been given a meaningful opportunity to disprove these allegations. Furthermore, the courts had failed to examine the proportionality of the first applicant's expulsion in view of the applicants' right to family life guaranteed under the Convention.

21. The Government argued that there had been no interference with the applicants' family life, as it was open to them to settle in Greece where the first applicant is currently residing. In any event, they considered that if there was interference, it met the requirements of Article 8 of the Convention. In particular, they contended that the national courts had exercised full judicial review and had duly examined the grounds relied on by the executive in relation to the first applicant's expulsion.

B. The Court's assessment

1. Admissibility

22. The Court considers that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Alleged violation of Article 8

23. The Court notes that the first applicant settled in Bulgaria in 1990. In 1994 he married the second applicant. Their two daughters, the third and fourth applicants, were born in 1992 and 1998 respectively (see paragraph 5

above). There is no indication that the applicants' relationship did not amount to a genuine family life. Therefore, they enjoyed the protection of Article 8 § 1 of the Convention.

24. The Court notes furthermore that the second, third and fourth applicants are Bulgarian nationals who were born in Bulgaria and have apparently lived there all their lives. From 1990 to his expulsion in 2005 the first applicant was also lawfully residing in Bulgaria. He learned Bulgarian and started his own business (see paragraph 5 above). After he was compulsorily removed from Bulgaria, the family was separated (see paragraph 7 above). The Court therefore concludes that the measures taken by the authorities against the first applicant amounted to interference with the applicants' right to family life, as guaranteed by Article 8 of the Convention (see *C.G. and Others*, cited above, § 37, and *Musa and Others v. Bulgaria*, no. 61259/00, § 58, 11 January 2007).

25. Such interference will constitute a breach of Article 8 unless it is established that it was "in accordance with the law", pursued one of the legitimate aims under paragraph 2, and was "necessary in a democratic society" for achieving those aims.

26. The Court reiterates that the first of these requirements, namely that any interference be "in accordance with the law", does not merely require that the interference should have a basis in domestic law, but also relates to the quality of that law, requiring it to be compatible with the rule of law. The law must moreover afford a degree of legal protection against arbitrary interference by the authorities (see, among many other authorities, *Malone v. the United Kingdom*, 2 August 1984, §§ 66-68, Series A no. 82).

27. In the recent case of *C.G. and Others*, the Court, after analysing in detail the domestic courts' approach to a situation which was similar to the one in the present case, found that despite being able to seek judicial review of the expulsion order against him, Mr C.G. had not enjoyed the minimum degree of protection against arbitrariness. The Court reached that conclusion for two main reasons. First, the national courts had allowed the executive to stretch the notion of national security beyond its natural meaning, as Mr C.G.'s expulsion had been justified on the basis of his alleged involvement in unlawful trafficking in narcotic drugs. Secondly, the courts had not examined whether the executive had been able to demonstrate the existence of specific facts serving as a basis for their assessments that Mr C.G. had presented a national security risk, and had instead rested their rulings solely on uncorroborated averments of the Ministry of the Interior. On that basis, the Court found that the interference with the applicants' family life had not been "in accordance with the law" (see *C.G. and Others*, cited above, §§ 42-47 and 49).

28. In the present case, the executive's decision to expel Mr Kaushal was based on allegations that he was active in extremist groups and was involved in human trafficking, which represented "a serious threat to national security" (see paragraphs 9 and 11 above). Examining the notion of

"national security", as referred to in different domestic legal provisions, the Sofia City Court concluded that this alleged unlawful activity indeed presented a national security risk (see paragraph 11 above). Unlike the case of *C.G. and Others*, where it found that Mr C.G.'s alleged involvement in drug trafficking could hardly be deemed capable of impinging on the national security of Bulgaria (see *C.G. and Others*, cited above, § 43), in the present case the Court is ready to accept the domestic authorities' conclusion that at least one of the activities alleged on Mr Kaushal, namely participation in extremist groups, could pose a genuine threat to national security. It observes in this connection that the notion of "national security" is a very wide one and that a large margin of appreciation is left to the national authorities to determine what is in the interests of that security (ibid.). Therefore, the Court will not call in question the national authorities' assessment in the case.

29. However, even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, if need be with appropriate procedural limitations on the use of classified information. The individual must be able to challenge the executive's assertion that national security is at stake. While the executive's assessment of what poses a threat to national security will naturally be of significant weight, the independent authority must be able to react in cases where invoking that concept has no reasonable basis in the facts or reveals an interpretation of "national security" that is unlawful or contrary to common sense and arbitrary. Failing such safeguards, the police or other State authorities would be able to encroach arbitrarily on rights protected by the Convention (see *Al-Nashif*, cited above, §§ 123-24).

30. In the instant case, the Court considers that the applicants were not afforded such protection from arbitrariness. In this respect, it finds it particularly striking that the decision to expel Mr Kaushal made no mention of the factual grounds on which it was made. It simply referred to the applicable legal provisions and stated that his presence in Bulgaria represented a "serious threat to national security"; this conclusion was based on unspecified information contained in a secret internal proposal (see paragraph 6 above). Lacking even outline knowledge of the facts which had served as a basis for this assessment, the first applicant was not able to present his case adequately in the ensuing judicial review proceedings.

31. Moreover, once Mr Kaushal instituted such judicial proceedings, the courts accepted that he had been involved in unlawful activities, referring to the Ministry of the Interior's proposal and failing to carry out any further inquiry into the facts. The Sofia City Court merely pointed out that the data on Mr Kaushal's alleged unlawful activities had been collected in accordance with the law and "within the competence of the Ministry of the

Interior's National Security Service" (see paragraph 11 above). The Supreme Administrative Court noted that the order for Mr Kaushal's expulsion had been "reasonably related" to the facts set out in the Ministry of the Interior's proposal, but failed to elaborate on the evidentiary basis of this proposal, and found, instead, that the burden to disprove the Ministry's allegations lay on Mr Kaushal and that he had not satisfactorily disproved them (see paragraph 14 above). Thus, similarly to the case of *C.G. and Others*, the domestic courts failed to examine a critical aspect of the case, namely, whether the executive had been able to demonstrate the existence of specific facts serving as a basis for their assessment that Mr Kaushal had presented a national security risk.

32. This is sufficient to lead the Court to the conclusion that the national courts confined themselves to a purely formal examination of the decision to expel Mr Kaushal. They failed to examine other pieces of evidence to confirm or refute the allegations against him, and rested their rulings solely on uncorroborated information tendered by the Ministry of the Interior (see *Lupsa v. Romania*, no. 10337/04, § 41, ECHR 2006-VII, and, *mutatis mutandis*, *Chahal v. the United Kingdom*, 15 November 1996, §§ 121, and 130, *Reports of Judgments and Decisions* 1996-V, and *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 212-24, ECHR 2009-...).

33. Therefore, the Court finds that Mr Kaushal did not enjoy the minimum degree of protection against arbitrariness on the part of the authorities. The interference with the applicants' family life was not therefore "in accordance with the law", as required by Article 8 § 2 of the Convention. In view of this conclusion, the Court is not required to determine whether this interference pursued a legitimate aim and, if so, whether it was proportionate to the aim pursued.

34. There has accordingly been a violation of Article 8 of the Convention.

(b) Alleged violation of Article 13

35. Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see, among many other authorities, *Chahal*, cited above, § 145). In immigration matters, where there is an arguable claim that expulsion may infringe an alien's right to respect for his or her family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging expulsion orders and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate

guarantees of independence and impartiality (see *Al-Nashif*, cited above, § 133).

36. If expulsion has been ordered by reference to national security considerations, certain procedural restrictions may be necessary to ensure that no leakage detrimental to national security occurs, and any independent appeals authority may have to afford a wide margin of appreciation to the executive. However, these limitations can by no means justify doing away with remedies altogether whenever the executive has chosen to invoke the term "national security". There must be some form of adversarial proceedings. Furthermore, the question whether the impugned measure would interfere with the individual's right to respect for his or her family life and, if so, whether a fair balance has been struck between the public interest involved and the individual's rights must be examined (see *Al-Nashif*, cited above, § 137). The relevant factors to be taken into account when carrying out the balancing exercise have recently been summarised in the Court's judgment in the case of *Üner v. the Netherlands* ([GC], no. 46410/99, §§ 57-59, ECHR 2006-XII).

37. Having regard to its conclusion under Article 8 (see paragraph 34 above), the Court considers that the applicants in the case had an arguable claim under Article 13. Furthermore, the Court notes that, notwithstanding the express ban on the matter in domestic law, the courts accepted for examination the first applicant's appeal against the order for his expulsion (see paragraph 9 above). The appeal was examined at two levels of jurisdiction (see paragraphs 10-16 above). The Court must therefore examine whether the proceedings the first applicant had resort to represented an effective remedy within the meaning of Article 13 of the Convention, that is, whether they were in compliance with the criteria set out in paragraphs 35 and 36 above.

38. In this respect the Court refers to its finding in paragraphs 30-32 above that the domestic courts which reviewed the executive's decision to expel Mr Kaushal failed to verify the factual circumstances on which that decision had been based. Even if it is to accept that certain procedural limitations were permissible, seeing that the case allegedly touched upon issues of national security, the Court does not see a justification for such limited judicial review and for the courts' failure to provide the first applicant with a meaningful opportunity to present his case. The Court thus concludes that the proceedings in the case cannot be considered an effective remedy for the applicants' complaint under Article 8 of the Convention (see *C.G. and Others*, cited above, § 60).

39. Moreover, the Court notes that the national courts did not duly consider the question of whether the interference with the applicants' family life was proportionate to the aim sought to be attained. The Sofia City Court considered the first applicant's arguments relating to his family situation irrelevant, pointing out instead that the measures against him had not been

aimed at punishing him and were sufficiently justified by the existence of "objective data" on his alleged unlawful activity (see paragraph 12 above).

40. The Supreme Administrative Court, which, on the contrary, did find Mr Kaushal's arguments concerning his right to family life relevant, concluded that his expulsion had nevertheless been justified, first, because it been carried out in the interests of national security, which was acceptable under Article 8 § 2 of the Convention, and second, because the applicants were free to settle in another country. However, the Court does not see how this limited review could satisfy the requirements of Article 13, as set out above (see paragraph 36). It observes that the Supreme Administrative Court failed to take into account highly relevant circumstances, such as the fact that the second, third and fourth applicants had been born in Bulgaria and had apparently lived there all their lives. At the time of their father's expulsion the third and fourth applicants were thirteen and seven years old (see paragraph 5 above). Therefore, it could be expected that they would encounter serious difficulties in adapting to life in another country. Furthermore, prior to his expulsion the first applicant had also been living in Bulgaria for many years. He had learned Bulgarian and started his own business (see above), and had apparently created solid social, family and cultural ties with the country.

41. The Court has repeatedly held that factors such as these had to be taken into account when carrying out an assessment as to whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued (see *Üner*, cited above, § 57, with further references). As the Supreme Administrative Court's approach fell short of these requirements, and the Sofia City Court failed to examine at all the proportionality of the measures applied against the first applicant, the Court considers that the judicial proceedings did not represent a remedy whereby the applicants could adequately vindicate their right to respect for their family life (see *C.G. and Others*, cited above, § 63).

42. The Government have not referred to any other effective remedy that might have been available to the applicants.

43. There has therefore been a violation of Article 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 7 TO THE CONVENTION

44. The first applicant further complained of the fact that he had been expelled from Bulgaria without having been afforded the guarantees of Article 1 of Protocol No. 7 to the Convention, which reads as follows:

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons why he should not be expelled,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

A. The parties' submissions

45. The Government argued that Article 1 of Protocol No. 7 had been complied with and that the authorities' actions had been justified in view of paragraph 2 of that provision.

46. The first applicant contested these arguments.

B. The Court's assessment

1. Admissibility

47. The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

48. The first guarantee of Article 1 of Protocol No. 7 is that persons referred to in that provision should not be expelled except "in pursuance of a decision reached in accordance with law". However, the Court has already found that the Mr Kaushal's expulsion in the case was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention (see paragraph 34 above). Seeing that this phrase has a similar meaning throughout the Convention and its Protocols (see *C.G. and Others*, cited above, § 73), the Court cannot but conclude that this expulsion did not conform to the requirement of the first paragraph of Article 1 of Protocol No. 7.

49. Furthermore, the Court observes that the national courts failed to gather evidence to confirm or dispel the allegations serving as a basis for the decision to expel the first applicant and subjected this decision to a purely formal examination, with the result that the first applicant was not able to have his case genuinely heard and reviewed in the light of possible arguments militating against his expulsion (see paragraphs 30-32 above). Thus, the domestic courts' actions went contrary to letter (b) of paragraph 1 of Protocol No. 7.

50. These elements suffice to lead the Court to the conclusion that in the present case there has been a violation of Article 1 of Protocol No. 7 to the Convention in respect of the first applicant.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicants claimed the following amounts: 1) 19,200 euros (EUR) for rent paid between January 2006 and December 2009 by the first applicant for an apartment rented by him in Thessaloniki; 2) 13,000 United States dollars (USD) borrowed by the first applicant to cover his living expenses; and 3) EUR 9,539.10 paid by the four applicants for plane and bus tickets after the first applicant's expulsion. In support of these claims they presented a declaration signed by the first applicant's landlord in Thessaloniki and concerning the rent paid, a declaration by the first applicant to the effect that he had borrowed USD 13,000, copies of plane tickets showing that the first applicant had travelled to Paris and to Amritsar, India, and bank statements.

53. The Government urged the Court to dismiss these claims, considering that there was no causal link between them and the alleged violations of the Convention.

54. The Court agrees with the Government and sees no causal link between the pecuniary damage allegedly suffered and the violations found in the case. Furthermore, it reiterates that its findings of violations essentially rested upon the domestic courts' failure to exercise full judicial review. It is not its task to speculate as to what those courts' decisions would have been had they taken an approach which was in accordance with the Convention. Therefore, the Court considers that losses allegedly suffered by the applicants were not the direct result of the violations of their rights found in the case (see, *mutatis mutandis*, *Capital Bank AD v. Bulgaria*, no. 49429/99, § 144, ECHR 2005-XII (extracts), with further references).

55. Accordingly, the Court dismisses the claims for pecuniary damage.

2. Non-pecuniary damage

56. The applicants claimed EUR 20,000 each, or EUR 80,000 in total, submitting that they had suffered frustration and distress as a result of the first applicant's expulsion, which had disrupted their family life.

57. The Government urged the Court to conclude that the finding of a violation sufficed in the case or, alternatively, considered the claims to be excessive.

58. The Court considers that the applicants must have suffered non-pecuniary damage as a result of the violations found in the case. Having regard to the materials in its possession and ruling on an equitable basis, it awards EUR 10,000 to the first applicant, Mr Rajesh Kaushal, and EUR 6,000 to each of the second, third and fourth applicants, Ms Kristina Stoyanova Boneva-Kaushal, Ms Viktoria Rajesh Kaushal and Ms Elena Rajesh Kaushal, plus any tax that might be chargeable.

B. Costs and expenses

59. The applicants also claimed EUR 7,000 for fees charged by their lawyer for the proceedings before the Court.

60. The Government urged the Court to dismiss the claim, as it was not supported by any documents.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. To this end, Rule 60 §§ 2 and 3 of the Rules of Court stipulates that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court may reject the claims in whole or in part. In the present case, noting that the applicants have failed to produce any documents in support of their claim, the Court does not make any award under this head.

C. Default interest

62. 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. *Declares* the application admissible;

2. *Holds* that in respect of the four applicants there has been a violation of Article 8 of the Convention;

3. *Holds* that in respect of the four applicants there has been a violation of Article 13 of the Convention;

4. *Holds* that in respect of the first applicant, Mr Rajesh Kaushal, there has also been a violation of Article 1 of Protocol No. 7 to the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 10,000 (ten thousand euros) to the first applicant, Mr Rajesh Kaushal;
      (ii) EUR 6,000 (six thousand euros) to each of the second, third and fourth applicants, Ms Kristina Stoyanova Boneva-Kaushal, Ms Viktoria Rajesh Kaushal and Ms Elena Rajesh Kaushal;
   (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;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 2 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President