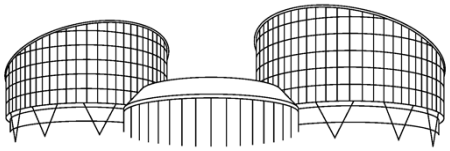

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MICROINTELECT OOD v. BULGARIA

(Application no. 34129/03)

JUDGMENT

STRASBOURG

4 March 2014

FINAL

04/06/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Microintelect OOD v. Bulgaria,

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

Ineta Ziemele, *President*,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges*,
and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 11 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 34129/03) 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 Microintelect OOD, a Bulgarian limited liability company with a registered office in Sofia ("the applicant company") and two other applicants, on 20 October 2003.

2. The applicant was represented by Ms V. Krumova-Kyuchukova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicant company complained under Article 1 of Protocol No. 1 of the unjustified forfeiture of alcohol belonging to it in administrative-penal proceedings against its business partners and under Article 6 § 1 of the Convention of its inability to intervene in those proceedings.

4. On 26 May 2009 the Court (Fifth Section) decided to give the Government notice of the applicant company's complaints under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention. The company's remaining complaints, as well as the complaints of the other applicants, were rejected as inadmissible.

5. Following the re-composition of the Court's sections on 1 February 2011, the application was transferred to the Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

6. On 31 July 2000 the applicant company entered into a contract with a sole trader, Ms T.Z., to jointly operate a billiards club. The contract stipulated, in particular, that the sole trader would operate the club against an undertaking on the part of the applicant company to supply the club with alcohol. The contract also made provision for the manner in which profits would be shared between the parties, and set out penalties in case of breach.

7. On 7 August 2000 the applicant company obtained a licence to sell alcoholic beverages in the billiards club.

8. On 18 January 2001 the applicant company entered into a similar contract with another sole trader, Ms V.G., for the joint operation of an electronic games club. At that time the applicant company had already obtained a licence to sell alcoholic beverages in that club.

9. Both the billiards club and the electronic games club were operated in premises leased by the applicant company.

B. The proceedings relating to the billiards club

10. On 3 July 2002 the tax authorities carried out an inspection at the billiards club. They found that the sole trader, Ms T.Z., was selling alcohol without the requisite licence. The next day, 4 July 2002, the authorities drew up a report accusing her of trading in excise goods without the requisite licence, contrary to section 17a(2) of the Excise Act 1994 (see paragraph 23 below), and impounded the alcohol (eighteen bottles) that they had found in the club. The applicant company was not notified of those events.

11. On 8 July 2002 Ms T.Z. objected to the report, saying she had been selling the alcohol on behalf of the applicant company, which had a licence to do so. She further claimed that the impounding had been unlawful.

12. On 16 July 2002 the regional tax director dismissed the objection, observing that the impounding could not be challenged separately as it had been ancillary to the opening of administrative-penal proceedings and had amounted to a measure intended to prevent tampering with evidence. On an appeal by Ms T.Z., on 25 October 2002 the Dobrich District Court upheld that decision, finding that the impounding could not be challenged in separate judicial review proceedings; only the penal order which would conclude the administrative-penal proceedings was capable of being challenged by way of judicial review.

13. In the meantime, on 17 July 2002 the regional tax director issued a penal order against Ms T.Z. The penalties imposed thereby were a fine and forfeiture of the impounded alcohol. The applicant company was not served with a copy of the order.

14. Ms T.Z. sought judicial review of the order. On 29 January 2003 the applicant company applied to intervene in the proceedings as a third party, arguing that it was the owner of the forfeited alcohol. The next day, 30 January 2003, the Dobrich District Court discontinued the judicial review proceedings, finding that Ms T.Z.'s application was out of time.

15. A subsequent appeal by the applicant company against the discontinuance was rejected by the Dobrich District Court on 17 February 2003 on the grounds that, not being a party to the proceedings, the company did not have standing to appeal against their discontinuance. On an appeal by the applicant company, in a final decision of 22 April 2003 the Dobrich Regional Court upheld that decision, holding that the company did not have standing to intervene in the proceedings. The court found it irrelevant to now discuss whether or not the company could have claimed to be a victim of the administrative offence. Ensuing attempts by the company to obtain re-opening of the proceedings were unsuccessful.

C. The proceedings relating to the electronic games club

16. On 3 July 2002 the tax authorities carried out an inspection at the electronic games club jointly operated by the applicant company and Ms V.G. They found that Ms V.G. was selling alcohol without the requisite licence. The next day, 4 July 2002, they drew up a report accusing her of trading in excise goods without the requisite licence, contrary to section 17a(2) of the Excise Act 1994 (see paragraph 23 below). They impounded the alcohol (forty-six bottles) that they had found in the club. The applicant company was not notified of those events.

17. Ms V.G. sought judicial review of the impounding, arguing that she had been selling the alcohol on behalf of the applicant company, which had a licence to do so. On 23 October 2002 the Dobrich District Court rejected her application as inadmissible, holding that the impounding could not be challenged in separate judicial review proceedings; only the penal order which would conclude the administrative-penal proceedings was capable of being challenged by way of judicial review.

18. In the meantime, on 19 August 2002 the regional tax director issued a penal order against Ms V.G. The penalties imposed thereby were a fine and forfeiture of the impounded alcohol. The applicant company was not served with a copy of the order.

19. The sole trader sought judicial review of the order.

20. At a hearing held on 4 November 2003 the applicant company applied to intervene in the proceedings as a third party, arguing that it was

the owner of the forfeited alcohol. However, the Dobrich District Court turned its application down, finding that it had not been party to the administrative-penal proceedings. It held that the business relations between the applicant company and Ms V.G. were irrelevant for the proceedings. It also instructed the applicant company to bring separate proceedings in the civil courts.

21. On 10 February 2004 the Dobrich District Court upheld the penal order. It found that the alcohol had been properly forfeited. It reiterated that considerations concerning the business relations between Ms V.G. and the applicant company were irrelevant for the administrative-penal proceedings. The Dobrich Regional Court upheld that judgment in a final judgment of 7 June 2004.

II. RELEVANT DOMESTIC LAW

A. Selling alcohol without a licence

22. At the relevant time, a mayor of a municipality, acting at the request of a sole trader or a company, was empowered to issue a licence for selling alcohol (section 40 of the Wine and Spirits Act 1999 and sections 27-28 of the regulations issued in 2000 under section 40(6) of that Act). The licensing regime for the sale of alcohol was later lifted.

23. Section 17a(2) of the Excise Act 1994, as in force at the relevant time, made it an administrative offence punishable with a fine for a company or a sole trader to, *inter alia*, sell excise goods without licence. For the procedure to be followed with a view to punishing an administrative offence, the Excise Act 1994 referred to the Administrative Offences and Punishments Act 1969 ("the 1969 Act").

B. Forfeiture of goods in administrative-penal proceedings

24. When punishing an administrative offence, the authorities must, if the relevant statute so provides, also seek to have forfeited, *inter alia*, the goods which are the subject of the offence and which belong to the offender or which have been used to commit the offence (section 20(1) and (3) of the 1969 Act). At the relevant time section 17a(11) of the Excise Act 1994 (superseded by section 124(1) of the Excise and Tax Warehouses Act 2005), read in conjunction with section 17a(2) of the same Act, provided that excise goods sold by a company or a sole trader without a licence were subject to forfeiture. It did not specify whether that was the case if the goods belonged to the offender alone.

25. The 1969 Act does not make provision for third parties who claim to be the owners of forfeited goods to take part in the proceedings against an

offender, and the courts have turned down requests for intervention on that basis (опр. № 338 от 10 август 2004 г. по н. а. х. д. № 222/2004 г., РС – Петрич, потв. с опр. № 8 от 25 май 2005 г. по д. № 1247/2004 г., ОС – Благоевград).

C. Persons who have suffered damage as a result of an administrative offence

26. When drawing up a report accusing an individual or a legal person of an administrative offence, the relevant authority must indicate the names and the addresses of the persons, if any, who have suffered damage as a result of the offence (section 42(9) of the 1969 Act). Before issuing a penal order in respect of the offence, the relevant authority must give notice of the proceedings to the persons, if any, who have suffered damage as a result of the offence (section 52(3)). Those persons can then ask the authority to award them compensation, provided the claim does not exceed two Bulgarian levs, unless another statute makes provision for a higher amount (section 45(1)). As a rule, compensation must be awarded simultaneously with the issuing of the penal order (section 55(1)). However, if the authority encounters difficulties in resolving the issue of compensation, it can discontinue that part of the proceedings and direct those concerned to bring their claims by way of civil actions (section 56).

D. State liability for damages

27. Section 1 of the State Responsibility for Damage Caused to Citizens Act 1988 (renamed in July 2006 the State and Municipalities Responsibility for Damage Act – "the 1988 Act"), as originally enacted and in force until the end of 2005, provided that the State was liable for damage suffered by individuals (*граждани*) as a result of unlawful decisions, actions or omissions by civil servants, committed in the course of or in connection with the performance of their duties. The Supreme Court of Cassation's case-law (реш. № 2139 от 12 декември 1997 г. по гр. д. № 1649/1996 г., ВКС; реш. № 1807 от 14 януари 2002 г. по гр. д. № 97/2001 г., ВКС; реш. № 1307 от 21 октомври 2003 г. по гр. д. № 2136/2002 г., ВКС, V г. о.), fully confirmed in a binding interpretative decision of that court of 22 April 2005 (тълк. реш. № 3 от 22 април 2005 г. по т. гр. д. № 3/ 2004 г., ОСГК на ВКС), was that solely individuals, not legal persons, could claim compensation under that provision. On 21 December 2005 Parliament decided to amend section 1(1) by adding "legal persons" to the category of those entitled to bring a claim. The amendment came into force on 1 January 2006. In their ensuing case-law the Supreme Court of Cassation and the Supreme Administrative Court have held that it conferred on legal persons a substantive right to claim damages, and has no retroactive

effect (опр. № 9134 от 3 октомври 2007 г. по адм. д. № 8175/2007 г., ВАС, III о.; опр. № 1046 от 6 август 2009 г. по гр. д. № 635/2009 г., ВКС, III г. о.; опр. № 1047 от 7 август 2009 г. по гр. д. № 738/2009 г., ВКС, III г. о.; реш. № 335 от 31 май 2010 г. по гр. д. № 840/2009 г., ВКС, III г. о.; реш. № 329 от 4 юни 2010 г. по гр. д. № 883/2009 г., ВКС, IV г. о.).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

28. The applicant company complained that the tax authorities had unjustifiably deprived it of its property. It relied on Article 1 of Protocol No. 1, which provides as follows:

> "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."

A. Admissibility

29. The Government submitted that the applicant company had failed to exhaust domestic remedies for the following reasons:

(a) it had not sought to take part in the administrative-penal proceedings relating to the billiards club in good time;

(b) it had not brought a claim against the tax authorities under section 1 of the 1988 Act (see paragraph 27 above); and

(c) it had not requested the return of the goods from the authorities.

30. The applicant company contested those arguments. It submitted that it had missed the time-limit for intervening in the proceedings concerning the billiards club because the authorities had not notified it of those proceedings. It further submitted that the 1988 Act was not applicable to its case because until 1 January 2006 legal persons could not bring claims under it and because it presupposed the unlawfulness of the authorities' actions, whereas no such unlawfulness had been established in the case at hand.

31. The Court considers that the question of exhaustion of domestic remedies is closely related to the merits of the complaint, and therefore joins the Government's objection to the merits.

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

B. Merits

1. The parties' submissions

33. The Government did not dispute that the applicant company was the owner of the forfeited alcohol. They accepted that there had been an interference with the company's possessions, but argued that that interference had amounted to control of the use of property. Relying on the Court's judgment in *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* (23 February 1995, Series A no. 306-B), the Government went on to argue that the interference had been lawful, as the authorities had strictly followed the relevant procedural rules, and had been in the public interest. It had also been proportionate because the company had not acted diligently, failing to check whether its business partner had been granted a licence to sell alcohol. Moreover, the number of bottles forfeited had not been significant, which meant that the company had not had to bear an excessive burden.

34. The applicant company argued that the interference had not amounted to control of the use of property, because it had not been intended to prevent tax evasion, but rather had been a deprivation of property. It also submitted that the interference had not been lawful and that the Excise Act 1994 had been wrongly applied. The company went on to argue that during the inspections in the clubs the authorities had failed to establish the owner of the alcohol. Lastly, the company submitted that the impounding and forfeiture of the alcohol had been disproportionate because it had not been allowed to take part in the administrative-penal proceedings.

2. The Court's assessment

a) Interference with possessions

35. It is not in dispute between the parties that the matters complained of constituted an interference with the peaceful enjoyment of the applicant company's possessions. However, there was disagreement as to whether there had been deprivation of property under the first paragraph of Article 1 of Protocol No. 1 or control of use under the second paragraph.

36. The interference was the result of the tax authorities' exercise of their powers under section 17a(11) read in conjunction with section 17a(2)

of the Excise Act 1994 (see paragraphs 23 and 24 above). The purpose of that Act was to regulate the collection of excise tax in Bulgaria. It also governed the unauthorised sale of excise goods and the punishments for doing so. The impounding and forfeiture of the alcohol in issue were clearly measures for the enforcement of those provisions. Thus, in the Court's view, the forfeiture can be examined as both a constituent element of the procedure for the control of the use of excise goods (see, *mutatis mutandis*, *AGOSI v. the United Kingdom*, 24 October 1986, § 51, Series A no. 108, and *Bowler International Unit v. France*, no. 1946/06, § 41, 23 July 2009) and as a measure securing the payment of taxes or penalties (see, *mutatis mutandis*, *Gasus Dosier- und Fördertechnik GmbH*, cited above, § 59). It follows that it is the second paragraph of Article 1 of Protocol No. 1 which is applicable in the present case.

37. However, that provision must be construed in the light of the general principle enunciated in the opening sentence of the first paragraph of Article 1 of Protocol No. 1. The Court must therefore determine whether the interference with the applicant company's possessions was lawful and in the public interest, and whether it struck a fair balance between the demands of the general interest and the company's rights.

b) Justification for the interference

38. 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 Court has consistently held that the terms "law" or "lawful" in the Convention do not merely refer back to domestic law but also relate to the quality of the law, requiring it to be compatible with the rule of law (see, among many other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 67, Series A no. 98).

39. Concerning the applicant company's assertion that the manner in which the authorities applied domestic law was erroneous, the Court observes that it has only a limited power to deal with alleged errors of law made by the national authorities. Although the Court can and should exercise a certain power of review in this matter, since failure to comply with domestic law entails a breach of Article 1 of Protocol No. 1, the scope of its task is subject to limits inherent in the subsidiary nature of the Convention, and it cannot question the way in which the domestic courts have interpreted and applied national law except in cases of flagrant non-observance or arbitrariness (see, *mutatis mutandis*, *Weber and Saravia v. Germany* (dec.), no. 54934/00, § 90, ECHR 2006-XI, and *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, § 46, 8 March 2011). The legislation in issue in the instant case clearly provided that excise goods sold by a sole trader without a licence were subject to forfeiture, and made no provision for third parties asserting rights to such goods to take part in

administrative-penal proceedings against the offender (see paragraphs 23-25 above). The domestic courts' rulings appear in accordance with that legislation, and there is nothing to indicate that they went beyond the reasonable limits of interpretation. Nor can it be said that their rulings came as a surprise to the applicant company (see *Saccoccia v. Austria*, no. 69917/01, § 87, 18 December 2008, and, *mutatis mutandis*, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 77, ECHR 2007-III). As for the question whether the applicable domestic legislation meets the relevant Convention requirements, the Court will examine it below in the context of the question whether the interference was necessary for the achievement of the legitimate aim pursued (see, for a similar approach and mutatis mutandis, *Yordanova and Others v. Bulgaria*, no. 25446/06, § 108, 24 April 2012).

40. The Court further considers that the impugned interference pursued a legitimate aim in the public interest – to prevent the unauthorised sale of excise goods.

41. However, that does not settle the matter. Even if it is lawful and in the public interest, an interference with the right to the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest and the applicant's rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, among many other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52).

42. In this connection, the Court notes that it has recognised that the Contracting States have a wide margin of appreciation when passing laws for the purpose of securing the payment of taxes (see *Gasus Dosier- und Fördertechnik GmbH*, cited above, § 60; *AGOSI*, cited above, § 52; and *Bulves AD v. Bulgaria*, no. 3991/03, § 63, 22 January 2009). Decisions in this area commonly involve the consideration of political, economic and social questions which the Convention leaves within the competence of the Contracting States. The Court would therefore respect the legislature's assessment unless it is devoid of reasonable foundation.

43. The Court is also conscious of the fact that the applicant company was engaged in a commercial venture which, by its very nature, involved an element of risk (see *Gasus Dosier- und Fördertechnik GmbH*, cited above, § 70). In addition, the Court is not fully convinced that the applicant company was diligent in conducting its business matters, seeing that it must have been aware that at the material time the sale of alcohol required a licence, but nevertheless negotiated a venture with the sole traders without checking whether they had obtained such licences. Lastly, the Court cannot overlook the fact that the applicant company could have sought compensation from the sole traders for any alleged damage before the civil courts.

44. The Court reiterates, however, that, although the second paragraph of Article 1 of Protocol No. 1 contains no explicit procedural requirements, it has been construed to require that persons affected by a measure interfering with their possessions be afforded a reasonable opportunity of putting their case to the responsible authorities for the purpose of effectively challenging those measures. In ascertaining whether this condition has been satisfied, the Court must take a comprehensive view of the applicable procedures (see *AGOSI*, cited above, § 55; *Bowler International Unit,* cited above, §§ 44-45; *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV; and *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 59, 1 April 2010).

45. In the instant case, the impounding and forfeiture of the alcohol were ordered and carried out in the course of administrative-penal proceedings against the sole traders, Ms T.Z. and Ms V.G. It appears that under Bulgarian law the applicant company did not have the opportunity to take part in those proceedings (contrast *AGOSI*, cited above, §§ 60 and 62). The law makes no provision for third parties who claim to be the owners of forfeited goods to intervene in proceedings against an alleged offender (see paragraph 25 above). Since the applicant company was not a victim of the administrative offence, but a third party affected by the proceedings, there was no basis for it to intervene in the proceedings.

46. The company nonetheless tried to take part in the judicial proceedings. However, its request was turned down because it had not been party to the administrative-penal proceedings (see paragraphs 15 and 20 above). In this connection, the Court takes note of the first limb of the Government's objection of non-exhaustion of domestic remedies: that in relation to the billiards club the applicant company had partly put itself in the position of being unable to challenge the penal order because it had missed the relevant time-limit (see paragraph 29 above). The Court observes, however, that the authorities did not notify the company of the impounding of its goods or of the ensuing penal order (see paragraphs 13 and 18 above). The failure to comply with the time-limit cannot therefore be imputed to the company (see, *mutatis mutandis*, *Platakou v. Greece*, no. 38460/97, § 39, ECHR 2001-I, and *Neshev v. Bulgaria* (dec.), no. 40897/98, 13 March 2003). It follows that the first limb of the Government's objection must be rejected.

47. Moreover, neither the tax authorities nor the domestic courts were competent to determine who the owner of the alcohol in issue was. On the contrary, the domestic courts found the applicant company's submissions on that point irrelevant (see paragraphs 15 and 21 above). In the Court's view, the lack of any judicial review of the contested measure was undoubtedly a result of deficient domestic legislation, because the relevant law did not provide for such a review, which put the applicant company in a situation of having no safeguards capable to protect it against unjustified interference

(contrast *Air Canada v. the United Kingdom*, 5 May 1995, § 46, Series A no. 316-A).

48. Lastly, as regards the second and third limbs of the Government's objection of non-exhaustion of domestic remedies (see paragraph 29 above), it does not appear that the applicant company had any other means of challenging the authorities' actions and obtaining either the return of the goods or compensation. In particular, domestic law does not provide for a procedure for the return of goods confiscated in a situation such as that of the present case. As for the Government's assertion that the applicants could have brought a claim for damages under section 1 of the 1988 Act, that argument appears to be baseless, as until 2006 legal persons could not bring claims under that Act (see paragraph 27 above, *Zlínsat, spol. s r.o. v. Bulgaria*, no. 57785/00, § 54, 15 June 2006, and *First Sofia Commodities EOOD and Paragh v. Bulgaria* (dec.), no. 14397/04, § 32, 25 January 2011). Even assuming that the applicant company could have brought a claim after 1 January 2006, it does not appear that such a claim would have had any prospects of success, because the actions of the tax authorities were fully in line with domestic law (see, *mutatis mutandis*, *Zlínsat, spol. s r.o.*, cited above § 56). Moreover, those limbs of the Government's objection are not substantiated by reference to any relevant case-law.

49. Having regard to the above considerations, and in spite of the wide margin of appreciation afforded to the State in this domain, the Court finds that the Government failed to establish that the applicant company's inability to challenge the measures interfering with its rights under Article 1 of Protocol No. 1, and the lack of any safeguards against arbitrariness, was necessary in a democratic society for the achievement of the legitimate aim pursued.

50. In conclusion, the Court dismisses the Government's objection of non-exhaustion of domestic remedies and finds that there has been a breach of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. The applicant company complained under Article 6 § 1 of the Convention that it had not been allowed to take part in the proceedings for judicial review of the penal orders issued against the sole traders. Article 6 § 1 provides, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by a ... tribunal ..."

52. The Government contested that argument.

53. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

54. However, having regard to its conclusions under Article 1 of Protocol No. 1, the Court considers that it is not necessary to examine whether there has been a breach of Article 6 § 1 of the Convention (see, for a similar approach, *Bowler International Unit*, cited above, § 62).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. In respect of pecuniary damage, the applicant company claimed 34,000 Bulgarian levs (BGN) (17,383.08 euros (EUR)): BGN 4,000 (EUR 2,045.05) that it had paid for the licence to sell alcohol in the electronic games club, and BGN 30,000 (EUR 15,338.03) for non-fulfilment of lease agreements for the use of the electronic games club due to the allegedly protracted administrative-penal proceedings.

57. The applicant company further claimed EUR 15,338.76 in respect of non-pecuniary damage which it claimed had arisen from detriment to its relations with other business partners caused by the alleged deprivation of property and from its inability to participate in the judicial proceedings.

58. The Government contested the claims as exorbitant.

59. Concerning the claim for pecuniary damage, the Court does not discern a sufficient causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. Concerning the claim for non-pecuniary damage, the Court notes that it has indeed not ruled out that a commercial company could be awarded compensation in respect of non-pecuniary damage, which may include heads of claim that are to a greater or lesser extent "objective" or "subjective". Among these, account should be taken of the company's reputation, uncertainty in planning and decision making, disruption in the management of the company and lastly, albeit to a lesser degree, anxiety and inconvenience caused to the members of the management team (see, among other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, §§ 32-36, ECHR 2000-IV, and *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, § 115, 20 September 2011). However, in the present case there is no indication that the events in issue negatively affected in any significant way the reputation, the planning, the decision making or the management of the applicant company, or caused significant anxiety and inconvenience to members of its management team. The Court therefore rejects this claim.

B. Costs and expenses

60. The applicant company claimed EUR 2,846.92 for costs and expenses incurred before the Court, comprising EUR 204.53 in translation costs, EUR 34.80 for postage and EUR 2,607.59 for work on the case by its lawyer. In support of its claim the company presented invoices for the translation of documents, postal receipts and a contract for legal representation.

61. The Government contested the claim as excessive.

62. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

63. The Court considers it appropriate that the default interest rate 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. *Joins* to the merits the Government's objection of non-exhaustion of domestic remedies and *declares* the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 and *dismisses* in consequence the Government's objection of non-exhaustion of domestic remedies;

3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay to the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses, to be converted into Bulgarian levs at the rate applicable at the date of settlement;

(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;

5. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 4 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Ineta Ziemele
President