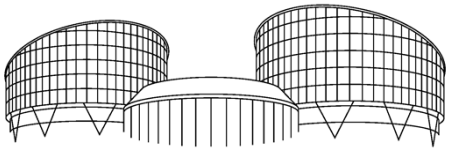

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TODOROV AND OTHERS v. BULGARIA

(Applications nos. 50705/11 and 6 others)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Individual, reasoned assessment required to counterbalance deficiencies in legislation on forfeiture of crime proceeds • Domestic courts to provide particulars of the criminal conduct and show in reasoned manner that assets could have been the proceeds of crime • General deference to domestic courts' assessment unless arbitrary or manifestly unreasonable • Disproportionate interference where no effort made to justify causal link, assess value of assets, and justify any finding of further offences • Proportionate interference where such efforts made, relevant Supreme Court Interpretative Decision applied, and conclusions neither arbitrary nor manifestly unreasonable

STRASBOURG

13 July 2021

FINAL

13/10/2021

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Todorov and Others v. Bulgaria,

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

Tim Eicke, *President,*
Yonko Grozev,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

The seven applications 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 fourteen Bulgarian nationals, whose names and further details are indicated in the appendix ("the applicants"), on the various dates also indicated in the appendix;

the fact that the applicant Ms Emilia Ruseva Zhekova passed away on 20 July 2018 and that her heirs (her husband and sons) expressed the wish to pursue the case in her stead;

the decision to give notice to the Bulgarian Government ("the Government") of the complaints concerning the forfeiture of the applicants' property presumed to be proceeds of crime and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 15 June 2021,

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

INTRODUCTION

1. The cases concern the forfeiture of alleged proceeds of crime. The applicants' complaints mainly concern Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicants were represented by lawyers, whose names and places of practice are indicated in the appendix.

3. The Government were represented by their Agents, Ms M. Dimova, Ms I. Stancheva-Chinova and Ms R. Nikolova, of the Ministry of Justice.

4. The facts, as submitted by the parties, may be summarised as follows.

I. APPLICATION NO. 50705/11 – *TODOROV AND OTHERS V. BULGARIA*

5. Mr Valeri Iliev Todorov ("the first applicant") and Ms Vera Ilieva Todorova ("the second applicant") are spouses. Mr Iliya Ivanov Todorov and Ms Galya Tsvetanova Ivanova ("the third and fourth applicants") are the first applicant's parents.

6. By a judgment of the Pleven Regional Court of 20 October 2002, which became final on 1 December 2004, the first applicant was convicted of unlawful deprivation of liberty of another person, committed between 5 and 9 September 1993, and attempted extortion. He received a suspended prison sentence.

7. Since the offence of extortion fell within the scope of the Forfeiture of Proceeds of Crime Act 2005 (hereinafter "the 2005 Act", see paragraph 90 below), in 2007 the Commission for Uncovering Proceeds of Crime (hereinafter "the Commission", see paragraph 92 below) filed a forfeiture application with the Vratsa Regional Court. It sought the confiscation of a number of assets of the first and second applicants (their family home was expressly excluded from the list), and a plot of land and house which the first applicant had bought in 1993 and gifted to his father, the third applicant, in 2003.

8. The forfeiture application was the result of checks and verifications by the Commission of the first and second applicants' income and expenditure between 1 January 1993 and 31 December 2005.

9. In a judgment of 1 April 2009 the Vratsa Regional Court allowed the Commission's application in part and ordered the forfeiture of the following assets of the first and second applicants: eight immovable properties, including shops, a café and plots of land acquired by the applicants between 2001 and 2005; 99,400 Bulgarian levs (BGN), the equivalent of 50,840 euros (EUR), received by the first and second applicants between 2002 and 2005 from renting out some of these properties; BGN 67,623 (EUR 34,590) received from the sale of flats and cars acquired initially between 2000 and 2002, and company shares; and deposits in bank accounts. The total value of the forfeited assets was BGN 1,752,275 (EUR 896,300).

10. The court did not order the forfeiture of the plot of land and house which the first applicant had gifted to his father (the third applicant – see paragraph 7 *in fine* above), finding that the house served as the third and fourth applicants' home.

11. Similarly to the other proceedings under the 2005 Act described below, the Vratsa Regional Court examined and compared the first and second applicants' "lawful" income and their expenditure. Furthermore, as was done in many other cases, for the purpose of comparing values during different periods it converted sums of money into their equivalent in

minimum monthly salaries at the relevant time (see, for a more detailed description of that approach, paragraph 109 below).

12. As to the first and second applicants, the Vratsa Regional Court established that for the relevant period their expenditure had equalled 11,501.74 minimum monthly salaries. That conclusion was based on an expert report, which the parties had not contested, and in which the values of most of the properties acquired by the applicants had been taken as indicated in the relevant sales documents. An exception was made for one immovable property (discussed under point (v) in paragraph 13 below), for which the domestic court was of the view that the applicants had had to pay market value.

13. The Vratsa Regional Court held that during the period under examination the first and second applicants had received a legal income equalling 8,357.78 minimum monthly salaries. It refused to accept as such income the following: (i) BGN 220,000 (EUR 112,000) and 8,000 German marks (DEM) which the first applicant's parents had allegedly given him in 1993 and 2002; while the defendants had submitted contracts of gift, they had not shown when these documents had been drawn up or provided other sufficient evidence of the gifts; (ii) BGN 420,500 (EUR 215,000) which the third applicant had allegedly taken as a bank loan and given to his son; once again, this had not been proven; (iii) loans which the first applicant had allegedly received from private individuals; this had not been sufficiently proven; (iv) sums which the first applicant had allegedly brought to Bulgaria in 1990 and 1991 after having worked abroad; while he had submitted customs declarations showing that he had had this money with him, there was no evidence as to its source; (v) about BGN 250,000 (EUR 128,000), part of a bank loan taken for the purchase of immovable property, which the first applicant had allegedly kept because the price he had paid had been significantly lower; the Vratsa Regional Court considered that the bank loan had equalled the market value of the property in question and that the first applicant had paid that price and had not kept any part of the sum borrowed for himself.

14. The court thus concluded that the first and second applicants' expenditure during the period under examination had significantly exceeded their legal income. It calculated that, with their daily and other expenses taken into account, the applicants had disposed with the equivalent of 4,004.15 minimum monthly salaries to acquire assets – a sum which was largely insufficient for that end. It could thus reasonably be presumed that the assets acquired by them were the proceeds of crime. The applicants' arguments as to the absence of a causal link between those assets and the offences of which the first applicant had been convicted were without merit.

15. In a judgment of 3 August 2010 the Sofia Court of Appeal upheld the lower court's judgment.

16. In a decision of 12 May 2011 the Supreme Court of Cassation (hereinafter "the Supreme Court") accepted for examination an appeal on points of law brought by the Commission contesting the lower courts' refusal to order the forfeiture of the third and fourth applicants' home.

17. In a final judgment of 3 January 2012 the Supreme Court ordered the forfeiture of that property. It noted that no evidence had been gathered to show that the house in question was the third and fourth applicants' only home, since the third applicant owned other immovable properties. The house in question had to be forfeited, as under section 8 of the 2005 Act (see paragraph 97 below) it was presumed that the third and fourth applicants had known that it had been acquired with income derived from criminal activity.

II. APPLICATION NO. 11340/12 – *GAICH V. BULGARIA*

18. In the early 1990s Ms Zhivka Dimitrova Gaich ("the first applicant") and her husband, Mr Miroljub Gajic (who passed away in 2014) registered several companies. Through them they operated a deposit-taking scheme, attracting investors against the promise of high returns. By 1995 their companies had accumulated about 1,700,000,000 old Bulgarian levs (BGL) – according to the Government, a sum equivalent to 615,960 minimum monthly salaries at the time, or currently about BGN 345,000,000 (EUR 176,000,000).

19. The scheme eventually fell apart, with the majority of the investors being unable to receive their money back. Mr Gajic was eventually convicted of aggravated fraud, aggravated embezzlement and tax evasion in relation to these events.

20. By a judgment of the Kavarna District Court of 20 January 2005, which became final on 10 November 2006, the first applicant was convicted of embezzlement and received a suspended one-year prison sentence. In 2003 she had appropriated BGN 42,172, the equivalent of about EUR 21,600, from one of the above-mentioned companies owned by her and Mr Gajic. The company in question had been in liquidation and thus managed by a trustee, and the first applicant, without having the necessary authority, had sold one of its immovable properties to a third party. She had transferred the money received to another company partly owned by her and Mr Gajic. The sale had subsequently been invalidated and the sum of money returned to its owner.

21. Since the offence of which the first applicant had been convicted fell within the scope of the 2005 Act, in 2008 the Commission filed an application with the Dobrich Regional Court seeking the forfeiture of assets of the first applicant and Mr Gajic, as well as assets of their daughter, Ms Zoritsa Mirolyubova Gaich ("the second applicant").

22. The assets in question were: a plot of land with a house in Kavarna bought by the first applicant and Mr Gajic in 1994; another plot of land in Kavarna bought in 1995; a flat and a garage in Dobrich acquired in 1994 and 1996 respectively; a car bought in 1993; sums of money received by the first applicant and Mr Gajic from the sale of other properties initially acquired between 1992 and 1999; and sums of money placed in bank accounts, including those in the second applicant's name. According to the Commission, the value of the above-mentioned assets totalled BGN 2,138,805 (EUR 1,094,000).

23. The forfeiture application was the result of checks and verifications by the Commission of the income and expenditure of the first applicant and Mr Gajic between 1986 (when the first applicant had turned 18) and 2007.

24. In a judgment of 13 October 2009 the Dobrich Regional Court allowed the application, ordering the forfeiture of all the above-mentioned assets.

25. On the basis of the documents presented by the parties, it established that the legal income of the first applicant and Mr Gajic during the period under examination had been the equivalent of 341.47 minimum monthly salaries. It refused to accept as such income the sum of DEM 200,000, which Mr Gajic, a Serbian national, claimed to have brought with him on arriving in Bulgaria in 1990, as this claim had not been supported by any written evidence (such as a customs declaration) and witness evidence could not be used to prove it.

26. During the period under examination the first applicant and Mr Gajic had acquired property worth more than BGN 3,146,300 (EUR 1,610,000). That amount was reached after the Dobrich Regional Court took into account the market values of the properties acquired by them and not the values indicated in the sales documents. The defendants' total expenditure during the period under examination was thus the equivalent of 4,545.73 minimum monthly salaries.

27. Since the applicants and Mr Gajic had not proven such a significant legal income, in view of the presumption contained in section 4(1) of the 2005 Act (see paragraph 96 below) the assets for which forfeiture was being sought had to be considered proceeds of crime.

28. Following an appeal by the applicants and Mr Gajic, on 9 June 2010 the Varna Court of Appeal upheld the lower court's judgment, confirming its conclusions. It reiterated in particular that the applicants and Mr Gajic had not established "legal income in the amount spent by them to acquire assets", and that the 2005 Act did not require that a direct causal link be established between the properties to be forfeited and the defendant's criminal activity, since the presumption contained in section 4(1) sufficed.

29. The applicants and Mr Gajic lodged an appeal on points of law, which the Supreme Court refused to accept for cassation review in a final decision of 16 August 2011.

30. It eventually turned out that some of the properties to be forfeited had already been sold to third parties in earlier enforcement proceedings against the first applicant and Mr Gajic. Thus, the only immovable properties actually forfeited in the procedure under the 2005 Act were the flat in Dobrich where the applicants and Mr Gajic lived and a share of the plot of land and house in Kavarna. In September 2014 the flat was put up for auction by the National Revenue Agency and sold to a third party.

31. None of the forfeited sums of money have been paid by the applicants or the late Mr Gajic to the State.

III. APPLICATION NO. 26221/12 – *BAROV V. BULGARIA*

32. In 1995 criminal proceedings were opened against the applicant (Mr Petar Milkov Barov) on suspicion that he had been in unlawful possession of a large quantity of firearms and had, together several other individuals, committed a series of thefts and robberies in 1994 and 1995, some of which had resulted in injuries and in one case even the death of the victim. The applicant remained in pre-trial detention from 1995 to 2001. He subsequently entered into a plea agreement with the prosecution authorities, admitting that he had committed the offences in question and accepting a prison sentence equalling the duration of his pre-trial detention. The agreement was approved on 6 October 2006 by the Lovech Regional Court, which noted, in particular, that all pecuniary damage stemming from the offences committed by the applicant had been repaid.

33. Since the offences of which the applicant had been convicted fell within the scope of the 2005 Act, in April 2009 the Commission filed an application with the Gabrovo Regional Court seeking the forfeiture of the following assets: two plots of land with an industrial building and outbuildings, bought by the applicant in 2007; two other plots of land bought in 2008; a car and motorcycle bought in 2006; and money received by the applicant from the sale of another car, bought by him in 2005 and sold to a third party in 2006.

34. The forfeiture application was the result of checks and verifications by the Commission of the applicant's income and expenditure between 10 May 1987 (when he had turned 18) and 1 January 2009.

35. In a judgment of 9 April 2010 the Gabrovo Regional Court allowed the application and ordered the forfeiture of the above-mentioned assets, finding that the preconditions of the 2005 Act had been met. Firstly, it noted that the applicant had been convicted of offences referred to in section 3(1) of the Act (see paragraph 95 below). Secondly, during the period under examination he had acquired assets of "significant value". Thirdly, a reasonable assumption could be made that those assets were the proceeds of crime. In this regard, it was not necessary to establish a causal link between the assets in question and the offences committed by the applicant: this was

not a requirement of the 2005 Act which, in section 4(1), contained a presumption in that regard (see paragraph 96 below).

36. The Gabrovo Regional Court calculated that during the period under examination the applicant's income for which a legal source had been shown to exist had amounted to BGN 60,801 (EUR 31,100), or the equivalent of 364.5 minimum monthly salaries. This came from his salary, the sale of property and from loans from banks and other institutions. The applicant had not proven that he had received any other income, most notably a loan from a friend (witness evidence could not be used to prove it; moreover, he remained liable to repay it) and remuneration under a commission contract (the contract submitted by the applicant had not been notarised, as required, and did not bear a valid date; moreover, no proof existed that he had actually received such remuneration).

37. For the period in question the applicant's expenditure amounted to BGN 182,270 (EUR 92,230), or the equivalent of 1,122.2 minimum monthly salaries. That amount was reached after the Gabrovo Regional Court notably took into account the market values of the properties bought by the applicant and not the values indicated in the notarial deeds and sales contracts, which were considerably lower. Thus, the applicant's expenditure exceeded his lawful income by 757.70 minimum monthly salaries, which meant that the Commission's forfeiture application had to be allowed.

38. On 8 November 2010 the above-mentioned judgment was mostly upheld by the Veliko Tarnovo Court of Appeal.

39. Despite upholding the lower court's conclusion that the applicant's expenditure significantly exceeded his legal income, which justified the forfeiture, the Court of Appeal recalculated that income and expenditure. It thus concluded that the applicant's legal income for the period under examination had totalled BGN 58,030 (EUR 30,000) and that his expenditure had totalled BGN 167,192 (EUR 85,520). That discrepancy between the applicant's legal income and expenditure justified the forfeiture of most of the above-mentioned assets. Only the motorcycle bought by the applicant in 2006 (see paragraph 33 above) was not to be forfeited, since it had been transferred to a third party, but the applicant remained liable to pay the price he had received for it.

40. The applicant lodged an appeal on points of law. In a final decision of 24 October 2011 the Supreme Court refused to accept it for cassation review.

IV. APPLICATION NO. 71694/12 – *ZHEKOVI V. BULGARIA*

41. Mr Zhivko Zhekov Zhekov ("the first applicant") and Ms Emilia Ruseva Zhekova ("the second applicant", she passed away in 2018 – see appendix) were spouses, and Mr Zheko Zhivkov Zhekov ("the third applicant") is the first applicant's son from a previous marriage.

42. By a judgment of the Plovdiv Regional Court of 24 July 2008 the first and second applicants were convicted of aggravated document forgery, preparation to commit forgery and possession of the relevant equipment and materials. The first applicant was also convicted for forming and leading a criminal group, and the second applicant for being a member of that group. It was established that between January and June 2007 the two applicants and their accomplices had created false identity papers and other official documents and had forged existing documents, including those issued in other countries, with the aim of obtaining financial gain.

43. In 2008 the Commission opened proceedings under the 2005 Act against the first applicant, and in early 2009 filed an application with the Plovdiv Regional Court seeking the forfeiture of the following assets: a flat in Plovdiv bought by the first applicant in 2002; another flat in Plovdiv bought for the third applicant by his mother in 2007; two cars bought by the first applicant in 2002 and 2003; EUR 14,400 and 730 United States dollars (USD) in cash seized from the first and second applicants' home during a search in 2007; sums deposited in bank accounts in the names of the first and second applicants.

44. The forfeiture application was the result of checks and verifications by the Commission of the first applicant's financial situation between 1 January 1985 and 31 December 2008, and that of the second applicant between 1 March 1997 and 31 December 2008.

45. In a judgment of 5 August 2010 the Plovdiv Regional Court dismissed the forfeiture application. It found that while the first applicant had indeed been convicted of an offence falling within the scope of the 2005 Act and that, moreover, during the period under examination the three applicants had acquired assets of considerable value, the preconditions for forfeiture had not been fulfilled, because the applicants had in fact provided proof of sufficient income from legal sources to acquire such assets. These included the first applicant's disability pension, sums given to the second applicant by her parents, in whose farming business she had been involved, sums gifted to the first and second applicant at the time of their wedding and, most significantly, sums given to the three applicants by the first applicant's father, who had inherited a considerable number of assets from his own father.

46. Following an appeal by the Commission, on 18 February 2011 the Plovdiv Court of Appeal upheld the above-mentioned judgment. It confirmed the Plovdiv Regional Court's reasoning, adding, as to the second applicant's involvement in her parents' farming business, that even if the parents had not been registered as farmers and had not paid their taxes, this did not in itself mean that any income received by the second applicant was illegal.

47. The Commission lodged an appeal on points of law. In a decision of 13 December 2011 the Supreme Court accepted it for cassation review and in a final judgment of 4 May 2012 allowed the forfeiture application, ordering the forfeiture of all the above-mentioned assets.

48. The Supreme Court noted that the lower courts had accepted as evidence documents concerning the inheritance received by the first applicant's father, even though they had been submitted by the applicants after the relevant time-limit for doing so had expired. Accordingly, that evidence was considered inadmissible and had to be excluded from the case file.

49. On the basis of the remaining evidence concerning that inheritance – in particular the witness testimony of family members, which was contradictory and also unreliable given their interest in the outcome of the case – it could not be concluded that the first applicant's father had actually been able to provide the money necessary for the acquisition of the disputed assets, or for the applicants' daily expenditure. As to the income allegedly received from the farming business of the second applicant's parents and the monetary gifts made at the time of the first and second applicant's wedding, these had not been proven by any documents but, again, the applicants had relied on the witness testimony of family members.

50. As to the third applicant's flat in Plovdiv (see paragraph 43 above), this had been bought in 2004 by the first applicant's parents who in 2007 had sold it to their grandson. He had been represented in the sale by his mother (the first applicant's first wife). However, the applicants had not shown that the third applicant's mother had had sufficient means to buy the flat, since she had had no declared income between 1997 and 2008. The applicants had not claimed that the sales contract had been fictitious, concealing a gift; on the contrary, the third applicant had argued that his mother had paid the full price.

51. Accordingly, there was no evidence that during the period under examination the applicants had had sufficient legal income to acquire the assets for which forfeiture was sought, which meant that those assets could reasonably be assumed to be the proceeds of crime.

52. It subsequently became clear that the EUR 14,400 and USD 730 seized from the first and second applicants' home (see paragraph 43 above) had already been confiscated in the course of the criminal proceedings against them. The Government submitted a statement by the National Revenue Agency dated 8 July 2019 explaining that it had informed the Plovdiv Regional Court and the Supreme Court of this, and that of the two confiscations only the first, ordered in the criminal proceedings, had been enforced.

53. The two forfeited flats were sold to third parties by the National Revenue Agency in 2014. As to the forfeited cars, one of them was sent to a scrapyard by the first applicant and dismantled, while the other was sold by the National Revenue Agency in 2015. The Agency also received BGN 16,425 (EUR 8,400) which had been held in the first and second applicants' bank accounts.

V. APPLICATION NO. 44845/15 – *RUSEV V. BULGARIA*

54. By a judgment of the Omurtag District Court of 13 June 2012 the applicant (Mr Yuliyan Vasilev Rusev) was convicted of illegal logging, on the grounds that in October 2009 he had had, without the relevant permit, timber valued at BGN 628 (EUR 321) harvested and transported by employees of his company. The conviction was upheld by the Targovishte Regional Court on 4 September 2012 and the Supreme Court on 4 March 2013. The applicant received a six-month suspended prison sentence and was fined.

55. Since the offence of which the applicant had been convicted fell within the scope of the 2005 Act, in November 2012 the Commission filed an application with the Dobrich Regional Court seeking the forfeiture of his assets. The application was the result of checks and verifications of the applicant's income and expenditure between 16 April 1992 (when he had turned 18) and 28 November 2012.

56. In a judgment of 29 November 2013 the Targovishte Regional Court allowed the application in part. It ordered the forfeiture of some of the assets indicated in the Commission's application, namely those whose value was equal to the difference between the applicant's expenditure and established lawful income (see paragraph 58 below), and dismissed the remainder of the application. It thus ordered the forfeiture of the following assets: seven plots of land bought by the applicant between 2006 and 2011, one of which had a house built on it; BGN 17,473 (EUR 9,000) received by the applicant from the sale of thirteen other plots of land, the majority of which were initially acquired by him in 2006; and a car bought by the applicant in 2011.

57. In calculating the applicant's legal income during the period under examination, the Targovishte Regional Court refused to accept the following: (i) BGN 22,300 (EUR 11,400) which someone had allegedly loaned the applicant in 2006 and 2007, as this had not been sufficiently proven; (ii) BGN 26,000 (EUR 13,300) which the applicant's grandmother had allegedly gifted to him on an unspecified date after the sale of a property; even though it was established that she had received such a sum, the gift remained unproven, the only evidence in that regard being her oral statements; it was also unlikely that she would give all the money to her grandson, since she had other close relatives; (iii) income from logging allegedly received between 2005 and 2007; the applicant had submitted

contracts for the sale of timber, but had not shown that these documents had actually been concluded at the relevant time, or what profit he had made; at the time, he had not declared any such profit to the tax authorities; (iv) BGN 110,000 (EUR 56,260) which the applicant had declared as income received in 2007 from the activities of a company partially owned by him, in a tax declaration submitted at the end of 2012; according to the court, there was no evidence that the applicant had actually received that income, and the tax declaration, submitted after the initiation of the forfeiture proceedings, was evidently aimed at being used as evidence in them.

58. After calculating the applicant's expenditure during the period under examination, the Targovishte Regional Court concluded that it had exceeded the applicants' legal income by BGN 53,382 (EUR 27,300), the equivalent of 337.9 minimum monthly salaries. This warranted the forfeiture of assets equalling the same number of minimum monthly salaries, namely the ones mentioned in paragraph 56 above.

59. The Targovishte Regional Court was of the view that the assets to be forfeited had been acquired with income derived from criminal activity and were thus the proceeds of crime. In that regard, it referred to the following: until 1998 the applicant had had no legal income; between 2000 and 2005 he had worked for a local forestry authority and in 2006 had once again had no legal income; it had been precisely in 2006 and 2007 that he had bought numerous properties, some of which he had subsequently transferred to third parties; he had been convicted of illegal logging (see paragraph 54 above) and his whole career had been in forestry and logging.

60. Following an appeal by the applicant, on 9 July 2014 the Targovishte Regional Court's judgment was upheld by the Varna Court of Appeal. Referring to the Supreme Court's Interpretative Decision of 30 June 2014 (see paragraphs 105-106 below), it pointed out that the causal link between the assets to be forfeited and the applicant's criminal activity could be indirect, and considered that such an indirect link had been established, for the same reasons as those put forward by the Targovishte Regional Court. Since this concerned criminal activity, it was irrelevant that the object of the specific offence of which the applicant had been convicted had been of relatively low value. The Varna Court of Appeal confirmed the Regional Court's findings (see paragraph 59 above) that the applicant had not had any other legal income. Referring to a further expert report ordered by it, the Varna Court of Appeal found that the applicant's expenditure during the period under examination had exceeded his legal income by BGN 61,446 (EUR 31,340), the equivalent of 451.73 minimum monthly salaries.

61. The applicant lodged an appeal on points of law, which the Supreme Court refused to accept for cassation review in a final decision of 5 March 2015. It considered in particular that the lower courts had correctly applied the standard set in the Interpretative Decision of 30 June 2014.

62. Most of the immovable properties to be forfeited were sold by the National Revenue Agency to third parties in 2016 and 2017. One of them, which had been subject to a mortgage, was put up for auction in enforcement proceedings brought against the applicant by a private party. The applicant's car for which forfeiture was also ordered was stolen in 2015.

63. The sums of money the applicant was ordered to pay in the forfeiture proceedings – BGN 21,309 (EUR 10,900) – have not been paid.

VI. APPLICATION NO. 17238/16 – *KATSAROV V. BULGARIA*

64. On an unspecified date the applicant (Mr Kiril Hristov Katsarov) was charged with illegal possession of drugs, seized from his cars and flat on 25 August 2000 and 18 August 2001. The total value of the drugs seized on those occasions was about BGN 650 – the equivalent of EUR 332.

65. In 2007 the applicant entered into a plea agreement with the prosecution authorities, admitting to having committed three offences of illegal possession of drugs, including with intent to sell. He was given a prison sentence and ordered to pay a fine. The plea agreement was approved on 15 January 2008 by the Burgas Regional Court.

66. Since the offences of which the applicant had been convicted fell within the scope of the 2005 Act, in early 2010 the Commission filed an application with the Sofia City Court seeking the forfeiture of the following assets: a flat in Sofia bought by the applicant in 2008, under a preliminary contract concluded in 2002; a sum equivalent to USD 20,000 which the applicant had paid in 2002 upon the conclusion of the preliminary contract in question; two cars; and money received by the applicant from the sale of two other cars.

67. The forfeiture application was the result of checks and verifications by the Commission of the applicant's income and expenditure for the period from 20 October 1990 (when he had turned 18) to 31 December 2008.

68. The forfeiture application was allowed in full by the Sofia City Court in a judgment given on 12 March 2014. The court found that during the period under examination the applicant had had a rather small income from legal sources, and had only received a salary between 2005 and 2008. His income had thus equalled 222.58 minimum monthly salaries, whereas his expenditure had been equivalent to 3,262.63 minimum monthly salaries. The Sofia City Court did not accept the applicant's claim that his parents had provided for him, noting that their own income had been rather low. As to expenditure, the court took into account the market values of the flat and cars acquired by the applicant, and not the values indicated in the respective sales documents.

69. The Sofia City Court also pointed out that it did not have to establish a causal link between the assets for which forfeiture was sought and the specific offences of which the applicant had been convicted, but a link between these assets and his "criminal activity". Such a link was presumed under the 2005 Act, as no legal sources of income had been shown to exist equivalent to the applicant's expenditure. As to the existence of criminal activity, it was significant that the applicant had been convicted on three counts of illegal possession of drugs, including with intent to sell (see paragraphs 64 and 65 above). This was, moreover, an activity "allowing for significant financial gain".

70. Following an appeal by the applicant, on 30 January 2015 the Sofia Court of Appeal upheld the lower court's judgment in part, dismissing the forfeiture application in relation to the USD 20,000 paid by the applicant in 2002 (see paragraph 66 above) on the grounds that this had in fact been the price of the forfeited flat. It thus accepted the applicant's claim, corroborated by the sellers' statements, that this had been the real price of the flat. It dismissed the Commission's argument that what had to be taken into account in the calculation of his expenditure was the property's market value.

71. The Sofia Court of Appeal confirmed the lower court's conclusion that there was no evidence that the applicant had received money from his parents (see paragraph 68 above). They had not had income permitting them to provide for him, and even if they had, there was no evidence that they had done so. The witnesses brought by the applicant – his mother and sister – in addition to having an interest in the outcome of the case, had made contradictory statements. The applicant's mother had stated that she had withdrawn the money for the purchase of the applicant's flat from a bank, but had not corroborated this with any documents. Nor had it been proven that the applicant had received, as also claimed by his mother and sister, income from working as a taxi driver and in his parents' vegetable garden.

72. The Sofia Court of Appeal noted that between 1990 and 2004 the applicant had had no income from a legal source, apart from the money received from the sale of two cars, and had only received a salary from 2005 to 2009. During the latter period he had also received money from the sale of land owned by the family. His income for the whole period under examination had thus amounted to the equivalent of 222.58 minimum monthly salaries, whereas his expenditure, recalculated to take into account the price of the flat as established by the Court of Appeal (see paragraph 70 above), had amounted to the equivalent of 2,971.94 minimum monthly salaries.

73. As to the existence of a causal link between the applicant's criminal activity and the assets for which forfeiture was sought, the Sofia Court of Appeal pointed out that the criminal activity in question was capable of generating income. The applicant had admitted to possession of drugs with

intent to sell (see paragraph 65 above), and had thus not kept them for his own personal use. Furthermore, he had paid for his flat when concluding a preliminary contract in 2002 (see paragraph 66 above), that is, at around the same time he had committed the offences of which he had been convicted. Thus, as he had had no legal income to acquire the assets to be forfeited, they had to be considered the proceeds of crime.

74. The applicant lodged an appeal on points of law, which the Supreme Court, in a decision of 23 September 2015, refused to accept for cassation review. Referring to its Interpretative Decision of 30 June 2014 (see paragraphs 105-106 below), it pointed out that the Sofia Court of Appeal had fully complied with the standard set therein.

75. The applicant's flat was sold by the National Revenue Agency to a third party in 2017. One of the forfeited cars could not be found and the other was sent to a scrapyard. The sums of money the applicant was ordered to pay in the forfeiture proceedings have not been paid.

VII. APPLICATION NO. 63214/16 – *DIMITROV V. BULGARIA*

76. The applicant (Mr Dimitar Genchev Dimitrov) exercised commercial activity as a sole trader.

77. In 2002, after a financial audit, the tax authorities ordered him to pay BGN 597,154 (EUR 305,370) in unpaid taxes. Even though enforcement proceedings were opened against him in 2002, no money was collected. In 2015 the National Revenue Agency declared that the applicant's obligation under the 2002 tax audit had become time-barred.

78. In the meantime, the applicant was indicted based on the same facts and brought to court on tax evasion charges. In a judgment of 12 May 2010, which became final on 28 May 2010, the Varna Regional Court convicted him. It established that he had given false information to the authorities in several tax declarations submitted between December 2000 and May 2001, thus evading the payment of value-added tax related to his commercial activity amounting to BGN 294,897 (EUR 150,842).

79. Since the offence of which the applicant had been convicted fell within the scope of the 2005 Act, in July 2011 the Commission filed an application with the Varna Regional Court seeking the forfeiture of his assets. It considered that the amount of taxes the applicant had evaded paying, together with the lack of sufficient legal income, proved the existence of a causal link between the offence of which he had been convicted and the assets in question.

80. The forfeiture application was the result of checks and verifications of the financial situation of the applicant for the period from 1 January 1999 to 31 December 2010.

81. In a judgment of 24 February 2015 the Varna Regional Court dismissed the application. It reached the conclusion that the Commission had failed to prove the existence of a causal link between the offence the applicant had committed and the assets for which forfeiture was sought and, at the same time, that the applicant had had sufficient legal income to acquire those assets. In the latter regard, the court found, in particular, that the applicant had, as claimed by him, received money from his parents and from his partner and her parents, and that when he had acquired certain immovable properties he had done so at the price stated in the respective notarial deeds (considerably lower than what was shown to be the market value), receiving significant gain soon afterwards when reselling the properties at a much higher price.

82. On 27 October 2015 the Varna Court of Appeal quashed the lower court's judgment and ordered the forfeiture of the following assets: a plot of land and building bought by the applicant in 2007 which, according to an expert report referred to by the appellate court, had a market value of BGN 26,882 (EUR 13,750) at the time of purchase; a flat in Varna bought by the applicant in 2008 and serving at the time as his family's main residence, and a parking space; BGN 117,300 (EUR 60,000), the monetary equivalent of shares in several companies acquired by the applicant between 2008 and 2010, and BGN 4,500 (EUR 2,300) received from the sale of other shares in 2010; BGN 165,000 (EUR 84,400) which the applicant had received when selling two immovable properties in 2008 and 2010, soon after having acquired them; and BGN 55,000 (EUR 28,130), which represented the market value of two cars bought by the applicant in 2007 and 2008 and resold to third parties soon afterwards.

83. The Varna Court of Appeal noted that there was no proof that the applicant had paid the State the amount of tax he had evaded paying in 2001 (see paragraph 78 above). It further observed that the applicant had been implicated in "criminal activity", since he had previous convictions, notably for document forgery and possession of stolen goods, and was facing fresh criminal proceedings for tax evasion.

84. As to the applicant's income and expenditure during the period in question, the Varna Court of Appeal made several observations. Firstly, even though for parts of this period the applicant had paid social insurance, there was insufficient evidence that during this time he had received any income. Furthermore, other income referred to by the applicant, including winnings from betting, was also found to be unproven. Between 2004 and 2006 and in 2010 the applicant had no legal income. Secondly, there was no evidence that the applicant had received, as claimed by him, substantial sums of money from his parents, since their own income had been insufficient. As to the money the applicant claimed to have received from his partner and her parents (see paragraph 81 above), the witness testimony in that regard was contradictory and the applicant's claims were

unconvincing. Thirdly, as to the immovable properties the applicant had purchased and subsequently resold, what had to be taken into account with regard to these purchases was their market value and not the much lower value indicated in the notarial deeds. This meant that the higher prices at which the applicant had resold some of these properties soon after acquiring them could not be considered lawful gain. Fourthly, even though it had been proven that the applicant had received dividends from the companies in which he had shares, the only payment of such dividends was shown to have taken place in 2011, outside the period under examination (see paragraph 80 above).

85. On the basis of the above considerations, the Varna Court of Appeal concluded that there was no evidence that the applicant had had a lawful source of income enabling him to acquire the assets for which forfeiture was sought, while it appeared that the assets had been acquired with the sums he had evaded paying in taxes in 2001 (see paragraph 78 above), or after the sale of assets initially acquired with these sums. It was at any event a fact that the applicant had had substantial sums of money at his disposal, in the absence of a legal income. Thus, based "on logic and experience", a causal link could be assumed to exist between the assets to be forfeited and the offence of which the applicant had been convicted.

86. In a final decision of 21 April 2016 the Supreme Court refused to accept for examination an appeal on points of law lodged by the applicant. In particular, it found that the Varna Court of Appeal had correctly established a causal link between the assets to be forfeited and the offence having given rise to the forfeiture procedure, as required by the Interpretative Decision of 30 June 2014 (see paragraphs 105-106 below).

87. In a judgment of 6 January 2017 the Varna Regional Court dismissed an additional application by the Commission for the forfeiture of a car bought by the applicant in 2008 and sold to a third party in 2009. On 4 April 2017 the Varna Court of Appeal reversed that decision and ordered the forfeiture of BGN 21,972 (EUR 11,240) which, according to an expert, had been the market value of the car in 2009. The court confirmed its earlier conclusion that at the time of buying the car the applicant had had no legal income, considering that he had instead used the money received from the sale of the properties mentioned in paragraph 82 above, themselves the proceeds of crime. In a final decision of 20 February 2018 the Supreme Court refused to accept for examination an appeal on points of law lodged by the applicant.

88. In 2018 the forfeited plot of land and building were sold to a third party by the National Revenue Agency for BGN 4,680 (EUR 2,390).

89. The forfeited flat is still in the applicant's possession. The sums of money he was ordered to pay in the forfeiture proceedings have not been paid.

RELEVANT LEGAL FRAMEWORK

I. THE 2005 ACT

A. Legislative history

90. The Forfeiture of Proceeds of Crime Act 2005 (*Закон за отнемане в полза на държавата на имущество придобито от престъпна дейност*, "the 2005 Act") was enacted by Parliament in February 2005 and came into force in March of the same year. In 2012 it was superseded by the Forfeiture of Unlawfully Acquired Assets Act 2012 (*Закон за отнемане в полза на държавата на незаконно придобито имущество*), with the proviso that all pending proceedings would continue to be governed by the 2005 Act.

91. The explanatory memorandum to the 2005 Bill stated that it was aimed at "eliminating the possibilities of receiving proceeds of crime and of preventing the use of such proceeds for the commission of new crimes or other breaches of the law", that it would play a decisive role in combatting money laundering, and that it would apply "where certain assets represent proceeds of crime but cannot, wholly or partially, be confiscated under the Criminal Code." It explained furthermore:

> "The Act targets assets which are not liable to be examined in criminal proceedings, and it should be noted that not every criminal activity can be established by means of the Code of Criminal Procedure. At the same time, there are cases where the assets of certain people increase significantly, without any indication of lawful activity. When such a situation arises – on the one hand, a criminal conviction, on the other, assets of significant value which do not appear to have a legal source – the procedure under this Act comes into play. A reasonable presumption can be made that the assets in question are the proceeds of crime, but the person has the opportunity to prove the source of his assets and to defend himself."

B. Authority in charge of administering the 2005 Act

92. The authority in charge of initiating and pursuing proceedings under the 2005 Act was the Commission for Uncovering Proceeds of Crime, currently named the Commission for Combatting Corruption and Forfeiture of Unlawfully Acquired Assets ("the Commission"). It has five members, appointed by the President, the Prime Minister and Parliament of Bulgaria. The Commission has regional offices.

C. Scope

93. Proceedings under the 2005 Act could be opened when it was established that a person charged with a relevant criminal offence (see paragraph 95 below) had acquired "assets of considerable value which [could] reasonably be assumed to be the proceeds of crime" (section 3(1)).

94. The term "considerable value" was defined in section 1(2) of the transitional and concluding provisions of the Act as more than BGN 60,000 (equivalent to EUR 30,677). According to the Supreme Court, that was the aggregate value of the assets acquired during the period under examination, while it was possible that not all of these assets were subject to forfeiture (*Решение № 463 от 28.07.2011 г. на ВКС по гр. д. № 463/2010 г., III г. о.*). The acquisition of assets of "considerable value" was thus only a condition for the initiation of forfeiture proceedings, not a condition as to what assets could be forfeited, and a separate analysis was to be carried out to establish whether the preconditions for forfeiture had been met (*Решение № 481 от 23.04.2013 г. на ВКС по гр. д. № 99/2012 г., IV г. о.*).

95. The offences that could trigger the opening of proceedings under the 2005 Act were set out in section 3(1). They were: various terrorism-related offences; murder for gain or for hire; pimping; abduction for prostitution; distribution of pornography; human trafficking; vehicle theft or robbery; embezzlement; fraud; document fraud involving misappropriation of European Union funds; insurance fraud; extortion; handling large quantities of stolen goods; insolvency fraud; dealing in weapons or dual-use goods without a licence; illegal logging; smuggling; counterfeiting of money; making illegal bank transfers; failing to declare money at the border; engaging in banking, insurance or another licensed financial activity without a licence; money laundering or preparation to commit money laundering; misuse of European Union funds; tax evasion; misappropriation of budgetary funds; abuse of office in relation to narcotic drugs; all forms of bribery; illegally influencing sporting events; aggravated document forgery; being a member of a criminal group; running a racketeering group; organising or taking part in illegal gambling; dealing in, acquiring or possession of firearms or explosives without a licence; vehicle theft with a view to extracting a ransom; producing, acquiring, dealing or possession of narcotic drugs; systematically allowing the use of premises for drug-taking; illegally prescribing narcotic drugs; and growing opium poppy, coca or cannabis.

96. Assets that could be forfeited under the 2005 Act were those that had been acquired by persons convicted of a criminal offence referred to in section 3(1) which could reasonably be assumed to be the proceeds of crime, as no legal source had been established (section 4(1)).

97. If such assets had been transferred to bona fide third parties for consideration, and those third parties had paid the real value of the assets, only the proceeds received by the defendant in the proceedings could be forfeited (section 4(2)). Assets inherited by the heirs of the defendant were also subject to forfeiture (section 5), as were assets included in the capital of a legal entity controlled by the defendant alone or jointly with others (section 6), and assets transferred by the defendant to his or her spouse or close relatives, provided that those persons knew that the assets were the

proceeds of crime (section 8(1)). Such knowledge was presumed until proven otherwise (section 8(2)). Assets that were joint marital property, if not traced to a source of income of the defendant's spouse, were also subject to forfeiture (section 10). Assets acquired by the defendant's spouse or minor children from third parties were regarded as assets acquired on behalf of the defendant if they were of significant value, exceeded the income of the spouse or children during the relevant period and could not be traced to another source of income (section 9).

98. Forfeiture proceedings could be opened in respect of assets acquired before the 2005 Act's entry into force (section 3 of the transitional and concluding provisions of the Act). The State's right to forfeit an asset expired twenty-five years after the asset had been acquired (section 11).

D. Procedure

99. If an individual had been charged with one of the offences set out in section 3(1) (see paragraph 95 above) or convicted of such an offence, the prosecution authorities and the courts had to notify the relevant regional office of the Commission.

100. The Commission would carry out an investigation with a view to ascertaining the source and whereabouts of assets reasonably suspected to be the direct or indirect proceeds of crime. In particular, the Commission would check the defendant's assets, the manner of their acquisition and their value, the defendant's income, the taxes paid by him or her, his or her usual expenditure, any unusual expenditure, tax returns, and so forth. In the course of the investigation the Commission could obtain information from various authorities, gather written, expert and other evidence and accounting records, carry out searches and seizures, and request the lifting of bank secrecy. The Commission could also request information from the defendants on their and their families' assets, bank accounts, sources of income, transactions and debts.

101. On the basis of that investigation, the Commission would decide whether to open forfeiture proceedings.

102. If the criminal proceedings against the defendant resulted in a final conviction, the Commission had one month to file a forfeiture application. Such applications were examined by the civil courts. After receiving the application, the local regional court would publish a notice in the State Gazette and set the case down for a hearing. The court would hear the case at a public hearing, in the presence of a public prosecutor. Its decision was amenable to appeal. The rules of the Code of Civil Procedure applied on a subsidiary basis for matters not expressly regulated by the 2005 Act.

103. Under section 32 of the 2005 Act, the State was liable for any damage caused by unlawful actions or omissions carried out under the Act. Additional provisions concerning the liability of the State, as well as the relevant practice of the national courts, are summarised in *Nedyalkov and Others v. Bulgaria* ((dec.) no. 663/11, §§ 61-68, 10 September 2013).

E. Case-law of the domestic courts

1. On the causal link between the assets to be forfeited and the defendant's criminal activity

104. Until 2014 the national courts had divergent views on the need under the 2005 Act to establish a causal link between the defendant's offence or criminal activity and the assets to be forfeited. Thus, in some cases the courts held that no causal link had to be proven, since section 4(1) the 2005 Act (see paragraph 96 above) established a presumption that all assets for which no legal source had been shown to exist represented proceeds of crime (see *Решение № 671 от 9.11.2010 г. на ВКС по гр. д. № 875/2010 г., IV г. о.*; *Решение № 156 от 29.05.2013 г. на ВКС по гр. д. № 890/2012 г., IV г. о.*). In other cases, the courts required the establishment of a causal link, finding that even where no lawful source of income had been shown to exist, this did not automatically mean that the assets in question were proceeds of crime (see *Решение № 607 от 29.10.2010 г. на ВКС по гр. д. № 1116/2009 г., IV г. о.*; *Решение № 209 от 26.07.2011 г. на ВКС по гр. д. № 1462/2010 г., III г. о.*).

105. The matter was settled in Interpretative Decision no. 7, a binding decision given by the Supreme Court on 30 June 2014 (*Тълкувателно решение № 7/2014 г. на ВКС по т. д. № 7/2013 г., ОСГК*). Confirming the existence of conflicting case-law, the court endorsed the latter of the two above-mentioned views, finding that the acquisition of assets by a person having committed an offence among those referred to in section 3(1) of the 2005 Act (see paragraph 95 above) had to be directly or indirectly linked to proceeds of crime, but that in all cases "that link [had] to be established, or its existence [had to] be presumable". The presumption at issue had to be "logically justified" and "based on the facts and circumstances". It was acceptable to presume the criminal origin of assets acquired earlier, including before the commission of the specific criminal offence. The Supreme Court also held that:

> "[t]he failure to establish a lawful source for an asset does not replace the justified presumption that it is linked to criminal activity, but merely relieves the Commission of the burden of proving such a link beyond doubt."

106. The Supreme Court further held that the failure to prove any causal link between the criminal activity for which the defendant had been convicted and the assets to be forfeited meant that the interference with the defendant's property rights would be disproportionate.

107. Subsequently, referring to this Interpretative Decision, the national courts dismissed forfeiture applications under the 2005 Act lodged by the Commission, holding that no causal link had been established between the assets for which forfeiture was being sought and the defendant's criminal activity, notwithstanding the fact that no lawful source had been shown to exist for some of the latter's income (see *Решение № 256 от 14.10.2014 г. на ОС Ловеч по гр. д. № 603/2011 г.*; *Решение № 79 от 22.05.2015 г. на АС Варна по в. гр. д. № 154/2015 г.*; *Решение № 194 от 5.11.2015 г. на АС Пловдив по в. гр. д. № 442/2015 г.*).

2. On the methods of assessing the defendant's income and expenditure

108. The settled approach of the domestic courts in proceedings under the 2005 Act has been to establish the expenditure incurred by the defendants in the purchase of immovable properties and cars on the basis of their market value at the relevant time, as calculated by court-appointed experts, and not the often lower value indicated in the relevant purchase documents, such as notarial deeds. The Supreme Court has held that such documents did not authoritatively establish the purchase price, that the State was not bound by the statements of the parties in that regard, as set out in the documents in question, and that the market value of an asset was an objective fact *(*see *Решение № 89 от 29.01.2010 г. на ВКС по гр. д. № 717/2009 г., III г. о.*; *Решение № 323 от 20.10.2011 г. на ВКС по гр. д. № 1135/2010 г., III г. о.*; *Решение № 716 от 1.03.2019 г. на САС по в. гр. д. № 5390/2017 г.*). Such a value could be proven through any kind of evidence (see *Определение № 938 от 9.09.2013 г. на ВКС по гр. д. № 3102/2013 г., III г. о.*). It remained possible for defendants in forfeiture proceedings to show, on the basis of "specific data", that they had not acquired a property at market value (see *Решение № 671 от 9.11.2010 г. на ВКС по гр. д. № 875/2010 г., IV г. о.*; *Решение № 264 от 25.10.2017 г. на ВКС по гр. д. № 5307/2016 г., IV г. о.*). The value of a property at the time it was acquired could differ from the value at a later point, due for example to wear and tear (*Решение № 481 от 23.04.2013 г. на ВКС по гр. д. № 99/2012 г., IV г. о.*).

109. Furthermore, for the purpose of comparing values during different periods, when examining forfeiture applications the domestic courts often converted sums of money into their equivalent in minimum monthly salaries at the relevant time. Such an approach has been justified by the courts on the grounds of the length of the periods of analysis of the defendant's income and expenditure and the inflation and the growth of prices, including those of immoveable properties, during these periods. The criterion of

equivalent minimum monthly salaries has been described as the "only objective criterion" for establishing the value of an asset (see *Решение № 132 от 1.04.2009 на ОС Враца по гр. д. № 616/2007 г.*; *Решение № 528 от 13.10.2009 на ОС Добрич по гр. д. № 103/2008 г.*; *Решение от 23.11.2010 г. на ОС Сливен по гр. д. № 577/2009 г.*). The minimum monthly salary is decided by the Council of Ministers (Government), after consultations with trade unions and employers, and is regularly updated. Between 2000 and 2005 it varied between BGN 67 (EUR 34) and BGN 150 (EUR 77), by 2010 it had increased to BGN 240 (EUR 123), by 2015 it had increased to BGN 380 (EUR 194), and in 2020 it was BGN 610 (EUR 312).

110. In order to calculate the defendant's daily expenditure, the courts used statistical data on the average expenditure per person during the period under examination, taking into account the person's family situation and also his or her standard and style of living (*Решение № 481 от 23.04.2013 г. на ВКС по гр. д. № 99/2012 г., IV г. о.*). Expenditure when travelling abroad was calculated on the basis of data on standardised daily expenses during official trips.

II. OTHER FORFEITURE PROCEDURES UNDER DOMESTIC LAW

111. Article 53 § 2 (b) of the Criminal Code, as worded before 2019, provided that on conviction, notwithstanding the main punishment, the proceeds of the offence were liable to forfeiture, unless they were subject to restitution.

112. Until 2005 domestic law provided for the forfeiture of so-called "non-work-related income". The applicable legal provisions are summarised in *Dimitrovi v. Bulgaria* (no. 12655/09, §§ 23-28, 3 March 2015).

III. THE CODE OF CIVIL PROCEDURE

113. By Article 164 § 1 (3) of the Code of Civil Procedure, the conclusion of a contract concerning assets with a value exceeding BGN 5,000 (EUR 2,557) cannot be proven by witness evidence alone, save in cases where the parties to the contract are spouses or close relatives. The restriction as to the admissible evidentiary material does not however affect the validity of the contract itself (see *Решение № 8109 от 11.06.2013 г. на ВАС по адм. д. № 11608/2012 г., I о.*; *Решение № 994 от 24.01.2014 г. на ВАС по адм. д. № 10132/2013 г., I о.*).

114. Article 303 § 1 (7) of the Code provides that an interested party may request the re-opening of civil proceedings in a case where a "judgment of the European Court of Human Rights has found a violation of the [Convention]" and "a new examination of the case is required in order to repair the consequences of the violation".

IV. RELEVANT INTERNATIONAL AND EUROPEAN UNION LAW

115. The relevant international and European Union law have been summarised in *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 139-153, 28 June 2018).

116. In particular, in the context of the European Union, Council Framework Decision of 24 February 2005 (2005/212/JHA) on confiscation of crime-related proceeds, instrumentalities and property, provided for ordinary confiscation, including value confiscation, in respect of all offences subject to imprisonment of more than one year, and confiscation of some or all assets held by a person who had been found guilty of specified serious offences, where they had been "committed within the framework of a criminal organisation", without establishing a link between the assets deemed to be of criminal origin and a specific offence. The latter approach was characterised as "extended powers of confiscation".

117. Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union also deals, in Article 5 § 1, with "extended confiscation" in the following manner:

> "Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct."

118. Recitals 20 and 21 provide further clarifications in that regard:

> (20) When determining whether a criminal offence is liable to give rise to economic benefit, Member States may take into account the modus operandi, for example if a condition of the offence is that it was committed in the context of organised crime or with the intention of generating regular profits from criminal offences. However, this should not, in general, prejudice the possibility to resort to extended confiscation.
>
> (21) Extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct. This does not mean that it must be established that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from criminal conduct than from other activities. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from criminal conduct.

119. Article 6 of the Directive deals with confiscation from third parties:

> "1. Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.
>
> 2. Paragraph 1 shall not prejudice the rights of bona fide third parties."

120. Finally, Article 8 of the Directive provides in addition for the following safeguards:

> "1. Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the right to an effective remedy and a fair trial in order to uphold their rights.
>
> ...
>
> 6. Member States shall take the necessary measures to ensure that reasons are given for any confiscation order and that the order is communicated to the person affected. Member States shall provide for the effective possibility for a person in respect of whom confiscation is ordered to challenge the order before a court.
>
> 7. Without prejudice to Directive 2012/13/EU and Directive 2013/48/EU, persons whose property is affected by a confiscation order shall have the right of access to a lawyer throughout the confiscation proceedings relating to the determination of the proceeds and instrumentalities in order to uphold their rights. The persons concerned shall be informed of that right.
>
> 8. In proceedings referred to in Article 5, the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct.
>
> 9. Third parties shall be entitled to claim title of ownership or other property rights, including in the cases referred to in Article 6.
>
> 10. Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking compensation for their claims."

V. STATISTICAL DATA

A. On the application of the 2005 Act

121. The Commission has drawn up annual reports for its activity between 2006 and 2018. The data contained therein show that in the years concerned it received more than 70,000 notifications from the prosecution authorities and the courts that people had been charged with one of the offences set out in section 3(1) of the 2005 Act or convicted of such an

offence (see paragraph 99 above). After conducting investigations, the Commission opened forfeiture proceedings in 1,093 cases (see paragraphs 100-101 above). The remaining cases referred to it were discontinued because they did not fall within the scope of the 2005 Act, or because the defendants had not acquired assets of "considerable value", or had shown proof of a legal source of these assets. After the adoption of the Interpretative Decision of 30 June 2014 of the Supreme Court (see paragraphs 105-106 above), the majority of the cases referred to the Commission were discontinued because no causal link could be established between the assets under investigation and the defendants' established criminal activity.

122. Between 2006 and 2018 the Commission brought 519 forfeiture applications under the 2005 Act before the courts (see paragraph 102 above). By the end of 2018, 260 sets of proceedings had been completed with a final judgment in the Commission's favour, ordering the forfeiture of proceeds of crime.

B. On the percentage of the shadow economy in Bulgaria

123. A working paper published by the International Monetary Fund in 2019 estimated the share of the shadow economy in Bulgaria between 2000 and 2016 at about 36-40% of the country's gross domestic product (GDP). Other estimates by the European Commission, the World Bank and other bodies have set that share at about 30-33% of the GDP, while for 2007 the Bulgarian National Bank assessed it at about 17% of the GDP. According to the National Statistics Institute, in 1993 the share of the shadow economy in Bulgaria amounted to 16.8%, and in 1998 to 27.8% of the country's GDP.

THE LAW

I. JOINDER OF THE APPLICATIONS

124. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

II. PRELIMINARY ISSUE

125. Ms Emilia Ruseva Zhekova, one of the applicants in the case of *Zhekovi* (application no. 71694/12 – see paragraph 41 above), passed away on 20 July 2018 and her heirs expressed the wish to pursue the application in her stead. The Government objected, pointing out that at the time of her death her forfeited assets had no longer been in her possession.

126. The Court reiterates that in determining such matters the decisive point is whether the heirs or the next of kin of can in principle claim a legitimate interest in requesting the Court to deal with the case on the basis of the deceased applicant's wish to exercise his or her individual and personal right to lodge an application with the Court. Also, human rights cases before the Court generally have a moral dimension and persons near to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see, among other authorities, *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014, and *Karastelev and Others v. Russia*, no. 16435/10, § 51, 6 October 2020).

127. In view of the above, the Court finds that Ms Zhekova's heirs, namely her husband, Mr Zhivko Zhekov Zhekov, and her sons Mr Ivaylo Zhivkov Zhekov and Mr Zheko Zhivkov Zhekov, have standing to pursue the application in her stead.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

128. The applicants complained under Article 1 of Protocol No. 1 and Articles 6 § 1 and 13 of the Convention about the forfeiture of their property.

129. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court is of the view that the complaint falls to be examined solely under Article 1 of Protocol No. 1 to the Convention, which reads 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. Scope of the complaint

130. In the case of *Zhekovi* (application no. 71694/12), the Government pointed out that even though the Supreme Court had ordered the forfeiture of, among other things, EUR 14,400 and USD 730 seized from the first and second applicants' home, the money had already been confiscated in the course of the criminal proceedings against those two applicants (see paragraph 52 above). The forfeiture order had therefore been unenforceable in respect of that money.

131. The Court observes that the situation was similar in the cases of *Gaich*, *Rusev* and *Katsarov v. Bulgaria* (respectively, applications nos. 11340/12, 44845/15 and 17238/16), where the forfeiture orders could not apparently be enforced with regard to immovable properties and cars which were no longer the property of the applicants (see paragraphs 30, 62 and 75 above). Similarly, in the case of *Zhekovi* the forfeiture order could not be enforced with regard to one of the forfeited cars (see paragraph 53 above).

132. While, as to the case of *Zhekovi*, the Government argued that the complaint under Article 1 of Protocol No. 1 was partially incompatible *ratione materiae*, the Court will not treat this issue, in this case as well as the others mentioned above, as one related to the admissibility of the complaints. It considers it more appropriate to define the scope of the complaint under examination, taking into account the circumstances referred to above.

133. In the case of *Zhekovi*, the sums referred to by the Government were apparently confiscated twice and the National Revenue Agency explained that only the confiscation ordered in the course of the criminal proceedings had been enforced (see paragraph 52 above). The first and third applicants and the second applicant's heirs have not claimed that they were asked to pay the sums in question a second time, and the Court thus accepts that the money is no longer due. As to the remaining assets which are no longer the property of the applicants, none of the applicants concerned have claimed to still be liable to transfer them to the State.

134. The Court will thus examine the complaint raised before it only as far as it concerns assets which were actually forfeited, or for which the applicants are still liable, as may be the case for the forfeited sums of money. It does not consider that the complaint concerns assets which are no longer property of the applicants, and in respect of which the authorities do not appear to be seeking to enforce the forfeiture orders.

B. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

135. In the cases of *Zhekovi*, *Katsarov* and *Dimitrov* (respectively, applications nos. 71694/12, 17238/16 and 63214/16), the Government raised an objection of non-exhaustion of domestic remedies on two grounds. Firstly, they argued that in the domestic proceedings the applicants had failed to expressly refer to the inviolability of private property as guaranteed by the Bulgarian Constitution. Secondly, they contended that, since in the cases of *Katsarov* and *Dimitrov* the forfeiture applications against the applicants had only been allowed in part, and in the case of *Zhekovi*, as already mentioned, the forfeiture had been partially unenforceable, the

applicants had had the opportunity to bring tort actions and seek damages from the State.

136. The first and third applicants and the second applicant's heirs in the case of *Zhekovi* stated that the applicants had done everything within their power in the forfeiture proceedings to defend their property, and that a tort action could not have been an effective remedy. The applicant in the case of *Katsarov* also pointed out that throughout the domestic proceedings he had defended his property rights. He argued that the compensatory remedy referred to by the Government had been inapplicable to his case, because the forfeiture of his property had been lawful under domestic law. The applicant in the case of *Dimitrov* did not comment on the Government's objection of non-exhaustion of domestic remedies.

137. The general principles concerning exhaustion of domestic remedies are resumed in *Vučković and Others v. Serbia* ([GC] (preliminary objection), nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). Turning to the circumstances of the present case, the Court observes that the forfeiture proceedings affected the applicants' property rights, and that the applicants' efforts throughout these proceedings were clearly aimed at defending these rights. The applicants raised different arguments, and the Court does not see how further reference by them to the Constitution would have aided their defence. The Government have provided no further explanations or arguments in that regard.

138. It is true that the applicants had the possibility to bring tort actions, and that the compensatory remedy provided for in the 2005 Act (see paragraph 103 above) was found by the Court to be, in principle, effective in the case of *Nedyalkov and Others v. Bulgaria* ((dec.) no. 663/11, §§ 91-102, 10 September 2013). Such tort actions, however, were available only in so far as the Commission's forfeiture applications against the applicants had been dismissed in part. Now, the applicants did not complain about this partial dismissal (or about the partial unenforceability of the forfeiture in the case of *Zhekovi*), but about the actual forfeiture of their assets. There is no dispute that that forfeiture is considered lawful under domestic law and that the applicants have no possibility to claim damages in that regard.

139. Accordingly, the Court does not consider that the applicants in the three cases under examination failed to exhaust any effective domestic remedies. It thus dismisses the Government's objection in that regard.

2. Other grounds for inadmissibility

140. Lastly, the Court notes that the complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other ground. It must therefore be declared admissible.

C. Merits

1. Submissions by the parties

(a) The Government

(i) General remarks

141. The Government pointed out that the interference with the applicants' rights had been provided for in the 2005 Act, which had been clear, accessible and foreseeable. Moreover, its application by the national courts had been consistent, especially after the Supreme Court's Interpretative Decision of 30 June 2014 (see paragraphs 105-106 above).

142. The Government contended that the aim of the 2005 Act had been to strike at the "economic foundations of organised and serious crime". They stated that at the end of the twentieth and the beginning of the twenty-first century organised crime in Bulgaria had generated huge financial resources which had been reinvested in business and that, in such a situation, the adoption of far-reaching measures such as those at issue had become a "critical necessity".

143. The Government pointed out that the procedure under the 2005 Act was applicable to assets which were not subject to confiscation under the Criminal Code and could not be recovered by the victim of the criminal offence. The forfeiture was "civil", as it was ordered by the civil courts and only occurred following criminal proceedings.

144. The Government submitted that the procedure under the 2005 Act was balanced and fair. In particular, the long periods of analysis of a defendant's income and expenditure (up to twenty-five years – see paragraph 98 above) guaranteed that all possible sources of income would be taken into account.

145. The Government contended that the manner in which the national authorities applied the 2005 Act fulfilled the requirements of Article 1 of Protocol No. 1. In particular, they defended the decision of the authorities to systematically convert sums of money received or spent by the defendant into their equivalent in minimum monthly salaries at the relevant time. Pointing to the long periods of analysis of income and expenditure in such proceedings, the Government submitted that reference to the minimum monthly salary was a "generally valid criterion", revealing the "purchasing power of money" and preventing the "arbitrary use of nominal values".

146. Next, the Government justified the domestic courts' reference to the market value of the assets acquired by the applicants, pointing out that it was the usual practice in Bulgaria that, when purchasing and selling immovable properties and cars, the parties declared a low price in order to pay lower tax. The actual price was significantly higher. The Government pointed out that, in the cases under examination, the market value of the

assets discussed in the domestic proceedings had been calculated by independent experts.

147. The Government argued that the Convention did not, in principle, prohibit presumptions such as that contained in section 4(1) of the 2005 Act (see paragraph 96 above), where they were accompanied by adequate protection of the right to property.

148. Lastly, the Government distinguished the present cases from *Dimitrovi v. Bulgaria* (no. 12655/09, 3 March 2015), which concerned the forfeiture of "non-work-related income".

(ii) Submissions on the individual applications

(α) Application no. 50705/11 – *Todorov and Others v. Bulgaria*

149. The Government pointed out that in the proceedings under the 2005 Act the first and second applicants had had the opportunity to defend their rights and to present evidence. Their rights under Article 1 of Protocol No. 1 had thus not been breached.

(β) Application no. 11340/12 – *Gaich v. Bulgaria*

150. The Government referred to the deposit-taking activities of the first applicant and Mr Gajic in the 1990s and to Mr Gajic's convictions, arguing that the first applicant's conviction resulting in the forfeiture of the applicants' property should not be viewed in isolation. They pointed out that much of the money received by the companies of the first applicant and Mr Gajic had never been traced, and argued that, in view of the family's "large-scale criminal activity" over many years, the 2005 Act had been the sole means of depriving them of the financial gain obtained.

151. The Government pointed to the "tremendous difference" established by the national authorities between the legal income of the applicants and Mr Gajic and the family's expenditure. They considered that the domestic courts had "correctly made the reasonable assumption" that there was an indirect link between the assets acquired by the family and their criminal activity. They pointed out that in the domestic proceedings the applicants and Mr Gajic had had at their disposal all procedural means of proving the origin of their assets.

(χ) Application no. 26221/12 – *Barov v. Bulgaria*

152. The Government pointed out that the applicant had been convicted of numerous serious offences and that the national courts had established his "prolonged criminal activity". That activity was capable of generating substantial financial resources. It could thus be reasonably assumed that the applicant's forfeited assets were the proceeds of crime, and the national courts had rightly done so.

(δ) Application no. 71694/12 – *Zhekovi v. Bulgaria*

153. The Government argued that the Supreme Court, which had ordered the forfeiture of the applicants' assets, had thoroughly examined the evidence presented by the parties in the proceedings and had reached the conclusion that the assets in question were the proceeds of crime. Even though its decision preceded the Interpretative Decision of 30 June 2014 (see paragraphs 105-106 above), it did not contradict it and established a causal link between the assets to be forfeited and the first and second applicants' criminal activity.

154. The Government pointed out that the applicants had had a very low legal income and had given no adequate explanation for their "material well-being". As to the third applicant's flat, while he had formally owned it, no legal source enabling him to acquire it had been established.

(ε) Application no. 44845/15 – *Rusev v. Bulgaria*

155. The Government stated that illegal logging was acutely problematic in Bulgaria. They noted that the national courts had established an indirect causal link between the assets to be forfeited from the applicant and his criminal activity. This had been done after a thorough examination of the relevant facts and taking into account the applicant's employment history over the years. It was significant that the Commission's forfeiture application had only been allowed in part, which showed that the courts had carefully examined the origin of the applicant's assets.

(ϕ) Application no. 17238/16 – *Katsarov v. Bulgaria*

156. The Government pointed out that the applicant had acquired assets of significant value, but had been unable to show proof of a legal source of income. Within a year of being found in illegal possession of drugs with intent to sell, he had concluded a preliminary contract and paid for his flat. There was a stark discrepancy between his legal income and his expenditure, for which he had provided no adequate explanation. The national courts had thus justifiably concluded that there was a causal link between the assets to be forfeited and the applicant's criminal activity, and had ordered the forfeiture of these assets as proceeds of crime. The applicant had had a reasonable opportunity in the domestic proceedings to defend his rights.

157. The Government also pointed out the following: (i) the value of the drugs seized from the applicant's property in 2000 and 2001 (BGN 650 or EUR 332) had not been negligible, since at the time the minimum monthly salary had varied between BGN 67 (EUR 34) and BGN 100 (EUR 51); (ii) the applicant himself had never alleged that he had received undeclared income from working as a taxi driver and in his parents' garden; only his mother and sister had made such statements; and (iii) the forfeiture order against the applicant had not been enforced with regard to the two forfeited cars.

(γ) Application no. 63214/16 – *Dimitrov v. Bulgaria*

158. The Government noted that the Varna Court of Appeal had carefully examined whether or not a causal link could be established between the assets to be forfeited and the applicant's "criminal activity", and that its conclusions in that regard had been justified and logical. Moreover, the Varna Court of Appeal had made reasonable findings with regard to the applicant's income and expenditure. The Government also pointed out that his taxes due to the tax authorities not having been paid, the proceedings under the 2005 Act had remained the sole means of depriving the applicant of the proceeds of his criminal activity.

159. Lastly, as to the plot of land with a building which, according to the Varna Court of Appeal, had been acquired by the applicant for BGN 26,882 (EUR 13,750), and had subsequently been sold by the National Revenue Agency for BGN 4,680 (EUR 2,390 – see paragraphs 82 and 88 above), the Government pointed to fluctuations in the property market and to the property not having been maintained by the applicant after purchase.

(b) The applicants

(i) Application no. 50705/11 – Todorov and Others v. Bulgaria

160. The applicants pointed out that the first applicant had been convicted of offences committed in 1993 and that, for this reason, years later, the four applicants had been deprived of assets of significant value. Some of these assets had been acquired not only before the 2005 Act's entry into force, but also before the first applicant had committed any criminal offence. The applicants contended that no causal link had been established between the forfeited assets and the first applicant's offences, and considered the presumption contained in section 4(1) of the 2005 Act (see paragraph 96 above) "*de facto* irrefutable". They were thus of the view that the 2005 Act was flawed, as it permitted the forfeiture of assets which were in no way linked to any criminal activity. The applicants contended that they had been given no meaningful opportunity to prove the legality of their income.

161. The applicants argued that the 2005 Act was unclear, pointing to the conflicting practice of the domestic courts as to the need to establish a causal link between the assets to be forfeited and any criminal activity. They criticised the ability of the State to check their income and expenditure over a long period of time, considering it "absurd", and even more so in view of the financial instability and galloping inflation in Bulgaria in the 1990s.

162. The applicants pointed out that the third and fourth applicants had not broken the law, yet their property had also been forfeited. The 2005 Act presumed that they had known that the property in question had been the proceeds of crime, even though it had been acquired by them before the first applicant had committed any criminal offence.

(ii) Application no. 11340/12 – Gaich v. Bulgaria

163. The applicants pointed out that, at domestic level, it had been the first applicant's 2006 conviction which had triggered the proceedings under the 2005 Act. It was thus unacceptable for the Government to rely on further facts, such as the deposit-taking activities in the 1990s of the first applicant and Mr Gajic, or the latter's convictions. These facts had not been discussed in the domestic proceedings or used to justify the forfeiture of the applicants' assets. The first applicant had been convicted of a specific offence, namely the appropriation of the sum of BGN 42,172 (EUR 21,600), which had subsequently been returned to its owner (see paragraph 20 above).

164. The applicants contended that their forfeited assets had not been the proceeds of crime and that no link had been established between these assets and the offence committed by the first applicant. They considered that the operation of the presumption under section 4(1) of the 2005 Act (see paragraph 96 above) had not been accompanied by sufficient guarantees, and that the 2005 Act was unclear, since at the time when their assets had been forfeited its application had been inconsistent.

165. The applicants contested the domestic courts' conclusions that the first applicant and Mr Gajic had acquired assets at market value, and not at the value indicated in the purchase documents. They argued that there was no evidence that the values indicated in these documents had been inaccurate. Furthermore, the applicants disagreed with the domestic courts' refusal to accept that the money Mr Gajic claimed to have brought to Bulgaria in 1990 had been lawful income. Lastly, the applicants argued that the forfeiture of their property had been based on mere assumptions – that the forfeited assets were the proceeds of crime, that the assets had been acquired at market value, and that the family's daily expenditure had been in the amounts provided by statistics.

(iii) Application no. 26221/12 – Barov v. Bulgaria

166. The applicant argued that the national courts had failed to establish a causal link between the offences of which he had been convicted, committed in 1994 and 1995, and the forfeited assets, acquired much later, pointing out that any damage resulting from the offences had been repaid. He submitted that the authorities had not even attempted to prove the causal link in question, and that the 2005 Act had been interpreted in his case as assimilating unlawful income and proceeds of crime. Moreover, the national courts had had conflicting practice on the matter, and the approach taken in his case had ultimately been rejected by the Supreme Court in its Interpretative Decision of 30 June 2014 (see paragraphs 105-106 above).

167. The applicant argued that the 2005 Act had not contained clear requirements as to what income was to be considered lawful and as to the standard of proof. He thus contended that his forfeited assets had been lawfully acquired, but that the national courts had unjustifiably rejected his arguments in that regard. In particular, he contested the courts' finding that he had acquired assets at market value, disregarding the values indicated in the respective purchase documents. Taking note of the Government's argument that it was the standard practice in Bulgaria to indicate a value lower than the actual price in such documents (see paragraph 146 above), he contended that there had been no such bad faith in his particular case. Moreover, he submitted that the expert calculations as to the market values of the properties at issue had been "arbitrary". He also contested the manner of calculating his daily expenditure over the years on the basis of statistical data.

168. The applicant argued that the long period of analysis of his income and expenditure meant that there could have been inaccuracies. In addition, the burden to provide proof of a lawful income during such a long period had been disproportionate.

(iv) Application no. 71694/12 – Zhekovi v. Bulgaria

169. The first and third applicants and the second applicant's heirs argued that no causal link had been established by the domestic courts between their forfeited assets and any criminal activity on the part of the applicants. They conceded that the applicants might have failed to provide proof of sufficient lawful income, but pointed out that this did not in itself mean that their assets had been the proceeds of crime. In the latter regard, there had been no evidence. Moreover, at the time when the forfeiture of the applicants' property had been ordered, the domestic courts had had conflicting practice as to the need to establish a causal link between the assets to be forfeited and any criminal activity, which had later necessitated the adoption of an interpretative decision by the Supreme Court (see paragraphs 105-106 above).

170. The first and third applicants and the second applicant's heirs pointed out that the forfeited assets had been acquired before the first and second applicants had committed any criminal offences. Moreover, the third applicant had not been implicated in these offences and there was no proof that he had known that his flat could be the proceeds of crime.

171. The applicants argued that the long period of analysis of their income and expenditure had made it difficult to establish the facts.

(v) Application no. 44845/15 – Rusev v. Bulgaria

172. The applicant contested the domestic courts' findings that a causal link could be established between the assets to be forfeited and the offence of which he had been convicted. He pointed out that the offence in question had been committed in 2009, whereas most of the forfeited assets had been acquired earlier. In addition, he disagreed with the domestic courts' refusal to accept as proven income referred to by him.

(vi) Application no. 17238/16 – Katsarov v. Bulgaria

173. The applicant pointed out that the drugs seized from him in 2000 and 2001 had been valued at about BGN 650 (EUR 332 – see paragraph 64 above), whereas the assets forfeited in the proceedings under the 2005 Act had been of much higher value.

174. He submitted that he had been the victim of State arbitrariness. He argued that the 2005 Act had allowed for the forfeiture of "any property of considerable value", since defendants in forfeiture proceedings had faced the "practically impossible task" of proving the origin of assets acquired over twenty-five years. Often, as in his case, people received income for which no written trace existed, such as maintenance from their family or money from undeclared work. The 2005 Act's approach was such that it automatically treated assets acquired with such income as proceeds of crime. It was unclear how "lawful" income had to be proven in proceedings under the 2005 Act, as it had been in the earlier case of *Dimitrovi* (cited above), which concerned similar proceedings. The applicant submitted that the national courts had assessed the sources of income he had referred to with excessive formalism.

175. The applicant argued that the domestic courts had not sufficiently established a causal link between his forfeited assets and any criminal activity. He denied receiving any proceeds of crime, pointing out that the drugs seized in 2000 and 2001 had been confiscated by the police and that he had not been convicted of any further offences. Moreover, he contended that, even though he had confessed to possession of drugs with intent to sell (see paragraph 65 above), this did not mean that he had actually sold any such drugs and obtained financial gain.

(vii) Application no. 63214/16 – Dimitrov v. Bulgaria

176. The applicant pointed out that in 2002 he had been ordered by the tax authorities to pay his taxes, and that the State had failed to collect that sum owing to the inactivity of its own bodies. It was thus unjustified that, many years later, the State had initiated forfeiture proceedings against him. The applicant submitted that such an approach had been "arbitrariness on the part of the State", which had initiated the forfeiture proceedings after its own failure to collect a sum of money owed by him.

177. The applicant argued that there had been no reliable methods of calculating his income and expenditure over a period of "radical economic transition and galloping inflation". In his view, the Varna Court of Appeal's finding that he had acquired properties at market value had resulted in the values being hugely inflated. The applicant gave as an example one of the properties in question, which had been valued in the domestic proceedings at BGN 26,882 (EUR 13,750) and subsequently sold by the National Revenue Agency for BGN 4,680 (EUR 2,390) (see paragraphs 82 and 88 above). He also submitted that the Varna Court of Appeal had unjustifiably disregarded some of the sources of income to which he had referred.

178. The applicant argued that the forfeiture of his property had not pursued a legitimate aim in the general interest, because the forfeited properties had not been the proceeds of crime and the authorities had only made an assumption in that regard. Lastly, he contested the Varna Court of Appeal's reference to convictions other than that which had triggered the proceedings under the 2005 Act.

2. The Court's assessment

(a) In general

(i) The applicable Rule of Article 1 of Protocol No. 1

179. Article 1 of Protocol No. 1 to the Convention, which guarantees in substance the right to property, comprises three distinct rules. The first one, which is expressed in the first sentence of the first paragraph, lays down the principle of peaceful enjoyment of property in general. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be construed in the light of the general principle laid down in the first rule (see, among other authorities, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V).

180. It is not in dispute between the parties that in the case under examination the forfeiture of the applicants' property constituted an interference with their rights under Article 1 of Protocol No. 1.

181. In some earlier forfeiture cases (see, for example, *Phillips v. the United Kingdom*, no. 41087/98, § 51, ECHR 2001-VII; *Saccoccia v. Austria*, no. 69917/01, § 86, 18 December 2008; *Bongiorno and Others v. Italy*, no. 4514/07, § 42, 5 January 2010; and *Dimitrovi*, cited above, § 43), the Court held that the interference with the applicants' rights fell within the scope of the second paragraph of Article 1 of Protocol No. 1, which, *inter alia*, allows the Contracting States to control the use of property in accordance with the general interest. In other cases the Court found similar measures to amount to deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see, for example, *Andonoski v. the former Yugoslav Republic of Macedonia*, no. 16225/08, § 30, 17 September 2015; *S.C. Service Benz Com S.R.L. v. Romania*, no. 58045/11, § 30, 4 July 2017; and *Yaşar v. Romania*, no. 64863/13, § 49, 26 November 2019).

182. In the case at hand, the Court is of the view that it does not have to determine with finality which the applicable rule of Article 1 of Protocol No. 1 is. The principles governing the question of justification are substantially the same, involving as they do the need for the interference to be lawful and in the public interest, and to strike a fair balance between the demands of the general interest and the applicants' rights (see, *mutatis mutandis*, *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 55, 1 April 2010, and *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, no. 3503/08, §§ 39-40, 13 October 2015).

(ii) Lawfulness

183. An essential condition for an interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

184. In the case under examination, the interference with the applicants' rights was based on the 2005 Act (see paragraphs 90-110 above), and the applicants did not dispute that it had a basis in domestic law.

(iii) Legitimate aim

185. Any interference by a public authority with the peaceful enjoyment of "possessions" can only be justified if it also serves a legitimate aim in the general interest.

186. The Court has held that confiscation in criminal proceedings is in line with the general interest of the community, because the forfeiture of money or assets obtained through illegal activities or paid for with the proceeds of crime is a necessary and effective means of combating criminal

activities (see *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A). Thus, a confiscation order in respect of criminally acquired property operates in the general interest as a deterrent to those considering engaging in criminal activities, and also guarantees that crime does not pay (see *Denisova and Moiseyeva v. Russia*, cited above, § 58, with further references to *Phillips*, cited above, § 52, and *Dassa Foundation and Others v. Liechtenstein* (dec.), no. 696/05, 10 July 2007). In the present case, the explanatory memorandum accompanying the 2005 Act in Parliament defined its aim as "eliminating the possibilities of receiving proceeds of crime and of preventing the use of such proceeds for the commission of new crimes or other breaches of the law", as well as combatting money laundering (see paragraph 91 above). The Government also contended that the aim of the 2005 Act had been to strike at the "economic foundations of organised and serious crime" (see paragraph 142 above). In light of this, the Court is satisfied that the 2005 Act pursued a legitimate aim in the public interest, namely to prevent the illicit acquisition of property through criminal activity and the use of such property (see, *mutatis mutandis*, *Raimondo*, cited above, § 30, and *Silickienė v. Lithuania*, no. 20496/02, § 65, 10 April 2012).

(iv) Proportionality

(α) General principles

187. Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim sought to be realised. In other words, a "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The requisite balance will not be found if the persons concerned have had to bear an excessive burden (see, amongst many other authorities, *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 89, ECHR 2000-XII). In that context, a wide margin of appreciation is usually allowed to the State when it comes to general measures of political, economic or social strategy (see *Gogitidze and Others v. Georgia*, no. 36862/05, § 97, 12 May 2015).

188. Even though Article 1 of Protocol No. 1 contains no explicit procedural requirements, judicial proceedings concerning the right to the peaceful enjoyment of one's possessions must also afford the individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see, among other authorities, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII). In *G.I.E.M. S.R.L. and Others*, in finding that the interference was not reasonably proportionate to the aim sought to be realised, the Court highlighted the following factors: the possibility of less

restrictive alternative measures, in the specific case demolition of structures that were incompatible with the relevant regulations or the annulment of the development plan rather than confiscation; the unlimited nature of the sanction, as it affected both developed and undeveloped land, and even areas belonging to third parties; and the degree of culpability or negligence on the part of the applicants or, at the very least, the relationship between their conduct and the offence in question (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 301, 28 June 2018).

189. The Court has examined under Article 1 of Protocol No. 1 a number of cases concerning the forfeiture of proceeds of crime on the basis of a variety of domestic forfeiture regimes, including extended confiscation based on a reversal of the burden of proof or estimates of the gains from criminal activity. In doing so, it has examined the purpose of the legislation, the applicable substantive and procedural guarantees and has laid down in the process the basic principles to be applied in such cases.

190. In a series of cases against Italy the Court found that the forfeiture of assets of suspected Mafia members was proportionate to the legitimate aim pursued. It pointed out that in Italy the problem of organised crime had reached "a very disturbing level", which justified the impugned measures. The national courts had examined evidence showing that the applicants had been in contact with members of the Mafia and that there had been a considerable discrepancy between their financial resources and their income (see *Arcuri and Others v. Italy* (dec.), no. 52024/99, ECHR 2001-VII; *Riela and Others v. Italy* (dec.), no. 52439/99, 4 September 2001; *Perre and Others v. Italy* (dec.), no. 1905/05, 12 April 2007; and *Bongiorno and Others*, cited above, §§ 45-51).

191. In several cases against the United Kingdom the Court found that the forfeiture of proceeds of drug-trafficking did not breach the proportionality requirement under Article 1 of Protocol No. 1. In *Phillips* (cited above, §§ 53-54) the applicant had been convicted of drug trafficking and an inquiry had been conducted into his financial means. A judge had found that the amount payable by him following that inquiry corresponded to what he could have received through drug trafficking over the preceding years. In *Butler v. the United Kingdom* ((dec.), no. 41661/98, ECHR 2002-VI) the Court pointed out that the Customs' authorities who had sought the forfeiture of the applicant's assets had had to make out their case before the courts, relying on forensic and circumstantial evidence; the domestic courts had refrained from any automatic reliance on presumptions created in domestic law and had not applied these presumptions in a manner incompatible with the requirements of a fair hearing. The conclusions reached in *Phillips* were reiterated in *Grayson and Barnham v. the United Kingdom* (nos. 19955/05 and 15085/06, § 52-53, 23 September 2008). The Court also found, in its analysis under Article 6 § 1 of the Convention, that it was not incompatible with the notion of a fair hearing, after it had been

found that the applicants had been involved in extensive and lucrative drug dealing, to place the onus on them to give a credible account of their current financial situation (§ 49 of the judgment).

192. Examining the purpose of the measure, the Court held in *Silickienė* (cited above, § 67-69) that it concerned "exceptional" circumstances, namely a systematic and well-organised criminal activity (smuggling), and that the confiscation of the applicant's assets could have been "essential in the fight against organised crime". Further, it took into account in its proportionality analysis the fact that the domestic courts ordering the confiscation had been debarred from relying on mere suspicions, and had satisfied themselves that each item to be confiscated from the applicant had been acquired through proceeds of crime. In the same way, in *Veits v. Estonia* (no. 12951/11, § 74, 15 January 2015), in finding the confiscation proportionate, the Court took into account the fact that the national courts had dealt with, and rejected with sufficient reasoning, the arguments by the applicant's mother and grandmother to the effect that the property to be forfeited had not been obtained through crime.

193. Similarly, the Court took into account the importance of "prevention and eradication of corruption in the public service" in accepting the justification of extended confiscation in the case of an official convicted for taking bribes (see *Telbis and Viziteu v. Romania*, no. 47911/15, §§ 77-80, 26 June 2018). The official at issue had committed 291 acts of bribe-taking over an extended period, and had caused damage to the State social security budget. The Court noted that the considerable estate acquired by the applicants' family in a rather short period of time was clearly disproportionate to their lawful income, and it had been "reasonable" to expect the applicants – who were presumed to have benefited unduly from the proceeds of his crimes – to discharge their part of the burden of proof by refuting the prosecutor's substantiated suspicions about the wrongful origins of their assets.

194. The case of *Gogitidze and Others* (cited above, §§ 104-13) also concerned corruption in the public service. The first applicant had served as Deputy Minister of the Interior and President of the Audit Office of the Ajarian Autonomous Republic. In assessing the purpose of the extended confiscation procedure adopted by the Respondent State, the Court observed that numerous international bodies, noticing the "alarming levels of corruption" in Georgia, had urged the Georgian authorities to confiscate its proceeds, and that the country was leading a policy "aimed at the prevention and eradication of corruption in the public service". The Court noted additionally that the domestic proceedings resulting in the forfeiture of the applicants' assets had been adversarial, and that the national courts had duly examined the prosecution authorities' forfeiture request, "in the light of the numerous supporting documents available in the case file". The courts had found a considerable and well-documented discrepancy between the

applicants' income and their wealth, and that their assets could not have been financed by the first applicant's official salaries alone, whilst the remaining applicants had had no other significant sources of income.

195. More recently, the case of *Balsamo v. San Marino* (nos. 20319/17 and 21414/17, §§ 89-95, 8 October 2019) concerned proceeds from money laundering. The domestic courts had been satisfied that the money to be forfeited from the applicants had had an illicit origin, and the applicants had had a reasonable opportunity of putting forward their arguments.

196. By contrast, in other cases the Court found confiscation to be disproportionate, where no link could be established between the confiscated property and any criminal activity. In the case of *Rummi v. Estonia* (no. 63362/09, §§ 105-109, 15 January 2015) the Court found a violation of Article 1 of Protocol No. 1, as the domestic courts had relied on a provision allowing the confiscation of property obtained through crime, but had not established that the applicant's husband, of whom she was a heir, had committed any crime: precious metals had been seized from his home, and even though it could be understood that he had been suspected of an offence in relation thereto, no substantial investigation had been carried out and he had never been convicted. Secondly and in any event, the domestic authorities appear to have carried out no assessment as to the sums the applicant's husband might have obtained through crime and invested in precious metals. Thus, the Court was "unable to see how the property could be confiscated as obtained through crime". On the contrary, the Court considered the confiscation "an arbitrary measure", resulting from the "somewhat incidental seizure of evidence". Lastly, the Court pointed out that no individual assessment of which pieces of property to confiscate appeared to have been carried out, and that the judicial proceedings had been deficient, leading also to a violation of Article 6 § 1 of the Convention.

197. The Court followed a similar approach in the case of *Geerings v. the Netherlands* (no. 30810/03, §§ 41-51, 1 March 2007), though it concerned a complaint under Article 6 § 2 of the Convention. After having been convicted of theft and of handling stolen goods, the applicant was ordered to repay what was considered to be "illegally obtained advantage", related both to these offences and to others of which he had been acquitted. However, the applicant had not been shown to be in possession of any assets for whose provenance he could not give an adequate explanation. The Court found a violation of Article 6 § 2 noting that, in the absence of a conviction, and if it could not be established that any advantage had actually been obtained, the impugned forfeiture could only be based on a "presumption of guilt".

198. The Court has also found violations of Article 1 of Protocol No. 1 in a number of cases where assets of the applicants had been confiscated after having been used by third parties for the commission of criminal offences. The Court pointed out in particular that no connection had been

established between the owners of the assets and the respective unlawful action; in addition, often the owners had had no effective means at their disposal to oppose the confiscation (see, among others, *Bowler International Unit v. France*, no. 1946/06, §§ 44-46, 23 July 2009; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, no. 42079/12, §§ 45-49, 17 January 2017; *Andonoski*, cited above, §§ 35-38; and *Ünsped Paket Servisi SaN. Ve TiC. A.Ş.*, cited above, § 45). In other cases, where the authorities had confiscated money which the applicants had failed to declare when crossing the border (even where its lawful origin had been established), the Court found the sanction disproportionately grave (see *Grifhorst v. France*, no. 28336/02, §§ 94-105, 26 February 2009; *Gyrlyan v. Russia*, no. 35943/15, §§ 24-31, 9 October 2018; and *Togrul v. Bulgaria*, no. 20611/10, §§ 42-46, 15 November 2018). The Court found a violation of Article 1 of Protocol No. 1 in *Denisova and Moiseyeva v. Russia* (cited above, §§ 59-64), where the applicants' assets had been confiscated in the framework of criminal proceedings against a third party and the applicants had been given no meaningful opportunity to defend their rights and challenge the confiscation measure.

199. Lastly, the case of *Dimitrovi* (cited above, §§ 42-56) did not concern the forfeiture of proceeds of crime, but of what was referred to by domestic law as "non-work-related" income. The Court held that the forfeiture of the applicants' assets had not been shown to pursue any legitimate aim in the public interest, since, in particular, it had not been proven that the applicants' "non-work-related" income represented the proceeds of crime, nor did the case concern infringements of the tax legislation. As the applicants had had to prove their "lawful" income, the Court criticised the lack of clarity under domestic law as to what constituted such an income, as well as the national courts' conflicting findings in that regard. The Court concluded on that ground that the applicants had not been adequately protected from arbitrariness and found a violation of Article 1 of Protocol No. 1.

(β) The present case

200. Turning to the circumstances of the present case, the Court observes that the 2005 Act's scope of application was wide, as forfeiture proceedings under it could be triggered by numerous offences (see paragraph 95 above), and not just, as in the majority of the cases considered by the Court and reviewed above, by particularly serious offences as Mafia-related offences, drug-trafficking, corruption in the public service or money laundering. The Court is of the view that not all of the offences enlisted in the 2005 Act could reasonably be assumed to necessarily generate an income. Thus, the forfeiture regime under the 2005 Act did not in all cases concern circumstances that can be qualified as "exceptional"

like, for instance, in the cases of *Silickienė* and *Telbis and Viziteu* referred to in paragraphs 192 and 193 above.

201. The Court also observes the 2005 Act's wide temporal application. Its application could, first, be triggered even where the predicate offences had been committed long before its entry into force (for example, in the case of *Todorov and Others* the first applicant had committed an offence falling eventually within the scope of the 2005 Act in 1993, and in the case of *Katsarov* the offences had been committed in 2000 and 2001 – see paragraphs 6 and 64 above). Second, the State remained entitled to forfeit an asset acquired up to twenty-five years before the opening of confiscation proceedings, with the corresponding obligation of the defendants to prove their income for this whole period. Assets acquired before the 2005 Act's entry into force were forfeitable as well (see paragraph 98 above).

202. It is reasonable to assume that the wide scope of application of the 2005 Act, as discussed above, and particularly the lengthy periods of time covered by the retroactive application of the law, rendered the proof of lawful income or lawful provenance of their assets difficult for the applicants. Not only were they, in some cases, obliged to give account of their financial situation as of years earlier (see, for example, the cases of *Gaich* and *Rusev*, paragraphs 23 and 55 above); it is also significant that parts of the periods of time concerned were characterised in Bulgaria with major economic change and galloping inflation (see, for example, *Angelov v. Bulgaria*, no. 44076/98, § 25, 22 April 2004, and *Capital Bank AD v. Bulgaria*, no. 49429/99, § 45, ECHR 2005-XII (extracts); also *Dimitrovi*, cited above, § 48, where the Court held that such a situation "inevitably resulted in some uncertainty and imprecision").

203. It should also be noted that the percentage of shadow economy in Bulgaria appears to have been high at least since 1993 (see paragraph 123 above). While, of course, the authorities should be able to take measures to combat this phenomenon, the primary instruments in that regard are those of tax and social security legislation, containing their own procedural guarantees. At the same time, the purpose of the 2005 Act was the confiscation of criminal assets where such assets could not wholly or partially be confiscated under the Criminal Code (see paragraph 91 above).

204. The confiscation regime under the 2005 Act was also not, in principle, limited to significant discrepancies between the established legal income of a person and the assets possessed by him or her. While there was a quantitative requirement for the opening of proceedings, namely where the person possessed assets of "considerable value" (see paragraph 94 above), it appears that, once the proceedings were opened, any discrepancy between the established legal income and the assets possessed was sufficient to order confiscation.

205. Yet, in the situation described – wide scope of application of the 2005 Act and apparent difficulties for the applicants in establishing the provenance of their assets due to the factors described above – domestic law put the onus of proving the legal provenance of these assets on the applicants. This was done by means of the presumption contained in section 4(1) of the 2005 Act, stipulating that, where no legal source of income could be established, the assets concerned were to be considered the proceeds of crime (see paragraph 96 above). The applicants took issue with that provision, considering the presumption "*de facto* irrefutable", contending that it had not been accompanied by sufficient guarantees, or that it automatically treated any undeclared income and even maintenance received by family members as proceeds of crime (see paragraphs 160, 164, 166, 169 and 174 above). The Court, for its part, has accepted that every legal system recognises presumptions of fact or of law, and that the Convention does not prohibit such presumptions in principle, in so far as their operation is accompanied by effective judicial guarantees (see *Arcuri and Others*, decision cited above). Thus, the Court cannot agree with the applicants that the reversal of the burden of proof resulted in itself in a disproportionate interference with their property rights. It will take into consideration, however, the difficulties the applicants might have faced in meeting their burden of proof due to the lengthy periods of time covered by the confiscation proceedings and the other factors described above.

206. A number of other features of the confiscation regime under the 2005 Act also have a bearing on whether a "fair balance" has been struck in accordance with the requirements of Article 1 of Protocol No. 1. The domestic courts ordering the forfeiture of the applicants' assets were apparently prepared to assume that the applicants had been implicated in other criminal offences, never prosecuted, and that this had been so for a period of many years. This followed directly from the general approach of the confiscation regime under the 2005 Act, and is evidenced by the fact that in some of the individual cases under examination any profit received by the applicants from the predicate offences had been repaid (for example, the cases of *Gaich* and *Barov*, see paragraphs 20 and 32 above); yet the domestic courts proceeded with the confiscation, despite the fact that the provenance of the confiscated property could not have been the predicate offence.

207. Several applicants further contested the manner in which the domestic courts had assessed their income and expenditure, arguing that it had been arbitrary. In particular, they took issue with the courts' reliance on the market value of the assets acquired by them, usually higher than the value indicated in the relevant purchase documents (see paragraphs 165, 167 and 177 above). The Court also notes that that value was calculated by experts as of the time of the assets' purchase, sometimes years earlier. While it remained, in principle, open to defendants to prove that they had

not acquired a property at its market value (see paragraph 108 above), and one of the applicants in the case, Mr Katsarov, succeeded in proving that point after the sellers of his flat were heard as witnesses (see paragraph 70 above), it cannot be argued that such a possibility was available in practice to all applicants. Nevertheless, the Court takes note of the justification of the disputed approach put forward at the national level (see paragraph 108 above), and the Government's referral to the practice of fraudulently declaring lower values in purchase documents in order to pay less tax (see paragraph 146 above).

208. The procedural rule that contracts concerning assets valued at more than BGN 5,000 cannot be proven by witness testimony only (see paragraph 113 above) might also have created difficulties for the applicants. The Court does not question such a rule in principle, but observes that, in the particular circumstances related to the application of the 2005 Act, namely the examination of the applicants' financial situation as of many years earlier, it could have impeded the proof of facts the applicants relied on.

209. The Court takes note furthermore of the domestic courts' practice to refer to the equivalent in minimum monthly salaries for the purpose of comparing the value of assets at different times. This approach has been described by the national courts as the only objective method for establishing the real value of an asset (see paragraph 109 above), the minimum monthly salary being fixed by the Council of Ministers after consultations with trade unions and employers, and regularly updated (see paragraph 109 *in fine* above). While indeed compensating for the uncertainties in estimating the value of assets over lengthy periods of time in conditions of high inflation, such a method creates its own difficulties in comparing values, and engenders risks of imprecisions. A similar approach, namely the conversion of all sums into their equivalent in United States dollars at the relevant time, was criticised in *Dimitrovi* (cited above, § 48) as possibly creating uncertainty and imprecision.

210. In light of the considerations above, the Court is of the view that the procedure under the 2005 Act, in its entirety, placed considerable burden on the applicants: the Act's scope of application was very large, as concerns the periods of time examined, as well as the list of offences capable of triggering forfeiture proceedings; proof of the lawful provenance of the assets and of the facts of the case in general could have been difficult, due to the need for the applicants to establish their financial situation as of many years earlier and the evidentiary limitations discussed above, in most cases during a period of economic turmoil, also due to the fact that the percentage of shadow economy and thus of undeclared income in Bulgaria has been relatively high; at the same time the 2005 Act operated a presumption on the criminal provenance of assets, meaning that the authorities did not have to prove such provenance but could rely only on the lack of lawful income; in

some cases this resulted in an implicit assumption, without evidence and specifications, that the applicants had been involved in other criminal activity.

211. While none of the deficiencies of the procedure under the 2005 Act described above could in principle, in themselves, have affected decisively the proportionality of the forfeiture measures against the applicants, the Court has to take into account their cumulative effect. It is of the view that, taken together, the above factors could result in the uncertainty and imprecision criticised by the Court in *Dimitrovi* (cited above, §§ 47-49), in other words they could render forfeiture under the 2005 Act disproportionate to the legitimate aim pursued by it.

212. In these circumstances, in assessing the proportionality of the interference, the Court will follow the position of the Bulgarian Supreme Court which, in its interpretative decision of 2014, prompted by the divergent case-law under the 2005 Act until then, held that a causal link, direct or indirect, had to be established, or had to be presumable, between the assets to be forfeited and the criminal activity. The Supreme Court stated furthermore that the finding of such a link had to be "logically justified" and based on the individual circumstances of each case, and that failure to establish a causal link would mean that any interference with the defendant's property rights is disproportionate (see paragraphs 104-106 above). The Court will thus also consider critical, for the achievement of the requisite balance under Article 1 of Protocol No. 1, the establishment of the causal link required by the Supreme Court, namely it will verify whether the national authorities provided at least some particulars justifying the provenance of the assets subject to forfeiture from the established offence, in the context of each specific case.

213. Such an approach is also reflected in the case law of the Court cited above. The Court has taken into account in its proportionality analysis the degree of culpability or negligence on the part of the applicants (see *G.I.E.M. S.R.L. and Others*, cited above, § 301), or has sought to satisfy itself that the illicit or criminal origin of the assets to be forfeited had been established in the domestic proceedings, even if not at a criminal law standard of proof. In *Phillips* (cited above, § 53), the Court pointed out that the sum to be forfeited corresponded to the amount which, according to the national courts, the applicant had benefited from through drug trafficking over the preceding years. In *Silickienė* (cited above, § 68), the Court pointed out that in respect of each item to be confiscated the courts had been satisfied that it had been purchased "by virtue of reinvestment of the criminal organisation's unlawful profits." Similarly, in *Veits* (cited above, § 74), the Court observed that the domestic courts had rejected with sufficient reasoning the claims of the applicant's mother and grandmother that the property to be forfeited had not been obtained through crime. In *Rummi* (cited above, § 107) and *Geerings* (cited above, § 47) the Court, in

finding a violation of Article 1 of Protocol No. 1 (respectively Article 6 § 2 of the Convention), pointed out that the forfeited assets had in no way been shown to be the proceeds of crime and that the domestic courts ordering confiscation had undertaken no assessment of the sums that might have been obtained through crime.

214. Article 5 § 1 of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014, clarified by Recital 21 of the same Directive, also requires, in the case of "extended confiscation", that a national court satisfy itself that the property to be forfeited "is derived from criminal conduct" (see paragraphs 117-118 above). Recital 21 provides further explanations in that regard, pointing out, in particular, that an asset can be the subject of "extended confiscation" where a court can "reasonably presume" that it is "substantially more probable" that it was obtained from criminal conduct than from other activities (see paragraph 118 above).

215. To sum up its approach concerning proportionality, the Court observes that, while the potential deficiencies of the forfeiture procedure under the 2005 Act described above did not automatically mean that any interference with the applicants' rights was disproportionate to the legitimate aims pursued, their cumulative effect could be such as to tilt the balance in the proceedings in the State's favour. The Court will thus find in the individual cases it will examine below that the fair balance required under Article 1 of Protocol No. 1 has been achieved where, as a counterbalance and a guarantee for the applicants' rights, the domestic courts provided some particulars as to the criminal conduct in which the assets to be forfeited were alleged to have originated, and showed in a reasoned manner that those assets could have been the proceeds of the criminal conduct shown to exist.

216. As long as such analysis has been carried out, the Court will generally defer to the domestic courts' assessment, unless the applicants have shown such assessment to be arbitrary or manifestly unreasonable (see, *mutatis mutandis*, *Arcuri and Others*, decision cited above, and *Bongiorno and Others*, cited above, § 49).

(b) Concerning the individual applications

(i) Application no. 50705/11 – Todorov and Others v. Bulgaria

217. The first applicant was convicted in 2004 of, *inter alia*, attempted extortion committed in 1993, and on this basis in 2007 the Commission initiated forfeiture proceedings against him and the second applicant (see paragraphs 6-7 above). The proceedings resulted in the forfeiture of assets of the four applicants worth EUR 896,300, the vast majority of which had been acquired between 2000 and 2005 (see paragraph 9 above, an important exception is the house acquired by the first applicant in 1993 and transferred to his father in 2003 – see paragraph 7 *in fine* above).

218. The Court finds that the interference with the applicants' rights under Article 1 of Protocol No. 1 was lawful (see paragraph 184 above). It refers furthermore to its finding that the 2005 Act pursued legitimate aims in the public interest (see paragraph 186 above).

219. Turning to the question of whether the interference with the applicants' rights was proportionate to any legitimate aim pursued, the Court once again points out that the first applicant was convicted of attempted extortion committed in 1993. While it is not evident that such an offence, being only an attempt, could have generated any income, and it has not been alleged that the first applicant was engaged in any other criminal activity, the conviction led to the forfeiture of assets of significant value. As mentioned in paragraph 217 above, the vast majority of those assets were acquired many years after the first applicant had committed the offence at issue.

220. The Court held above that, in the particular circumstances related to the application of the 2005 Act, in order to conclude that the requisite fair balance had been achieved, that is that the interference with the applicants' property rights was proportionate to any legitimate aim pursued, it would require the national authorities to provide at least some particulars as to the alleged unlawful conduct having resulted in the acquisition of the assets to be forfeited, and to establish some link between those assets and the unlawful conduct (see paragraphs 212 and 215 above). The Supreme Court has defined the latter link widely, saying that it could be direct or indirect, expressly established or presumable (see paragraphs 105-106 and 212 above).

221. However, even though according to the facts of the case the existence of a causal link between the 1993 offence committed by the first applicant and the assets acquired by the applicants, usually much later, was by no means evident, as discussed above, the domestic courts examining the forfeiture application made no effort to justify such a link. They pointed to the discrepancy, as established by them, between the first and second applicants' income and expenditure, without giving any further reasons whatsoever, and dismissed the first and second applicant's objections in that regard (see paragraph 14 above). Furthermore, they failed to indicate whether the value of the assets to be forfeited equalled the established discrepancy between the applicants' income and expenditure (see paragraphs 14 and 204 above). Nor did the national courts, as mentioned, ever try to reason that the first applicant had been implicated in any other criminal activity.

222. In view of the potential deficiencies of the forfeiture procedure under the 2005 Act discussed above, and the lack of the guarantees which it considers necessary to achieve the requisite fair balance (see paragraphs 200-215 above), the Court is of the view that it has not been established that the interference with the applicants' rights under Article 1

of Protocol No. 1 was proportionate to any legitimate aim pursued by the 2005 Act.

223. It is thus not necessary to examine the applicants' particular arguments as to the forfeiture of the third and fourth applicants' house (see paragraph 162 above).

224. There has been a violation of Article 1 of Protocol No. 1.

(ii) Application no. 11340/12 – Gaich v. Bulgaria

225. In 2006 the first applicant was convicted of embezzlement. She had appropriated the equivalent of EUR 21,600 from a company which, even though owned by her and her husband, Mr Gajic, had been in liquidation and thus managed by a trustee. The money was subsequently returned to its owner (see paragraph 20 above). The conviction led to forfeiture proceedings being brought against the two applicants and Mr Gajic, and eventually to the forfeiture of a number of assets owned by them.

226. As above (see paragraph 218), the Court considers the interference with the applicants' rights under Article 1 of Protocol No. 1 lawful, and observes that the 2005 Act pursued a legitimate aim in the public interest.

227. Turning to the question of proportionality, the Court points out once again that the forfeiture proceedings against the applicants were initiated after the first applicant had been convicted in relation to a specific incident of embezzlement. It does not appear that any material gain was obtained from that offence, given that the money which the applicant had appropriated was returned to its owner (see paragraph 20 above).

228. The Government referred to additional facts, such as the deposit-taking activities of the first applicant and Mr Gajic in the 1990s and Mr Gajic's convictions for aggravated fraud, aggravated embezzlement and tax evasion (see paragraphs 18-19 above). The Government argued in relation to this that the family had undertaken a "large-scale criminal activity" (see paragraph 150 above). However, as observed by the applicants (see paragraph 163 above), these additional circumstances were never mentioned or relied on in the forfeiture proceedings, or used to justify the forfeiture of their assets. Accordingly, the Court does not consider it justified to take them into account.

229. It thus reiterates that the applicants' assets were forfeited on the basis of the first applicant's conviction of an offence of which no material gain had stemmed.

230. While, accordingly, the connection between the first applicant's criminal conduct and the forfeited assets was in no way evident, the domestic courts did not seek to establish it. They merely referred to the presumption under section 4(1) of the 2005 Act, with the Varna Court of Appeal expressly holding that no further justification was needed (see paragraphs 27-28 above). The courts equally failed to indicate whether the value of the assets to be forfeited equalled the established discrepancy

between the income and expenditure of the applicants and Mr Gajic (see paragraphs 27-28 and 204 above). Lastly, the domestic courts did not attempt to explain what further criminal activity the first applicant and Mr Gajic had been involved in; as mentioned, they did not discuss or rely on any facts in that regard.

231. The Court refers once again to its finding above that, in the particular circumstances related to the application of the 2005 Act, it would require the national authorities to provide at least some particulars as to the alleged unlawful conduct having resulted in the acquisition of the assets to be forfeited, and to establish some link between those assets and the unlawful conduct (see paragraphs 212 and 215 above). This was not done in the case at hand.

232. Since, therefore, the guarantees which the Court considers necessary in order to achieve the requisite fair balance were not provided to the applicants, the forfeiture of their assets amounted to a disproportionate interference with their rights under Article 1 of Protocol No. 1.

233. In light of this the Court finds it unnecessary to discuss the applicants' additional arguments related specifically to the manner in which the domestic courts established their income and expenditure (see paragraph 165 above).

234. There has thus been a violation of Article 1 of Protocol No. 1.

(iii) Application no. 26221/12 – Barov v. Bulgaria

235. In 2006 the applicant entered into a plea agreement with the prosecution authorities, admitting to several thefts and robberies and unlawful possession of firearms. All the offences had been committed in 1994 and 1995. Between 1995 and 2001 the applicant was in pre-trial detention. The domestic court which subsequently approved the plea agreement expressly noted that all pecuniary damage stemming from the applicant's offences had been repaid (see paragraph 32 above). The conviction triggered forfeiture proceedings against the applicant, in which properties he had acquired between 2005 and 2008 were found to be the proceeds of crime and were forfeited (see paragraphs 33-40 above).

236. The Court finds that the interference with the applicant's rights under Article 1 of Protocol No. 1 was lawful (see paragraph 184 above), and refers once again to its finding that the 2005 Act pursued legitimate aims in the public interest (see paragraph 186 above).

237. Turning to the question of proportionality, the Court is of the view that the existence of a causal link between the offences committed by the applicant and the forfeited assets was in no way evident, seeing that his criminal activity dated back to 1994 and 1995, that it was accepted that all pecuniary damage stemming from it had been repaid, and that the forfeited assets had been acquired by the applicant many years later and after he had spent considerable time in detention. Yet, the domestic courts examining the

forfeiture application against the applicant made no effort to justify the causal link at issue. They considered that there was no need to do so, since this was not an express requirement under the 2005 Act (see paragraphs 35 and 39 above). Furthermore, the domestic courts failed to indicate whether the value of the assets to be forfeited equalled the established discrepancy between the applicant's income and expenditure (see paragraphs 37, 39 and 204 above). Nor did they justify any finding that the applicant had committed any further offences, or had been engaged in any other criminal activity.

238. As noted above, as concerns the application of the 2005 Act, in order to establish that the necessary balance between the public interest and the need to protect the individual rights had been achieved, the Court would require the national authorities to provide at least some particulars as to the alleged unlawful conduct having resulted in the acquisition of the assets to be forfeited, and to establish some link between those assets and the unlawful conduct (see paragraphs 212 and 215 above). As noted above, this was not done, with the domestic courts failing to discuss these issues.

239. Accordingly, the forfeiture of the applicant's assets amounted to a disproportionate interference with his rights under Article 1 of Protocol No. 1.

240. In view of that finding, it is unnecessary for the Court to examine the applicant's additional arguments related specifically to the manner in which the domestic courts assessed his financial situation (see paragraph 167 above).

241. There has been a violation of Article 1 of Protocol No. 1.

(iv) Application no. 71694/12 – Zhekovi v. Bulgaria

242. In 2008 the first and second applicants were convicted of several offences committed between January and June 2007 and falling within the scope of the 2005 Act (see paragraph 42 above), which triggered forfeiture proceedings against them and the third applicant. As a result, the applicants lost two flats and other properties, some of which, in particular the first and second applicants' flat (see paragraph 43 above), had been acquired years earlier.

243. As above, the Court finds the interference with the applicants' rights lawful, and observes that the 2005 Act pursued legitimate aims in the public interest.

244. The Supreme Court, which ordered the forfeiture in its judgment of 4 May 2012, concluded that the applicants had not shown that they had acquired the disputed assets with income which could be accepted as proven and lawful (see paragraphs 49-51 above). The first and third applicants and the second applicant's heirs did not, in principle, take issue with these findings (see paragraph 169 above).

245. They argued, on the other hand, that it had not been established that the forfeited assets had been the proceeds of crime (see paragraph 169 above).

246. The Court observes that the Supreme Court made no effort to show that the assets to be forfeited were related to any established criminal activity of the first and second applicants and were thus the proceeds of crime. It merely made an assumption in that regard, after finding that the applicants had not provided proof of sufficient lawful income (see paragraph 51 above).

247. As already noted, the first and second applicants had been found to have engaged in criminal activity between January and June 2007, while some of the forfeited assets, in particular the first and second applicants' flat, had been acquired much earlier (see paragraphs 42-43 above).

248. The failure of the Supreme Court to establish any link between the first and second applicants' criminal activity and the forfeited assets is sufficient for the Court to find that the requisite fair balance between the legitimate aims in the public interests pursued by the 2005 Act and the applicants' individual rights has not been achieved, that is, that the forfeiture of the applicants' assets amounted to a disproportionate interference with their rights under Article 1 of Protocol No. 1. The Court refers once again to its analysis above on the potential deficiencies of the forfeiture procedure under the 2005 Act and the guarantees necessary to achieve the requisite fair balance (see paragraphs 200-215).

249. The above considerations mean that there is no need for the Court to analyse the applicants' arguments related specifically to the situation of the third applicant, who had not been involved in any criminal activity (see paragraph 170 above).

250. The Court thus concludes that there has been a violation of Article 1 of Protocol No. 1.

(v) Application no. 44845/15 – Rusev v. Bulgaria

251. In 2012 the applicant was convicted of illegal logging, committed in 2009 (see paragraph 54 above). Since that offence fell within the scope of the 2005 Act, the conviction triggered forfeiture proceedings against him, which resulted in the forfeiture of a number of assets, acquired between 2006 and 2011 (see paragraph 56 above).

252. As above, the Court finds the interference with the applicant's rights lawful, and observes that the 2005 Act pursued legitimate aims in the public interest.

253. The Court held above that, in the particular circumstances related to the application of the 2005 Act, in order to conclude that the requisite fair balance had been achieved, that is that the interference with the applicants' property rights was proportionate to any legitimate aim pursued, it would require the national authorities to provide at least some particulars as to the

alleged unlawful conduct having resulted in the acquisition of the assets to be forfeited, and to establish some link between those assets and the unlawful conduct (see paragraphs 212 and 215 above). The Court held also that it would generally defer to the national courts' assessment in that regard, unless that assessment has been shown to be arbitrary or manifestly unreasonable (see paragraph 216 above).

254. In the present case, the Targovishte Regional Court and the Varna Court of Appeal analysed the existence of a causal link between the assets to be forfeited and discussed the possible criminal activity of the applicant, drawing reasoned conclusions. They analysed the applicant's employment history and lawful income, and took into account the dates on which he had acquired the disputed properties. Furthermore, they accounted for the relatively low value of the object of the specific offence of which the applicant had been found guilty (see paragraphs 59-60 above). The Supreme Court accepted that the lower courts had duly applied the standard set in its Interpretative Decision of 30 June 2014 (see paragraph 61 above).

255. The Court is of the view that the domestic courts' conclusions as to the applicant's possible implication in criminal activity outside the offence he had been convicted of, as well as on the existence of a causal link between that criminal activity and the assets to be forfeited, were not arbitrary or manifestly unreasonable. It thus accepts that the assets forfeited from the applicant were reasonably shown to be the proceeds of crime. It observes in addition that the national courts only ordered the forfeiture of assets shown to be such proceeds, and dismissed the remainder of the Commission's forfeiture application (see paragraph 56 above).

256. Furthermore, the Court sees no arbitrariness or manifest unreasonableness in the national courts' analysis on the applicant's income and expenditure. In particular, the Targovishte Regional Court discussed the matter in great detail, giving specific reasons for not accepting as proven the different types of income referred to by the applicant (see paragraph 57 above).

257. Accordingly, the Court concludes that the interference with the applicant's property rights was not disproportionate to the legitimate aims pursued by the 2005 Act.

258. There has thus been no violation of Article 1 of Protocol No. 1.

(vi) Application no. 17238/16 – Katsarov v. Bulgaria

259. In 2008 the applicant was convicted on three counts of illegal possession of drugs. The offences were committed in 2000 and 2001 (see paragraphs 64-65 above). The conviction triggered forfeiture proceedings under the 2005 Act, which resulted in the forfeiture of a number of assets, most notably a flat officially acquired by the applicant in 2008, but paid for in 2002 (see paragraph 66 above).

260. The interference with the applicant's "possessions" was lawful (see paragraph 184 above). Moreover, the Court reiterates that the 2005 Act pursued legitimate aims in the public interest (see paragraph 186 above).

261. The salient question is therefore whether the interference was proportionate to the legitimate aims pursued. The Court refers once again to its general consideration on that point (see paragraphs 200-216 above).

262. In the case, the Sofia City Court commented on the applicant's criminal activity, pointing out that he had been convicted on three counts of illegal possession of drugs, including with the intent to sell (see paragraph 69 above). Moreover, the Sofia City Court and the Sofia Court of Appeal commented on the existence of a causal link between that criminal activity and the assets to be forfeited, pointing out to the nature of the activity and the lack of any lawful income for the applicant for long periods of time (see paragraphs 69 and 73 above). Furthermore, it was expressly noted that the most expensive asset to be forfeited from the applicant – his flat – had been paid for at about the same time as the applicant had been in possession of drugs with intent to sell, and at a time when he had had no legal income (see paragraphs 72-73 above). The Supreme Court concluded that the lower courts had duly examined the existence of a causal link between the assets to be forfeited and the applicant's criminal activity, in compliance with the requirements of its Interpretative Decision of 30 June 2014 (see paragraph 74 above).

263. The Court, for its part, finds the domestic courts' conclusions well-reasoned, and sees no reason to question them (see paragraph 216 above). It thus concludes that the assets forfeited from the applicant were reasonably shown to be the proceeds of crime.

264. The applicant took issue furthermore with the domestic courts' assessment of his income and expenditure, reproaching the courts of excessive formalism. He claimed that it had been "practically impossible" to prove the origin of his assets (see paragraph 174 above).

265. The Court observes that the domestic courts discussed the matter in detail, providing reasons for not accepting the applicant's claims that he had received other lawful income, in particular maintenance from his parents. They also discussed his mother and sister's claims that he had worked as a taxi driver and in his parents' garden (see paragraphs 68 and 71 above). The Court sees no arbitrariness or manifest unreasonableness in their conclusions. It further observes that the applicant succeeded in proving one of the major points he had been arguing on, namely that he had not bought his flat at its market value (see paragraph 70 above).

266. In light of the above, the Court concludes that the interference with the applicant's "possessions", namely the forfeiture of his assets, was not disproportionate to the legitimate aims it pursued.

267. Accordingly, there has been no violation of Article 1 of Protocol No. 1.

(vii) Application no. 63214/16 – Dimitrov v. Bulgaria

268. In 2010 the applicant was convicted of tax evasion on the grounds that between December 2000 and May 2001 he had evaded the payment of about EUR 150,000 in taxes (see paragraph 78 above). The conviction triggered forfeiture proceedings against him under the 2005 Act, in which the courts ordered the forfeiture of a number of assets acquired by him between 2007 and 2010 (see paragraph 82 above).

269. The Court refers to its conclusion in paragraph 184 above that the interference with the applicant's rights had a basis in domestic law.

270. The applicant raised a specific objection to the lawfulness of the interference with his rights, pointing out that in 2002 he had already been ordered by the tax authorities to pay the State unpaid taxes; the authorities had not enforced that order, but had instead opened forfeiture proceedings against him (see paragraph 176 above).

271. In 2002, after a financial audit, the applicant was ordered to pay the State about EUR 300,000 in unpaid taxes. The order was not enforced and in 2015 the applicant's debt was written off, after it had become time-barred (see paragraph 77 above). In the meantime, in 2010 the applicant was convicted of tax evasion concerning part of the above sum (see paragraph 78 above). The conviction, as already mentioned, triggered the forfeiture proceedings against him.

272. In cases under Article 1 of Protocol No. 1, the Court has held that it is incumbent upon the authorities to act in good time and in an appropriate and consistent manner (see, among other authorities, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 114, 25 October 2012 and *Moskal v. Poland*, no. 10373/05, § 72, 15 September 2009). In the similar Bulgarian case of *Dimitrovi* (cited above, § 46) the Court found problematic under the head of lawfulness the fact that, under domestic law, the prosecution authorities' earlier decision to discontinue forfeiture proceedings against the first applicant and her husband had had no binding force, and that those authorities had been free to "open, suspend, close and reopen the proceedings at will at any time".

273. As to the present case, the Court observes that in the tax proceedings involving the applicant the State failed to recover any of the unpaid taxes, and that, subsequently, in the forfeiture proceedings it claimed that assets allegedly acquired by the applicant with part of his unpaid taxes were the proceeds of crime (see paragraphs 77-79 above). However, the situation should be differentiated from that in *Dimitrovi*. In the present case, the tax proceedings involving the applicant aimed at identifying and recovering unpaid taxes, whereas the forfeiture proceedings sought to deprive the applicant of proceeds of crime. That is why the Court cannot conclude, as it did in *Dimitrovi*, that the authorities were free to open, close and reopen the same type of proceedings against the applicant, in breach of the requirements of legal certainty and foreseeability.

274. The Court thus finds that the interference with the applicant's rights was lawful.

275. It reiterates its finding in paragraph 186 above that the 2005 Act pursued legitimate aims in the public interest.

276. Turning to the question of proportionality, the Court has to examine whether the domestic courts demonstrated a causal link between any unlawful conduct and the assets to be forfeited (see paragraphs 212 and 215 above).

277. The Varna Court of Appeal which ordered the forfeiture of the applicant's assets explained in detail why it considered these assets to be the proceeds of crime. In particular, it noted that the taxes the applicant had evaded paying in 2000 and 2001 had never been paid to the State, that the applicant had been involved in a criminal activity, and that he had lacked any lawful income but had disposed with large sums of money (see paragraphs 83, 85 and 87 above). Thus, on the basis of "logic and experience", the Varna Court of Appeal concluded that a causal link existed between the offence committed by the applicant and the assets for which forfeiture was being sought (see paragraph 85 above).

278. The Court, for its part, cannot consider the above conclusions arbitrary or manifestly unreasonable. It points out that the Supreme Court also found that the Varna Court of Appeal had correctly applied the standard set in the Interpretative Decision of 30 June 2014 (see paragraph 86 above).

279. As to the manner in which the national courts assessed the applicant's income and expenditure in the proceedings, the Court observes that the Varna Court of Appeal, which ordered the forfeiture of the applicant's assets, examined the matter in detail and reached reasoned conclusions (see paragraph 84 above). In particular, the applicant contested its conclusions as to the value of the immovable properties he had acquired, citing the example of one such property which had been valued in the forfeiture proceedings at EUR 13,750, but had subsequently been sold by the National Revenue Agency for EUR 2,390 (see paragraph 177 above). However, in the light of the Government's explanations on that point (see paragraph 159 above) and the Supreme Court's position (see paragraph 108 *in fine* above), the Court does not find it proven that that property was valued and assessed in an arbitrary or manifestly unreasonable manner. The Court sees no reason to find the remaining conclusions of the Varna Court of Appeal arbitrary or manifestly unreasonable.

280. In light of the above, the Court concludes that the interference with the applicant's "possessions" was not disproportionate to the legitimate aims it pursued.

281. Accordingly, there has been no violation of Article 1 of Protocol No. 1 in the case at hand.

IV. REMAINING COMPLAINTS

A. Applications nos. 50705/11 (*Todorov and Others v. Bulgaria*), 11340/12 (*Gaich v. Bulgaria*) and 71694/12 (*Zhekovi v. Bulgaria*)

282. The first and second applicants in the case of *Todorov and Others* and the applicants in the case of *Zhekovi* complained under Article 6 § 2 of the Convention of a breach of their right to be presumed innocent. The third applicant in the case of *Zhekovi* complained under Article 7 of the Convention that he had been "punished" without having committed a criminal offence, and the first applicant in the case of *Todorov and Others* complained under Article 4 of Protocol No. 7 that he had been punished twice for the same offence. Lastly, the two applicants in the case of *Gaich* and the third and fourth applicants in the case of *Todorov and Others* complained under Article 8 of the Convention that they had lost their homes.

283. Having regard to the facts of the cases and its findings under Article 1 of Protocol No. 1, the Court considers that it has examined the main legal questions raised in those three applications, and that there is thus no need to give a separate ruling on the remaining complaints (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

B. Applications nos. 17238/16 (*Katsarov v. Bulgaria*) and 63214/16 (*Dimitrov v. Bulgaria*)

1. Article 6 § 2 of the Convention

284. The applicant in the case of *Katsarov* also complained of a breach of his right to be presumed innocent. He relied on Article 6 § 2 of the Convention, which reads as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

(a) Submissions by the parties

285. The Government argued that Article 6 § 2 of the Convention was inapplicable, since the case did not concern the examination of a criminal charge against the applicant. They pointed out that the forfeiture of the applicant's assets had been ordered by the civil courts, outside any criminal proceedings, and that what those courts had had to establish was whether the assets in question had been acquired with lawful income. The Government also raised an objection of non-exhaustion of domestic remedies, contending that the applicant had not complained about the presumption of innocence before the domestic courts.

286. The applicant disagreed. In particular, he argued that the forfeiture proceedings had involved the examination of a criminal charge against him, and that he had been *de facto* "charged" with "alleged, unspecified and unproven" offences.

(b) The Court's assessment

287. It is not in dispute between the parties in the case at hand that during the criminal proceedings which led to the applicant's conviction he was "charged with a criminal offence", and was therefore entitled to – and received – the protection of Article 6 § 2. The questions for the Court regarding the applicability of Article 6 § 2 to the subsequent forfeiture proceedings are, firstly, whether the forfeiture following the applicant's conviction amounted to the bringing of a new "charge" within the meaning of Article 6 § 2, and secondly, even if that question must be answered in the negative, whether Article 6 § 2 should nonetheless have some application to protect the applicant from assumptions made during the confiscation proceedings (see *Phillips*, cited above, § 30).

288. In order to determine whether in the course of the confiscation proceedings the applicant was "charged with a criminal offence" within the meaning of Article 6 § 2, the Court must have regard to three *Engel* criteria, namely, the classification of the proceedings under national law, their essential nature and the type and severity of the penalty that the applicant risked incurring (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22).

289. As regards the first of those criteria, it is clear that a forfeiture application under the 2005 Act did not involve any new charge or offence in terms of national criminal law.

290. Turning to the second and third criteria, it is true that the national courts apparently assumed in the case that, in order to acquire the assets for which forfeiture was being sought, the applicant had been involved in unlawful activities different from the offences of which he had been convicted. However, the purpose of the forfeiture procedure was not the conviction or acquittal of the applicant for any drug-related or other offence, and any findings reached were not reflected in the applicant's criminal record.

291. The court has to verify in addition whether Article 6 § 2 of the Convention should nonetheless be seen as having some application to protect the applicant from assumptions made during the confiscation proceedings (see paragraph 287 above).

292. However, whilst it is clear that Article 6 § 2 governs criminal proceedings in their entirety, and not solely the examination of the merits of the charge, the right to be presumed innocent under Article 6 § 2 arises only in connection with the particular offence "charged". Once an accused has properly been proved guilty of that offence, Article 6 § 2 can have no

application in relation to allegations made about the accused's character and conduct as part of the sentencing or an analogous process (see *Van Offeren v. the Netherlands* (dec.), no. 19581/04, 5 July 2005), unless such accusations are of such a nature and degree as to amount to the bringing of a new "charge" within the autonomous Convention meaning referred to above (see *Phillips*, cited above, § 35).

293. The forfeiture in the present case did not give rise to the determination of separate or new charges against the applicant, and Article 6 § 2 is thus inapplicable (see *Phillips*, cited above, § 34, and *Butler*, decision cited above; see also *Arcuri and Others* and *Riela and Others*, decisions cited above, where the Court found that forfeiture measures similar to those of the present case did not involve a finding of guilt, but were designed to prevent the commission of offences, and could therefore not be compared to a criminal "sanction", which excluded the applicability of the criminal limb of Article 6 of the Convention).

294. Accordingly, the complaint under examination is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4.

295. In view of this conclusion, the Court does not have to examine the Government's objection concerning non-exhaustion of domestic remedies (see paragraph 285 above).

2. Article 7 of the Convention and Article 4 of Protocol No. 7

296. The applicants in the cases of *Katsarov* and *Dimitrov* complained that the forfeiture of their property, on the basis of legislation applied retroactively, had amounted to an additional punishment for their offences, not provided for at the time of the commission of those offences. The applicant in the case of *Katsarov* relied on Article 4 of Protocol No. 7, and the applicant in the case of *Dimitrov* relied on Article 7 of the Convention.

297. The relevant parts of the two provisions read as follows:

Article 7

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

Article 4 of Protocol No. 7

"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State."

(a) Submissions by the parties

298. The Government argued that Article 7 was inapplicable, since the case did not concern a punishment for a criminal offence. They pointed out that the forfeiture of the applicants' assets had been an independent measure, unrelated to the punishments provided for in the Criminal Code, that it had been ordered in civil proceedings, and that its aim had not been to replace the applicants' criminal liability. Moreover, the Government argued that the applicants had failed to exhaust the available domestic remedies because they had not raised the complaints under examination at domestic level.

299. The applicant in the case of *Katsarov* pointed out that he had committed offences in 2000 and 2001 (see paragraphs 64 and 65 above), before the enactment of the 2005 Act. Many years later the authorities had imposed an additional "penalty" on him – forfeiture under the 2005 Act. According to the applicant, such forfeiture had "automatically" followed on from his conviction.

300. The applicant in the case of *Dimitrov* also argued that the forfeiture of his property had been an "automatic consequence" of his conviction, and that it had amounted to a second "punishment". As a result, he had been given a more severe cumulative punishment than that provided for at the time of the commission of the offences.

(b) The Court's assessment

301. The applicants complained that the authorities had imposed a "penalty" on them not provided for at the time of the commission of the offences.

302. The Court reiterates that the concept of a "penalty" in Article 7 of the Convention has an autonomous meaning. For the protection offered by this Article to be effective, the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a "penalty" within the meaning of this provision. The starting point in any such assessment is whether the measure in question is imposed following a criminal conviction. However, other factors may also be taken into account as relevant in this connection, namely the nature and purpose of the measure in question, its characterisation under national law, the procedures involved in the making and implementation of the measure and its severity (see *G.I.E.M. S.R.L. and Others*, cited above, §§ 210-11, with further references).

303. As to the first criterion, namely whether the measure in question was imposed following a criminal conviction, the Court points out that the applicants were convicted of criminal offences. Furthermore, a conviction for an offence falling within the scope of the 2005 Act was a prerequisite for forfeiture under that Act (see paragraph 102 above). However, while there

was a link between the two, it is significant that the forfeiture did not automatically follow on from the conviction: a further assessment had to be carried out by the Commission and the national courts (see paragraphs 100-102 above), and further circumstances had to be established, such as whether the applicants had acquired assets of significant value, the origin of those assets and, sometimes, the existence of a causal link between them and any criminal activity.

304. The Court has already found above when it examined Mr Katsarov's complaint under Article 6 § 2 of the Convention that the proceedings under the 2005 Act did not involve the determination of a criminal charge (see paragraph 293 above). It observes furthermore that forfeiture under that Act was a preventive measure, designed to take out of circulation assets which were presumed to be the proceeds of drug dealing. The Court sees no reason to consider the forfeiture of the applicants' assets a punitive measure: as noted, it was not mandatory; moreover, its purpose does not appear to be to punish those convicted of a criminal offence (contrast *G.I.E.M. S.R.L. and Others*, cited above, §§ 223-26), but to identify and deprive them of proceeds of crime.

305. The Court further observes that the proceedings under the 2005 Act were conducted before the civil courts and that the rules of civil procedure applied in addition to those contained in the 2005 Act (see paragraph 102 above).

306. Lastly, the Court notes that the forfeiture of the applicants' assets undeniably seriously interfered with their property rights, and could thus be considered a measure of relative severity. However, this circumstance alone is insufficient, in the light of the additional considerations above, to justify the conclusion that the authorities imposed on the applicants a "penalty" within the meaning of Article 7 of the Convention (see *Bowler International Unit*, cited above, §§ 65-67).

307. The above considerations are also valid as regards the complaint under Article 4 of Protocol No. 7. The Court does not consider that the applicants were "tried or punished again in criminal proceedings" within the meaning of that provision.

308. In view of the foregoing, the Court concludes that the complaints under Article 7 of the Convention and Article 4 of Protocol No. 7 are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4.

309. This conclusion makes it unnecessary for the Court to examine the Government's objection of non-exhaustion of domestic remedies (see paragraph 298 *in fine* above).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

310. 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."

311. The Court is required to rule on the applicants' just satisfaction claims only in the cases in which it has found a violation of the Convention (see *Velikovi and Others v. Bulgaria*, nos. 43278/98 and 8 others, § 264, 15 March 2007), namely *Todorov and Others*, *Gaich*, *Barov* and *Zhekovi*.

A. Damage

1. The applicants' claims and the Government's comments

(a) Application no. 50705/11 (*Todorov and Others v. Bulgaria*)

312. In respect of pecuniary damage, the four applicants claimed 1,431,220 euros (EUR), comprising the value of their forfeited assets and lost profit, plus interest. As to non-pecuniary damage, the first and second applicants claimed jointly EUR 60,000 and the first applicant claimed a further EUR 10,000. The applicants stated that they had experienced frustration and had felt helpless in the face of the authorities' "arbitrary action", and that the forfeiture had placed them in a situation of financial insecurity and had destroyed their way of life. The third and fourth applicants claimed jointly EUR 20,000.

313. The Government contested the claims, considering in particular the ones concerning non-pecuniary damage exaggerated.

(b) Application no. 11340/12 (*Gaich v. Bulgaria*)

314. The applicants claimed EUR 234,444 in respect of pecuniary damage, representing the value of the forfeited properties. In respect of non-pecuniary damage, the two applicants claimed jointly EUR 100,000, stating that they had lost their home, that Mr Gajic, husband of the first applicant and father of the second applicant (see paragraphs 18 and 21 above), had fallen ill and died due to the stress provoked by the forfeiture proceedings, that the family's reputation had been damaged, and that, due to the lack of financial means, the second applicant had had to interrupt her university studies.

315. The Government contested the claims. As regards in particular non-pecuniary damage, they considered that no causal link could be established between the forfeiture proceedings at issue and Mr Gajic's illness and death. As to the remaining arguments of the applicants, the Government argued that "there is no legal, logical or existential connection between the alleged suffering of the applicants and the compensation claimed by them".

(c) Application no. 26221/12 (*Barov v. Bulgaria*)

316. The applicant claimed EUR 6,183 for the value of his forfeited assets and EUR 5,012 representing interest on that sum. He claimed in addition EUR 8,000 in respect of non-pecuniary damage, pointing out that the forfeiture of his property had caused him stress and frustration and had placed him in a situation of financial precarity.

317. The Government contested the claims, in particular the one concerning interest. As to non-pecuniary damage, they contended that any finding of a violation by the Court would constitute sufficient just satisfaction.

(d) Application no. 71694/12 (*Zhekovi v. Bulgaria*)

318. The first applicant and the second applicant's heirs claimed EUR 83,180 for the value of the first two applicants' forfeited assets, while the third applicant claimed EUR 65,290 for the value of his flat. The first applicant claimed in addition EUR 10,200, paid by him for rent after the forfeiture of the flat where his family had lived. The first applicant and the second applicant's heirs claimed jointly another EUR 40,000 in respect of non-pecuniary damage in relation to the death of the second applicant (see paragraph 125 above).

319. The Government considered the claims in respect of pecuniary damage unsubstantiated and excessive. As regards non-pecuniary damage, they pointed out that any such damage stemming from the death of the second applicant bore no relation to any violation of the Convention.

2. The Court's assessment

(a) Pecuniary damage

320. In so far as the applicants claimed the value of their expropriated property, the Court observes that, in finding a violation of Article 1 of Protocol No. 1, it noted that the national courts having examined the forfeiture applications against the applicants had failed to specify the alleged unlawful conduct resulting in the acquisition of the assets to be forfeited, and to establish any link between those assets and the unlawful conduct at issue (see paragraphs 221-222, 230-232, 237-238 and 246-248 above).

321. Since an analysis on these issues was not carried out on the domestic level, the Court cannot speculate as to whether and to what extent the assets forfeited from the applicants were the proceeds of crime, or as to the possible outcome of the proceedings had the requirements of Article 1 of Protocol No. 1 been complied with. It is not therefore in a position to assess correctly any damage suffered by the applicants on account of unjustified forfeiture. It thus considers that, in light of the nature of the violation found, a reopening of the domestic proceedings and a re-examination of the matter on the national level would constitute, in principle, an appropriate means to remedy the violation (see, *mutatis mutandis*, *Gereksar and Others v. Turkey*, nos. 34764/05 and 3 others, § 75, 1 February 2011; *Kravchuk v. Russia*, no. 10899/12, §§ 55-56, 26 November 2019; and *Kostov and Others v. Bulgaria*, nos. 66581/12 and 25054/15, § 105, 14 May 2020).

322. Domestic law provides for the possibility of reopening – by Article 303 § 1 (7) of the Code of Civil Procedure, applicable to proceedings under the 2005 Act, an interested party may request the reopening of civil proceedings in a case where a "judgment of the European Court of Human Rights has found a violation of the [Convention]" and "a new examination of the case is required in order to repair the consequences of the violation" (see paragraphs 102 and 114 above). It is now for the applicants to make use of that opportunity. If their cases are to be re-examined, the domestic courts will, in principle, be obliged to apply Article 1 of Protocol No. 1, as interpreted by the Court (see *Kostov and Others*, cited above, § 104).

323. Lastly, in so far as some of the applicants claimed further damage related to the forfeiture, such as interest on the value of the forfeited assets (see paragraphs 312 and 316 above) or rent paid after the loss of their family's dwelling (see paragraph 318 above), the Court refers to the domestic provisions on the liability of the State for unlawful actions and omissions under the 2005 Act (see paragraph 103 above). If the forfeiture applications against the applicants are eventually wholly or partially rejected, the applicants will have at their disposal an appropriate avenue to seek redress (see, for an analysis of that remedy, *Nedyalkov and Others v. Bulgaria* (dec.), no. 663/11, §§ 91-102, 10 September 2013).

324. The Court accordingly dismisses the claims for pecuniary damage.

(b) Non-pecuniary damage

325. As concerns the case of *Zhekovi* (application no. 71694/12), the Court agrees with the Government's argument (see paragraph 319 above) that no direct causal link may be established between the death of the second applicant and the violation found by it, which concerns the forfeiture of the applicants' property. Accordingly, the Court dismisses the claim for non-pecuniary damage made in this case (see paragraph 318 above).

326. As to the remaining cases, the Court is of the view that the applicants must have suffered non-pecuniary damage on the ground of the forfeiture of their assets, carried out in a manner criticised by the Court and found to be in breach of Article 1 of Protocol No. 1. Deciding in equity, it awards them the following amounts:

- EUR 4,000 each to Mr Valeri Iliev Todorov, Ms Vera Ilieva Todorova (application no. 50705/11), Ms Zhivka Dimitrova Gaich and Ms Zoritsa Mirolyubova Gaich (application no. 11340/12);
- EUR 3,000 to Mr Petar Milkov Barov (application no. 26221/12); and
- EUR 2,000 each to Mr Iliya Ivanov Todorov and Ms Galya Tsvetanova Ivanova (application no. 50705/11).

B. Costs and expenses

*1. Application no. 50705/11 (*Todorov and Others v. Bulgaria*)*

327. The applicants claimed 68,255.2 Bulgarian levs (BGN), the equivalent of EUR 34,898, for the costs and expenses incurred before the domestic courts in the proceedings under the 2005 Act. In support of this claim, they submitted two certificates issued by the National Revenue Agency in 2014 indicating various sums payable by the first and second applicants in respect of court fees.

328. The applicants also claimed BGN 9,387.98 (EUR 4,800) for the legal fees charged by their representatives before the Court, submitting a contract for legal representation and an invoice. They claimed furthermore BGN 1,000 (EUR 511) paid by them for an expert valuation of their forfeited assets, submitting a contract with the expert.

329. Lastly, the applicants claimed EUR 262 for translation, postage and office consumables. In support of this claim, they submitted a receipt for translation costs and invoices for postage expenses, showing the payment of the equivalent of EUR 237 in total. The applicants requested that any award to cover the costs described in the present paragraph be paid directly to the law firm of their legal representatives.

330. The Government contested the claims.

331. 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 were actually and necessarily incurred and are reasonable as to quantum.

332. As to the claim related to the domestic proceedings, particularly in view of the documents submitted relating to the court fees (see paragraph 327 above), the Court is not satisfied that the applicants actually paid any part of the sum claimed, or that the money is still owed. Accordingly, it dismisses that claim.

333. As to the costs and expenses for the proceedings before the Court, the applicants have substantiated them in the total amount of EUR 5,548 (see paragraphs 328-329 above). The Court is of the view that these expenses were actually and necessarily incurred and that they are reasonable as to quantum, particularly in view of the complexity of the case. It therefore awards that amount. As requested by the applicants, EUR 237 of it is to be paid directly into the bank accounts of the law firm of their legal representatives (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, ECHR 2016 (extracts)).

*2. Application no. 11340/12 (*Gaich v. Bulgaria*)*

334. The applicants claimed EUR 1,000 for their legal representation before the Court. In support of this claim, they submitted a contract for legal representation dated 13 September 2019 indicating that the representative's fees would be "payable by the State".

335. The applicants also claimed BGN 2,000 (EUR 1,020) paid by them for the translation of their observations and of documents submitted to the Court. In support of this claim they presented the relevant invoice.

336. The Government contested the claims. In particular, as to the sum paid by the applicants for translation, they considered the price per page too high, and argued that in the proceedings before the Court the applicants had not been obliged to submit translations of documents.

337. An applicant is entitled to the reimbursement of costs and expenses only if they were actually incurred. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see, as a recent authority, *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the case at hand, the applicants did not submit documents showing that they had paid or were under a legal obligation to pay any of the representative's fees. Accordingly, the Court cannot conclude that these expenses were actually incurred by the applicants, and dismisses their claim in that regard.

338. As to the costs for translation, the Court takes note of the Government's objections (see paragraph 336 above). It observes that Rule 34 § 3(a) of its Rules requires that applicants' written submissions be made in one of its official languages, but does not contain the same requirement as concerns the documents submitted in support of the application. Accordingly, the costs under examination were only partially necessary. As to quantum and in view of the circumstances of the case, the Court considers it reasonable to award the applicants EUR 300 under the present head.

*3. Application no. 26221/12 (*Barov v. Bulgaria*)*

339. The applicant requested that an appropriate award be made to his legal representative for the latter's work, specifying nevertheless that the representative had worked "for free". He further requested the reimbursement of BGN 127.2 (EUR 65) for postage and translation costs, submitting the relevant receipts.

340. The Government contested the claims.

341. As in the case of *Gaich* (see paragraph 337 above), the Court does not consider that the costs of legal representation claimed by the applicant were actually incurred by him: he has not paid any fees to his representative, and cannot be considered liable in that regard. The Court therefore dismisses this part of the claim.

342. On the other hand, it awards the applicant the EUR 65 claimed for postage and translation costs, noting that these expenses were actually and necessarily incurred and are reasonable as to quantum.

*4. Application no. 71694/12 (*Zhekovi v. Bulgaria*)*

343. The first and third applicants and the second applicants' heirs claimed the reimbursement of BGN 41,754 (21,350) for the costs and expenses incurred in the domestic proceedings under the 2005 Act, and an additional BGN 3,000 (EUR 1,530) for their expenses in the proceedings before the Court.

344. The Government pointed out that the claims above had not been supported by any documents. In particular, as to any court fees the applicant had been ordered to pay in the domestic proceedings, they submitted a letter from the National Revenue Agency dated 12 December 2019 explaining that even though enforcement proceedings had been opened against the applicants, no payment had been received.

345. Rule 60 § 2 of the Rules of Court states that any claim made under Article 41 of the Convention must be submitted together with the relevant supporting documents, failing which the Court may reject the claim in whole or in part (see Rule 60 § 3). In the case at hand, the first and third applicants and the second applicant's heirs failed to submit any supporting documents. The Court also takes into account the National Revenue Agency's letter submitted by the Government, explaining that the applicants (respectively the second applicant's heirs) had not paid any of the court fees they had been ordered to pay; in the absence of any other documents, it is also unable to conclude that any such sums are still due.

346. Accordingly, the Court dismisses the claims made by the first and third applicants and the second applicant's heirs.

C. Default interest

347. 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. *Decides* to join the applications;

2. *Finds* that the heirs of Ms Emilia Ruseva Zhekova (Mr Zhivko Zhekov Zhekov, Mr Ivaylo Zhivkov Zhekov and Mr Zheko Zhivkov Zhekov) have standing to pursue the proceedings in her stead;

3. *Declares* the complaints under Article 1 of Protocol No. 1 to the Convention admissible, and the remainder of the complaints in application nos. 17238/16 (*Katsarov v. Bulgaria*) and 63214/16 (*Dimitrov* v. *Bulgaria*) inadmissible;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in applications nos. 50705/11 (*Todorov and Others v. Bulgaria*), 11340/12 (*Gaich v. Bulgaria*), 26221/12 (*Barov v. Bulgaria*), and 71694/12 (*Zhekovi v. Bulgaria*);

5. *Holds* that there has been no violation of Article 1 of Protocol No. 1 in applications nos. 44845/15 (*Rusev v. Bulgaria*), 17238/16 (*Katsarov v. Bulgaria*), and 63214/16 (*Dimitrov v. Bulgaria*);

6. *Holds* that it is not necessary to examine the admissibility and merits of the remaining complaints in applications nos. 50705/11 (*Todorov and Others v. Bulgaria*), 11340/12 (*Gaich v. Bulgaria*), and 71694/12 (*Zhekovi v. Bulgaria*);

7. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) in respect of non-pecuniary damage,

- EUR 4,000 (four thousand euros) each to Mr Valeri Iliev Todorov and Ms Vera Ilieva Todorova and EUR 2,000 (two thousand euros) each to Mr Iliya Ivanov Todorov and Ms Galya Tsvetanova Ivanova in application no. 50705/11 (*Todorov and Others v. Bulgaria*), plus any tax that may be chargeable;
- EUR 4,000 (four thousand euros) each to the two applicants in application no 11340/12 (*Gaich v. Bulgaria*), plus any tax that may be chargeable;
- EUR 3,000 (three thousand euros) to the applicant in application no. 26221/12 (*Barov v. Bulgaria*), plus any tax that may be chargeable;

(ii) in respect of costs and expenses,

- EUR 5,548 (five thousand five hundred and forty-eight euros), jointly to the applicants in application no. 50705/11 (*Todorov and Others v. Bulgaria*), plus any tax that may be chargeable to the applicants, EUR 237 (two hundred and thirty-seven euros) of which to be paid into the bank accounts of their representatives' law firm;
- EUR 300 (three hundred euros) jointly to the applicants in application no. 11340/12 (*Gaich v. Bulgaria*), plus any tax that may be chargeable to the applicants;
- EUR 65 (sixty-five euros) to the applicant in application no. 26221/12 (*Barov v. Bulgaria*), plus any tax that may be chargeable to the applicant;

(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;

8. *Dismisses* the remainder of the claims for just satisfaction.

Done in English, and notified in writing on 13 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Ilse Freiwirth
Deputy Registrar

Tim Eicke
President

APPENDIX

List of cases

No.	Application no. and case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by Practicing in
1.	50705/11 **Todorov and Others v. Bulgaria**	02/08/2011	**Mr Valeri Iliev TODOROV** 1972 Vratsa **Ms Vera Ilieva TODOROVA** 1969 Vratsa **Mr Iliya Ivanov TODOROV** 1950 Ruska Bela **Ms Galya Tsvetanova IVANOVA** 1953 Vratsa	Mr M. Ekimdzhiev, Ms K. Boncheva Ms S. Stefanova Plovdiv
2.	11340/12 **Gaich v. Bulgaria**	16/02/2012	**Ms Zhivka Dimitrova GAICH** 1968 Dobrich **Ms Zoritsa Mirolyubova GAICH** 1992 Dobrich	Ms M. Todorova Dobrich
3.	26221/12 **Barov v. Bulgaria**	20/04/2012	**Mr Petar Milkov BAROV** 1969 Gabrovo	Mr Y. Yordanov Veliko Tarnovo

No.	Application no. and case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by Practicing in
4.	71694/12 **Zhekovi v. Bulgaria**	03/11/2012	**Mr Zhivko Zhekov ZHEKOV** 1966 Plovdiv **Ms Emilia Ruseva ZHEKOVA** 1971 Died on 20/07/2018 Heirs: Zhivko Zhekov Zhekov, Ivaylo Zhivkov Zhekov, Zheko Zhivkov Zhekov **Mr Zheko Zhivkov ZHEKOV** 1991 Athens	Mr D. Kalinchev Plovdiv
5.	44845/15 **Rusev v. Bulgaria**	04/09/2015	**Mr Yuliyan Vasilev RUSEV** 1974 Izvorovo	Mr Ts. Ignatov Targovishte
6.	17238/16 **Katsarov v. Bulgaria**	23/03/2016	**Mr Kiril Hristov KATSAROV** 1972 Kostenets	Mr M. Ekimdzhiev, Ms S. Stefanova Plovdiv
7.	63214/16 **Dimitrov v. Bulgaria**	21/10/2016	**Mr Dimitar Genchev DIMITROV** 1976 Provadia	Mr I. Ivanov Varna