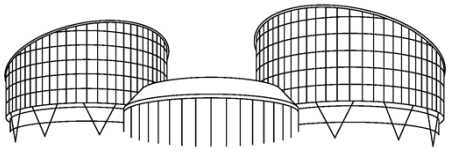

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF APOSTOLOVI v. BULGARIA

(Application no. 32644/09)

JUDGMENT

Art 1 P 1 • Possessions • Interference • Freezing of assets in the context of criminal proceedings • Courts' omission to examine argument that freezing impaired defendant's ability to meet medical expenses

STRASBOURG

7 November 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Apostolovi v. Bulgaria,

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

Angelika Nußberger, *President*,
Gabriele Kucsko-Stadlmayer,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 October 2019,

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

PROCEDURE

1. The case originated in an application (no. 32644/09) 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 two Bulgarian nationals, Mr Stoyan Todorov Apostolov and Mrs Milena Georgieva Apostolova ("the applicants"), on 28 April 2009.

2. The applicants were represented by Ms E. Nedeva, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms I. Nedyalkova of the Ministry of Justice.

3. The applicants complained, in particular, that the initial freezing of a number of bank accounts and immovable properties belonging to them in the context of criminal proceedings against the first applicant and the maintenance of those freezing orders had unlawfully and unjustifiably interfered with their possessions, in particular because it had prevented them from adequately meeting the medical expenses of their severely disabled son. They also complained of the alleged absence of an effective domestic remedy in that respect.

4. On 13 December 2017 the Court gave the Government notice of the first applicant's complaints concerning the freezing of his assets and the alleged lack of an effective remedy in respect of that (Rule 54 § 2 (b) of the Rules of Court), and asked the parties to submit factual information about the remedial measures taken with respect to the freezing of the second applicant's assets (Rule 54 § 2 (a)). The Court declared the remainder of the application inadmissible (Rule 54 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant (Mr Apostolov) was born in 1956. The second applicant (Mrs Apostolova) was born in 1958. They live in Haskovo.

6. The applicants are spouses. The first applicant used to be a public prosecutor but at the relevant time was working as a lawyer in private practice.

7. The applicants have three children. The third, a son born in 1989, suffers from a number of congenital disorders. He has been declared 100% disabled and receives disability benefit. In the second half of 2008 his monthly disability benefit amounted to about 164 Bulgarian levs (BGN). He requires constant medical treatment and personal care.

A. Criminal proceedings against the first applicant

8. On 29 March 2007 the Haskovo regional prosecutor's office opened an investigation with respect to the first applicant and an alleged accomplice on suspicion that they had been conducting banking business without a licence, in breach of Article 252 § 1 of the Criminal Code.

9. On 17 November 2008 the first applicant and his alleged accomplice were charged. The first applicant was accused of conducting banking business without a licence and thereby causing others significant damage and obtaining unlawful earnings. This offence, under Article 252 § 2 of the Criminal Code, carried a penalty of (a) five to ten years' imprisonment; (b) a fine of BGN 5,000 to 10,000 (equivalent to 2,556 and 5,113 euros (EUR) respectively); and (c) confiscation of some or all of the perpetrator's assets. It was alleged that he had caused nine people a total loss of BGN 116,030 (equivalent to EUR 59,325) and had unlawfully earned BGN 187,250 (equivalent to EUR 95,739).

10. On 4 December 2009 the prosecuting authorities indicted the first applicant and his co-accused.

11. Twenty-one trial hearings were held, and on 9 November 2012 the Haskovo Regional Court found the first applicant guilty of conducting banking business without a licence jointly with his co-accused, thereby causing five people damage totalling BGN 12,408 (equivalent to EUR 6,344) and unlawfully earning BGN 51,368 (equivalent to EUR 26,264). The court acquitted him of the remainder of the charges brought by the prosecution. It imposed a two-year suspended prison sentence and a BGN 3,000 (EUR 1,534) fine. It also ordered him and his co-accused jointly to pay the Treasury BGN 29,440 (equivalent to EUR 15,052) and the first applicant personally to pay the Treasury BGN 21,928 (equivalent to EUR 11,212) by way of forfeiture under

Article 53 § 2 (b) of the Criminal Code (see paragraph 47 below). Lastly, it ordered him to pay BGN 2,000 (equivalent to EUR 1,023), plus interest, in damages to two civil claimants. The court also partly upheld the charges against the co-accused.

12. The prosecution, the first applicant, his co-accused and the two civil claimants (who were also private prosecuting parties) all appealed. On 28 March 2013 the Plovdiv Court of Appeal quashed the lower court's judgment and remitted the case to the prosecuting authorities. It first noted that the partial acquittal of the first applicant and his co-accused had not been appealed against and was therefore final. It went on to say that the appeals of the first applicant and his co-accused, which concerned the remainder of the lower court's judgment, were well-founded, as the proceedings had been tainted by a serious procedural irregularity. The indictment had been unclear and internally inconsistent, which had caused confusion about the subject matter of the case and had reflected on the lower court's findings. That court had spotted the problem but had nevertheless proceeded to judgment. It was, then, necessary to quash its judgment and remit the case to the prosecuting authorities for them to draw up a proper indictment.

13. On 12 September 2013 the prosecuting authorities submitted an amended indictment to the Haskovo Regional Court. On 10 October 2013 the judge-rapporteur returned it to them with instructions to correct various irregularities in it. The prosecuting authorities appealed against that decision, and on 18 November 2013 the Plovdiv Court of Appeal quashed it, finding that the prosecuting authorities had sufficiently complied with the instructions in its earlier judgment.

14. The first applicant was then re-tried, but the civil claims against him were not taken up for examination. The Haskovo Regional Court held nineteen hearings, many of which had to be adjourned owing to the failure of the co-accused to appear. On 10 March 2016 it again found the first applicant guilty of conducting banking business without a licence (in relation to three loans which he had made alone and five loans which he had made jointly with his co-accused), thereby causing three people damage totalling BGN 7,000 (equivalent to EUR 3,579) and unlawfully earning BGN 44,640 (equivalent to EUR 22,824). It gave the first applicant a year's suspended prison sentence. In fixing the sentence below the statutory minimum and opting not to impose a fine or order confiscation, as provided for under Article 252 § 2 of the Criminal Code, the court had regard, in particular, to the medical conditions of the first applicant's son and the prolonged duration of the criminal proceedings against him.

15. The first applicant and his co-accused appealed. The Plovdiv Court of Appeal held five hearings and on 2 October 2017 upheld the first applicant's conviction and sentence, fully agreeing with the lower court's reasons.

16. The first applicant and his co-accused appealed on points of law. On 23 February 2018 the Supreme Court of Cassation heard the appeals and on 9 March 2018 it upheld the lower court's judgment.

B. Freezing of the applicants' assets

1. The freezing order

17. Following a request by the prosecuting authorities under Article 72 § 1 of the Code of Criminal Procedure (see paragraph 48 below), on 28 November 2008, shortly after the first applicant had been charged (see paragraph 9 above), the Haskovo Regional Court decided to freeze thirty-five bank accounts registered in his name and three immovable properties belonging to him. It noted that the offence of which he stood accused was punishable with a fine and confiscation, and said that his being charged was enough to consider that the charges were probably well-founded. There was also evidence that the bank accounts and properties belonged to him. It was necessary to freeze them to secure the satisfaction of a possible fine or confiscation. The court's asset-freezing order was issued on 1 December 2008. At that time, the bank accounts apparently contained BGN 88,784 (equivalent to EUR 45,395) plus 300 euros (EUR) and 23,565 United States dollars.

2. Appeal against the decision to issue the freezing order

18. On 31 March 2009 the first applicant appealed against the decision to issue the freezing order, arguing that it impermissibly affected family assets, half of which belonged to his wife, and assets shielded from confiscation. This was particularly problematic in his case owing to the disability of his son and the associated medical expenses (see paragraph 7 above).

19. The Haskovo Regional Court refused to forward the appeal to the Plovdiv Court of Appeal, on the basis that it had been lodged out of time. The first applicant appealed against that decision, but on 16 June 2009 the Plovdiv Court of Appeal upheld it, finding, in particular, that he had obtained a copy of the decision to issue the freezing order on 25 February 2009 and had appealed against it long after the expiry of the applicable seven-day time-limit.

3. First request to have the freezing order lifted

20. On 31 March 2009 the applicants also applied to the Haskovo Regional Court to have the freezing order lifted.

21. The second applicant pointed out that half of the sums in the bank accounts and half of two of the three immovable properties belonged to her, in her capacity as the first applicant's spouse. She argued that her half could

not lawfully be frozen, since only assets belonging to an accused could be confiscated.

22. The first applicant submitted that the impossibility to draw on the money in his bank accounts placed the life of his disabled son at risk, as he had no sources of income apart from his savings. He also argued that the restriction unlawfully affected assets shielded from confiscation under Article 45 § 2 of the Criminal Code (see paragraph 44 below). His argument ran as follows: that provision prohibited the confiscation of funds needed by a convicted person and his or her family for living expenses for one year. It was, then, impermissible to freeze such funds to ensure their confiscation. Yet, the Haskovo Regional Court had not checked what sum would be needed by him and his family to live for one year with a view to excluding it from the scope of the freezing order. That was especially problematic in the light of his son's medical conditions (see paragraph 7 above), which generated medical expenses on top of the family's ordinary living expenses.

23. The prosecuting authorities made no submissions in reply.

24. The Haskovo Regional Court examined the applications on the papers and on 8 May 2009 rejected them. It held that the need for the assets to be blocked was still in place as the criminal proceedings against the first applicant were still under way. The mere fact that charges had been brought against him made those charges potentially well-founded, and that possibility would not vanish unless there was a final acquittal. No fresh developments had obviated the need to keep the assets frozen. As for the second applicant's arguments, they had to be made in the proceedings in which the competent bailiff and property-registration officials had enforced the freezing order.

25. The applicants appealed. They said that they fully maintained their original arguments, and again asserted that only the first applicant's half of the family assets could lawfully be frozen. The prosecuting authorities made no submissions in reply.

26. The Plovdiv Court of Appeal examined the appeal on the papers, and on 29 July 2009 partly quashed the lower court's decision and unfroze the second applicant's half of the assets. It agreed that the main reason for the restriction had not ceased to exist, since the criminal proceedings against the first applicant were still under way and could lead to a fine and confiscation of part or all of his assets. The lower court had, however, been wrong to hold that the second applicant's argument concerning her half of the assets was irrelevant to those proceedings. Since charges had been brought only against her husband, only his half of the family assets could lawfully be frozen. Those were sufficient to ensure that a confiscation order or fine against him would be met. His son's medical conditions were irrelevant for that assessment.

4. Second request to have the freezing order lifted

27. On 11 May 2013 the first applicant complained to the Haskovo regional prosecutor's office that his assets had remained blocked for an inordinate amount of time and without a genuine need for that, especially since the likelihood of a confiscation or forfeiture order against him was low and the maximum amount of the potential fine he faced was BGN 10,000 (equivalent to EUR 5,113). His immovable properties were sufficient to guarantee the enforcement of any such sentence. The impossibility to use the money in his bank accounts was a real problem in view of his son's disability, and it was imperative for him to get unencumbered access to that money as soon as possible.

28. The prosecuting authorities did not respond to the request, and on an unknown date in the summer or early autumn of 2013 the first applicant asked the Haskovo Regional Court to unfreeze fully his bank accounts and two of the immovable properties, and to unfreeze partly the third immovable property.

29. On 14 October 2013 a civil judge of the Haskovo Regional Court partly allowed the request and unfroze the bank accounts. The first applicant appealed, arguing that his immovable properties should be unfrozen as well, because the restriction was disproportionate as a whole. On 28 November 2013 the Plovdiv Court of Appeal quashed the lower court's decision in full on the basis that it had been taken by a judge without jurisdiction in the matter, and the matter was referred to the trial panel examining the criminal case against the first applicant.

30. At a hearing on 16 January 2014 that panel decided to adjourn the first applicant's trial owing to the absence of a number of witnesses, and went on to examine the request for the unfreezing of his assets. The first applicant submitted that his co-accused, the charges against whom were more serious, had not suffered any such restrictions. By contrast, all of his assets had remained frozen since 2008, which seriously impeded his ability to take care of his ailing son, especially since the criminal proceedings against him and the attendant publicity had in practice prevented him from practising as a lawyer. In addition, the interest that had accumulated on the money in his bank accounts had likewise remained blocked.

31. In a bench ruling of the same date the panel unfroze all of the first applicant's assets, except one immovable property. It held that although the criminal proceedings against him were still under way and there was still a risk that he might dissipate those assets, it could not be overlooked that the proceedings had begun in 2007 and that his assets had been blocked as early as 2008. He had thus been unable to use the money in his bank accounts despite the need flowing from the serious medical conditions of his son. Another point to be borne in mind was the maximum amount of the fine and confiscation which could be imposed on him on conviction.

5. Unfreezing of the remaining immovable property

32. In view of its judgment of 10 March 2016 convicting the first applicant and giving him only a suspended prison sentence (see paragraph 14 above), on the same day the Haskovo Regional Court unfroze his third immovable property as well.

C. The second applicant's claims for damages against the authorities

1. Claim against the Haskovo Regional Court

33. On an unknown date in 2010 the second applicant brought a claim in respect of non-pecuniary damage under section 49 of the Obligations and Contracts Act 1950 (see paragraphs 59 and 60 below) against the Haskovo Regional Court. She said that she had suffered non-pecuniary damage to the tune of BGN 50,000 but for the time being sought only BGN 25,500.

34. Since none of the judges in the Haskovo Regional Court could deal with the case, as the claim was directed against that court, it was transferred to the Kardzhali Regional Court. On 17 May 2011 that court dismissed the claim, holding that courts could not incur liability under section 49 of the 1950 Act in relation to decisions taken by the judges serving on them.

35. The second applicant appealed, but on 31 October 2011 the Plovdiv Court of Appeal upheld the lower court's judgment on the same basis.

36. The second applicant then appealed on points of law. Finding that the appeal raised an important novel issue, the Supreme Court of Cassation admitted it for examination, and on 14 June 2013 upheld the Plovdiv Court of Appeal's judgment. It held that whenever the State's liability could not be engaged under the State and Municipalities Liability for Damage Act 1988 (see paragraphs 57 and 58 below), it could in principle be engaged under section 49 of the 1950 Act. It went on to say that liability for damages in relation to the freezing of assets ordered by a court at the behest of a State authority lay with that authority, in line with the general rule in civil proceedings that liability for damages in such situations lay on the party at whose instance an asset freeze had been ordered (see реш. № 110 от 14.06.2013 г. по гр. д. № 93/2012 г., ВКС, IV г. о.).

2. First claim against the prosecutor's office

37. In line with the reasoning of the Supreme Court of Cassation, on 5 September 2013 the second applicant brought a claim for damages under section 49 of the 1950 Act (see paragraphs 59 and 60 below) against the prosecutor's office. She said that she had suffered non-pecuniary damage to the tune of BGN 50,000, but that for the time being she sought only BGN 2,000, plus interest running from 28 November 2008.

38. On 6 January 2014 the Haskovo District Court allowed the claim. It held that the second applicant had suffered non-pecuniary damage as a result of the freezing of her assets. The prosecutor's request to that effect had been wrongful and had directly caused that damage. Under section 45(2) of the 1950 Act (see paragraph 60 below), the fault of the prosecutor who had sought the restriction had to be presumed. In any event, the prosecutor should have checked the ownership of the assets before seeking to block them. In view of the duration of the restriction and the medical conditions of the second applicant's son, the appropriate award was BGN 5,000. Since she was seeking less than that, her claim was to be allowed in full. The court went on to say that although the second applicant had not presented evidence about the actual extent of her distress and the actual shortage of money needed for the medical treatment of her son, it could be presumed that the freezing of her assets for a significant period had caused her psychological distress (see реш. № 15 от 06.01.2014 г. по гр. д. № 2505/2013 г., РС-Хасково).

39. The prosecutor's office appealed, and on 29 May 2014 the Haskovo Regional Court upheld the lower court's judgment, agreeing with its reasoning (see реш. № 257 от 29.05.2014 г. по гр. д. № 260/2014 г., ОС-Хасково). That judgment itself was not amenable to appeal.

40. On 17 June 2014 the second applicant obtained a writ of execution and presented it to the prosecutor's office for payment. On 16 December 2014 the prosecutor's office paid her the full sum she had been awarded: BGN 2,000 in damages, BGN 1,299 in interest and BGN 280 in costs.

3. Second claim against the prosecutor's office

41. On 10 February 2015 the second applicant brought a second claim under section 49 of the 1950 Act against the prosecutor's office. She again put her non-pecuniary damage at BGN 50,000, but said that for the time being she sought only BGN 5,000.

42. On 9 June 2015 the Haskovo District Court dismissed the claim. It began by saying that the claim was in principle well-founded, and that, for the same reasons as those in the earlier case against the prosecutor's office, it considered that the non-pecuniary damage suffered by the second applicant could be made good by BGN 5,000. This meant that, if the BGN 2,000 awarded in the previous proceedings were to be deducted, she was entitled to BGN 3,000. The claim was, however, time-barred. The court analysed in detail the applicable statutory provisions and case-law, and held that the applicable five-year limitation period had started to run when the Haskovo Regional Court had decided to issue the freezing order – 28 November 2008 – and had thus expired on 28 November 2013. The bringing of a partial claim had not stopped the running of the time-limit with respect to the remainder. But even if the period during which the earlier claim for damages against the prosecutor's office had been pending

was to be disregarded, the limitation period had expired on 22 August 2014, whereas the second claim had been brought on 10 February 2015 (see реш. № 332 от 09.06.2015 г. по гр. д. № 319/2015 г., РС-Хасково).

43. The second applicant did not appeal against that judgment, and it became final on 1 July 2015.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant provisions of the Criminal Code

1. Assets shielded from confiscation or the enforcement of a fine

44. Article 45 § 2 of the Criminal Code provides that the funds needed by a convicted person and his or her family for living expenses for one year are shielded from confiscation. The former Supreme Court has held that this prohibition exists not only for the benefit of the convicted person but also for that of members of his or her family (see реш. № 109 от 28.12.1987 г. по н. д. № 103/1987 г., ВС, ОСНК).

45. Article 47 § 3 of the same Code provides that assets shielded from confiscation cannot be used to satisfy a criminal fine either.

46. No such provisions exist with respect to the freezing of assets with a view to their confiscation or use to satisfy a fine. Various courts with final jurisdiction in such cases, including the Plovdiv Court of Appeal, have held that the exemptions in those two provisions are irrelevant in asset-freezing proceedings under Article 72 of the Code of Criminal Procedure (see paragraph 48 below, and опр. № 12 от 12.01.2015 г. по в. ч. н. д. № 1146/2014 г., САС; опр. № 453 от 21.07.2016 г. по в. ч. н. д. № 387/2016 г., ПАС; and опр. № 123 от 08.08.2018 г. по в. н. ч. д. № 350/2018 г., АСпНС).

2. Forfeiture of proceeds of crime

47. Article 53 § 2 (b) of the Criminal Code provides that on conviction, regardless of the main penalty, the proceeds of the offence are liable to forfeiture, unless subject to restitution.

B. Freezing of assets with a view to securing the satisfaction of a criminal fine or a confiscation or forfeiture order

1. Competence to make a freezing order and prerequisites for doing so

48. Under Article 72 § 1 of the 2005 Code of Criminal Procedure, the prosecuting authorities may ask the competent first-instance court to take measures to ensure that a fine, confiscation or forfeiture which may be ordered in criminal proceedings can be satisfied. If the criminal proceedings

have reached the trial stage, competence to take such measures rests with the trial court (Article 72 § 2).

49. In May 2012 the President of the Supreme Court of Cassation proposed that the plenary of that court's criminal chambers give an interpretative decision on the application of Article 72. He indicated divergences in the lower courts' case-law on several points. In particular, they had resolved differently the questions (a) whether the mere bringing of charges could justify a freezing order under that provision or whether those charges had to be based on a reasonable suspicion, and (b) whether the value of the blocked assets had to be proportionate to the possible confiscation or fine.

50. In its interpretative decision, given in October 2012, the plenary of the Supreme Court of Cassation's criminal chambers held, *inter alia*, that (a) when dealing with requests by the prosecuting authorities to freeze assets under Article 72, the courts must check, on the basis of all the available evidence, whether there was a reasonable suspicion that the accused had committed the alleged offence – a decision to bring charges not being sufficient in that respect – with a view to preventing unjustified interferences with the property rights of the people concerned, in breach of Article 1 of Protocol No. 1; (b) only assets belonging to someone charged with an offence punishable with confiscation or a fine could be frozen under that provision, the only exception being assets subject to forfeiture regardless of their owner; (c) the courts must examine whether the value of the assets sought to be frozen matched the extent of the potential confiscation, fine or forfeiture; and (d) the decisions of the first-instance courts in such cases were amenable to appeal to a higher court in the manner provided for in the Code of Civil Procedure (see тълк. реш. № 2 от 11.10.2012 г. по тълк. д. № 1/2012 г., ВКС, ОСНК).

2. Maximum duration of a freezing order

51. The Sofia Court of Appeal has held that assets blocked under Article 72 of the 2005 Code must normally remain frozen until the conclusion of the criminal proceedings, and that the only situation in which the freezing order can be lifted earlier is if the time-limit under Article 234 § 8 of the Code expires (see опр. № 170 от 10.08.2012 г. по в. ч. н. д. № 797/2012 г., САС).

52. Article 234 § 8, which applies solely to the investigation stage, provides that all coercive measures with respect to the accused – which includes the freezing of assets under Article 72 – must be rescinded by the prosecuting authorities if a certain period of time has elapsed since the accused was charged. Originally, the time-limit was two years in cases of offences punishable with more than five years' imprisonment and one year in all other cases. In August 2013 those periods were shortened to one and a half years and eight months respectively. The Sofia Court of Appeal has,

however, held that if the assets were frozen after the charges were brought, the time-limit runs from that later date (see опр. № 403 от 29.12.2014 г. по в. ч. н. д. № 1180/2014 г., CAC).

53. Article 234 § 9 of the Code provides that if the prosecuting authorities omit to lift the restriction after the expiry of the time-limit of their own motion, the accused may directly ask the first-instance court to do so (see опр. № 83 от 15.03.2017 г. по в. ч. н. д. № 256/2017 г., CAC). The court decides on the papers and its decision is not amenable to appeal (Article 234 § 10).

54. By contrast, there is no statutory cap on the duration of asset freezing during the ensuing judicial phase of the proceedings (see опр. № 453 от 21.07.2016 г. по в. ч. н. д. № 387/2016 г., ПАС). However, Article 309 § 5 of the Code provides that if the trial court finds the accused not guilty, it must consider whether to maintain the freezing order.

3. Procedure

55. For the applicable procedure, Article 72 of the 2005 Code of Criminal Procedure refers to the Code of Civil Procedure. Article 395 § 1 of the 2007 Code of Civil Procedure provides that the proceedings start without notice being served on the defendant, and Article 395 § 2 provides that the court decides the matter on the papers. If the court issues a freezing order, the defendant is notified and can appeal against it within seven days of the notification (Article 396 § 1). The appeal has no suspensive effect (Article 396 § 3).

56. Under Article 402 §§ 1 and 2 of the 2007 Code, a freezing order can be lifted at the request of an interested party. This is to be allowed if the court finds that the need for it no longer exists. The request is examined on the papers (Article 402 § 2), and the first-instance court's decision is amenable to appeal. Any appeal is normally also examined on the papers, but the court may, if necessary, hold an oral hearing (Article 278 § 1).

C. Claims for damages against the authorities in relation to measures taken in criminal proceedings

1. Under the State and Municipalities Liability for Damage Act 1988

57. Section 2(1) of the State and Municipalities Liability for Damage Act 1988, as originally enacted and subsequently amended, provides for no-fault liability on the part of the investigating and prosecuting authorities and the courts in several situations arising in relation to criminal proceedings, none of which has to do with the freezing of assets (for details, see *Tsonev v. Bulgaria* (dec.), no. 9662/13, §§ 29-37, 30 May 2017).

58. The Bulgarian courts have consistently held that no-fault liability on the part of the investigating and prosecuting authorities and the courts in

relation to decisions or measures taken in connection with criminal proceedings may only be engaged with respect to the situations exhaustively listed in section 2(1) of the Act (see, among other authorities, тълк. реш. № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ВКС, ОСГК; реш. № 579 от 10.12.2010 г. по гр. д. № 377/2009 г., ВКС, IV г. о.; реш. № 97 от 03.05.2012 г. по гр. д. № 80/2011 г., ВКС, IV г. о.; реш. № 157 от 08.07.2013 г. по гр. д. № 1268/2012 г., ВКС, III г. о.; опр. № 474 от 28.03.2014 г. по гр. д. № 7338/2013 г., ВКС, III г. о.; опр. № 30 от 12.01.2015 г. по ч. гр. д. № 7269/2014 г., ВКС, IV г. о.; опр. № 264 от 27.12.2016 г. по ч. гр. д. № 5293/2016 г., ВКС, II г. о.; and опр. № 359 от 10.10.2017 г. по ч. гр. д. № 3020/2017 г., ВКС, III г. о.).

2. Under the Obligations and Contracts Act 1950

59. At the same time, the Bulgarian courts have held that in cases not covered by section 2(1) of the 1988 Act, a claim could be brought under section 49 of the Obligations and Contracts Act 1950, which lays down the general rule of the law of tort that a person who has entrusted another with a job is liable for the damage caused by that other person in the course of or in connection with the job (see, apart from the Supreme Court of Cassation's judgment in the second applicant's case cited in paragraph 36 above, реш. № 579 от 10.12.2010 г. по гр. д. № 377/2009 г., ВКС, IV г. о.; реш. № 362 от 21.11.2013 г. по гр. д. № 92/2013 г., ВКС, IV г. о.; опр. № 414 от 04.06.2014 г. по ч. гр. д. № 1827/2014 г., ВКС, IV г. о.; and опр. № 359 от 10.10.2017 г., по ч. гр. д. № 3020/2017 г., ВКС, III г. о.).

60. Liability under section 49 of the 1950 Act is premised on the wrongfulness of the impugned conduct (see, among other authorities, реш. № 567 от 24.11.1997 г. по гр. д. № 775/1996 г., ВС, петчл. с-в; реш. № 222 от 05.06.2012 г. по гр. д. № 967/2011 г., ВКС, IV г. о.; реш. № 104 от 15.05.2014 г. по гр. д. № 5422/2013 г., ВКС, III г. о.; and реш. № 43 от 4.09.2017 г. по гр. д. № 3143/2016 г., ВКС, III г. о.). It does not presuppose fault on the part of the person entrusting the job, but does presuppose fault – which by virtue of section 45(2) is presumed – on the part of the person carrying out the job (see пост. № 7 от 29.12.1958 г. по гр. д. № 7/1958 г., ВС, Пл.; пост. № 7 от 30.12.1959 г. по гр. д. № 7/1959 г., ВС, Пл.; пост. № 9 от 28.12.1966 г. по гр. д. № 8/1966 г., ВС, Пл.; реш. № 70 от 16.07.2009 г. по гр. д. № 5691/2007 г., ВКС, I г. о.; реш. № 100 от 16.02.2010 г. по гр. д. № 696/2009 г., ВКС, III г. о.; реш. № 48 от 08.02.2011 г. по гр. д. № 545/2010 г., ВКС, IV г. о.; and реш. № 268 от 24.02.2016 г. по гр. д. № 2525/2015 г., ВКС, III г. о.).

THE LAW

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

61. The applicants complained under Article 1 of Protocol No. 1 that the freezing of their assets had been unlawful and unjustified, both when initially done and when kept in place. Relying on Article 8 of the Convention, they further submitted that the resulting unavailability of the funds in their bank accounts had made it very hard for them to care for their disabled son.

62. Since the alleged inability of the applicants to meet the medical expenses of their disabled son was an indirect consequence of the freezing of their assets, in the Court's view the complaint falls to be examined solely under Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. The second applicant's victim status

(a) The parties' submissions

63. The Government submitted that, having obtained compensation for the freezing of her assets, the second applicant could no longer claim to be a victim of a breach of her rights under Article 1 of Protocol No. 1. The amount of that compensation had resulted from her litigation strategy: first to bring a partial claim, which had been allowed in full, and then to seek higher damages in a follow-up action, which moreover had been brought after the expiry of the relevant limitation period. To the extent that the second applicant disagreed with the first-instance court's ruling on the limitation point, she could have appealed, but had not done so. In the Government's view, this could alternatively be seen as a failure to exhaust domestic remedies.

64. The applicants submitted that the sum paid to the second applicant following her successful first claim against the prosecutor's office did not amount to sufficient redress. The proceedings leading to that award had lasted quite a long time, and the sum had been too low and paid with more than six months' delay. BGN 2,000 or even BGN 5,000 – which would have

been the total award if the first-instance court in the follow-up action had not incorrectly ruled that the limitation period had expired – could not make up for the second applicant's distress caused by her inability properly to take care of her disabled son as a result of the freezing of her assets.

(b) The Court's assessment

65. The principles governing the assessment of whether an applicant can continue to claim to be a victim of a breach of the Convention or its Protocols following favourable measures at domestic level are settled. They have been set out, for example, in *Zaharieva v. Bulgaria* ((dec.), no. 6194/06, § 63, 20 November 2012), and, more recently, in *Vanchev v. Bulgaria* (no. 60873/09, §§ 28-29, 31 and 36, 19 October 2017).

66. In view of the Bulgarian courts' findings that the freezing of the second applicant's assets had been unlawful and "wrongful", and that it had unduly prevented her from properly taking care of her disabled son (see paragraphs 26, 38 and 39 above), it can be accepted that the national authorities acknowledged in substance the alleged breach of Article 1 of Protocol No. 1 with respect to her.

67. The salient question is whether the amount of compensation obtained by the second applicant on the back of that recognition was sufficient.

68. The second applicant was paid BGN 2,000 in respect of non-pecuniary damage, plus BGN 1,299 in interest, in relation to the blocking of her assets for about eight months (see paragraph 40 above). This equals EUR 1,687.[1]

69. It is this final net sum which the Court will take into account when assessing whether the redress was sufficient (see *Vanchev*, cited above, § 32). It is not manifestly unreasonable in comparison to recent awards made by the Court in similar cases, due account being taken of the fact that those cases were against different respondent States (see *Džinić v. Croatia*, no. 38359/13, § 87, 17 May 2016, where EUR 2,000 was awarded to one applicant, in respect of the attachment of ten plots of land, two houses and a commercial building for more than three and a half years, and *Eilders and Others v. Russia* [Committee], no. 475/08, § 29, 3 October 2017, where EUR 6,000 was awarded jointly to two applicants, in respect of the attachment of four flats and a car for more than ten years). In the absence of specific evidence and information on the point by the applicants, the fact that the non-pecuniary damage suffered by the second applicant in the present case flowed chiefly from the effect of the blocking of her assets on her ability to care for her disabled son does not alter that conclusion.

1. Since 1998 the exchange rate between the euro and the Bulgarian lev has been fixed by law (section 29(2) of the Bulgarian National Bank Act 1997, and decision no. 223 of the Bulgarian National Bank of 31 December 1998). EUR 1 is equal to BGN 1.95583 (or 1,955.83 old Bulgarian levs (BGL), before the revalorisation on 5 July 1999).

70. The sum awarded to the second applicant was paid in full about six and a half months after the end of the proceedings for damages (see paragraphs 39 and 40 above). This cannot be seen as an unreasonable delay (contrast *Delle Cave and Corrado v. Italy*, no. 14626/03, § 30, 5 June 2007; *Simaldone v. Italy*, no. 22644/03, § 31, 31 March 2009; and *Uguccioni v. Italy* [Committee], no. 62984/00, § 53, 18 December 2012).

71. In this case, however, the analysis cannot stop here. In assessing the sufficiency of the redress obtained by the second applicant, account must be taken not only of the actual compensation she obtained but also of the compensation that she could have obtained had she proceeded in a different manner. According to the Court's case-law, this second element may also be taken into account when analysing the point (see, among other authorities, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 262, ECHR 2012 (extracts); *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, § 60, 19 July 2018; and *J.B. and Others v. Hungary* (dec.), nos. 45434/12 and 2 others, § 59, 27 November 2018).

72. The second applicant chose to limit her initial claim for damages against the prosecutor's office to BGN 2,000 (see paragraph 37 above). Since at the time this was somewhat uncharted territory in Bulgarian law (see paragraph 59 above), and since the second applicant had already pursued one set of proceedings (see paragraphs 33-36 above), she cannot be blamed for treading with caution, especially bearing in mind that to proceed with a claim for damages under section 49 of the 1950 Act, a claimant had to pay up-front a court fee of 4% of the amount sought (see *Zaharieva*, cited above, § 43). At the same time, nothing suggests that the second applicant would have faced substantial difficulties in affording the court fee for a claim equal to the sum which, according to the Bulgarian courts, would have fully recompensed the non-pecuniary damage suffered by her (BGN 5,000) – that fee would have come to BGN 200, or the equivalent of EUR 102.

73. The second applicant thus forwent a reasonable opportunity to obtain up to BGN 5,000 (EUR 2,556) in damages, which in turn would have produced at least BGN 3,248.94 (EUR 1,661) in interest (see paragraph 42 above, and, for the manner in which such interest is calculated in Bulgarian law, see *Zaharieva*, cited above, § 42).

74. In these circumstances, the second applicant cannot be seen as still being a victim of a breach of Article 1 of Protocol No. 1. Her complaint in this regard is hence incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention.

2. Exhaustion of domestic remedies by the first applicant

(a) The parties' submissions

(i) The Government

75. The Government submitted that the first applicant had failed to appeal in time against the freezing order, and that it could not be assumed that such an appeal would have been bound to fail.

76. The first applicant's parallel request for the lifting of the order had not been an equally effective remedy, since in such proceedings the courts could only check whether the need for the measure persisted in the light of fresh developments. In any event, in his appeal against the first-instance court's decision to reject that request, he had failed to include arguments relating to the measure's proportionality.

77. The first applicant had then waited until about mid-2013 before renewing his request for the freezing order to be lifted, whereas it had been open to him to do so earlier. Following the Supreme Court of Cassation's interpretative decision of October 2012, the courts had been clearly required to review the proportionality of the restriction. Indeed, this was evident from the reasons on the basis of which the Haskovo Regional Court had in large part allowed his renewed request.

(ii) The applicants

78. The applicants argued that the courts' finding that the first applicant's appeal against the freezing order had been out of time was not borne out by the facts. In any event, even a timely appeal would not have stood a chance of succeeding, as shortly after that, in the proceedings for the lifting of the order, the Plovdiv Court of Appeal had found that the first applicant's assets had to remain frozen regardless of his personal circumstances.

79. For its part, the parallel request to have the order lifted, which the first applicant had pursued properly but without success, was an equally effective remedy, entailing a review of the same factors as an appeal against the order. His omission to plead specifically a lack of proportionality in his appeal against the first-instance court's decision to reject that request could not be held against him, as the courts had been required to delve into that issue of their own motion.

80. The first applicant could not have successfully renewed his request for the order to be lifted before mid-2013. Any such request during the original trial against him, and even after the judgment of the Haskovo Regional Court of November 2012, would have been turned down.

(b) The Court's assessment

81. In the specific circumstances of this case, in which the first applicant complained of both the initial freezing of his assets and of the continuation of the measure for a number of years, it is appropriate to consider the exhaustion issue separately for the two matters (see, for a similar approach, *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04 and 4 others, § 81, 24 February 2011).

82. As regards the initial freezing of the assets, it is true that the first applicant did not appeal against the freezing order in due time. He did, however, concomitantly seek to have it lifted (see paragraphs 18-20 above). Contrary to what the Government suggested, without however citing any domestic case-law in support of their assertion, it does not appear that there was at that point a material difference between those two procedures, as they were applied in practice by the national courts. So far as relevant for the complaint at hand, the request to have the order lifted could, just like the appeal against it, be made immediately. Moreover, the reasons for which the Haskovo Regional Court and the Plovdiv Court of Appeal rejected the request show that, rather than citing any limitations on the kind of circumstances that they could take into account when dealing with it, those courts concerned themselves with the same questions as the judge who had decided to issue the order: (a) whether the charges against the first applicant justified, in view of the possible confiscation and fine to which they could lead, the blocking of his assets pending the outcome of the criminal proceedings against him, and (b) whether the assets belonged to him (see paragraphs 17, 24 and 26 above). If anything, the proceedings pursuant to the request to have the order lifted entailed a broader assessment, as the Haskovo Regional Court also considered, albeit briefly, whether any fresh developments had obviated the need to keep the order in force. If an applicant has pursued one apparently effective remedy, he is not required to have used another one directed to essentially the same end and not presenting a better prospect of success (see *Iatridis v. Greece* [GC], no. 31107/96, § 47, ECHR 1999-II; and, specifically in relation to the domain at hand, *Borzhonov v. Russia*, no. 18274/04, § 54, 22 January 2009, and *Džinić*, cited above, § 47).

83. In his request that the freezing order be lifted, the first applicant included arguments touching on its proportionality: he pointed out that the impossibility to use his bank accounts placed the life of his disabled son at risk, and argued that the money that he and his family needed for living expenses should be excluded from its scope (see paragraph 22 above). Although his appeal against the dismissal of his request did not in terms reiterate those points, it did refer to the arguments in the initial request. As evident from the brief reference, in its reasons, to the medical condition of the first applicant's son, the Plovdiv Court of Appeal had regard to those arguments (see paragraphs 25 and 26 above). This shows that the first

applicant had sufficiently brought the point he has now raised before the Court to the attention of the Bulgarian courts (compare with *Paulet v. the United Kingdom*, no. 6219/08, §§ 50-52, 13 May 2014, and with *Valant v. Slovenia*, no. 23912/12, § 54, 24 January 2017).

84. In sum, the first applicant sufficiently exhausted domestic remedies with respect to the initial freezing of his assets.

85. The position with regard to the continued freezing of those assets over many years is, however, different. The need for them to remain blocked with a view to securing the satisfaction of a possible confiscation or forfeiture order or a fine did not fully recede until it became clear that the prosecution would not seek to appeal against the Haskovo Regional Court's judgment of March 2016, in which that court chose not to impose a monetary penalty on the first applicant (see paragraph 14 above). Yet, most of the assets – the bank accounts and two of the three immovable properties – had been unblocked more than two years earlier, in January 2014 (see paragraphs 12 and 31 above). That had happened in response to the first applicant's second request to have the freezing order lifted by a court – the first time he had tried to do so since early 2009 – which he made at some point in mid-2013 (see paragraphs 27 and 28 above). It cannot be said with full certainty that, if made earlier, such a request would have been likely to succeed. It is nevertheless striking that the Haskovo Regional Court allowed it purely on the basis of arguments relating to the proportionality of maintaining the freezing order (see paragraph 31 above). It is hard to fathom to what extent that court's position was influenced by the Supreme Court of Cassation's 2012 interpretative decision – which had broadly highlighted the need for a proportionality assessment in relation to the freezing of assets in criminal proceedings (see paragraph 50 above) –, by the manner in which the criminal proceedings against the first applicant had unfolded up to that point (see paragraphs 9-14 above), or by fresh arguments about the difficulties that he faced as a result of the restriction (see paragraph 30 above). However, it cannot simply be presumed that an earlier request to the competent courts to lift the freezing order would have been treated differently. By not making one until mid-2013, the first applicant failed to exhaust domestic remedies with respect to the continued freezing of his assets.

86. It follows that the Government's non-exhaustion objection, so far as it concerns the first applicant's failure to challenge the continued freezing of his assets, must be allowed. By contrast, so far as it concerns his alleged failure duly to pursue domestic remedies with respect to the initial freezing of his assets, the objection must be rejected.

3. Admissibility of the first applicant's complaint relating to the initial freezing of his assets

87. The part of the complaint relating to the initial freezing of the first applicant's assets is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

88. The Government submitted that the freezing of the first applicant's assets had been lawful, since nothing in Bulgarian law barred the freezing of assets which could not later be confiscated or used to satisfy a fine. The measure had been based on precise and foreseeable rules, and meant to secure the satisfaction of a possible financial penalty. It had not lasted an inordinate amount of time, in particular in view of the complexity of the criminal case against the first applicant. It had also been attended by proper safeguards, such as an appeal against the freezing order and a possibility to seek to have it lifted. Both of those procedures offered the full plethora of safeguards under Article 6 § 1 of the Convention, including the possibility for a hearing on appeal. Also, they often entailed, even before the 2012 interpretative decision, an examination of whether the measure was necessary, including whether there existed a reasonable suspicion against the person concerned and whether the assets sought to be frozen exceeded the potential penalty. The first applicant had failed to use those remedies properly before mid-2013. When he had done so, the courts had in large part allowed his request, precisely on the basis of arguments concerning the proportionality of the measure, even though the need to have his assets frozen had not truly vanished until it had become clear that the prosecution would not appeal against the March 2016 judgment of the Haskovo Regional Court. The measure, though preventing the first applicant from drawing on the money in his bank accounts, had not fully prevented him from using his immovable properties – for instance letting them out. Lastly, it could not be overlooked that his wife's assets had been unfrozen as early as July 2009, enabling the family to use them to meet its living expenses.

89. The applicants submitted that assets shielded from confiscation or the enforcement of a fine – those needed for a family's living expenses for one year – could not lawfully be frozen. Moreover, when deciding to issue the freezing order the Haskovo Regional Court had not checked the reasonableness of the suspicion against the first applicant, but had simply considered whether charges had been brought against him. The available safeguards had also been insufficient. Appeals against freezing orders and requests to have them lifted were examined solely on the papers. Until the

2012 interpretative decision of the Supreme Court of Cassation, when dealing with such cases the courts had not been required to check the existence of a reasonable suspicion, and had confined their review to formal criteria. Nor was there any cap on the duration of the measure during the judicial phase of the proceedings. In 2009 the competent courts had disregarded the arguments concerning the disability of the applicants' son, which should have instead been seen as compelling, and the necessity of leaving the first applicant enough unencumbered funds to meet his family's living expenses. The courts had only assessed the proportionality of the measure in the light of those factors and the length of the criminal proceedings in late 2013 and early 2014.

2. The Court's assessment

90. It is not in dispute that the freezing order with respect to the first applicant's assets amounted to an interference with his possessions.

91. According to the Court's case-law in this domain, the freezing of assets in the context of criminal proceedings with a view to keeping them available to meet a potential financial penalty falls to be analysed under the second paragraph of Article 1 of Protocol No. 1, which, among other things, allows States to control the use of property to secure the payment of penalties (see *Andrews v. the United Kingdom* (dec.), no. 49584/99, 26 September 2002; *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 63, 9 October 2008; *BENet Praha, spol. s r.o.*, cited above, § 92; *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 118, 6 December 2011; *Radu v. Romania* (dec.), no. 484/08, § 19, 3 September 2013; *Hábenczius v. Hungary*, no. 44473/06, § 28, 21 October 2014; *Džinić*, cited above, § 60; *Piras v. San Marino* (dec.), no. 27803/16, § 49, 27 June 2017; and *Uzan and Others v. Turkey,* no. 19620/05 and 3 others, § 194, 5 March 2019).

92. There is nothing to suggest that the freezing order was unlawful in terms of Bulgarian law. It was based on Article 72 of the Code of Criminal Procedure (see paragraphs 17 and 48 above), which allows the competent court to take measures to ensure that a fine, confiscation or forfeiture which may be ordered in criminal proceedings would be satisfied. Contrary to the first applicant's suggestion, it does not appear that Bulgarian law as currently interpreted by the courts bars the freezing of assets shielded from confiscation or the enforcement of a fine (see paragraph 46 above).

93. Nor is there anything to suggest that the applicable rules were insufficiently accessible or foreseeable. The question whether they provided enough safeguards against an arbitrary or disproportionate interference will be examined below, under the heading of proportionality.

94. The measure was meant to ensure that the assets at issue would remain available to satisfy a possible confiscation, forfeiture or fine; it thus pursued a legitimate aim in the general interest (see *Džinić*, §§ 65-66; *Radu*, § 25; and *Piras*, § 54, all cited above, and, in relation to civil proceedings,

JGK Statyba Ltd and Guselnikovas v. Lithuania, no. 3330/12, §§ 123-26 and 136, 5 November 2013).

95. The main issue is whether there was a reasonable relationship of proportionality between that aim and the means employed to attain it.

96. The freezing of assets in the context of criminal proceedings with a view to making them available to satisfy a possible confiscation, forfeiture or fine is not as such open to criticism (see *Džinić*, § 68, and *Uzan and Others*, § 204, both cited above). But since it carries with it a risk of unduly fettering the ability of the people holding rights in those assets freely to dispose of them, it must be attended by enough procedural safeguards to ensure that the measure is not arbitrary or disproportionate (ibid., as well as *Piras*, cited above, § 55). The available procedures as a whole must afford those affected by the freezing a reasonable opportunity of putting their case to the competent authorities with a view to enabling them to strike a fair balance between the competing interests at stake (see *Piras*, § 55, and *Uzan and Others*, § 214, both cited above).

97. It must, then, be ascertained whether the relevant procedures, seen as a whole, met this requirement.

98. In Bulgaria, as is often the position in other Contracting States (see, for instance, *Andrews*, and *Džinić*, § 36, both cited above), freezing orders are made without notice being served on the accused or the other persons affected by them (see paragraph 55 above). This does not in itself raise an issue in terms of safeguards (see *Nedyalkov and Others v. Bulgaria* (dec.), no. 663/11, § 117, 10 September 2013, where the point was analysed under Article 6 § 1 of the Convention). At the same time, given the one-sidedness of the proceedings, the freezing order's potentially far-reaching consequences, and the fact that it takes effect immediately, any appeal against it having no suspensive effect (see paragraph 55 *in fine* above), careful consideration of the requests for such orders is called for in each individual case.

99. Under Bulgarian law, an asset-freezing order, once issued and notified, can be challenged by way of an appeal or an application that it be lifted (see paragraphs 55 and 56 above). In view of the finding that, so far as relevant in this case, at the outset there was no material difference between those two procedures in the way they were applied by the national courts in the case at hand (see paragraph 82 above), the analysis here can be limited to the second one, which the first applicant pursued at first instance and on appeal (see paragraphs 20-26 above).

100. At first instance those proceedings are conducted solely on the papers, but on appeal there is a possibility for an oral hearing (see paragraphs 56 above). There is no indication that the first applicant asked for an oral hearing, and it cannot be presumed that a request to that effect would have inevitably been turned down (see *Nedyalkov and Others*, cited above, § 118). Nor was there, in the event, any problem with regard to the

adversarial nature of the proceedings, as the prosecution did not make submissions in reply to the first applicant's request and appeal (see paragraphs 23 and 25 *in fine* above). In any event, the procedural requirements flowing from Article 1 of Protocol No. 1 are not necessarily the same as those enshrined by Article 6 § 1 of the Convention (see *Saccoccia v. Austria*, no. 69917/01, § 89, 18 December 2008). There is nothing to suggest that the lack of a hearing prevented the first applicant from adequately putting his case to the competent courts.

101. The first applicant criticised the court which had issued the freezing order for not checking whether there had been a reasonable suspicion against him. It is true that at the time the Bulgarian courts' case-law on the point was still unsettled, and that when deciding to make the order, the competent court did not concern itself with it (see paragraphs 17 and 49 above). It is also true that, as remarked by the Supreme Court of Cassation in its ensuing interpretative decision, in the context of the legislative scheme at hand this was a key safeguard against an unjustified interference with possessions (see paragraph 50 above). In the event, however, the first applicant was not affected by that omission, since in his case the matter was not disputed. Indeed, when he appealed against the freezing order and sought to have it lifted, he did not do so on the grounds that the charges against him were baseless (see paragraphs 18, 22, 25, 27 and 30 above). Given that the Bulgarian courts' case-law on the point was unsettled at the time, it cannot be presumed that this argument would be seen as futile. In proceedings originating in an individual application the Court's task does not consist in reviewing domestic law in the abstract but in determining whether the way in which it was applied to the applicant gave rise to a breach of the Convention or its Protocols (see, among other authorities, *Perinçek v. Switzerland* [GC], no. 27510/08, § 136, ECHR 2015 (extracts); *Piras*, cited above, § 61; and *Uzan and Others*, cited above, § 198).

102. No issue arises with regard to the scope of the freezing order either. Since the first applicant could, on conviction, have all his assets confiscated and have any proceeds of the offence of which he stood accused forfeited (see paragraphs 9, 11 and 47 above), the value of his frozen assets did not exceed the financial penalty he risked (compare with *Piras*, § 56, and contrast *Džinić*, §§ 70-80, both cited above).

103. There is, however, one respect in which the review of the initial freezing of the first applicant's assets fell short of the requirements of Article 1 of Protocol No. 1. When first seeking to have the freezing order lifted, the first applicant pointed out that he needed unencumbered access to at least some funds on which to draw to meet the medical expenses of his disabled son (see paragraph 22 above). Neither the first-instance court nor the court of appeal dealing with his request engaged with that argument, which potentially had a crucial impact on the proportionality of freezing the entirety of the first applicant's assets. Although the argument was not very

specific – the first applicant did not tell the courts how much money he needed for those expenses, or provide any evidence or details in support of his assertion that he had no other sources of income –, the fact remains that it had been expressly raised and that it was of considerable importance. It is also true that the first applicant did not repeat the argument in terms on appeal. But in his appeal he said that he fully maintained his original arguments (see paragraph 25 above). The Plovdiv Court of Appeal's brief statement that the argument was irrelevant (see paragraph 26 *in fine* above) is unsurprising in view of the absence of any statutory provisions covering such situations (see paragraph 46 above). This absence is all the more striking when juxtaposed with the express provisions in the Criminal Code which shield the funds needed by a convicted person and his or her family for living expenses for one year from confiscation or the enforcement of a fine (see paragraphs 44 and 45 above). This is hard to reconcile with the need to afford those affected by such freezing measures procedures that make it possible to strike a fair balance between their rights and the public interest (see paragraph 96 above, and, *mutatis mutandis*, *Paulet*, cited above, §§ 67-68). Indeed, when recently legislating in a closely related domain, the Bulgarian legislature recognised the need to have regard to such matters: a 2005 statute providing for the forfeiture of proceeds of crime by way of proceedings before the civil courts expressly envisaged a possibility to permit payments out of assets frozen with a view to their forfeiture if this was necessary for medical treatment or other humanitarian needs (see *Nedyalkov and Others*, cited above, § 56).

104. The courts' omission to address the first applicant's argument does not, in the event, appear to have substantively affected him, since the Plovdiv Court of Appeal concomitantly decided, for other reasons, to unfreeze the half of the initially frozen assets that belonged to his wife (see paragraph 26 above). The total sum of money in the frozen bank accounts at the time of the freezing order (see paragraph 17 *in fine* above) was not negligible, and the applicants have not presented any evidence about the specific amount of money that they needed to take care of their disabled son. But this cannot, in itself, affect the above analysis, since it was the domestic courts' duty to satisfy themselves that the freezing of the first applicant's assets would not cause him more damage than that which inevitably flows from such measures. The Court has had occasion to say that although any seizure entails damage, the actual damage sustained by those affected by it should not be more extensive than that which is inevitable, if it is to be compatible with Article 1 of Protocol No. 1 (see *Borzhonov*, § 61; *Džinić*, § 68 *in fine*; and *Piras*, § 55 *in fine*, all cited above).

105. There has therefore been a breach of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

106. The applicants further complained that they had not had an effective remedy with respect to their grievance under Article 1 of Protocol No. 1. They relied on Article 13 of the Convention, which provides:

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

A. The parties' submissions

107. The Government submitted that neither of the two applicants had an arguable claim of a breach of Article 1 of Protocol No. 1, and that, in any event, they had had effective remedies with respect to the freezing of their assets. In support of this assertion, the Government reiterated the arguments which they made with respect to the exhaustion of domestic remedies. They went on to say, with reference to the possibility for the first applicant to bring a claim for damages under section 49 of the 1950 Act, that only unlawful property-control measures called for compensation, whereas nothing suggested that this had been the case with respect to the first applicant, in contrast with the situation of his wife. In any event, he could have sought compensation for the duration of the blocking of his assets, which had resulted from the duration of the criminal proceedings against him, by way of a claim for compensation under the dedicated length-of-proceedings remedy put in place in 2012.

108. The applicants reiterated their assertion that they had not had effective remedies with respect to the freezing of their assets. According to them, a claim for compensation in relation to the length of the criminal proceedings against the first applicant would only have concerned the length of the proceedings as such, not the duration of attendant restrictions on his property rights.

B. The Court's assessment

109. The second applicant was able successfully to challenge the freezing of her assets as unlawful and then to obtain compensation in that respect, which the Court found sufficient to make good the damage suffered by her and thus strip her of her victim status (see paragraphs 65-74 above). She cannot therefore validly claim not to have had at her disposal effective domestic remedies with respect to her grievance under Article 1 of Protocol No. 1. Her complaint under Article 13 of the Convention is hence manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

110. The first applicant, for his part, had at his disposal an apparently effective remedy with respect to the continued freezing of his assets, but resorted to it – successfully – nearly four years after the freezing (see paragraphs 85-86 above). This part of his complaint under Article 13 of the Convention is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 (compare with *İçyer v. Turkey* (dec.), no. 18888/02, §§ 90-91, ECHR 2006-I).

111. As for the remedies whereby the first applicant could challenge the initial freezing of his assets, their effectiveness was taken into account in the analysis of the merits of his complaint under Article 1 of Protocol No. 1 (see paragraphs 97-104 above). Although the part of his complaint under Article 13 of the Convention relating to those remedies is linked to that under Article 1 of Protocol No. 1, and must thus likewise be declared admissible, it is not necessary to examine those remedies also by reference to Article 13 (see, *mutatis mutandis*, *Džinić*, cited above, § 82; *C.M. v. France* (dec.), no. 28078/95, ECHR 2001-VII; and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 309, 28 June 2018).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

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

113. The first applicant sought 20,000 euros (EUR) in respect of the damage that he had allegedly suffered as a result of the prolonged freezing of his assets. He pointed out that throughout the whole period during which they had remained frozen he had been barred from drawing on even the minimum assets legally shielded from confiscation or the enforcement of a fine, and that during the first nine months he had been unable to rely even on the half of the family assets belonging to his wife (the second applicant), since during that time those had been frozen as well. The first applicant did not specify whether his claim was in respect of pecuniary of non-pecuniary damage, and did not submit any documents in support of it.

114. For her part, the second applicant sought EUR 10,000 in respect of the distress allegedly caused by the initial freezing of her half of the family assets and the resulting inability to take care of her disabled son. She argued that the domestic awards that she had obtained or could have obtained were

not sufficient to compensate that damage. She did not submit any documents in support of her claim either.

115. The Government noted that neither applicant specified whether their claims concerned pecuniary or non-pecuniary damage, or submitted any documents in support. In their view, the claims were exorbitant, and lower sums or even the mere finding of a breach would amount to sufficient just satisfaction.

2. The Court's assessment

116. Under the terms of Article 41 of the Convention, the Court may only award just satisfaction to an applicant if it "finds that there has been a violation of the Convention or the Protocols thereto" with respect to that applicant (see, *mutatis mutandis*, *Neumeister v. Austria* (Article 50), 7 May 1974, § 30, Series A no. 17, and *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 21 (i), Series A no. 14), and then also finds that the damage alleged to have been suffered by that applicant stems from that particular violation. In this case, no such findings have been made in relation to the second applicant, all of whose complaints were declared inadmissible (see paragraphs 4 and 74 above). It follows that her claim must be rejected.

117. By contrast, the first applicant, with respect to whom the Court found a breach of Article 1 of Protocol No. 1, is entitled to an award of just satisfaction. In view of the manner in which he framed his claim and the absence of any supporting documents, he must be seen as only seeking compensation with respect to non-pecuniary damage.

118. The breach found in relation to the first applicant only concerned the initial freezing of his assets rather than the whole period during which they had remained frozen and thus unavailable to him (see paragraphs 86 and 87 above). The breach was also purely procedural in character, based as it was solely upon the domestic courts' failure duly to review the proportionality of that initial freezing in the light of a key argument raised by the first applicant (see paragraphs 103 and 104 above, and compare with *Paulet*, cited above, § 73). Any anguish and frustration experienced by him on account of the absence of such review can be made good by an award of EUR 1,250.

B. Costs and expenses

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

119. The applicants sought reimbursement of:

(a) EUR 1,500 said to have been incurred by both of them in counsel's fees for their representation before the Court;

(b) EUR 368 said to have been incurred by the second applicant in counsel's fees for the cassation phase of the first proceedings under section 49 of the Obligations and Contracts Act 1950 (see paragraph 36 above); and

(c) 500 Bulgarian levs (BGN) said to have been incurred again by both applicants for the translation of their observations and claims.

120. In support of these claims, the applicants submitted two fee agreements, the first between the two of them and their counsel in the proceedings before the Court, and the second between the second applicant and her counsel in the proceedings before the Supreme Court of Cassation. When later filing the English translation of their observations and claims, the applicants enclosed with them an invoice for translation services.

121. The Government submitted that the claim in respect of counsel's fees for the proceedings before the Court was excessive. For their part, the counsel's fees for the cassation phase of the first proceedings under section 49 of the Obligations and Contracts Act 1950 had not been necessarily incurred, as those proceedings had not been directed against the proper defendant. As for the claim in respect of translation expenses, no supporting documents had been enclosed with it within the time-limit fixed for filing the applicants' observations and claims in Bulgarian, and no extension of time had been sought by them in relation to that.

2. The Court's assessment

122. As already noted in paragraph 116 above, in this case the Court has no competence to make an award under Article 41 of the Convention with respect to the second applicant. Her claims relating to (a) counsel's fees for the cassation phase of the first proceedings under section 49 of the Obligations and Contracts Act 1950, and (b) her share of the costs and expenses incurred for the proceedings before this Court must therefore be rejected.

123. By contrast, the first applicant, in relation to whom the Court found a breach of Article 1 of Protocol No. 1, is according to the Court's settled case-law entitled to the reimbursement of his costs and expenses, but only to the extent that these were actually and necessarily incurred and are reasonable as to quantum.

124. In view of the Government's last point, it is necessary, before going into those issues, first to determine whether the invoice substantiating the claim for translation expenses was filed within the time-limit laid down in Rule 60 § 2 of the Rules of Court. By the terms of that provision, applicants must submit the documents supporting their claims within the time-limit fixed for submitting their observations on the merits, unless the President of the Chamber directs otherwise. In this case, in line with the Court's usual practice, and as possible under Rule 34 § 3 (a), the President gave the applicants leave to file – and they did file – their observations on the

admissibility and merits and their claims first in Bulgarian, and then, within an additional time-limit of four weeks, a translation of those in English. The invoice for translation services was enclosed with the English translation. In those circumstances, it cannot be seen as having been submitted out of time.

125. The next question is whether the costs and expenses claimed by the first applicant were actually and necessarily incurred and are reasonable as to quantum. The rejection of many of his complaints as inadmissible (see paragraphs 4 and 86 above) calls for a certain reduction (see, among other authorities, *Glass v. the United Kingdom*, no. 61827/00, § 91, ECHR 2004-II; *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, § 169, 2 June 2016; and *Posevini v. Bulgaria*, no. 63638/14, § 100, 19 January 2017; see also paragraph 17 of the Practice Direction on Just Satisfaction Claims). Furthermore, the EUR 1,500 incurred in counsel's fees for the proceedings before the Court and the BGN 500 incurred for the translation of the observations and claims were, according to the materials submitted by the applicants, borne jointly by both of them. In the absence of any indication about the way in which they apportioned those between themselves, each must be considered to have borne half.

126. In view of all this and the materials in the Court's possession, it is appropriate to award the first applicant EUR 700, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the first applicant's complaints under Article 1 of Protocol No. 1 and Article 13 of the Convention, in so far as they concern the initial freezing of his assets, admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a breach of Article 1 of Protocol No. 1 with respect to the first applicant;

3. *Holds* that there is no need to examine the first applicant's complaint under Article 13 of the Convention relating to the remedies whereby he could challenge the initial freezing of his assets;

4. *Holds*

(a) that the respondent State is to pay the first applicant, 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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,250 (one thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 700 (seven hundred euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 7 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President