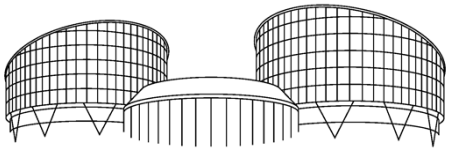

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STREZOVSKI AND OTHERS v. NORTH MACEDONIA

(Applications nos. 14460/16 and 7 others - see appended list)

JUDGMENT

Art 1 P1 • Control of the use of property • State-imposed standing charge payable to private heat suppliers by owners of flats disconnected from district heating system which supplies their residential buildings • State required to ensure that the impugned measure does not impose excessive burden on applicants, while allowing private heat suppliers to make potentially unjustified profits • Lack of objective assessment of indirect use of heating in each individual case • Domestic courts' failure to strike the requisite fair balance between the interests involved by applying sufficient procedural safeguards

STRASBOURG

27 February 2020

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 Strezovski and Others v. North Macedonia,

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

Ksenija Turković, *President,*
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Abel Campos, *Section Registrar,*

Having regard to:

the above applications (nos. 14460/16, 14958/16, 14962/16, 14966/16, 27884/16, 16064/17, 20229/17 and 30206/17) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eight Macedonians/citizens of the Republic of North Macedonia, Mr Strezo Strezovski ("the first applicant"), Mr Cane Nikoloski ("the second applicant"), Mr Aco Spasovski ("the third applicant"), Mr Josip Juvan ("the fourth applicant"), Mr Zoran Kostovski ("the fifth applicant"), Ms Trajanka Nakevska ("the sixth applicant"), Mr Enver Iseni ("the seventh applicant") and Ms Sonja Nalbanti-Dimoska ("the eighth applicant"), on the various dates indicated in the appended table;

the letter of 2 May 2018 by the first applicant's wife, Ms V. Strezovska, informing the Court that the first applicant had died on 4 April 2017 and indicating her interest in continuing the application in his name;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaint under Article 1 of Protocol No. 1 and to declare inadmissible the remainder of the applications pursuant to Rule 54 § 3 of the Rules of Court

the parties' observations;

Having deliberated in private on 4 February 2020,

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

INTRODUCTION

1. The applicants, who are all owners of flats disconnected from the district heating network supplying their respective residential buildings, complained that the obligation to pay private heat suppliers a standing charge introduced by the State had violated their right to the peaceful enjoyment of their possessions (flats) under Article 1 of Protocol No.1.

THE FACTS

2. The applicants live in Skopje. Ms Strezovska and the seventh applicant were represented by Mr A. Varela, the second and fifth applicants were represented by Ms D. Chakarovska-Grozdanovska, and the eighth applicant was represented by Mr I. Spirovski, all lawyers practising in Skopje. The remaining applicants were granted leave to represent themselves.

3. The Government were represented by their Agent, Ms D. Djonova.

4. All the applicants are owners of (and live in) flats in residential buildings (*колективни објекти за домување*) in Skopje connected to a district heating network operated by private heat suppliers. Their units have either never been connected to the district heating network in the building (in application no. 20229/17, the seventh applicant installed his own heating system in his flat before the district heating network in his building became operable for other apartments) or were disconnected from it before 30 July 2012 (see paragraphs 5 and 13 below), either at the request of the former owner of the flat (application no. 30206/17, the eighth applicant) or by the applicants (the remaining applications, between 2002 and 2011).

5. On 30 July 2012 the Heat Energy Supply Regulations ("the 2012 Regulations") were adopted by the Energy Regulatory Commission, a State body whose members are appointed by Parliament. Under those regulations, disconnected users were required to pay to private heat suppliers an annual standing charge (*надоместок за ангажирана моќност*), payable in monthly instalments (section 53(2) of the 2012 Regulations, see paragraph 12 below).

6. On 22 May 2013 the Constitutional Court declared that provision compatible with the Constitution. It held that disconnected units in buildings were indirect (*пасивни*) consumers of heat from pipes passing through them or from neighbouring and other units in the building connected to the district heating network (see paragraph 16 below).

7. Private heat suppliers issued invoices requiring the applicants to pay the standing charge subsequent to its introduction on 1 October 2012 (see section 66 of the 2012 Regulations, paragraph 13 below). After the applicants had failed to pay, a notary public granted the suppliers' requests for enforcement of the unpaid invoices and issued payment orders regarding several unpaid monthly instalments of the standing charge (*решение за дозвола за извршување*). The monthly instalments payable by the applicants were in the range of between 5 and 29 euros (EUR).

8. The applicants opposed the payment orders (*приговор*) before the Skopje Court of First Instance arguing (i) that they had not entered into an agreement with the supplier; (ii) that the charge had been introduced with the 2012 Regulations, notwithstanding that such an obligation could only be introduced by primary legislation (*закон*); (iii) that the Energy Act did not

include the terms "disconnected users" and "indirect consumers" introduced by the 2012 Regulations; (iv) that their units had either never been connected or had been disconnected from the district heating system before the 2012 Regulations entered into force; and (v) that they received either little (in the case of the eighth applicant) or no heat whatsoever (in the case of the remaining applicants) since no pipes passed through the flats in question and/or all the neighbouring flats were also disconnected. In this connection, the fifth, sixth and seventh applicants (applications nos. 16064/16, 27884/16 and 20229/17) argued that their units were on the ground or uppermost floor of their buildings and were surrounded by flats disconnected from the district system. Some applicants claimed that their units were heated better than those heated through the district system, as a result of which they lost heat, instead of receiving any. The amounts claimed had not been based on an objective assessment of any heat received from other flats. In that connection, they requested that the courts carried out an on-site inspection. The fifth applicant submitted as evidence an expert report which stated that his flat received no heat whatsoever from the district heating system in the building either through the pipes or by conduction.

9. Following the applicants' objections, all the cases were decided by the Skopje Court of First Instance and Court of Appeal. By separate decisions (Pl.P. 1486/13; 1487/14; 1794/14; 1824/14; 1907/14; 2133/14; 2837/14 and 977/15) given between December 2014 and February 2017 (final judgments rendered between September 2015 and February 2017) both courts dismissed the applicants' objections and confirmed the orders. Referring to the findings of the Constitutional Court (see paragraphs 6 and 17) and without carrying out on-site visits (except in the case of the sixth applicant) or ordering an expert assessment, the courts held that the applicants were "indirect consumers" of heat distributed in the building through the district heating network. Since there were other units in the buildings heated through that network ("direct consumers"), the applicants were to be considered "indirect consumers" and were accordingly obliged to pay the standing charge as specified in section 53(2) (and section 66) of the 2012 Regulations. The courts further held (in the case of the first, fourth, fifth and seventh applicants) that "all (disconnected) units in a building connected to a district heating network [were] obliged to pay the standing charge irrespective of their position or the composition or construction of the internal installation".

10. According to the Government, 12,000 of 60,000 flats in residential buildings were affected, having been disconnected from the district heating network.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Civil Proceedings Act 2005

11. Section 400 of the Civil Proceedings Act 2005 provides that proceedings may be reopened if the Court has found a violation of the Convention. In such proceedings, the domestic courts are required to comply with the provisions of the final judgment of the Court.

B. Heat Energy Supply Regulations 2012, adopted by the Energy Regulatory Commission and published in Official Gazette no. 97/12 ("the 2012 Regulations")

12. Under section 53(2) of the 2012 Regulations, disconnected users in residential buildings equipped with a single joint meter (*каде распределбата на надоместокот се врши преку еден колективен мерен уред*) were required to pay a fixed heating standing charge, the amount of which was to be determined in accordance with the heat tariff system (see paragraph 14 below). Under section 53(3), the charge was not payable if all the units linked to a single meter had been disconnected for one or more heating seasons or if the heat allocator had registered no heat consumption.

13. Under the transitional and final provisions of the 2012 Regulations (section 66), all previously disconnected users in residential buildings were required to enter into an agreement with the supplier and connect to the district network by 1 October 2012 at the latest. Failure to do so would result in having to pay the standing charge.

C. Tariff system for the sale of heat energy of 12 July 2013, adopted by the Energy Regulatory Commission and published in Official Gazette no. 99/2013 ("the heat tariff system")

14. Under the heat tariff system, the standing charge was a fee related to the available heat capacity at meter level point (section 2). The standing charge for households at meter level point was calculated on the basis of the surface area of the unit (section 37).

D. Heat Energy Supply Regulations 2019, adopted on 23 March 2019 (effective as of 1 April 2019) and further amended on 1 August 2019 by the Energy Regulatory Commission (Official Gazette nos. 65/2019 and 162/2019, "the 2019 Regulations")

15. Following the entry into force of the new Energy Act in May 2018, the Energy Regulatory Commission adopted new regulations to replace the 2012 Regulations (section 65). Under the 2019 Regulations, consumers are entitled to disconnect their flats in residential buildings from the district heating network if the owner of the unit demonstrates that the planned heating system would be more efficient and environmentally friendly than the heating provided by the district system. In the event of a dispute with the heat supplier, the owner can refer the matter to the Energy Regulatory Commission for a decision. Owners not living in such units are required to pay the standing charge. Owners of flats, which are disconnected from the district heating system, are not required to pay the standing charge if they provide valid proof (such as an identification card and the title deeds or lease) that they, *inter alia,* live in or use (rent) the unit. The latter category of owners can challenge before the Energy Regulatory Commission a decision of the heat supplier rejecting their request for exemption from paying the standing charge (section 54).

16. According to the Energy Regulatory Commission, disconnected users eligible under the above provision have not been required to pay the standing charge since April 2019.

E. Practice of the Constitutional Court

17. By a decision (U.br.125/2012) of 22 May 2013 (given following an application by three people, including the first applicant) the Constitutional Court declared section 53(2) of the 2012 Regulations compatible with the Constitution. Referring to the "specific nature of collective housing (*колективни објекти за домување*)", the court held that "owing to the transmission of heat through the substance from a warmer to a cooler place (heat conduction)" and pipes passing through the flats, disconnected units "indirectly" obtained heat from units in the building connected to the district heating network. Accordingly, disconnected units obtained heat at the expense of units using the service provided through the district system installed in the building and were to be considered "indirect consumers of heat obtained from neighbouring and other flats in the building" connected to that system. According to the court, it was "clear" that in collective residential buildings "consumers disconnected from the district heating system objectively use certain heat ... which justifies that they pay for it ... Disconnected users are required under section 53(2) of the [2012 Regulations] to pay for a service which ... regardless of the fact that they are

disconnected from the system, they receive. It is accordingly justified that they pay for it."

18. The court also held that section 66 of the 2012 Regulations had introduced a deadline for already disconnected users to connect to the district heating system (1 October 2012) or else risk paying the standing charge. Since that provision was of a provisional nature and had ceased to apply after that time-limit had expired, the court held that it was no longer valid and accordingly rejected that part of the application.

19. In a dissenting opinion, one judge stated that the Energy Act contained no provisions relating to the standing charge. Accordingly, its introduction by the 2012 Regulations had been contrary to the Constitution. In this connection, he referred to an earlier decision of the Constitutional Court (U.br.148/2008) declaring a piece of secondary legislation introducing a similar charge unconstitutional. He concluded that the payment of the charge was an issue of fact that had to be determined by the civil courts.

F. Legal opinion of the Supreme Court of 20 February 2018

20. Following an application alleging inconsistent domestic practice, the Civil Division of the Supreme Court adopted a legal opinion, holding as follows:

> "... consumers who have never been connected to a district heating system, have never entered into an agreement with the supplier and [whose] unit has not been equipped with a heating installation by the latter cannot be regarded as disconnected indirect consumers and are not required to pay the standing charge."

That approach concerned flats in residential buildings which were not pre-equipped with a heating installation, flats using an independent (individual) heating system before the supplier equipped some units in the building with a heating installation (which did not pass through the flats in question) and consumers who had never entered into an agreement with the heat supplier. The court stated that the above category of consumers had never used the service provided by the supplier and could not therefore seek its discontinuation. Accordingly, they were neither direct nor indirect consumers.

II. OTHER MATERIALS

21. The Government submitted a report drawn up in 2019 by the Academy of Sciences and Arts of North Macedonia before the 2019 Regulations (see paragraphs 15 and 16 above) entered into force. The report is a comprehensive study of the national legislation regarding the heating standing charge and contains several conclusions and recommendations. The report finds, *inter alia*, that the 2012 Regulations dealt with

disconnected units collectively rather than individually, given that the standing charge applied to all such units irrespective of whether they were heated more efficiently than units connected to the district heating network. In that connection, the report suggests that the new regulations should allow units heated more efficiently – an issue to be determined in appropriate proceedings before an independent commission – to discontinue the service provided through the district heating system. It also points to the possibility of a full or partial exemption from the obligation to pay the standing charge in other situations, such as if an unit has more exterior walls, good quality insulation, and so forth.

THE LAW

I. JOINDER OF THE APPLICATIONS

22. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 OF THE CONVENTION

23. The applicants complained that the obligation to pay the standing charge had violated their property rights under Article 1 of Protocol No. 1 of 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. Admissibility

1. The victim status of the applicants

(a) The parties' submissions

(i) The Government

24. The Government contested the victim status of the applicants.

25. As regards Ms Strezovska, they submitted that her letter informing the Court of her husband's (the first applicant) death had reached it over a year after he had died, and six months before notice of the case had been

given. Furthermore, she had failed to demonstrate that she had any legitimate interest in pursuing the application.

26. The Government further argued that all the applicants had lost their victim status following the introduction of the 2019 Regulations (paragraphs 15 and 16 above). This was because they were all owners of the disconnected units in which they lived. Accordingly, they were eligible to be exempted from the obligation to pay the standing charge under the 2019 Regulations.

(ii) The applicants

27. The first, fourth and seventh applicants contested the Government's objection, arguing that 2019 Regulations did not apply to the standing charge payable under the 2012 Regulations. In this connection, Ms Strezovska submitted a copy of a (non-final) judgment of the Skopje Court of First Instance dated 16 July 2019 stating that she was liable to pay the monthly instalments of the standing charge for the period January to July 2018 since she owned the flat and had lived there after the first applicant's death. The fourth applicant confirmed, however, that the invoices he had received regarding the standing charge for the months subsequent to the entry into force of the 2019 Regulations had been cancelled.

(b) The Court's assessment

(i) The standing of Ms Strezovska

28. Where an applicant has died after lodging an application, the Court has accepted that the next of kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014). This is particularly the case in applications which were introduced by the applicant him or herself and were only continued by his or her surviving spouse after his or her subsequent death (see *Dalban v. Romania* [GC], no. 28114/95, ECHR 1999-VI).

29. Having regard to the request by Ms Strezovska, as the first applicant's widow, to pursue the proceedings (see above), and her material interest based on the direct effect on her pecuniary rights (see paragraph 27 above), which the Government did not contest, the Court considers that she has the requisite standing under Article 34 of the Convention to continue the application in his name (see *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 and 86 others, § 39, 29 July 2010, and *Stojkovic v. the former Yugoslav Republic of Macedonia*, no. 14818/02, § 25, 8 November 2007). That she did not promptly bring the first applicant's death to the Court's attention is of no relevance for her standing.

Consequently, the Government's objection under this head must be dismissed.

(ii) The victim status of all the applicants

30. As the Court has repeatedly held, a decision or measure favourable to an applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for the breach of the Convention (see *Moon v. France*, no. 39973/03, § 29, 9 July 2009). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Milić and Nikezić v. Montenegro*, nos. 54999/10 and 10609/11, § 73, 28 April 2015).

31. The Court notes that the present case concerns the alleged violation of the applicants' right to the peaceful enjoyment of their possessions owing to the requirement to pay the heating standing charge under the 2012 Regulations. These regulations were replaced by the 2019 Regulations. Section 54 of the 2019 Regulations provides that consumers that are already disconnected from the district heating system in residential buildings can be exempted from the obligation to pay the standing charge under certain conditions (see paragraph 15 above). These regulations entered into force on 1 April 2019, and since that date consumers eligible under this exemption clause have no longer been required to pay the standing charge (see paragraphs 16 and 27 above). However, there is nothing to suggest that this provision applies to the monthly instalments of the standing charge payable under the 2012 Regulations. Furthermore, the Government did not submit any example of domestic practice in which that provision had been interpreted so as to apply to the obligation for payment of the standing charge prior to the introduction of the exemption clause under the 2019 Regulations. In such circumstances, while it is likely that the 2019 Regulations lay a basis for the applicants' exemption from the obligation to pay the standing charge as of 1 April 2019, they cannot be interpreted as an acknowledgment or redress for the alleged violation of the Convention.

32. In view of the foregoing, the Court concludes that the applicants can claim to be "victims" of a breach of their right to the peaceful enjoyment of their possessions as regards the standing charge payable under the 2012 Regulations. Consequently, the Government's objection must be dismissed.

2. Exhaustion of domestic remedies in respect of the seventh applicant

(a) The parties' submissions

(i) The Government

33. In a document dated 9 May 2018 containing their additional observations and comments on the seventh applicant's just satisfaction claims, the Government, for the first time, objected that he had failed to sue the private heat supplier for unjust enrichment (*стекнување без основ*). In support of their objection, they relied on the Supreme Court's legal opinion (paragraph 20 above) that had been adopted subsequent to their initial observations on the admissibility and merits of the case of 17 January 2018. They submitted that, in the alleged circumstances of his case (paragraph 4 above), the seventh applicant was entitled by law to bring such a claim against the supplier. To show the effectiveness of that remedy, they submitted copies of several final court judgments in cases where claimants had successfully sued a private electricity supplier for unjust enrichment regarding a standing charge, which the competent (administrative and judicial) authorities (in separate proceedings) had found to be in violation of competition law. To show that a claim for unjust enrichment would not lack any prospect of success, they submitted copies of judgments postdating the Supreme Court's legal opinion in which the same courts (paragraph 9 above) had held that claimants in similar circumstances to the seventh applicant were not required to pay the standing charge to the heat supplier (for period covered by the 2012 Regulations).

(ii) The seventh applicant

34. The seventh applicant contested the Government's objection, arguing that the remedy suggested (an unjust enrichment claim) could not compensate him for the payments ordered in the proceedings at issue. Furthermore, the judgments submitted concerning the private electricity supplier were irrelevant as they concerned different issues. The remaining judgments submitted by the Government made no mention of the Supreme Court's legal opinion. In the latter connection, he submitted, *inter alia*, three final judgments of the Skopje Court of Appeal (*Gz.3268/17; Gz.4066/17 and Gz.4945/17*) dated between February and November 2018 dismissing appeals brought by him, notwithstanding the fact that he had submitted the Supreme Court's legal opinion as evidence.

(b) The Court's assessment

35. The Court would like to note at the outset that, having regard to the explanation provided by the Government as to why they had not promptly relied on the existence of the civil avenue of redress (see paragraph 33 above), they are not estopped from raising the objection of non-exhaustion

of domestic remedies, in particular, based on the failure of the seventh applicant to sue the district heat supplier for unjust enrichment (see, conversely, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 52, 15 December 2016).

36. The general principles regarding the exhaustion rule under Article 35 § 1 of the Convention are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-77, 25 March 2014, with further references, in particular to *Akdivar and Others v. Turkey*, 16 September 1996, *Reports of Judgments and Decisions* 1996−IV).

37. In that connection, the Court finds it appropriate to reiterate that in order to be effective, a remedy must be capable of remedying directly the state of affairs at issue and must offer reasonable prospects of success. There is no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal (see *Vučković and Others*, §§ 73-74, and *Akdivar and Others*, §§ 67 and 71, both cited above).

38. Furthermore, as regards the distribution of the burden of proof in the area of the exhaustion of domestic remedies, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. However, once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others*, § 68, and *Vučković and Others*, § 77, both cited above).

39. Turning to the present case, the Court does not consider that a claim for unjust enrichment against the private heat supplier would be an effective remedy in the circumstances of the seventh applicant. In this connection, it notes that the Government have not provided any examples of domestic practice in which a legal opinion by the Supreme Court served as a legal basis for such a claim. The examples submitted by the Government do not allow the Court to hold otherwise for the following reasons.

40. The case-law concerning claims for unjust enrichment lodged against the electricity provider cannot be regarded as a valid reference for the present case because those claims were made on the basis of final court judgments, unlike in the present case, where such a claim would rely on the Supreme Court's legal opinion. No argument or evidence was submitted as

to the legal nature of such an opinion and whether it was binding. Furthermore, and on the basis of the material submitted by the parties, the Court notes that discordant decisions by the same courts postdating the Supreme Court's opinion of 22 February 2018 existed simultaneously. Moreover, those courts dismissed the seventh applicant's identical claims notwithstanding the fact that he had brought that opinion to their attention.

41. In view of the foregoing, the Court considers that the Government have not substantiated that a claim for unjust enrichment against the district heat supplier would have been an available, let alone effective, remedy in the present case. Consequently, their objection on the grounds of non-exhaustion of domestic remedies with respect to the seventh applicant has to be rejected.

3. Whether the applicants have suffered a significant disadvantage

(a) The parties' submissions

42. The Government submitted that the Court's assessment of the case should be limited to the standing charge, which the applicants had been required to pay on a monthly basis (free of the court costs related to the civil proceedings at issue). In that connection, they maintained that the highest monthly instalment payable by the applicants had been EUR 21, which had been insignificant given the standard of living in the respondent State. Furthermore, any damage that that requirement had entailed had been insignificant in view of the applicants' "privilege" of being able to reconnect their units to the district heating system or to benefit indirectly from the heat, which that system produced in the building.

43. The seventh and eighth applicants contested the Government's objection, arguing that the amount of the standing charge had not been negligible (and should take into account trial costs). In this connection, the eighth applicant maintained that she had been required to pay the standing charge indefinitely, to avoid enforcement action, which had been a significant financial burden for her. Furthermore, the issue at stake concerned a matter of principle of considerable importance. Lastly, the possibility to reconnect their dwellings to the district heating system could neither be regarded as a "privilege", nor were both issues (payment of the standing charge and reconnection) comparable.

(b) The Court's assessment

44. The relevant part of Article 35 § 3 of the Convention reads as follows:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> ...

> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

45. The Court has considered the rule contained in Article 35 § 3 (b) of the Convention to consist of three criteria. Firstly, whether the applicant has suffered a "significant disadvantage"; secondly, whether respect for human rights compels the Court to examine the case; and thirdly, whether the case has been duly considered by a domestic tribunal (see *Savelyev v. Russia* (dec.), no. 42982/08, 21 May 2019, § 25).

46. The first question of whether the applicant has suffered any "significant disadvantage" represents the main element. It applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see *Adrian Mihai Ionescu v. Romania* (dec), no. 36659/04, 1 June 2010; *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010; and *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011). The assessment of this minimum level is, in the nature of things, relative, and depends on all the circumstances of the case. The level of severity must be assessed in the light of the financial impact of the matter in dispute and the importance of the case for the applicant (see *Burov v. Moldova* (dec.), no. 38875/03, 14 June 2011, § 25).

47. The present case concerns civil proceedings in which the applicants unsuccessfully challenged the payment of several monthly instalments of the standing charge. The highest single monthly instalment payable by the applicants did not exceed EUR 30 (see paragraphs 7 and 42 above). The Court notes that none of the parties submitted information concerning the financial situation of the applicants. Nevertheless, the Court does not consider that that sum, as such, would have had a significant effect on them (see *Jovanovska and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 14001/13 and 22883/14, 14 November 2017, § 29).

48. However, the Court considers that the applicants' grievances in the present case should be seen in the overall context in which the payment requirement in question operated. In this connection, it is to be noted that the obligation to pay the standing charge was not a one-off requirement extinguished by the proceedings at issue, but rather one of a recurrent nature that operated within the framework of the 2012 Regulations. The applicants were required to pay the standing charge while those regulations were in force, that is, between 1 October 2012 and 1 April 2019. The overall amount cannot be said to have been insignificant in the light of the standard of living in the respondent State.

49. In addition, the Court also considers that the present case satisfies the safeguard clause contained in this admissibility criterion compelling the Court to continue the examination of the application, even in the absence of

any significant disadvantage suffered by the applicant, if respect for human rights as defined in the Convention and the Protocols thereto so requires. This is because it raises questions of a general nature affecting other persons in the same position as the applicants. In this connection, it is noteworthy that, according to the Government, there are 12,000 units affected on the basis that they have discontinued district heating, whose owners are likely to have been required to pay the standing charge in question. Furthermore, there are over 120 similar cases pending before the Court. When giving notice of the applications to the Government, the Court indicated that they were potentially leading cases (see, *mutatis mutandis*, *Finger v. Bulgaria*, no. 37346/05, § 75, 10 May 2011).

50. In view of the foregoing, the Court does not consider it necessary to determine whether the case has been duly considered by a domestic tribunal.

51. It follows that the Government's objection must be rejected.

4. The Court's conclusion on admissibility

52. The Court notes that the case is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

53. The seventh and eighth applicants reiterated that the interference in question had not been in accordance with the law because the standing charge had been introduced by the 2012 Regulations, as secondary legislation. The Energy Act did not contain any provisions in that regard. The eighth applicant further criticised the Constitutional Court's decision (see paragraphs 17-19 above) as being inconsistent with its earlier decision finding, in similar circumstances, that the heating standing charge could not be introduced by secondary legislation.

54. They also contested the general interest grounds which, in the Government's view (see paragraph 58 below), the standing charge had pursued. All those grounds had aimed to protect the commercial interests of the private heat suppliers (at the expense of consumers) rather than any public interest. Flats had been disconnected from the district heating network out of the heating season, so the supplier had had timely information about the number of consumers and could have made the necessary adjustments to the heat supply. Furthermore, the standing charge had neither been a tax nor a penalty payable to the State. The Government's argument that it had represented "payment for the privilege to be disconnected from the system" demonstrated that it had been regarded as a

"tax" or "penalty" payable to a private company. Any argument that it had related to the indirect use of heat distributed through that system pertained to an issue of fact that the domestic courts had not undertaken to establish. In any event, the domestic courts in their decisions had not identified any public interest to justify the standing charge.

55. The eighth applicant further argued that in her case the 2012 Regulations had been applied retroactively given the fact that her flat had been already disconnected from the district heating system by the previous owner in 2011, before the regulations had entered into force. Furthermore, the domestic courts had applied the 2012 Regulations in such a manner that they had considered the standing charge a public fee payable to the supplier, which could not be contested. Accordingly, any prospect of success in the proceedings at issue had been merely theoretical and illusory. Lastly, she maintained that the State's margin of appreciation in regulating commercial activities based on the rules of competition in a regulated market, as it was in the present case, was narrower than in an area of housing with sensitive aspects of social justice. The State should not impose on residents a particular source of heat, but rather should allow free choice based on reasonable factors.

56. The remaining applicants, who were at the time represented by a lawyer of their own choosing, did not submit timely observations in compliance with the Rules of Court.

(b) The Government

57. The Government acknowledged that the requirement to pay the standing charge had amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions. It had been introduced by the 2012 Regulations, adopted pursuant to the Energy Act, and had become payable after those regulations had entered into force. The Constitutional Court had confirmed that those regulations were compatible with the law and the Constitution (see paragraphs 17 and 18 above). Accordingly, the interference in question had been in accordance with the law.

58. The requirement to pay the standing charge had been justified not only because disconnected consumers used heat provided in the building from the district system (for the reasons advanced by the Constitutional Court, see paragraph 17 above), but it also aimed to ensure a safe, secure and efficient heat supply, a matter of public interest. Disconnection from the district heating system affected the energy balance in the building and reduced heating efficiency. The standing charge had aimed to offset the adverse effects of the use of heat by disconnected users, had represented a payment for their privilege to disconnect (and remain as such) from the district system, had been an attempt to prevent a disconnection spiral by other consumers in the building, and had ensured protection of the consumers that used heat distributed through the district system. The

Government emphasised that the charge had neither been "a tax" nor "a penalty" within the meaning of the invoked provision of the Convention. Furthermore, a similar charge had existed in several States in the region, which reflected the trend at the time.

59. According to the Government, when moving into the buildings the applicants had been aware or ought to have been aware of the heating system in the building and what their obligations were as tenants. The standing charge also included a fee for the heating of the communal parts of the building (such as stairways and corridors) used by all residents irrespective of whether they themselves used heat provided by the district suppliers. Furthermore, the amount had been minor in relation to the possibility to reconnect to the system, which was offered to such consumers for free.

60. The Government concluded that the introduction of the standing charge by the 2012 Regulations and the manner in which that requirement had been interpreted and implemented in the applicants' cases had not amounted to a violation of their property rights. Referring to the eighth applicant, they argued that the judicial procedures at issue, which had involved litigation between private parties, had contained the necessary procedural safeguards under Article 1 of Protocol No.1 to the Convention. Furthermore, the State had a wide margin of appreciation in this sphere and the standing charge had not disturbed the balance between the individual and general interest, namely the stability of the energy system and the safe and efficient supply of heat to consumers connected to that system.

2. The Court's consideration

(a) General principles

61. The essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions. However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, even in cases involving litigation between individuals and companies, those positive obligations may require the State to take the measures necessary to protect the right of property. This means, in particular, that the States are under an obligation to provide judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any cases concerning property matters (see *Anheuser - Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I, and *Bistrović v. Croatia*, no. 25774/05, § 33, 31 May 2007).

62. The boundaries between the State's positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analysed in terms of a positive duty of the State or in terms of interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In both contexts, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (see *Kotov v. Russia* [GC], no. 54522/00, § 110, 3 April 2012 and *Arzhiyeva and Tsadayev v. Russia*, nos. 66590/10 and 3773/11, § 49, 13 November 2018).

(b) Application of these principles to the present case

63. The Court will determine whether the conduct of the respondent State – regardless of whether that may be characterised as interference or failure to comply with its positive obligation, or a combination of both - was justifiable in the light of the applicable principles.

(i) The applicable rule

64. The Court notes that the Government acknowledged that the imposition of the heating standing charge on the applicants, as owners of flats disconnected from the district heating system, had amounted to an interference with their right to the peaceful enjoyment of their possessions. The Court notes that the standing charge was introduced by the Energy Regulatory Commission, a State body. Whereas the charge did not affect the applicants' right to dispose of (to pledge, to lend or to sell) their flats, it imposed a financial burden on the applicants directly related to the heating of the flats and capable of affecting the exercise of their right to use and their possession of the flats. Accordingly, and to the extent that the charge was a result of State regulation, the Court considers that its continuing application (see paragraphs 31 and 48 above) constituted a means of State control of the use of the applicants' property within the meaning of the second paragraph of Article 1 of Protocol No. 1.

65. In addition, the Court notes that the impugned proceedings concerned standing charge-related-disputes between the applicants and the private heat suppliers, the latter being the recipients of the charge. The Court's duty under Article 19 of the Convention to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, requires it to examine whether the way in which the domestic courts applied the system of payment of the standing charge have infringed the applicants' rights and freedoms protected by the Convention. As noted in paragraph 62 above, regardless of whether the situation falls to be analysed in terms of the

respondent State's negative or positive obligation, the applicable principles are similar.

66. The Court needs to examine whether the system in which the heating standing charge operated under the 2012 Regulations was compatible with Article 1 of Protocol No. 1, that is to say whether it was lawful, in the general interest and proportionate, that is, whether it struck a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I).

(ii) Whether the impugned measure was "provided for by law"

67. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see *Bradshaw and Others v. Malta*, no. 37121/15, § 52, 23 October 2018). When speaking of "law", Article 1 of Protocol No. 1 alludes to a concept which comprises statutory law, as well as case-law (see *Brezovec v. Croatia*, no. 13488/07, § 60, 29 March 2011).

68. In the present case, the Court agrees with the Government (see paragraph 57 above) that the standing charge was introduced under section 53(2) of the 2012 Regulations. It was secondary legislation, which the Energy Regulatory Commission, a State body, adopted pursuant to the Energy Act, as confirmed by the Constitutional Court (see paragraph 17 above),. It applied to all units disconnected from the district heating system in residential buildings equipped with a single joint meter (see paragraph 12 above). Section 66 of those regulations extended that requirement to all previously disconnected users, including the applicants (see paragraph 13 above). The 2012 Regulations became binding after they had been published in the Official Gazette.

69. Accordingly, the Court is satisfied that the interference in question was "lawful" within the meaning of Article 1 of Protocol No. 1 of the Convention.

(iii) Whether the measure pursued a "legitimate aim in the general interest"

70. A measure aimed at controlling the use of property can only be justified if it is shown, *inter alia*, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international

judge to appreciate what is in the "general" or "public" interest (see *Bradshaw and Others*, cited above, § 54).

71. In the present case, the Government identified the safe, secure and efficient heat supply as the aim in the general interest pursued by the standing charge. In that connection, they referred to the effect that disconnected users had on the balance of the energy sector and the quality of heat supplied to users connected to the district heating system in residential buildings (see paragraph 58 above).

72. The Court observes that the public interest invoked by the Government was not referred to by any of the courts dealing with the issue. Indeed, in the decision finding section 53(2) of the 2012 Regulations compatible with the Constitution, the Constitutional Court did not go beyond noting that the requirement to pay the standing charge was related to the heat that the disconnected consumers used from units connected to the district heating system in the buildings. That court considered the standing charge as the price which disconnected users were required to pay for heat received indirectly from other units in the buildings heated by the district system (see paragraph 17 above). The courts of general jurisdiction that decided the applicants' civil claims followed that approach and confirmed the findings of the standing charge as the price for the heat received by the applicants (see paragraph 9 above).

73. The Court does not consider that the rationale of the standing charge identified by the domestic courts is necessarily inconsistent with the public interest invoked by the Government. Both concepts are not mutually exclusive. This is because the indirect use of district heating by disconnected users, in particular if it concerns a considerable share of the affected market, as in the present case (see paragraph 10 above), can be regarded as a factor capable of affecting the stability of the energy sector as a whole. Furthermore, the standing charge applied to a specific category of disconnected users in residential buildings (see paragraph 12 above). In the Court's opinion, it is not unreasonable that "the specific nature of collective housing" (see paragraph 17 above) has a bearing on the efficiency of the district heating system at building level.

74. That the respondent State amended its legislation in 2019 so that that category of disconnected users is no longer required, under certain conditions, to pay the standing charge (see paragraph 15 above), does not necessarily undermine the public interest invoked by the Government. It can be seen in the context of the State's right to exercise its margin of appreciation in this sphere, where the operation of specific legislation has wide-reaching consequences for numerous individuals (see *Fleri Soler and Camilleri v. Malta*, no. 35349/05, § 76, ECHR 2006-X).

75. Given that the notion of "public interest" is necessarily extensive and that States enjoy certain margin of appreciation to define what is "in the public interest" (see *Jahn and Others v. Germany* [GC], nos. 46720/99

and 2 others, § 91, ECHR 2005-VI), the Court is ready to accept that the obligation to pay the heating standing charge imposed on the applicants whose flats were disconnected from the district heating system can be regarded as having pursued the legitimate aim of ensuring a safe, secure and efficient heat supply.

(iv) Principle of "fair balance"

76. Both an interference with the peaceful enjoyment of possessions and an abstention from action must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving the alleged violation of that Article the Court must, therefore, ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate and excessive burden (see *Broniowski v. Poland* [GC], no. 31443/96, § 150, ECHR 2004-V; *Zolotas v. Greece (no. 2)*, no. 66610/09, § 40, ECHR 2013 (extracts); and *Dickmann and Gion v. Romania*, nos. 10346/03 and 10893/04, § 90, 24 October 2017).

77. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the conditions of the measure, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on one's property rights is neither arbitrary nor unforeseeable. Uncertainty - be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct (see *Broniowski,* § 151, and *Bradshaw and Others*, § 56, both cited above).

78. In the present case, all the applicants are owners of flats in residential buildings connected to a district heating network. Their units had been disconnected from that system before the 2012 Regulations entered into force, either at the request of the former owner or by the applicants (see paragraph 4 above). At that time, there were no regulations requiring the payment of a heating standing charge. As noted above, such a requirement was introduced, for the first time, with the 2012 Regulations. Accordingly, at the relevant time the applicants could not have anticipated with any reasonable certainty that there would be, or the extent of, a standing charge imposed in the future.

79. The applicants were required to pay the standing charge from 1 October 2012 onwards. There is nothing to indicate that that requirement applied retroactively. It remained payable for at least six and a half years, that is to say until 1 April 2019, the date of entry into force of the 2019

Regulations, which, as noted above, seems to provide a basis for the applicants' exemption from the obligation to pay the standing charge after that date (see paragraphs 26, 27 and 31 above). As noted above (see paragraph 48 above), the overall financial burden on the applicants cannot be regarded as insignificant.

80. The Court notes that the monthly instalments of the standing charge differed for each applicant (see paragraph 7 above). In the absence of any explanation by the parties, it appears that that difference was related to the different surface area of each unit, as a determinative factor for the calculation of the standing charge specified in the heat tariff system (see paragraph 14 above).

81. On the other hand, it has not been argued that the regulatory framework that operated under the 2012 Regulations identified any other factor related to the disconnected units relevant for the calculation of the standing charge, unlike the current system under the 2019 Regulations (see paragraph 15 above). Similarly, there is nothing to suggest that that framework allowed and set any conditions under which such units could seek a full or partial exemption from paying the standing charge.

82. The above elements (paragraphs 78-81 above) must be weighed against the interests at play in the present case.

83. In that context, the Court notes that the judicial authorities that dealt with the issue justified the payment of the standing charge by disconnected users, such as the applicants, only by reference to them indirectly using the heat provided in the building through the district network. Firstly, the Constitutional Court established the principle that users disconnected from the district network were "indirect consumers" of heat provided through that network to other units in the building. According to that court, "[since they] objectively use certain heat ... [they] are required ... to pay for a service which ... they receive" (see paragraph 17 above). Subsequent to that decision, the courts of general jurisdiction applied the same approach and dismissed the applicants' arguments against the private heat suppliers. In so doing, they referred to the fact that there were units in the applicants' buildings that were connected to and used the heat provided by the district network ("direct consumers"). In such circumstances, the courts held the applicants liable to pay the standing charge as "indirect consumers" for having benefited from that heat. This approach was applied to all such disconnected units. It was only in February 2018, over five years after the standing charge had become payable, that the Supreme Court limited the scope of application of that approach by excluding a particular category of units if the conditions specified in its legal opinion were met. However, as noted above (see paragraph 40 above), that opinion was not consistently applied by the competent courts.

84. The above blanket approach developed by the domestic courts was based exclusively on the premise that the applicants, as indirect consumers

within the meaning given by the Constitutional Court, used heat that was distributed in the building through the district network. There was nothing in their decisions to suggest that the standing charge which the applicants were ordered to pay also concerned, as argued by the Government (see paragraph 59 above), the heating of the communal parts of the building. Similarly, it has not been argued that the standing charge was to be regarded "contribution", within the meaning of paragraph 2 of Protocol No. 1 to the Convention, levied to support a public service.

85. In the proceedings at issue, the applicants challenged that premise by making arguments regarding certain issues of fact specific to their units. They also sought measures and proposed evidence relevant for an objective assessment of that premise in view of the units' individual characteristics (see paragraph 8 above). The courts disregarded those requests and took no account of the applicants' arguments. They did not undertake an examination of the contested issues of fact, holding that "all (disconnected) units in a building connected to a district heating network [were] obliged to pay the standing charge irrespective of their position or the composition or construction of the internal installation" (see paragraph 9 above). Accordingly, the individual circumstances related to the applicants' units played no role in the judicial adjudication of their claims.

86. While the Court has accepted above (se paragraph 75 above) that the overall measure was, in principle, capable of being regarded as being in the general interest, the fact that there also existed an underlying private interest of a commercial nature cannot be disregarded. In such circumstances, both States and the Court in its supervisory role must be vigilant to ensure that measures, such as the one at issue, do not give rise to an imbalance that imposes an excessive burden on the applicants (as owners of disconnected units) while allowing private heat suppliers to make potentially unjustified profits. It is also in such contexts that effective procedural safeguards become indispensable (see, *mutatis mutandis*, *Bradshaw and Others*, cited above, § 64).

87. Having regard to the considerations discussed above, the Court cannot accept the Government's contention (see paragraph 60 above) that there existed sufficient procedural safeguards in the application by the domestic courts of the law regarding the payment of the heating standing charge. The Court considers that it was necessary in the proceedings at issue to have the facts contested by the applicants established in a precise manner by verifying their arguments regarding the level of district heating provided in the building that their units allegedly used. Only after a verification of all relevant factors would it have been possible for the domestic authorities to make an objective assessment of the "indirect" use of heating in each individual case.

88. Having assessed all the elements above, the Court finds that the respondent State, notwithstanding its margin of appreciation, has failed to

strike the requisite fair balance between the interests involved and has failed to make efforts to ensure adequate protection of the applicants' property rights in the context of the proceedings at issue, which involved the ultimate interference on the part of the State with these rights.

89. Having regard to the foregoing, the Court finds that there has been a violation of the applicants' right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. In respect of pecuniary damage, the seventh and eighth applicants claimed reimbursement of the standing charge which they had paid, on the basis of the court orders in the domestic proceedings, to the heat supplier.

92. The eighth applicant further claimed 4,000 euros (EUR) in respect of non-pecuniary damage for the distress and anxiety suffered as a result of the alleged violation. The seventh applicant also made a claim under this head, but left it to the Court's discretion to specify the amount.

93. The remaining applicants did not submit a claim for just satisfaction in compliance with Rule 60 of the Rules of Court.

94. The Government contested these claims as unsubstantiated and excessive, arguing that there was no causal link between the alleged violation and the damage claimed.

95. As to the pecuniary damage claimed, the Court considers that, having regard to the grounds on which it found a violation of Article 1 of Protocol No. 1 to the Convention, it is unable to assess the applicants' claim under this head. In this connection, it refers to the possibility available to the applicants to request reopening of the proceedings in accordance with section 400 of the Civil Proceedings Act (see paragraph 11 above), which would allow for a fresh examination of their claims (see *Bistrović*, cited above, § 58).

96. On the other hand, the Court considers that the seventh and eighth applicants must have sustained non-pecuniary damage resulting from the lack of respect for their rights guaranteed under Article 1 of Protocol No. 1. Having regard to the relative seriousness of the violation and the introduction of the 2019 Regulations under which the applicants can seek to be exempted from paying the standing charge, the Court awards these

applicants EUR 1,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

97. The seventh applicant claimed EUR 355 and the eighth applicant EUR 115 for the costs and expenses incurred before the domestic courts. These figures included court and notary fees, as well as the costs which these applicants were ordered to pay in the domestic proceedings (some payment slips were submitted as evidence).

98. As regards the proceedings before the Court, the applicants made the following claims: for legal fees, the first applicant claimed EUR 320 for the preparation of one set of submissions; the seventh applicant claimed EUR 1,970 for the preparation of the application and three sets of submissions (these claims were calculated on the basis of the tariff list of the Bar of the respondent State); while the eighth applicant claimed EUR 1,770 for the preparation of one set of submissions. As regards postal expenses, the seventh applicant claimed EUR 15 and the eighth applicant EUR 70. A retainer agreement and payment slips were submitted in support.

99. The Government contested the above claims as unsubstantiated, excessive and not necessarily incurred.

100. 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 (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the first applicant the full sum of EUR 320 claimed by him; as regards the seventh applicant the sum of EUR 2,100; and as regards the eighth applicant the sum of EUR 360, covering costs under all heads, plus any tax that may be chargeable to them.

C. Default interest

101. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European District Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* that the first applicant's wife, namely Ms V. Strezovska, has standing to continue the present proceedings in her late husband's stead;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds*,
   (a) that the respondent State is to pay the following applicants, 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) as regards the first applicant: EUR 320 (three hundred and twenty euros), plus any tax that may be chargeable to him, in respect of costs and expenses;
      (ii) as regards the seventh applicant:
      - EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      - EUR 2,100 (two thousand one hundred euros), plus any tax that may be chargeable to him, in respect of costs and expenses;
      (iii) as regards the eighth applicant:
      - EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      - EUR 360 (three hundred and sixty euros), plus any tax that may be chargeable to her, 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 District Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Ksenija Turković
Registrar	President

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence
1.	14460/16	Strezovski v. North Macedonia	08/03/2016	**Strezo STREZOVSKI** 1953 Skopje
2.	14958/16	Nikoloski v. North Macedonia	08/03/2016	**Cane NIKOLOSKI** 1958 Skopje
3.	14962/16	Spasovski v. North Macedonia	08/03/2016	**Aco SPASOVSKI** 1955 Skopje
4.	14966/16	Juvan v. North Macedonia	08/03/2016	**Josip JUVAN** 1942 Skopje
5.	27884/16	Kostovski v. North Macedonia	09/05/2016	**Zoran KOSTOVSKI** 1952 Skopje
6.	16064/17	Nakevska v. North Macedonia	21/02/2017	**Trajanka NAKEVSKA** 1953 Skopje
7.	20229/17	Iseni v. North Macedonia	06/03/2017	**Enver ISENI** 1958 Skopje
8.	30206/17	Nalbanti-Dimoska v. North Macedonia	13/04/2017	**Sonja NALBANTI-DIMOSKA** 1969 Skopje