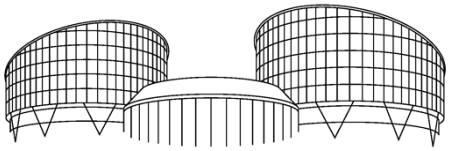

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MANDEV AND OTHERS v. BULGARIA

(Applications nos. 57002/11 and 4 others – see appended list)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Forfeiture of assets as proceeds of crime • Application of the requirements set out in *Todorov and Others v. Bulgaria* • Domestic courts' failure, as in *Todorov,* to justify the existence of a causal link between the predicate offences or any other criminal conduct of the applicants in four of the applications resulting in a disproportionate interference • Confiscated assets reasonably shown to be proceeds of crime in relation to the remaining application • Reasoning in that respect neither arbitrary nor manifestly unreasonable
Art 1 P1 • Secure the payment of contributions or penalties interest • Excessive court fees for lodging appeals in forfeiture proceedings • Fair balance between the general interest of the community and fundamental rights of the individual upset

STRASBOURG

21 May 2024

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 Mandev and Others v. Bulgaria,

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

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 57002/11, 61872/11, 46024/12, 6430/13 and 67333/13) 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 several Bulgarian nationals and companies whose details are set out in the appended table ("the applicants"), on the various dates also indicated in the table;

the death of the applicant Mr Petar Krastev Marvakov on 15 February 2017 and the wish expressed by his wife, Ms Svetla Ivanova Marvakova, to pursue the case in his stead;

the decision to give notice to the Bulgarian Government ("the Government") of the complaints concerning the forfeiture of the applicants' assets under legislation concerning proceeds of crime and the amount of court fees paid by the applicants in the judicial proceedings on the forfeiture, and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 5 March and 2 April 2024,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case raises issues under Article 1 of Protocol No. 1. It concerns the forfeiture of assets as proceeds of crime which, according to the applicants, was unfair and unjustified. The case also concerns the allegedly excessive court fees paid by the applicant in the forfeiture proceedings.

THE FACTS

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

3. The Government were represented by their Agents, Ms M. Dimitrova, Ms S. Sobadzhieva, Ms I. Nedyalkova and Ms B. Simeonova, from the Ministry of Justice.

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

I. APPLICATION No. 57002/11 – *MANDEVI v. BULGARIA*

5. In 2006 Mr Atanas Mandev (the first applicant – see the appended table) entered into a plea agreement with the prosecution authorities, admitting to having committed extortion in 2004 and accepting a suspended sentence of imprisonment. The agreement was approved by the Sliven Regional Court.

6. Since the offence at issue was among those set out as predicate offences in section 3(1) of the Forfeiture of Proceeds of Crime Act 2005 (hereinafter "the 2005 Act"; see paragraphs 52-53 below), the Commission for Uncovering Proceeds of Crime (hereinafter "the Commission") commenced proceedings against the four applicants – Mr Atanas Mandev, his wife Vanya Mandeva (the second applicant) and his parents Angel Mandev and Maria Mandeva (the third and fourth applicants). After conducting checks covering the period between 1990 and 2006, it brought a forfeiture application in the courts.

7. The application was partially allowed in judgments of the Sliven Regional Court of 1 August 2008 and the Burgas Court of Appeal of 23 October 2010. The forfeiture order became final on 25 February 2011, when the Supreme Court of Cassation (hereinafter "the Supreme Court") refused to accept the case for a cassation review.

8. The domestic courts found that during the period under examination (1990-2006) the first and second applicants had received income of 620,559 Bulgarian levs (BGN), equivalent to about 317,400 euros (EUR), and had had expenses of BGN 753,230 (EUR 385,280). The courts only partially accepted the two applicants' statements as to the sources of their income, pointing out that some of their claims that they had taken out loans and had made a profit from economic activity remained unproven. The applicants had made expenses for living costs, for the purchase and improvement of immovable property, and for the repayment of loans.

9. Since the first and second applicants' expenses significantly exceeded their income from what was considered to be lawful sources, the applicants had not rebutted the presumption that their assets were the proceeds of crime as set out in section 4(1) of the 2005 Act. In the words of the Sliven Regional Court,

> "[i]t is precisely the failure to prove the lawful provenance of the assets that shows that those assets are the proceeds of crime".

10. As to the third and fourth applicants, in 2006 their son had transferred a plot of land with buildings to them. That property was subject to forfeiture

as well, given that those applicants had not rebutted the presumption under section 8(1) of the 2005 Act that they knew about its criminal provenance.

11. The national courts therefore ordered the forfeiture of several immoveable properties and the proceeds of the sale of further properties. The assets in respect of which the forfeiture was ordered were valued at BGN 421,971 (EUR 215,842).

12. At the close of the proceedings the applicants were ordered to pay BGN 16,878 (EUR 8,630) in court fees, amounting to 4% of the value of the assets in respect of which the Commission's application had been allowed. The applicants paid an additional BGN 8,377 (EUR 4,285) in court fees to file their appeal against the first-instance judgment.

13. After the forfeiture order became effective, the National Revenue Agency, which enforced such orders, sold one of the properties for BGN 12,030 (EUR 6,153). Another property was sold in enforcement proceedings initiated by third parties, with the State receiving BGN 50,813 (EUR 25,990) from the sale price. With regard to yet another property, the forfeiture order could not be enforced since its description in the court judgments was found to be erroneous. Lastly, in so far as the forfeiture concerned the proceeds of sale of further properties, no part of those sums was paid, and in April 2022 the applicants' debt became time-barred.

14. As to the order for the applicants to pay BGN 16,878 (EUR 8,630) in court fees (apart from those paid for the appeal – see paragraph 12 above), the National Revenue Agency managed to collect BGN 642 (EUR 328) before the debt became time-barred in 2022.

II. APPLICATION No. 61872/11 – *GLAVCHEV AND GLAVCHEV GROUP OOD v. BULGARIA*

15. In a judgment of 5 November 2003, which became final in 2005, Mr Petar Glavchev (the first applicant) was convicted of sex trafficking, and was sentenced to a term of imprisonment. As established by the criminal courts, between 1999 and 2003 the applicant's son and nephew had recruited and brought to Western Europe many Bulgarian women, who had then worked for them as prostitutes. The first applicant had also participated in the scheme, mainly as a chauffeur. The son and nephew were convicted for pimping, committed between 1999 and 2003, and for sex trafficking, and the first applicant – only for sex trafficking, in particular for having organised the transfer abroad of a woman in March 2003. The offence of trafficking in human beings, including for the purpose of prostitution, was criminalised under Bulgarian law in 2002.

16. Since the offence at issue was among those set out in section 3(1) of the 2005 Act, the Commission initiated an inquiry into the income and expenditure of the first applicant and his wife between 1981 and 2006, and into those of a company controlled by them, namely Glavchev Group OOD,

the second applicant. In December 2006 the Commission filed a forfeiture application with the Plovdiv Regional Court seeking the confiscation of a plot of land of 416 square metres in Plovdiv with a seven-storey office building constructed on it. According to the Commission, the value of the property, and accordingly the value of the claim against the applicants, was BGN 832,462 (EUR 425,811).

17. The forfeiture application was allowed by the national courts in judgments of the Plovdiv Regional Court of 30 May 2009, of the Plovdiv Court of Appeal of 14 January 2010, and of the Supreme Court of 21 March 2011.

18. The courts found that during the period under examination the income of the first applicant and his wife for which a lawful provenance had been established amounted to BGN 155,905 (EUR 80,000). During the same period, in 1997 they had bought a plot of land for BGN 263,080 (EUR 135,000), which they had transferred to the second applicant in 2001, and on which the second applicant had built the seven-storey building between 2001 and 2003. In 2002 the second applicant had taken out a bank loan to finance the construction works, and that loan had been fully repaid by May 2003. In 2001, 2002 and 2003 the first applicant and his wife had transferred a total of BGN 468,000 (approximately EUR 240,000) to the second applicant. When their remaining expenses were added in, in particular travel expenses, given that between 1996 and 2003 Mr Glavchev had travelled abroad ninety-eight times, their expenses for the period at issue amounted to BGN 1,165,136 (approximately EUR 596,000).

19. The first- and second-instance courts noted that the difference between the applicants' proven lawful income and expenditure was sufficient to show that the applicants had not rebutted the presumption under section 4(1) of the 2005 Act that the provenance of their assets was criminal (see paragraph 53 below). For the Supreme Court, it was "logical to assume" that the expenses incurred by the first applicant and his wife were linked to the first applicant's criminal activity, namely sex trafficking, which "could justifiably be considered a source of income". Such a conclusion, in the Supreme Court's view, was not based merely on the presumption contained in section 4(1) of the 2005 Act, but on "an assessment of the facts as a whole, in the context of section 4". The Supreme Court also pointed out that the 2005 Act permitted the confiscation of assets acquired prior to the commission of the predicate offence, the sole constraint in that regard being the twenty-five-year time-limit under section 11 (ibid.).

20. The applicants were ordered by the Plovdiv Regional Court to pay BGN 32,420 (EUR 16,583) in court fees, calculated in accordance with the applicable rules as 4% of the value of the forfeiture application. The applicants paid in total another BGN 32,420 (EUR 16,583) to file their appeal against the first-instance judgment and their cassation appeal.

21. After the forfeiture order became final, in 2012 the office building was offered by the State to the Plovdiv Municipality, which continues to occupy it.

22. The applicants never paid the court fee of BGN 32,420 as ordered by the Plovdiv Regional Court, and in April 2022 the debt was written off by the National Revenue Agency as time-barred.

III. APPLICATION No. 46024/12 – *RACHEVI v. BULGARIA*

23. In a judgment of the Shumen Regional Court of 26 April 2002, which became final in 2003, Mr Rosen Rachev (the first applicant) was convicted of the possession of counterfeit banknotes. The offence had been committed in 2001.

24. Since the offence at issue fell within the scope of the 2005 Act, in 2006 the Commission commenced proceedings against the first applicant and his wife (Ms Dimitrichka Racheva, the second applicant) and brought a forfeiture application against them. It sought the confiscation of a number of properties and vehicles, as well as the proceeds of sale of further properties and vehicles, and money in the applicants' bank accounts. The value of the assets for which forfeiture orders were sought was assessed at BGN 383,936 (EUR 196,386), which was also the value of the forfeiture application against the applicants.

25. The forfeiture application was partially allowed on 20 November 2009 in a judgment of the Shumen Regional Court. The domestic court ordered the forfeiture of most of the assets claimed by the Commission, apart from sums in two bank accounts.

26. It found that during the period under examination, namely from 1982 to 2006, the applicants had acquired assets equivalent to 4,953 minimum monthly salaries and had incurred expenses, including living costs and expenses for travelling abroad, to a total equivalent of 6,760 minimum monthly salaries (for the use of minimum monthly salaries in proceedings under the 2005 Act as a measure to compare values during different periods, see *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 109, 13 July 2021). During the same period the applicants' income from lawful sources had been equivalent to 2,689 minimum monthly salaries. In that connection the domestic court considered that some of the sources of income referred to by the applicants, in particular loans, remained unproven.

27. The difference between the applicants' income and expenditure during the relevant period meant that they had not rebutted the presumption that the assets were the proceeds of crime, as set out under section 4(1) of the 2005 Act (see paragraph 53 below).

28. On appeal, the Shumen Regional Court's judgment was upheld on 19 May 2010 by the Varna Court of Appeal. It noted that the applicants had not appealed against the part of the lower court's judgment ordering the

forfeiture of the proceeds of sale of certain assets and of sums available in bank accounts (see paragraph 24 above), and that in that respect the lower judgment had become effective.

29. The proceedings ended with a final judgment of the Supreme Court of 13 January 2012, which upheld the forfeiture.

30. At the close of the proceedings before the Shumen Regional Court the applicants were ordered to pay BGN 15,911 (EUR 8,138) in court fees, amounting to 4% of the value of the Commission's claim against them. In addition, the applicants paid each time BGN 7,956 (EUR 4,069) to file their appeal against the first-instance judgment and their cassation appeal.

31. After the forfeiture order became final, the confiscated properties were put up for public sale, apart from a flat in Shumen which had been the subject of enforcement proceedings initiated by private parties. Three of the confiscated vehicles could not be found, one was sent to a scrapyard, and one was offered to the municipal authorities in Sofia for their use. Only a small part of the sums the applicants were ordered to pay (the sums received from the sale of assets – see paragraph 24 above) was actually received by the State, and no part of the BGN 15,911 ordered in court fees for the proceedings at first instance was ever paid by the applicants.

IV. APPLICATION No. 6430/13 – *MARVAKOV AND OTHERS v. BULGARIA*

32. On 29 May 2006 the first applicant, Mr Petar Marvakov, entered into a plea agreement with the prosecution authorities, admitting to having committed two offences – participation in an organised criminal group created for drug trafficking, and attempted drug trafficking. Both offences were committed in 2003. In the plea agreement, which was approved by the Plovdiv Regional Court, the first applicant accepted a sentence of imprisonment.

33. Following the conviction, the Commission commenced an investigation against the first applicant and his wife (Ms Svetla Marvakova, the second applicant), auditing their income and expenses between 1983 and 2007. The investigation also included two companies fully controlled by the family – Paldin Company EOOD and Pomfrit Company OOD (the third and fourth applicants).

34. In 2008 the Commission brought a forfeiture application against the four applicants, seeking orders for the confiscation of the following assets as proceeds of crime: several properties with residential and industrial buildings on them, acquired by the first applicant in the name of the third applicant in 2002 and 2007; a car owned by the first and second applicants and other vehicles owned by the third applicant; the first applicant's shares in the third and fourth applicants (respectively 100% and 70% of the companies' shareholdings); and BGN 44,500 (EUR 22,760) which Mr Marvakov had

transferred to the fourth applicant. According to the Commission, the total value of these assets, and thus the value of the application brought by it, was BGN 839,216 (EUR 430,000).

35. The forfeiture application was allowed in full in judgments of the Plovdiv Regional Court and the Plovdiv Court of Appeal of 15 February and 21 July 2011. In a final decision of 17 July 2012, the Supreme Court declined to accept the case for a cassation review.

36. The domestic courts found that, while the first and second applicants' income from lawful sources and their expenses during the period under examination could be calculated in various ways, on any calculation the latter exceeded the former by the equivalent of at least 1,291 minimum monthly salaries. Moreover, the first applicant had contributed the equivalent of 6,306 minimum monthly salaries to the activities of the applicant company Paldin Company EOOD, while the revenue obtained from it had amounted to 4,139 minimum monthly salaries. Accordingly, the applicants had not established the lawful provenance of their assets, which meant that they had not rebutted the presumption under section 4(1) of the 2005 Act that those assets were the proceeds of crime (see paragraph 53 below). The 2005 Act did not require the establishment of a link between any proven criminal activity and the assets subject to forfeiture.

37. The applicants were ordered by the first-instance Plovdiv Regional Court to pay BGN 33,569 (EUR 17,170) in court fees. They never paid that sum. They did, however, pay BGN 16,784 (EUR 8,585) to file an appeal against the first-instance judgment.

38. After the forfeiture order became final, it transpired that the majority of the third applicant's properties had been mortgaged prior to the initiation of the forfeiture application. As the company had ceased its economic activities after the forfeiture and had stopped paying its debts, the properties were put up for public sale and sold to third parties without the State receiving any part of the sale price. Only one plot of land was put up for public sale by the National Revenue Agency and it was sold for BGN 933 (EUR 477). Some of the confiscated vehicles had also been sold to third parties, or their whereabouts were unknown, and the remainder were put up for public sale. No part of the sum of BGN 44,500 (see paragraph 34 above) which the fourth applicant had been ordered to pay was ever paid. Lastly, since the first applicant had ceased carrying out any economic activity through the third and fourth applicants, the shares in them which had also been subject to forfeiture were considered to have lost any real value they might once have had.

39. Despite the forfeiture of his shares, the first applicant remained nominally the manager of the third applicant until his death on 15 February 2017. Since no new manager was then appointed, the Plovdiv Regional Court removed the company from the companies register on 2 November 2017 at the prosecution authorities' request. A liquidator was appointed, but he has

apparently neither accepted, nor refused the appointment, and the State, as the company shares' current owner, has not sought his replacement.

40. Following the first applicant's death, the second applicant declared that she wished to pursue the application in his stead.

V. APPLICATION No. 67333/13 – *DIMOVI v. BULGARIA*

41. In a judgment of the Kyustendil Regional Court of 5 October 2007 the first applicant, Mr Asen Dimov, was convicted of smuggling. The criminal courts established that in June 2006 he had taken in a car 4,504 boxes of cigarettes, assessed at a value of BGN 15,419 (EUR 7,887), through the Serbo-Bulgarian border, without declaring them. He had done the trip at a suggestion by a friend and, when stopped by the customs authorities, had confessed to transporting undeclared goods, had revealed their hiding place, and had expressed remorse. The applicant was fined, and received a suspended imprisonment sentence, the domestic courts noting when ordering the suspension that he did not have previous convictions and had a "good characterisation".

42. Following the conviction, the Commission commenced proceedings against the first applicant and his wife (the second applicant, Ms Daniela Dimova), and in 2009 made a forfeiture application against them. It sought the forfeiture of the following assets, with a total value according to it of BGN 337,370 (EUR 172,567): two properties, acquired in 2005 and 2008, one of which was for commercial use; several vehicles and the proceeds received by the applicants from the sale of other vehicles; and company shares.

43. The forfeiture application was allowed in full in judgments of the Pernik Regional Court of 30 June 2011 and the Sofia Court of Appeal of 3 December 2012. In a final decision of 12 April 2013 the Supreme Court refused to accept the case for a cassation review.

44. The Sofia Court of Appeal dismissed in particular an argument by the second applicant that one of the disputed properties had been gifted to her by her mother, noting that the parties had signed a sale contract.

45. The national courts also established that during the period under examination, namely from 1996 to 2009, the applicants' proven lawful income had amounted to BGN 73,652 (EUR 37,673). Their expenditure, on the other hand, including for the applicants' daily living expenses, trips abroad, the acquisition of properties, vehicles and shares in companies, and the repayment of loans had amounted to BGN 797,000 (EUR 407,672).

46. According to the Pernik Regional Court, the applicants' failure to establish the lawful origin of their assets was sufficient to show that those assets were the proceeds of crime and thus subject to forfeiture.

47. The Sofia Court of Appeal considered, for its part, that it did have to establish a causal link between the assets to be confiscated and Mr Asen

Dimov's criminal activity, and that the applicants' failure to prove the lawful provenance of those assets was not sufficient in that regard. It thus held that

> "[i]n this case, the criminal activity is the smuggling of cigarettes, which in itself is an indication of a causal link between the gains from such an activity (as an unlawful source of income) and the assets acquired by the Dimovi family, which are of substantial value".

It stated furthermore the following:

> "If one is to refute the presumption under section 4(1) (of the 2005 Act), one is to show that the assets acquired are not connected to criminal activity [...], and that the lawful income is sufficient. Seeing that the defendant Asen Dimov has been convicted for an offence enlisted in section 3 (of the 2005 Act), the facts of the case should lead to the conclusion that the assets at issue have been acquired by means of a criminal activity, while not necessarily the one which has resulted in the conviction."

48. In its decision refusing to accept the case for cassation review (see paragraph 43 above), the Supreme Court considered that the Sofia Court of Appeal had adequately shown a "possible link" between the assets to be confiscated and Mr Asen Dimov's criminal activity, which was smuggling cigarettes.

49. The applicants were ordered by the first-instance Plovdiv Regional Court to pay BGN 13,495 (EUR 6,903) in court fees, calculated as 4% of the value of the application against them. In addition, the applicants paid BGN 6,747 (EUR 3,451) to file their appeal against the first-instance judgment.

50. After the forfeiture order became final, one of the applicants' properties was sold by the State for BGN 9,160 (EUR 4,685). The other one was the subject of enforcement proceedings initiated by private parties, and after it had been put up for public sale the bailiff transferred BGN 33,090 (EUR 16,925) to the State. Of the confiscated vehicles, one was sold by the State to a third party, and the others could not be found.

51. The National Revenue Agency also commenced enforcement proceedings to collect the sums received from the sale of vehicles. It only obtained the payment of BGN 79 (EUR 40). It is unclear whether the applicants have paid the court fees for the first-instance proceedings, which came to BGN 13,495 (see paragraph 49 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE 2005 ACT

52. The relevant substantive and procedural provisions of the Forfeiture of Proceeds of Crime Act 2005 (*Закон за отнемане в полза на държавата на имущество, придобито от престъпна дейност*, "the 2005 Act"), in force until 2012, as well as the relevant judicial practice, have been described

in *Todorov and Others v. Bulgaria* (nos. 50705/11 and 6 others, §§ 90-110, 13 July 2021).

53. In particular, proceedings under the 2005 Act could be triggered by a conviction for one of the predicate offences set out in section 3(1). Under section 4(1) of the Act, assets of the defendants were to be presumed to be the proceeds of crime if no legal source for their acquisition had been established. The State's right to confiscate an asset expired twenty-five years after the asset had been acquired (section 11 of the Act).

54. Sections 21-26 of the 2005 Act provided for the freezing of the disputed assets while the forfeiture proceedings were pending. Section 23(4) provided in particular that, where freezing measures had been imposed, they could be partially lifted to allow, among other things, the payment of litigation costs, which included court fees. A decision was to be taken by the court examining the case, on the basis of a reasoned request from the interested person or from the head of the local office of the Commission.

II. COURT FEES IN CIVIL PROCEEDINGS

55. The question of court fees was regulated until 2008 by the Code of Civil Procedure 1952 (hereinafter "the 1952 Code"), and after that by the Code of Civil Procedure 2008 (hereinafter "the 2008 Code"), providing essentially for the same rules. Provisions of the State Fees Act (*Закон за държавните такси*) are applicable as well.

56. The general rule is that court fees are payable by the plaintiff in advance, at the time when a claim is filed. State bodies are exempt from the obligation to pay court fees, except where the case concerns a private-law matter to which the State is a party. Where the plaintiff is a State body not liable to pay fees, and it is successful in the proceedings, the defendant has to pay a fee to the State for the first-instance examination of the case. When such a payment order has been made, it is usually enforced by the National Revenue Agency.

57. Where the plaintiff succeeds in the proceedings, the defendant is to be ordered to reimburse the plaintiff for the fees paid.

58. As to the fees for appeals and cassation appeals, they have to be paid in advance. Such payments are a precondition for the examination of appeals.

59. Court fees are set at 4% of the value of the claim for proceedings before a first-instance court and 2% of the value of the claim for examination on appeal or in cassation proceedings. There is no upper limit, and the national courts have no discretion in the matter.

60. The value of the claim has to be stated by the plaintiff when the proceedings are commenced, and once it has been finally determined, it is binding on the courts for the purpose of calculating the relevant court fees. The defendant, or the court examining the case at first instance acting of its own motion, can contest the value of the claim stated by the plaintiff, at the

latest during the first court hearing. The matter then has to be resolved by the court hearing the case.

61. Under Article 83 § 2 of the 2008 Code (corresponding to Article 63 § 1 of the 1952 Code), the courts can exempt parties to civil proceedings from the obligation to pay court fees where they show that they do not have sufficient financial means.

62. The Government submitted domestic case-law on the exemption from the obligation to pay court fees. The provisions cited above have been applied in proceedings under the 2005 Act, in particular where the relevant parties did not possess liquid assets, notwithstanding the fact that those parties could alternatively have sought the lifting of some of the interim measures freezing their assets (see paragraph 54 above).

63. The Bulgarian Constitutional Court, in a judgment given on 31 July 2014 in a different context (*Решение № 13 от 31 юли 2014 г. по к.д. № 1/2014 г.*), held that fees charged by the State were "payments in favour of the State budget by an individual or a legal person, by which these persons obtain an action by a State body in their interest, or receive a service". The service received or the action obtained means that such fees were of a "reciprocal" nature.

III. OTHER PROVISIONS

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

65. Under Article 309 § 2, read in conjunction with Article 245 § 3 of the Code of Civil Procedure, if an application to reopen a case has been granted and the claim initially allowed is ultimately dismissed, the court hearing the reopened case is to order the reimbursement of any expenses paid by the initial losing party.

66. The Supreme Bar Council has adopted Regulations on the Minimum Fees for Legal Representation. As in force between 2009 and 2014, section 7 of these Regulations provided that, where the interest at stake in civil proceedings was with a value exceeding BGN 10,000 (EUR 5,115), such fees would amount to BGN 650 (EUR 332), plus 2% on the value surpassing BGN 10,000.

IV. STATISTICAL DATA

67. According to the National Statistics Institute, the average total annual income per capita in Bulgaria was as follows:

- in 2006 – BGN 2,851 (EUR 1,458);

- in 2007 – BGN 3,347 (EUR 1,712);
- in 2008 – BGN 3,748 (EUR 1,917);
- in 2009 – BGN 3,867 (EUR 1,978);
- in 2010 – BGN 3,812 (EUR 1,950);
- in 2011 – BGN 3,937 (EUR 2,013);
- in 2012 – BGN 4,541 (EUR 2,322).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. PRELIMINARY ISSUES

69. Ms Petar Krastev Marvakov, one of the applicants in *Marvakov and Others* (application no. 6430/13), died on 15 February 2017, and his widow, Ms Svetla Ivanova Marvakova, also an applicant (see the appended table), expressed her wish to pursue the application in his stead (see paragraph 40 above). The Government did not object, in principle, to her being recognised as having standing to do so. Yet, they pointed out that Mr Marvakov had two successors – his wife and his daughter.

70. The Court finds that Ms Marvakova has standing to pursue the application in her husband's stead. As to the Government's concern about Mr Marvakov having two successors, the Court points out that Ms Marvakova's standing to pursue the application stems from her legitimate interest in doing so (see *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014), and not necessarily from any entitlement to inherit property (compare *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII). Accordingly, the Court will examine the application as originally submitted by Mr Marvakov (see *Kalló v. Hungary*, no. 30081/02, § 25, 11 April 2006).

71. As to the third applicant in *Marvakov and Others* – Paldin Company EOOD – the Government argued that it had lost its legal personality, and thus its victim status in the proceedings before the Court, after the domestic decision of 2 November 2017 removing it from the register of companies (see paragraph 39 above).

72. The second, third and fourth applicants (as represented by the lawyers designated at the time of lodging the application) objected, noting that the company had not been formally dissolved. Alternatively, they urged the Court to allow Ms Marvakova to pursue the application on the company's behalf, pointing out that she had a legal interest in obtaining a finding of the Court of a violation of the company's rights, and could, in case of such a finding, apply for the reopening of the proceedings at the national level.

73. The Court observes that despite the decision to remove it from the register of companies, Paldin Company EOOD still exists as a separate legal person under Bulgarian law, as no steps have been taken towards its formal dissolution (see paragraph 39 above). However, there is no clarity as to who represents the company currently, as the first applicant's shares have been confiscated (see paragraph 34 above) and the new owner – the State – has taken no meaningful steps to assume ownership and proceed, if necessary, with the company's dissolution.

74. The Court observes, in addition, that before the confiscation of the shares Paldin Company EOOD had been fully owned by Mr Marvakov, who had used it to acquire property in its name (see paragraph 34 above). The case concerns the forfeiture of alleged proceeds of crime and the payment of court fees, and it is clear that the measures taken against the company affected Mr Marvakov's own pecuniary interests (see *Euromak Metal Doo v. the former Yugoslav Republic of Macedonia*, no. 68039/14, § 32, 14 June 2018).

75. In this situation the Court accepts that Ms Marvakova, who is the successor of Mr Marvakov and pursues the application in his stead (see paragraph 70 above), has standing also to pursue the application on behalf of Paldin Company EOOD and to obtain a final determination of the case by the Court.

76. Consequently, the Government's preliminary objection concerning Paldin Company EOOD is to be dismissed.

III. COMPLAINT CONCERNING THE FORFEITURE OF THE APPLICANTS' ASSETS

77. The applicants complained that the forfeiture of their assets had been unjustified. They relied on Article 1 of Protocol No. 1 and Article 6 § 1 and Article 13 of the Convention.

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

79. The complaint is of the type examined in the leading judgment *Todorov and Others v. Bulgaria* (nos. 50705/11 and 6 others, 13 July 2021).

A. Scope of the complaint

80. While many assets were confiscated from the applicants, the forfeiture orders could not be enforced with regard to some of them because they were already subject to enforcement initiated by third parties or could not be found, or because the applicants did not pay the sums of money ordered and the State could not pursue enforcement in that regard because the matter had become time-barred (see paragraphs 13, 31, 38 and 50-51 above).

81. As in *Todorov and Others* (cited above, § 134), the complaint under examination concerns only assets which were actually taken, or which the applicants remain liable to have confiscated. Assets for which enforcement is impossible for various reasons fall outside of the scope of the complaint.

B. Admissibility

1. Non-exhaustion of domestic remedies

82. As concerns the case of *Rachevi* (application no. 46024/12), the Government argued that the applicants had not exhausted the available domestic remedies because they had not appealed against a part of the first-instance court's judgment in their case, namely the order for the payment of certain sums of money and for the forfeiture of other sums deposited in bank accounts (see paragraph 28 above).

83. The Court agrees that this part of the complaint is inadmissible for the reasons indicated by the Government, which the applicants did not contest. It therefore holds that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

84. In the cases of *Mandevi* (application no. 57002/11) and *Rachevi*, the Government argued further that the applicants had not duly raised their complaint under Article 1 of Protocol No. 1 in the domestic courts. The Court is of the view that, while the applicants did not rely expressly on that provision in the domestic courts, they must be considered to have raised a complaint to that effect in substance. Their efforts were aimed at defending their property rights, and they claimed that their assets had a lawful provenance and should not be confiscated.

85. In the cases of *Mandevi* and *Rachevi* the Government claimed non-exhaustion also on the ground that the applicants had not brought a tort action against the State in order to seek compensation, based on the fact that parts of the forfeiture actions against them had been rejected (see paragraphs 7 and 25 above). The Court has already dismissed an identical objection in *Todorov and Others* (cited above, § 138) and does not need to repeat its considerations.

86. Lastly, the Government pointed out that in the case of *Mandevi* the applicants had not appealed against the freezing orders made at the start of

the proceedings against them at the request of the Commission. The Court does not, however, see how this failure to appeal is related to the complaint under examination, which does not concern the interim measures taken against the applicants pending forfeiture, but the actual forfeiture of their property.

87. The Court therefore dismisses the Government's objections of non-exhaustion of domestic remedies, save for the one discussed in paragraphs 82-83 above.

2. Other grounds for inadmissibility

88. As to the remainder of the complaint, the Court notes that it is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. The complaint must therefore be declared admissible.

C. Merits

1. Arguments of the parties

89. The applicants argued that the legislation providing for the forfeiture of their assets – the 2005 Act (see paragraph 52 above) – was deficient, in that it permitted arbitrary interferences with property rights. In all five applications they contended that the national courts examining the forfeiture claims had not sought to establish that the assets subject to forfeiture had been the proceeds of crime.

90. In addition, the applicants in the case of *Glavchev and Glavchev Group OOD* pointed out that the activity Mr Petar Glavchev had been convicted of in 2003 – sex trafficking – had only been criminalised in Bulgarian law in 2002 (see paragraph 15 above). This, in their submissions, meant that even if he had been involved in the same activity before the specific predicate offence, that activity would not have been criminal in nature. The applicants pointed out that the confiscated building had been constructed between 2001 and 2003, on land acquired in 1997, that is, mostly before the predicate offence had taken place.

91. For their part, the applicants in the case of *Dimovi* noted that the predicate offence committed by Mr Asen Dimov had in itself yielded no financial gain, because the smuggled cigarettes had been confiscated.

92. The Government submitted documents in some of the cases showing that some of the applicants had further convictions or had been investigated for other offences. The Government argued that the forfeiture had therefore been justified, and in particular that the national courts had established a sufficient causal link between the applicants' criminal conduct and the assets subject to forfeiture, or that such a link was evident, or could be logically presumed. In some of the cases the Government argued further that the

applicants had not sought to establish the facts they had relied on with sufficient diligence. In any event, all the applicants had been given adequate procedural opportunities to prove the lawful provenance of their assets. In the case of *Glavchev and Glavchev Group OOD* the criminal courts had established joint criminal activity of the first applicant and members of his family, and it could be presumed that the proceeds had been distributed among members of the family and the companies set up by them. Lastly, according to the Government, the applicants in the case of *Mandevi* had not borne any particular burden as a result of the forfeiture, given that it had remained largely unenforced (see paragraph 13 above).

2. The Court's assessment

(a) The judgment in *Todorov and Others*

93. As mentioned, the complaint under examination is of the type examined in the leading judgment *Todorov and Others* (cited above), which also concerned the forfeiture of alleged proceeds of crime under the 2005 Act.

94. In the leading judgment the Court identified some potential flaws in the 2005 Act and in the manner in which it had been applied. It highlighted in particular the combined effect of the wide scope of its application – as to predicate crimes and as to the periods for which the defendants' revenues and expenses were being checked, the difficulties for defendants to prove what the courts considered "lawful" income during such a period, marked, moreover, by inflation and economic changes, and the presumption that any asset not shown to have had a "lawful" provenance was the proceeds of crime.

95. The Court's position was that, while those flaws were not sufficient to render all instances of forfeiture under the 2005 Act contrary to Article 1 of Protocol No. 1, they certainly placed a considerable burden on defendants in forfeiture proceedings. It was therefore crucial that the national courts provided, as a counterbalance, some particulars as to the criminal conduct from which the assets for which forfeiture was being sought had originated and established a causal link between those assets and any such conduct (ibid., §§ 210-15).

96. Applying those requirements to the specific cases examined in the leading judgment, the Court found a violation of Article 1 of Protocol No. 1 in those cases where the national courts had failed to justify the existence of the causal link defined above, and had ordered forfeiture merely on the basis of the presumption contained in the 2005 Act that any asset not shown to have had a "lawful" origin was the proceeds of crime (ibid., §§ 217-50).

97. On the other hand, the Court found no violation of Article 1 of Protocol No. 1 in the cases where the domestic courts had reasonably shown the existence of a causal link between the assets subject to forfeiture and the applicants' criminal conduct. It held that it would generally defer to the courts' assessment in that regard, unless that assessment was arbitrary or

manifestly unreasonable, which had not been the case (ibid., §§ 216 and 251-81).

(b) The cases under examination

(i) General considerations

98. The Court notes at the outset that, as in *Todorov and Others* (cited above, § 228), it will not take into account in its analysis in the individual cases facts which were not discussed in the domestic proceedings or relied on to justify the forfeiture of the applicants' assets, such as those submitted by the Government and concerning any further proven or suspected criminal activity of the applicants (see paragraph 92 above). The Court's examination is limited to the question whether the forfeiture orders, as justified at the domestic level, met the requirements of Article 1 of Protocol No. 1.

99. Moreover, it is not the Court's task to review the domestic courts' conclusions on the facts, in particular concerning the applicants' proven income from lawful sources and their expenses, unless those conclusions are arbitrary or manifestly unreasonable (see *Todorov and Others*, cited above, §§ 255, 265 and 279), which has not been argued in the present case. The Court is examining whether Article 1 of Protocol No. 1 has been complied with, on the basis of the facts as established, and regardless of any procedural omission in that regard on the part of the applicants.

(ii) The cases of Mandevi*,* Rachevi*,* Marvakov and Others *and* Dimovi *(applications nos. 57002/11, 46024/12, 6430/13 and 67333/13)*

100. In these four cases the national courts did not convincingly prove a causal link between the predicate offences or any other criminal conduct of Mr Atanas Mandev, Mr Rosen Rachev, Mr Petar Marvakov and Mr Asen Dimov, on the one hand, and the assets subject to confiscation, on the other. Instead of that they relied on the presumption of the criminal provenance of the assets under section 4(1) of the 2005 Act and on the difference established by them between the applicants' income from lawful sources and their expenditure (see paragraphs 9, 27, 36 and 46-48 above). The national courts thus applied the same flawed approach that was criticised by the Court in the cases examined in *Todorov and Others* (cited above) where a violation of the applicants' rights was found (see paragraph 96 above).

101. In particular, in the case of *Dimovi*, while the Sofia Court of Appeal did state that it needed to show that a causal link existed between the assets to be forfeited and any criminal activity, it did eventually rely on the presumption under section 4(1) of the 2005 Act, and on the fact that Mr Asen Dimov had been convicted for smuggling (see paragraph 47 above). In addition, stating that the assets to be forfeited had been shown to have criminal provenance, but were not necessarily linked to the predicate offence

(ibid.), it apparently implied that the applicant had been involved in other criminal conduct, without specifying what sort of conduct, and the grounds for concluding so. This was in apparent contrast with the findings of the criminal courts that the applicant's sentence had to be suspended in light of the fact that he had committed no other criminal offences and had a "good characterisation" (see paragraph 41 above; compare the considerations in a similar situation in *Sabouni and Others v. Bulgaria* [Committee], nos. 25795/15 and 59286/16, § 10, 2 March 2023). Accordingly, the Court cannot conclude that the mere reliance on the presumption under section 4(1) and on the type of offence the first applicant had committed once sufficed to establish the criminal provenance of the two applicants' assets. The present case should be distinguished, for instance, from *Katsarov*, examined in *Todorov and Others* (cited above, §§ 262-63), where the applicant had been convicted on three counts of illegal possession of drugs with the intent to sell them; in this case the nature of the criminal activity, coupled with the lack of sufficient lawful income, was considered, at the domestic level and by the Court, to demonstrate sufficiently the criminal provenance of the confiscated assets.

102. In the next place, the Court does not agree with the Government's argument that the applicants in the case of *Mandevi* did not suffer any particularly heavy burden (see paragraph 92 above *in fine*). While, indeed, the forfeiture order against them was not fully enforced, a property of theirs was taken by the State and offered for public auction, and when another such property was subject to enforcement proceedings initiated by third parties, the State received BGN 50,813 (EUR 25,990) from the proceeds of sale (see paragraph 13 above). The applicants were therefore affected by the forfeiture in a manner which was not negligent.

103. The same is valid in the case of *Marvakov and Others*. The State did not actually become the owner of the majority of the properties that were confiscated from the third applicant as they had been mortgaged and were sold off to cover the company's debts, and it proved similarly impossible to enforce the forfeiture order regarding other assets (see paragraph 38 above). Nevertheless, a number of assets were actually taken from the applicants as a result of that order (ibid.), and they were thus affected by it in practice.

104. The foregoing considerations are sufficient to enable the Court to conclude that in the cases of *Mandevi*, *Rachevi*, *Marvakov and Others* and *Dimovi* the forfeiture of the applicants' assets did not meet the requirements of Article 1 of Protocol No. 1, in particular as defined in *Todorov and Others* (cited above).

105. There has accordingly been a violation of Article 1 of Protocol No. 1.

(iii) The case of Glavchev and Glavchev Group OOD *(application no. 61872/11)*

106. In this case the first applicant, Mr Petar Glavchev, was convicted of sex trafficking committed in 2003 (see paragraph 15 above). The conviction

led to the Commission initiating forfeiture proceedings against him and the second applicant, a company under his control, which resulted in the disputed confiscation (see paragraphs 17-18 above). The national courts found that the assets subject to forfeiture could be considered the proceeds of crime – in particular, the Supreme Court pointed out that a causal link between the first applicant's criminal activity and the assets at issue could "logically be assumed", given that such activity could, in principle, yield financial gain (see paragraph 19 above). The courts noted also that between 1996 and 2003 Mr Glavchev had travelled abroad ninety-eight times (see paragraph 18 above).

107. As was noted above, in *Todorov and Others* (cited above, § 216, with further references) the Court held that it was in principle prepared to defer to the national courts' assessment as to the existence of a causal link between any criminal conduct of the applicants and the assets for which forfeiture was being sought, if such an assessment had been made. The courts in the case at hand gave reasons for their conclusions that the causal link at issue existed (see paragraphs 19 and 46 above), and the Court does not find those reasons arbitrary or manifestly unreasonable. It observes furthermore that the national courts established substantial discrepancies between the applicants' lawful income and expenditure (see paragraphs 18 and 45 above).

108. The applicants objected that sex trafficking had only been criminalised in Bulgaria in 2002, whereas the confiscated land had been acquired earlier, in 1997, and the building on it had been constructed between 2001 and 2003 (see paragraph 90 above). However, the aim of the forfeiture proceedings was not to conclusively establish criminal conduct, in a manner similar to that of criminal proceedings, but to show with a certain degree of reliability that the assets to be confiscated could have been the proceeds of crime. In addition, the building at issue having been constructed between 2001 and 2003, part of the confiscated assets had in fact been acquired after Mr Glavchev's conduct had been criminalised in 2002. It is also significant that, as found by the criminal courts (see paragraph 15 above), the first applicant had taken part in a large criminal scheme for pimping and sex trafficking created by his son and nephew and operating between 1999 and 2003; as was pointed out by the Government (see paragraph 92 above), and seeing the close family ties, it cannot thus be ruled out that the forfeited assets could have been the proceeds of such broader criminal activity, and not exclusively of any criminal conduct of the first applicant.

109. In view of the above, the Court accepts that the confiscated assets were reasonably shown to have been the proceeds of crime. Accordingly, it does not find that the interference with the applicants' rights was disproportionate to the legitimate aims pursued by the 2005 Act.

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

IV. COMPLAINTS CONCERNING THE COURT FEES

111. The applicants also complained that they had had to pay excessive court fees in the forfeiture proceedings. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

A. Scope

112. The applicants paid the court fees to file their appeals and cassation appeals, since this was a prerequisite for the cases to be heard (see paragraph 58 above). On the other hand, while they were ordered to pay various amounts in fees at the close of the first-instance proceedings, in most of the cases only small portions of those amounts, or none at all, were eventually paid after the State sought enforcement (see paragraphs 14, 22, 31 and 37 above). In some cases it was expressly found that the relevant limitation periods had already expired (see paragraphs 14 and 22 above). It is unclear whether the applicants in the case of *Dimovi* have paid the fees they were ordered to pay by the first-instance court (see paragraph 51 above), but in that case the complaints about the court fees only concerned the fees on appeal.

113. In these circumstances the Court will only consider in its analysis the amounts actually paid by the applicants in court fees in the forfeiture proceedings against them, and in the case of *Dimovi* it will only consider the court fees paid to file the applicants' appeal. The amounts the Court will be concerned with are therefore as follows:

- in the case of *Mandevi* – BGN 9,019, equivalent to EUR 4,613 (see paragraphs 12 and 14 above);
- in the case of *Glavchev and Glavchev Group OOD* – BGN 32,420, equivalent to EUR 16,583 (see paragraphs 20 and 22 above);
- in the case of *Rachevi* – BGN 15,912, equivalent to EUR 8,139 (see paragraphs 30-31 above);
- in the case of *Marvakov and Others* – BGN 16,784, equivalent to EUR 8,585 (see paragraph 37 above); and
- in the case of *Dimovi* – BGN 6,747, equivalent to EUR 3,451 (see paragraph 49 above).

B. Admissibility

1. Article 6 § 1 of the Convention

114. In the present case, the applications for forfeiture orders against the applicants were examined by three levels of courts, and in so far as the applicants had to pay the requisite fees to file appeals or cassation appeals, they did so (see paragraphs 12, 20, 30, 37 and 49 above). The complaint at

hand does not therefore raise issues of the applicants not having access to a certain level of court because they were unable to pay very high court fees.

115. Accordingly, the complaint under Article 6 § 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Article 1 of Protocol No. 1

116. While, as noted, the complaint regarding the court fees did not concern access to a court, the applicants complained that the fees they were required to pay imposed an excessive and unjustified burden on them. The Court has already examined complaints concerning very high court fees under Article 1 of Protocol No. 1 (see, for example, *Perdigão v. Portugal* [GC], no. 24768/06, §§ 51-79, 16 November 2010), and considers this provision applicable.

117. The Government argued that the applicants had failed to exhaust the available domestic remedies, since they had not sought to be exempted from the obligation to pay court fees or to have their assets partially unfrozen to allow for such payments (see, for the applicable domestic provisions, paragraphs 54 and 61 above), nor had they contested in any other manner the court fees they were required to pay. In addition, the applicants had been entitled to contest the value of the claims lodged by the Commission, which had served as a basis for the calculation of the fees complained of (see paragraph 60 above).

118. The applicants contested the Government's arguments.

119. The Court observes once again that the case before it concerns principally the court fees paid by the applicants on lodging their appeals and cassation appeals (see paragraphs 112-113 above). As regards those fees, the Court does not perceive any reason why the applicants should have been granted an exemption or a partial unfreezing of their assets – options in principle existing under domestic law – given that they have not claimed that they did not have sufficient financial means or other assets at their disposal to pay the court fees. The Court points out once again that the case does not concern access to a court (see paragraphs 114-115 above) but a complaint that the court fees, as paid by the applicants, were unreasonably high.

120. Nor is it clear on what ground the applicants could have contested the court fees they were required to pay at the domestic level; they never claimed that those fees had been wrongly calculated, or were otherwise in breach of domestic law.

121. Lastly, the Court is not convinced that the applicants could have validly contested the value of the claims brought against them, thus affecting the level of court fees (see paragraph 60 above). The value of those claims consisted of the aggregate value of the assets for which the Commission sought forfeiture orders, and it has not been shown that the applicants could in any way have influenced the Commission's choice in that regard.

122. In view of the above considerations, the Court dismisses the Government's inadmissibility plea based on non-exhaustion of domestic remedies.

123. The complaint under examination is furthermore neither manifestly ill-founded, nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. Arguments of the parties

124. The applicants argued that it had been unfair to require them to pay very high court fees in proceedings where they had had to defend themselves against forfeiture applications made by the State. They pointed out that the national courts had had no discretion in setting the amount of fees due, nor any option to ensure that the amounts were not excessively high. The applicants relied on the Court's findings in *National Movement Ekoglasnost v. Bulgaria* (no. 31678/17, 15 December 2020).

125. The Government, for their part, pointed out that States enjoyed a wide margin of appreciation when regulating matters such as fees in judicial proceedings. As to the cases under examination, they submitted that the court fees paid had not been disproportionately high, given that the applicants had been able to pay and had owned assets of considerable value; all this showed that they had not had to bear an excessive individual burden. The Government referred in addition to the "pecuniary nature" of the case, the high value of the disputed assets, and the fact that those assets had been found by the national courts to be the proceeds of crime. The Government argued lastly that the court fees in the present case had not been as disproportionately high as they had been in *Perdigão* (cited above).

2. The Court's assessment

126. The interference with the applicants' rights, namely the obligation for them to pay the court fees referred to above, falls to be examined under the second paragraph of Article 1 of Protocol No. 1, as such fees are to be seen as "contributions" within the meaning of that provision (see *Perdigão*, cited above, §§ 61-62).

127. The parties were not in dispute as to the fact that the interference with the applicants' rights was in accordance with domestic law. The applicable national legislation provides that the court fees for appeal and cassation are to be calculated as a percentage of the value of the claim (see paragraph 59 above), and those rules were applied with regard to the applicants.

128. It is also not in dispute that the interference at issue pursued, in principle, a legitimate aim in the public interest. The Court has held that

systems of court fees pursue the legitimate aims of funding the judicial system, of increasing public revenue, and of acting as a deterrent to frivolous claims (see *Perdigão*, cited above, § 61, and *Chorbadzhiyski and Krasteva v. Bulgaria*, no. 54991/10, § 59, 2 April 2020).

129. The salient question is therefore whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of individual rights.

130. The search for such balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, regardless of which paragraphs are concerned in each case; there must always be a reasonable relationship of proportionality between the means employed and the aim pursued (see *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 102, 24 June 2014). In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of the measures taken are justified in the general interest for the purpose of achieving the object of the interference in question. The requisite balance will not be achieved if the person concerned has had to bear an excessive burden (ibid., § 102, and see also *Perdigão*, cited above, § 67). The Court has confirmed that States enjoy a certain margin of appreciation as to the possible limitations to the right to access to a court also in cases concerning court fees and examined under Article 6 § 1 of the Convention (see *Urbanek v. Austria*, no. 35123/05, § 48, 9 December 2010, with further references); it has nevertheless pointed out that the ultimate decision as to the observance of the Convention's requirements rests with it (ibid., § 48, and *Mehmet and Suna Yiğit v. Turkey*, no. 52658/99, § 33, 17 July 2007).

131. In *Perdigão* (cited above, §§ 69-78), the applicants had brought proceedings concerning the level of compensation to be paid for their expropriated property. They had been awarded nearly EUR 200,000 by the domestic courts, but at the same time had been ordered to pay court fees exceeding that sum by EUR 15,000. The Court found a violation of Article 1 of Protocol No. 1, holding that the applicants had suffered an excessive burden.

132. As to the cases under examination, the applicants paid court fees to file appeals against the forfeiture orders made against them, in amounts ranging between BGN 6,747 (EUR 3,451) and BGN 32,420 (EUR 16,583) (see paragraph 113 above). Those fees were paid between 2008 and 2012.

133. During that period the average annual per capita income in Bulgaria was between BGN 3,748 (EUR 1,917) and BGN 4,541 (EUR 2,322) (see paragraph 67 above). In all cases the court fees paid by the applicants therefore significantly exceeded the country's annual per capita income, in some cases reaching levels many times higher. The Court is aware that the average annual income is a measure only remotely indicative of the value of the work necessary for deciding any particular case, as the volume and

complexity of a case could vary significantly. Still, as the parties have not argued that the appeals for which the disputed court fees were charged required work of exceptional volume or complexity, the average annual income could help in assessing the proportionality of those court fees.

134. As noted above, the fees the applicants were required to pay were calculated in accordance with the applicable domestic rules. It is not for the Court to challenge those rules in the abstract (see *Perdigão*, cited above, § 70), and the Court also reiterates that States enjoy a wide margin of appreciation in the matter in designing their court fee system (see paragraph 130 above). Particularly, the Court has found acceptable, in principle, that court fees for pecuniary claims be dependent on the amount in dispute (see, among other authorities, *Stoenescu v. Romania*, no. 14166/19, § 38, 28 February 2023), as such amount could be a measure for the volume and complexity of the case. The Court has nevertheless required that the applicable rules should be, to some extent, flexible. It has thus already on several occasions criticised the inflexibility of the system of court fees under Bulgarian law, the lack of any room for judicial discretion, and the fact that there is no upper limit to court fees (see *Stankov v. Bulgaria*, no. 68490/01, § 64, 12 July 2007; *Agromodel OOD and Mironov v. Bulgaria*, no. 68334/01, § 47, 24 September 2009; *Chorbadzhiyski and Krasteva*, cited above, §§ 64-65; see also, for similar findings with regard to other States, *Weissman and Others v. Romania*, no. 63945/00, §§ 39-42, ECHR 2006-VII (extracts); *Laçi v. Albania*, no. 28142/17, § 52, 19 October 2021; and *Nalbant and Others v. Turkey*, no. 59914/16, § 42, 3 May 2022). In the cases under examination the application of those rules led to the applicants having to pay the high court fees indicated above.

135. The Government sought to justify those levels on the grounds that the applicants had been able to pay them, also pointing to the high value of the assets for which forfeiture orders had been sought and distinguishing the present case from *Perdigão* (see paragraph 125 above). However, for the Court those considerations are insufficient to justify the court fees paid. It has held that applicants could be expected to contribute, "in a reasonable amount", to the costs of taking an action, especially where they deliberately inflated the value of their claims (compare with *Harrison McKee v. Hungary*, no. 22840/07, § 33, 3 June 2014), but this does not appear be the situation in the case at hand. Additionally, according to the Bulgarian Constitutional Court, fees charged by the State have a "reciprocal" character, that is they are paid in return for a certain service provided by a State body (see paragraph 63 above). The Court is not convinced that the examination of the forfeiture applications against the applicants by the national courts on appeal and cassation, which does not appear to have given rise to work of exceptional volume or complexity in comparison with other court cases, could have cost what was, as already noted, many times the equivalent of the annual per capita income during the relevant period (compare, for similar considerations,

Kreuz v. Poland, no. 28249/95, § 62, ECHR 2001-VI, and *Weissman and Others*, cited above, §§ 39-40; contrast *Reuther v. Germany* (dec.), no. 74789/01, 5 June 2003, where the court fees were judged to be reasonable).

136. The Court observes furthermore that the court fees at issue were paid by the applicants in forfeiture proceedings under the 2005 Act, namely proceedings brought against them by a State body exercising public-authority functions. For the purposes of analysing the proportionality of the interference with the applicants' rights, such fees must be distinguished from those charged in private-law disputes (see *Perdigão*, cited above, § 72). In the proceedings under examination the applicants were facing, as a procedural adversary, a State body, the Commission, which had extensive investigative powers (see *Todorov and Others*, cited above, § 100). In defending against forfeiture applications, the applicants were already in a difficult position, having to submit evidence concerning their financial situation over a lengthy period. However, in the situation described above the applicants were required to pay large amounts of money in court fees in order to ensure that they were able to lodge appeals and have a full access to court.

137. For the reasons above, the Court is of the view that the applicants had to bear an excessive burden which upset the necessary fair balance between the general interest of the community and the fundamental rights of the individual.

138. There has accordingly been a violation of Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

139. 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. Pecuniary damage

140. The applicants claimed the value of their confiscated assets or, where possible, the return of those assets. They submitted valuations in support of those claims. In so far as some applicants were considered to still be liable to pay sums of money or to hold properties in respect of which forfeiture had been ordered, they asked the Court to indicate that the forfeiture orders should not be enforced. Some applicants also claimed compensation for loss of profit after the forfeiture of certain assets, or interest.

141. The applicants in the cases of *Glavhev and Glavchev Group OOD*, *Marvakov and Others* and *Dimovi* claimed, in addition, the reimbursement of

the amounts paid by them in court fees for appeal and cassation. The remaining applicants did not make such claims.

142. The Government contested the claims. In particular, they urged the Court to follow the same approach as in *Todorov and Others* (cited above, §§ 321-22), where it dismissed the claims in respect of pecuniary damage related to the forfeiture of the applicants' assets and indicated that the most appropriate means to remedy the situation would be to have the forfeiture proceedings reopened at the domestic level and the forfeiture applications against the applicants re-examined in accordance with the requirements of Article 1 of Protocol No. 1.

143. In so far as the applicants made claims relating to their confiscated assets (see paragraph 140 above), the Court observes that it has found a violation of Article 1 of Protocol No. 1 with regard to the forfeiture and will examine the related claims only in the cases of *Mandevi*, *Rachevi*, *Marvakov and Others* and *Dimovi*. The finding of a violation was based on the failure of the national courts to justify their conclusions that the assets subject to forfeiture could be the proceeds of crime (see paragraphs 100-105 above).

144. Since the necessary analysis was not carried out at the domestic level, whether or not the applicants' confiscated assets were the proceeds of crime remains a matter of speculation for the Court, and it is not in a position to assess correctly any damage suffered by the applicants on account of any unjustified forfeiture (see *Todorov and Others*, cited above, § 321). In the light of the nature of the violation found, the reopening of the domestic proceedings and the re-examination of the matter at the national level in accordance with the requirements of Article 1 of Protocol No. 1 would constitute, in principle, the most appropriate means to remedy the violation (ibid., with further references). Domestic law expressly provides for the possibility of reopening in cases where the Court has found a violation of the Convention (see paragraph 64 above).

145. The Court therefore dismisses the claims in the cases of *Mandevi*, *Rachevi*, *Marvakov and Others* and *Dimovi* relating to the confiscated assets (see paragraph 140 above).

146. The Court also dismisses the additional claims relating to loss of profit or interest (ibid.) in those cases, for the same reasons as in *Todorov and Others* (cited above, § 323).

147. The applicants in the cases of *Glavchev and Glavchev Group OOD*, *Marvakov and Others* and *Dimovi* also claimed reimbursement of the court fees paid in the domestic proceedings (see paragraph 141 above).

148. In view of the circumstances of the case and its finding that the fees paid by the applicants to file their appeals and cassation appeals were excessive and in breach of Article 1 of Protocol No. 1 (see paragraphs 137-138 above), the Court considers it justified to make the following awards under the present head, plus any tax that may be chargeable:

- in the case of *Glavchev and Glavchev Group OOD* (application no. 61872/11) – EUR 14,500;
- in the case of *Marvakov and Others* (application no. 6430/13) – EUR 7,500; and
- in the case of *Dimovi* (application no. 67333/13) – EUR 2,500.

149. In so far as the applicants in the cases of *Marvakov and Others* and *Dimovi* may, in principle, claim the reimbursement of the fees paid if they obtain the reopening of the domestic proceedings and are eventually successful in challenging the forfeiture applications, this is a matter to be settled between the parties at that stage and if the conditions arise.

150. Finally, as concerns *Marvakov and Others*, the Court observes that after the forfeiture the State has become, at least nominally, the owner of all shares in the third applicant, as well as the majority shares in the fourth applicant (see paragraph 34 above). In these circumstances it considers it inappropriate that all or part of the award made would eventually end up back in the hands of the State, as the owner of the companies' capital, and defers to the decision of the Committee of Ministers on that point in the context of the execution of the present judgment (see, for a similar situation, *Ataun Rojo v. Spain*, no. 3344/13, § 52, 7 October 2014).

B. Non-pecuniary damage

151. The applicants claimed between EUR 5,000 and EUR 10,000 each in respect of non-pecuniary damage. They argued that the damage suffered had stemmed from the forfeiture ordered at the national level.

152. The Government considered the claims excessive.

153. The Court dismisses the claims in respect of non-pecuniary damage in the case of *Glavchev and Glavchev Group OOD*, since those claims only concerned the forfeiture (see paragraph 151 above), and in that regard in this case the Court found no violation of Article 1 of Protocol No. 1 (see paragraph 110 above).

154. As to the remaining cases, the Court makes the following remarks. First, it observes that one of the applicants in *Marvakov and Others*, Mr Petar Marvakov, died in 2017, and that it has accepted that his widow, Ms Svetla Marvakova, has standing to pursue the application in his stead (see paragraph 70 above). In her submissions under Article 41 of the Convention Ms Marvakova requested that any compensation for non-pecuniary damage due to her late husband be paid to her. The Court has previously held that a family member pursuing an application after the main applicant's death could take the applicant's place as regards just satisfaction (see *Sargsyan v. Azerbaijan* (just satisfaction) [GC], no. 40167/06, § 53, 12 December 2017, with further references). Accordingly, in the present case, in making an award to Ms Svetla Marvakova, who is also an applicant in her own right, it will

take into account any anguish and frustration that her late husband might have experienced on account of the forfeiture.

155. Secondly, in so far as the applicant companies in *Marvakov and Others* (see the appended table) claimed an award in respect of non-pecuniary damage, they have not shown why the Court should make such an award in the light of the criteria set out in *Comingersoll S.A. v. Portugal* ([GC], no. 35382/97, § 35, ECHR 2000-IV). The Court observes furthermore that the two companies were not targeted in the forfeiture proceedings on their own account, but because they were under the first applicant's control. Accordingly, the Court sees no justification in making a separate award to the applicant companies in respect of non-pecuniary damage.

156. In view of the considerations above, the Court makes the following awards in respect of non-pecuniary damage, plus any tax that may be chargeable:

- in the case of *Mandevi* (application no. 57002/11) – EUR 4,000 jointly to the first and second applicants, Mr Atanas Mandev and Ms Vanya Mandeva, and EUR 3,000 jointly to the third and fourth applicants, Mr Angel Mandev and Ms Maria Mandeva;
- in the case of *Rachevi* (application no. 46024/12) – EUR 4,000 jointly to the two applicants, Mr Rosen Rachev and Ms Dimitrichka Racheva;
- in the case of *Marvakov and Others* (application no. 6430/13) – EUR 4,000 to Ms Svetla Marvakova; and
- in the case of *Dimovi* (application no. 67333/13) – EUR 4,000 jointly to the two applicants, Mr Asen Dimov and Ms Daniela Dimova.

C. Costs and expenses

1. Costs incurred in the domestic proceedings

157. The applicants claimed various amounts which they had actually paid, or which remained outstanding in respect of litigation costs in the domestic proceedings, beyond the court fees which were the subject of one of their complaints under Article 1 of Protocol No. 1.

158. The Government contested the claims.

159. The Court rejects these claims. In the case of *Glavchev and Glavchev Group OOD* it found no violation of Article 1 of Protocol No. 1 with regard to the forfeiture of the applicants' assets (see paragraph 110 above), and therefore has no reason to conclude that the litigation costs incurred by the applicants were unjustified. As to the remaining applications where the forfeiture of the applicants' assets has been found to be in violation of Article 1 of Protocol No. 1, the Court indicated that the applicants should seek the reopening of the domestic proceedings, and if they do so and are ultimately successful, they can claim the reimbursement of the litigation costs incurred by them from the State (see paragraph 65 above). At this stage the Court cannot conclude that the costs at issue were unjustifiably incurred.

2. Costs incurred in the proceedings before the Court

160. In the case of *Mandevi*, the applicants claimed EUR 2,400 for their legal representation before the Court, plus an additional EUR 381 for postage and translation.

161. In the case of *Glavchev and Glavchev Group OOD*, the applicants claimed EUR 3,600 for their legal representation before the Court, EUR 277 for postage and translation, and EUR 1,281 paid for a valuation report prepared in support of their claims in respect of pecuniary damage (see paragraph 140 above).

162. In the case of *Rachevi*, the applicants claimed EUR 3,600 for their legal representation before the Court, plus EUR 433 for postage and translation.

163. In the case of *Marvakov and Others*, Ms Svetla Marvakova and the applicant companies claimed EUR 1,800, representing the payments to the applicants' legal representatives before the Court, and an additional EUR 292 for postage and translation.

164. Lastly, in the case of *Dimovi* the applicants claimed EUR 2,400 for their legal representation before the Court and an additional EUR 380 for postage and translation.

165. In support of the above claims the applicants presented contracts for legal representation and receipts.

166. The Government contested the claims.

167. 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.

168. In the present case, the Court takes into account the fact that in one of the applications it dismissed the complaint concerning the forfeiture of the applicants' assets (see paragraph 110 above). It also observes that following the leading judgment in *Todorov and Others* (cited above), the complaints concerning forfeiture under the 2005 Act are considered to be the subject of well-established case-law of the Court.

169. Accordingly, regard being had to the documents in its possession and the above considerations, the Court finds it reasonable to award the following amounts for the costs incurred before it, plus any tax that may be chargeable to the applicants:

- in the case of *Mandevi* (application no. 57002/11) – EUR 2,500;
- in the case of *Glavchev and Glavchev Group OOD* (application no. 61872/11) – EUR 800;
- in the case of *Rachevi* (application no. 46024/12) – EUR 2,500;
- in the case of *Marvakov and Others* (application no. 6430/13) – EUR 2,092; and
- in the case of *Dimovi* (application no. 67333/13) – EUR 2,500.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Holds*, unanimously, that Ms Svetla Ivanova Marvakova has standing to pursue the application in Mr Petar Krastev Marvakov's stead;

3. *Holds*, unanimously, that the company Paldin Company EOOD has retained its standing in the proceedings before the Court, and that Ms Svetla Ivanova Marvakova has standing to pursue the application in its stead;

4. *Declares*, by a majority, the complaints under Article 1 of Protocol No. 1 concerning the forfeiture of the applicants' assets as proceeds of crime, save for the part discussed in paragraphs 82-83 above, and the court fees paid in the domestic proceedings admissible, and the remainder of the applications inadmissible;

5. *Holds*, unanimously, that in the cases of *Mandevi*, *Rachevi*, *Marvakov and Others* and *Dimovi* (applications nos. 57002/11, 46024/12, 6430/13 and 67333/13) there has been a violation of Article 1 of Protocol No. 1 on account of the forfeiture of the applicants' assets as proceeds of crime;

6. *Holds*, by six votes to one, that in the case of *Glavchev and Glavchev Group OOD* (application no. 61872/11) there has been no violation of Article 1 of Protocol No. 1 on the same account;

7. *Holds*, by five votes to two, that in all cases there has been a violation of Article 1 of Protocol No. 1 on account of the high level of court fees paid by the applicants;

8. *Holds*
   (a) by the votes indicated below, that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) by five votes to two, in respect of pecuniary damage, plus any tax that may be chargeable:
      - EUR 14,500 (fourteen thousand five hundred euros) in the case of *Glavchev and Glavchev Group OOD* (application no. 61872/11);
      - EUR 7,500 (seven thousand five hundred euros) in the case of *Marvakov and Others* (application no. 6430/13); and

- EUR 2,500 (two thousand five hundred euros) in the case of *Dimovi* (application no. 67333/13);

(ii) unanimously, in respect of non-pecuniary damage, plus any tax that may be chargeable:

- EUR 4,000 (four thousand euros) jointly to the first and second applicants, Mr Atanas Mandev and Ms Vanya Mandeva, and another EUR 3,000 (three thousand euros) jointly to the third and fourth applicants, Mr Angel Mandev and Ms Maria Mandeva, in the case of *Mandevi* (application no. 57002/11);
- EUR 4,000 (four thousand euros) jointly to the two applicants, Mr Rosen Rachev and Ms Dimitrichka Racheva, in the case of *Rachevi* (application no. 46024/12);
- EUR 4,000 (four thousand euros) to the second applicant, Ms Svetla Marvakova, in the case of *Marvakov and Others* (application no. 6430/13); and
- EUR 4,000 (four thousand euros) jointly to the two applicants, Mr Asen Dimov and Ms Daniela Dimova, in the case of *Dimovi* (application no. 67333/13);

(iii) in respect of costs and expenses, plus any tax that may be chargeable to the applicants:

- unanimously, EUR 2,500 (two thousand five hundred euros) in the case of *Mandevi* (application no. 57002/11);
- by five votes to two, EUR 800 (eight hundred euros) in the case of *Glavchev and Glavchev Group OOD* (application no. 61872/11);
- unanimously, EUR 2,500 (two thousand five hundred euros) in the case of *Rachevi* (application no. 46024/12);
- unanimously, EUR 2,092 (two thousand and ninety-two euros) in the case of *Marvakov and Others* (application no. 6430/13); and
- unanimously, EUR 2,500 (two thousand five hundred euros) in the case of *Dimovi* (application no. 67333/13);

(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;

9. *Dismisses*, by six votes to one, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 21 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint partly dissenting opinion of Judges Pastor Vilanova and Roosma;
(b) partly dissenting opinion of Judge Serghides.

JOINT PARTLY DISSENTING OPINION OF JUDGES PASTOR VILANOVA AND ROOSMA

1. To our regret we are unable to join the majority in their finding that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the high level of court fees paid by the applicants.

2. We note at the outset that the Court has examined complaints about allegedly excessive court fees both under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1. In the former cases, the focus of the examination has been on the right of access to a court, even if this has not prevented the Court from finding a violation of that right on account of high court fees in cases where the applicants had actually had the merits of their cases determined by domestic courts (see, for example, *Stankov v. Bulgaria*, no. 68490/01, 12 July 2007, and *Chorbadzhiyski and Krasteva v. Bulgaria*, no. 54991/10, 2 April 2020). In the latter cases, the issue before the Court has been whether the applicants have had to bear an excessive burden owing to the high amount of the fees ("contributions" within the meaning of Article 1 of Protocol No. 1) (see, for example, *Perdigão v. Portugal* [GC], no. 24768/06, 16 November 2010).

3. We will not delve into the reasons that may have caused the Court to examine a substantially similar issue – amount of court fees – under different provisions of the Convention but will limit ourselves to noting that although in the present case the examination was carried out under Article 1 of Protocol No. 1, the case-law relied on in the judgment is based both on that provision and on Article 6 § 1.

4. The applicants in the present case paid the court fees to file their appeals and cassation appeals. They only paid a part, if any, of the fees they had been ordered to pay for the first-instance proceedings. Therefore, the Court, in determining the scope of the case, only took into account the sums actually paid by the applicants. These sums were between EUR 3,451 and EUR 16,583 (paragraph 113 of the judgment).

5. Court fees in Bulgaria were set at 4% of the value of the claim for proceedings before a first-instance court and 2% of the value of the claim for examination on appeal or in cassation proceedings (paragraph 59 of the judgment). By way of comparison, lawyers' fees, in so far as they were regulated in Bulgaria at the material time, were EUR 332 on an interest of EUR 5,115 at stake in civil proceedings (that is, 6.5%), plus 2% of the value exceeding the latter sum (see paragraph 66 of the judgment). However, as mentioned in the previous paragraph, the applicants did not pay all court fees in full. The sums actually paid by them represent between 2% and 4.14% of the value of the assets subject to litigation (see the summary of fees paid in paragraph 113 and the value of assets set out in paragraphs 11, 16, 24, 34 and 42 of the judgment).

6. The majority, in finding that the applicants did have to bear an excessive burden, relied on a comparison of the court fees that the applicants paid with the average annual per capita income in Bulgaria at the material time, finding that the fees paid had significantly exceeded the country's annual per capita income (paragraphs 132 and 133 of the judgment).

7. We are not convinced by that argument. The present cases concerned pecuniary claims of known value (unlike, for example, claims for non-pecuniary damage where the amount may have been left to the discretion of the courts). The value of the claims was between EUR 172,567 and EUR 430,000. These sums were substantial, exceeding the average annual incomes up to two hundred times. We assume that in Bulgaria, as everywhere else in the world, there are income disparities between individuals; it is inconceivable that the properties in question could have been obtained by means of savings from average incomes. Against that background, we see no basis for finding that the applicants were made to bear an excessive burden because the court fees may have seemed high in comparison with the country's average income.

8. The remaining arguments put forward by the majority do not convince us either. The question of flexibility in the determination of the court fees (paragraph 134 of the judgment), in our view, relates to access to a court rather than an excessive individual burden in the context of a "contribution" under Article 1 of Protocol No. 1. In any event, the flexibility and judicial discretion in this field may easily come into conflict with the requirement of legal certainty. The Court has stressed that the observance of formalised rules of civil procedure, through which parties secure the determination of a civil dispute, is valuable and important as it is capable of limiting discretion, securing equality of arms, preventing arbitrariness, securing the effective determination of a dispute and adjudication within a reasonable time, and ensuring legal certainty and respect for the court (see *Zubac v. Croatia* [GC], no. 40160/12, § 96, 5 April 2018). Be that as it may, we note that a degree of flexibility exists in Bulgarian law which enables the courts to exempt parties to civil proceedings from the obligation to pay court fees where they show that they do not have sufficient financial means (paragraph 61 of the judgment). It is not evident that a substantially larger degree of discretion would even be desirable. Moreover, there is no information that the applicants attempted to request any such exemptions.

9. The Court has found that charging litigants court fees pursues various aims, including financing the judicial system and increasing public revenue. Although collecting these fees may not be the role of the tax authorities, the obligation to pay them is clearly one of a fiscal nature (see *Perdigão*, cited above, § 61). Although in the field of taxation various exemptions may be possible, income or property tax calculated as a percentage of the taxed income or property is hardly ever considered as excessive owing to its relation to average income. Rather, the weight of the burden imposed by taxation is

assessed with reference to the tax rate and, in respect of income tax, the tax rate may even increase progressively when the income increases. A comparative law study concerning the payment of court fees in a number of member States of the Council of Europe, undertaken by the Court in *Perdigão*, revealed that, generally speaking, the court fees charged vary according to the sum claimed (except in countries where fees charged are not based on the sum in dispute). The fees may represent a percentage of that sum, a lump sum, or a combination of the two. In many States where the fees charged are linked to the value of the claim, there is an upper limit on how much one party can be charged, but in some States there is no such limit (ibid., § 48). We admit that a lack of a cap on the court fees in respect of very large claims may be problematic in some circumstances, but in our view the present case did not come close to that.

10. As concerns the "reciprocal" character of the fees charged by the State, in that they are paid in return for a certain service provided by a State body (paragraph 135 of the judgment, with reference to the Bulgarian Constitutional Court), we cannot but note that the applicants in the present case did receive a "service" – in the form of the judicial examination of their cases – from the State. In this sense the fees may be seen as having been of a "reciprocal" character. The "cost price" of this "service" is a different matter. Unlike the domestic authorities, we have no information as to what the actual cost of judicial examination of one case was for the Bulgarian State at the material time. At the same time, it is evident that certain cross-subsidisation usually takes place: a fee of tens of euros will never cover the real costs of examination of claims of some thousands of euros. The examination of such claims, if they are not to be removed from a court's remit, needs to be secured by finances other than the fees charged on those who brought them. It seems fair that court fees paid on large claims should offset the costs of the administration of justice in less significant cases. However, domestic authorities, in our opinion, are better placed to determine to what extent fees charged on larger claims are to be used for that purpose and to what extent revenue from general taxation is to be relied on. Another difficulty for an international court is to determine what exactly constitutes the cost of examination of a case – should it cover the judges' salaries or also the cost of courthouses and retired judges' pensions? We find that the Contracting States should have a broad margin of appreciation in determining a reasonable balance in this context. Moreover, the court systems do not operate in a vacuum and normally receive more resources from the State budget than they ever "earn" themselves by offering "services" to their "clients". Also, court fees are usually payable to the State budget, not retained by the courts. In this sense court fees, as any fees payable to the State budget, are very similar to taxes. Taxation is an area where the States enjoy a wide margin of appreciation (see, for example, *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 60, Series A no. 306-B).

11. Lastly, the circumstances in which the Court has found that the amount of court fees was excessive, despite the fact that the applicants had actually had access to a court, have been rather exceptional. Thus, in *Perdigão* (cited above, § 72), the court fees amounted to more than 100% of the sum awarded, leading the Court to find it paradoxical that the State should take away with one hand – in court fees – more than it has awarded in compensation with the other. In other cases the fees have been 90% or 72% of the award or, again, higher than the award itself (see *Chorbadzhiyski and Krasteva*, cited above, § 59, with further references). By contrast, in *Zaharieva v. Bulgaria* (dec.) (no. 6194/06, 20 November 2012), the Court dismissed a complaint where the court fee only amounted to about 8.3% of the compensation awarded. The court fees of between 2% and 4.14% of the value of the assets subject to litigation in the present cases stand in stark contrast with the above cases. Therefore, we do not think that the court fees paid by the applicants in the present cases were excessive.

12. For the above reasons, we have been unable to conclude that the applicants had to bear an excessive burden which upset the necessary fair balance between the general interest of the community and the fundamental rights of the individual.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicants, relying on Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 and Article 13 of the Convention, complained that the forfeiture of their assets had been unfair and unjustified.

2. I voted in favour of all points of the operative provisions of the judgment, save for points 4, 6 and 9. To clarify, my dissent relates to: (a) points 6 and 9 – and this part of my dissenting opinion takes the form of a bare statement of dissent, as provided for in Rule 74 § 2 of the Rules of Court; and (b) point 4, to the extent that it declares "the remainder of the applications inadmissible", thus, rendering the complaints under Articles 6 § 1 and 13 of the Convention inadmissible.

3. While the Court declares the complaints under Articles 6 § 1 and 13 inadmissible in the operative provisions of its judgment (i.e., "the remainder of the applications which are declared inadmissible"), it does not do the same in the main body of its judgment. It does not even say that it is not necessary to deal with these complaints, as it does when it follows the *Câmpeanu* formula (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, [GC], no. 47848/08, §§ 155-156, 17 July 2014). It only states in paragraph 76 that the applicants relied on Article 1 of Protocol No. 1 to the Convention and on Article 6 § 1 and Article 13 of the Convention, but in paragraph 77 it states that, being master of the characterisation to be given in law to the facts of the case, "[it] is of the view that the complaint falls to be examined solely under Article 1 of Protocol No. 1", without referring again to the complaints under Articles 6 § 1 and 13 of the Convention.

4. In my humble submission, such a methodology is entirely erroneous, because this is not an appropriate manner of declaring complaints inadmissible, without considering or examining them at all. This methodology is even more drastic than the *Câmpeanu* methodology because it declares a complaint inadmissible instead of considering that it is not necessary to examine it. It is even more incompatible with the fundamental and overriding Convention principle of the effective protection of human rights (i.e., the principle of effectiveness).

5. I regret to observe that the Court in the present case uses its practice or principle, namely, that "it is the master of the characterisation to be given in law to the facts of the case", not in line with its aim, but in a misguided manner. In my submission, this practice or principle, as applied so far, has been used and developed as a facet or manifestation of the principle of effectiveness. Its aim is to save complaints where, though their factual basis is established in the applicants' pleadings, the appropriate legal basis is not relied upon: the Court would then consider these complaints of its own motion, under the appropriate Convention Articles or provisions. Surely, the aim of this practice or principle is not to reject prima facie admissible complaints by declaring them inadmissible without any examination, but

rather to allow the Court to examine an application under the Convention Article or provision that it considers most applicable, even if the applicants omitted to refer to it in their pleadings. For instance, the Court, in its judgment in the landmark Grand Chamber case of *Guerra and Others v. Italy* (19 February 1998, §§ 44, 46, *Reports of Judgments and Decisions* 1998-I), by following the aforementioned practice or principle, held that it had jurisdiction to consider the case not only under Article 10 of the Convention, which was expressly invoked by the applicants, but also under Articles 8 and 2 of the Convention, which were not expressly invoked by them. In the end, the Court found a violation of Article 8 of the Convention and considered that it was unnecessary to consider the case under Article 2 of the Convention. Concerning the complaint under Article 10, the Court did not declare it inadmissible without examining it, as the present judgment does regarding the complaints under Articles 6 and 13, but, on the contrary, it thoroughly examined it (see paragraphs 47-54 of that judgment) and ultimately concluded that Article 10 was not applicable in the case before it.

6. In the present case, the Court should not have bypassed serious complaints like those under Articles 6 and 13 so lightly. Regarding the seriousness of the Article 6 complaint, it is useful to mention what the applicants argued before the Court. In paragraph 14 of their Observations before the Court, they, *inter alia,* argued that, "apart from not taking into account the causal link between the predicate crime for which A.M. pleaded guilty and the property subject to forfeiture, the domestic courts also did not provide the procedural guarantees under Article 6 § 1 of the Convention for a trial and for equality of arms and ordered forfeiture without a comprehensive and objective analysis of the evidence presented by the applicant". They also argued that, unlike in the cases of *Phillips v. the United Kingdom* (no. 41087/98, 5 July 2001), *Arcuri and Others v. Italy* (no. 52024/99, 5 July 2001) and *Raimondo v Italy* (no. 12954/87, 22 February 1994), the domestic courts, "by applying a presumption of criminal origin of the property, which was extremely difficulty to disprove in the specific case, put a practically overwhelming burden of proof on them, who were obliged, in hypothesis of full and direct proof, to demonstrate lawful income for property acquired over a period of 16 years in which Bulgaria went through dramatic economic turmoil". Furthermore, citing *Todorov and Others v. Bulgaria* (nos. 50705/11 and 6 others, §§ 215-216, 13 July 2021), they argued that "the domestic courts did not examine the proportionality of the intervention as a second basic condition for admissibility of confiscation".

7. Both Articles 6 and 13 of the Convention are very important provisions for the effective protection of human rights. However, in particular as regards the right to a fair trial under Article 6, the Court has held that this right occupies a "central position" in the Convention and "reflects the fundamental principle of the rule of law" (see *Sunday Times v. the United Kingdom*, no. 6538/74, § 55, 26 April 1974 (Plenary)) and that it holds a "prominent

place in a democratic society" (see *Delcourt v. Belgium*, 17 January 1970, § 25, Series A no. 11; *Moreira de Azevedo v. Portugal*, no. 11296/84, § 66, 23 October 1990; and *De Cubber v. Belgium,* no. 9186/80, § 30, 26 October 1984). Furthermore, the right under Article 6 "is pre-eminent because it provides the platform for the vindication of all other legal rights" (see Laura Hoyano, "What is balanced on the scales of justice? In search of the essence of the right to a fair trial", in *Criminal Law Review* (2014) 1, at p. 4). Having said the above, since Article 6 of the Convention has such a prominent place in a democratic society and is the platform for the vindication of the applicants' complaint of a breach of Article 1 of Protocol No. 1 to the Convention, their complaint under Article 6, being in and of itself a serious one, should not have been rejected by the Court in the present case as inadmissible, without it first being examined thoroughly.

8. In conclusion, it is respectfully submitted that the Court in the present case has wrongly declared the complaints under Articles 6 and 13 inadmissible.

APPENDIX

List of cases:

No.	Application no. Lodged on	Case name	Applicant Year of birth/registration Place of residence Nationality	Represented by
1.	57002/11 24/08/2011	Mandevi v. Bulgaria	**Atanas Angelov MANDEV** 1968 Sliven Bulgarian **Vanya Mihaylova MANDEVA** 1970 Sliven Bulgarian **Angel Ivanov MANDEV** 1940 Sliven Bulgarian **Maria Atanasova MANDEVA** 1943 Sliven Bulgarian	M. Ekimdzhiev K. Boncheva S. Stefanova
2.	61872/11 20/09/2011	Glavchev and Glavchev Group OOD v. Bulgaria	**Petar Todorov GLAVCHEV** 1949 Plovdiv Bulgarian **GLAVCHEV GROUP OOD** 2000 Plovdiv Bulgarian	M. Ekimdzhiev K. Boncheva S. Stefanova
3.	46024/12 13/07/2012	Rachevi v. Bulgaria	**Rosen Atanasov RACHEV** 1962 Shumen Bulgarian **Dimitrichka Ilieva RACHEVA** 1962	M. Ekimdzhiev K. Boncheva S. Stefanova

No.	Application no. Lodged on	Case name	Applicant Year of birth/registration Place of residence Nationality	Represented by
			Shumen Bulgarian	
4.	6430/13 10/05/2013	Marvakov and Others v. Bulgaria	**Petar Krastev MARVAKOV** 1957 - died in 2017, Svetla Ivanova Marvakova expressed a wish to continue the proceedings in his stead. **Svetla Ivanova MARVAKOVA** 1972 Plovdiv Bulgarian **PALDIN COMPANY EOOD** 2000 Plovdiv Bulgarian **POMFRIT COMPANY OOD** 1996 Plovdiv Bulgarian	M. Ekimdzhiev K. Boncheva S. Stefanova M. Nacheva
5.	67333/13 11/10/2013	Dimovi v. Bulgaria	**Asen Kirilov DIMOV** 1978 Pernik Bulgarian **Daniela Boyanova DIMOVA** 1978 Pernik Bulgarian	M. Ekimdzhiev K. Boncheva G. Chernicherska