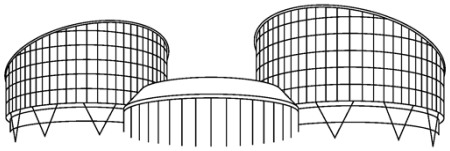

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF YORDANOV AND OTHERS v. BULGARIA

(Applications nos. 265/17 and 26473/18)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Disproportionate forfeiture of applicants' assets as "unlawfully acquired" without specifying the prohibited conduct resulting in their acquisition or establishing any link between those assets and the conduct • Significant number of deficiencies in 2005 legislation identified in *Todorov and Others v. Bulgaria* maintained in applicable 2012 repealing legislation • Approach similar to that in *Todorov and Others* followed • Individual assessment necessary to counterbalance heavy burden placed by 2012 legislation on defendants in forfeiture proceedings required to prove the lawful origin of their assets

STRASBOURG

26 September 2023

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 Yordanov and Others v. Bulgaria,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Yonko Grozev,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the applications (nos. 265/17 and 26473/18) 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 three individuals (holding different nationalities, as indicated in the appended table) and a company with its registered office in Bulgaria ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Bulgarian Government ("the Government") of the complaints concerning the forfeiture of the applicants' assets under the Forfeiture of Unlawfully Acquired Assets Act and to declare inadmissible the remainder of application no. 26473/18;

the fact that the Belgian Government did not avail themselves of their right to submit written comments in view of the Belgian nationality of one of the applicants, Mr R. Yordanov (see the appended table);

the parties' observations;

Having deliberated in private on 5 September 2023,

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

INTRODUCTION

1. The case concerns the forfeiture by the State of assets alleged to have been "unlawfully acquired", and raises in particular issues under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicants' details, as well as the names of their legal representatives before the Court, are indicated in the appendix.

3. The Government were represented by their Agents, Ms I. Stancheva-Chinova and Ms A. Panova of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. APPLICATION No. 265/17 – *YORDANOV v. BULGARIA*

5. In 2008 the applicant – by himself or through a company wholly controlled by him – bought plots of land in Bulgaria considered to be worth about 496,000 levs (BGN), the equivalent of about 254,000 euros (EUR). Since the Bulgarian tax authorities had no information about income received by him in the preceding years they inquired about his financial situation. In response the applicant presented the tax authorities with customs declarations showing that between 2005 and 2008 he had brought EUR 345,000 into Bulgaria. In response to a further enquiry as to the origin of the money, the applicant explained that he had received income in Belgium, where he predominantly resided, and presented numerous documents to support that assertion. Several of those documents, namely contracts whereby other people had agreed to pay him for different services, turned out to have been forged. It was also established at that stage that the applicant had never declared income in Belgium and had never paid income tax there.

6. The applicant was subsequently charged with evading the payment of income tax amounting to about BGN 90,000 (EUR 46,000) on the sum he had brought into Bulgaria, and with the use of forged documents. He was convicted as charged by a judgment of the Targovishte Regional Court of 20 November 2012. As he had in the meantime paid the tax due, he was relieved of criminal liability and ordered to pay a fine of BGN 4,000 (EUR 2,046).

7. In 2013 the Commission for the Forfeiture of Unlawfully Acquired Assets (hereinafter "the Commission") opened proceedings under the Forfeiture of Unlawfully Acquired Assets Act 2012 (hereinafter "the 2012 Act", see paragraphs 28 et seq. below) against the applicant, his wife and the company owned by him, which had acquired some of the plots of land. The Commission investigated their income and expenses between 2003 and 2013, and in March 2014 introduced a forfeiture application in the courts. It sought the forfeiture of a flat, several vehicles, sums of money in the defendants' bank accounts, the value of shares in companies owned by the defendants, as well as the plots of land owned by them and the monetary equivalent of other plots of land which had been resold in the meantime to third parties.

8. The forfeiture application was allowed by the national courts – specifically by a judgment of the Targovishte Regional Court of 26 June 2015, a judgment of the Varna Court of Appeal of 10 February 2016, and a final decision of the Supreme Court of Cassation (hereinafter "the Supreme Court") of 23 June 2016 refusing leave to appeal on points of law. The courts ordered in particular the forfeiture of assets owned by the applicant worth BGN 37,212 (EUR 19,034), and of assets jointly owned by the applicant and his wife valued at BGN 53,013 (EUR 27,116); the remaining forfeited assets

belonged to the applicant's company, which is not itself an applicant in the present proceedings.

9. The courts referred to information sent by the Belgian authorities under a mutual legal assistance procedure. According to that information, the applicant was being investigated in Belgium for offences allegedly committed in February 2011, namely human trafficking with the aim of labour exploitation, black market trade and breaches of employment law. He was additionally suspected of money laundering and breaches of the tax legislation, committed on unspecified dates. In particular, the applicant had brought Bulgarian workers to Belgium, who had then worked there for companies owned by him without employment contracts. In that way the applicant had allegedly gained more than EUR 1,150,000, which he had never declared as income in Belgium. The applicant had admitted in 2011 that he had used revenue from his companies in Belgium to cover his daily expenses, to finance a political party, and to acquire vehicles and immoveable property in Bulgaria.

10. However, the Bulgarian courts pointed out that there was no indication that the applicant had been formally charged or convicted in Belgium, and it was thus not proven that he had engaged in the unlawful activities described above.

11. The applicant claimed in the forfeiture proceedings that between 1999 and 2007 his brother had gifted him sums of money totalling BGN 900,000 (EUR 460,000), but the only evidence presented in that regard was a statement by his brother, which proved neither the gifts themselves, nor the lawful provenance of the money. While the applicant mentioned that witnesses could testify to the actual handover of the money, he did not challenge the Targovishte Regional Court's failure to order the examination of those witnesses, and did not raise the matter in his subsequent appeals.

12. The applicant and his wife claimed in addition to have received remuneration as managers of the companies owned by them in Belgium, as well as dividends. Once again, those claims were based on their statements and on statements of their companies and employees, and were not substantiated by further evidence, such as entries in the companies' accounting books; nor had it been shown that the companies' financial situation had permitted the payment of such sums. The applicant and his wife had submitted income tax declarations in Bulgaria and Belgium declaring substantial income for the period 2006-2013, but that had only been done in 2014, after the initiation of the forfeiture proceedings, and did not prove anything about the actual source of their income or its lawful origin. The applicant claimed also to have received rent for several vehicles owned by him, but had not proved that to be the case. In addition, while it was established that in 2008 the applicant and his wife had brought into Bulgaria EUR 345,000, allegedly obtained from economic activities in Belgium, documents establishing what could have been the lawful provenance of that

sum had already been found to have been forged in the criminal proceedings against the applicant (see paragraph 5 above); the lawful origin of that money had therefore not been proven. Lastly, the information provided by the Belgian authorities (see paragraph 9 above) had disproved the applicant's claims that he had received lawful income through his companies in Belgium.

13. Accordingly, the courts concluded that during the period under examination the applicant and his wife had only had a small income from lawful sources, namely BGN 5,800 (the equivalent of EUR 2,966) received from the sale of a vehicle in 2005.

14. At the same time, during the period under examination they had spent more than BGN 1,600,000 (EUR 818,000), a sum which included, among other things, their daily expenses (calculated on the basis of statistical data on average household expenses in Belgium) and the price of the assets acquired by them and the applicant's company.

15. Given their very low lawful income, the conclusion was drawn that all the assets subject to the forfeiture application had been unlawfully acquired, namely with income for which no lawful source had been shown.

16. To the applicant's objection that no link had been established between the offence he had been convicted of and the assets in respect of which forfeiture was being sought, the Varna Court of Appeal and the Supreme Court responded that no such link was required: under the 2012 Act, any finding of criminal activity was only the starting point enabling the Commission to initiate an investigation, while the preconditions for the actual forfeiture were "detached" from the criminal proceedings and their outcome.

II. APPLICATION No. 26473/18 – *BOZADZHIEVA AND OTHERS v. BULGARIA*

17. By a judgment of the Razgrad Regional Court of 26 March 2014, which became final on an unspecified date, the first applicant, Ms Nevin Bozadzhieva, was convicted of two offences. First, despite having received between 2008 and 2013 through the Western Union and MoneyGram systems numerous payments from persons living abroad, totalling about EUR 163,000, she had failed to declare the income to the tax authorities, evading the payment of income tax for a total of BGN 52,317 (EUR 26,760). Second, between 2008 and 2011 the first applicant had fraudulently received BGN 2,300 (EUR 1,176) in child allowances when, given the income described above, she had not been entitled to receive it (the allowances had subsequently been restituted to the competent State body). During the trial the first applicant accepted the facts as alleged in the indictment and agreed to be convicted in summary proceedings.

18. Since the offences fell within the scope of the 2012 Act, in 2014 the Commission opened proceedings against the first applicant, her husband (Mr Gyulver Hasan, "the second applicant") and a company owned by him

(Ruzh-Dil EOOD, "the third applicant"), in order to investigate their financial situation between 2004 and 2014. In 2015 it introduced a forfeiture application against them, seeking the forfeiture of the following assets: a flat in Razgrad and several plots of land, some of which with buildings constructed on them; sums of money received from the sale of other plots of land and a car; the value of the second applicant's shares in the third applicant (a company) and monetary contributions to the company on his part; sums of money placed by the first and second applicants in numerous bank accounts; and a sum of money equalling the remainder of the EUR 163,000 received by the first applicant, that is to say minus the investments in the assets described above. According to the Commission, at the time of submission of the forfeiture application the total value of the assets in respect of which forfeiture was being sought was BGN 535,624 (about EUR 274,000).

19. The applicants contested the forfeiture application, claiming that their assets had been lawfully acquired, that the authorities had to prove any unlawfulness, and that the Commission was applying wrongly the *de facto* presumption contained in section 1(2) of the 2012 Act (see paragraph 38 below).

20. By a judgment of 19 October 2016 the Razgrad Regional Court dismissed the forfeiture application, finding that while the origins of the income of EUR 163,000 (received by the first applicant between 2008 and 2013) had not been established, that did not mean that it had been unlawful.

21. However, on 24 February 2017 the Varna Court of Appeal reversed that decision and allowed the forfeiture application in its entirety.

22. It noted that the salient issue before it was whether the money received by the first applicant from abroad – EUR 163,000 in total – could be considered to be of lawful origin, namely whether the applicants could establish a lawful ground for receiving it. The applicants claimed that the money had been from gifts on the occasion of marriages and other family celebrations, and from loans. However, the Varna Court of Appeal considered that those unsubstantiated claims were insufficient to prove the money's lawful provenance; nor could the tax authorities' finding that the money was taxable income prove such provenance.

23. During the period under examination the first and second applicants had thus received revenue of about BGN 62,500 (EUR 32,000) of lawful provenance, namely from salaries, from the sale of different assets and in bank loans. During the same period, the applicants' daily and extraordinary expenses had amounted to BGN 118,010 (EUR 60,360), while the value of the assets acquired by them was assessed at BGN 555,955 (EUR 284,000). All of the above meant that the discrepancy between their lawful income and their expenses amounted to BGN 681,117 (EUR 348,400).

24. The above considerations meant that the preconditions for forfeiture had been met.

25. In a final decision of 6 December 2017 the Supreme Court refused to accept for examination the applicants' appeal on points of law. It reiterated that the 2012 Act did not require a link between the predicate offence and the assets to be forfeited because it was concerned with all unlawfully acquired assets and not necessarily with proceeds of crime.

26. After the end of the forfeiture proceedings, three of the forfeited plots of land, with buildings on them, were put up for public sale and sold to third parties. The remaining assets have not been subject to enforcement measures. No part of the sums of money due has been collected from the applicants.

RELEVANT LEGAL FRAMEWORK

I. THE 2012 ACT

A. Adoption of the 2012 Act

27. The Forfeiture of Proceeds of Crime Act (*Закон за отнемане в полза на държавата на имущество, придобито от престъпна дейност*, hereinafter "the 2005 Act") was enacted in 2005. It provided for the forfeiture of proceeds of crime and thus required a conviction, as well as, in accordance with the practice of the national courts, a causal link between the offence committed and the assets to be forfeited. The relevant provisions of the 2005 Act have been described in more detail in *Todorov and Others v. Bulgaria* (nos. 50705/11 and 6 others, §§ 90-110, 13 July 2021).

28. The 2005 Act was repealed in 2012 when the Forfeiture of Unlawfully Acquired Assets Act (*Закон за отнемане в полза на държавата на незаконно придобито имущество*, hereinafter "the 2012 Act") was enacted. The 2012 Act's main novelty was that it provided for the forfeiture of "unlawful" assets and not necessarily proceeds of crime. The explanatory memorandum accompanying the Bill in Parliament explained the need for the 2012 Act as follows:

> "[The changes in Bulgaria in the 1990s] facilitated [the development of] organised criminal structures which opposed society's democratic functioning and negatively influenced the social order, while imposing corrupt practices. The perception that these people were untouchable and unpunishable seriously eroded the sense of social justice and rule of law. Their assets are there for all in society to see as 'unexplained wealth' ...
>
> For the citizens, corruption is categorically the most important problem the country faces ... There is no doubt that we need an institutional approach against schemes and practices of corruption ...
>
> This Bill represents a decisive step towards the elimination of this deficit in anti-corruption measures, [and is] aimed at the elimination of possibilities for organised crime to generate corruption of any kind. ...

> Forfeiture of assets of unestablished origin is considered in Europe and in the world to be an effective means to combat organised crime and corruption. ... In this way, and through guarantees for the rights of law-abiding citizens, we will be able to advance in our fight against criminality, depriving it of financial gain, which is one of the main reasons for its existence.
>
> Civil-law forfeiture is a different action for the protection of the common interest, distinguishable from criminal prosecution. What is decisive for civil-law forfeiture is not the commission of a criminal offence and the perpetrator's guilt. The confiscation of assets is not a punishment for a guilty person, but a measure in the public interest. It has a preventive effect and makes the rule that 'an offence should not enrich' a reality."

29. The main deficiency of the 2005 Act was identified as the need to await the conclusion of the criminal proceedings against the defendant in order to proceed with the forfeiture application (see *Todorov and Others*, cited above, § 102). The fact of a criminal conviction being a prerequisite for a civil forfeiture claim was considered to frequently render the State interference "ineffective".

30. The Bulgarian Government have subsequently claimed, for example before the Committee of Ministers of the Council of Europe in the context of its supervision of the execution of the Court's judgment in the case of *Dimitrovi v. Bulgaria* (no. 12655/09, 3 March 2015), that the 2012 Act's aim was "to fight corruption and organised crime through enabling the State to recover assets derived from criminal activity or administrative violations" (see Action Report DH-DD(2017)740).

31. In a judgment of 13 October 2012, the Bulgarian Constitutional Court found that the 2012 Act's general approach was in accordance with the provisions of the Constitution guaranteeing the right to property (*Решение № 13 от 13.10.2012 г. на КС по к. д. № 6/2012 г.*). It held in particular the following:

> "What is subject to forfeiture are not assets acquired through lawful sources, but assets of unlawful origin ... The Act aims at countering the consequences of unjustified enrichment at the expense of other individuals or the society as a whole, that is to say enrichment resulting from activities which are forbidden."

The Constitutional Court gave examples of such forbidden activities – tax evasion, smuggling, corruption, trafficking in human beings or drugs, large-scale thefts – pointing out however that forfeiture proceedings under the 2012 Act did not aim to establish the details of such activities.

32. It considered furthermore that the 2012 Act was sufficiently clear and its consequences foreseeable:

> "[It is not true that] the addressees of the [2012 Act] would not understand what behaviour is necessary to avoid the application of the Act to them – they must not enrich themselves with assets acquired through activities which are outside the law...
>
> If the sources of lawful enrichment are evident from the Constitution and the legislation, the failure to establish such sources, which in fact indicates their absence, leads to the logical conclusion that the enrichment of the defendants concerned has an unlawful provenance."

33. The Constitutional Court pointed out nevertheless that it was assessing the 2012 Act in the abstract, and that this did not relieve the competent State bodies from their obligation to make assessments and decisions in the light of the specific circumstances of each case.

34. Lastly, the Constitutional Court considered the previous approach under the 2005 Act to be ineffective in some cases:

> "for instance, where the evidence shows explicitly that certain assets are of unlawful origin, but is at the same time insufficient for a conviction for an offence proven beyond reasonable doubt, as well as where a criminal prosecution is temporarily or permanently barred by an obstacle such as the death of the perpetrator, amnesty, the expiry of a limitation period for criminal prosecution, immunity, an objective impossibility of finding the perpetrator to ensure his participation in the criminal proceedings, mental disorder excluding criminal liability etc."

35. The body in charge of initiating and pursuing proceedings under the 2012 Act was the Commission for the Forfeiture of Unlawfully Acquired Assets ("the Commission").

36. The 2012 Act remained in force until 2018 when it was repealed with the adoption of the Counteraction Against Corruption and Forfeiture of Unlawfully Acquired Assets Act (*Закон за противодействие на корупцията и отнемане на незаконно придобито имущество*, hereinafter "the 2018 Act"). The 2018 Act provides essentially for the same mechanism for the forfeiture of "unlawfully acquired assets", namely assets "for which no lawful origin is established" (section 5(1)), and does not require a criminal conviction.

37. The 2018 Act, together with other legislation, is currently deemed to transpose into Bulgarian law Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime (see paragraphs 59-63 below).

B. Substantive provisions

38. The 2012 Act defined unlawfully acquired assets as "assets for which no lawful origin [was] established" (section 1(2)). The burden to prove the "lawfulness" of their assets was on the defendants (*Решение № 1 от 6.01.2017 г. на ВтАС по гр. д. № 254/2016 г.*; *Решение № 85 от 6.06.2017 г. на ВнАС по в. гр. д. № 167/2017 г.*; *Решение № 147 от 16.09.2019 г. на ВКС по гр. д. № 1998/2018 г.*; *Определение № 103 от 21.03.2022 г. на ВКС по гр. д. № 3979/2021 г.*). That *de facto* presumption of unlawfulness of assets was considered by the Constitutional Court in its judgment of 13 October 2012 (see paragraph 31 above) to be justified, because it facilitated the establishment of the truth and represented "proportionate means to achieve the aim of the Act, which is in accordance with the Constitution".

39. The aim of the 2012 Act, as explained in section 3(1), was to "protect the common interest, by removing and restricting the possibilities for the unlawful acquisition and disposal of assets". Under section 3(2) the Act had to be applied while respecting the rights of the persons affected and avoiding "any risk of unfairness".

40. Forfeiture could be sought after criminal charges had been brought against the defendant if they concerned the offences enumerated in section 22(1) of the 2012 Act. The list was largely the same as in section 3(1) of the 2005 Act (see, for more detail, *Todorov and Others*, cited above, § 95), with the addition of some corruption offences, offences against the tax and fiscal systems, and human trafficking. By section 22(2), forfeiture proceedings could also be opened where, owing to an amnesty, the expiry of a limitation period, the death of the defendant or his or her incapacitation, the defendant had not been formally charged, no criminal proceedings had been opened or the pending proceedings had been discontinued; a national court has applied that provision noting that there were "available data" that an offence might have still been committed (*Решение № 7 от 6.01.2020 г. на ОС-Пловдив по гр. д. № 1121/2017 г.*).

41. Forfeiture proceedings could also be triggered where a final decision of the relevant authorities found that an administrative offence had been committed which had resulted in substantial profit – at least BGN 150,000 (EUR 76,700), lowered to BGN 100,000 (EUR 51,150) in 2016 – and where such profit could not be recovered by the State by other means.

42. The Commission had to establish a "significant discrepancy" between the defendant's revenue and the value of the assets acquired, namely in the amount of at least BGN 250,000, the equivalent of EUR 128,000 (reduced to BGN 150,000, or EUR 76,700, in 2016) for the whole period under examination. Any asset was to be assessed for that purpose taking into account its actual market value at the moment of its acquisition or disposal. The Constitutional Court noted in its judgment of 13 October 2012 (see paragraph 31 above) that what had to be established was the defendant's assets at the beginning and at the end of the period under examination, any increase of these assets from lawful sources, as well as the defendant's expenses.

43. Under the 2012 Act "unlawfully acquired assets" were subject to forfeiture (section 62). Specifically, the national courts had to compare the defendant's "net income" – the overall income reduced by the daily expenses and extraordinary expenses such as the payment of taxes – and the value of the assets acquired during the period under examination.

44. Section 1 of the supplementary provisions of the 2012 Act contained a non-exhaustive list of lawful sources of income – such as remuneration under a labour contract; net profit from economic activity, dividends and interest; rent from properties acquired with lawful income; lottery and

gambling winnings; sums received from the sale of properties acquired with lawful income; and court awards.

45. "Unlawfully acquired assets" for the purposes of the Act could include assets acquired by the defendant's spouse or minor children, as well as assets acquired unlawfully by a legal entity under the defendant's control (sections 63 and 66).

46. The State's right to confiscate or seek the forfeiture of an asset expired ten years after the asset had been acquired (section 73 of the 2012 Act).

C. Interpretative Decision no. 4 of 7 December 2018

47. As forfeiture proceedings under the 2012 Act could be opened after charges had been brought against the defendant, and did not need to await a conviction by the criminal courts (see paragraph 40 above), the practice of the national courts initially varied as to whether the forfeiture could still be pursued in cases where the criminal proceedings had been discontinued after the initiation of forfeiture proceedings on a ground not among those enumerated in section 22(2) of the Act (see paragraph 40 above), including where the criminal proceedings had resulted in an acquittal.

48. The matter was settled in a binding interpretative decision of the Supreme Court – Interpretative Decision no. 4 of 7 December 2018 (*Тълкувателно решение № 4 от 7.12.2018 г. по тълк. д. № 4/2016 г, ОСГК*). The Supreme Court held that the discontinuance of the criminal proceedings on a ground outside of those enumerated in section 22(2) represented an absolute procedural bar to forfeiture. That was so because, in order to remain a proportionate interference with the right to property, forfeiture could only be sought under the 2012 Act against people meeting the requirements which had allowed for such proceedings to be initiated. Holding otherwise would mean that "the law [did] not provide for a link between the commission of crimes and the possibility to seek forfeiture". The Supreme Court considered significant the fact that the Government had claimed, for instance before the Committee of Ministers of the Council of Europe, that the 2012 Act aimed to aid the fight against corruption and organised crime (see paragraph 30 above).

49. The Supreme Court noted furthermore that Directive 2014/42/EU of the European Union on the freezing and confiscation of instrumentalities and proceeds of crime (see paragraphs 59-63 below) provided for minimum standards guaranteeing the rights of the individuals affected, such as that there should be a criminal conviction. Accepting that the national courts could order forfeiture under the 2012 Act even where there was no conviction would mean the abandonment of those guarantees.

50. On 10 December 2018, three days after the adoption of the above Interpretative Decision, a Member of Parliament introduced a Bill to amend the 2018 Act (see paragraph 36 above). The Bill, which was passed on 20 December 2018, provided that: (1) the discontinuance of the criminal proceedings against defendants in forfeiture proceedings, including as a result of acquittal, would not preclude the State's right to seek forfeiture (section 153(6) of the 2018 Act), and (2) the above rule would also apply to pending forfeiture proceedings under the 2012 Act (section 5(2) of the concluding and transitional provisions of the 2018 Act).

51. The amendments above were justified by the contention that this had been "the actual intent of the legislator" when adopting the 2012 Act.

D. Procedure

52. Once it was notified by other competent bodies that there were grounds on which to open forfeiture proceedings, the Commission would open an investigation in one of its regional offices in order to establish the assets, income and expenses of the person under investigation. At that stage it could seek the imposition of injunctions and other interim measures. After the imposition of such measures, the Commission was obliged to disclose to the individuals under investigation the evidence it had collected, and to give them an opportunity to comment or to present further evidence. On the basis of the findings of its investigation the Commission would take a decision at that point to discontinue the proceedings or to bring a forfeiture application.

53. A forfeiture application was examined by the courts in a public hearing under the rules of civil procedure and before courts at up to three levels of jurisdiction.

54. The forfeited assets could be used by the State to compensate victims of the offence perpetrated by the defendant if his or her remaining assets were insufficient to do so (section 90a of the 2012 Act).

55. The State was liable for any damage caused through unlawful decisions or actions of its bodies under the 2012 Act (section 91).

II. THE CODE OF CIVIL PROCEDURE

56. Article 303 § 1 (7) of the Code 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".

57. Under Article 309 § 2, read in conjunction with Article 245 § 3 of the Code, 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.

III. RELEVANT INTERNATIONAL AND EUROPEAN UNION LAW

58. Relevant international materials have been summarised in *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, §§ 139-53, 28 June 2018) and *Todorov and Others* (cited above, §§ 116-20).

59. As to European law, Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union establishes "minimum rules on the freezing of property with a view to possible subsequent confiscation and on the confiscation of property in criminal matters" (Article 1 § 1 of the Directive).

60. Article 4 of the Directive, entitled "Confiscation", provides in paragraph 1:

> "Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence ..."

61. Article 5 § 1 of the Directive provides in addition for so-called "extended confiscation" in the following manner:

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

62. Article 8 of the Directive provides, among other things:

> "In proceedings referred to in Article 5, the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct."

63. Recitals 15, 20 and 21 contain further clarifications:

> "(15) Subject to a final conviction for a criminal offence, it should be possible to confiscate instrumentalities and proceeds of crime, or property the value of which corresponds to such instrumentalities or proceeds. ...
>
> (20) When determining whether a criminal offence is liable to give rise to economic benefit, Member States may take into account the modus operandi, for example if a condition of the offence is that it was committed in the context of organised crime or with the intention of generating regular profits from criminal offences. However, this should not, in general, prejudice the possibility to resort to extended confiscation.
>
> (21) Extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct. This does not mean that it must be established that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more

probable, that the property in question has been obtained from criminal conduct than from other activities. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from criminal conduct."

64. On 28 October 2021 the Court of Justice of the European Union ("the CJEU") gave a judgment concerning the 2018 Act (which replaced the 2012 Act, providing essentially for the same forfeiture mechanism – see paragraph 36 above), following a request for a preliminary ruling (see *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo*, C-319/19, EU:C:2021:883). The questions raised concerned the compatibility of the 2018 Act with the requirements of Directive 2014/42.

65. At the domestic level, Z.V. had been charged with abuse of office. The criminal proceedings against her remained pending. In the meantime, the Commission had introduced a forfeiture application against her, her husband and a company, considering that there had been a significant discrepancy between their assets and income. The matter had been referred to the CJEU by the first-instance Sofia City Court, which had been concerned that the 2018 Act might not provide for the minimum procedural safeguards required by the Directive.

66. The CJEU held in particular the following (citations omitted):

"36. [G]iven the objectives and the wording of the provisions of Directive 2014/42 and the context in which it was adopted, it must be held that that directive ... is an act aimed at obliging Member States to establish common minimum rules for confiscation of crime-related instrumentalities and proceeds, in order to facilitate the mutual recognition of judicial confiscation decisions adopted in criminal proceedings.

37. Directive 2014/42 does not therefore govern the confiscation of instrumentalities and proceeds resulting from illegal activities that is ordered by a court in a Member State in the context of or following proceedings that do not concern the finding of one or more criminal offences. Such confiscation falls outside the scope, in fact, of the minimum rules laid down by that directive, in accordance with Article 1(1) thereof, and the rules governing it fall within the scope of the power of the Member States, referred to in recital 22 of that directive, to provide more extensive powers in their national law.

38. In the present case, it appears that the confiscation proceedings pending before the referring court are civil in nature and that those proceedings coexist, in national law, with the regime for confiscation under criminal law. It is true that, pursuant to Article 22(1) of the [2018 Act], such proceedings are initiated by the [Commission] where the latter is informed of the fact that a person is accused of having committed certain criminal offences. However, it is clear from the evidence in the file before the Court that, in accordance with the provisions of that law, once commenced, those proceedings, which only concern assets alleged to have been illegally obtained, are conducted independently of any criminal proceedings brought against the person

accused of committing the offences at issue, and of the outcome of such proceedings, and, in particular, of the possible conviction of that person.

39. In those circumstances, it must be held that the decision which the referring court is called upon to adopt in the main proceedings does not fall within the context of, or follow on from, proceedings relating to one or more criminal offences. Furthermore, the confiscation that that court might order following the examination of the request before it does not depend on a criminal conviction of the person concerned. Any such measure does not therefore fall within the scope of application of Directive 2014/42.

...

41. Having regard to the foregoing considerations, ... Directive 2014/42 must be interpreted as not applying to legislation of a Member State which provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences."

THE LAW

I. JOINDER OF THE APPLICATIONS

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

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

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

69. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court is of the view that the complaint falls to be examined solely under Article 1 of Protocol No. 1 to the Convention (see also *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, § 129, 13 July 2021). The provision reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. Abuse of the right of individual application

70. As regards the applicant in application no. 265/17, the Government argued that he had abused his right of individual application for two reasons. First, he had submitted only the operative part of his conviction in Bulgaria (see paragraph 6 above) with his application form, and not the reasoning; the latter was submitted by the Government after they had been given notice of the application. Second, the applicant had presented to the Court documents concerning his situation in Belgium which had not been available to the domestic courts in the forfeiture proceedings.

71. The applicant did not comment on those points.

72. Under Article 35 § 3 (a) of the Convention, the Court may reject an application as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. That is also valid when the applicant has submitted misleading or incomplete information (see, among other authorities, *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

73. Turning to the circumstances of the present application, it appears that the applicant did indeed submit information which was in part misleading and incomplete, as claimed by the Government. In addition, the applicant failed to inform the Court of his conviction in Belgium, information of which, once again, was only submitted to the Court by the Government after notice of the application had been given (see paragraph 90 below). However, none of those omissions, individually or collectively, appear to concern information which is essential to or touches upon the very core of the application. The complaint under examination is about the forfeiture of the applicant's assets for the reasons and considerations put forward by the Bulgarian courts, on the basis of the facts known and discussed by them (see *Todorov and Others*, cited above, § 228, and paragraph 127 below); the domestic courts were apparently unaware of the applicant's conviction in Belgium and consequently they did not discuss it (see paragraph 10 above). There are therefore no sufficient grounds to declare the application abusive within the meaning of Article 35 § 3 (a) of the Convention.

2. Non-exhaustion of domestic remedies

74. With regard to the applicant in application no. 265/17, the Government further argued that he had failed to exhaust the available domestic remedies, because he had not contested the Targovishte Regional Court's failure to order the examination of witnesses who – the applicant had claimed – could have proved the existence of a monetary gift from his brother to him (see paragraph 11 above). The applicant did not respond to that argument.

75. The Court, for its part, notes that any such omission by the applicant concerned only one aspect of the application, and not a decisive one, and related to only one of his arguments put forward at the domestic level. The alleged omission is not therefore sufficient to justify the dismissal of the application for non-exhaustion of domestic remedies.

76. As regards the applicants in application no. 26473/18, the Government claimed non-exhaustion on two grounds. First, the applicants had not expressly raised their complaints under Article 1 of Protocol No. 1 at the domestic level. Second, while the applicants claimed that the forfeiture of their property had been arbitrary and unfair, they had not brought tort proceedings against the Commission putting forward arguments to that effect. The applicants did not comment on those points.

77. As to the first limb of the Government's objection, the Court is of the view that the applicants, while not relying expressly on Article 1 of Protocol No. 1 before the domestic courts, raised such a complaint in substance. They took efforts to defend their property rights, claiming that their assets had been lawfully acquired and that the presumption on the unlawful provenance of these assets was inapplicable to them (see paragraph 19 above). As to the second limb of the objection, the Government have not shown that the applicants could claim compensation for a measure such as the forfeiture of their property, which was considered to be in compliance with the domestic legal order. The rules on State liability for damage caused to individuals clearly state that only actions or decisions of State bodies that are considered unlawful can give rise to such liability (see paragraph 55 above and *Nedyalkov and Others v. Bulgaria* (dec.), no. 663/11, §§ 62-64, 10 September 2013).

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

3. Conclusion as to admissibility

79. Lastly, the Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicants

(i) Application no. 265/17 – Yordanov v. Bulgaria

80. The applicant did not submit any observations on the merits.

(ii) Application no. 26473/18 – Bozadzhieva and Others v. Bulgaria

81. The applicants urged the Court to examine their complaints in the light of the charges brought against the first of them and the findings of the national courts.

82. The applicants criticised the 2012 Act for its automatic treatment of assets with unestablished provenance as unlawfully acquired assets, arguing that the equation between the two categories was "artificial". They contended that lawful provenance of such assets often could not be proved owing to "the excessive burden of proof, formalism [or] abuse". They thus considered the general approach of the 2012 Act to be wrong.

83. The applicants argued that the 2012 Act had pursued no legitimate aim in the public interest. In particular, it had not aimed to help in the fight against criminality, because it had not been concerned with establishing the criminal provenance of assets, nor could it in some way prevent the commission of crimes. Instead of finding ways to fight criminality effectively, the State had contented itself with confiscating any suspicious asset. There had been a risk, however, of such a mechanism being selectively or arbitrarily applied.

84. As the 2012 Act had not been specifically concerned with the forfeiture of proceeds of crime and a criminal conviction had not been a precondition for forfeiture, the applicants considered that the 2012 Act had been akin to the Citizens' Property Act, in force before the 2005 Act had been adopted (see *Todorov and Others*, cited above, § 112). The applicants thus relied on the Court's findings in the case of *Dimitrovi v. Bulgaria* (no. 12655/09, 3 March 2015), where the Court had criticised the Citizens' Property Act, considering the confiscation of those applicants' assets under it to have been arbitrary.

85. The applicants pointed out that the 2012 Act had provided for forfeiture on much wider grounds than those defined in Directive 2014/42/EU (see paragraphs 59-63 above). The CJEU had found however, in its judgment in case C-319/19 (see paragraphs 64-66 above) that a forfeiture scheme such as the one established by the 2012 Act did not fall within the scope of the Directive. That meant that the Act had not provided for the guarantees and safeguards contained in the Directive, in particular the requirement to establish the criminal provenance of the assets to be forfeited.

86. Lastly, the applicants contested the national courts' conclusions in their case, complaining of having the burden of proof placed on them as to the lawful provenance of their assets. They considered that the forfeiture of assets of the second and third applicants, on the ground of their being connected with the first applicant, had been excessive.

(b) The Government

(i) General remarks

87. The Government argued that the 2012 Act had been sufficiently clear and its consequences foreseeable. It had contained adequate guarantees against arbitrariness, and the judicial practice in its implementation was uniform.

88. The Government submitted that the interference with the applicants' rights had pursued a legitimate aim in the general interest. This was so because the 2012 Act on which it was based had been intended to protect the public interest by "preventing and limiting the possibilities for unlawful acquisition of assets and the transfer of such assets". The 2012 Act had also aimed "to undermine the economic foundations of corruption and organised crime" by eliminating unexplained wealth accumulated as a result of criminal activities.

89. According to the Government, the situation with organised crime in the early 2000s in Bulgaria had required "decisive steps". One such step had been the adoption of the 2005 Act (see paragraph 27 above), which had however turned out to be ineffective on many occasions and had eventually been replaced by the 2012 Act. The latter did not require the establishment of a link between the predicate offence and the assets to be forfeited.

(ii) Submissions on each application

(α) Application no. 265/17 – *Yordanov v. Bulgaria*

90. The Government submitted a criminal conviction of the applicant handed down in Belgium on 29 February 2008 by the Court of First Instance of Limburg. The applicant had been convicted for employing nine Bulgarian nationals in one of his companies in Belgium without the necessary work permits, and for not paying social insurance contributions. The offences had been committed in 2006. The applicant had been sentenced to a fine, suspended for three years. The conviction and sentence had entered into force and had been transferred for execution to the Bulgarian authorities. The Government contended that that conviction, together with the statements of the Belgian authorities in 2011 that the applicant was under investigation for similar offences (information discussed in the domestic proceedings – see paragraph 9 above), meant that he had been engaged in "continuous criminal activities".

91. The Government contended that the national courts had thoroughly examined the claims against the applicant in the course of the forfeiture proceedings, and had given adequate and sufficient reasons when ordering the forfeiture, examining in addition "the existence of a connection between the assets, the income and the unlawful activities of the applicant". The applicant had had at his disposal all procedural means to prove his claims

about the provenance of his assets, but had submitted no convincing evidence in that regard.

92. Finally, the Government considered that the applicant's case was a "vivid example" of the effectiveness of the 2012 Act, namely of its success at "counter[ing] the consequences of the accumulation of 'unexplained wealth'".

(β) Application no. 26473/18 – *Bozadzhieva and Others v. Bulgaria*

93. In a statement submitted by the Government and prepared for the current proceedings, the Commission claimed that the money received by the first applicant and which had triggered the different proceedings against her and the other applicants had in fact been the result of her participation in an allegedly fraudulent scheme run in Muslim-majority regions. The scheme, which had been uncovered by investigating journalists, was described by the Commission as follows:

> "[U]sing different profiles, sometimes fake ones, people register in different Internet sites and, through false promises of marriage, claims that they need financial help for the treatment of a non-existent illness and other similar means, deceive foreign citizens, most often Turkish nationals living in different parts of the world, with the sole aim of receiving money from them, counting most of all on the foreigners' naivety and good intentions, as well as on certain rules of their religion, such as the requirement to help the poor. There is no doubt that the scheme thus described is based on fraud, which is a criminal offence, but [the offence] has remained unpunished mostly because the deceived people are numerous and are foreigners who do not reside in Bulgaria and are thus not likely to complain to the local authorities that they have been the victims of fraud."

According to the Commission, the above circumstances had been the reason for which the first applicant had not contested the facts alleged against her in the criminal proceedings (see paragraph 17 above), and for the three applicants' reluctance to reveal the actual origin of their money.

94. As to the forfeiture of the applicants' assets, the Government contended that the Varna Court of Appeal had established "unlawful activities". It had moreover been satisfied that there had been a significant discrepancy between the applicants' income and the value of their assets. The applicants had remained largely passive and had not proved the lawful origin of their assets, in particular failing to prove their claim that the sums received from abroad had been gifts and loans; they had put forward in that regard "unsubstantiated and completely unconvincing" explanations.

95. In addition, the forfeiture had been ordered in fair proceedings, in which the applicants had had the possibility of submitting evidence and proving their claims. The Varna Court of Appeal had carried out its analysis on the basis of the evidence collected, and had provided adequate reasoning in its judgment.

2. The Court's assessment

(a) Existence of interference and the applicable rule of Article 1 of Protocol No. 1

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

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

98. In *Todorov and Others* (cited above, § 181), the Court pointed out that in some previous cases concerning forfeiture of property it had considered the interference with the applicants' rights to fall under the second paragraph of Article 1 of Protocol No. 1, allowing control of the use of property in the general interest, while in other cases it had treated such forfeiture as deprivation of property, as dealt with in the second sentence of the first paragraph of the provision. As in *Todorov and Others* (ibid., § 182 with further references), the Court finds that it does not have to determine which of the two rules applies, considering that the applicable principles are substantially the same. In particular, an interference with property rights under Article 1 of Protocol No. 1 has to be lawful, to be in the public interest, and to strike a fair balance between the demands of the general interest and the applicant's rights.

(b) Lawfulness

99. The first condition for any interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful (see, among other authorities, *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). In the case under examination, the interference with the applicants' rights was based on the 2012 Act (see paragraphs 28-51 above), and they did not dispute that it had a basis in domestic law.

(c) Legitimate aim

100. As mentioned above, any interference by a public authority with rights protected under Article 1 of Protocol No. 1 must also pursue a legitimate aim in the general interest (see also, among other authorities, *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 113, 13 December 2016).

101. In *Todorov and Others* (cited above, § 186), the Court found that the interference with the applicants' "possessions", based on the 2005 Act, had pursued a legitimate aim, namely to prevent the illicit acquisition of property through criminal activity and the use of such property. As discussed above, the 2005 Act provided expressly for the forfeiture of proceeds of crime (see paragraph 27 above). The Court has similarly held in other cases concerning confiscation of proceeds of crime that the interference with the applicant's rights pursued a legitimate aim in the general interest (see, for instance, *Butler v. the United Kingdom* (dec.), no. 41661/98, ECHR 2002-VI, and *Silickienė v. Lithuania*, no. 20496/02, § 65, 10 April 2012).

102. On the other hand, in the case of *Dimitrovi* (cited above, §§ 53-54), which concerned the forfeiture of what was called under the legislation in force at the time "non-work-related income", and not the forfeiture of proceeds of crime, the Court found that the interference with the applicants' rights had pursued no legitimate aim in the general interest. It held that one of the legitimate aims suggested by the Government, namely the pursuit of justice, equality and just conditions for economic activity was too general and vague, and contrary to the value of economic entrepreneurship. Furthermore, the applicable legislation had not been meant to aid in the fight against criminality, despite the Government so claiming, as the authorities had not attempted to prove that the assets to be forfeited were the proceeds of crime; nor had the interference been aimed at countering tax evasion, as tax legislation had been applicable with respect to the income of the applicants, and tax proceedings had indeed been pursued by the authorities.

103. In the present case, the Government argued that the 2012 Act had pursued two aims – to undermine the economic foundations of corruption and organised crime by eliminating unexplained wealth accumulated as a result of criminal activities, and to prevent and limit the possibilities for unlawful acquisition and transfer of assets (see paragraph 88 above).

104. The explanatory memorandum of the 2012 Act accompanying it in Parliament stated that the purpose of the new legislation was to enhance the fight against corruption and organised crime. That document referred repeatedly to the need to adopt legislation aimed at combatting organised crime and corruption, by depriving the perpetrators of such offences of any financial profit (see paragraph 28 above). Moreover, the justification for new legislation to replace the 2005 Act was not the need to extend the remit of the legislation, but rather the need to overcome a specific deficiency of the original legislation, namely the need to await the conclusion of the criminal

proceedings in order to proceed with the forfeiture (see paragraphs 28-29 above).

105. In addition, the Bulgarian Government has stated to the Committee of Ministers of the Council of Europe that the Act's aim was "to fight corruption and organised crime" (see paragraph 30 above). A similar line was adopted *vis-à-vis* the European Union, to which the 2018 Act, providing for a comparable forfeiture scheme, was presented as transposing into Bulgarian law Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime (see paragraphs 36-37 above).

106. In the same line, the Bulgarian Constitutional Court noted in its judgment of 13 October 2012 that the 2012 Act was aimed at ensuring the forfeiture of what were essentially the proceeds of crime, or the proceeds of clearly unlawful activities – such as tax evasion, smuggling, corruption, trafficking in human beings or drugs, or large-scale thefts (see paragraph 31 above). The Constitutional Court held additionally that the Act would also be applicable without a conviction for a criminal offence, in circumstances where prosecution was impossible because of the death of the perpetrator, amnesty or expiry of a limitation period or other similar reasons, or where the evidence of criminal activity had been insufficient for a "conviction for an offence proven beyond reasonable doubt" (see paragraph 34 above).

107. The Court observes in addition that the 2012 Act contained a list of predicate criminal offences and also referred to certain administrative offences. At least a suspicion that a criminal offence had been committed, or a final decision concerning an administrative offence, was needed to enable the Commission to initiate forfeiture proceedings (see paragraphs 40-41 above).

108. The Government argued in addition that the 2012 Act had aimed at "preventing and limiting the possibilities for unlawful acquisition of assets and the transfer of such assets" (see paragraph 88 above).

109. Such an aim was not expressly referred to in the justification for the 2012 Act, at the national or international level. Yet, it was stated in the Act itself: section 3(1) defined its aim as "removing and restricting the possibilities for the unlawful disposal and acquisition of assets", and it provided for the forfeiture of "assets for which no lawful origin [was] established" (see paragraphs 38-39 above). The Government have failed to expand on what the meaning of "unlawful acquisition of assets" might be, apart from assets acquired as a result of the offences, criminal or administrative, referred to in the 2012 Act.

110. The Court has previously held on various occasions that confiscation of proceeds of crime is in line with the general interest of the community, (see *Raimondo v. Italy*, 22 February 1994, § 30, Series A no. 281-A). A confiscation order in respect of criminally acquired property operates in the general interest as a deterrent to those considering engaging in criminal

activities, and also guarantees that crime does not pay (see *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 58, 1 April 2010, with further references to *Phillips v. the United Kingdom*, no. 41087/98, § 52, ECHR 2001-VII, and *Dassa Foundation and Others v. Liechtenstein* (dec.), no. 696/05, 10 July 2007).

111. In light of the above, the Court is satisfied that the 2012 Act pursued a legitimate aim in the public interest, namely to prevent the illicit acquisition of property through criminal or administrative offences, as referred to in the Act.

(d) Proportionality

(i) General considerations

112. The applicable general principles deriving from the Court's case-law have been summarised in *Todorov and Others* (cited above, §§ 187-88, with further references). In particular, the Court has held that any interference with property rights should strike a fair balance between the demands of the general interest of the community and the requirements of the protection of individual rights, while recognising that States nevertheless retain a wide margin of appreciation in respect of measures of political, economic or social strategy. In addition, in judicial proceedings concerning the right to property an individual must have a reasonable opportunity to put his or her case to the competent authorities and to challenge effectively any measures interfering with the rights guaranteed under Article 1 of Protocol No. 1 to the Convention.

113. In *Todorov and Others* (cited above, §§ 200-11) the Court undertook a detailed analysis of the specific features of the 2005 Act as applied by the national courts. As mentioned above, that case concerned forfeiture under the 2005 Act, which was the legislation preceding the 2012 Act and dealing expressly with proceeds of crime (see paragraph 27 above). The Court identified some deficiencies in the 2005 Act and the manner of its application which, in many situations, could mean that the applicants had had to bear an excessive burden and that the balance in the proceedings had been tilted in favour of the State.

114. The Court is concerned that a significant number of these deficiencies were maintained in the 2012 Act.

115. The list of predicate offences under the 2012 Act remained very wide, and was comparable to that under the 2005 Act (see paragraph 40 above and § 95 of *Todorov and Others*, cited above). Proceedings under the 2012 Act could thus be triggered not only by particularly serious offences such as those related to organised crime, drug-trafficking, corruption in the public service or money laundering, or other offences which could be assumed to always generate income, but by a variety of other offences as well, in addition to some administrative offences.

116. The scope of application of the 2012 Act was also wide as regards the periods it applied to. While it did not deal with assets acquired within the last twenty-five years, as the 2005 Act had done (see *Todorov and Others*, cited above, § 98), it provided for a period of ten years for which defendants had to establish the lawfulness of their income and expenses (see paragraph 46 above), and that is still a significant duration. Moreover, the 2012 Act was applicable even where the predicate offences had been committed years before its entry into force. That was, for example, the case in one of the individual applications under examination, that of Mr Yordanov, where the applicant had committed an offence between 2005 and 2008 (see paragraph 5 above).

117. As was the case with the 2005 Act (see *Todorov and Others*, cited above, § 202), the Court considers it reasonable to assume that the rather wide scope of application of the 2012 Act, coupled with its retroactive application, rendered the task of proving the lawful income source or the lawful provenance of any assets difficult for the applicants.

118. Yet, in this situation, the 2012 Act and relevant judicial practice placed the burden of proving the lawful provenance of their assets on the defendants, a state of affairs which was accepted by the Constitutional Court in its judgment of 13 October 2012 (see paragraph 38 above). The Court, for its part, while reiterating that every legal system recognises presumptions of fact or of law, and that the Convention does not prohibit such presumptions in principle (see, among other authorities, *Arcuri v. Italy* (dec.), no. 52024/99, ECHR 2001-VII), cannot ignore the fact that such presumption in the instant case operated in combination with the difficulties for the applicants described above, namely those stemming from the wide scope of the 2012 Act.

119. Furthermore, the Court is not convinced that the "lawfulness" of the sources of income was an easy matter to prove. In *Todorov and Others* (cited above, § 208) it referred in particular to the domestic courts' refusal to accept witness testimony alone as proof of certain transactions, increasing the burden on the applicants in a situation where they had already been faced with the task of establishing their financial situation as of many years earlier.

120. While it does not doubt that the factors above must have placed considerable burden on defendants in proceedings under the 2012 Act and, as under the 2005 Act, possibly tilted the balance in favour of the State, the Court does not consider that, taken in themselves, those aspects of the forfeiture regime could automatically render any confiscation under the 2012 Act in breach of Article 1 of Protocol No. 1.

121. What could, however, be a matter of concern, in addition to the various factors enumerated above, was the apparent assumption made in the 2012 Act that defendants in forfeiture proceedings had not only been implicated in unspecified criminal or unlawful activities, but that this had been the case for a period of many years (compare the considerations in *Todorov and Others*, cited above, § 206). That feature stemmed from the

general approach of the 2012 Act, which considered it unnecessary to seek to establish any such activities, but nevertheless apparently presumed them to be the source of the assets to be forfeited. While the Court is aware that organised crime can sometimes resort to more sophisticated methods of acquiring property, rendering the tracing to its origins difficult, it cannot but notice at the same time that an important safeguard contained in the 2005 Act was removed with the 2012 Act, namely the requirement to establish some link between the assets to be forfeited and the predicate offence. It should also be noted that the Bulgarian Supreme Court, in its Interpretative Decision no. 4 of 7 December 2018, given subsequent to the relevant facts in the present case, identified the need to maintain such a link, interpreting the 2012 Act as targeting property acquired through criminal behaviour and maintaining a link with the criminal proceedings; this finding, however, was overturned by Parliament, without any specific justification and engagement with the reasoning of the Bulgarian Supreme Court (see paragraphs 48-51 above).

122. In such a situation the Court considers it appropriate to follow, in so far as possible and in the light of the features of the present case, an approach similar to that established in *Todorov and Others* (cited above). In that case it reached the conclusion that, for any interference with individual rights under the 2005 Act to be in conformity with the requirements of Article 1 of Protocol No. 1, the national courts ordering the forfeiture had to provide some particulars as to the criminal conduct in which the assets to be forfeited were alleged to have originated, and show in a reasoned manner that those assets could have been the proceeds of that conduct; such a requirement was seen as a counterbalance against the State's advantage in the forfeiture proceedings, stemming from the restrictions on the ability of defendants to effectively challenge the measures against them under the 2005 Act, and as a basic guarantee of the applicants' rights (see §§ 200-14 of that judgment, with the approach summarised in § 215).

123. The Court's approach in *Todorov and Others* was based on its case-law concerning forfeiture of proceeds of crime, which was also summarised in that judgment (ibid., §§ 190-99). In previous cases the Court took into account whether the national authorities which had ordered forfeiture had established the criminal provenance of the assets concerned. For instance, in *G.I.E.M. S.R.L. and Others v. Italy* ([GC], nos. 1828/06 and 2 others, § 301, 28 June 2018) it noted in its proportionality analysis the degree of culpability or negligence on the part of the applicants. In other cases, such as *Phillips* (cited above, § 53), *Veits v. Estonia* (no. 12951/11, § 74, 15 January 2015) and *Silickienė* (cited above, § 68), it had sought to satisfy itself that the illicit or criminal origin of the assets to be forfeited had been established in the domestic proceedings, even if not to a criminal-law standard of proof. By contrast, the Court did find violations of Convention provisions in some other confiscation cases where the domestic authorities had not shown that the

forfeited assets had been the proceeds of crime or undertaken any assessment of the exact assets that could have been obtained through crime (see *Geerings v. the Netherlands*, no. 30810/03, § 47, 1 March 2007, and *Rummi v. Estonia*, no. 63362/09, § 107, 15 January 2015).

124. In view of the considerations above, and also referring to its conclusion above that the 2012 Act pursued the aim of depriving perpetrators of criminal and administrative offences of their financial gain (see paragraph 111 above), the Court holds that, for a forfeiture under the 2012 Act to be in compliance with the requirements of Article 1 of Protocol No. 1, it is essential, as a counterbalance to the potential deficiencies discussed above, that the domestic courts provided some particulars as to the offences, criminal or administrative, in which the assets subject to forfeiture were alleged to have originated, and showed in a reasoned manner that there could be a link between such offences and the assets in question.

125. Lastly, in so far as that analysis was actually carried out, the Court would be prepared to defer to the national courts' assessment, unless it finds that such assessment was arbitrary or manifestly unreasonable (see *Todorov and Others*, cited above, § 216; also *Arcuri and Others*, cited above, and *Bongiorno and Others v. Italy*, no. 4514/07, § 49, 5 January 2010).

(ii) In respect of each application

(α) *Yordanov* (application no. 265/17)

126. The applicant in application no. 265/17 was convicted of a criminal offence, namely tax evasion. That offence in itself yielded no financial gain because the applicant had, albeit with some delay, paid the tax due (see paragraph 6 above).

127. While the national courts had before them some data about the alleged illegal activities of the applicant in Belgium, they decided not to use them, considering that the applicant had not, to their knowledge, been either charged or convicted (see paragraphs 9-10 above). The Government submitted the applicant's conviction in 2008 in Belgium and claimed that he had been engaged in "continuous criminal activities" (see paragraph 90 above). However, the Court will not take that information into account, as it was not discussed at the domestic level and therefore could not have served as the justification for the forfeiture of the applicant's assets (see, for a similar situation, *Todorov and Others*, cited above, § 228). Apart from the applicant's conviction in Bulgaria, the national courts made no further findings as to any criminal activity.

128. The courts found in addition that the applicant had failed to prove the existence of any lawful income to justify the acquisition of the assets in respect of which forfeiture was being sought (see paragraph 15 above). The Court sees no reason to doubt that conclusion as it does not consider it arbitrary or manifestly ill-founded in the light of the circumstances of the

application (see, for similar findings, *Todorov and Others*, cited above, §§ 256 and 265); the national courts gave adequate and sufficient reasons when rejecting the applicant's claim that he and his wife had received "lawful" income from various sources.

129. Nevertheless, such a conclusion in itself is insufficient to justify the forfeiture of the applicant's assets. As noted above, for the forfeiture to be seen as compliant with Article 1 of Protocol No. 1, the national authorities had to provide in addition some particulars as to the criminal or administrative offences which had allegedly resulted in the acquisition of the disputed assets, and also to show a link between any such activity and the assets at issue (see paragraph 124 above).

130. However, as already noted, the only such activity which was actually established in respect of the applicant was the criminal offence committed in Bulgaria, which had yielded no financial gain. Apart from serving as a ground allowing the initiation of forfeiture proceedings by the Commission, the applicant's criminal conviction was in no way relevant for the courts' decision to order the forfeiture. No link was shown to exist between the offence and the assets in respect of which forfeiture was being requested, and the domestic courts held expressly that the procedure under the 2012 Act was "detached" from the criminal proceedings and their outcome (see paragraphs 16 and 25 above). Instead of that, the courts considered that the assets for which forfeiture was being sought were to be confiscated as "unlawfully acquired" only because the applicant had failed to prove any lawful income to justify their acquisition.

131. Thus, the national courts failed to discuss any criminal activity or an administrative offence which could have been the source of the assets subject to the forfeiture claim, or to establish a link between those assets and any such activity.

132. It follows that the fair balance required under Article 1 of Protocol No. 1, as interpreted above, was not achieved in this instance, and the interference with the applicant's "possessions" was not shown to be proportionate to any legitimate aim that the interference might have pursued.

133. Having regard to the foregoing, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

(β) *Bozadzhieva and Others* (application no. 26473/18)

134. In the circumstances of this application the forfeiture was ordered after the first applicant had been convicted of tax evasion and the fraudulent receipt of child allowance (see paragraph 17 above).

135. The national courts did not discuss any other criminal or unlawful conduct on the part of the applicants. While in the proceedings before the Court the Government made allegations to the effect that the money received by the applicants and used, to an unknown extent, to acquire the assets under examination, could have been of unlawful or even criminal provenance (see

paragraph 93 above), such allegations have remained unproven. They were, moreover, never discussed or taken into account by the national courts. The Court reiterates once again that it cannot take into account circumstances not considered at the domestic level and not used to justify the forfeiture of the applicants' assets (see paragraph 127 above and *Todorov and Others*, cited above, § 228).

136. Once again it was found that the assets in respect of which forfeiture was being sought had to be considered "unlawfully acquired" only because the applicants had not proved sufficient lawful income to have acquired them otherwise (see paragraphs 22-24 above). The Court sees no reason to question this finding of the national courts in itself, as it does not appear to be unreasonable or manifestly ill-founded in the light of the circumstances of the application.

137. It was never alleged that the offences committed by the first applicant – the only prohibited activity established in the domestic case – had been the source of the assets subject to forfeiture. The national courts ordering the forfeiture never sought to establish a link between those assets and the predicate offences, finding that this was not a requirement of the 2012 Act (see paragraph 25 above).

138. The Court reiterates once again its finding above that, to render any forfeiture under the 2012 Act compliant with the requirements and guarantees of Article 1 of Protocol No. 1, the national authorities had to establish some criminal activity or administrative offences alleged to have led to the acquisition of the assets subject to forfeiture, and a link between such activity and the assets at issue (see paragraph 124 above). Even in the light of its readiness to defer to any national analysis in that regard, as far as it was not arbitrary or manifestly unreasonable (see paragraph 125 above), the Court considers that the required standard has not been met.

139. It has thus not been established that the interference with the applicants' rights, even if pursuing a legitimate aim in the general interest, was proportionate to such an aim.

140. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention in respect of this application as well.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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. Application no. 265/17 - *Yordanov v. Bulgaria*

142. The applicant in this application did not submit any claims for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

143. The Court observes nevertheless that, following its finding of a violation of Article 1 of Protocol No. 1, it remains open for the applicant to seek the reopening of his case at the domestic level in order to have the forfeiture claims against him re-examined. That possibility is discussed in more detail in paragraph 148 below with regard to the remaining applicants.

B. Application no. 26473/18 – *Bozadzhieva and Others v. Bulgaria*

1. Pecuniary damage

144. The applicants claimed the value of their forfeited assets. Presenting valuations prepared by an expert, they submitted that the value of the three plots of land with buildings constructed on them which had already been put up for public sale by the State (see paragraph 26 above) was 392,400 Bulgarian levs (BGN), the equivalent of 200,630 euros (EUR), and that the value of their remaining immoveable property was BGN 56,000 (EUR 28,630). The applicants claimed in addition BGN 421,624 (EUR 215,570), which they had been ordered to pay to the State (see paragraph 26 above). Lastly, the applicants claimed compensation for loss of profit from their forfeited land, which an expert had assessed at BGN 85,138 (EUR 43,530).

145. The Government did not comment on those claims.

146. The Court observes that, in concluding that there was a violation of Article 1 of Protocol No. 1, it found that the national courts which had examined the forfeiture application against the applicants had failed to specify the prohibited conduct resulting in the acquisition of the assets to be forfeited, or to establish any link between those assets and the conduct at issue (see paragraphs 138-139 above). Since an analysis of those issues was not carried out on the domestic level, the Court cannot speculate as to whether and to what extent the assets forfeited from the applicants were the proceeds of criminal or administrative offences, or as to the possible outcome of the proceedings had the requirements of Article 1 of Protocol No. 1 been complied with. It is not therefore in a position to assess correctly any damage suffered by the applicants on account of unjustified forfeiture (see *Todorov and Others*, cited above, § 321).

147. The Court thus considers, as it did in *Todorov and Others* (cited above, § 322), that, in the light of the procedural character of the violation found, a reopening of the domestic proceedings and a re-examination of the matter at the national level would constitute, in principle, an appropriate means to remedy the violation (see, for similar solutions, *Gereksar and*

Others v. Turkey, nos. 34764/05 and 3 others, § 75, 1 February 2011; *Kravchuk v. Russia*, no. 10899/12, §§ 55-56, 26 November 2019; and *Kostov and Others v. Bulgaria*, nos. 66581/12 and 25054/15, § 105, 14 May 2020).

148. Domestic law provides for the possibility of reopening such proceedings; specifically, under Article 303 § 1(7) of the Code of Civil Procedure an interested party may request the reopening of civil proceedings in a case where a "judgment of the European Court of Human Rights has found a violation of the [Convention]" and "a new examination of the case is required in order to repair the consequences of the violation" (see paragraph 56 above). It is for the applicants now to make use of that opportunity, and if their case is to be re-examined, the domestic courts will, in principle, be obliged to apply Article 1 of Protocol No. 1, as interpreted by the Court (see *Todorov and Others*, cited above, § 322).

149. Lastly, in so far as the applicants claimed compensation for loss of profit, in view of the considerations above, the question whether or not any such loss was unjustifiably caused by the respondent State remains a matter of speculation. Moreover, if the forfeiture application against the applicants is wholly or partially rejected after reopening, they will be entitled to claim compensation for any damage caused by the forfeiture order, including in respect of lost profit. In particular, section 91 of the 2012 Act provided that the State was liable for any damage caused through unlawful decisions or actions of its bodies under that Act (see paragraph 55 above).

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

2. Non-pecuniary damage

151. Under this head, each of the applicants claimed EUR 5,000.

152. The Government did not comment on those claims.

153. The Court awards the first and second applicants, Ms Nevin Bozadzhieva and Mr Gyulver Hasan, EUR 3,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable, on account of the forfeiture of their assets carried out in a manner previously criticised by the Court and found to be in breach of Article 1 of Protocol No. 1.

154. The Court, on the other hand, dismisses the claim of the company Ruzh-Dil EOOD. The company is owned by the second applicant (see paragraph 18 above), and the applicants have not shown, or even claimed, that the events at issue negatively affected in any significant manner its reputation, planning or decision making, or that the second applicant suffered, on that separate account, any distinct anxiety or inconvenience (see, for the circumstances to be taken into account, *Comingersoll S.A. v. Portugal* ([GC], no. 35382/97, § 35, ECHR 2000-IV, and, for a conclusion similar to the present one, *Microintelect OOD v. Bulgaria*, no. 34129/03, § 59, 4 March 2014).

3. Costs and expenses

155. The applicants claimed BGN 6,000 (EUR 3,070) paid by them for their legal representation before the domestic courts. They presented the relevant receipts.

156. In respect of the proceedings before the Court, the applicants claimed EUR 6,000, of which EUR 1,000 was value-added tax, paid by them to their legal representatives. They claimed in addition BGN 1,470 (EUR 751) which they had paid for the valuations of their forfeited properties and for the calculation of lost profit (see paragraph 144 above). Lastly, they claimed the equivalent of EUR 361 in respect of postage and translation. The applicants presented the relevant receipts. They requested that any award under this head be paid directly to them, save for the EUR 361 paid for postage and translation, which they requested be transferred directly to the law firm of their legal representatives, Ekimdzhiev and Partners.

157. The Government did not comment on those claims.

158. 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.

159. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings. It observes that if the applicants seek the reopening of these proceedings and are ultimately successful, they can claim the reimbursement of these expenses from the State (see paragraph 57 above).

160. On the other hand, the Court awards the costs and expenses incurred before it in full. It considers this claim reasonable as to quantum, considering in particular the complexity of the case and the novel issues raised with regard to Bulgarian law. The Court thus awards the applicants EUR 7,112 in total under the present head, plus any tax that may be chargeable to them on that amount. As requested, EUR 361 of this sum is to be transferred directly into the bank account of the law firm of the applicants' legal representatives (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, ECHR 2016 (extracts)).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds*

(a) that the respondent State is to pay the applicants in application no. 26473/28, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) each to Ms Nevin Bozadzhieva and Mr Gyulver Hasan, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 7,112 (seven thousand one hundred and twelve euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, EUR 361 (three hundred and sixty-one euros) of which is to be transferred directly into the bank account of the law firm Ekimdzhiev and Partners;

(iii) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth or registration Place of residence or registered office Nationality	Name of representative Place of practice
1.	265/17	*Yordanov v. Bulgaria*	21/12/2016	**Rosen Marinov YORDANOV** 1965 Antwerp Belgian, Bulgarian	Lachezar Lyubomirov POPOV Sofia
2.	26473/18	*Bozadzhieva and Others v. Bulgaria*	30/05/2018	**Nevin Ramadan BOZADZHIEVA** 1977 Yasenovets Bulgarian **Gyulver Ismail HASAN** 1968 Yasenovets Bulgarian **Company RUZH-DIL EOOD** 2007 Yasenovets Bulgarian	Mihail Tiholov EKIMDZHIEV Plovdiv