



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

FOURTH SECTION

CASE OF VALKOV AND OTHERS v. BULGARIA

*(Applications nos. 2033/04, 19125/04, 19475/04, 19490/04,
19495/04, 19497/04, 24729/04, 171/05 and 2041/05)*

JUDGMENT

STRASBOURG

25 October 2011

FINAL

08/03/2012

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

In the case of Valkov and Others v. Bulgaria,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

Pavlina Panova, *ad hoc judge*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 4 October 2011, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in nine applications (nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05) 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 nine Bulgarian nationals, Mr Valko Stanilov Valkov, Mr Vasil Kirilov Galabov, Mr Atanas Vladimirov Gonevski, Mr Ivan Zahariev Slavkov, Mr Boyko Dimitrov Sodev, Mr Vacho Dimitrov Baev, Mr Georgi Sotirov Atanasov, Mr Stoyan Hristov Stoyanov, and Mr Lali Naney Avreiski (“the applicants”), on 6 January, 14 May, 29 June and 7 December 2004 respectively.

2. All applicants save for Mr Atanasov were represented by Mr M. Ekimdzhiyev and Ms K. Boncheva, lawyers practising in Plovdiv. Mr Atanasov was represented by Mr Ts. Tsekov, a lawyer practising in Montana. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicants alleged, in particular, that a statutory cap on their retirement pensions was in breach of their rights under Article 1 of Protocol No. 1, and that they were victims of a two-fold discrimination, in breach of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1: firstly, in relation to those pensioners whose pensions fell below the cap, and secondly, in relation to certain high-ranking officials whose pensions were exempted from the cap.

4. On 10 November 2009 the Court (Fifth Section) decided to join the applications, declared them partly inadmissible, and decided to give the Government notice of the complaints concerning the pensions cap and the alleged discrimination. It was also decided to rule on the admissibility and

merits of the applications at the same time (Article 29 § 1 of the Convention).

5. Following the re-composition of the Court's sections on 1 February 2011, the application was transferred to the Fourth Section.

6. On 13 April 2011 Zdravka Kalaydjieva, the judge elected in respect of the Republic of Bulgaria, withdrew from sitting in the case. On 15 April 2011 the President of the Fourth Section appointed Pavlina Panova as an *ad hoc* judge from the list of three persons whom Bulgaria had designated as eligible to serve as such judges (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are all pensioners who retired on various dates between 1979 and 2002. Whenever the nominal monthly amount of their pensions exceeded the maximum amount of pension specified until the end of 1999 in section 47c of the Pensions Act 1957 (see paragraph 27 below) and since the beginning of 2000 in paragraph 6 of the provisional and concluding provisions of the Social Security Code 1999 (see paragraphs 31-33 below), their pensions were capped.

8. In practice, that worked as follows. In individual decisions relating to each of the applicants, the National Social Security Institute ("the NSSI") calculated their monthly pensions under the general rules laid down first in the Act and then in the Code, and then capped the pensions by reference to the above-mentioned provisions. Whenever the pensions were updated or recalculated, the same process was repeated.

A. Retired Air Force pilots

9. The following applicants are retired pilots from the Air Force. During their employment they received higher salaries than the average for the country.

10. Mr Valkov, who was born in 1928, started receiving a retirement pension in April 1979. In that year, the competent pension authority set his monthly pension at 330.20 old Bulgarian leva (BGL). Mr Valkov did not provide information about the actual amount of his monthly pension between June 1992 and the end of 1999; it appears that its nominal amount

at the end of 1999 was 327.40 new Bulgarian leva (BGN)¹ (the equivalent of 167.40 euros (EUR)²), and that it was therefore affected by the cap under section 47c of the Pensions Act 1957 (see paragraphs 27 and 28 below). When the Social Security Code 1999 came into force on 1 January 2000, Mr Valkov's pension was recalculated in accordance with the new rules. With effect from 27 April 2004, he was granted an additional invalidity pension, amounting to BGN 13.75 (EUR 7.03).

11. In summary, Mr Valkov's monthly pension after 1 January 2000 was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
3 July 2000, rect'd	1 January 2000	BGN 622.97 (EUR 318.52)	BGN 160 (EUR 81.81)
12 January 2001	1 June 2001	BGN 685.27 (EUR 350.37)	BGN 176 (EUR 89.99)
5 June 2001	1 June 2002	BGN 726.39 (EUR 371.40)	BGN 233.20 (EUR 119.23)
3 June 2002	1 June 2003	BGN 771.43 (EUR 394.43)	BGN 250 (EUR 127.82)
3 June 2003	1 January 2004	BGN 771.43 (EUR 394.43)	BGN 420 (EUR 214.74)
Amendment of paragraph 6 of 1 January 2004	27 April 2004	BGN 785.18 (EUR 401.46)	BGN 420 (EUR 214.74)
19 May 2004	1 June 2004	BGN 832.30 (EUR 425.55)	BGN 420 (EUR 214.74)
July 2004	1 June 2005	BGN 891.46 (EUR 455.80)	BGN 420 (EUR 214.74)
19 May 2005	1 January 2006	BGN 927.29 (EUR 474.12)	BGN 455 (EUR 232.64)
3 February 2006	1 July 2007	BGN 1,020.02 (EUR 521.53)	BGN 490 (EUR 250.53)
2 July 2007	1 July 2008	BGN 1,238.15 (EUR 633.06)	BGN 490 (EUR 250.53)
1 July 2008	1 April 2009	BGN 1,541 (EUR 787.90)	BGN 700 (EUR 357.90)

12. Mr Galabov, who was born in 1954, started receiving a retirement pension in 1999. It was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
7 July 1999	1 December 1998	BGL 356,160 (EUR 182.10)	BGL 103,950 (EUR 53.15)

1. Under the currency revalorisation of 5 July 1999, one new Bulgarian lev (BGN) equals 1,000 old Bulgarian leva (BGL).

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

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
7 July 1999	1 July 1999	BGL 400,170 (EUR 204.60)	BGL 111,000 (EUR 56.75)
3 July 2000, rect'd 22 May 2002	1 January 2000	BGN 616.86 (EUR 315.40)	BGN 160 (EUR 81.81)
22 May 2002	1 June 2001	BGN 678.55 (EUR 346.94)	BGN 176 (EUR 89.99)
2 July 2001, rect'd 22 May 2002	1 July 2001	BGN 680.72 (EUR 348.05)	BGN 176 (EUR 89.99)
22 May 2002	1 January 2002	BGN 680.72 (EUR 348.05)	BGN 220 (EUR 112.48)
22 May 2002	1 June 2002	BGN 721.56 (EUR 368.93)	BGN 233.20 (EUR 119.23)
3 June 2002	1 June 2002	BGN 779.07 (EUR 368.93)	BGN 186.56 (EUR 95.39)
3 June 2003	1 June 2003	BGN 766.30 (EUR 391.80)	BGN 250 (EUR 127.82)
Amendment of paragraph 6 of 1 January 2004	1 January 2004	BGN 766.30 (EUR 391.80)	BGN 420 (EUR 214.74)
1 June 2004	1 June 2004	BGN 812.28 (EUR 415.31)	BGN 420 (EUR 214.74)
1 June 2005	1 June 2005	BGN 869.14 (EUR 444.38)	BGN 420 (EUR 214.74)
1 March 2006	1 January 2006	BGN 903.91 (EUR 462.16)	BGN 455 (EUR 232.64)
2 July 2007	1 July 2007	BGN 994.30 (EUR 508.38)	BGN 490 (EUR 250.53)
1 October 2007	1 October 2007	BGN 1,093.73 (EUR 559.22)	BGN 490 (EUR 250.53)
1 July 2008	1 July 2008	BGN 1,206.93 (EUR 617.09)	BGN 490 (EUR 250.53)
1 October 2008	1 October 2008	BGN 1,368.52 (EUR 699.71)	BGN 490 (EUR 250.53)
5 December 2008	27 November 2008	BGN 1,499.28 (EUR 766.57)	BGN 490 (EUR 250.53)
1 April 2009	1 April 2009	BGN 1,649.39 (EUR 843.32)	BGN 700 (EUR 357.90)

13. Mr Sodev, who was born in 1949, started receiving a retirement pension in 2001. It was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
13 August 2001	1 June 2001	BGN 915.61 (EUR 468.14)	BGN 176 (EUR 89.99)
3 June 2002	1 June 2002	BGN 970.55 (EUR 496.23)	BGN 233.20 (EUR 119.23)
12 February 2003	15 January 2003	BGN 999.56 (EUR 511.07)	BGN 233.20 (EUR 119.23)
3 June 2003	1 June 2003	BGN 1,061.53 (EUR 542.75)	BGN 250 (EUR 127.82)

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
Amendment of paragraph 6 of 1 January 2004	1 January 2004	BGN 1,061.53 (EUR 542.75)	BGN 420 (EUR 214.74)
1 June 2004	1 June 2004	BGN 1,125.22 (EUR 575.32)	BGN 420 (EUR 214.74)
1 June 2005	1 June 2005	BGN 1,203.99 (EUR 615.59)	BGN 420 (EUR 214.74)
1 March 2006	1 January 2006	BGN 1,252.15 (EUR 640.21)	BGN 455 (EUR 232.64)
29 March 2006	14 March 2006	BGN 1,351.70 (EUR 691.11)	BGN 455 (EUR 232.64)
7 March 2007	19 February 2007	BGN 1,366.22 (EUR 698.58)	BGN 455 (EUR 232.64)
2 July 2007	1 July 2007	BGN 1,502.84 (EUR 768.39)	BGN 490 (EUR 250.53)
1 October 2007	1 October 2007	BGN 1,653.12 (EUR 845.23)	BGN 490 (EUR 250.53)
19 March 2008	22 February 2008	BGN 1,670.72 (EUR 854.23)	BGN 490 (EUR 250.53)
1 July 2008	1 July 2008	BGN 1,843.64 (EUR 942.64)	BGN 490 (EUR 250.53)
26 March 2009	20 February 2009	BGN 2,049.34 (EUR 1,047.81)	BGN 700 (EUR 357.90)
1 July 2009	1 July 2009	BGN 2,233.78 (EUR 1,142.11)	BGN 700 (EUR 357.90)

14. Mr Stoyanov, who was born in 1950, started receiving a retirement pension in 2002. It was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
12 September 2002	14 June 2002	BGN 871.32 (EUR 445.50)	BGN 233.20 (EUR 119.13)
3 June 2003	1 June 2003	BGN 925.34 (EUR 473.12)	BGN 250 (EUR 127.82)
Amendment of paragraph 6 of 1 January 2004	1 January 2004	BGN 925.34 (EUR 473.12)	BGN 420 (EUR 214.74)
1 June 2004	1 June 2004	BGN 980.86 (EUR 501.51)	BGN 420 (EUR 214.74)
n/a	1 June 2005	BGN 1,049.52 (EUR 536.61)	BGN 420 (EUR 214.74)
n/a	1 January 2006	BGN 1,091.50 (EUR 558.08)	BGN 455 (EUR 232.64)
n/a	1 January 2007	BGN 1,091.50 (EUR 558.08)	BGN 490 (EUR 250.53)
n/a	1 July 2007	BGN 1,200.65 (EUR 613.88)	BGN 490 (EUR 250.53)
n/a	1 October 2007	BGN 1,320.72 (EUR 675.27)	BGN 490 (EUR 250.53)

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
n/a	1 July 2008	BGN 1,457.41 (EUR 745.16)	BGN 490 (EUR 250.53)
n/a	1 April 2009	BGN 1,603.25 (EUR 819.73)	BGN 700 (EUR 357.90)
n/a	1 July 2009	BGN 1,747.54 (EUR 893.50)	BGN 700 (EUR 357.90)

15. Mr Avreiski, who was born in 1950, started receiving a retirement pension in 2002. It was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
3 September 2002	15 June 2002	BGN 699.69 (EUR 357.75)	BGN 233.20 (EUR 119.23)
3 June 2003	1 June 2003	BGN 743.07 (EUR 379.93)	BGN 250 (EUR 127.82)
Amendment of paragraph 6 of 1 January 2004	1 January 2004	BGN 743.07 (EUR 379.93)	BGN 420 (EUR 214.74)
1 June 2004	1 June 2004	BGN 787.65 (EUR 402.72)	BGN 420 (EUR 214.74)
n/a	1 June 2005	BGN 842.79 (EUR 430.91)	BGN 420 (EUR 214.74)
n/a	1 January 2006	BGN 876.50 (EUR 448.15)	BGN 455 (EUR 232.64)
n/a	1 July 2007	BGN 964.15 (EUR 492.96)	BGN 490 (EUR 250.53)
n/a	1 October 2007	BGN 1,060.57 (EUR 542.26)	BGN 490 (EUR 250.53)
n/a	1 July 2008	BGN 1,170.34 (EUR 598.39)	BGN 490 (EUR 250.53)
n/a	1 October 2008	BGN 1,170.34 (EUR 598.39)	BGN 490 (EUR 250.53)
n/a	1 April 2009	BGN 1,287.45 (EUR 658.26)	BGN 700 (EUR 357.90)
n/a	1 July 2009	BGN 1,403.32 (EUR 717.51)	BGN 700 (EUR 357.90)

B. Retired sappers

16. The following applicants were sappers from the Border Police Service. They also received higher salaries than the average for the country.

17. Mr Gonevski, who was born in 1944, started receiving a retirement pension in 2001. It was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
10 April 2002	27 November 2001	BGN 949.96 (EUR 485.71)	BGN 176 (EUR 89.99)

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
3 June 2002	1 June 2002	BGN 1,006.96 (EUR 514.85)	BGN 200 (EUR 102.26)
3 June 2003	1 June 2003	BGN 1,069.39 (EUR 546.77)	BGN 200 (EUR 102.26)
Amendment of paragraph 6 of 1 January 2004	1 January 2004	BGN 1,069.39 (EUR 546.77)	BGN 420 (EUR 214.74)
1 June 2004	1 June 2004	BGN 1,133.55 (EUR 579.57)	BGN 420 (EUR 214.74)
1 June 2005	1 June 2005	BGN 1,212.90 (EUR 620.15)	BGN 420 (EUR 214.74)
1 March 2006	1 January 2006	BGN 1,261.42 (EUR 644.95)	BGN 455 (EUR 232.64)
2 July 2007	1 July 2007	BGN 1,387.56 (EUR 709.45)	BGN 490 (EUR 250.53)
1 October 2007	1 October 2007	BGN 1,526.32 (EUR 780.40)	BGN 490 (EUR 250.53)
1 July 2008	1 July 2008	BGN 1,684.29 (EUR 861.16)	BGN 490 (EUR 250.53)
25 July 2008	17 July 2008	BGN 2,068.32 (EUR 1,057.52)	BGN 490 (EUR 250.53)
27 February 2009	24 February 2009	BGN 2,100.36 (EUR 1,073.90)	BGN 490 (EUR 250.53)
1 April 2009	1 April 2009	BGN 2,310.48 (EUR 1,181.33)	BGN 700 (EUR 357.90)
1 July 2009	1 July 2009	BGN 2,518.42 (EUR 1,287.65)	BGN 700 (EUR 357.90)
22 January 2010	20 January 2010	BGN 2,556.83 (EUR 1,307.29)	BGN 700 (EUR 357.90)

18. Mr Slavkov, who was born in 1950, started receiving a retirement pension in 2000. It was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
11 August 2000	1 February 2000	BGN 772.74 (EUR 395.10)	BGN 160 (EUR 81.81)
5 June 2001	1 June 2001	BGN 850.01 (EUR 434.60)	BGN 176 (EUR 89.99)
3 June 2002	1 June 2002	BGN 901.01 (EUR 460.68)	BGN 186.56 (EUR 95.39)
3 June 2003	1 June 2003	BGN 956.87 (EUR 489.24)	BGN 200 (EUR 102.26)
Amendment of paragraph 6 of 1 January 2004	1 January 2004	BGN 956.87 (EUR 488.80)	BGN 420 (EUR 214.74)
1 June 2004	1 June 2004	BGN 1,013.74 (EUR 518.32)	BGN 420 (EUR 214.74)
1 June 2005	1 June 2005	BGN 1,084.70 (EUR 554.60)	BGN 420 (EUR 214.74)

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
1 March 2006	1 January 2006	BGN 1,128.09 (EUR 576.78)	BGN 455 (EUR 232.64)
2 July 2007	1 July 2007	BGN 1,240.90 (EUR 634.46)	BGN 490 (EUR 250.53)
1 October 2007	1 October 2007	BGN 1,364.99 (EUR 697.91)	BGN 490 (EUR 250.53)
1 July 2008	1 July 2008	BGN 1,506.27 (EUR 770.14)	BGN 490 (EUR 250.53)
1 October 2008	1 October 2008	BGN 1,707.96 (EUR 873.27)	BGN 490 (EUR 250.53)
1 April 2009	1 April 2009	BGN 1,878.84 (EUR 960.64)	BGN 700 (EUR 357.90)
1 July 2009	1 July 2009	BGN 2,047.94 (EUR 1,047.10)	BGN 700 (EUR 357.90)

19. Mr Baev, who was born in 1954, started receiving a retirement pension in 2000. It was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
11 August 2000	1 March 2000	BGN 560.92 (EUR 286.79)	BGN 160 (EUR 81.81)
5 June 2001	1 June 2001	BGN 617.01 (EUR 315.47)	BGN 176 (EUR 89.99)
3 June 2002	1 June 2002	BGN 654.03 (EUR 334.40)	BGN 186.56 (EUR 95.39)
3 June 2003	1 June 2003	BGN 694.58 (EUR 355.13)	BGN 200 (EUR 102.26)
Amendment of paragraph 6 of 1 January 2004	1 January 2004	BGN 694.58 (EUR 355.13)	BGN 420 (EUR 214.74)
1 June 2004	1 June 2004	BGN 736.25 (EUR 376.44)	BGN 420 (EUR 214.74)
1 June 2005	1 June 2005	BGN 787.79 (EUR 402.79)	BGN 420 (EUR 214.74)
1 March 2006	1 January 2006	BGN 819.30 (EUR 418.90)	BGN 455 (EUR 232.64)
2 July 2007	1 July 2007	BGN 901.23 (EUR 460.79)	BGN 490 (EUR 250.53)
1 October 2007	1 October 2007	BGN 991.35 (EUR 506.87)	BGN 490 (EUR 250.53)
1 July 2008	1 July 2008	BGN 1,093.95 (EUR 559.33)	BGN 490 (EUR 250.53)
1 October 2008	1 October 2008	BGN 1,240.43 (EUR 634.22)	BGN 490 (EUR 250.53)
1 April 2009	1 April 2009	BGN 1,364.26 (EUR 697.53)	BGN 700 (EUR 357.90)
1 July 2009	1 July 2009	BGN 1,487.04 (EUR 760.31)	BGN 700 (EUR 357.90)

C. Mr Atanasov

20. Mr Atanasov, who was born in 1935, did not specify what his employment had been; he merely stated that it had entailed “hard physical labour”. He started receiving a retirement pension in 1995. He did not provide information about the actual amount of his monthly pension between that time and the end of 1999; it appears that its nominal amount at the end of 1999 was BGN 285.71 (EUR 146.08), and that it was therefore affected by the cap under section 47c of the Pensions Act 1957 (see paragraphs 27 and 28 below). When the Social Security Code 1999 came into force on 1 January 2000, Mr Atanasov’s pension was recalculated in accordance with the new rules.

21. In summary, Mr Atanasov’s pension after 1 January 2000 was as follows:

Order of the NSSI dated	For the period after	Pension(s) under the general rules	Capped amount of pension
n/a	1 January 2000	BGN 310.79 (EUR 158.91)	BGN 160 (EUR 81.81)
n/a	1 June 2001	BGN 341.87 (EUR 174.80)	BGN 176 (EUR 89.99)
n/a	1 June 2002	BGN 362.38 (EUR 185.28)	BGN 186.56 (EUR 95.39)
n/a	1 June 2003	BGN 384.85 (EUR 196.77)	BGN 200 (EUR 102.26)
n/a	1 June 2004	BGN 407.94 (EUR 208.58)	n/a
n/a	1 June 2005	BGN 436.50 (EUR 223.18)	BGN 420 (EUR 214.74)
n/a	1 January 2006	BGN 453.96 (EUR 232.11)	n/a
n/a	1 July 2007	BGN 499.36 (EUR 255.32)	BGN 490.00 (EUR 250.53)
n/a	1 October 2007	BGN 549.30 (EUR 280.85)	BGN 490.00 (EUR 250.53)
n/a	1 July 2008	BGN 606.15 (EUR 309.92)	BGN 490.00 (EUR 250.53)
n/a	1 October 2008	BGN 687.30 (EUR 351.41)	BGN 490.00 (EUR 250.53)
n/a	1 April 2009	BGN 755.89 (EUR 386.48)	BGN 700 (EUR 357.90)
n/a	1 July 2009	BGN 832.92 (EUR 425.87)	BGN 700 (EUR 357.90)

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitution

22. Article 6 § 2 of the 1991 Constitution provides as follows:

“All citizens shall be equal before the law. There shall be no restrictions of rights or privileges on grounds of race, nationality, ethnic identity, sex, origin, religion, education, opinions, political affiliations, or personal, social or property status.

23. Article 51 of the Constitution provides as follows:

“1. Citizens shall have the right to social security and social assistance.

2. Individuals who are temporarily unemployed shall be provided with social security under the conditions and procedures provided for by law.

3. Elderly people who are without relatives and who are unable to support themselves with their own assets, and individuals with physical or mental disabilities shall be under the special protection of the State and society.”

24. Article 57 § 1 of the Constitution stipulates that the citizens’ fundamental rights are irrevocable.

B. Caps on pensions

1. Under the Pensions Act 1957

25. Section 47(5) of the Pensions Act 1957, in force until February 1991, provided that a retired person could not receive a pension exceeding his or her highest monthly wage during the last ten years of his or her employment.

26. In January 1990 section 47b(2) of the Pensions Act 1957 was amended to provide that the amount of the one or more monthly pensions received could not exceed BGL 500. The cap also applied to pensions that had already been granted (paragraph 3 of the transitional and concluding provisions of the Act for the amendment of the Pensions Act).

27. Section 47c of the Pensions Act 1957, inserted in June 1992, capped the amount that could be paid to an individual as a result of his or her entitlement to one or more pensions at three times the amount of the social pension.

28. The amount of the social pension was set by the Council of Ministers pursuant to a proposal by the NSSI (sections 45a(4) and 46b(4) of the Pensions Act 1957). It was superseded by the social pension for old age under Article 89 of the Social Security Code 1999 (see paragraph 32 below). Its amount, and the corresponding capped pensions, were as follows:

Period	Social pension	Pensions cap
1 January – 31 March 1996	BGL 1,210	BGL 3,630
1 April – 30 June 1996	BGL 1,800	BGL 5,400
1 July – 31 September 1996	BGL 2,160	BGL 6,480
1 October 1996 – 30 April 1997	BGL 2,808	BGL 8,424
1 – 8 May 1997	BGL 14,040	BGL 42,120
9 May – 30 June 1997	BGL 16,300	BGL 48,900
1 July – 31 September 1997	BGL 27,000	BGL 81,000
1 October – 31 December 1997	BGL 28,900	BGL 86,700
1 January – 30 June 1998	BGL 30,350	BGL 91,050
1 July – 31 December 1998	BGL 33,000	BGL 99,000
1 January – 30 June 1999	BGL 34,650	BGL 103,950
1 July – 31 December 1999	BGL 37,000 (BGN 37)	BGL 111,000 (BGN 111)

29. In December 1997 the Chief Prosecutor challenged section 47c before the Constitutional Court, arguing that it ran counter to Articles 51 § 1 and 57 § 1 of the Constitution (see paragraphs 23 and 24 above) and to Article 9 of the International Covenant on Economic, Social and Cultural Rights. In a judgment of 15 July 1998 (реш. № 21 от 15 юли 1998 г. по к. д. № 18 от 1997 г., обн., ДВ, бр. 83 от 21 юли 1998 г.) the Constitutional Court rejected the challenge by seven votes to five. It held as follows:

“The provision [in issue], the new section 47c of the Pensions Act, was [inserted in 1992]. It introduced the impugned pensions cap based on the social pension. In turn, the social pension is set by the Council of Ministers on the basis of a proposal by the [NSSI] (section 45a(1)).

It should be noted, for the record, that even before section 47c was added the Pensions Act, which has been amended and supplemented many times, contained provisions that in one way or another set limits on the maximum amount [of pension]. Thus, section 47b(2), [added in 1990 and subsequently repealed], provided that the amount of one pension or the sum total of several pensions could not exceed [BGL] 500 per month. Another example is section 47(5) of the Pensions Act [as in force between 1967 and 1991].

Under the rule laid down in section 47c of the Pensions Act, a class of individuals receive the same amount of pension irrespective of the differences between their employment remunerations, their lengths of service or their social security contributions. While the amount of the pensions of most pensioners depends on those parameters, the amount of the pensions of the persons concerned [by the cap] does not. The question thus arises whether the resulting levelling makes the impugned rule unconstitutional.

The answer cannot be affirmative. The allegations that Articles 51 § 1 and 57 § 1 of the Constitution have been breached are groundless.

Why is that?

Article 51 § 1 of the Constitution proclaims the right to social security and social assistance. The right to a pension, being part of the right to social security, is

comprised and enshrined in that provision. It is one of the citizens' fundamental rights and is irrevocable.

However, the constitutional provision does not lay down the conditions under which that right arises and the way in which it is to be exercised. It follows that the framers of the Constitution have left those matters, which include the amount of the pension, to be regulated by statute. The legislature is entitled to determine the matter at its discretion, provided the concrete solution proposed does not run counter to the principles and requirements of the [Constitution]. The legislature did so by adopting section 47c of the Pensions Act.

Article 57 § 1 of the Constitution has not been breached either. That provision is entirely irrelevant, because the impugned section 47c of the Pensions Act does not concern a revocation of rights.

...

It is true that section 47c of the Pensions Act places citizens in two groups, based on the manner of calculating their pensions. For the first of those groups, the pension is based on certain [individual circumstances], whereas for the second the amount is the same for all.

That unequal situation is not a function of any of the statuses 'set out in Article 6 § 2 of the Constitution in an exhaustive manner' ... Therefore, the constitutional principle of equality of citizens before the law has not been breached.

It is in addition alleged that section 47c of the Pensions Act results in an injustice for those affected by it. That argument is likewise ill-founded. On the contrary, the provision results in justice. One could talk about injustice if it did not exist.

The cap set out in section 47c of the Pensions Act could be linked with the so-called minimum amount of pension. Not only is that minimum, guaranteed by law, not unconstitutional, but it is recommended by some conventions of the International Labour Organisation: for instance, Article 7 of Convention No. 35 on Old-Age Insurance (Industry, etc.), [1933]; Article 7 of Convention No. 38 on Invalidity Insurance (Agriculture), [1933]; Article 9 of Convention No. 39 on Survivors' Insurance (Industry, etc.), [1933]. Those conventions allow the amount of pension to be a fixed sum, or a percentage of the remuneration taken into account for insurance purposes, or to vary with the amount of the contributions paid.

The existence of limits on the maximum or the minimum amount of pension, as well as their mutual dependence, are a result of the pension system operating in our country. It can be described, in financial terms, as a 'pay-as-you-go' system. Such a system requires a cap on the maximum amount of pension – it serves to guarantee the minimum amount of pension and to contribute to its growth. That function shows that the impugned provision is consistent with the requirements of social justice, as laid down in the Preamble to the [Constitution].

Those reasons lead [this court] to conclude that the current wording of section 47c of the Pensions Act does not run counter to any constitutional provision. The request must therefore be dismissed.

In those circumstances ..., there is no need to rule on the previous wording of the same provision.

At the same time, [this court] finds that the current constitutional arrangements do not rule out the impugned legislative solution being repealed in the future, but actually make it desirable in the context of the comprehensive reform of social security in this country. ...

The rule contained in [Article 9 of the International Covenant on Economic, Social and Cultural Rights] corresponds to that contained in Article 51 § 1 of the [Constitution]. [Article 5 § 1 of the Covenant] is likewise reflected in Article 57 § 1 of the [Constitution].

In those circumstances, and bearing in mind that section 47c of the Pensions Act is not unconstitutional and that the above-mentioned provisions of the [Covenant] have been reflected in the Constitution, [this court comes to the conclusion] that section 47c of the Pensions Act is not contrary to the Covenant provisions either.”

30. The five dissenting judges were of the view that the cap was contrary to the constitutional principle of justice because it disregarded the individual contribution of each person to the public good.

2. Under the Social Security Code 1999

31. Paragraph 6(1) of the transitional and concluding provisions of the Social Security Code 1999, which came into force on 1 January 2000 and superseded the Pensions Act 1957, read as follows:

“Up to 31 December 2003 inclusively, the amount of the one or more pensions received ... shall not exceed four times the social pension for old age.”

32. The social pension for old age, which superseded the social pension under section 45a of the Pensions Act 1957 (see paragraph 28 above) is currently governed by Article 89 of the Code (repealed with effect from 1 January 2012). It is set by the Council of Ministers on the basis of a proposal by the NSSI and the Ministry of Labour and Social Policy (Article 89 § 2 of the Code). Its amount, and the corresponding amount of the pensions cap, were as follows:

Period	Social pension	Pensions cap
1 January 2000 – 31 May 2001	BGN 40	BGN 160 (EUR 81.81)
1 June 2001 – 31 May 2002	BGN 44	BGN 176 (EUR 89.99)
1 June 2002 – 31 May 2003	BGN 46.64	BGN 186.56 (EUR 95.39)
1 June 2003 – end of 2003	BGN 50	BGN 200 (EUR 102.26)

33. As an exception to that general rule, paragraph 6(6) of the transitional and concluding provisions of the Code, in force between 1 January 2002 and 31 December 2003, capped the pensions received by retired military personnel or personnel from certain other national security institutions at five times the social pension for old age. In a judgment of 23 February 2004 (реш. № 1579 от 23 февруари 2004 г. по адм. д.

№ 5004/2003 г., BAC, I о.) the Supreme Administrative Court held that the exemption was strictly personal and did not apply to the heirs of the persons mentioned in paragraph 6(6).

34. On 23 December 2003, a few days before the date on which the cap was due to expire (see paragraph 31 above), Parliament amended paragraph 6(1) with effect from 1 January 2004 to read as follows:

“The maximum amount of the one or more pensions received, granted before 31 December 2009 ..., shall be equal to thirty-five per cent of the maximum income for social security purposes for each calendar year [see paragraph 54 below], [as] fixed by the annual State social security budget Act.”

It appears that the percentage was set at 35% because that is equivalent to the expected average pension replacement rate in Bulgaria (the ratio between a retiree’s preretirement income and his or her pension – see paragraph 48 below).

35. With effect from 1 January 2005, the basis for calculating the cap was changed to the maximum monthly income for social security purposes for the previous calendar year (see paragraph 54 below).

36. With effect from 1 January 2007, the date for recalculating the cap was moved from 1 January to 1 July. In 2009, the cap was exceptionally set at BGN 700 with effect from 1 April of that year (paragraph 22h(1) of the transitional and concluding provisions of the Code).

37. Thus, during the period 2004-11 the cap was as follows:

Year	Amount of the cap
2004	BGN 420 (EUR 214.74)
2005	BGN 420 (EUR 214.74)
2006	BGN 455 (EUR 232.64)
2007	BGN 490 (EUR 250.53)
2008	BGN 490 (EUR 250.53)
2009	BGN 700 (EUR 357.90)
2010	BGN 700 (EUR 357.90)
2011	BGN 700 (EUR 357.90)

38. With effect from 1 January 2010, the cap was extended to all pensions granted before 31 December 2011. The explanatory notes to the draft bill that the Government laid before Parliament related the content of the proposed amendment without further explanations.

39. With effect from 1 January 2011, the cap was extended to all pensions granted before 31 December 2013. The explanatory notes to the draft bill that the Government laid before Parliament said that the proposal was to abolish the cap in respect of pensions granted after 1 January 2014 and gradually to increase it in respect of pensions granted before that date.

40. The cap does not apply to individuals who have held the posts of President or Vice-President of the Republic of Bulgaria, Speaker of the National Assembly, Prime Minister, or judge in the Constitutional Court (paragraph 6(3) of the transitional and concluding provisions of the Code).

Nor does it apply to military invalids who have reached the general retirement age (paragraph 6(5) of the transitional and concluding provisions of the Code). In a judgment of 2 October 2001 (реш. № 7218 от 2 октомври 2001 г. по адм. д. № 1127/2001 г., BAC, I о.) the Supreme Administrative Court held that this exemption is strictly personal and does not apply to the heirs of the persons mentioned in paragraph 6(3).

41. In 2001 an individual whose pension had been capped in application of paragraph 6(1) sought judicial review of the NSSI's decision in relation to his pension. In a final decision of 18 March 2002 (реш. № 2491 от 18 март 2002 г. по адм. д. № 6065/2001 г., BAC, I о.) the Supreme Administrative Court dismissed his application, holding that the NSSI had properly applied the substantive law and that the courts were not competent to rule on the constitutionality of statutory provisions such as paragraph 6.

42. In December 2004 an association of pensioners affected by the cap asked the Chief Prosecutor to refer paragraph 6(1) to the Constitutional Court. In a letter of 10 February 2005 the Chief Prosecutor's Office informed the association that the Chief Prosecutor had turned down the request because he considered that the pensions cap did not fall foul of the Constitution.

43. In February 2008 a pensioner affected by the cap asked the Ombudsman of the Republic of Bulgaria to refer paragraph 6 to the Constitutional Court. In July 2008 the Ombudsman refused, saying that the cap appeared reasonable, and that in any event the matter had been settled with the Constitutional Court's judgment of 15 July 1998 (see paragraph 29 above) and could not be revisited.

44. In 2009 another individual whose pension had been reduced from BGN 995.29 to BGN 700 in application of paragraph 6 sought judicial review of the NSSI's decision in relation to his pension. In a judgment of 9 December 2009 (реш. № 96 от 9 декември 2009 г. по адм. д. № 5932/2009 г., CAC, I о., 14 състав) the Sofia Administrative Court dismissed the application. The litigant appealed on points of law, asserting, *inter alia*, that the cap was contrary to the Constitution and to Article 1 of Protocol No. 1 to the Convention. He requested the Supreme Administrative Court to stay the proceedings and refer the constitutionality of paragraphs 6(1) and 22h(1) of the Code (see paragraphs 34 and 36 above) to the Constitutional Court.

45. On 7 August 2010 (опр. от 7 август 2010 г. по хода на адм. д. № 1407/2010 г., BAC, VI о.) the Supreme Administrative Court acceded to the referral request, stayed the proceedings and referred to the Constitutional Court the question whether the impugned provisions were compatible with the Constitution, Article 14 of the Convention, and Article 1 of Protocol No. 1.

46. In a decision of 10 February 2011 (опр. № 1 от 10 февруари 2011 г. по к. д. № 18/2010 г.) the Constitutional Court, over the dissent of

one judge, refused to take the matter up for consideration. It held that, in so far as it concerned the compatibility of the pensions cap with the Constitution, the subject matter of the case was essentially the same as that of the case that it had decided in 1998 (see paragraph 29 above). It was immaterial that the two cases concerned different legal provisions. The court went on to hold, in relation to the alleged incompatibility of the cap with Article 1 of Protocol No. 1, that under the Constitution the Supreme Administrative Court was not competent to refer to it the alleged incompatibility of statutory provisions with international treaties.

47. In view of that decision, on 28 February 2011 (опр. от 28 февруари 2011 г. по хода на адм. д. № 1407/2010 г., BAC, VI о.) the Supreme Administrative Court decided to resume the proceedings. It heard the case on 21 April 2011. The litigant argued, *inter alia*, that paragraph 6(1) was in breach of Bulgaria's international obligations and that it was still open to the court to rule on that issue. The prosecutor who took part in the proceedings *ex officio* argued, *inter alia*, that the pensions cap did not run counter to the Constitution or to Article 1 of Protocol No. 1.

48. In a final judgment of 7 July 2011 (реш. № 10139 от 7 юли 2011 г. по адм. д. № 1407/2010 г., BAC, VI о.) the Supreme Administrative Court upheld the lower court's decision and thus the NSSI's decision to cap the litigant's pension. It held that the NSSI had correctly applied the statutory rules, which required it to apply a ceiling to the pension. That ceiling was set at 35% of the maximum income for social security purposes (see paragraph 54 below) because that was the average pension replacement rate in Bulgaria. The previous version of the cap had been upheld by the Constitutional Court (see paragraph 29 above) and could therefore not be regarded as unconstitutional. Nor did it run counter to any international treaties to which Bulgaria was party, or to European Union law.

C. General rules on the amounts and funding of retirement pensions

1. Under the Pensions Act 1957 and related legislation

49. Between 1957 and the end of 1999, the pension system in Bulgaria was a monopillar system; the Pensions Act 1957 made provision for just one tier of retirement pension (sections 2-11). Until 1995, the pension fund's budget was part of the general State budget (Article 170 of the Labour Code 1951). After that, the pension scheme continued to be based on an unfunded, pay-as-you-go model, but the pension fund was separated from the State budget and its management was entrusted to the newly created NSSI (sections 1-13 of the Social Security Fund Act 1995). Before March 1996, social security contributions were charged only to employers, not employees, and employers were barred from deducting those contributions from the remuneration paid to employees (Article 148 of the

Labour Code 1951, as worded from its adoption in 1951 until the beginning of March 1996). In March 1996 contributions began to be charged, in specified proportions, to both employers and employees (Articles 147, 147a and 148 of the Labour Code 1951, as amended with effect from 1 March 1996).

50. An individual became entitled to a retirement pension after a specified number of years of contributions (as a general rule, twenty-five years for men and twenty years for women – section 2(1)(c) of the Pensions Act 1957; there were more favourable conditions for certain categories of work – section 2(1)(a) and (b)). The pension age was sixty years for men and fifty-five years for women (*ibid.*). However, the age requirement did not apply to military personnel, police, and some other categories of civil servants, who could, in addition, retire after a shorter period of contributions (twenty years – sections 6(1) and 7(1) of the Act). Air Force pilots could retire after ten years of service (section 6(2) of the Act). As a rule, the amount of an individual's retirement pension was calculated as a percentage of the average gross monthly earnings for three years picked by the pensioner out of his or her last fifteen years of service (section 11(1) of the Pensions Act 1957, as in force between 1967 and 1996). In 1996, that basis was changed to three years of the pensioner's choice until 1 January 1997, plus the entire period of service after that.

51. Pensions were not subject to taxation (section 2(1)(c) of the Income Tax Act 1950).

2. Under the Social Security Code 1999

52. The Social Security Code 1999 came into force on 1 January 2000 and brought about significant changes in the retirement pension model. It makes provision for a multipillar pension system, with three tiers of general retirement pension. The first-tier, or basic, pension scheme is mandatory, public, and defined-benefit. It is based on an unfunded, pay-as-you-go model (Articles 21 and 22 of the Code), and consists of public pension funds managed by the NSSI. The general fund's main sources of financing are social security contributions and subsidies from the State budget (Article 21 of the Code). Contributions are charged to both employers and employees, in a specified proportion, with the exception of judges, prosecutors, investigators, civil servants, police, national security agents, and military personnel, whose contributions are fully covered by the State budget (Article 6 §§ 3 and 5 of the Code). The part of the contributions payable by employers cannot be deducted from remunerations under any form (Article 6 § 12 of the Code). The amount of the annual State subsidy to the fund is fixed in the annual State social security budget Act (Article 21 § 4 (b) of the Code). Apart from retirement pensions, the fund is used to pay out survivor's and disability pensions, as well as certain health-related benefits (Article 22 of the Code). The second-tier scheme is also mandatory.

It applies to all individuals born on or after 1 January 1960, and is a funded defined-contribution scheme, with contributions fixed by law and going into funds consisting of individual accounts and managed by private companies subject to special regulation (Articles 120a-123i and 124-203 of the Code). The second-tier scheme is open only to individuals born on or after the above-mentioned date because at the time when it started operating (1 January 2002) they were aged forty-two years or less and could thus be expected to make contributions for a longer period of time and build up the funds on which the scheme relies (Средкова, К., *Осигурително право*, 3 издание, Сиби, 2008, стр. 216; Мръчков, В., *Осигурително право*, 5 издание, Сиби, 2010, стр. 380 и 389). The third-tier scheme is voluntary and open to all persons above the age of sixteen. It is also a funded defined-contribution scheme, with contributions going into funds consisting of individual accounts and managed by private companies subject to special regulation. However, unlike the second-tier scheme, the amount of the contributions is not fixed by law but freely decided upon by the persons concerned (Articles 120a-123i, 209-59 and 317-43 of the Code).¹

53. An individual becomes entitled to a retirement pension after a specified number of years of contributions (currently thirty-seven for men and thirty-four for women, set gradually to rise to forty and thirty-seven years, respectively – Article 68 §§ 1 and 2 of the Code). The pension age is currently sixty-three years for men and sixty years for women, set gradually to rise to sixty-five and sixty-three years, respectively (Article 68 § 1 of the Code). However, the age requirement does not apply to military personnel, police, and some other categories of civil servants, who can, in addition, retire after a shorter period of contributions (Article 69 of the Code). Air Force pilots can retire after fifteen years of service (Article 69 § 3, subsequently § 4, of the Code). The amount of the basic, or first-tier, retirement pension is calculated in the manner laid down in Articles 70 and 70a of the Code. It is a function of the length of service (“*осигурителен стаж*”) and the average monthly income for social security purposes (“*средномесечен осигурителен доход*”), multiplied by an individual coefficient. The coefficient is based on the ratio between the retiree’s monthly earnings and the average monthly salary (for the period before 1 January 1997) and the average monthly income for social security purposes (for the period after 1 January 1997). For the period before 1 January 1997, the calculation is based on the retiree’s monthly earnings during three consecutive years of his or her choice out of the last fifteen years of service. For the period after 1 January 1997, the calculation is based on the retiree’s monthly earnings during the entire period of service between that date and the date of retirement.

1. Between 1998 and 2003 the third-tier scheme was governed by the Additional Voluntary Pension Insurance Act 1998. In 2003 the relevant provisions were incorporated into the Social Security Code 1999.

54. The monthly income for social security purposes (“*осигурителен доход*”) is used as the basis for calculating not only pensions and welfare benefits, but also social security contributions. It has a lower and an upper limit. The upper limit serves to cap the amount of the monthly social security contributions. In 2000-01, that limit was ten times the minimum monthly salary¹ (Article 9 § 2 of the Code, as worded until 31 December 2001). Since 2002, it has been fixed in monetary terms in the annual State social security budget Act (Article 6 § 2 (1) of the Code, as worded after 1 January 2002). In 2002 it was BGN 850 (section 8(4) of the State social security budget Act for 2002). In 2003 it became BGN 1,000 (section 8(5) of the State social security budget Act for 2003). In 2004 it became BGN 1,200 (section 8(5) of the State social security budget Act for 2004). In 2005 it became BGN 1,300 (section 8(5) of the social security budget Act for 2005). In 2006 and 2007 it became BGN 1,400 (section 8(5) of the social security budget Acts for 2006 and 2007). In 2008-11 it became BGN 2,000 (section 8(5) (later (4)) of the State social security budget Acts for 2008-11).

55. Pensions received under the first- and second-tier schemes are not subject to taxation (section 12(1)(2) of the Physical Persons Income Taxation Act 1997, superseded on 1 January 2007 by section 13(1)(6) of the Physical Persons Income Tax Act 2006).

D. The Protection Against Discrimination Act 2003

1. General prohibition of discrimination

56. Section 4 of the Protection Against Discrimination Act 2003, which came into force on 1 January 2004, prohibits any direct or indirect discrimination on the basis of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which Bulgaria is party.

2. Commission for Protection Against Discrimination

57. The authority responsible for ensuring compliance with the Act and with other statutes containing equal-treatment provisions is the Commission for Protection Against Discrimination (section 40).

1. In January 2000 the minimum monthly salary was BGN 67. Between February and September 2000, it was BGN 75. Between October 2000 and March 2001, it was BGN 79. Between April and September 2001, it was BGN 85. From October 2001 until the end of that year, it was BGN 100. Thus, the maximum income for social security purposes during those periods was respectively BGN 670, BGN 750, BGN 790, BGN 850, and BGN 1,000.

58. Section 47 empowers the Commission to, *inter alia*, make recommendations for the enactment, repeal or amendment of statutes and regulations (subsection 8).

59. In a decision of 17 September 2009 (реш. № 163 от 17 септември 2009 г. по пр. № 56/2008 г.), given in proceedings brought by a number of individuals affected by the pensions cap under paragraph 6(1) of the transitional and concluding provisions of the Social Security Code 1999 (see paragraphs 31-39 above), the Commission found that the cap amounted to indirect discrimination on the basis of property status and was in breach of the principle of equal treatment of the pensioners affected by it. In the view of the Commission, those who had had higher salaries and had accordingly paid higher pension contributions, and had done so for a longer period of time, were just as entitled to the full amount of their pensions as those who did not fall into that group. The Commission went on to note that paragraph 6(1), as amended in 2004, envisaged that pensioners whose pensions were granted from 1 January 2010 onwards would not face a cap on their pension. That difference in treatment lacked an objective justification and was also in breach of the principle of equal treatment. In view of those considerations, the Commission recommended to Parliament to repeal paragraph 6(1).

60. On the other hand, the Commission found that paragraph 6(5) of the transitional and concluding provisions of the Code (see paragraph 40 above) did not amount to discriminatory treatment under the Act, because it was necessary and objectively justified in view of the special status of the persons to whom it provided an advantage and of the restrictions that those persons faced in carrying out their public duties.

61. In a decision of 18 May 2010 (реш. № 117 от 18 май 2010 г. по пр. № 122/2009 г.) the Commission again found that the existence of a cap on pensions granted before a certain date (at that time, the end of 2011 – see paragraph 38 above) and the lack of such a cap on pensions granted after that date lacked an objective justification and amounted to indirect discrimination. The Commission recommended to the Council of Ministers to table a bill in Parliament for the amendment of paragraph 6(1).

3. Liability for acts of discrimination

62. Under section 71(1) of the Act, a person who considers that his or her right to equal treatment stemming from the Act or from other statutes has been violated can bring a claim, seeking declaratory or injunctive relief or an award of damages.

63. Under section 73 of the Act, a person who considers that an administrative decision has breached his or her right to equal treatment stemming from the Act or from other statutes can seek judicial review of the decision.

64. Under section 74(1) of the Act, a person who has obtained a favourable ruling by the Commission for Protection Against Discrimination and seeks compensation for damage suffered as a result of the violation of his or her right to equal treatment stemming from the Act or from other statutes can bring a tort claim against the persons or authorities that have caused the damage. If the damage stems from unlawful decisions, actions or omissions of State authorities or officials, the claim must be brought under the State Responsibility for Damage Act 1988 (section 74(2)).

III. RELEVANT STATISTICAL INFORMATION

65. According to information published by the NSSI and the National Statistical Institute, the overall number of pensioners in Bulgaria, the number of pensioners affected by the pensions cap, and the annual amount of money “saved” by the NSSI’s budget as a result of the cap were as follows:

Year	Overall number of pensioners	Number of pensioners with capped pensions	Annual “savings”
1999	n/a	201,786	BGN 70,411,978
2000	n/a	140,413	BGN 105,130,340
2001	2,372,268	156,344	BGN 128,338,151
2002	2,349,045	162,508	BGN 142,604,831
2003	2,343,896	164,536	BGN 154,964,256
2004	2,320,444	15,929	BGN 19,091,520
2005	2,301,669	23,519	BGN 29,030,701
2006	2,271,192	21,088	BGN 27,240,041
2007	2,233,697	37,182	BGN 56,264,707
2008	2,200,595	73,175	BGN 85,676,442
2009	2,189,131	42,615	BGN 94,173,582
2010	2,194,274	46,540	n/a

IV. RELEVANT COMPARATIVE MATERIAL

66. The World Bank and the Organisation for Economic Cooperation and Development (“OECD”) have published comparative studies of the pension systems of various countries, including a number of Contracting States. Among them are *Pensions Panorama: Retirement-Income Systems in 53 Countries*, The World Bank (2007), and *Pensions at a Glance 2011: Retirement-income Systems in OECD and G20 Countries*, OECD (2011), OECD Publishing. The first study found, *inter alia*, that most high-income OECD countries do not require high earners to make pension contributions on their entire earnings. Usually, a limit is set on the earnings used to calculate both contribution liability and pension benefits. The study also found that the average ceiling on public (first-tier) pensions in sixteen high-income OECD countries is 190% of average economy-wide earnings.

The overall (first- and second-tier) pension ceiling for seventeen high-income OECD countries averages 275% of average earnings (pp. 13-18). The second study also noted that most OECD countries have set a limit on the earnings used to calculate both contribution liabilities and pension benefits, and that the average ceiling on public pensions for twenty-one countries is 185% of average economy-wide earnings, excluding four countries that have no ceiling on public pensions (p. 110).

67. Based on a detailed cross-country analysis of pension entitlements, the first study came to the conclusion that “different countries’ pension systems strike very different balances between the goals of adequacy – guaranteeing that all older people meet a minimum standard of living – and insurance – ensuring a certain standard of living in retirement relative to that when working”. For instance, OECD countries could be divided in four groups. The first comprised those (including Denmark and Ireland) in which there was little or no link between pensions and preretirement earnings. The second consisted of those (including Belgium, Iceland, and the United Kingdom) in which that link was weak. The third group (including France, Norway, Portugal, and Switzerland) lay toward the middle. The countries in the fourth group (including Austria, Finland, Germany, Greece, Italy, Luxembourg, the Netherlands, Spain, and Sweden) had a very strong link between pensions and preretirement earnings. The same divisions could be observed in Eastern Europe, where Bulgaria, Croatia, the Czech Republic, Lithuania and Turkey had a weaker link between pensions and preretirement earnings, and Estonia, Hungary, Latvia, Poland and the Slovak Republic had a stronger one (pp. 31-45).

68. The second study calculated, *inter alia*, pension entitlements in OECD countries and several other major economies (pp. 115-43). As part of that exercise, it measured the progressivity of the mandatory parts of the countries’ pension systems, or, in other words, the link between pensions and preretirement earnings. The results showed that some countries, such as Ireland and the United Kingdom, have highly progressive systems (in which the link between preretirement incomes and pensions is very weak), whereas others, such as Finland, Greece, Hungary, Italy, the Netherlands, Poland, Portugal and the Slovak Republic, have almost entirely proportional systems (in which the link between preretirement incomes and pensions is very strong) and therefore limited progressivity. The study said that “[a] high score [on the progressivity index] is not necessarily ‘better’ than a low score or *vice versa*. Countries with a high score simply have different objectives than countries with a low score.” (pp. 136-37).

THE LAW

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

69. The applicants complained that the cap on their retirement pensions was in breach of their rights under Article 1 of Protocol No. 1, which provides 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

70. The Government submitted that if they considered that their pensions had been set by the NSSI at variance with their statutory entitlement, the applicants could have sought judicial review of the NSSI's decisions concerning their individual pensions. In addition they could have petitioned the competent authorities to request the Constitutional Court to review the constitutionality of paragraph 6(1) of the transitional and concluding provisions of the Social Security Code 1999.

71. The applicants submitted that in proceedings for judicial review of individual decisions of the NSSI the courts could not scrutinise statutes as such. According to the Supreme Administrative Court's established case-law, only the Constitutional Court was competent to rule on their constitutionality. The Government had not pointed to any examples where the Bulgarian courts had set aside a decision of the NSSI capping a pension by reference to paragraph 6(1) of the transitional and concluding provisions of the Social Security Code 1999. Furthermore, under Bulgarian law private persons could not bring proceedings before the Constitutional Court. When two non-governmental organisations had asked the Ombudsman to refer paragraph 6(1) to the Constitutional Court, the Ombudsman had refused, saying that the matter had already been resolved by that court in 1998.

72. Concerning the first limb of the Government's objection, the Court observes that the cap on pensions currently flows directly from the express wording of paragraph 6(1) of the transitional and concluding provisions of the Social Security Code 1999; until 31 December 1999 it was based on the express wording of section 47c of the Pensions Act 1957 (see

paragraphs 27, 31 and 34 above). It was not disputed that in its decisions fixing the pension of each of the applicants the NSSI, which had no discretion in the matter, applied those provisions correctly. In that regard, the present cases are no different from the two cases from 2001 and 2010 in which the Supreme Administrative Court dismissed applications for judicial review of pension-capping decisions of the NSSI, holding that those decisions were lawful (see paragraphs 41 and 48 above). It follows that applications for judicial review of the NSSI's decisions were not an effective remedy that the applicants had to use (see, *mutatis mutandis*, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 42 *in limine*, ECHR 1999-V; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 86, 27 November 2007; and *Ognyan Asenov v. Bulgaria*, no. 38157/04, § 32, 17 February 2011).

73. The second limb of the objection does not stand up to examination either. In Bulgaria, there is no possibility for private persons themselves to bring proceedings before the Constitutional Court. The Court has, in line with its earlier case-law on that point (see *Brozicek v. Italy*, 19 December 1989, § 34, Series A no. 167; *Padovani v. Italy*, 26 February 1993, § 20, Series A no. 257-B; *Spadea and Scalabrino v. Italy*, 28 September 1995, § 24, Series A no. 315-B; and *Immobiliare Saffi*, cited above, § 42 *in fine*), already held that the possibility to request the bodies or the officials entitled to bring such proceedings to do so is not an effective remedy for the purposes of Articles 13 or 35 § 1 of the Convention, because the persons concerned cannot directly compel the institution of proceedings before the Constitutional Court, whereas under this Court's settled case-law a remedy can be considered effective only if the applicant is able to initiate the procedure directly (see *Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 82, ECHR 2009-..., with further references). The Court reaffirmed that ruling in *Nozharova v. Bulgaria* ((dec.), nos. 44096/05 et al., 25 August 2009). It sees no reason to deviate from it in the present case, in which several such requests were turned down (see paragraphs 42 and 43 above). The fact that in August 2010 the Supreme Administrative Court acceded to a request to refer the pensions cap to the Constitutional Court (see paragraphs 44 and 45 above) does not alter that position, because the referral was a result of the exercise of that court's discretionary power in that respect. In any event, the Constitutional Court refused to accept the matter for examination, noting that it had already ruled on the constitutionality of the cap in 1998 and that the Supreme Administrative Court was not competent to refer to it the alleged incompatibility of statutory provisions with international treaties (see paragraph 46 above).

74. The Government's objection of non-exhaustion of domestic remedies must therefore be rejected.

75. The Court further finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or

inadmissible on any other grounds. Any issues having to do with its compatibility *ratione materiae* with the provisions of the Convention are more appropriately addressed at the merits stage (see, *mutatis mutandis*, *Maggio and Others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 36, 31 May 2011). The complaint must therefore be declared admissible.

B. Merits

1. The parties' submissions

76. The Government submitted that the cap on the maximum amount of pension had been prompted by financial considerations. Such a cap had existed under different forms ever since the adoption of the Pensions Act 1957. Pensions in Bulgaria were based on the principle of social solidarity, which required that all those who reached a certain age be provided with a pension, but also that the personal input of each individual be taken into account in fixing its amount. A pension ceiling was not a uniquely Bulgarian occurrence, but existed in a number of countries, such as Germany, without being regarded as infringing the principles of social justice or equal treatment. Moreover, it could not be overlooked that the Social Security Code 1999 had made provision for a second-tier pension, based on individual contributions, in respect of persons born on or after 1 January 1960. It was also noteworthy that recently the maximum amount of pension had been increased to BGN 700.

77. The Government agreed that social security rights fell within the ambit of Article 1 of Protocol No. 1, but pointed out that that provision did not guarantee a particular amount of pension, and did not require States to choose a particular social security model. Even if it was theoretically possible to pay the applicants the full nominal amount of their pensions, there existed a number of factors that would make that difficult to achieve in practice. The population was getting older and the ratio between pensioners and persons in active employment was deteriorating. If the authorities opted to pay the full amount of pension, even if it exceeded the cap, it could result in a shortfall of funds to pay the pensions of others who had contributed less to the funding of the pension system. That could lead to a breach of the principle of equal treatment, which guaranteed a minimum revenue for each pensioner. All the more so in the midst of a severe economic and demographic crisis. The applicants could not maintain that they had had a legitimate expectation that they would receive the full amount of their pensions after 31 December 2003, because it was impossible to predict how the legislation would evolve in the future. Legislation was a product of social developments, which were rapidly changing. It was for the applicants

to show that the cap on their pensions had caused them to suffer an individual and excessive burden.

78. In the Government's view, the capping of pensions to 35% of the maximum monthly income for social security purposes was in the public interest. The pension system in Bulgaria was based on a pay-as-you-go model, and the legislature's intent was to guarantee a minimum amount of pension and the potential for it to increase. The existence of a pensions ceiling went hand in hand with the existence of a maximum income for social security purposes. It was intended to guarantee social justice, and was necessary for the sound financial management of the pension system. The Constitutional Court had made those points in its 1998 decision.

79. The applicants submitted that they had had a legitimate expectation that they would receive the full amount of their pensions, based on the contributions they had been required to make throughout their employment. After the entry into force of paragraph 6(1) of the transitional and concluding provisions of the Social Security Code 1999, they had expected that the cap on the maximum amount of pension would be lifted on 31 December 2003 and that from that date on they would receive the full amount of their pensions. The ensuing postponement of the lifting of the cap had accordingly amounted to an interference with their possessions.

80. The applicants did not dispute that that interference was lawful, but argued that it lacked a reasonable foundation. It was true that the Constitutional Court had held that the introduction of a pensions cap was a matter for the legislature's discretion. However, the 2004 draft bill for the amendment of the Social Security Code 1999, which had permanently capped the pensions of all pensioners whose rights had accrued before 31 December 2009, had not been accompanied by any explanatory notes or by any debate in Parliament. The same went for the 2009 amendments to the Code. The assertions that the pensions ceiling was tied to the minimum amount of pension, helped to maintain it, and furthered social justice were not true. Even if it could be accepted that such a cap had been warranted to help the poorest pensioners scrape through the profound social and economic changes of the 1990s, it could not be maintained forever.

81. The real reasons for maintaining the cap could be gleaned from a number of interviews and public statements by officials, such as the director of the NSSI and several successive ministers of Labour and Social Policy. They were the perception that the public would not tolerate very high pensions and that the pension model existing under the Pensions Act 1957 had suffered from a number of defects. Neither of those reasons was a reasonable basis for the cap. The first was based on entirely populist considerations, which were moreover out of line with modern social attitudes. It was telling that a number of domestic institutions and organisations, plus five constitutional judges, were opposed to the cap. In that connection, it was also worth noting that the authorities were not doing

enough to collect the social security contributions payable by those in active employment. The second reason was also unavailing. The applicants, like everyone else, had been bound by the provisions of the Pensions Act 1957 governing the basis for calculating the amount of social security contributions and retirement pensions.

82. Even if it could be accepted that the pensions cap pursued a legitimate aim, it was disproportionate, because, while failing to produce considerable savings for the pension system, it affected a very small minority of pensioners (about 2%) by significantly reducing the amount of their pensions. In that connection, sight should not be lost of the nature of the applicants' employment, which had entailed higher levels of responsibility, privation, stress and risk, and hence higher remuneration. In addition, when permanently capping the applicants' pensions with effect from 1 January 2004, the State had not offered them any form of compensation.

83. In their additional observations, the Government submitted that in as much as Article 1 of Protocol No. 1 did not guarantee a particular amount of pension the applicants' complaint was incompatible *ratione materiae*. It was in the legislature's discretion to choose a particular social security model. Faced with demographic and financial difficulties, Bulgaria had opted to limit the maximum amount of the first-tier pension. However, it had made provision for a voluntary third-tier pension, and there was no indication that the applicants had tried to avail themselves of that opportunity. It was also important to point out that the cap on their pensions had been increased several times, and that those of them who had served in the armed forces had not themselves paid pension contributions and had retired under very favourable conditions. The requisite fair balance had not therefore been upset to their detriment.

2. The Court's assessment

(a) Applicability of Article 1 of Protocol No. 1

84. The principles which apply generally in cases under Article 1 of Protocol No. 1 are equally relevant when it comes to pensions (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 77, 18 February 2009, and, more recently, *Stummer v. Austria* [GC], no. 37452/02, § 82, 7 July 2011). Thus, that provision does not guarantee the right to acquire property (see, among other authorities, *Van der Mussele v. Belgium*, 23 November 1983, § 48, Series A no. 70; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II; and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35 (b), ECHR 2004-IX). Nor does it guarantee, as such, any right to a pension of a particular amount (see, among other authorities, *Müller v. Austria*, no. 5849/72, Commission's report of 1 October 1975, Decisions and Reports (DR) 3, p. 25; *T. v. Sweden*, no. 10671/83, Commission decision of

4 March 1985, DR 42, p. 229; *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X; *Kuna v. Germany* (dec.), no. 52449/99, ECHR 2001-V (extracts); *Lenz v. Germany* (dec.), no. 40862/98, ECHR 2001-X; *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX; *Apostolakis v. Greece*, no. 39574/07, § 36, 22 October 2009; *Wieczorek v. Poland*, no. 18176/05, § 57, 8 December 2009; *Poulain v. France* (dec.), no. 52273/08, 8 February 2011; and *Maggio and Others*, cited above, § 55). However, where a Contracting State has in force legislation providing for the payment as of right of a pension – whether or not conditional on the prior payment of contributions – that legislation has to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 64, ECHR 2010-...). The reduction or the discontinuance of a pension may therefore constitute interference with possessions that needs to be justified (see *Kjartan Ásmundsson*, cited above, § 40; *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009; and *Wieczorek*, cited above, § 57).

85. In the instant case, the applicants' pensions were first calculated in line with the general rules of the Pensions Act 1957 and subsequently of the Social Security Code 1999 (in the cases of those applicants who retired after 1 January 2000, solely the latter). Because the amounts produced by those calculations were, in the case of each applicant, above the pensions cap set out in section 47c of the Act and later in paragraph 6(1) of the transitional and concluding provisions of the Code, their pensions were trimmed to the level allowed by the cap (see paragraphs 7, 8, 10-15, 17-19, 21, 27 and 31 above). The cap may thus be regarded either as a provision limiting the amount of pension after it has been calculated under the general rules, and thus amounting to an interference with a "possession" of the applicants, or as part of the overall set of statutory rules governing the manner in which the amount of pension should be calculated, and thus amounting to a rule preventing the applicants from having any "possession" in relation to the surplus.

86. It should in addition be noted that when it first came into force on 1 January 2000 paragraph 6(1) set a temporal limitation on the pensions cap – 31 December 2003 (see paragraph 31 above). That limitation was removed with the December 2003 amendment, with the result that the cap became permanently applicable to all pensions granted before a certain date: initially 31 December 2009 and, following further amendments, 31 December 2011 and then 31 December 2013 (see paragraphs 34, 38 and 39 above). From this vantage point, it could be argued that, regardless of the position before or after, between 1 January 2000 and 23 December 2003 the applicants could be regarded as having harboured a legitimate expectation that the cap on their pensions would come to an end on 31 December 2003, and that the legislative amendment which took that expectation away

amounted in its own right to an interference with their “possessions” (see, *mutatis mutandis*, *Maurice v. France* [GC], no. 11810/03, §§ 67-71 and 79, ECHR 2005-IX; *Draon v. France* [GC], no. 1513/03, §§ 70-72, 6 October 2005; and *Hasani v. Croatia* (dec.), no. 20844/09, 30 September 2010).

87. However, the Court does not consider it necessary to take a firm stance on those points, because it considers that there has been no breach of Article 1 of Protocol No. 1 for the reasons that follow (see *Maggio and Others*, cited above, § 59). It will therefore proceed on the assumption that Article 1 of Protocol No. 1 is applicable and that the pensions cap, in all its forms, can be regarded as an interference with the applicants’ rights under that provision.

(b) Compliance with Article 1 of Protocol No. 1

88. The Court does not consider that the cap amounted to a “deprivation of possessions” within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. It is rather to be regarded as an interference with the applicants’ right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of the first paragraph (see *Kjartan Ásmundsson*, § 40, and *Wieczorek*, § 61, both cited above).

89. It was not in dispute between the parties that the interference was lawful in terms of both domestic and Convention law. The Court, noting that it was based on the unambiguous wording of section 47c of the Pensions Act 1957 and subsequently paragraph 6(1) of the transitional and concluding provisions of the Social Security Code 1999, provisions whose constitutionality was upheld by the Constitutional Court (see paragraphs 29 and 46 above), sees no reason to hold otherwise.

90. It remains to be established whether the interference served a legitimate public interest and was reasonably proportionate to the aim sought to be realised.

91. According to the Court’s case-law, the national authorities, because of their direct knowledge of their society and its needs, are in principle better placed than the international judge to decide what is “in the public interest”. Under the Convention system, it is thus for those authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions. Moreover, the notion of “public interest” is necessarily extensive. In particular, the decision to enact laws concerning pensions or welfare benefits involves consideration of various economic and social issues. The margin of appreciation available to the legislature in implementing such policies should therefore be a wide one, and its judgment as to what is “in the public interest” should be respected unless that judgment is manifestly without reasonable foundation. However, any interference must also be reasonably proportionate to the aim sought to be realised. In other words, a “fair balance” must be struck between the

demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. That balance will be lacking where the person concerned has to bear an individual and excessive burden (see *Wieczorek*, cited above, §§ 59-60, with further references). In that regard, it would also be important to verify whether an applicant's right to derive benefits from the social security scheme in question has been infringed in a manner resulting in the impairment of the essence of his pension rights (see *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V; *Kjartan Ásmundsson*, cited above, § 39 *in fine*; and *Wieczorek*, cited above, § 57 *in fine*). On the other hand, it must not be overlooked that Article 1 of Protocol No. 1 does not restrict a State's freedom to choose the type or amount of benefits that it provides under a social security scheme (see *Stec and Others*, cited above § 54; *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 53, ECHR 2006-VI; and *Wieczorek*, cited above, § 66 *in limine*).

92. In the instant case, the applicants called into question the purpose of the cap, saying that it was not, as contended by the Government, based on considerations having to do with the financial viability of the pension system. It was rather a result of the perceptions that the public would not tolerate very high pensions and that the Pensions Act 1957 had made possible retirement on overly generous terms. The Court, for its part, notes that the cap obviously results in savings for the pension system (see the statistics quoted in paragraph 65 above). However, it does not find it necessary to determine whether those savings are indeed necessary to ensure the system's financial viability. It observes that in upholding the cap the Constitutional Court took the view that it was based on the "requirements of social justice" (see paragraph 29 above). Even assuming that the applicants' assertions as to the real purpose of the cap are correct, the Court does not consider that it was illegitimate for the Bulgarian legislature to have regard to social considerations, or that its judgment in that respect was manifestly without reasonable foundation. The pension systems of different countries vary in the relative emphasis that they place on redistributive *vis-à-vis* insurance elements. Comparative studies by the World Bank and the OECD show that while some Contracting States attach more importance to providing the same or very similar pension replacement rates to all workers, with a strong link between pensions and preretirement earnings, in others the accent is on pension adequacy, with little or no connection between pensions and preretirement earnings (see paragraphs 67 and 68 above). That is primarily a matter that falls to be decided by the national authorities, which have direct democratic legitimation and are better placed than an international court to evaluate local needs and conditions. According to the Court's case-law, in matters of general policy, on which opinions within a democratic society may reasonably differ widely, the determination of the domestic policymaker should be given special weight (see *Hatton and*

Others v. the United Kingdom [GC], no. 36022/97, § 97, ECHR 2003-VIII). The Court is therefore satisfied that the cap pursued a legitimate aim in the public interest.

93. This, however, does not entirely settle the issue. It must also be established whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

94. On this point, the Court starts by noting that the redistributive function of the pension system can be achieved in various ways, such as putting in place progressive benefit-calculation formulae, imposing ceilings on pension entitlements, or taxing high pensions. In Bulgaria, the legislature has chosen to exempt first- and second-tier pensions from taxation (see paragraphs 51 and 55 above), but has imposed a cap on the maximum amount of pension under the first tier. The Court is unable to find that this is in itself a disproportionate measure. It has in a number of cases accepted the possibility of reductions in social security entitlements (see *Kjartan Ásmundsson*, cited above, § 45; *Hoogendijk v. the Netherlands* (dec.), no. 58641/00, 6 January 2005; *Goudswaard-Van der Lans v. the Netherlands* (dec.), no. 75255/01, ECHR 2005-XI; and *Wieczorek*, cited above, § 67). It has even countenanced pension caps similar to the one at issue (see *Blanco Callejas v. Spain* (dec.), no. 64100/00, 18 June 2002, and *Buchheit and Meinberg v. Germany* (dec.), nos. 51466/99 and 70130/01, 2 February 2006). So has the former Commission (see *Beging v. Germany*, no. 15376/89, decision of the Commission of 27 May 1991, unreported, and *Kuhlmann v. Germany*, no. 21519/93, Commission decision of 30 June 1993, unreported). The above-mentioned comparative studies by the World Bank and the OECD show that ceilings on public pensions are far from being a uniquely Bulgarian phenomenon (see paragraph 66 above). In the present case, there are several factors that inform the Court's assessment.

95. First, the applicants' principal argument against the cap was that, unlike modern-day workers, in respect of whom there exists a ceiling on pensionable earnings (see paragraph 54 above), they were bound to pay contributions on the full amount of their relatively high salaries; they were therefore entitled to pensions commensurate with those contributions. However, that argument does not stand up to examination. In the first place, it cannot be overlooked that until 1996, contributions were payable solely by employers, who were barred from deducting them from employees' remunerations; that continues to be the case for military personnel, civil servants, and some other categories of State employees (see paragraphs 49 and 52 above). More importantly, the argument misconceives the relationship between social security contributions and first-tier pensions in Bulgaria. Unlike the second- and the third-tier schemes, where contributions are directly linked to the expected benefit returns (see paragraph 52 above), first-tier contributions did not and still do not have an exclusive link to retirement pensions. That is due to the unfunded, pay-as-you-go character of

the first pillar of the Bulgarian pension system, both under the Pension Act 1957 and under the Social Security Code 1999 (see paragraphs 49 and 53 above). That makes it impossible to regard the payment of higher social security contributions as a sufficient ground for entitlement to matching pension benefits (see, *mutatis mutandis*, *Carson and Others*, § 84, and *Müller*, at p. 31, §§ 29-30, both cited above). Indeed, in the cases of some of the applicants – and of others in a similar situation – the bulk of those contributions was paid under a different economic regime, when the pension fund was an inseparable part of the general State budget (see paragraph 49 above), and at a time when the real value of the Bulgarian lev and the general framework of the Bulgarian economy were very different from what they are today.

96. Secondly, the Court cannot lose sight of the fact that the pensions cap was put in place and, more importantly, maintained at a time when the Bulgarian pension system was undergoing a comprehensive reform, as part of the country's transition from a wholly State-owned and centrally planned economy to private property and a market economy (see, *mutatis mutandis*, *Credit Bank and Others v. Bulgaria* (dec.), no. 40064/98, 30 April 2002, and *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, § 166, 15 March 2007). In view of the changes in the manner of calculating the amounts of social security contributions and retirement pensions – in particular, the introduction of a ceiling on pensionable earnings (see paragraph 54 above) – the first tier of that pension system can be regarded as moving towards a global levelling of the amount of benefits provided. It is apparent that the new pension model in Bulgaria envisages the provision of higher retirement incomes through the second- and third-tier pension schemes, which, unlike the first-tier scheme, are funded, defined-contribution schemes (see paragraphs 52 and 53 above). In that context, the cap, as well as its extensions until the end of 2009, and then the end of 2011 and of 2013 (see paragraphs 34, 38 and 39 above), can be seen as a transitional measure accompanying the overall transformation of the pension system. The Court has in the past recognised that Contracting States have a wide margin of appreciation when passing laws in the context of a change of political and economic regime (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 113, ECHR 2005-VI, with further references). It is true that the applicants, all of whom were born before 1 January 1960, are not eligible to be affiliated to the second-tier scheme (see paragraph 52 above) and cannot therefore top up their pension earnings in that way. However, the Court cannot attach decisive importance to that, because that scheme is a funded, defined-contribution one, with individual accounts; the amount of benefits it can provide is directly dependent on the amount and duration of the contributions of those affiliated to it. It is understandable that such a scheme should be open only

to those who will be able to accumulate sufficient funds to finance their pensions.

97. Thirdly, particular emphasis needs to be placed on the fact that the applicants were obliged to endure a reasonable and commensurate reduction rather than a total loss of their pension entitlements. Indeed, they did not suffer an actual decrease in the monthly payments they received, but simply did not see the announced lifting of the pensions cap materialise – it appears that since retirement they have never received the uncapped amount of their pensions. Moreover, the cap, while sometimes – but not always – resulting in considerable reductions of the nominal amount of their monthly pensions, did not totally divest the applicants of their only means of subsistence. The applicants are, in the nature of things, the top earners among the more than two million persons in Bulgaria who are currently in receipt of a retirement pension. They can therefore hardly be regarded as being made to bear an excessive and disproportionate burden, or as having suffered an impairment of the essence of their pension rights (see, *mutatis mutandis*, *M.V. and U-M.S. v. Finland* (dec.), no. 43189/98, 28 January 2003; *Saarinen v. Finland* (dec.), no. 69136/01, 28 January 2003; *Banfield v. the United Kingdom* (dec.), no. 6223/04, ECHR 2005-XI; *Laloyaux v. Belgium* (dec.), no. 73511/01, 9 March 2006; and *Wieczorek*, § 71; *Hasani*; and *Maggio and Others*, § 62, all cited above; and contrast *Kjartan Ásmundsson*, §§ 43-45, and *Apostolakis*, §§ 39-42, both cited above).

98. Fourthly, it cannot be overlooked that public pension schemes are based on the principle of solidarity between contributors and beneficiaries (see *Ackermann and Fuhrmann v. Germany* (dec.), no. 71477/01, 8 September 2005). Just like other social security schemes, they are an expression of a society's solidarity with its vulnerable members (see *Goudswaard-Van der Lans*, and *Wieczorek*, § 64, both cited above), and cannot be likened to private insurance schemes (see *Müller*, cited above, at p. 32, § 31). Indeed, as already noted (see paragraph 92 above), the pension systems of different countries vary in the relative emphasis that they place on redistributive *vis-à-vis* insurance elements.

99. Lastly, it cannot be overlooked that the amount of the cap and the manner in which it is calculated have evolved over the years. Initially, the maximum pension was tied to the social pension, not being able to exceed it by more than three times (see paragraph 27 above). In 2000, that ceiling was raised to four times the social pension for old age (see paragraph 31 above). In 2003, the cap was tied to the ceiling on pensionable earnings and the average estimated pension replacement rate (see paragraph 34 above). It has thus been gradually increased throughout the years, with the result that, as a general trend, considerably fewer pensioners are affected by it (see paragraphs 28, 32, 37 and 65 above).

100. In view of those considerations, the Court concludes that the impugned cap on the maximum amount of pension falls within Bulgaria's margin of appreciation in regulating its social security policy.

101. There has therefore been no violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

102. The applicants also complained under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 that they were victims of a two-fold discrimination: firstly, in relation to those pensioners whose pensions fell below the cap and who thus remained unaffected by it, and secondly, in relation to the high-ranking officials whose pensions were exempted from the cap by virtue of paragraph 6(3) of the transitional and concluding provisions of the Social Security Code 1999 (see paragraph 40 above).

103. Article 14 of the Convention provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

104. The Government pointed out that only Mr Atanasov, and none of the other applicants, had brought proceedings before the Commission for Protection Against Discrimination, at the close of which the Commission had recommended to Parliament to repeal the offending statutory provisions. The Government secondly argued that the applicants could have brought a claim under section 71(1) of the Protection Against Discrimination Act and obtained an award of damages.

105. The applicants observed that the Commission's recommendation was not binding for Parliament. Even if Parliament chose to act on it and repeal the impugned provisions, that would not provide the applicants with any redress in respect of past losses. As for the possibility to bring a claim under the Protection Against Discrimination Act, it had to be borne in mind that under section 74(2), where the alleged damage was a result of actions or omissions of State bodies, those concerned had to bring proceedings under the State Responsibility for Damage Act, which did not envisage the liability of Parliament. It was therefore not possible to pursue such a claim with success.

106. Concerning the proceedings before the Commission for Protection Against Discrimination, the Court notes that that Commission cannot compel Parliament to repeal or amend legislation. It can – and in fact did – only make recommendations in that regard (see paragraphs 58, 59 and 61 above and, *mutatis mutandis*, *Hobbs v. the United Kingdom*, no. 63684/00, 18 June 2002; *Burden v. the United Kingdom* [GC], no. 13378/05, § 40, ECHR 2008-...; and *A, B and C v. Ireland* [GC], no. 25579/05, § 150, 16 December 2010). The Government have not cited any examples of steps having been taken to amend statutory provisions as a result of recommendations by the Commission (contrast *Burden*, cited above, § 41). Therefore, in as much as the alleged breach stemmed directly from the wording of the provision concerned – paragraph 6(1) and (3) of the transitional and concluding provisions of the Social Security Code 1999 – the proceedings before the Commission cannot be regarded as an effective remedy.

107. As for the second limb of the Government's objection, the Court again notes that the alleged discrimination stemmed from the express wording of statutory provisions. In those circumstances, and having regard to the fact that under Bulgarian law one of the prerequisites for successfully pursuing a tort claim is to establish the wrongfulness of the conduct causing the damage (see *Zlinsat, spol. s r.o. v. Bulgaria*, no. 57785/00, §§ 50 and 56, 15 June 2006), the Court is not persuaded that such a claim would have had any prospect of success. Moreover, the Government have not specified the defendant to such a claim, or cited any decisions of the Bulgarian courts showing its practicability in that context.

108. The Government's objection of non-exhaustion of domestic remedies must therefore be rejected.

109. The Court further finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. Any issues having to do with its compatibility *ratione materiae* with the provisions of the Convention are more appropriately addressed at the merits stage. The complaint must therefore be declared admissible.

B. Merits

1. The parties' submissions

110. The Government submitted that the exemption of persons who have held high office from the pensions cap did not amount to discrimination, for the reasons set out in the decision of the Commission for Protection Against Discrimination of 17 September 2009 (see paragraph 60 above). In any event, that exemption did not directly affect the applicants because they would not benefit from its cancellation. The different treatment accorded to

persons who have held high office was justified by the nature of their duties, which were closely related to the country's government. Only persons who had held one of a small number of very high posts were exempted from the cap; all of them had been barred by law from taking up additional employment. Nor could it be said that the cap was discriminatory *vis-à-vis* other pensioners whose pensions fell below it.

111. The applicants submitted that they were being treated differently both from pensioners who had had lower salaries and whose pensions thus fell below the cap, and from the high officials to whose pensions the cap did not apply. That difference in treatment concerned rights protected under Article 1 of Protocol No. 1, and could therefore be examined under Article 14. There were no grounds to treat the applicants differently from pensioners whose pensions fell below the cap, for the same reasons as those set out in relation to the complaint under Article 1 of Protocol No. 1. That differential treatment did not pursue a legitimate aim. However, even if it were to be accepted that the money saved as a result of the cap could be used to make payments to other pensioners, the effects of the measure were disproportionate. The interference with the applicants' pension rights, which had become permanent, was quite serious, because they received only a fraction of their full pensions; at the same time, capping the pensions of only 2% of all pensioners could not have a significant effect on the pensions of others. In 2009 those arguments had led the Commission for Protection Against Discrimination to find that the cap amounted to indirect discrimination. Lastly, the applicants submitted that it was not justified to treat them differently from persons who had held high office. Like them the applicants had been subjected to restrictions regarding the taking up of new employment.

2. The Court's assessment

(a) Applicability of Article 14 of the Convention

112. Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. However, its application does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and its Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide. It is necessary but also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see *Carson and Others*, § 63, and *Stummer*, § 81, both cited above).

113. In line with its approach under Article 1 of Protocol No. 1 taken alone (see paragraph 87 above), the Court does not consider it necessary to determine whether the facts of the case fall within the ambit of that provision. Even assuming that they do, and that Article 14 is thus applicable, the Court finds that there has been no violation of that provision for the reasons that follow.

(b) Alleged discrimination *vis-à-vis* pensioners whose pensions fall below the cap and are thus not affected by it

114. As to the applicants' first head of complaint – that they are being treated differently from pensioners who had lower salaries and whose pensions thus now fall below the cap – the Court considers that it was inevitable that the contested legislation, being designed to cap pensions in excess of a certain sum, should affect pensioners who fell within that particular category rather than all others. The aim pursued by the legislation has been held by the Court to be a legitimate one in the public interest (see paragraph 92 above). According to the applicants, however, that is not sufficient to justify the distinction since the pensions cap has a disproportionate and serious impact on them. This amounts in substance to the same grievance, albeit seen from another angle, as that which has been examined under Article 1 of Protocol No. 1. Although that complaint could equally be argued in terms of indirect discrimination, the Court sees no cause for arriving at a different conclusion in relation to Article 14 of the Convention: having regard to its margin of appreciation, the Bulgarian legislature did not transgress the principle of proportionality.

(c) Alleged discrimination *vis-à-vis* individuals who have held high office

115. Only differences in treatment based on an identifiable characteristic, or “status”, are capable of amounting to discrimination within the meaning of Article 14. However, the list set out in Article 14 is illustrative and not exhaustive, as is shown by the words “any ground such as” (in French “*notamment*”) (see, among other authorities, *Carson and Others*, cited above, §§ 61 and 70). The words “other status” (and *a fortiori* the French “*toute autre situation*”) have been given a wide meaning so as to include, in certain circumstances, military rank (see *Engel and Others v. the Netherlands*, 8 June 1976, § 72, Series A no. 22), or being a former KGB officer (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, §§ 53-62, ECHR 2004-VIII). The holding, or otherwise, of high office can likewise be regarded as “other status” for the purposes of Article 14.

116. However, for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see *Burden*, § 60, and *Carson and Others*, §§ 61 and 83, both cited above). In other words, the requirement to demonstrate an analogous

position does not require that the comparator groups be identical. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently (see *Clift v. the United Kingdom*, no. 7205/07, § 66, 13 July 2010).

117. It must therefore be determined whether the applicants have been able to demonstrate that, for pension purposes, they are in a relevantly similar situation to retirees who have held high office. The applicants' main argument in support of their assertion that they are in such a situation was in essence that it was impossible to draw a valid distinction, for pension purposes, between the character of the respective employments of the two groups. However, the Court is not prepared to draw conclusions based on the nature of the undoubtedly demanding and important tasks performed by the applicants and the tasks of the holders of the high-ranking posts in issue: the President or Vice-President of the Republic of Bulgaria, the Speaker of the National Assembly, the Prime Minister, and the judges in the Constitutional Court (see paragraph 40 above). It is not for an international court to make pronouncements on such matters; those are policy judgments which are in principle reserved for the national authorities, which have direct democratic legitimation and are better placed than an international court to evaluate local needs and conditions (see, *mutatis mutandis*, *Hatton and Others*, cited above, § 97). It should be noted in that connection that both the Court and the former Commission have on a number of occasions countenanced the differences that some Contracting States draw, for pension purposes, between civil servants and private employees (see *X v. Austria*, no. 7624/76, Commission decision of 6 July 1977, DR 19, p. 100, at p. 106; *K. v. Germany*, no. 11203/84, Commission decision of 5 May 1986, unreported; *Hesse-Anger and Anger v. Germany* (dec.), no. 45835/99, 17 May 2001; *Matheis v. Germany* (dec.), no. 73711/01, 1 February 2005; and *Ackermann and Fuhrmann*, cited above). The Court and the former Commission have also acknowledged, albeit in different contexts, the differences between other professions, such as lawyers in private practice and judicial and parajudicial professions (see *Van der Mussele*, cited above, § 46), lawyers and chartered public accountants (see *Liebscher and Others v. Austria*, no. 25170/94, Commission decision of 12 April 1996, unreported), and engineers and other liberal professions (see *Allesch and Others v. Austria*, no. 18168/91, Commission decision of 1 December 1993, unreported).

(d) Conclusion

118. In view of the foregoing considerations, the Court concludes that there has been no violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the remainder of the applications admissible;
2. *Holds* by six votes to one that there has been no violation of Article 1 of Protocol No. 1;
3. *Holds* unanimously that there has been no violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

Done in English, and notified in writing on 25 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Panova is annexed to this judgment.

N.B.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE PANOVA

I agree with the majority that the pensions cap is a measure that is provided for by law and pursues a legitimate aim. However, in my view the protracted restriction of the applicants' right to receive the full amount of their pensions is not proportionate to the aim sought to be attained and thus not necessary in a democratic society.

First, I fully agree that each State is in the best position to determine how to allocate its budget and in particular how to organise and allocate its social security budget. In that sense, a State has a wide margin of appreciation to determine the measures that it has to take at any given time to achieve its legitimate aim – in the case at hand, a reorganisation of the social security budget at a time when the Bulgarian economy was undergoing a transition and when the pension system was being reorganised. In 1989 Bulgaria entered a period of transition from a centralised socialist economy to a market economy. However, that process cannot be endless and unlimited in time – twenty-two years have now elapsed since 1989 – and cannot perpetually serve to justify limitations on citizens' social rights. Whilst until the end of the 1990s, when section 47c of the Pensions Act 1957 was in force, it could be considered that the State had the right to achieve its legitimate aim by capping pensions in order to organise the pensions budget, after that the restriction obviously started to become disproportionate because it affected citizens' rights for too long and therefore in an excessive manner.

Secondly, the measure impugned by the applicants, consisting of a cap on their pensions, was introduced with paragraph 6 of the transitional and concluding provisions of the Social Security Code 1999 and has been in effect from the beginning of 2000 to the present day. It is by nature a rule limited in time. It provides for a time-limit for the capping of pensions, but that time-limit is constantly being postponed. It has thus far been extended on three occasions: once until the end of 2009, a second time until the end of 2011, and most recently until the end of 2013. There is no guarantee that at the end of 2013, when the cap is currently due to expire, the provisional measure will not be extended again. Thus, the recommendation made by the Constitutional Court in judgment no. 21 of 1998, that it would be desirable for the impugned legislative solution to be repealed in the future, has for thirteen years not been heeded, in spite of the changed social and economic circumstances. The continued existence of that measure, originally envisaged as a provisional one, creates legal uncertainty for the applicants and for others in a similar situation. That makes the measure – the pensions cap – disproportionate in relation to the attainment of its otherwise legitimate aim.

Thirdly, it is true that the applicants' pension contributions were being made on their behalf by the State, but that cannot serve as grounds for the

conclusion reached by the majority in paragraph 95 of the judgment, namely that the State can freely modify the amount of the pensions that are due to the applicants. The State has made and continues to make pension contributions for civil servants. The applicants are not the only group of individuals who were not paying their pension contributions themselves. However, they have exercised professions entailing a very high risk for their life and physical integrity, and that has been recompensed with higher remunerations and thus with higher pension contributions paid into the social security budget. Even though the pension system in Bulgaria is organised on a pay-as-you-go basis, the applicants' pension contributions financed the pensions of those who were in retirement back then. The reorganisation of the pension system has to take into account the legitimate expectations of citizens in relation to their retirement. The purpose of social security is to provide for risks resulting from the attainment of an age after which those concerned are no longer expected to be able to work. In the applicants' case, that risk, in view of the nature of their jobs, was markedly higher. Moreover, one cannot overlook the fact that because of the higher salaries that they were receiving while employed the applicants were paying higher taxes, which also went into the State's budget.

Fourthly, the applicants, who are entitled to social security in the form of pensions but not to a particular amount of pension, nonetheless had a legitimate expectation that their pensions would be determined in the same way as all other pensions in the country and would thus correspond to a foreseeable amount. The applicants' problem is that their pensions were set in amounts determined in decisions of the National Social Security Institute. However, they have never received those amounts as a result of a provisional restriction imposed by the legislature that has thus far been maintained for eleven years. This is not about amounts that were taken in equal proportions from all those entitled to a pension, but about amounts that are by law due and not being paid as a result of a provisional restriction. It has not been disputed that the applicants are among those who have for a number of years exercised heavy and risk-laden professions, which was probably the reason for their not unjustified, and indeed statute-based, expectation that they would be entitled to higher pensions. If those individuals had been aware that in spite of their high pension contributions they would never be able to receive the full amount of their pensions, they probably would not have exercised those professions for very long, in order to preserve their health.

Lastly, I do not agree with the conclusion in paragraph 97 of the judgment that the applicants do not have to endure a considerable and actual decrease in their pension benefits because they have always been affected by some sort of pension ceiling and because they remain among the highest-paid pensioners. The facts of the case show that they receive two or three times less than the full amount of their pensions. The maximum

amount of their pensions is approximately five times higher than the minimum (social) pension in Bulgaria – BGN 136 (equivalent to EUR 69.54) – which is received by people who have reached retirement age but have never worked. In view of the nature of the applicants' professions, such a difference is disproportionate and unjust. The legitimate aim – social justice – cannot be attained if there is no justice for the individual. The issue here is not deprivation of an increase in the amount of the pension, but deprivation of the basic amount of the pension. In addition, it should not be overlooked that the measure affecting the applicants also affects a considerable proportion of pensioners in the country – approximately one-fiftieth of them. It is true that since 2000 in Bulgaria there have been two other tiers of pension: a mandatory second tier for those born after 1 January 1960, and a voluntary third tier consisting of private pension funds. However, neither of those schemes is relevant for or available to the applicants, because they had already retired by the time the schemes came into existence. They therefore have no means of securing a higher pension amount. That makes the pensions cap even more disproportionate to the aim pursued.

For all these reasons I believe that the Bulgarian authorities have infringed the right of the applicants to receive their real amounts of their pensions and that this constitutes a violation of Article 1 of Protocol No. 1.