



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

FIFTH SECTION

CASE OF AVENDI OOD v. BULGARIA

(Application no. 48786/09)

JUDGMENT
(Merits)

Art 1 P1 • Respect for possessions • Continued retention of merchandise, initially seized as evidence pending criminal proceedings against third parties, after final judgment ordering return • Unlawful interference with the applicant company's rights

STRASBOURG

4 June 2020

FINAL

12/10/2020

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

In the case of Avendi OOD v. Bulgaria,

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

Síofra O’Leary, *President*,

Ganna Yudkivska,

Yonko Grozev,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia,

Anja Seibert-Fohr, *judges*,

and Victor Soloveytschik, *Deputy Section Registrar*,

Having deliberated in private on 12 May 2020,

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

PROCEDURE

1. The case originated in an application (no. 48786/09) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Avendi OOD, a Bulgarian limited liability company with a registered office in Sofia (“the applicant company”), on 24 August 2009.

2. The applicant company was represented by Mr G. Kalinov and Mr V. Dramov, lawyers practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimitrova, from the Ministry of Justice.

3. The applicant company complained of the authorities’ failure to comply with a final domestic court decision ordering the return of merchandise belonging to it, which had been seized as evidence in criminal proceedings. It alleged that it had suffered pecuniary losses as a consequence and had no effective remedy in that respect. The applicant company relied on Article 6 § 1 of the Convention, as well as on Article 1 of Protocol No. 1, alone and in conjunction with Article 13 of the Convention.

4. On 8 November 2017 notice of the complaints was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company traded in alcoholic beverages, which are subject to excise duty under Bulgarian tax law.

A. Seizure of the applicant company's merchandise in criminal proceedings against the first group of third parties

6. On 6 and 7 January 2005 the Varna regional police carried out a search-and-seizure operation at a warehouse where merchandise belonging to the applicant company was stored. During the operation, the police seized as evidence 53,857 bottles of alcoholic beverages of different kinds, among which 26,748 bottles of Baileys cream liqueur, belonging to the applicant company. That measure was taken in relation to ongoing criminal proceedings against third parties, a certain M.M. and S.S., on suspicion of storing merchandise subject to excise duty without the mandatory excise duty stamps. The seized beverages were then stored at a warehouse belonging to the Dobrich regional tax office.

7. By a judgment of 7 November 2005 the Varna District Court acquitted M.M. and S.S. That judgment was upheld by the Varna Regional Court on 17 April 2006 and became enforceable on 5 May 2006.

8. Meanwhile, the applicant company requested the return of the merchandise which had been seized as evidence, arguing that there was a danger of the beverages' shelf life expiring. By a decision of 21 November 2005 the Varna District Court noted that in its judgment on the merits of 7 November 2005 the Varna District Court had omitted to decide on the question of the seized bottles and ordered their return to the applicant company, mentioning 53,857 bottles. That court took into account that the accused had been acquitted and that there was no dispute about the applicant company's ownership of the bottles. The decision was not challenged and became enforceable on 7 December 2005.

B. Administrative proceedings against the applicant company

9. In the meantime, on 11 August 2005 the tax authorities had instituted administrative proceedings against the applicant company under the Excise Act for storing merchandise subject to excise duty without the mandatory excise duty stamps. In an administrative offence report issued against the applicant company on that same date, the Varna regional tax office established that the applicant company was storing 54,181 bottles of alcoholic beverages without the mandatory excise stamps. That report

indicated that the bottles had been the subject of an inspection carried out by the tax authorities on 6 January 2005. It added that the bottles in question had been described in the search-and-seizure report of 6 and 7 January 2005, issued in the context of the criminal proceedings against the first group of third parties, following which the bottles had been seized for the purpose of those proceedings. The administrative offence report did not indicate that the bottles had been adduced or seized as evidence in the administrative proceedings.

10. By a decision of 23 December 2005 the Varna regional tax office imposed an administrative sanction on the applicant company. It concerned, among other penalties, the forfeiture of 54,181 bottles of alcoholic beverages belonging to it, including the bottles seized by the police on 6 and 7 January 2005. In describing the evidence adduced in the administrative proceedings, the decision referred to the search-and-seizure report of that latter date. No mention was made of the bottles as being part of the evidence in the administrative proceedings. The Varna tax authority did not order the preliminary execution of its forfeiture decision.

11. On 27 January 2006 the applicant company challenged that decision before the courts. By a decision of 19 May 2006 the Varna District Court terminated the proceedings, finding that the facts of the case concerned a criminal offence, and referred the matter to the Varna district prosecutor's office. However, by a decision of 24 July 2006 the Varna Regional Court quashed that decision and remitted the case to the District Court.

12. By a judgment of 9 October 2006 the Varna District Court set aside the decision of the Varna regional tax office as regards the forfeiture of the merchandise and upheld it as regards the other penalties. Regarding the forfeiture, it relied on the principle of non-retroactivity of criminal law, enshrined also in the Administrative Offences and Penalties Act, whereby the courts had to apply the legislative provisions that were most favourable to the defendant. The court found that provisions that were more favourable to the applicant company had entered into force on 1 January 2006 with the adoption of the new Excise Duties and Tax Warehouses Act, which repealed the previous Excise Act. In particular, the new Act did not provide for forfeiture as a penalty for the administrative offence at issue.

13. By a final judgment of 18 December 2006, the Varna Regional Court upheld the finding of the lower-instance court as regards the forfeiture and quashed the part concerning the other penalties imposed by the tax authority on 23 December 2005. In its reasoning for quashing that part of the decision, the court first relied on the discrepancy in the number of bottles mentioned in the search-and-seizure report of 6 and 7 January 2005 and the quantity referred to in the decision of 23 December 2005. According to the documentary evidence presented, 53,857 bottles had been referred to in the criminal proceedings, whereas administrative proceedings had been brought against the applicant company for storing 54,181 bottles without the

required stamps. The Regional Court found that this was a manifest discrepancy, which the lower court had failed to identify in assessing the evidence gathered. Further, the court noted that according to the documentary evidence in the file, the excise duty in relation to the impugned merchandise had been paid by the importing company D.B., which had initially sold the bottles to the applicant company. That company had received the mandatory excise duty stamps and its subcontractors had started to apply them to the bottles. It was true that the process of application of those duty stamps had not been completed on time and this constituted an administrative offence. However, that offence had preceded the moment when the applicant company had bought the merchandise. At the time of the inspection, the bottles had still been treated as merchandise in the process of importation and had been stored for that purpose at a warehouse. The mandatory duty stamps had been placed in the safe of the warehouse. In light of those elements, the Regional Court found that the offence, subject to the administrative proceedings, had not been committed by the applicant company.

C. The administrative and criminal proceedings against the second group of third parties

14. It appears from the case file that separate administrative proceedings against the importing company D.B., which had initially sold the bottles to the applicant company, had been opened with respect to the same bottles. By a decision of 10 February 2006 the executive director of the National Revenue Agency imposed an administrative sanction on the D.B. company. However, by a subsequent decision of 20 June 2006 the Varna District Court terminated those proceedings, finding that the information contained in the case file indicated a possible criminal offence, and forwarded the file to the Varna district prosecutor's office.

15. On 8 February 2007 the Varna district prosecutor's office charged a certain E.G., a representative of the D.B. company, with selling the beverages to the applicant company without the mandatory excise duty stamps. However, by a decision of 14 March 2007 the Varna district prosecutor's office terminated those proceedings, as the data gathered during the investigation did not show that a criminal offence had been committed. In that decision, the prosecutor referred to the applicant company's merchandise as having been seized in the course of the criminal proceedings against the first group of third parties. She also noted that no ruling had been made concerning the bottles in either the judgment of the Varna District Court of 7 November 2005 or the judgment of the Varna Regional Court of 17 April 2006 which ended that set of criminal proceedings (see paragraph 7 above). The prosecutor's decision does not mention the separate Varna District Court's decision dated 21 November

2005, ordering the return of the bottles (see paragraph 8 above). The prosecutor found that, as the director of the Varna regional tax office was presented with evidence that its decision of 23 December 2005 had been set aside by final judgment of the Varna Regional Court of 18 December 2006, the beverages had to be returned to their owner.

D. The applicant company's attempts to have the merchandise returned

16. In the meantime, on 22 December 2005 the applicant company applied to the Dobrich regional tax office, in whose premises its merchandise was stored, for the return of the seized beverages. It based that request on the Varna District Court decision which became enforceable on 7 December 2005 (see paragraph 8 above). On 14 March 2006 that authority informed the applicant company that it could not return the merchandise, because the competent bodies to be addressed in that regard were the Varna regional police and the Varna regional tax office, whereas the Dobrich tax office acted only as keeper of the merchandise. The Dobrich inspectorate further argued that the merchandise was subject to the administrative proceedings against the applicant company which were pending and in which forfeiture of the merchandise had been imposed, as well as to the criminal proceedings against the first group of third parties, namely M.M. and S.S., which were still ongoing at that time.

17. On 4 April 2006 the applicant company applied to the Varna regional tax office for the return of its merchandise. It again relied on the decision of the Varna District Court ordering the return of the beverages, which had become enforceable on 7 December 2005. It further argued that the Varna regional tax office in its decision of 23 December 2005 had not provided for the preliminary execution of the imposed forfeiture and that the decision itself was not enforceable (see paragraph 10 above). In a letter of 31 May 2006 that authority replied that the merchandise constituted evidence in the administrative proceedings against the applicant company which were still pending before the courts. The Varna tax authority added that the competent body to rule on the return of the beverages was the Varna District Court, and that it had forwarded the applicant company's request to that court.

18. On 13 June 2006 the Varna regional police sent a letter to the Varna District Court, the Varna regional tax office and the applicant company, informing them that it could not execute the Varna District Court's decision on the return of the merchandise, which had come into effect on 7 December 2005. This was because the Varna District Court had sent a letter on 30 May 2006 informing the police that the evidence seized for the purposes of the criminal proceedings against the first group of third parties could not be returned until "the question of the accused's responsibility had

been resolved”. The police further argued that they found themselves unable to deal with the case since the beverages were being held at a warehouse belonging to the Dobrich regional tax office.

19. On 7 July 2006, the applicant company applied to the Varna tax authority for the return of the merchandise. In a letter dated 11 July 2006, that authority indicated that it was not competent to rule on the request and forwarded it to the Varna district prosecutor’s office, in view of the Varna District Court’s decision of 19 May 2006 to terminate the administrative proceedings against the applicant company (see paragraph 11 above). Following the Varna Regional Court’s decision of 24 July 2006 to remit the matter to the District Court (see paragraph 11 above), the applicant company lodged another application with the Varna regional tax office on 10 August 2006. The applicant company relied on the fact that the new Excise Duties and Tax Warehouses Act, which had entered into force on 1 January 2006, was more favourable to it in the sense that the forfeiture could not constitute a penalty for the administrative offence in question. The Varna regional tax office replied on 17 August 2006, again stating that it was not competent to rule on the return of the bottles as the appeal proceedings against the decision of 23 December 2005 on the administrative sanctions against the applicant company were pending before the Varna District Court. The Varna tax authority argued that that court was the competent authority to rule on the return of the merchandise, which had been adduced as evidence to the case pending before it. Moreover, the criminal investigation against the second group of third parties concerning the beverages was also ongoing before the Varna district prosecutor’s office. In the light of those factors, the Varna tax authority further informed the applicant company that it had forwarded its request to both the Varna District Court and the district prosecutor’s office.

E. The return of the seized merchandise to the applicant company

20. On 9 January 2007 the applicant company sent another letter to the Varna and Dobrich regional tax offices, as well as to the National Revenue Agency. It requested the return of the beverages on the basis of the final judgment of the Varna Regional Court of 18 December 2006 whereby the forfeiture of the beverages by way of administrative sanction had been quashed with final effect (see paragraphs 10-13 above).

21. On 28, 29 and 30 March 2007, in the presence of the Varna police, the bottles were returned to the applicant company. Following this restitution, the applicant company commissioned two private expert reports in order to ascertain whether the beverages which had a best-before date were still fit for consumption. The two expert reports, both dated 30 March 2007, found that the shelf life of 26,743 bottles of Baileys cream liqueur among the whole merchandise had expired in September and October 2006.

The reports also indicated that apart from this number, a few other bottles had been broken. They concluded that those beverages were no longer marketable. According to those reports, all other beverages were not marked for a best-before date.

F. The applicant company's claim for damages against the State

22. On 17 March 2008 the applicant company filed a claim against the National Revenue Agency under the State and Municipalities' Liability for Damage Act before the Sofia City Administrative Court. The applicant company requested that the court declare null and void the tax authorities' decision to retain the merchandise and its refusal to return it after 7 December 2005, when the Varna District Court's decision ordering the return of the merchandise had become enforceable (see paragraph 8 above). The applicant company claimed compensation for damage and lost profits in respect of the bottles of Baileys cream liqueur the shelf life of which had expired and for the impossibility to sell those beverages, as well as for the impossibility to dispose of the beverages which did not have an expiry date during the period of their retention and could be marketed after their restitution. By a decision of 28 July 2008, the Sofia City Administrative Court decided that the claim ought to be examined in three separate sets of proceedings. The first two sets of proceedings concerned the alleged nullity of the tax authority's decisions, respectively, before and after 1 January 2006, while the third set of proceedings was related to the applicant company's claim for compensation.

1. Claim of nullity in respect of the tax authority's refusal to return the merchandise before 1 January 2006

23. By a decision of 13 October 2008, the Sofia City Administrative Court sent the case to the Dobrich Administrative Court, which it found to be the court with jurisdiction to examine the claim. In a judgment of 19 March 2009, the Dobrich Administrative Court partly terminated the proceedings and partly rejected the claim. The applicant company challenged that judgment before the Supreme Administrative Court, which upheld the decision to terminate the proceedings and declared the rejected part of the claim inadmissible by a final decision that took effect on 28 October 2009. That court found that the facts of the case did not concern a failure to perform actions required by law but rather the failure to enforce a final judicial decision. In other terms, the courts were allowed to review only situations where the obligation to perform an administrative act was directly required by law, which was not the case at hand. The obligation for the Dobrich administrative authorities to return the bottles resulted from a binding judicial decision, and not directly from a statutory provision.

2. Claim of nullity in respect of the tax authority's refusal to return the merchandise after 1 January 2006

24. By a decision of 3 November 2008, the Sofia City Administrative Court sent the case to the Varna Administrative Court, which it found to be the court with competence to examine the claim. By a decision of 13 November 2008, the Varna Administrative Court dismissed the applicant company's claim and terminated the proceedings. It found that the claim represented, in substance, a complaint about a refusal by the tax authority to take a decision on the issue of the bottles' return. However, the court concluded that, by forwarding the applicant company's requests to other competent bodies on grounds of not being competent to examine them itself, and subsequently notifying the applicant company, the Varna regional tax office had not failed to take a decision on those requests. The court added that, if the applicant company was to be considered as challenging the two letters of 31 May 2006 and 17 August 2006 (see paragraphs 17 and 19 above), that action had been introduced outside the deadlines prescribed by law. By a final decision of 14 January 2009, the Supreme Administrative Court upheld the lower court's decision.

3. Claim for compensation

25. In a judgment of 30 November 2010, the Sofia City Administrative Court rejected the applicant company's claim for compensation.

26. That court first noted the conclusions the administrative courts had reached in the previous two sets of proceedings rejecting the applicant company's claims seeking to have the administrative acts or omissions declared null and void (see paragraphs 23 and -24 above).

27. In its judgment, the Sofia administrative court also indicated that, in the course of the proceedings, an expert had been appointed to report on the price the applicant company had paid initially (purchase price) for the seized bottles, as well as on their market value and on the statutory default interest for the period of the retention. That report had indicated, with respect to the bottles cited in the search-and-seizure report of 6 and 7 January 2005 (see paragraph 6 above), among other things, that the applicant company had spent, according to the available purchase invoices, a total of BGN 466,159.96 Bulgarian leva (BGN) (238,343.80 euros (EUR)) to acquire 25,748 bottles of Baileys cream liqueur. The report added that the shelf life of those beverages had expired in September and October 2006. The statutory default interest on that amount was BGN 196,429.71 (EUR 100,432.92) for the period between 7 January 2005 and 17 March 2008, BGN 140,480.68 (EUR 71,826.63) for the period between 1 January 2006 and 17 March 2008, and BGN 82,923.52 (EUR 42,398.12) for the period between 18 December 2006 and 17 March 2008. Further, the judgment mentioned that the expert report had shown that the market price

at the moment of the seizure of those beverages (7 January 2005) was higher than their purchase price, the difference between them being evaluated in the amount of BGN 134,527.70 (EUR 68,782.92). Without referring to precise figures, the judgment indicated that the expert report had calculated statutory default interest on that amount also. Finally, that report had also indicated three different amounts corresponding to statutory default interest for the retention of bottles which did not have an expiry date and could be marketed after their return. The number of those beverages was not indicated in the judgment. The three different amounts for statutory default interest referred to three periods and three different market estimations of the bottles' price, without giving more detailed information, as follows: a) BGN 111,926.24 (EUR 57,226.98) for the period between 7 January 2005 and 30 March 2007 with respect to a sum of BGN 396,896.86 (EUR 202,930.14); b) BGN 69,694.98 (EUR 35,634.48) for the period between 1 January 2006 and 30 March 2007 with respect to a sum of BGN 430,263.26 (EUR 219,990.11); and c) BGN 14,338.36 (EUR 7,331.08) for the period between 18 December 2006 and 30 March 2007 with respect to a sum of BGN 372,314.72 (EUR 190,361.49). The court observed that the expert's conclusions were not disputed by the parties. It considered the report to be well-founded and corresponding to the rest of the evidence in the case. The expert report itself had not been submitted before the Court within the time-limits set in the present procedure.

28. The court further noted that the alleged damage had resulted from the following actions and omissions on the part of the administration: (a) the retention of merchandise on 6-7 January 2005 consisting of *de facto* forfeiture; (b) an omission on the part of the administrative authorities to return that merchandise after the judgment that entered into force on 7 December 2005 ordering its return (see paragraph 8 above), until 30 March 2007 when the retention ended, in particular taking into account that the administrative offence report issued by the Varna regional tax office had not indicated that the bottles should be seized or forfeited in the framework of the administrative proceedings; (c) the decision of 23 December 2005 by the Varna regional tax office to seize the bottles, which had eventually been set aside; and (d) a lack of action despite the legal obligation to return the merchandise after 18 December 2006, the date on which the decision of the Varna Regional Court, setting aside the impugned decision of 23 December 2005 in its entirety, had become enforceable.

29. The Sofia City Administrative Court considered in that connection that the seizure of the bottles carried out on 6 and 7 January 2005 by the Varna regional police in the framework of the criminal proceedings had not constituted an "administrative act" as provided for by Article 21 of the Code of Administrative Procedure. Nor had it been established that other

administrative acts had been issued before that date in view of the retention of the bottles. The court was therefore unable to conclude that the merchandise had been retained as a result of acts issued by the tax authorities. The court endorsed the conclusions reached by the administrative courts in the previous set of proceedings that no decisions issued by the tax authority were to be declared null and void (see paragraphs 23 and 24 above).

30. Therefore, the only compensation claim to be examined was that based on the fact that the administrative decision of 23 December 2005 had been subsequently set aside.

31. However, State institutions could be held liable under section 1(1) of the State and Municipalities' Responsibility for Damage Act 1988 (SMRDA) for damage occasioned only by those individual administrative acts the lawfulness of which could be challenged under the newly adopted Administrative Procedure Code (which entered into force on 12 July 2006). Administrative decisions imposing administrative sanctions – such as the decision of 23 December 2005 - did not fall into this category. Such decisions were amenable to appeal before the district courts in application of the Administrative Offences and Penalties Act 1969, which constituted a *lex specialis* in that area. In other words, according to the Sofia City Administrative Court, the entry into force of the Administrative Procedure Code had reduced the material scope of section 1(1) of the SMRDA in the sense that State institutions could not be held liable under that piece of legislation for damage resulting from an unlawful decision imposing an administrative sanction under the Administrative Offences and Penalties Act 1969. The Sofia City Administrative Court thus concluded that it was not necessary to examine further the other requirements of section 1(1) of the SMRDA.

32. The court went on to say that even if that provision was applicable, it had to be noted that the alleged damage was not a direct result of the decision of 23 December 2005. In reality, the act affecting the applicant company's rights had been the search-and-seizure report of 6 and 7 January 2005, issued by the police authorities in the context of criminal proceedings against third parties (see paragraph 6 above).

33. On appeal, in a final judgment of 27 April 2011, the Supreme Administrative Court upheld the lower court's judgment while modifying its reasoning. It held that in the case of the applicant company the obligation to return the bottles, seized as evidence, had resulted from a judicial decision and not from a legislative requirement. It added that another legal remedy existed for this type of situation, without specifying what that remedy was. In that sense, another judicial act or an administrative decision had not had to be issued in order to have the bottles returned to the applicant company.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Retention of physical evidence during criminal proceedings

34. The relevant provisions of domestic law concerning retention of physical evidence during criminal proceedings have been summarised in the Court’s judgment in the case of *Prezhdarovi v. Bulgaria* (no. 8429/05, § 29, 30 September 2014).

35. At the relevant time, Article 107 § 2 of the Code of Criminal Procedure 1974 provided that physical evidence was to be adduced, and measures were to be taken to prevent it from being damaged or altered. The Code of Criminal Procedure 2005 contains an identical provision (Article 110 § 2).

36. Article 107 § 3 of the Code of Criminal Procedure 1974 provided that when a case file was transferred from one State body to another, the adduced physical evidence was to be transmitted with it. The Code of Criminal Procedure 2005 contains an identical provision (Article 110 § 3).

B. Code of Administrative Procedure 2006

37. Under Article 21 § 1 of the Code of Administrative Procedure 2006, which entered into force on 12 July 2006 and as applicable at the relevant time, an individual “administrative act” is defined as an explicit decision, or action taken or an omission on the part of an administrative body or another body or an organisation authorised to act, by which rights and obligations are directly created, or rights, freedoms and legal interest of individuals or organisations are affected. The refusal to deliver a decision also constitutes an individual administrative act.

C. Administrative Offences and Penalties Act 1969

38. Section 3(2) of the Administrative Offences and Penalties Act 1969 (“the 1969 Act”) provides that when different laws are enacted between the time the administrative offence was committed and the date on which the administrative decision imposing a penalty became final, the law with the most favourable provisions for the defendant applies.

39. When setting the penalty for an administrative offence, the authorities must, if the relevant law so provides, also seek the forfeiture of, *inter alia*, the goods which are the subject of the offence and which belong to the offender (section 20(1) and (3) of the 1969 Act). At the relevant time section 17a(11) of the Excise Act 1994, read in conjunction with section 17a(2) of the same Act, provided that merchandise subject to excise duty that was held in store by a company without the mandatory excise duty stamps was subject to forfeiture. Section 123 of the Excise Duties and Tax

Warehouses Act 2005, which superseded those provisions as of 1 January 2006, did not provide for such forfeiture at the relevant time. An amendment to section 124 of that Act dated 22 December 2006 reintroduced forfeiture as an administrative measure for such an offence.

40. Under section 20(2) of the 1969 Act, goods which are the subject of an administrative offence and the possession of which is prohibited must also be forfeited.

41. Under section 42(10), the administrative decision establishing the offence must include, *inter alia*, an inventory of the goods that were, where appropriate, seized, as well as information about the person or institution responsible for storing those goods. In a case where the seized goods are described in detail and sent for storage with an acceptance sheet to a customs' warehouse, it is considered that the requirement of section 42(10) has been fulfilled (see decision: решение № 148 от 16.03.2011 г. на АдМС - София област по к. а. н. д. № 4/2011 г.). As far as section 42 describes a minimum number of measures to be carried out in order for the decision to be legally valid, including the obligation to draw up an inventory, the failure to carry out any of the necessary measures would lead to a violation of a legal rule and, respectively, to the unlawfulness of the decision (see decision: решение № 1429 от 4.01.2005 г. на РС - Петрич по н. а. х. д. № 23/2004 г.). Section 46(1), (2) and (3) provide that the goods seized should be sent for safe storage in accordance with the established rules. If such rules do not exist, the goods are sent for storage within the services of the body that established the offence or within the relevant municipal authority. In some cases, it could be justified to entrust the offender or another person to store the goods. Under section 46(4), seized perishable goods must be sold through State or municipality-owned enterprises and the amount received deposited.

42. Pursuant to section 54, if it is established that the act committed is not an offence, that the offence was not committed by the person indicated as its author, or that that person should not bear the responsibility, the administrative authority should pronounce the end of the proceedings by means of a reasoned decision in which it orders the return of any goods seized, if their possession is not prohibited, or the reimbursement of their value in cases under section 46(2).

43. Section 57(1) of the 1969 Act provides that administrative decisions imposing administrative penalties have to describe, *inter alia*, the evidence which confirms the facts surrounding the offence at issue, as well as the goods that are forfeited.

44. Section 84 provides that, in so far as the 1969 Act does not provide specific provisions, the rules of the Code of Criminal Procedure are applicable as regards, *inter alia*, seizure of objects and judicial appeal proceedings against administrative decisions imposing penalties.

D. Criminal Code 1968

45. Article 234 § 3 of the Criminal Code 1968, as in force at the relevant time, provided for the forfeiture of goods which were the subject of the criminal offence of holding in store excise duty merchandise without the mandatory excise duty stamps.

E. State and Municipalities' Responsibility for Damage Act 1988

46. The relevant provisions and domestic courts' practice in connection with actions for damages under the SMRDA have been summarised in the Court's judgments in the cases of *Dimitar Yanakiev v. Bulgaria* (no. 2) (no. 50346/07, §§ 36-37, 31 March 2016); *Guseva v. Bulgaria* (no. 6987/07, §§ 29-30, 17 February 2015); and *Posevini v. Bulgaria* (no. 63638/14, §§ 34-42, 19 January 2017).

47. The question whether claims in respect of damage caused by unlawful administrative decisions imposing administrative penalties were to be examined by civil courts under the Contracts and Obligations Act or by administrative courts under the SMRDA had been subject to conflicting practice in domestic case-law. The divergences eventually required the issuing of a binding interpretative decision, which was adopted on 19 May 2015 jointly by the Supreme Court of Cassation and the Supreme Administrative Court in order to resolve the matter (see *Dimov v. Bulgaria* (dec.) [Committee], no. 60445/15, §§ 15-17, 4 December 2018). According to the latter, such claims were to be examined by the administrative courts under the SMRDA, notwithstanding the fact that the decision imposing the administrative penalty was not considered as an individual "administrative act" under Article 21 of the Code of Administrative Procedure. The Supreme Administrative Court considered in particular that the delivery of such a decision was the result of the exercise of administrative functions determined by law and thus constituted in substance the exercise of "administrative action" within the meaning of section 1(1) of the SMRDA, the provision circumscribing the jurisdiction of the administrative courts in the relevant area.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

48. The applicant company complained that as a result of the failure to execute a final domestic court decision in its favour, and after a series of

unlawful actions by the tax and prosecuting authorities, it had been deprived of its property and had suffered pecuniary losses. It relied on Article 6 of the Convention, as well as on Article 1 of Protocol No. 1. The Government contested the complaints.

49. The Court is of the view that the complaints fall to be examined, under Article 1 of Protocol No. 1, which, in so far as relevant, reads as follows:

Article 1 of Protocol No. 1

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

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

A. Admissibility

1. The parties' submissions

50. The Government submitted, in substance, that the applicant company had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, it had failed to request the return of the bottles in the framework of the administrative proceedings that had unfolded against it. The merchandise had been seized as evidence in both the criminal proceedings against M.M. and S.S. and the administrative proceedings against the applicant company, as well as in a separate set of criminal proceedings against E.G. The applicant company should therefore have requested the return of the bottles from, respectively, the Varna tax authority in the administrative proceedings and, after 20 June 2006, the prosecutor in the criminal proceedings against E.G. In the event of a refusal by the tax authorities, it could have appealed before the courts.

51. The Government further argued that the applicant company had failed to lodge a general tort claim against the State under the Contracts and Obligations Act. At the time, according to the predominant position in domestic case-law, that was the appropriate domestic remedy to use in situations such as the present one. In particular, claims for damages as a result of retention of objects in the course of criminal proceedings had always been examined under the general rules of tort. As regards claims for damage incurred as a result of unlawful administrative decisions imposing administrative penalties, the Government argued that, although from a certain period onwards the case-law on the matter had become divergent,

until 2011 the prevailing position had been that the civil courts were competent to hear such claims under the general rules of tort.

52. The applicant company contested those arguments. It claimed that the judgment of the Varna District Court that had become final and enforceable on 7 December 2005 had been clear and unambiguous in its wording that the merchandise was to be returned. Furthermore, no decision or order had ever been issued for the attachment of the bottles as evidence, either under the administrative proceedings against the applicant company or under the criminal proceedings against E.G. The Code of Criminal Procedure 1974, in force at the relevant time and until 29 April 2006, did not contain a rule stating that physical evidence seized in the course of criminal proceedings could not be returned when it was also the subject of an administrative offence.

53. The applicant company further claimed that it had used the most appropriate remedy available under domestic law as far as actions for damages were concerned. In particular, it had brought a claim under the SMRDA, the suitability of which had also been confirmed by a subsequent interpretative decision which had put an end to the prior divergences in case-law.

2. The Court's assessment

54. The Court finds that the question whether the merchandise had been adduced as evidence in the subsequent administrative proceedings against the applicant company or the criminal proceedings against E.G. and, accordingly, whether the applicant company had to request the return of the merchandise in the framework of those proceedings, is closely linked to the merits of the applicant company's complaint that its merchandise was unlawfully retained. Therefore, the Court will examine that part of the Government's objection below in the context of the merits (see paragraphs 64-82 below).

55. As regards the question of which courts were competent to hear claims in respect of damage caused by unlawful administrative decisions imposing administrative penalties, the Court observes that at the relevant time this matter was indeed subject to conflicting practice in domestic case-law. The divergences were of such a nature that they eventually required the issuing of a binding interpretative decision, which found that such claims were to be examined by the administrative courts under the SMRDA (see paragraph 47 above).

56. The Court notes the particular complexity of the situation in which the applicant company found itself. On one hand, its claims were related to the retention of objects seized as evidence in the course of criminal proceedings, issues normally subject to the general rules of tort under the Contracts and Obligations Act (see *Posevini*, cited above, §§ 42 and 46). On the other hand, they concerned the specific issue of a delay in enforcing, or

a failure to enforce, a final judicial decision, a situation in which State bodies' liability was to be examined under the SMRDA (see *Dimitar Yanakiev*, cited above, § 37). It is not for the Court to determine the nature of the relationship between the provisions of those Acts. In that connection, it is in principle sufficient to note that the Bulgarian courts apparently regard the two as autonomous in the sense that either of them can serve as a basis for a tort claim against the authorities (see *First Sofia Commodities EOOD and Paragh v. Bulgaria* (dec.), no. 14397/04, § 35 *in fine*, 25 January 2011).

57. The Court reiterates that, from the Convention standpoint, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). When a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, 15 October 2009). In the present case, the applicant company used one of the potentially available remedies – namely, a claim under the SMRDA (contrast *First Sofia Commodities EOOD and Paragh*, cited above, § 35 *in fine*). In the context of the conflicting practice in the relevant domestic case-law before 2015, and taking into account the factual complexity of the situation, the Court finds that it was not necessary for the applicant company to have also submitted a tort claim under the Contract and Obligations Act in order to comply with the rule of exhaustion of domestic remedies.

58. It follows that this part of the Government's objection of failure by the applicant company to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention must be rejected.

59. The Court notes that the complaints under Article 1 of Protocol No. 1 to the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

60. The applicant company complained that between 6-7 January 2005 and 30 March 2007 it had been unlawfully deprived of the peaceful enjoyment of its merchandise in a situation that had amounted to *de facto* confiscation. In particular, after 7 December 2005 the authorities had not retained the bottles on any valid grounds and had failed to enforce the decision of the Varna District Court of that date ordering the return of the bottles. The applicant company submitted that the tax authorities had not

formalised the seizure of its merchandise in any administrative act issued in the framework of the administrative proceedings against it. In particular, the administrative offence report dated 11 August 2005 could not be seen as such a document as it had not contained any seizure order for the bottles, but indicated the seizure of a series of documents. Similarly, no decision had been taken in view of the retention of the bottles for the purposes of the criminal proceedings against the second group of third parties.

61. The applicant company added that the authorities refused to return the beverages, in spite of its numerous complaints regarding the unlawfulness of the authorities' actions and of the risk that the merchandise's shelf life might expire.

62. The Government argued that the bottles had been retained on valid grounds by, respectively, the investigative and tax authorities, in the exercise of their powers under the applicable laws. Even after 7 December 2005 when the decision of the Varna District Court ordering the return of the seized evidence had become enforceable, the merchandise had still been retained on lawful grounds by the authorities. In particular, as of 11 August 2005 it had been considered adduced as evidence in the context of the pending administrative proceedings against the applicant company. The Government referred to the administrative offence report issued against the applicant company on that same date by the Varna regional tax office which pointed to the search-and-seizure report of 6 and 7 January 2005. For the Government, that was the manner in which the administrative body enclosed the merchandise to the administrative proceedings as physical evidence. They thus maintain that the search-and-seizure report of 6 and 7 January 2005 was not to be seen as document related to the alleged offence but a document which objectified bottles related to the offence.

63. The Government further argued, with reference to the search-and-seizure report of 6 and 7 January 2005, that between 20 June 2006 and 14 March 2007 the bottles had been also retained as evidence in a separate set of criminal proceedings against E.G. The impugned interference had thus pursued a legitimate aim in the public interest, in particular, to secure evidence in ongoing criminal and administrative proceedings. In applying the measure, the authorities had acted with a reasonable degree of proportionality between the means employed and the aim sought to be achieved. The proceedings had unfolded relatively quickly, and it had been due to the applicant's failure to properly request the return of the bottles that the shelf life of a large part of them had expired. Lastly, the Government argued that the damage suffered by the applicant company had been an inherent consequence of the risks entailed by commercial activity and that the applicant company had not used the proper remedy to claim compensation.

2. *The Court's assessment*

64. The Court notes that the general principles in respect of Article 1 of Protocol No. 1 are set out, for example, in *Hutten-Czapska v. Poland* ([GC], no. 35014/97, §§ 163-65 and 167-68, ECHR 2006-VIII).

65. Turning to the present case, the Court notes that the Government do not contest that the seizure of the merchandise in question in January 2005 and its subsequent retention until March 2007 constituted an interference with the peaceful enjoyment of the applicant company's possessions. It further notes that the seizure was the result of the investigative authorities' exercising their powers under Article 108 of the 1974 Code and Article 111 of the 2005 Code, as well as of the tax authorities exercising their powers under the 1969 Act (see paragraphs 34, 39 and 40 above). Thus, the interference with property rights in the present case can be examined as a constituent element of the procedure for controlling the use of goods subject to excise duty (see, *mutatis mutandis*, *AGOSI v. the United Kingdom*, 24 October 1986, § 51, Series A no. 108, and *Bowler International Unit v. France*, no. 1946/06, § 41, 23 July 2009), as a measure for securing the payment of taxes or penalties (see, *mutatis mutandis*, *Gasus Dossier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 59, Series A no. 306-B) and as a measure for securing physical evidence in ongoing administrative and criminal proceedings (see *Atanasov and Ovcharov v. Bulgaria*, no. 61596/00, § 72, 17 January 2008). It follows that it is the second paragraph of Article 1 of Protocol No. 1 which is applicable in the present case.

66. However, that provision must be construed in the light of the general principle enunciated in the opening sentence of the first paragraph of Article 1 of Protocol No. 1. The Court's task in this matter is to determine first whether the interference with the applicant company's possessions was lawful and in the public interest and, if the answer is positive, whether the interference struck a fair balance between the demands of the general interest and the applicant company's rights (see *Microintelect OOD v. Bulgaria*, no. 34129/03, § 37, 4 March).

67. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. The requirement of lawfulness, within the meaning of the Convention, demands compliance with the relevant provisions of domestic law and compatibility with the rule of law, which includes freedom from arbitrariness (see *Patrikova v. Bulgaria*, no. 71835/01, § 82, 4 March 2010).

68. Concerning the lawfulness of the interference, the Court observes that it has only limited power to deal with alleged errors of law made by the national authorities. Although the Court can and should exercise a certain power of review in this matter, since failure to comply with domestic law entails a breach of Article 1 of Protocol No. 1, the scope of its task is

subject to limits inherent in the subsidiary nature of the Convention, and it cannot question the way in which the domestic courts have interpreted and applied national law, except in cases of flagrant non-observance or arbitrariness (see *Microintellect OOD*, cited above, § 39).

69. In the present case, the Court notes that the seizure of the applicant company's merchandise on 6-7 January 2005 was decided for the purposes of a criminal investigation that was being carried out against third parties (see paragraph 6 above). The applicant company had the opportunity to request the return of the merchandise, which it did successfully by obtaining a final judicial decision in its favour which became enforceable on 7 December 2005 (see paragraph 8 above). The Court notes that the applicant company contests the lawfulness of the retention of its property after that moment. The Government argued, however, that even after that date, the merchandise was still retained on various lawful grounds by the authorities (see paragraphs 62 and 63 above).

70. The Court must establish therefore whether there were lawful grounds for retention after 7 December 2005 and, if such grounds existed initially but were later removed, from which point it could be considered that the merchandise was no longer lawfully seized or otherwise retained by the authorities.

71. It observes, in the first place, that despite the numerous judicial proceedings in the present case, the domestic courts did not expressly rule on the substance of the question whether the retention after 7 December 2005 was lawful under domestic law. To the extent there was a judicial finding of domestic courts in that respect, the most relevant is the finding of the domestic courts that the retention after 7 December 2005 was not on the basis of a decision of the tax authorities (see paragraphs 29-33 above).

72. As to the Government's allegation that the bottles had been seized as evidence in the administrative offence proceedings opened on 11 August 2005, the Court notes that the report of that latter date, drawn up in the framework of those proceedings, only mentioned a series of documents that had been seized as evidence, including the search-and-seizure reports of 6 and 7 January 2005, 11 July 2005 and 5 August 2005 (see paragraphs 9 and 10 above), and described particular documents seized on the basis of those reports. However, contrary to the Government's submissions (see paragraph 62 above) the administrative offence report in question did not, in any manner, indicate that the beverages seized on the basis of the report of 6 and 7 January 2005 were also to be adduced as evidence for the purposes of the administrative proceedings (see paragraph 9 above). The Government have not claimed that under domestic law seizure of merchandise as evidence in administrative offence proceedings was possible without an explicit written statement to that effect in a relevant decision.

73. Furthermore, the decision of 23 December 2005, by which the Varna regional tax office ordered the forfeiture of the bottles, referred to them as

having been seized by the police on 6 and 7 January 2005 in the criminal proceedings against the first group of third parties, not in the framework of the administrative proceedings instituted on 11 August 2005 (see paragraphs 9 and 10 above).

74. The Court observes that section 42 of the Administrative Offences and Penalties Act 1969 provides specifically that an administrative decision establishing an offence should include an inventory of any goods that have been seized, as well as information about the person or institution responsible for storing those goods. It also appears from established practice that an omission to draw up an inventory is interpreted as a failure to comply with a legal requirement and the decisions imposing the administrative penalty are declared unlawful (see paragraph 41 above). The obligation to describe the evidence adduced to the proceedings existed also in the case of forfeiture (see paragraph 43 above). However, the decision of 23 December 2005 made no mention of the applicant company's merchandise being used as evidence, but referred only to the search-and-seizure report of 6 and 7 January 2005 in order to identify it. As required by domestic law, when a case file is transferred from one body to another, custody of the physical evidence adduced to it is also transferred (see paragraph 36 above). The Court notes that no document showing that merchandise belonging to the applicant company was transferred to the tax authorities as part of the evidence in the administrative proceedings has been presented.

75. In fact, reference to the merchandise as being part of the evidence examined in the course of the administrative proceedings against the applicant company was made for the first time on 31 May 2006, when the Varna tax authority dismissed a request for its return (see paragraph 17 above).

76. Nevertheless, in its final judgment of 18 December 2006 by which the tax authority's decision of 23 December 2005 was set aside in its entirety, the Varna Regional Court again referred only to the search-and-seizure report of 6 and 7 January 2005 as evidence adduced to the file. No mention was made of the merchandise as physical evidence, and the Regional Court did not make any ruling on the return of evidence adduced to the case file and belonging to the applicant company. Moreover, that court explicitly highlighted the inconsistency in the documentary evidence adduced to the case regarding the exact number of bottles as one of the reasons for quashing the forfeiture decision (see paragraph 13 above).

77. The Court finds it difficult to see how that inconsistency would not have been cleared up, had the bottles indeed been considered as physical evidence in the course of the administrative proceedings against the applicant company. Moreover, in their observations the Government did not address in any way the inconsistency in the number of bottles between the different sets of proceedings.

78. Finally, as already noted, the courts deciding on the applicant company's claims for damages explicitly held that the beverages in question had not been retained by a decision of the tax authorities (see paragraphs 29-33 above). They thus recognised that no formal administrative decision had been taken to seize the bottles as evidence in the administrative proceedings.

79. In those circumstances, the Court is not persuaded by the Government's argument that as of 11 August 2005, the merchandise had been validly adduced as evidence in the ongoing administrative offence proceedings against the applicant company, in full compliance with the domestic rules. It also notes that the decision of 23 December 2005, issued in those proceedings and ordering the confiscation of the bottles, never became final. It could not serve as grounds for their retention since it was not enforceable before becoming final (see paragraphs 10 and 11 above).

80. As regards the Government's argument that the bottles were later retained as evidence in the criminal proceedings against the second group of third parties (see paragraph 62 above), the Court notes that the search-and-seizure report of 6 and 7 January 2005 on which that contention is based concerned the seizure carried out in the criminal proceedings against the first group of third parties. Those proceedings were terminated on 5 May 2006 (see paragraphs 6 and 7 above), whereas the criminal proceedings against the second group of third parties were terminated on 20 June 2006 and the file was sent to the prosecutor's office (see paragraphs 14 and 15 above). Although both sets of proceedings were related to the merchandise belonging to the applicant company, they had different subject matters and different parties. While the first set of criminal proceedings concerned charges against M.M. and S.S. for storing merchandise without the mandatory excise stamps, the second set of proceedings was based on an accusation that E.G. had been selling merchandise to the applicant company without the mandatory excise stamps (see paragraphs 6 and 15 above). There is nothing to indicate that those two sets of proceedings were merged, or that the physical evidence seized in the course of the first set was adduced to the file in the second set.

81. The Court observes that in its decision of 14 March 2007 to terminate the proceedings against the second group of third parties, the Sofia district prosecutor's office indeed made reference to the bottles belonging to the applicant company. However, no mention was made of them as being part of the evidence in the case, and the prosecutor explicitly pointed out that the merchandise had been seized in the course of the criminal proceedings against the first group of third parties. The prosecutor ordered that, in so far as the bottles were also subject to the Varna tax authority's decision of 23 December 2005, which had been set aside by a final judgment, the director of the Varna tax authority had to return them to their owner. Again, there is no reliable record showing that the bottles had

been adduced as evidence to the criminal proceedings against the second group of third parties.

82. Noting all the above elements, the Court finds it difficult to accept that the authorities were entitled to retain the applicant company's merchandise automatically, after 7 December 2005, in the course of pending parallel proceedings against the applicant company and third parties, without any decision or even a procedural document on the matter, as provided for by domestic law, despite the existence of a final judicial decision ordering its return. Therefore, the Court considers that the correct date after which the impugned merchandise was no longer held by the authorities on a legal ground was 7 December 2005 when the decision of the Varna District Court ordering the return of the seized evidence became final (see paragraph 70 above).

83. A last argument, which the Court needs to address is the one put forward by the Bulgarian Government, namely that the applicant company failed to properly request the return of the bottles from, respectively, the Varna tax authority in the administrative proceedings and, after 20 June 2006, the prosecutor in the criminal proceedings against E.G. (see paragraph 15 above). Taking into account the lack of clear legal ground on the basis of which the bottles were retained after 7 December 2005, the Court does not find the steps undertaken by the applicant company in that respect deficient. The applicant company did address the authority having actual possession of those bottles (see paragraph 16 above) and later addressed the Varna tax authority with the same request (see paragraph 17 above). As to the criminal proceedings against the second set of third parties, the Court refers to its finding that no decision with respect to the beverages was taken in these proceedings (see paragraphs 14 and 15 above) and thus sees no reason for the applicant company to have used that procedural route for recovering its merchandise.

84. The foregoing considerations are sufficient to enable the Court to conclude that the delayed return of the impugned merchandise after the final court decision of 7 December 2005 constituted an unlawful interference with the applicant company's rights under Article 1 of Protocol No. 1.

85. It follows that the objection raised by the respondent Government on grounds of non-exhaustion of domestic remedies must be dismissed (see paragraph 54 above). Accordingly, there has been a violation of Article 1 of Protocol No. 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

86. The applicant company complained that it did not have an effective domestic remedy with respect to its complaint under Article 1 of Protocol No. 1 to the Convention. In particular, it had been unable to seek

and obtain compensation for the damage suffered as a result of the retention of its merchandise. It relied on Article 13 of the Convention.

87. The Court notes that this complaint is linked to the ones examined above and must, therefore, be declared admissible.

88. Having regard to its findings related to Article 1 of Protocol No. 1 (see paragraphs 64 and 85 above), the Court considers that, in the circumstances of the present case, it is not necessary to examine separately the complaint under Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

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

A. Damage

1. Pecuniary damage

(a) The parties’ submissions

90. The applicant company claimed BGN 1,267,621 (EUR 648,124.33) in respect of the pecuniary damage on the basis of the following calculations.

91. First, it claimed compensation equivalent to the purchase price it spent for 26,753 bottles containing Baileys cream liqueur which had been returned after their shelf life had expired, considering it in the amount of BGN 458,419 (EUR 234,385.91).

92. Secondly, the applicant company claimed compensation for lost profit with respect to those bottles. It referred in this connection to the profit it could possibly have made of the difference between the purchase price and their market price during the period of retention of the merchandise. According to its calculation, the amount of that profit was BGN 185,250 (EUR 94,854.87).

93. Thirdly, the applicant company claimed statutory default interest for the period in which the amounts referred to in the two previous paragraphs had not been available to it. The period ran from 6-7 January 2005 to the date on which it lodged its claim before the Sofia City Administrative Court, in the amount of BGN 267,997 (EUR 137,024.69).

94. Lastly, the applicant company also claimed BGN 129,172 (EUR 66,044.59) in default interest for the period from 6-7 January 2005 (the date of the seizure) to 30 March 2007 (the date on which the bottles were returned) in respect of those beverages that had been seized but had no

expiry date and thus were still marketable when they were returned. The applicant company submitted that the above amount in default statutory interest should be based on the total purchase price of the bottles, which according to its calculations was equivalent to BGN 457,500 (EUR 233,916.04). In its claims for just satisfaction, the applicant company did not specify the number of beverages to which it referred. It did not claim compensation with respect to the purchase price or lost profit in relation to the retention of those beverages.

95. In support of all the above claims the applicant company submitted the judgment of the Sofia City Administrative Court of 30 November 2010 adopted in the proceedings concerning the compensation claim lodged by the applicant company against the National Revenue Agency. The applicant company relied on the fact that that judgment made reference to figures expressed in the expert report commissioned in the course of those proceedings. In particular, that report indicated: a) the purchase price paid initially for the bottles; b) the difference between the purchase price and the market price, at the moment of the seizure of those beverages, showing that the market price was higher than the purchase price, and therefore the applicant company could calculate lost profit on that basis; and c) the statutory default interest for the retention period (see paragraph 27 above). The applicant company had not submitted copy of the above expert report within the time-limits set in the framework of the procedure before the Court.

96. The Government argued that the applicant company's claims for pecuniary loss had not been properly itemised or substantiated. Furthermore, those claims referred solely to what the Sofia City Administrative Court had noted in its judgment of 30 November 2010 on the basis of an expert opinion, which itself had not been submitted before the Court. Moreover, in the aforementioned proceedings the domestic court had eventually ruled against the applicant company and no findings had been formulated with respect to the alleged damage in spite of the report's conclusions to which the Sofia City Administrative Court had made reference. The Government contended that, in any event, the applicant company's claim was unclear and should be rejected as there were discrepancies between the amounts claimed and those mentioned in the judgment of the Sofia City Administrative Court of 30 November 2010. They again argued that the applicant company could have sought damages under the Contracts and Obligations Act instead of submitting a claim under the SMRDA (see paragraphs 43-57 above).

(b) The Court's assessment

97. In the circumstances of the present case, the Court finds that the question of compensation for pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the

possibility of an agreement between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

2. Non-pecuniary damage

98. The applicant company claimed BGN 195,583 (EUR 100,000) in respect of non-pecuniary damage on account of the repercussions on its commercial reputation and public image, as well as the disruption to its trading activities. It argued that the damage was a result of the fact that the Ministry of Finance had publicly disclosed information about the seizure of the merchandise and the related proceedings.

99. The Government contested the claim, arguing that the applicant company had not submitted any proof that the Ministry of Finance had publicly disclosed such information.

100. The Court observes that the applicant company has not adduced any element in support of its allegation that the Ministry of Finance publicly disclosed information about the seizure of the merchandise and the related proceedings. As the claim for non-pecuniary damage is based entirely on that allegation, the Court rejects it as unsubstantiated.

B. Costs and expenses

101. The applicant company also claimed BGN 31,200 for a total of 200 hours of legal work, 150 hours of which were in the domestic proceedings and 50 hours in the proceedings before the Court, at an hourly rate of BGN 156.

102. The Government pointed out that the applicant company had not submitted any documents in support of its claim.

103. Rule 60 § 2 of the Rules of Court requires applicants to submit itemised particulars of all their just satisfaction claims, together with any relevant supporting documents, failing which the Court may reject the claims in whole or in part (Rule 60 § 3). In the present case, the applicant company has not submitted any documentary evidence of its costs and fees. The Court therefore dismisses the claim for costs and expenses in its entirety.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds* that the question of the application of Article 41 of the Convention in so far as pecuniary damage resulting from the violation found in the present case is concerned is not ready for decision and accordingly:
 - (a) reserves the said question in whole;
 - (b) invites the parties to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be.
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytkhik
Deputy Registrar

Síofra O'Leary
President