



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

THIRD SECTION

CASE OF NINA DIMITROVA v. BULGARIA

(Application no. 40669/16)

JUDGMENT

Art 1 P1 • Control of the use of property • Impossibility to halt the public sale of applicant's flat as a result of the enforcement of an immediately enforceable payment order against her, pending a judicial examination of the substantive dispute with the bank • Statutory scheme in force at the relevant time, governing the issuing and challenging of immediately enforceable payment orders and the manner in which it was applied upset the fair balance between the competing rights • Disproportionate and excessive burden

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 April 2024

FINAL

23/09/2024

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

TABLE OF CONTENTS

INTRODUCTION	1
THE FACTS.....	2
I. THE APPLICANT’S BANK LOAN	2
II. THE PAYMENT ORDER AGAINST THE APPLICANT	3
III. LEGAL CHALLENGES AGAINST THE PAYMENT ORDER	4
A. Examination of those legal challenges	4
B. Findings of the inspectorate attached to the Supreme Judicial Council in respect of the unfolding of the proceedings	6
IV. PUBLIC SALE OF THE APPLICANT’S FLAT	6
V. FURTHER COURSE OF THE ENFORCEMENT PROCEEDINGS	8
VI. JUDICIAL-DECLARATION PROCEEDINGS BROUGHT BY THE BANK AGAINST THE APPLICANT	8
VII. REVERSE WRITS OF EXECUTION SOUGHT BY THE APPLICANT’S MOTHER AND DAUGHTER.....	10
VIII.EVIDENCE ABOUT THE APPLICANT’S PLACE OF ABODE	11
RELEVANT LEGAL FRAMEWORK	11
I. PAYMENT ORDERS.....	11
A. (Re)introduction of the procedure in Bulgaria	11
B. Payment orders and payment orders in favour of banks	12
II. LEGAL CHALLENGES AGAINST AN PAYMENT ORDER	14
A. Objection against the payment order.....	14
B. Stay of the enforcement of a payment order following an objection	15
C. Appeal against the direction of immediate enforceability.....	17
D. Possibility for the debtor to seek a judicial declaration that the debt to which the payment order relates is not due.....	18
1. Under the general rules of civil procedure	18
2. Under Article 424 of the Code of Civil Procedure if newly discovered facts or evidence emerge	19
III. COMPENSATION FOR DAMAGE CAUSED BY ENFORCING AN PAYMENT ORDER.....	20
IV. CONSTITUTIONAL CHALLENGE AGAINST THE PAYMENT- ORDER PROCEDURE AVAILABLE TO BANKS.....	21
V. JUDICIAL DECLARATIONS THAT UNFAIR TERMS ARE VOID ...	21
VI. INTERIM MEASURES IN CIVIL PROCEEDINGS	22
VII. REMEDIES IN RESPECT OF THE UNREASONABLE LENGTH OF CIVIL PROCEEDINGS.....	23
A. Acceleratory remedy	23
B. Compensatory remedies	23
VIII.LEGAL CHALLENGES IN ENFORCEMENT PROCEEDINGS	24
IX. ADDRESS REGISTRATION.....	24

RELEVANT CASE-LAW OF THE CJEU	25
ELEMENTS OF COMPARATIVE LAW	26
THE LAW	27
I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1	27
A. Admissibility of the complaint	28
1. Exhaustion of domestic remedies	28
(a) The parties' submissions	28
(i) The Government	28
(ii) The applicant	30
(b) The Court's assessment	31
2. The Court's conclusion regarding the admissibility of the complaint	34
B. Merits	34
1. The parties' submissions	34
(a) The applicant	34
(b) The Government	35
2. The Court's assessment	36
(a) Whether there has been interference with the applicant's right to the peaceful enjoyment of her possessions	36
(b) Whether the interference was prescribed by law	36
(c) Whether the interference pursued a legitimate aim	37
(d) Whether the interference was proportionate to the legitimate aim pursued	37
(i) Scope and method of the Court's assessment	37
(ii) General principles	38
(iii) Application of those principles	38
(α) Applicable legislative scheme and its application in the applicant's case	38
(β) Additional steps allegedly capable of preventing the public sale of the flat	41
– Appeal against the Sofia District Court's decision to refuse the applicant's request for a stay of enforcement of the payment order	42
– Provision of security for the bank in support of the applicant's request for a stay of enforcement of the payment order	42
– Informally advising the bank and the enforcement agent of the use of remedies against the payment order	42
– Judicial declaration that the applicant did not owe the sums under the payment order	43
– Judicial declaration under Article 424 of the Code of Civil Procedure	43
– Claim against the bank under the consumer-protection legislation	43

NINA DIMITROVA v. BULGARIA JUDGMENT

–	Conclusion with respect to the preventive remedies cited by the Government.....	44
(γ)	After-the-fact remedies	44
(δ)	Conclusion.....	45
II.	ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION	45
	Admissibility of the complaint.....	45
1.	Compatibility <i>ratione materiae</i>	45
(a)	The parties' submissions.....	46
(i)	The Government	46
(ii)	The applicant.....	46
(b)	The Court's assessment	47
2.	Exhaustion of domestic remedies	48
III.	ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION	48
IV.	APPLICATION OF ARTICLE 41 OF THE CONVENTION.....	49
A.	Pecuniary damage.....	49
1.	The applicant's claim and the Government's comments on it	49
2.	The Court's assessment	50
B.	Non-pecuniary damage.....	50
1.	The applicant's claim and the Government's comments on it	50
2.	The Court's assessment	50
C.	Costs and expenses	51
1.	The applicant's claim and the Government's comments on it	51
2.	The Court's assessment	51

In the case of Nina Dimitrova v. Bulgaria,

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Yonko Grozev,

Georgios A. Serghides,

Peeter Roosma,

Andreas Zünd,

Oddný Mjöll Arnardóttir, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 40669/16) 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 a Bulgarian national, Ms Nina Ivanova Dimitrova (“the applicant”), on 8 July 2016;

the decision to give the Bulgarian Government (“the Government”) notice of the application; and

the parties’ observations;

Having deliberated in private on 26 March 2024,

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

INTRODUCTION

1. The main question in the case is whether the absence of a realistic possibility for the applicant to halt the sale of a flat owned by her as a result of the enforcement of an immediately enforceable order for payment (*заповед за плащане* – “payment order”) obtained against her by a bank (on the basis of a loan contract later found to contain certain terms which were unfair and therefore void under the consumer-protection legislation) upset the fair balance between the applicant’s right to the peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 and the bank’s rights as a creditor. The impossibility of halting the enforcement of the payment order pending a proper judicial examination of the substantive dispute between the applicant and the bank is alleged to have stemmed both from the applicable statutory scheme (as it existed at the material time) and from the delay on the part of the court processing the applicant’s legal challenges against the payment order.

THE FACTS

2. The applicant was born in 1967 and now lives in Germany. She was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv, Bulgaria.

3. The Government were represented by their Agents, Ms B. Simeonova and Ms M. Kotseva of the Ministry of Justice.

I. THE APPLICANT'S BANK LOAN

4. In July 2005 the applicant took out a twenty-year loan of 40,000 euros (EUR) from Tsentralna Kooperativna Banka AD ("the bank"), which she secured with a mortgage on a flat that she bought with that sum; the contract specified that the sum lent to the applicant was to be used for purchasing the flat in issue. The annual interest rate on the loan was set at: the bank's base rate, at that time 4%, plus 5.9% – together amounting to 9.9%. According to the terms of the loan contract, the bank could alter that rate when altering its base rate owing to "changes in market conditions" and its "interest-rate policy". The loan, together with the interest on it, was to be repaid in uniform monthly instalments, which were at that time fixed at EUR 388.77 and were to start running in November 2005. According to the loan contract, penalty interest of 35% a year would be due in the event of any delay in the payment of those instalments. Under an acceleration clause, if the applicant failed to pay two instalments in a row or to perform other obligations under the contract, the bank could declare the whole outstanding balance of the loan due and enforce it against any security provided by the applicant. In such an event, penalty interest at 35% would run on the outstanding part of the principal and contractual interest.

5. In October 2008 the bank increased its base rate to 5%, and as a result the rate on the loan increased from 9.9% to 10.9%, and the monthly instalments from EUR 388.77 to EUR 412.74.

6. In July 2010 the bank and the applicant drew up an annex amending the loan contract. They agreed, *inter alia*, that (a) the outstanding balance came to EUR 39,460.06, which included capitalised interest; (b) the applicant would have a nine-month grace period during which she would only pay 200 Bulgarian leva (BGN) a month; and (c) after that, the monthly instalments would go up to EUR 454.36. At the same time, the bank entered into surety contracts with the applicant's mother and daughter (the latter born in 1992), who both stood surety in respect of the loan. The annex and the surety contracts specified that the flat which the applicant had purchased with the loan (see paragraph 4 above) was the "address for correspondence" for her and her mother and daughter.

7. It seems that in late 2012 the applicant stopped repaying her loan regularly.

II. THE PAYMENT ORDER AGAINST THE APPLICANT

8. In October 2014 the bank applied to the Sofia District Court for a payment order (see paragraphs 48 and 51 below) against both the applicant and her mother and daughter (who had stood surety in respect of her loan – see paragraph 6 above). As required by the rules of procedure then in force (see paragraph 53 below), the bank enclosed with its application excerpts from its accounting records attesting to the existence of the applicant’s debt. It also enclosed the loan contract, the 2010 annex to it (see paragraph 6 above), the two surety contracts with the applicant’s mother and daughter (see paragraph 6 *in fine* above), and notices (sent by post to the applicant and her mother and daughter in September 2014) for payment of the outstanding sums. In the application, the bank gave the address of another flat, where the applicant and her mother and daughter had their permanent address and whose ownership the applicant had transferred to her mother by way of a donation (see paragraphs 46 and 96 below).

9. Pursuant to the rules of procedure (see paragraph 51 below), the Sofia District Court examined the bank’s application on the papers and without notice to the applicant, and on 10 February 2015 issued the payment order sought by the bank in respect of the following sums (plus costs):

- (a) EUR 37,279.24 (the outstanding part of the principal of the loan), plus default interest at the statutory rate from 16 October 2014 until settlement;
- (b) EUR 7,059.68 in contractual interest for the period from 28 December 2013 until 15 October 2014; and
- (c) EUR 856.97 in penalty interest for the period from 21 January 2013 until 15 October 2014.

10. In accordance with the rules governing payment orders in favour of banks (see paragraph 53 below), at the bank’s request the court directed that the payment order be enforced immediately and issued a writ of execution on its basis.

11. Shortly after that, in March 2015, the bank brought enforcement proceedings against the applicant and her mother and daughter. It requested, in particular, that the payment order and the writ of execution issued on its basis be enforced against the flat which the applicant had bought with the bank loan and which she had mortgaged in favour of the bank (see paragraph 4 above). On 31 March 2015 the enforcement agent invited the applicant to pay the sums set out in the payment order and served her with copies of the order and the writ of execution; she also informed the applicant that she had attached the flat. The invitation specified that (a) the current and permanent address of the applicant, her mother and daughter (see paragraphs 95-97 below) was the above-mentioned other flat whose ownership the applicant had transferred to her mother by way of a donation (see paragraph 46 below), and (b) the flat that the applicant had purchased with the bank loan (see paragraph 4 above) was her “alternative address”.

III. LEGAL CHALLENGES AGAINST THE PAYMENT ORDER

A. Examination of those legal challenges

12. In objections (see paragraph 56 below) lodged with the Sofia District Court on 15 April 2015, the applicant and her mother and daughter contested the payment order, saying that the underlying debt had not yet fallen due. In the objections, the applicant gave an address different from that of the flat which she had purchased with the bank loan.

13. On the same day the applicant (together with her mother and daughter) appealed to the Sofia City Court against the Sofia District Court's direction that the payment order be enforced immediately (see paragraph 10 above). The applicant argued that the excerpts from the bank's accounting records enclosed with the bank's application (see paragraph 8 above) were not, *prima facie*, valid, as that notion was understood in the relevant case-law, as they had not been signed by bank officers duly authorised to do so. Moreover, the excerpts did not specify how many instalments were in arrears, how many payments had been made (and when), and when the debt had fallen due. It was hence unclear how the bank had calculated the number of days of delay and the contractual and penalty interest that it was claiming. The applicant also argued that the bank had not enclosed with its application documents showing that the entire debt had indeed fallen due; in particular, there was no evidence that the payment notices sent by post in September 2014 (see paragraph 8 *in fine* above) had actually reached the applicant and her mother and daughter. According to the relevant case-law, only the due delivery of such notice could trigger the acceleration clause in a loan contract (see paragraph 4 *in fine* above). As required by the rules of procedure, the applicant and her mother and daughter lodged the appeal with the Sofia District Court, which had to forward it to the Sofia City Court (see paragraph 66 below).

14. At the same time that they lodged their appeal, the applicant and her mother and daughter requested the Sofia District Court to stay the enforcement of the payment order (see paragraph 60 below). Their request contained the same arguments as those advanced in the appeal.

15. On 16 April 2015 (the day after the appeal was lodged) the Sofia District Court instructed the applicant and her mother and daughter to rectify certain omissions. Having received the court's instructions on 15 May 2015, they did so in an additional filing made on 22 May 2015. On 17 November 2015 the court sent the appeal to the bank, inviting it to make submissions in reply. No further steps were taken in respect of the objection, the appeal or the request for a stay of enforcement, and in December 2015 the applicant and her mother and daughter reiterated their request for a stay of enforcement.

16. The Sofia District Court did not react to the repeated request for a stay of enforcement either; so in March and November 2017 the applicant's mother and daughter lodged two consecutive requests for the setting of a time-limit under Article 255 of the Code of Civil Procedure (the standard acceleratory remedy in respect of the length of civil proceedings in Bulgaria – see paragraph 89 below) in relation to their request for a stay of enforcement. As required by the rules of procedure, they lodged those requests with the Sofia District Court. That court did not react to the requests – which under the rules of procedure were to be either satisfied by the court itself or forwarded immediately to the Sofia City Court (see paragraph 89 below) – until 5 October 2018, when it directed that the applicant's mother and daughter be informed of the decisions that it gave on that date.

17. On 5 October 2018 the Sofia District Court:

(a) directed that the bank be notified of the objections lodged by the applicant and her mother and daughter against the payment order (see paragraph 12 above), and invited the bank to apply for a judicial declaration that the applicant and her mother and daughter owed the sums set out in the payment order – failing which the payment order would be rescinded (see paragraph 57 below);

(b) forwarded the appeal against its direction that the payment order be enforced immediately (see paragraph 13 above) to the Sofia City Court; and

(c) refused the request for a stay of the enforcement of the payment order (see paragraph 14 above). It noted that the applicant and her mother and daughter had founded that request on arguments, based on the content of the bank's application and its enclosures, that they did not owe the sum claimed by the bank rather than on "convincing written evidence", as required by the relevant statutory provision (see paragraph 60 (b) below). The request could not therefore be allowed. Such arguments could only be taken into account by the higher court (the Sofia City Court) when it examined the appeal against the direction that the payment order be enforced immediately (see paragraph 13 above);

18. The appeal against the direction that the payment order be enforced immediately was received by the Sofia City Court at the end of January 2019.

19. In a final decision given on 25 February 2019 the Sofia City Court quashed that direction, on the basis that the September 2014 payment notices that the bank had sent to the applicant and her mother and daughter (see paragraph 8 *in fine* above) had not been duly delivered to them. The acceleration clause in the loan contract (see paragraph 4 *in fine* above) had therefore not been duly triggered, which meant that the debt that the bank had sought to enforce via the payment order had not yet fallen due before the bank had applied for that order. However, according to an interpretative decision given by the Supreme Court of Cassation in June 2014 that was an absolute prerequisite for the issuance of an immediately enforceable payment order and a writ of execution on its basis. Hence, the direction that the payment

order was to be enforced immediately was to be quashed, the bank's application for an immediately enforceable payment order was to be refused, and the writ of execution issued on the basis of the payment order was to be rescinded (see *onp. № 4932 om 25.02.2019 г. no в. ч. зп. д. № 1285/2019 г., CTC*).

B. Findings of the inspectorate attached to the Supreme Judicial Council in respect of the unfolding of the proceedings

20. Meanwhile, in September 2018 the applicant and her mother and daughter complained of Sofia District Court's delay in processing their case (see paragraphs 15-17 above) to the inspectorate attached to the Supreme Judicial Council (for details about that authority, see *Finger v. Bulgaria*, no. 37346/05, §§ 36 and 38, 10 May 2011, and *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, §§ 18-19, 18 June 2013). They emphasised the serious harm that the delay had caused them (in the light of the unimpeded unfolding of the enforcement proceedings against them – see paragraphs 25 and 30 below), and asked that disciplinary measures be taken against the judge in charge of the case, and that she be directed to process it.

21. Having requested information from the Sofia District Court in September 2018, and having obtained that information in late October 2018, in November 2018 the inspectorate attached to the Supreme Judicial Council found the complaint well-founded. It noted, in particular, that the judge in charge of the case had failed for nearly three and a half years to rule on the request for a stay of enforcement of the payment order or to process any of the other filings. The inspectorate went on to note that disciplinary proceedings had already been opened against the judge in 2017 in respect of her failure to process other cases in due time. In July 2019 the judge resigned.

IV. PUBLIC SALE OF THE APPLICANT'S FLAT

22. Meanwhile, on 22 April 2015 the deputy of the enforcement agent in charge of the enforcement proceedings brought by the bank against the applicant (see paragraph 11 above) inspected the flat which the applicant had bought with the bank loan and had mortgaged in favour of the bank (see paragraph 4 above). In the record of that inspection, she noted, *inter alia*, that the electricity in the flat had been cut off, that the flat was in need of some repairs (in particular owing to a leak in the bathroom), and that no one was living there at the time of the inspection. Only the applicant's daughter had been present at the time of the inspection, but she had informed the enforcement agent that she wished to be served with documents at the applicant's permanent address, which was her permanent address as well (see paragraph 11 *in fine* above).

23. An expert report obtained by the enforcement agent later in April 2015 stated that the flat's market value was BGN 135,000 (EUR 69,024.40).¹ The report repeated the inspection record's finding that no one lived in the flat at the time of the inspection and that the flat was in need of repairs.

24. In November 2015 another creditor of the applicant – a private person who had obtained a writ of execution against her in April 2012 – joined the enforcement proceedings. He had already attached the flat in May 2013 within the context of separate enforcement proceedings against the applicant.

25. In May-June and again in July-August 2015 the enforcement agent held two public sales of the flat. No bidders came forward. As a result, in September 2015 she reduced the asking price to BGN 99,200 (EUR 50,720.15), and held a third public sale in October-November 2015. Again, no bidders came forwards. The enforcement agent then reduced the asking price further, to BGN 79,360 (EUR 40,576.12), and held a fourth public sale between 7 December 2015 and 7 January 2016. This time, one bidder made an offer (on the last day of the sale), offering BGN 80,412.50 (EUR 41,114.26) – a bid that was accepted. The following day, 8 January 2016, the enforcement agent declared her the flat's buyer. Having paid the entire price, on 11 January 2016 the buyer was declared the owner of the flat.

26. The applicant was informed of the sale on 14 January 2016; the notice sent by the enforcement agent referred to both the address of the flat and another address – the same that the applicant had given in her objection against the payment order (see paragraph 12 above). The enforcement agent's decision to transfer title to the flat to its buyer became final on 23 January 2016.

27. On 29 January 2016 the enforcement agent distributed the proceeds from the sale. She noted that by that date the applicant owed the bank a total of BGN 102,057.31 (EUR 52,181.07), which broke down as follows:

(a) BGN 72,911.86 (EUR 37,279.24) in respect of the outstanding part of the principal;

(b) BGN 9,602.54 (EUR 4,909.70) in default interest on the outstanding part of the principal at the statutory rate for the period from 16 October 2014 until 29 January 2016;

(c) BGN 13,807.53 (EUR 7,059.68) in contractual interest for the period from 28 December 2013 until 15 October 2014;

(d) BGN 1,676.08 (EUR 856.97) in penalty interest (in accordance with the writ of execution) for the period from 21 January 2013 until 15 October 2014; and

(e) outstanding costs incurred by the bank in securing the payment order (BGN 3,623.84) and enforcing it (BGN 435.46).

¹ Since 1999 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, taken together with sections 1 and 2 of the Lev Denomination Act 1999): EUR 1 equals BGN 1.95583.

28. Having calculated how the proceeds from the sale of the flat were to be distributed among the bank and those of the applicant's other creditors who had joined the enforcement proceedings, the enforcement agent found that the bank was to be paid in full the outstanding costs that it had incurred (see paragraph 27 (e) above), and BGN 74,086.36 (EUR 37,879.75) in respect of the outstanding part of the principal, plus interest on the loan (see paragraph 27 (a)-(d) above). The enforcement agent noted that those two sums – combined with the sum allocated for her own fees (BGN 3,614.71), the costs advanced by the other creditor who had joined the enforcement proceedings (BGN 108) and local tax on the flat, plus default interest on it (BGN 2,167.97) – depleted the proceeds from the sale.

29. In all the documents that she issued in 2015-16, the enforcement agent specified that the other flat whose ownership the applicant had transferred to her mother (see paragraph 46 below) was her permanent and current address (and the permanent and current address of her mother and daughter as well). In some of those documents, the enforcement agent gave the address of the flat that the applicant had purchased with the bank loan as the applicant's "address for correspondence". In practice, all correspondence between the applicant and the enforcement agent passed through the applicant's lawyer throughout the time of the events in question.

V. FURTHER COURSE OF THE ENFORCEMENT PROCEEDINGS

30. At the bank's request, in November 2016 the enforcement proceedings were transferred to another enforcement agent. Between December 2016 and December 2018 he was engaged in enforcing the remainder of the sums due under the payment order against the salary of the applicant's daughter and the pension of the applicant's mother.

31. Having been notified of the decision of the Sofia City Court in February 2019 to rescind the writ of execution (see paragraph 19 above), in April 2019 the enforcement agent terminated the enforcement proceedings.

VI. JUDICIAL-DECLARATION PROCEEDINGS BROUGHT BY THE BANK AGAINST THE APPLICANT

32. Meanwhile, in November 2018 the bank, having been notified of the applicant's and her mother's and daughter's objections to the payment order in October 2018 (see paragraphs 12 and 17 (a) above), applied for a judicial declaration (see paragraph 57 below) that they owed it the sums set out in the payment order (see paragraph 9 (a)-(c) above).

33. In reply to the bank's application, the applicant argued, *inter alia*, that (a) those sums had not yet fallen due because the bank had not duly invited her to pay them, and (b) the clauses in the loan and the 2010 annex thereto (see paragraphs 4 and 6 above) which set out the manner in which

contractual and penalty interest were to be calculated were unfair terms that were void under the consumer-protection legislation.

34. In July 2020 the Sofia City Court made a judicial declaration that the applicant and her two sureties jointly owed the bank:

(a) EUR 33,491.62 in respect of the unpaid part of the principal, plus default interest at the statutory rate running from 16 October 2014 until the date of settlement;

(b) EUR 2,751.20 in contractual interest for the period from 28 December 2013 until 15 October 2014; and

(c) EUR 793.33 in penalty interest for the period from 21 January 2013 until 15 October 2014.

35. The court dismissed the remainder of the bank's claim: EUR 3,787.62 in respect of the unpaid part of the principal, EUR 4,308.48 in unpaid contractual interest, and EUR 63.64 in penalty interest.

36. The court noted that by January 2019 the enforcement proceedings against the applicant had yielded EUR 26,320.79. As in its February 2019 decision in respect of the applicant's appeal against the direction that the payment order be enforced immediately (see paragraph 19 above), it found that the bank had not duly invited the applicant to pay her debt before it had applied for a payment order, and had thus not duly triggered the acceleration clause in the loan contract. Thus, only the serving of the application for a judicial declaration on the applicant in March 2019 could be seen as an invitation to pay activating that acceleration clause and rendering the entire debt to the bank due. The court also found that the clause in the loan contract allowing the bank unilaterally to alter the contractual interest rate (see paragraph 4 above) constituted an unfair term, which was accordingly void under the consumer-protection legislation, and that the loan's outstanding balance was hence to be calculated in line with the initial contractual interest rate (9.9%). However, the court came to the opposite conclusion with respect to the penalty-interest clauses: although they provided for an interest rate of 35%, and interest on interest, those clauses were valid, since the rate could still be seen as fair and not excessive, and since the two types of interest (contractual and penalty) served different purposes. By contrast, the capitalisation clause in the 2010 annex (see paragraph 6 (a) above) was void, as the law did not permit the capitalisation of interest. The capitalised sum of EUR 3,204.32 was hence not to be included in the applicant's debt. In the light of all those factors, and the evidence presented to the court, the outstanding debt of the applicant came to EUR 33,491.62 in respect of the unpaid part of the principal, EUR 2,751.20 in contractual interest, and EUR 793.33 in penalty interest (see *peu. № 4461 om 22.07.2020 z. no zp. d. № 15707/2018 z., CTC*).

37. The applicant and her mother and daughter appealed. They challenged, *inter alia*, the court's ruling on the penalty-interest clauses.

38. In April 2021 the Sofia Court of Appeal partly quashed the lower court's judgment and declared that the applicant owed the bank (a) EUR 21,118.47 in respect of the unpaid part of the principal, and (b) EUR 231.30 in penalty interest. The court did not alter the lower court's declaration regarding contractual interest (see paragraph 34 (b) above), with the result that the total sum of the applicant's judicially-acknowledged debt came to EUR 24,100.97.

39. The court held, *inter alia*, that the penalty-interest clauses (see paragraphs 4 and 36 above) constituted unfair terms that were void under the consumer-protection legislation, as they provided for an excessive interest rate, and that only the portion of the debt that had already fallen due by the conclusion of the oral arguments presented before it was to be included in the judicial declaration sought by the bank (see *peu. № 351 om 09.04.2021 г. no зп. д. № 4234/2020 г., CAC*).

40. The bank appealed on points of law, but on 3 February 2022 the Supreme Court of Cassation refused to admit its appeal for examination (see *onp. № 75 om 03.02.2022 г. no зп. д. № 2929/2021 г., BKC, III г. о.*).

VII. REVERSE WRITS OF EXECUTION SOUGHT BY THE APPLICANT'S MOTHER AND DAUGHTER

41. In June 2022, about four months after the conclusion of the judicial-declaration proceedings in February 2022 (see paragraph 40 above), the applicant's mother and daughter applied to the Sofia District Court for reverse writs of execution – see paragraphs 58 and 78 below) against the bank in respect of the sums that it had allegedly obtained unduly as a result of the enforcement of the payment order against them (see paragraph 30 above).

42. In October 2022 the Sofia District Court allowed the application, ordering the bank to repay the applicant's daughter BGN 6,503.79 (EUR 3,325.34) and the applicant's mother BGN 614.63 (EUR 314.26). The court noted that the enforcement proceedings had yielded a total of BGN 102,844.70 (EUR 52,583.66). BGN 91,185.65 (EUR 46,622.48) of that sum had gone to the bank. The juxtaposition of that sum with the judicially-acknowledged debt payable to the bank by the applicant and (as her sureties) her mother and daughter showed that the latter had overpaid, respectively, BGN 6,503.79 and BGN 614.63. They were hence entitled to reverse writs of execution in respect of those sums (see *пазн. № 20061673 om 12.10.2022 г. no зп. д. № 56122/2022 г., CPC*).

43. The bank appealed, arguing, *inter alia*, that (a) the Sofia District Court had not had the authority to issue the reverse writs of execution, and (b) such a writ could only be issued if the sum whose repayment was being sought by the debtor was not at all due rather than just simply judicially recognised as having not yet fallen due.

44. In May 2023 the Sofia City Court allowed the appeal on ground (a) and rescinded the reverse writs of execution. It noted that the only court with jurisdiction to issue those writs was the court that had dismissed, either wholly or in part, the creditor's application for a judicial declaration rather than the court that had issued the initial payment order. The application for reverse writs of execution was therefore to be sent for examination to the appropriate formation of the Sofia City Court (see *onp. № 5667 om 09.05.2023 г. no в. ч. зп. д. № 2011/2023 г., CFC*).

45. According to the latest information received from the parties on the point (on 10 October 2023), those proceedings before the Sofia City Court are still pending.

VIII. EVIDENCE ABOUT THE APPLICANT'S PLACE OF ABODE

46. The applicant's permanent address (see paragraphs 95-97 below) is that of another flat, which she fully owned until 2005, when she transferred half of its ownership to her mother by way of a donation. In April 2012 the applicant transferred to her mother the second half of that flat as well. In the application for a loan (see paragraph 4 above), that she submitted to the bank in June 2005, the applicant specified that she had lived in that other flat since 1996.

47. The applicant submitted to the Court email correspondence with owners of property in unspecified locations relating to reservations that she had made via Airbnb for 8-15 and 24-26 April 2016 and the extension of the second of those reservations for a few more days.

RELEVANT LEGAL FRAMEWORK

I. PAYMENT ORDERS

A. (Re-)introduction of the procedure in Bulgaria

48. The payment-order procedure (*заповедно производство*), which had existed in Bulgarian law between 1898 and 1951, was reintroduced with the enactment of the 2007 Code of Civil Procedure, which came into force in March 2008. It is governed by Articles 410-25 of that Code.²

49. The explanatory notes to the 2006 government bill (no. 602-01-38) that led to the enactment of the Code stated, *inter alia*, that the payment-order procedure would guarantee the equal protection of the interests of debtors and creditors. It does not appear that the specific parameters of the procedure – in particular as regards immediately enforceable payment orders issued in

² The rules which had served a similar role in the 1952 Code of Civil Procedure (which was superseded by the 2007 Code of Civil Procedure) were described briefly in *Chorbov v. Bulgaria* (no. 39942/13, §§ 18-22, 25 January 2018).

favour of banks – were touched upon during the deliberations on the bill by Parliament’s Legal Affairs Committee, which were held before the first plenary reading. The Committee’s report did not dwell on the point either. During the bill’s first plenary reading in August 2006, several members of parliament made remarks about the usefulness and desirability or otherwise of a payment-order procedure, but there was no detailed discussion of the parameters of that procedure. One member of parliament noted that although debtors could object against the payment order (and thereby move the dispute to full adversarial proceedings), the immediate enforcement of the order would guarantee the rights of some types of creditors, such as public utilities. At the bill’s second plenary reading in July 2007, the part that was relevant to the issues raised in the instant case was adopted unanimously without debate.

50. In 2014-18 payment-order proceedings amounted to approximately half of all civil cases examined by the district courts. There were 162,846 such cases in 2014, 183,368 in 2015, 181,346 in 2016, 225,756 in 2017, and 198,008 in 2018 – vastly outnumbering other types of cases (see Институт за пазарна икономика, *Кратък преглед на заповедното производство*, 2019 г., pp. 4-5).³ The highest number of such cases came before the Sofia District Court (50,835 in 2018), leading to a backlog (ibid., p. 6). A 2015 report published by the World Bank Group (*Mapping the way through court procedures in Bulgaria (English)*). Washington, D.C.: World Bank Group, July 2015)⁴ noted, on p. 28, that in 2014 it took the Sofia District Court on average between one and three months to issue a payment order (and in some extreme cases up to five months) – with large variations among the seventy-two judges there tasked with processing such orders. The main reason for the delay was the court’s “extreme caseload”.

B. Payment orders and payment orders in favour of banks

51. A creditor may apply to the relevant district court for a payment order. Such an order may as a rule be sought only in relation to monetary claims that fall within the jurisdiction of the district courts – that is, claims for up to BGN 25,000 (EUR 12,782.30) (Articles 410 § 1 (1) and 411 § 1, read in conjunction with Articles 103 and 104, point 4, of the Code of Civil Procedure). But if a payment order is sought by, among other types of creditors, a bank, and the application for it is based on, *inter alia*, excerpts from that bank’s accounting records attesting to its claim (see paragraph 53 below), then there is no such ceiling (Article 417, point 2). The court must

³ <https://ime.bg/var//images/Law/Order-of-Payment-Proceeding-Report.pdf> (last accessed on 26 March 2024)

⁴ <http://documents1.worldbank.org/curated/en/784131468184735141/pdf/100934-WP-REVISED-BulgarianmappingreportFINALENG-PUBLIC.pdf> (last accessed on 26 March 2024)

examine the application on the papers and without notice to the debtor; if all preconditions are in place, the court must make the payment order within three days (Article 411 § 2). According to a new point 3 (which was added to Article 411 § 2 in December 2019), the court must refuse to make the payment order if the application for it is based (or can reasonably be considered to be based) on an unfair term in a contract with a consumer. A new provision of the Code (namely Article 7 § 3), also added in December 2019, provides that the courts must check on their own initiative whether a contract contains terms that are unfair to consumers in all sorts of civil proceedings.

52. The explanatory notes to the February 2019 bill (no. 954-01-11) that led to the December 2019 amendment – which was chiefly championed by the Ombudsman of the Republic and was intended to make payment-order proceeding in favour of banks more consumer-friendly (see paragraphs 53, 56, 60 and 66 below) – stated that under the then existing law debtors risked losing their possessions before any judicial consideration of the claims against them. That was because (a) the courts were not required to scrutinise on their own initiative whether applications for payment orders (in particular applications made by banks) related to claims that were based on contracts with consumers that contained unfair terms or on incorrect calculations of the sum of the debt, and (b) the enforcement of such orders could only be stayed in rare cases. That ran counter to European Union (EU) law, as interpreted by the Court of Justice of the European Union (the CJEU), and had prompted infringement proceedings against Bulgaria.⁵

53. If an application for a payment order has been made by, among other types of creditors, a bank, and is accompanied by, *inter alia*, a document or an excerpt from the bank's accounting records which attests to the claim, the bank can ask the court to direct that the payment order be made immediately enforceable and directly to issue a writ of execution on its basis (Article 418 § 1, read together with Article 417, point 2 of the Code of Civil Procedure). According to legal commentators, in practice this type of procedure is used mainly by banks (see Сталев, Ж., *Българско гражданско процесуално право*, Сиела, 2020 г., p. 943). In December 2019 Article 417, point 2, was amended to specify that, as far as banks are concerned, the enclosures to an application for a payment order must comprise not only an excerpt from the bank's accounting records, but also the legal instrument from which the bank's contractual claim against the debtor stems, together with any annexes or general terms and conditions. A new Article 410 § 3 (also added in December 2019) provides that if the claim stems from a contract with a consumer, the application must be accompanied by the contract along with any annexes, amendments or general terms and conditions.

⁵ In those infringement proceedings, conducted under Article 258 of the Treaty on the Functioning of the European Union, the European Commission sent Bulgaria a letter of formal notice on 24 January 2019. The case (INFR(2018)4083) is apparently still active.

54. If the court finds that the documents enclosed with the bank's application are *prima facie* valid and show the existence of an enforceable claim against the debtor, it must issue a writ of execution (Article 418 § 2).

55. The payment order and the documents enclosed with the application for it must be served on the debtor by the agent in charge of the ensuing enforcement proceedings against him or her (Article 418 § 5).

II. LEGAL CHALLENGES AGAINST AN PAYMENT ORDER

A. Objection against the payment order

56. A payment order itself is not amenable to appeal (Article 413 § 1 of the Code of Civil Procedure), but the debtor can lodge an objection against it, without necessarily giving reasons for that objection (Article 414 § 1). Until December 2019, the statutory time-limit for lodging an objection was two weeks, and was then prolonged to one month; no extensions to that time-limit are possible (Article 414 § 2, as worded both before and after December 2019).

57. If a debtor lodges an objection (*възражение*) against a payment order within that time-limit, the court instructs the creditor in whose favour the payment order was made to apply for a judicial declaration against the debtor in respect of the underlying claim (Article 415 §§ 1 (1) and 3). The creditor must bring such proceedings within one month; failure to do so results in the rescission of the payment order and any related writ of execution (Article 415 §§ 4 and 5).

58. If those proceedings result in a judicial declaration that the creditor's claim is ill-founded, the enforcement of the payment order must be halted and the court must issue a reverse writ of execution directing the creditor to repay the debtor any sums obtained as a result of that enforcement, as well as any fees or costs that the debtor has paid in the course of the enforcement proceedings (Article 422 § 3 read in conjunction with Article 245 § 3). In point 13 of a June 2014 interpretative decision, the Supreme Court of Cassation clarified that such a reverse writ of execution must be issued if the creditor's claim is, in particular, declared (either wholly or in part) ill-founded because it was based on a void contract. In such a case, the writ must be for the portion of the claim that has been disallowed and must cover solely the sums that the creditor has actually obtained as a result of the enforcement of the payment order (see *тълк. реш. № 4 от 18.06.2014 г. no тълк. д. № 4/2013 г., БКС, ОСПТК, т. 13*). A new paragraph 4 of Article 422, added in October 2017, specified that no reverse writ of execution is to be issued if the creditor's claim is dismissed simply because the debt has not yet fallen due.

59. The Supreme Court of Cassation has clarified that the court with jurisdiction to issue such a reverse writ of execution is the court that dismissed the creditor's application for a judicial declaration against the debtor (see *onp. № 320 om 15.06.2017 г. no ч. м. д. № 651/2017 г., BKC, II м. о.*).

B. Stay of the enforcement of a payment order following an objection

60. In the case of a payment order that is not sought by a bank on the basis of an excerpt from its accounting records, the question of a stay of the enforcement of that order does not arise when it is first issued. Such an order does not become operative before the time-limit for lodging an objection against it expires (or, if an objection is lodged, before the ensuing judicial-declaration proceedings end in the creditor's favour (Article 416 of the Code of Civil Procedure)). Moreover, such orders cannot be made immediately enforceable (Article 418 § 1). However, if the court directs that a payment order be made immediately enforceable because the application for its issuance is based on, among other types of documents, an excerpt from bank accounting records (see paragraphs 53 and 54 above), then the objection cannot have the effect of staying the order's enforcement. Enforcement can then only be stayed by the court if:

(a) when making the objection the debtor provides security for the creditor (which must cover the full value of the creditor's claim – see *onp. № 163 om 01.03.2010 г. no ч. м. д. № 504/2009 г., BKC, II м. о.*; *onp. № 453 om 25.06.2010 г. no ч. м. д. № 478/2010 г., BKC, II м. о.*; and *onp. № 14 om 06.11.2011 г. no ч. зп. д. № 685/2010 г., BKC, IV г. о.*); or

(b) the court that has directed the immediate enforcement of the payment order allows a timely request by the debtor seeking a stay of enforcement that is based on "convincing written evidence" (Article 420 §§ 1 and 2, as worded before October 2017).

61. The Supreme Court of Cassation has emphasised that the relevant court must examine such a request for a stay of enforcement on the papers and without notice to the creditor; moreover, it must do so quickly because the enforcement of payment order in question will otherwise go ahead unimpeded (see *onp. № 454 om 29.12.2008 г. no ч. зп. д. № 2260/2008 г., BKC, III г. о.*).

62. In a number of final decisions that it gave in 2013-14, the Sofia City Court refused requests for a stay of enforcement that were based on, *inter alia*, arguments that the bank loans whose enforcement was being sought via such orders contained unfair terms in consumer contracts that were void under the consumer-protection legislation. In the court's view, those arguments could not justify such a stay (see *onp. № 15112 om 12.08.2013 г. no в. ч. зп. д. № 8085/2013 г., CFC*; *onp. № 9278 om 07.05.2014 г. no в. ч. зп. д. № 5707/2014 г., CFC*; *onp. № 12937 om 23.06.2014 г. no в. ч. зп. д. № 8435/2014 г., CFC*; *onp. № 25510 om 11.12.2014 г. no*

в. ч. зп. Д. № 14361/2014 г., ЦГК; *онп. № 25736 от 17.12.2014 г. no в. ч. зп. Д. № 17346/2014 г., ЦГК*; and *онп. № 26031 от 19.12.2014 г. no в. ч. зп. Д. № 10998/2014 г., ЦГК*). It appears that during that period the Sofia City Court allowed a request for a stay of enforcement on the basis of such arguments in one case only (see *онп. № 26307 от 29.12.2014 г. no в. ч. зп. Д. № 13189/2014 г., ЦГК*).

63. In October 2017 the word “convincing” was deleted from Article 420 § 2 of the Code of Civil Procedure, and that provision was amended so clarify that a debtor did not need to provide security in order to obtain a stay on the basis of written evidence (see paragraph 60 (b) above).

64. The December 2019 amendment (see paragraph 51 *in fine* above) to Article 420 §§ 1 and 2 provided that:

(a) if the debtor is a consumer, the amount of security required to obtain a stay cannot exceed one third of the debt; and

(b) a request for a stay of enforcement may be granted even if the debtor does not provide security, provided that the written evidence supporting the request shows that the claim in question has not fallen due, arose from an unfair term in a contract with a consumer, or has been incorrectly calculated (again if based on a contract with a consumer).

65. The bill that led to the December 2019 amendment (see paragraph 52 above) initially proposed, as one alternative for amending Article 420, that a debtor’s objection against an immediately enforceable payment order in favour of a bank should have suspensive effect. That alternative was opposed by, among others, the Ministry of Justice (which argued that there was a need to preserve the efficiency of that type of payment-order procedure). However, the bill, as originally framed, was approved unanimously at its first reading by Parliament’s Legal Affairs Committee, which was convened in the presence of various stakeholders, who debated the proposal at length. The bill was then again approved – once more unanimously but without debate – at its first plenary reading. At its second reading of the bill, the Committee, following a long discussion, approved (by thirteen votes in favour, no votes against, and seven abstentions) another alternative for amending Article 420, which did not envisage a suspensive effect of the objection. At the bill’s second plenary reading, only two members of parliament spoke about this specific amendment. The first member suggested reverting to the suspensive-effect proposal, which was in his view a key feature of the legislative package and would provide proper protection to debtors turning out not to owe in full the sums sought from them. The second member replied that this would mean that there would once again be difficulties with the collection of debts, and that the amendment, as approved by the Committee, afforded consumers a sufficient level of protection. Parliament adopted the Committee’s alternative amendment (by seventy-five votes in favour, no votes against, and thirteen abstentions).

C. Appeal against the direction of immediate enforceability

66. A debtor may appeal to the regional court (for the city of Sofia, this is the Sofia City Court) against a district court's direction that a payment order be made immediately enforceable (see paragraph 53 above). Until late 2019, the time-limit for doing so was two weeks; however, the December 2019 amendment extended that time-limit to one month. Such an appeal must be lodged with the relevant district court, together with the debtor's objection against the payment order (see paragraph 56 above). Until December 2019, such an appeal could only be based on arguments relating to the documents enclosed with the creditor's application for a payment order; in December 2019 the provision laying down that limitation was removed from Article 419 of the Code of Civil Procedure. The lodging of an appeal does not stay the enforcement of the payment order in question. The December 2019 amendment (see paragraph 51 *in fine* above) provided that the relevant regional court must quash the direction that the payment order be enforced immediately if (a) it finds that the documents enclosed with the creditor's application for the payment order were not *prima facie* valid and did not attest to an enforceable claim, or (b) the claim is based on an unfair term in a contract with a consumer (Article 419 §§ 1 to 3, as worded before and after December 2019).

67. If such an appeal is successful, the payment order remains in existence (it is not amenable to appeal in itself anyway – see paragraph 56 above), but is no longer immediately enforceable (see *peu. № 30 om 25.04.2013 г. no m. д. № 245/2012 г., BKC, II м. о.*). In point 5 (d) of a June 2014 interpretative decision (*тълк. peu. № 4 om 18.06.2014 г. no тълк. д. № 4/2013 г., BKC, OCTTK, м. 5 г.*), the Supreme Court of Cassation clarified that this did not yet constitute grounds for issuing a reverse writ of execution in the debtor's favour, since at that point it had not yet been established that any sums obtained by the creditor as a result of the enforcement of the payment order were subject to restitution to the debtor as having been unduly paid – that could only happen if and when the creditor's application for a judicial declaration against the debtor for the claim underlying the payment order was dismissed (see paragraphs 57-58 above).

68. As a result of the above-mentioned statutory limitation on the points capable of being raised in such an appeal, at the material time the Sofia City Court was refusing to engage with arguments advanced by debtors which went beyond the question of the validity or content of the documents enclosed with an application for a payment order and which addressed the question of whether the underlying debt actually existed (see, among other decisions, *onp. № 14219 om 24.07.2013 г. no в. ч. зп. д. № 9599/2013 г., CTC*; *onp. № 15384 om 19.08.2013 г. no в. ч. зп. д. № 10976/2013 г., CTC*; *onp. № 16042 om 03.09.2013 г. no в. ч. зп. д. № 11613/2013 г., CTC*; *onp. № 9278 om 07.05.2014 г. no в. ч. зп. д. № 5707/2014 г., CTC*;

onp. № 17163 om 19.08.2014 г. no в. ч. зп. д. № 10760/2014 г., CFC; onp. № 2028 om 27.01.2015 г. no в. ч. зп. д. № 18421/2014 г., CFC; onp. № 3226 om 09.02.2015 г. no в. ч. зп. д. № 1644/2015 г., CFC; and onp. № 18110 om 22.07.2016 г. no в. ч. зп. д. № 7975/2016 г., CFC).

D. Possibility for the debtor to seek a judicial declaration that the debt to which the payment order relates is not due

1. Under the general rules of civil procedure

69. Under Article 124 § 1 of the Code of Civil Procedure, anyone who has an interest in doing so may apply for a judicial declaration that that a legal relation or a right exists or does not exist.

70. According to the prevailing case-law of the Supreme Court of Cassation (see *onp. № 643 om 02.11.2009 г. no ч. м. д. № 680/2009 г., BKC, II м. о.; onp. № 688 om 14.12.2009 г. no ч. зп. д. № 692/2009 г., BKC, III г. о.; onp. № 258 om 18.03.2010 г. no ч. м. д. № 68/2010 г., BKC, I м. о.; onp. № 244 om 12.05.2010 г. no ч. зп. д. № 180/2010 г., BKC, III г. о.; peu. № 781 om 25.05.2011 г. no зп. д. № 12/2010 г., BKC, III г. о.; onp. № 292 om 03.06.2011 г. no ч. зп. д. № 156/2011 г., BKC, I г. о.; onp. № 950 om 28.11.2011 г. no ч. м. д. № 550/2010 г., BKC, II м. о.; onp. № 824 om 30.12.2011 г. no м. д. № 181/2011 г., BKC, II м. о.; onp. № 23 om 17.01.2012 г. no ч. м. д. № 867/2011 г., BKC, I м. о.; onp. № 274 om 12.04.2012 г. no ч. м. д. № 131/2012 г., BKC, II м. о.; onp. № 335 om 27.06.2012 г. no ч. зп. д. № 311/2012 г., BKC, I г. о.; onp. № 738 om 06.08.2012 г. no ч. м. д. № 428/2011 г., BKC, II м. о.; onp. № 117 om 11.02.2013 г. no ч. м. д. № 1004/2013 г., BKC, II м. о.; onp. № 440 om 27.06.2013 г. no ч. м. д. № 2466/2013 г., BKC, I м. о.; peu. № 165 om 31.10.2013 г. no м. д. № 1202/2011 г., BKC, I м. о.; onp. № 309 om 14.07.2016 г. no ч. м. д. № 1384/2016 г., BKC, I м. о.; peu. № 60172 om 14.04.2022 г. no м. д. № 942/2020 г., BKC, I м. о.; onp. № 278 om 19.05.2022 г. no м. д. № 1811/2021 г., BKC, I м. о.; and onp. № 863 om 24.10.2023 г. no ч. м. д. № 1398/2023 г., BKC, I м. о.), such applications by debtors facing payment orders – for a judicial declaration that the debt to which the payment order relates does not exist – are inadmissible, because in such a situation the debtor has other remedies that are specific to his or her situation: (a) an objection against the payment order, which forces the creditor to apply for a judicial declaration that the underlying debt exists (see paragraphs 56-57 above) or, if newly discovered facts or evidence emerge, (b) a claim under Article 424 of the Code of Civil Procedure (see paragraph 74 below).*

71. According to one of the decisions in that line of case-law, this is in particular so when the debtor has already lodged an objection against the payment order in question (see *onp. № 15 om 10.01.2012 г. no ч. м. д. № 764/2011 г., BKC, II м. о.*). Another of those decisions specified

that the debtor could not dispute, by means of an application for a judicial declaration, the triggering of an acceleration clause in a bank-loan contract (see *onp. № 343 om 09.05.2013 г. no ч. м. д. № 1707/2013 г., BKC, II м. о.*).

72. However, in four decisions given in May 2013, February 2014, July 2019 and January 2023, panels of the Fourth Civil Section of the Supreme Court of Cassation held that such an application for negative declaratory relief made within the two-week time limit for objecting to a payment order was admissible, since the debtor was entitled to choose which of those two avenues to pursue (see *peu. № 76 om 07.05.2013 г. no зр. д. № 391/2012 г., BKC, IV г. о.; onp. № 154 om 27.02.2014 г. no ч. зр. д. № 769/2014 г., BKC, IV г. о.; onp. № 318 om 09.07.2019 г. no ч. зр. д. № 2108/2019 г., BKC, IV г. о.; and peu. № 50295 om 23.01.2023 г. no зр. д. № 1030/2022 г., BKC, IV г. о.*). In the second of those cases, one judge dissented, saying, *inter alia*, that such a claim constituted an abuse of process. Legal commentators have criticised the approach taken in those cases, on the basis that it failed to take into account the specificities of the payment-order procedure (see Сталев, Ж., *Българско гражданско процесуално право*, Сиела, 2020 г., р. 924, and Т. Градинарова и др., *Актуални проблеми на гражданския изпълнителен процес*, ИК „Труд и право“, 2023 г., pp. 794-95).

73. The Government also referred to two judgments given by the Sofia District Court in early 2022 in which that court had followed that latter line of case-law (see *peu. № 2208 om 18.03.2022 г. no зр. д. № 68705/2021 г., CPC*, and *peu. № 2900 om 02.04.2022 г. no зр. д. № 69830/2021 г., CPC*). There is no indication as to whether those judgments have become final.

2. Under Article 424 of the Code of Civil Procedure if newly discovered facts or evidence emerge

74. Under Article 424 § 1 of the 2007 Code of Civil Procedure, a debtor targeted by a payment order may apply for a judicial declaration that he or she does not owe the debt to which that order relates, if newly discovered facts or written evidence of material importance emerge and those facts or evidence could not have been known or available to him or her before the expiry of the time-limit for objecting to the payment order. The debtor can seek such negative declaratory relief within three months of learning of the newly discovered fact or the date on which he or she could obtain the newly discovered evidence, but in any event not later than one year after the debt has been paid (Article 424 § 2).

75. According to the Supreme Court of Cassation's case-law, such an application is possible if the debtor has not already made an objection against the payment order and that order has thus become final (see *onp. № 924 om 14.12.2010 г. no м. д. № 826/2010 г., BKC, I м. о.*, and *onp. № 597 om 17.10.2011 г. no ч. зр. д. № 538/2011 г., BKC, IV г. о.*).

III. COMPENSATION FOR DAMAGE CAUSED BY ENFORCING AN PAYMENT ORDER

76. In recent years, the Bulgarian courts have allowed claims for damages by debtors against banks that have obtained and enforced immediately enforceable payment orders against them in relation to debts that were later not fully recognised in judicial-declaration proceedings brought by the banks following the debtors' objections to the payment orders.

77. For instance, in September 2021 the Supreme Court of Cassation allowed such a claim (see *peu. № 105 om 30.09.2021 г. no зп. д. № 2610/2020 г., BKC, III г. о.*). In that case, the debtor had taken a loan secured with a mortgage on a flat that she had purchased with the loan in question. Although she had only missed two instalments (which she had later paid after some delay), the bank had obtained an immediately enforceable payment order against her in relation to the entire loan, plus interest. The debtor had objected against the payment order, and the bank had applied for a judicial declaration that the debtor owed it the sums to which the payment order related. Those proceedings had ended with a judicial declaration that the debtor had only owed a small amount of interest on the two delayed instalments, whereas the entire loan had not been due because the bank had not duly triggered the acceleration clause in the loan contract. Meanwhile, however, the payment order had been enforced, and the applicant's flat had been sold in the course of those enforcement proceedings at a price below its market price, owing the absence of any bids that reached that price. The Supreme Court of Cassation held that (a) the debtor was entitled to pecuniary damages equivalent to the difference between the flat's market price and the price at which it had been sold in the enforcement proceedings, and that (b) the debtor's claim had accrued when the judgment dismissing the bulk of the bank's application for a judicial declaration against her had become final. The court also awarded the debtor compensation in respect of non-pecuniary damage.

78. In a November 2021 judgment (*peu. № 60247 om 29.11.2021 г. no зп. д. № 3137/2020 г., BKC, IV г. о.*), the Supreme Court of Cassation held that the liability of the creditor – who had, by way of an immediately enforceable payment order, collected a debt which had later turned out not to be due – amounted to a type of no-fault liability for damages that was a necessary corollary of the statutory scheme enabling creditors to enforce claims before their full judicial consideration. The measure of damages in such situations was not the sums obtained by the creditor as a result of the enforcement of the payment order. Those sums, as well as any fees and costs incurred by the debtor in the enforcement proceedings, plus interest, could not be sought back by way of such a claim for damages, but were rather to be included in the reverse writ of execution to be issued in favour of the debtor

after the dismissal or partial dismissal of the creditor's application for a judicial declaration (see paragraph 58 above).

IV. CONSTITUTIONAL CHALLENGE AGAINST THE PAYMENT-ORDER PROCEDURE AVAILABLE TO BANKS

79. In mid-2012 the Ombudsman of the Republic asked the Constitutional Court to declare Article 417, point 2 of the Code of Civil Procedure (see paragraph 53 above) unconstitutional. He argued that it impermissibly placed banks in a privileged position and was hence discriminatory.

80. In October 2012 the Constitutional Court unanimously dismissed the request. It noted, *inter alia*, that the safeguards surrounding the payment-order procedure available to banks, combined with the remedies against immediately enforceable payment orders (including the possibility of seeking a stay of their enforcement), were sufficient to ensure that undue debts would not be enforced. The court went on to say that there existed sound reasons – relating to, among other things, the stability of the economy and the protection of depositors – for enabling banks to more easily collect on loans. Moreover, the strict requirements in respect of the keeping of bank records ensured their reliability. The argument advanced by some third-party interveners that banks could calculate the interest on loans incorrectly, or on the basis of unclear criteria or their unilateral decisions to increase interest rates, could not throw doubt on the constitutionality of the rules governing payment orders in favour of banks, and had in any event not been raised by the Ombudsman (see *peu. № 12 om 02.10.2012 г. no к. д. № 4/2012 г., KC, обн. ДБ, бр. 79/2012 г.*).

V. JUDICIAL DECLARATIONS THAT UNFAIR TERMS ARE VOID

81. The Bulgarian courts have allowed claims by debtors who are consumers for judicial declarations that clauses in bank-loan contracts constituted unfair terms that were void under the consumer-protection legislation.

82. For instance, in February 2012 the Sofia District Court issued such a declaration in a case in which a consumer debtor complained of a clause allowing the bank in question to increase unilaterally the contractual interest rate in a mortgage-loan contract, before any enforcement steps had been taken by the bank in respect of that contract (see *peu. om 03.02.2012 г. no зп. д. № 15502/2011 г., CPC*). Following an appeal by the bank, in June 2012 the Sofia City Court upheld that judgment (see *peu. № 3887 om 05.06.2012 г. no в. зп. д. № 6209/2012 г., CTC*). In February 2013 the Supreme Court of Cassation refused to admit for examination an appeal on points of law by the bank (see *onp. № 72 om 13.02.2013 г. no м. д. № 802/2012 г., BKC, II м. о.*).

83. Similarly, in December 2015 the Supreme Court of Cassation upheld a November 2014 judgment in which the Sofia City Court had granted such a declaration on the basis that a clause enabling the bank unilaterally to alter the contractual interest rate did not envisage objective, transparent and clear enough criteria for doing so (see *peuu. № 424 om 02.12.2015 г. no зр. д. № 1899/2015 г., BKC, IV г. о.*). The proceedings in that case had been initiated by the debtor in 2012.

84. In three other such cases, which it decided in the second half of 2016, the Supreme Court of Cassation itself granted such declarations, overturning lower court judgments refusing to grant them (see *peuu. № 95 om 13.09.2016 г. no м. д. № 240/2015 г., BKC, II м. о.*; *peuu. № 205 om 07.11.2016 г. no м. д. № 154/2016 г., BKC, I м. о.*; and *peuu. № 165 om 02.12.2016 г. no м. д. № 1777/2015 г., BKC, I м. о.*). The proceedings in those three cases had all been originally brought by the debtors in 2013.

85. Again in 2016, the Supreme Court of Cassation refused to admit for examination an appeal on points of law by a bank against a January 2015 judgment whereby the Sofia City Court had upheld an October 2013 judgment whereby the Sofia District Court had granted such a declaration (see *onp. № 631 om 08.07.2016 г. no м. д. № 1705/2015 г., BKC, I м. о.*).

VI. INTERIM MEASURES IN CIVIL PROCEEDINGS

86. Under Article 389 § 1 read in conjunction with 397 § 1 (3) *in fine* of the Code of Civil Procedure, a court hearing a civil case may, at the request of the claimant, secure the claim by ordering interim measures, which may include a stay of enforcement. Such interim measures may be granted in relation to any type of claim (Article 389 § 2).

87. Such interim measures may be ordered if the claimant would otherwise find it impossible or difficult to exercise the rights that will be determined in the proceedings and if the claim is supported by convincing written evidence or the claimant puts up security, to be set by the court (Article 391 § 1). The court may require the claimant to provide security even if the claim is supported by convincing written evidence (Article 391 § 2). The amount of the security is to be set by the court with reference to the amount of the direct and proximate damage that the defendant is likely to suffer if the interim measure turns out to have been unjustified (Article 391 § 3). The security can take the form of cash or a mortgage on immovable property (sections 180-81 of the Obligations and Contracts Act 1950). A request for interim measures may also be granted in part only, corresponding to those parts of the claim that are supported by enough evidence (Article 394).

88. In a decision given in June 2019 (*onp. № 432 om 27.06.2019 г. no ч. м. д. № 944/2019 г., BKC, II м. о.*), the Supreme Court of Cassation held that enforcement proceedings against a debtor carried out pursuant to an immediately enforceable payment order issued in favour of a bank could not be stayed by way of an interim measure granted in proceedings in which the debtor was seeking a judicial declaration against the bank that some of the clauses in the loan contract were unfair terms and hence void under the consumer-protection legislation. It was true that staying the enforcement pending the judicial determination of the unfair-terms point was required under EU consumer-protection law, as construed by the CJEU in several cases (see paragraphs 99, 100, 102 and 104 below). However, the Bulgarian legislature had put in place a special remedy for protecting debtors facing an immediately enforceable payment order – a request for a stay of enforcement under Article 420 § 2 of the Code of Civil Procedure (see paragraph 60 above). In those circumstances, it was not open to the courts to stay the enforcement of such a payment order by way of an interim measure ordered in judicial-declaration proceedings brought by the debtor under the consumer-protection legislation. This could only be done if the legislature amended the relevant law.

VII. REMEDIES IN RESPECT OF THE UNREASONABLE LENGTH OF CIVIL PROCEEDINGS

A. Acceleratory remedy

89. Under Article 255 § 1 of the Code of Civil Procedure, if a court fails to take a procedural step in due time, a party to the proceedings before it may, at any stage of the proceedings, request that an appropriate time-limit be set for that step to be taken. The request must be lodged with the court responsible for the delay, and that court has to then forward the request immediately to the higher court (Article 255 § 2). If the court responsible for the delay (a) immediately takes all the procedural steps mentioned in the request, and (b) notifies the aggrieved party that those steps have been taken, then the request is considered to have been withdrawn, unless the aggrieved party expressly maintains it (Article 256 §§ 1 and 2). The higher court must examine the request within one week of receiving it (Article 257 § 1). If it finds that there has been undue delay, it must set a time-limit for the procedural step(s) in question to be taken by the lower court (Article 257 § 2).

B. Compensatory remedies

90. Under sections 60a *et seq.* of the Judiciary Act 2007 (“the 2007 Act”), which were added to the Act in 2012, a party to completed civil proceedings may seek and obtain up to BGN 10,000 (EUR 5,113) in compensation

in respect of their unreasonable length. The remedy is obtained by way of a two-step administrative procedure before, firstly, the inspectorate attached to the Supreme Judicial Council, and then the Ministry of Justice. It is open to parties aggrieved by the length of proceedings that have come to an end (section 60a(2)(1) and (4)).

91. Under section 2b(1) of the State and Municipalities Liability for Damage Act 1988 (“the 1988 Act”), which was added to the Act in 2012, the State is liable for damage caused to individuals or legal persons by breaches of the right to have one’s case examined within a reasonable time within the meaning of Article 6 § 1 of the Convention. Such a claim is open to parties who are aggrieved by the length of proceedings that are still pending (section 2b(3) of the 1988 Act), and to parties who are aggrieved by the length of proceedings that have come to an end but who have not obtained adequate redress through the above-mentioned remedy under sections 60a *et seq.* of the 2007 Act (section 8(2) of the 1988 Act).

92. All those provisions were put in place in response to the Court’s pilot judgment in *Finger* (cited above). Details about their enactment and how the remedies in question were intended to work in practice can be found in *Balakchiev and Others* (cited above, §§ 20-29).

VIII. LEGAL CHALLENGES IN ENFORCEMENT PROCEEDINGS

93. Under Article 435 § 3 of the Code of Civil Procedure, a debtor can seek judicial review of the enforcement agent’s decision to declare a successful bidder in a public sale the owner the purchased property only on the grounds that (a) the bidding has not been duly carried out, or (b) the property has not been sold to the highest bidder.

94. Under Article 462 § 2 and Article 463 § 1 of the same Code, the distribution of the proceeds from a public sale is amenable to review by the relevant regional court (for Sofia, that court is the Sofia City Court). An appeal may subsequently be lodged with the relevant court of appeal against any adverse decision (Article 463 § 2).

IX. ADDRESS REGISTRATION

95. Under sections 90(1) and 92(1) of the Civil Registration Act 1999, all persons subject to civil registration must declare their permanent and current address to the local mayor or an official designated by the mayor. They must enclose with their declaration documents showing that they own or live in the property (section 92(2)).

96. A person’s permanent address is the address in which that person chooses to be entered in the population register (section 93(1)). Each person can only have one permanent address (section 93(3)), and that address constitutes that person’s official address for the purposes of correspondence

with the authorities (section 93(5)). That address may be the same as the person's current address (section 93(7)).

97. A person's current address is the address at which that person lives (section 94(1)). Each person can only have one current address (section 94(2)). Each person must declare to the local mayor any change to his or her current address within thirty days of changing it (section 99(1) and (2)).

RELEVANT CASE-LAW OF THE CJEU

98. The CJEU has extensive case-law in respect of the application of EU consumer-protection law to payment-order and enforcement proceedings, including an order pursuant to a preliminary reference from the Sofia District Court (see *DSK Bank and FrontEx International*, C-807/19, EU:C:2020:967). Those of its judgments and orders that might be relevant to the present case appear to be the following.

99. In *Banco Español de Crédito* (C-618/10, EU:C:2012:349, §§ 38-57), which concerned payment-order proceedings in favour of a bank, the CJEU – going against the opinion of its Advocate-General – held that EU consumer-protection law precluded national rules barring a court examining an application for a payment order from assessing on its own initiative, at any stage of the proceedings, whether a term in the underlying loan contract, if the loan in question was taken out by a consumer, was unfair.

100. In *Aziz* (C-415/11, EU:C:2013:164, §§ 43-64), the CJEU held that EU consumer-protection law precluded national rules barring a court hearing a claim by a consumer against a bank that a term in his (mortgage-secured) loan was unfair to stay enforcement proceedings brought by the bank pending the determination of that claim. In reaching that conclusion, the CJEU noted, *inter alia*, that (a) an after-the-fact compensatory remedy could not protect the consumer's rights effectively, and (b) the property against which enforcement was directed was the consumer's home, which could be lost as a result of the operation of those rules (*ibid.*, §§ 60-61).

101. In *Banco Popular Español and Banco de Valencia* (C-537/12 and C-116/13, EU:C:2013:759, §§ 38-60), the CJEU held that EU consumer-protection law precluded national rules barring a court dealing with mortgage-enforcement proceedings from checking whether the loan being enforced contained unfair terms, or from staying enforcement pending the determination of such a claim by the consumer in separate proceedings.

102. In *Kušionová* (C-34/13, EU:C:2014:2189, §§ 45-68), the CJEU held that the possibility for a consumer to obtain without excessive difficulty an interim measure preventing the sale of her home to enforce a loan allegedly tainted by an unfair term sufficiently protected her rights under EU consumer-protection law, as well as that consumer's right to respect for her home under Article 7 of the EU Charter of Fundamental Rights.

103. In *Finanmadrid EFC SA* (C-49/14, EU:C:2015:746, §§ 34-55) and *Aktiv Kapital Portfolio* (C-122/14, EU:C:2016:486, §§ 24-39), the CJEU held that EU consumer-protection law precluded national rules barring a court deciding on the enforcement of a payment order from checking on its own initiative whether a term in a loan contract with a consumer was unfair, when the judge or non-judicial authority dealing with the initial application for the payment order also lacked jurisdiction to assess that question.

104. In *Profi Credit Polska* (C-176/17, EU:C:2018:711, §§ 38-71), the CJEU held that that EU consumer-protection law precluded national rules permitting a payment order to be issued on the basis of a promissory note securing a claim arising from a consumer credit contract if the court dealing with the application for that payment order could not examine whether the terms of that contract were unfair, if the point could not be checked following the lodging of an objection against that payment order. In *PKO Bank Polski* (C-632/17, EU:C:2018:963, §§ 27-53) the CJEU held that the same applied to payment orders issued on the basis of bank ledgers.

105. In *Kuhar* (C-407/18, EU:C:2019:537, §§ 41-68), the CJEU held that EU consumer-protection law precluded national rules barring a court deciding on the enforcement of a (mortgage-secured) loan with a consumer from checking whether the loan contract in question contained unfair terms and on that basis staying the enforcement. To reach that conclusion, the CJEU noted, *inter alia*, that apparently under Slovenian law a court hearing a claim by a consumer that a loan contract contained unfair terms could only stay the enforcement of that loan if a risk of damage that was either irreparable or difficult to make good was shown, subject to the provision of full security by the debtor (*ibid.*, § 60).

106. In *Impuls Leasing România* (C-725/19, EU:C:2022:396, §§ 38-60), the CJEU held that EU consumer-protection law precluded national rules under which a court dealing with an objection against the enforcement of a debt owed by a consumer was barred from checking whether the terms of the contract being enforced were unfair, if the court hearing a parallel claim concerning the same point could only stay that enforcement pending its own decision if the consumer provided security equivalent to the value of the debt.

ELEMENTS OF COMPARATIVE LAW

107. In a 2002 “Green Paper on a European Order for Payment Procedure and on Measures to Simplify and Speed Up Small Claims Litigation” (COM(2002) 746 final), the European Commission carried out a comparative study of the national payment-order procedures existing at that time in eleven (out of the then fifteen) member States of the European Union: Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, Portugal, Spain and Sweden. The paper noted, in particular, that:

(a) in all those States a timely objection by the debtor prevented the payment order from acquiring enforceability (point 3.3.10 at p. 40); and

(b) As a general rule, save for Greece, all States with a one-step payment-order procedure (Austria, France, Italy, Portugal and Spain) did not attribute provisional enforceability to a payment order; rather, they required that the time-limit for objecting to that payment order first expire – only then would it become enforceable. However, exceptions to that general rule were possible in respect of claims that were based on very strong documentary evidence. In most States having a two-step procedure (namely, Finland, Germany, Luxembourg and Sweden), the first decision (the order that payment be made) was not enforceable at all, whereas the second decision, taken after the expiry of the time-limit for objections (the enforcement of the order that payment be made) was only provisionally enforceable (point 3.3.14.1 at pp. 46-47).

108. Since 2008, a payment-order procedure has also existed at EU level (see Regulation (EC) No 1896/2006 creating a European order for payment procedure, which has been in application since December 2008 in all EU member States except Denmark). Recital 24 of that Regulation indicates that a timely statement of opposition should terminate the payment-order procedure and prompt an automatic transfer of the case to ordinary civil proceedings; Article 18 § 1 of the Regulation provides that a payment order may be declared enforceable only if no statement of opposition has been lodged against it. However, under Article 21 § 1, enforcement procedures are governed by the law of the member State in which the enforcement is carried out; moreover, under Article 26, all procedural issues not specifically dealt with in the Regulation are governed by national law.

THE LAW

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

109. The applicant complained that her flat had been sold in the enforcement proceedings brought by the bank against her before her legal challenges against the payment order in favour of the bank and its immediate enforcement had been examined. According to her, that had been due both to the manner in which payment-order proceedings in favour of banks had been organised under Bulgarian law and to the Sofia District Court's inertia in processing her legal challenges.

110. The applicant relied on Article 1 of Protocol No. 1, which reads as follows:

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

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

A. Admissibility of the complaint

1. Exhaustion of domestic remedies

(a) The parties’ submissions

(i) The Government

111. The Government submitted that the applicant had not exhausted domestic remedies. They pointed to the following steps which she had omitted to take:

(a) Under Article 255 of the Code of Civil Procedure (see paragraph 89 above), between April and December 2015 she could have requested the setting of a time-limit in the event of delay, and thus tried to spur the Sofia District Court into processing more speedily her objection against the payment order, her appeal against the direction that the payment order be enforced immediately, and her request for a stay of the payment order’s enforcement. This could have prevented the subsequent public sale of her flat in early 2016.

(b) She could have sought judicial review of (i) the enforcement agent’s decision to declare the sole bidder the owner of the flat and of (ii) that agent’s decision to distribute the proceeds from the public sale (see paragraphs 25-27 and 93-94 above).

(c) She could have appealed against the Sofia District Court’s decision in October 2018 to refuse her request to stay the enforcement of the payment order (see paragraph 17 (c) above). That could have at least prevented the further enforcement of the payment order and triggered the faster resolution of the dispute between her and the bank.

(d) She could have put up security for the bank when seeking a stay of the enforcement of the payment order. The security could have also been provided by her mother or daughter, who had stood surety for her debt. It had been possible for them to do so: according to the Bulgarian courts’ case-law, such security could be in the form of a mortgage on another property, and both the applicant and her mother owned other properties – her mother, in particular, the flat whose ownership the applicant had transferred to her in 2005 and 2012.

(e) She could have sought a judicial declaration that she did not owe the debt which the bank had enforced via a payment order in separate proceedings, and asked that order's enforcement be stayed by way of an interim measure within the framework of those proceedings. It was true that this had constituted an alternative to making an objection against the payment order, and that the applicant had been able to choose which of the two to use. Given the circumstances of her case, however, this other possibility seemed reasonable, and could have ensured better procedural protection. Such a claim could also have been made under Article 424 of the Code of Civil Procedure (see paragraph 74 above) in cases of newly discovered facts or written evidence of material importance.

(f) She could have brought a claim against the bank under the consumer-protection legislation (see paragraph 81-85 above) asking the courts to declare the unfair terms in her bank loan void; moreover, she could have joined to that claim a claim for damages in respect of unjust enrichment. She could have brought such proceedings even before the bank had applied for a payment order in October 2014.

(g) She could have, like her mother and daughter, who had stood surety in respect of her debt, sought a reverse writ of execution (see paragraph 58 above). That possibility had been available even when, as in the applicant's case, in the subsequent substantive proceedings between the bank and the debtor the courts had found that the debt enforced by the bank via the payment order was valid in part only. Moreover, the reverse writ of execution could have covered not only the sums incorrectly obtained by the bank via the payment-order proceedings – as appeared to have happened in the applicant's case, in view of the discrepancy between the price for which her flat had been sold and the subsequent finding of the Sofia Court of Appeal concerning the extent of her debt to the bank (see paragraphs 25 and 38 above) – but also interest and costs. It was still possible for the applicant to seek such a reverse writ of execution.

(h) She could have sought compensation for any damage – such as the alleged difference between the market price of her flat and the price for which it had been sold by the enforcement agent – caused to her by the bank's use of the payment-order procedure by way of a claim for damages against the bank. According to the Bulgarian courts' case-law, such no-fault liability on the part of the creditor arose whenever an immediately enforceable payment order in his or her favour was later quashed. Such a claim therefore stood a reasonable prospect of success. The limitation period for bringing one was still running, and the applicant did not suffer from any special vulnerability preventing her from pursuing one.

(i) Under either sections 60a *et seq.* of the 2007 Act or section 2b of the 1988 Act, she could have sought compensation for the length of the proceedings between her and the bank (see paragraphs 90-91 above). Although there was a cap on the compensation which could be obtained via

the first provision, no such cap existed in respect of the compensation that could be obtained via the latter provision.

112. The Government went on to submit that the applicant had not raised the complaint which she had made before the Court at domestic level – either in her objection against the payment order, or in her request for a stay of that order’s enforcement, or during the ensuing enforcement proceedings.

(ii) The applicant

113. The applicant contested the Government’s assertion that she had failed to exhaust domestic remedies. She made the following submissions in relation to the steps suggested by the Government:

(a) She did not comment on the Government’s arguments summarised in paragraph 111 (a) above.

(b) Nor did she comment on the Government’s arguments summarised in paragraph 111 (b) above.

(c) The decision by which the Sofia District Court had refused the applicant’s request for a stay of the enforcement of the payment order had been given years after her flat had been sold. Appealing against that decision would have therefore been pointless.

(d) Even if the applicant had put up security for the creditor bank and had on that basis sought a stay of the enforcement of the payment order, that would not have led automatically to that enforcement being stayed: even in that scenario a stay would have required a decision by the Sofia District Court, whereas that court had dealt with the applicant’s request for a stay of enforcement only after years of delay. It had in any event been too burdensome to require her to put up such security.

(e) According to the prevailing case-law of the Bulgarian courts, an application for a judicial declaration that a debtor faced with a payment order did not owe the debt in question was inadmissible and even constituted an abuse of process, since in such scenarios debtors had dedicated means of protecting their rights. Therefore, such a claim had not constituted an effective remedy in the instant case. Moreover, it would have been too burdensome to require the applicant to bring such a claim, as she had already used other procedural means: an objection against the payment order, an appeal against the direction that the payment order be enforced immediately, and a request for a stay of the enforcement of the payment order – all of which had been aimed at achieving the same result. Applicants could not be required to resort to another remedy that had the same purpose as the one they had used. Bringing a claim under Article 424 of the Code of Civil Procedure had been plainly out of place in the applicant’s situation, since no newly discovered facts or evidence had emerged after she had lodged an objection against the payment order.

(f) A standalone claim against the bank under the consumer-protection legislation would not have automatically stayed the enforcement of the payment order. Given that according to the Bulgarian courts' case-law the sale of a debtor's property in enforcement proceedings opened pursuant to a payment order was not a direct result of the creditor bank's conduct, such a claim would not have been capable of resulting in compensation either.

(g) Even if the applicant's mother and daughter could have obtained the reimbursement of some of the sums collected from them in the enforcement proceedings (in their capacity as sureties for the applicant's debt) by way of reverse writs of execution, that did not mean that the applicant could, in the same way, have obtained compensation for the damage caused by the sale of her flat before the judicial determination of the bank's claim against her. It was true that she had owed a considerable portion of the sum claimed against her, but it was important to emphasise that the Sofia Court of Appeal had held that her debt towards the bank had only become fully payable later, in March 2019, when the bank's application for a judicial declaration had been served on her.

(h) Claiming damages from the bank had not been a viable option, since the damage suffered by the applicant had not been caused by the bank (which had validly sought a payment order) but by the Sofia District Court (which had issued the payment order and had then failed to process the legal challenges against it in a timely fashion). Moreover, such a claim against the bank would have entailed high court fees – 4% of the amount claimed, plus costs – and would have been too burdensome for the applicant to pursue.

(i) Compensation under sections 60a *et seq.* of the 2007 Act (see paragraph 90 above) was capped at BGN 10,000 (EUR 5,113), which was way less than the value of the applicant's flat. In any event, there were no examples showing that in such proceedings one could obtain compensation in respect of pecuniary damage. The same went for a claim under section 2b of the 1988 Act (see paragraph 91 above).

114. The applicant also pointed out that in her objection against the payment order, her appeal against the direction that the payment order be enforced immediately, and her request for a stay of the payment order's enforcement she had contested the bank's claim against her and the validity of the payment order. In her view, she had thus raised the complaints subsequently made before the Court in substance.

(b) The Court's assessment

115. Only the first, second and last limbs of the nine limbs of the Government's non-exhaustion objection (see paragraph 111 above) concern procedures not opposing the applicant to the bank, but rather remedies directed against the authorities. They can thus be examined already at this stage.

116. The first limb of the objection (see paragraph 111 (a) above) must be dismissed. It is true that the applicant did not lodge a request under Article 255 of the Code of Civil Procedure for the setting of a time-limit (see paragraph 89 above) between April and December 2015, or indeed at any point up until October 2018, when the Sofia District Court at last ruled on her request that the enforcement of the payment order be stayed and forwarded to the Sofia City Court her appeal against its direction that the order be enforced immediately (see paragraphs 15-17 above). It is also true that the possibility of making such a request (although it had in theory been intended by the legislature to serve as a remedy in respect of alleged breaches of the reasonable-time requirement of Article 6 § 1 of the Convention) was theoretically capable of spurring the Sofia District Court to deal faster with the matters submitted to it by the applicant, and thus of perhaps preventing the alleged breach of Article 1 of Protocol No. 1, which resulted from the combination of the applicable statutory scheme and the Sofia District Court's inertia. There is, however, no indication that such a request would have yielded any results in the applicant's case, since the Sofia District Court remained totally passive in respect of the entire case until October 2018. It suffices to note in that connection that more than a year earlier, in March and November 2017, the applicant's mother and daughter lodged two such requests under Article 255 of the Code of Civil Procedure, and the Sofia District Court (which should have either satisfied those requests itself or forwarded them immediately to the Sofia City Court) did not react to either of them until October 2018 (see paragraphs 16 and 17 (b) and (c) above). Nothing suggests that a request under Article 255 of the Code of Civil Procedure made by the applicant – either between April and December 2015 or later – would have been treated any differently.

117. The second limb of the objection (see paragraph 111 (b) above) must be dismissed as well. The applicant did not allege that the bidding for her flat in the course of its public sale in the enforcement proceedings had been tainted by any irregularities, that the flat had not been sold to the highest bidder (there was, in fact, one bidder only, despite the four consecutive public sales), or that the proceeds from that sale had been distributed improperly (see paragraphs 25-27 and 93-94 above). Rather, her grievance under Article 1 of Protocol No. 1 was directed against the very fact that the payment order against her could be enforced against her flat before any proper judicial scrutiny of the bank's underlying claim. It is hard to conceive how the two remedies cited by the Government in that limb of their objection – both of which appear to be specific procedures intended to deal with narrow procedural irregularities in the enforcement proceedings – could have remedied that.

118. The ninth limb of the objection (see paragraph 111 (i) above) must equally be dismissed. It is true that there is no indication that the applicant has sought compensation under sections 60a *et seq.* of the 2007 Act or section 2b of the 1988 Act (see paragraphs 90-91 above). However, those two remedies were put in place solely with a view to providing monetary compensation in respect of breaches of the reasonable-time requirement of Article 6 § 1 of the Convention (see paragraph 92 above), whereas the complaint under Article 1 of Protocol No. 1 in the present case is broader in scope. It concerns not just the Sofia District Court's failure to process in a timely manner the applicant's objection against the payment order, her appeal against the direction that the order be enforced immediately, and her request for a stay of the order's enforcement, but also the fact that under the relevant statutory scheme, any delay in the processing of such matters could lead – and in the applicant's case did indeed lead – to the loss of property as a result of the enforcement of a payment order in favour of a bank before the debtor has the possibility to secure proper judicial examination of his or her legal challenges to that order. Admittedly, a remedy that is only intended to afford redress in respect of certain grievances under the Convention can sometimes also be used to afford redress in respect of other kinds of Convention grievances (see, for instance, *Stefanov v. Bulgaria* (dec.), no. 51127/18, §§ 77 and 80, 8 September 2020, and *Zlatanov v. Bulgaria* (dec.), no. 53050/21, §§ 227-28, 30 January 2024). In the present case, however, the two remedies cited by the Government in the ninth limb of their non-exhaustion objection do not appear capable of appropriately redressing the broader complaint made by the applicant (see, *mutatis mutandis* but specifically with regard to those two remedies, *S.Z. v. Bulgaria*, no. 29263/12, §§ 34-35, 3 March 2015; *Kolev v. Bulgaria* (dec.), no. 69591/14, §§ 46-47, 30 May 2017; and *Y v. Bulgaria*, no. 41990/18, § 73, 20 February 2020; see also, more generally with regard to the (in)ability of such dedicated length-of-proceedings remedies of providing redress for other Convention grievances that flow from procedural delay in part only, *Byrzykowski v. Poland*, no. 11562/05, § 90, 27 June 2006; *Mojsiejew v. Poland*, no. 11818/02, § 42, 24 March 2009; *Šilih v. Slovenia* [GC], no. 71463/01, § 169-70, 9 April 2009; *Bilbija and Blažević v. Croatia*, no. 62870/13, § 110, 12 January 2016; *Mardosai v. Lithuania*, no. 42434/15, § 44, 11 July 2017; and *Kornicka-Ziobro v. Poland*, no. 23037/16, § 58, 20 October 2022).

119. The remaining six limbs of the Government's non-exhaustion objection (see paragraph 111 (c)-(h) above) all concern the availability of further procedures that would allegedly have enabled the applicant (had she attempted to avail herself of them) to protect her rights *vis-à-vis* the bank (see, *mutatis mutandis*, *Kotov v. Russia* [GC], no. 54522/00, § 61, 3 April 2012). Those procedures thus touch upon the merits of the complaint – which concern the question of whether the relevant statutory scheme made it possible to strike a fair balance between the applicant's right to the peaceful

enjoyment of her possessions and any countervailing rights and interests (see, *mutatis mutandis*, *Atev v. Bulgaria* (dec.), no. 39689/05, § 24, 18 March 2014; *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, § 71, 20 September 2011; and *Vrzić v. Croatia*, no. 43777/13, § 80, 12 July 2016). Those six limbs of the Government’s objection must therefore be joined to the merits.

120. As for the Government’s allegation that the applicant had not raised her complaint under Article 1 of Protocol No. 1 in her objection against the payment order, in her request for the stay of that order’s enforcement, or in the ensuing enforcement proceedings (see paragraph 112 above), it should be noted that the Government did not explain how by doing so the applicant would have obtained an effective examination of that complaint in the context of any of the three procedures to which they referred. Under Bulgarian law, the debtor’s objection against a payment order does not normally need to be supported by reasons, and is meant simply to (a) prevent the payment order from becoming final and (b) make it incumbent upon the creditor in whose favour the payment order has been issued to seek a judicial declaration against the debtor for the underlying claim if it wishes to preserve the payment order (see paragraphs 56-57 above). For its part, the request for a stay of the enforcement of the payment order is only intended to halt that enforcement. Moreover, under the rules of procedure in force at the material time such a request could only have been granted in limited circumstances – the provision of security for the creditor or the production of “convincing written evidence” – as opposed to broader arguments (see paragraphs 60 (a) and (b) and 62 above). As for the enforcement proceedings themselves, they were directed against the applicant (rather than being a remedy available to her), and, as noted in paragraph 117 above, could likewise be challenged only on limited procedural grounds.

121. It follows that the complaint cannot be rejected for non-exhaustion of domestic remedies.

2. The Court’s conclusion regarding the admissibility of the complaint

122. This complaint is, moreover, not manifestly ill-founded or inadmissible on other grounds. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant

123. The applicant submitted that at the material time Bulgarian law had not provided sufficient safeguards in relation to immediately enforceable payment orders in favour of banks. She had had to use three concurrent remedies to block the enforcement of the payment order against her. Even

though she had duly availed herself of all three remedies, she had been unable to protect her rights and to halt the public sale of her flat, on account of the Sofia District Court's inertia – which had lasted for years, during which time the bank had been able to enforce its claim without it being subject to any proper judicial consideration. It had to be emphasised in that connection that in the subsequent judicial-declaration proceedings the courts had found that the bank's claim had not accrued until March 2019 – years after it had enforced it. Moreover, before the 2019 amendments to the Code of Civil Procedure it had not been open to the courts hearing challenges against payment orders in favour of banks to verify whether the underlying loans contained unfair terms.

124. The applicant agreed that normal payment-order proceedings served a legitimate aim because they made it possible to enforce uncontested claims quickly. But that had not been so in her case: she had contested the bank's claim, and yet that had not halted the public sale of her flat.

125. According to the applicant, the interference had in any event failed to strike a fair balance. Even though she had challenged the payment order, her flat had been sold as a result of the enforcement of that order long before any judicial consideration of her challenges against it. That had not been sufficiently counterbalanced by the existence of other remedies – in particular, the after-the-fact remedies set out in her submissions summarised in paragraph 113 (g) and (h) above.

(b) The Government

126. Referring to the characteristics of the procedure governing immediately enforceable payment orders, as laid down in the Bulgarian Code of Civil Procedure, the Government submitted that the interference with the applicant's possessions had been based on the provisions of that Code and had been intended to protect the rights of creditors.

127. In the Government's view, the overarching consideration was that the interference had resulted from a dispute between private persons – in particular, from the applicant's failure to repay a bank loan which she in large part still owed and which she had secured with a mortgage on the flat that she had bought with the sum that she had borrowed. The Government also noted that between the time when the applicant had stopped paying her monthly instalments and the time when the bank had applied for a payment order against her, she had not tried to renegotiate the terms of the loan, to rent the flat out to obtain money with which to pay the instalments, or sell the flat. They again pointed to her failure to seek a judicial declaration that some of the terms in the loan contract were unfair and thus void under the consumer-protection legislation.

128. The Government went on to say that even before the 2019 amendments the Code of Civil Procedure had contained sufficient safeguards to protect the rights of debtors such as the applicant, providing as they did for the possibility to object against a payment order, to appeal against a direction for its immediate enforcement, and to request a stay of that enforcement – or, alternatively, to seek a judicial declaration that the debtor did not owe the debt in question, and to seek a stay of the enforcement of the payment order by way of an interim measure in such proceedings. It was to be regretted that the Sofia District Court’s inertia had blunted the usefulness of those safeguards. But it could not be overlooked that the applicant had not explored all possibilities to prevent the sale of her flat. In that respect, the Government referred to their arguments (as summarised in paragraph 111 (d) and (e) above), and also pointed out that the applicant could have reiterated her request for a stay of enforcement earlier than December 2015, or even informally advised the bank and the enforcement agent that she had objected against the payment order and had appealed against the direction that it be made immediately enforceable. The Government also referred to the after-the-fact remedies cited in their submissions summarised in paragraph 111 (g) and (h) above. In their view, the existence of those remedies had also ensured a fair balance between the rights of the applicant and those of the bank. There had been no circumstances preventing her from fully availing herself of those remedies.

2. The Court’s assessment

(a) Whether there has been interference with the applicant’s right to the peaceful enjoyment of her possessions

129. It was not in dispute that the public sale of the applicant’s flat as a result of the enforcement of the payment order against her amounted to interference with the peaceful enjoyment of her possessions.

130. That interference is to be characterised as constituting control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It thus falls to be examined under the so-called “third rule” set out in that Article, which relates to the State’s right “to enforce such laws as it deems necessary to control the use of property in accordance with the general interest” (see *Zehentner v. Austria*, no. 20082/02, § 71, 16 July 2009; *Vrzić*, cited above, §§ 93-96; and *Vaskrsić v. Slovenia*, no. 31371/12, § 73, 25 April 2017).

(b) Whether the interference was prescribed by law

131. The applicant did not assert that the public sale of her flat had been unlawful in terms of Bulgarian law. The subsequent quashing of the direction that the payment order (which served as a basis for the enforcement proceedings in the course of which the flat was sold) be made immediately

enforceable (see paragraph 19 above) did not necessarily affect retrospectively the sale's lawfulness from the perspective of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Benham v. the United Kingdom*, 10 June 1996, § 42, *Reports of Judgments and Decisions* 1996-III). Nor is there anything to suggest that the applicable legal provisions were insufficiently accessible or foreseeable. The question of whether those provisions (as applied in the applicant's case) ensured a fair balance between her rights and any countervailing rights or interests will be examined below (see, for a similar approach, *Apostolovi v. Bulgaria*, no. 32644/09, § 93, 7 November 2019).

(c) Whether the interference pursued a legitimate aim

132. The flat was sold by the enforcement agent to satisfy the bank's claim against the applicant, which was based on the loan taken out by her. It can hence be accepted that the interference served the legitimate aim of protecting the rights of creditors (see *Zehentner*, § 74, and *Vaskrsić*, § 76 *in fine*, both cited above). Indeed, the Court has already stated that it attaches great importance to effective enforcement for creditors (see *Vaskrsić*, cited above, § 86).

133. The existence of a dispute between the applicant and the bank about the validity of the debt which the bank sought to enforce through the payment order does not affect that finding. That is only relevant for assessing whether the payment order's immediate enforcement struck a fair balance between the rights of the applicant and those of the bank, and will be examined below, under the heading of proportionality.

(d) Whether the interference was proportionate to the legitimate aim pursued

(i) Scope and method of the Court's assessment

134. In this case, the applicant's complaint was directed against both the manner in which at the relevant time Bulgarian law regulated the issuing and challenging of immediately enforceable payment orders, and the manner in which her legal challenges against the payment order obtained by the bank against her had been dealt with. Unlike the Bulgarian Constitutional Court, which had to, and did, examine the relevant legislation as such (see paragraph 80 above), the Court's task is not to review domestic law in the abstract (see, with specific reference to a situation similar to that in the present case, *Zehentner*, cited above, § 61), but to determine whether the manner in which that law was applied to the applicant gave rise to a breach of the Convention or its Protocols. Nor is the Court competent to determine whether a State's domestic law is consistent with EU law (see, as a recent authority, *K.I. v. France*, no. 5560/19, § 123, 15 April 2021).

(ii) *General principles*

135. The relevant general principles are settled. They were set out in *Zehentner* (cited above, §§ 71-73 and 75), *Vrzić* (cited above, §§ 100-01) and *Vaskrsić* (cited above, §§ 77-78), and can be summarised as follows:

(a) Any interference with the right to peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the fundamental rights of the person concerned. In respect of interferences which fall under the second paragraph of Article 1 of Protocol No. 1, there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be attained. The question in each case is whether by reason of the interference, the persons concerned have had to bear a disproportionate and excessive burden;

(b) Contracting States enjoy a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified;

(c) Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, it does require procedures affording the persons concerned a reasonable opportunity of effectively challenging the measures interfering with the rights guaranteed by it. Even in cases involving private litigation, those persons must have available to them judicial procedures which offer the necessary procedural guarantees. The determination of whether this was so in a given case calls for a comprehensive assessment of the relevant procedures.

(iii) *Application of those principles*

(α) Applicable legislative scheme and its application in the applicant's case

136. Payment-order procedures, based on the so-called principle of *inversion du contentieux* (which consists in shifting the responsibility for procedural action to the defendant), exist in many Contracting States (see paragraph 107 above). In 2008 such a procedure was also put in place at EU level (see paragraph 108 above). In 2008 that procedure was (re-)introduced in Bulgaria as well (see paragraphs 48 and 50 above). In the present case, however, what is at issue is not the typical payment-order procedure, but a subspecies of it which in Bulgaria is available to, among other types of creditors, banks. That subspecies of the procedure does not have any cap on the sums capable of being claimed through it, and in it the payment order can as a matter of course be made (should the creditor so request) immediately enforceable, without the debtor's objection against the order having any suspensive effect – which is normally a key feature of the procedure. Moreover, in that subspecies of the procedure, as it existed in Bulgaria at the relevant time, enforcement, once made immediate, could then be stayed on limited grounds only (see paragraphs 60 and 66-68 above). All that was because the bank accounting records serving as a basis to issue such a payment order were seen as reliable enough to enforce the bank's claim

before dealing with any legal challenges against the order (see paragraph 80 above).

137. Since its introduction in 2008, this subspecies of the payment-order procedure has apparently become the typical means for the recovery of bank loans in Bulgaria (see paragraph 53 above).

138. The question here is whether the initial statutory scheme, as applied in the applicant's case, deprived her of effective safeguards and caused her to bear a disproportionate and excessive burden.

139. Even though the scheme may seem an outlier when compared with those in other Contracting States (see paragraph 107 above), it is, in principle, hard to call into question the Bulgarian legislature's opting for it. Under Article 1 of Protocol No. 1, a national legislature's view about what is "in the public interest" in social and economic matters must be respected unless it is manifestly without reasonable foundation (see, among other authorities, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 49, ECHR 1999-V; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 75, ECHR 2007-III; and *Béla Németh v. Hungary*, no. 73303/14, § 33, 17 December 2020). Moreover, the Contracting States have considerable leeway on how to balance the rights of creditors and debtors in enforcement proceedings (see *Vrzić*, § 107, and *Béla Németh*, § 45, both cited above). Indeed, they have such leeway more generally in relation to any sort of balancing of competing interests of private parties under Article 1 of Protocol No. 1 (see *Kotov*, cited above, § 131).

140. In Bulgaria, the matter was debated by the legislature with the participation of various stakeholders – albeit in 2019, rather than when the relevant provisions were first being enacted in 2007 (see paragraphs 49, 52 and 65 above). It was nonetheless the subject of full consideration at that level. The matter was also examined by the Bulgarian Constitutional Court in 2012, and that court found that there existed sound reasons – relating to, among other things, the stability of the economy and the protection of depositors – to enable banks to collect the loans they extend more easily (see paragraphs 79-80 above). And clearly, for a creditor not only the ease but also the speed of collection can be of considerable importance (see, by way of illustration, *S.C. Prodcomexim SRL v. Romania (no. 2)*, no. 31760/06, §§ 41-45, 6 July 2010, and *Fomenko and Others v. Russia* (dec.), nos. 42140/05 and 4 others, §§ 181-95, 24 September 2019). The overall improvement of repayment discipline in the country concerned can also be prominent consideration (see *Vaskrsić*, cited above, § 83).

141. Nevertheless, the leeway enjoyed by the Contracting States in that domain cannot be unlimited. The fair balance required under Article 1 of Protocol No. 1 requires a State which has opted for a system envisaging the enforcement of contested bank claims in advance of their full adversarial examination by a court, and combines that enforcement with non-suspensive remedies for the debtors, to ensure that when that system comes to be applied

to consumer debtors such as the applicant – who are by definition in a weak position *vis-à-vis* the creditor bank – the courts can deal with any legal challenges intended to halt that enforcement quickly enough to give those debtors a realistic chance of halting the enforcement of unfounded or partly unfounded claims to prevent interferences with their possessions (see, *mutatis mutandis*, *Rousk v. Sweden*, no. 27183/04, § 117, 25 July 2013).

142. It is true that by borrowing considerable sums and mortgaging the assets bought with such sums to secure the loan, debtors such as the applicant voluntarily expose themselves to the risk of losing those assets in the event of default (see, *mutatis mutandis*, *Vrzić*, cited above, §§ 68-70 and 103). However, this can hardly be compared to the risk taken by someone engaging in a business venture (see, for instance, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 59, Series A no. 222, and *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 70, Series A no. 306-B). There is no indication that the applicant took the loan at issue in the present case to finance a business undertaking – on the contrary, the Bulgarian courts recognised her as being an ordinary consumer *vis-à-vis* the bank.

143. The initial examination of the bank's application for a payment order, which consisted in a merely formal review of the documents presented by the bank, and was without notice to the applicant (see paragraph 51 above), was insufficient to satisfy the above procedural requirement (see, *mutatis mutandis*, *Ravon and Others v. France*, no. 18497/03, § 30, 21 February 2008, and *Apostolovi*, cited above, § 98).

144. The three remedies which the applicant used when she was then served with the payment order turned out to be insufficient as well, for two reasons.

145. Firstly, the Sofia District Court failed to process the applicant's objection against the payment order, her appeal against the direction that the payment order be made immediately enforceable and her request that the payment order's enforcement be stayed (the last of which the applicant reiterated in December 2015) for more than three-and-a-half-years, during which time the payment order's enforcement led to the sale of the applicant's flat and to the distribution of the proceeds from that sale (see paragraphs 12-17 and 25-28 above). Although oversights by the judge in charge of the case were apparently a major contributing factor for that delay (see paragraph 20-21 above), it cannot be overlooked that at the relevant time the entire Sofia District Court was experiencing a backlog with the processing of such cases (see paragraph 50 above).

146. Secondly, at the time, and until late 2019, under the relevant rules it was not open to the Bulgarian courts to refrain from issuing an immediately enforceable payment order in favour of a bank, or then to halt its enforcement (whether pursuant to a request for a stay of enforcement or pursuant to an appeal against the direction that the payment order be made immediately

enforceable), even if the bank's claim was based on a loan to a consumer containing unfair terms (see paragraphs 51-54, 60, 62 and 66-68 above). That statutory scheme was later modified to bring Bulgarian law into line with the CJEU's case-law (see paragraph 52 *in fine* above). That case-law was of course based on the specific EU-law provisions on consumer protection (see paragraphs 98-106 above), which have no direct equivalent in the Convention and its Protocols. However, the statutory scheme existing in Bulgaria until late 2019 and applied in the applicant's case raises an issue under Article 1 of Protocol No. 1 as well. This is because, as noted in paragraph 136 *in fine* above, the presumption underlying the possibility of enforcing a payment order in favour of bank in advance of the examination of any legal challenge against it is that there is virtually no risk that the bank records on the basis of which the payment order is issued would not accurately represent the valid amount of the debt owed to the bank. That presumption is hard to sustain in the presence of unfair terms in a consumer-loan contract, which are void and thus not binding on the consumer (see paragraph 81 above).

147. That was exactly the applicant's situation. The judicially-recognised sum of her debt to the bank (EUR 24,100.97 – see paragraph 38 *in fine* above) was much lower than the sums payable under the payment order obtained by the bank (EUR 50,105.58 – see paragraph 27 (a)-(d) above), and also much lower than the sum which the bank obtained when the payment order was enforced through the sale of the applicant's flat (EUR 37,879.75 – see paragraph 28 above). This was because in the judicial-declaration proceedings which the bank brought when faced with the applicant's objection against the payment order, the courts found that some clauses in the loan contract (those fixing the penalty-interest rate and those allowing the bank to alter the contractual-interest rate unilaterally and based on unclear criteria) were unfair terms and thus void (see paragraphs 32-39 above).

(β) Additional steps allegedly capable of preventing the public sale of the flat

148. According to the Government, that situation could have been prevented if the applicant had taken some further procedural steps (see paragraphs 111 (c)-(f) and 128 above). However, according to the Court's case-law, when an applicant has pursued one remedy, he or she cannot be required to use another remedy which has essentially the same objective (see, among many other authorities, *Shesti Mai Engineering OOD and Others*, cited above, § 86, and *Grbac v. Croatia*, no. 64795/19, § 126, 16 December 2021), unless that other remedy is plainly more suited to his or her situation and offers a better prospect of success (see *Zlatanov*, cited above, § 174, with further references). An analysis of the relevant domestic provisions and the manner in which they are being applied shows that the further steps suggested by the Government were not just less likely to succeed than those taken by the applicant – they were actually either not open to her or would have been

incapable of preventing the sale of her flat and the distribution of the proceeds from that sale.

- *Appeal against the Sofia District Court’s decision to refuse the applicant’s request for a stay of enforcement of the payment order*

149. It is true that the applicant could have appealed against the Sofia District Court’s decision in October 2018 to refuse her request to stay the enforcement of the payment order (see paragraphs 17 (c) and 111 (c) above). But by that time her flat had already been sold and the proceeds distributed, two-and-a-half years earlier (see paragraphs 25-28 above), and the enforcement of the payment order was being carried out solely against her mother’s pension and her daughter’s salary (see paragraph 30 above).

- *Provision of security for the bank in support of the applicant’s request for a stay of enforcement of the payment order*

150. It was procedurally open to the applicant to base her request – which she first made in April 2015 and reiterated in December 2015 – that the immediate enforcement of the payment order be stayed on her willingness to provide security for the bank (see paragraphs 14-15, 60 (a) and 111 (d) above). But even if that was feasible for her from a financial standpoint (seeing that at the material time, before the December 2019 amendments to the Code of Civil Procedure, the amount of that security had to cover the full value of the creditor’s claim – see paragraphs 60 (a) and 64 above), this would not have prevented the sale of her flat. Under Bulgarian law, the lodging of a request for a stay of enforcement does not in itself halt the payment order’s enforcement, irrespective of the grounds on which that request is based; enforcement can only be stayed by the district court if it decides to allow that request (see paragraphs 60-61 above). In the applicant’s case, however, the Sofia District Court only dealt with her request for a stay of enforcement in October 2018, more than two-and-a-half years after her flat had been sold and the proceeds distributed (see paragraphs 17 (c) and 25-28 above).

- *Informally advising the bank and the enforcement agent of the use of remedies against the payment order*

151. For the same reasons as indicated in paragraph 150 above, it does not appear that the applicant would have been able to prevent the sale of her flat by informally advising the bank and the enforcement agent that she had objected against the payment order and appealed against the direction that the order be made immediately enforceable (see paragraph 128 above). Those two remedies had no automatic suspensive effect either (see paragraphs 60 and 66 above). It is hence unclear why the enforcement agent would have halted enforcement, or the bank agreed to that, merely because those two remedies had been put into motion.

– *Judicial declaration that the applicant did not owe the sums under the payment order*

152. As for the alleged possibility for the applicant to seek a judicial declaration that she did not owe the debt enforced via the payment order, and to ask that the order's enforcement be stayed by way of an interim measure within the framework of such separate proceedings (see paragraph 111 (e) above), it should be noted that according to the Supreme Court of Cassation's prevailing case-law such claims are inadmissible (see paragraphs 70-71 above). The four isolated decisions of one of the sections of that court going in the opposite direction, criticised as anomalous (see paragraph 72 above), and the two recent non-final judgments of the Sofia District Court which follow those decisions (see paragraph 73 above) are not sufficient to accept that this was a remedy which offered reasonable prospects of success (see, *mutatis mutandis*, *Sejdovic v. Italy* [GC], no. 56581/00, § 50, ECHR 2006-II).

– *Judicial declaration under Article 424 of the Code of Civil Procedure*

153. Nor does it appear that the applicant could have obtained such a judicial declaration under Article 424 of the Code of Civil Procedure (see paragraphs 74 and 111 (e) *in fine* above). It appears that a debtor can make an application under that provision only if he or she has not already lodged an objection against the payment order (see paragraph 75 above), whereas the applicant did lodge such an objection (see paragraph 12 above). It is, then, not evident that Article 424 would apply in her case. It was in those circumstances incumbent on the Government to cite examples in which that provision has been applied in the manner suggested by them. They did not do so (see, *mutatis mutandis*, *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 227, 12 December 2013).

– *Claim against the bank under the consumer-protection legislation*

154. It is equally true that the applicant could have, already in 2013-14, sought a judicial declaration against the bank under the consumer-protection legislation that some of the clauses in the loan contract were unfair terms and hence void (see paragraphs 81-85 and 111 (f) above, and compare, *mutatis mutandis*, *Vrzić*, cited above, § 70). However, it does not appear that by bringing such proceedings the applicant would have been able to halt the enforcement proceedings brought against her pursuant to the payment order. The Bulgarian Supreme Court of Cassation has expressly held that such a stay could not be obtained by way of an interim measure in such judicial-declaration proceedings (see paragraph 88 above). The Government did not point to any contrary examples.

– *Conclusion with respect to the preventive remedies cited by the Government*

155. It thus appears that, contrary to what was asserted by the Government, the applicant did not have at her disposal further procedural means to halt the enforcement of the payment order before it had resulted in the sale of her flat and the distribution of the proceeds. The first four of the six limbs of their non-exhaustion objection, which were joined to the merits (see paragraphs 111 (c)-(f) and 119 above), must therefore be rejected.

(γ) *After-the-fact remedies*

156. However, the Government also pointed to two after-the-fact remedies which the applicant has apparently not attempted: a reverse writ of execution and a claim for damages against the bank (see paragraphs 111 (g) and (h) and 128 above). From the perspective of Article 1 of Protocol No. 1, this argument needs to be engaged with (see *Zehentner*, cited above, § 77).

157. It is true that after the judgments in which the Sofia City Court and the Sofia Court of Appeal declared that the sums in the payment order had been due to the bank in part only became final (see paragraphs 34-40 above), it became open to the applicant to seek a reverse writ of execution against the bank and claim damages from it (see paragraphs 58 and 76-78 above). Her mother and daughter, against whom the bank had also in part enforced the payment order, sought such reverse writs of execution, and have apparently not yet obtained them solely because they applied for them to the wrong court (see paragraphs 41-45 and 59 above). Nonetheless, those two possibilities cannot wipe out adequately the consequences of the interference with the applicant's possessions. Firstly, both of them became available to her only after the substantive proceedings between her and the bank had come to a conclusion, more than six years after the public sale of her flat, a delay which was in large part due to the years-long inertia on the part of the Sofia District Court (see paragraphs 12, 17 (a), 25-26, 32 and 40 above). Secondly, the second possibility – the claim for damages against the bank – can likely take years to bear fruit, and will entail significant further procedural efforts by the applicant, as well as additional costs, which will come on top of the significant efforts and costs already engaged by her.

158. The last two of the six limbs of the Government's non-exhaustion objection which were joined to the merits (see paragraphs 111 (g) and (h) and 119 above) must therefore be rejected as well.

159. That said, the applicant's failure to have recourse to those after-the-fact remedies – and to thus attempt to mitigate or perhaps even make good the financial loss resulting from the interference – may be taken into account under Article 41 of the Convention (see, *mutatis mutandis*, *Shesti Mai Engineering OOD and Others*, cited above, § 86 *in fine*).

(δ) Conclusion

160. In sum, the rules governing the issuing and challenging of immediately enforceable payment orders in favour of banks, as in force at the relevant time, and the manner in which those rules were applied to the applicant upset the fair balance between her rights and those of the bank, and caused the applicant to bear a disproportionate and excessive burden. There has therefore been a breach of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

161. The applicant complained that she had been deprived of her only home based on the bank's claim against her, without a prior judicial examination of the dispute between her and the bank.

162. She relied on Article 8 of the Convention, which reads, so far as relevant:

“1. Everyone has the right to respect for ... his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Admissibility of the complaint

1. *Compatibility* *ratione materiae*

163. The first question which arises in relation to this complaint is whether the flat owned by the applicant and sold to enforce the payment order obtained by the bank against her was her “home” within the meaning of Article 8 § 1 of the Convention, and whether this provision thus applies.

164. According to the Court's case-law, a dwelling is someone's home within the meaning of Article 8 § 1 if that person has sufficient and continuous links with that dwelling, which is an issue of fact (see, among other authorities, *Prokopovich v. Russia*, no. 58255/00, § 36, ECHR 2004-XI (extracts); *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 253, ECHR 2015; and *Jansons v. Latvia*, no. 1434/14, § 52, 8 September 2022). Such links can be showed by presenting documents from the local administration, plans, photographs or maintenance receipts, proof of mail deliveries, statements of witnesses – or, indeed, any other relevant evidence (see *Nasirov and Others v. Azerbaijan*, no. 58717/10, § 73, 20 February 2020).

165. The parties made the following submissions in relation to that point.

(a) The parties' submissions

(i) The Government

166. The Government submitted that the flat could not be regarded as the applicant's home, for several reasons. First, she had given a different address – her permanent one – in her objection against the payment order and in the ensuing judicial-declaration proceedings. It was true that she had earlier transferred the ownership of that other flat to her mother, but the available information suggested that she had lived there throughout the relevant period. For instance, the applicant's daughter, who had the same permanent address as the applicant, had told the enforcement agent that she wished to be contacted through her mother, which suggested that the two had been living together at that address. Secondly, when the enforcement agent had inspected the flat at issue in the present case on 22 April 2015, she had recorded that no one lived there at that point, that the electricity had been cut off, and that there had been leaks in the bathroom. All that had then been repeated in the expert report on the flat's market value. Thirdly, the information in the case file suggested that the applicant did not live in Bulgaria, and it was unclear when she had settled abroad. Fourthly, she had not alleged that she had been physically evicted from the flat. Lastly, there was no direct evidence of the applicant ever living there.

(ii) The applicant

167. The applicant submitted that the material in the case file made it plain that she had used the 2005 bank loan to purchase the flat and had then lived in it for ten years. The data in the property register showed that when that flat had been taken away from her, it had been the only dwelling she owned. It was true that she had inherited a share of a house in a village located at about 500 kilometres from Sofia, but she had never lived there; that house was inhabited by her uncle's family. The enforcement agent's finding that no one lived in the flat on 22 April 2015 had only concerned that specific point in time, and could not be read to mean that she had permanently abandoned the flat. At that time, she had been abroad to find employment, but had later returned and had resumed living in the flat. In fact, she had arranged with its buyer to be allowed to inhabit it for a few more months, in return for letting the buyer have some of the furniture and paying a sum of money. She had unfortunately been unable to get in touch with the buyer to obtain an affidavit about that. After March 2016 she had for a while lived with her daughter in Airbnb accommodation. It was true that her permanent address was the flat whose ownership she had earlier transferred to her mother, but that did not mean that she had lived there. Under Bulgarian law, the permanent address was not necessarily the place where one lived. The fact that she and her daughter had the same permanent address did not, then, permit a conclusion that they lived there. She had indeed lived in that other flat until 2005, when

she had bought the flat in issue in the present case, but had never moved back there after that, letting her mother use it. In December 2017, without income or a place to live in Bulgaria, the applicant had settled in Germany. No eviction had ever taken place since she had left the flat in issue in the present case after its public sale of her own volition, without waiting to be forced out of it.

(b) The Court's assessment

168. The loan contract with the bank specified that the sum lent to the applicant was to be used for purchasing the flat in issue in the present case, but did not say whether that flat would be used by the applicant to live in or for other purposes (see paragraph 4 above). The 2010 annex to the loan contract and the concurrent surety contracts with her mother and daughter specified that this flat was their “address for correspondence” (see paragraph 6 *in fine* above). However, when in October 2014 the bank applied for a payment order against the applicant, it gave the address of the other flat where the applicant and her mother and daughter had their permanent address and whose ownership the applicant had transferred to her mother in 2005 and 2012 (see paragraphs 8 *in fine* and 46 above). The invitation which the enforcement agent sent to the applicant in March 2015 specified that this other flat was the applicant's permanent but also current address, and gave the flat which the applicant had purchased with her bank loan as her “alternative address” (see paragraph 11 *in fine* above). In all subsequent documents issued by the enforcement agent in 2015-16, the flat whose ownership the applicant had transferred to her mother was specified as her and her mother's and daughter's permanent and current address; in some of those documents the enforcement agent gave the flat which the applicant had purchased with the bank loan as “address for correspondence”, but in practice all correspondence with the applicant was passing through her lawyer (see paragraph 29 above).

169. That material is hence not sufficient to sustain a conclusion that the flat in issue in the present case was the applicant's home in 2014-16. Admittedly, as she pointed out (see paragraph 167 above), under Bulgarian law the permanent address is not necessarily the place where one lives (see paragraph 96 above). However, she said nothing about her current address, which is according to Bulgarian law the place where one lives, and which can coincide with the permanent address (see paragraphs 96 *in fine* and 97 above).

170. Although it is reasonable to assume that in 2005 the applicant bought the flat in issue in the present case to live there with her daughter (she had before that, since 1996, lived in the other flat, whose ownership she had transferred to her mother – see paragraph 46 *in fine* above), the available evidence is not sufficient to show that she was still living there in 2014-16, when the bank applied for a payment order against her, and that order was issued and enforced through the sale of that flat. The flat had already been

attached by another creditor in May 2013 (see paragraph 24 above), and the applicant must have been aware of the possibility of losing it by that time, also because she had stopped repaying her bank loan regularly already in late 2012 (see paragraph 7 above). When the enforcement agent inspected the flat on 22 April 2015, no one lived there, and the electricity had been cut off (see paragraph 22 above). The applicant did not submit any evidence in support of her assertion that after a stay abroad at that time she had resumed living in the flat (see paragraph 167 above). In fact, there is no evidence in the case file that the applicant has ever lived in that flat; the evidence about her Airbnb reservations in April 2016 (see paragraph 47 above) does not necessarily show that she used Airbnb rentals because she had had to move out of the flat just before that. It is also telling in that connection that in none of her submissions to the domestic courts the applicant asserted that the flat was her home.

171. The applicant's assertion that the flat against which the payment order was enforced was her "home" at the relevant time has therefore not been made out, and Article 8 of the Convention is therefore not applicable.

172. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and that it must be rejected in accordance with Article 35 § 4.

2. Exhaustion of domestic remedies

173. The Government's objection in that respect, which concerned not only the complaint under Article 1 of Protocol No. 1 but also that under Article 8 of the Convention, has been summarised in paragraphs 111-112 above. With respect to Article 8, the Government went on to say that the applicant had in particular failed to mention at domestic level that the flat in issue was her home. The applicant's reply to that objection has been summarised in paragraphs 113-114 above.

174. In the light of the conclusion that the complaint under Article 8 of the Convention is incompatible *ratione materiae*, there is no need to examine whether the applicant has exhausted domestic remedies in respect of it.

III. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

175. The applicant also complained (a) under Article 6 § 1 of the Convention that she had been deprived of access to a court in relation to the payment order against her, and (b) under Article 13 of the Convention that she had not had effective remedies in respect of her complaints under Articles 6 § 1 and 8 of the Convention and under Article 1 of Protocol No. 1.

176. The parties made no submissions in relation to those complaints.

177. The Court considers that in the light of the analysis under Article 1 of Protocol No. 1 (see paragraphs 136-160 above), no separate issues arise

under Article 6 § 1 or Article 13 of the Convention (see *Zehentner*, § 82, and *Vaskrsić*, § 92, both cited above). There is, then, no need to examine the admissibility or merits of these complaints.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

178. Article 41 of the Convention provides:

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

A. Pecuniary damage

1. *The applicant’s claim and the Government’s comments on it*

179. The applicant submitted that the pecuniary damage that she had suffered as a result of the breach of Article 1 of Protocol No. 1 had consisted in the loss of her flat. After its acquisition by a bona fide purchaser, it was impossible to get it back, also because that purchaser could rely on adverse possession to oppose any attempt by the applicant to reclaim it. Hence, the only way of making good the pecuniary loss suffered by her was to award her a sum of money equivalent to the current value of the flat. According to a valuation report obtained by her in July 2023, the flat’s market price was 236,500 Bulgarian leva (BGN) (equivalent to 120,921 euros (EUR)).

180. In support of her claim, the applicant presented a valuation report drawn up by a certified real estate valuation company.

181. The Government contested the claim. They pointed out that there had not been deprivation of possessions within the meaning of Article 1 of Protocol No. 1, and argued that there was no direct causal link between the breach of that provision and the damage allegedly suffered by the applicant. In particular, even if the enforcement of the payment order had been stayed, it was unclear whether the applicant would have been able to repay her debt to the bank, with the result that the sale of her flat would have been simply postponed. According to the final judgment in the judicial-declaration proceedings between the applicant and the bank, she and her sureties (her mother and daughter) did owe the bank a significant part of the debt sought to be enforced by the bank via the payment order. Moreover, the applicant could even now bring a claim for damages against the bank.

182. The Government went on to contest the credibility of the valuation report presented by the applicant, on the basis that (a) it had been drawn up by an expert privately retained and remunerated by her, which raised doubts about his impartiality and independence; that (b) the company where the expert worked had only been officially certified in April 2023, which meant that it did not have a lot of experience; that (c) the expert had not actually

inspected the flat; and that (d) the flats chosen by the expert as comparators were quite different from the applicant's flat.

2. *The Court's assessment*

183. Article 41 of the Convention empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate if national law does not allow, or allows only partial, reparation to be made. If national law and the nature of the injury make such reparation possible, this can be taken that into account under Article 41, and the award of just satisfaction can either be reduced on that basis, or this may lead to the refusal to make any award (see *Shesti Mai Engineering OOD and Others*, cited above, § 101, with further references).

184. In the present case, it was already established that the applicant could (a) seek a reverse writ of execution in relation to any sums which she has overpaid to the bank as a result of the enforcement of the payment order against her, plus interest and costs incurred in the enforcement proceedings, and (b) claim damages from the bank for any (further) damage caused by the immediate enforcement of the payment order (see paragraph 157 above). In those circumstances, there is no reason to make any award in respect of pecuniary damage (see, *mutatis mutandis*, *Mindek v. Croatia*, no. 6169/13, § 92, 30 August 2016). The applicant's claim must therefore be dismissed.

B. Non-pecuniary damage

1. *The applicant's claim and the Government's comments on it*

185. The applicant claimed EUR 10,000 in respect of the frustration and feelings of helplessness occasioned by the courts' failure to protect her rights in a timely fashion.

186. The Government invited the Court to rule that the finding of violation amounted to sufficient just satisfaction for any non-pecuniary damage suffered by the applicant. They pointed out that the Court had discretion on whether to award just satisfaction, which was required only if domestic law allowed only partial reparation, and even then, only if such an award was necessary. Alternatively, they argued that the amount claimed was excessive, in particular because the circumstances underlying the breach found in the case had been only one of the sources of the applicant's distress.

2. *The Court's assessment*

187. It can be accepted that the applicant has suffered anguish and frustration as a result of the breach of her rights under Article 1 of Protocol No. 1. Taking into account the nature of the breach and ruling in equity, as required under Article 41 of the Convention, the Court awards her EUR 5,000 in that respect, plus any tax that may be chargeable.

C. Costs and expenses

1. The applicant's claim and the Government's comments on it

188. The applicant sought reimbursement of:

(a) BGN 1,955.83 (equivalent to EUR 1,000), plus BGN 391.17 (equivalent to EUR 200) in value-added tax, incurred in lawyers' fees in respect of the proceedings before the Court;

(b) BGN 16.20 (equivalent to EUR 8.28) spent by her lawyers' firm on postage; and

(c) EUR 345.12 spent by her lawyers' firm on the translation of the observations and claims made on the applicant's behalf into English.

189. The applicant requested that any award under this head be made payable to her lawyers' firm, except for BGN 1,173.50 (equivalent to EUR 600) which she had already paid to that firm.

190. In support of her claim, the applicant submitted (a) a retainer agreement; (b) an invoice issued by her lawyers' firm; (c) a bank-transfer receipt; (d) postal receipts; and (e) a contract between her lawyers' firm and a translation company.

191. The Government submitted that the claim was not properly itemised. In particular, there was no information about the hourly rate charged by the applicant's lawyers or about how many hours they had billed. As for the expenses allegedly incurred by those lawyers' firm (see paragraph 188 (b) and (c) above), those were operating costs already covered by the fees which that firm had charged to the applicant. There was, moreover, no evidence that the sum charged by the translation company had in fact been paid by the law firm.

2. The Court's assessment

192. According to the Court's settled case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum.

193. In this case, it is not in doubt that the applicant has undertaken to pay her lawyers' firm a global sum of BGN 1,955.83 (equivalent to EUR 1,000), plus BGN 391.17 (equivalent to EUR 200) in value-added tax, and that she had already paid them half of that sum – BGN 1,173.50 (equivalent to EUR 600). No doubt arises about the necessity of incurring those lawyers' fees either – the bulk of the submissions made on behalf of the applicant concerned the alleged breach of Article 1 of Protocol No. 1.

194. There is no requirement, for the purposes of Article 41 of the Convention, that the lawyers' fees incurred by an applicant for work on his or her case before the Court be billed on an hourly basis rather than as a lump sum, and this does not in itself prevent the Court from assessing whether those

costs are reasonable as to quantum. The lawyers' fees incurred and claimed by the applicant are significantly lower than those accepted as reasonable in recent cases against Bulgaria of comparable complexity (see *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, §§ 328 and 333, 13 July 2021, and *Nikolay Kostadinov v. Bulgaria*, no. 21743/15, §§ 81 and 83, 8 November 2022). They can hence be accepted as reasonable, and are to be awarded in full: EUR 1,000, plus EUR 200, coming in total to EUR 1,200.

195. Since the sum claimed by the applicant in respect of lawyers' fees is already inclusive of value-added tax (see paragraph 188 (a) above), there is no need to specify – as is otherwise customary in the Court's practice – that any tax chargeable to her should be added to that sum.

196. As requested by the applicant (see paragraph 189 above), this sum – except for the BGN 1,173.50 (equivalent to EUR 600) that she has already paid – is to be paid into the bank account of her lawyers' firm, Ekimdzhiev and Partners. The BGN 1,173.50 (equivalent to EUR 600) which the applicant has already paid, is to be paid directly to her (compare *Stoyanova v. Bulgaria*, no. 56070/18, § 90, 14 June 2022).

197. The claim in respect of translation expenses and postage (see paragraph 188 (b) and (c) above), must be rejected. Leaving to one side the question of whether there is enough evidence that the translation expenses were actually incurred by the firm of the applicant's lawyers, there is no evidence that those expenses – or the postage, which was likewise paid by the applicant's lawyer – were then passed on to the applicant (see *Simonova v. Bulgaria*, no. 30782/16, § 68, 11 April 2023). The retainer agreement with her lawyers' firm did not stipulate that she would be liable to cover such expenses (contrast *Genov and Sarbinska v. Bulgaria*, no. 52358/15, §§ 106-07, 30 November 2021). Nor is there anything to suggest that the applicant is otherwise liable to pay them. No award can be made to the lawyers or their firm – the applicant's representatives cannot seek just satisfaction for themselves, since they are not an "injured party" within the meaning of Article 41 (former Article 50) of the Convention (see *Luedicke, Belkacem and Koç v. Germany* (Article 50), 10 March 1980, § 15, Series A no. 36; *Airey v. Ireland* (Article 50), 6 February 1981, § 13, Series A no. 41; *Campbell and Cosans v. the United Kingdom* (Article 50), 22 March 1983, § 14 (a), Series A no. 60; and *Simonova*, cited above, § 68 *in fine*).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Joins limbs three to eight (see paragraph 111 (c)-(h) above) of the nine limbs of the Government's objection that the applicant has not exhausted domestic remedies in respect of her complaint under Article 1 of Protocol No. 1 to the merits of that complaint, and *rejects* those limbs of the objection;

2. *Declares* the complaint under Article 1 of Protocol No. 1 admissible, and the complaint under Article 8 of the Convention inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* that there is no need to examine the admissibility or merits of the complaints under Article 6 § 1 and Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which this judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,200 (one thousand two hundred euros), in respect of costs and expenses; EUR 600 (six hundred euros) of this sum is to be paid directly to the applicant, and the remainder into the bank account of the firm of her legal representatives, Ekimdzhiev and Partners;
 - (iii) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President