



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

FIFTH SECTION

CASE OF PATRIKOVA v. BULGARIA

(Application no. 71835/01)

JUDGMENT

STRASBOURG

4 March 2010

FINAL

22/11/2010

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

In the case of Patrikova v. Bulgaria,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 71835/01) 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, Mrs Galina Todorova Patrikova, (“the applicant”), on 8 March 2001.

2. The applicant was represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs M. Dimova, of the Ministry of Justice.

3. On 9 July 2007 the President of the Fifth Section decided to communicate the complaints concerning the applicant's property rights and the length of the domestic proceedings for damages to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in Isperih. At the relevant time she was a sole trader, registered under the name ET GATZI-92 Galina Patrikova. Under Bulgarian law her business did not have a distinct legal personality. She traded in alcoholic beverages and tobacco, which are considered as excise duty products under Bulgarian tax law.

1. The seizure of the applicant's merchandise and ensuing administrative proceedings

5. The applicant possessed a licence, issued in 1994, for wholesale trading in excise duty products.

6. On 6 June 2000 the Razgrad tax authority inspected one of the two storehouses where the applicant held her merchandise, seized all tobacco and alcoholic products found therein and by decision of 27 June 2000 fined the applicant. The decision was based on the tax authority's opinion that the relevant law required a separate license for storage of excise duty products whereas the applicant only had a trading license.

7. The authorities seized a significant quantity of tobacco products, 11,864 bottles of wine and 86,638 bottles of other alcoholic beverages with higher alcohol content (98,502 bottles in total). They were moved to a storage building used by the Razgrad tax authority. At the time of seizure, the total value of the merchandise was the equivalent of approximately 150,000 euros (EUR). The fine imposed on the applicant was in the amount of 221,139 Bulgarian leva (BGN), the equivalent of approximately EUR 115,000.

8. It appears that, during the seizure, part of the merchandise was damaged or destroyed due to improper handling.

9. The applicant lodged an appeal. On 20 July 2000 the Ispirich District Court decided in her favour and quashed the Razgrad tax authority's decision. The court found that the relevant law did not require a storage license separate from the trading license. In the ensuing cassation proceedings, on 11 December 2000 the Razgrad Regional Court reversed the decision and upheld the seizure and fine.

10. In January 2001 the applicant filed a request for reopening on the basis of newly obtained information that storage licenses had never been issued in the practice of the relevant authorities. On 5 October 2001 the District Court agreed to reopen the proceedings and quashed the Razgrad tax authority's decision of 27 June 2000, stating, *inter alia*, that there was no support in the relevant law for the view that a separate storage license was required. On 18 January 2002 the Regional Court upheld the District Court's judgment.

2. The criminal proceedings against the applicant and the attachment of the same merchandise as evidence in those proceedings

11. On 7 June 2000 criminal proceedings were instituted against the applicant on suspicion of tax evasion, selling excise tax goods without the requisite tax labels and illicit trading in excise goods.

12. On 11 September 2000, the Ispirich District Prosecutor's Office ordered the attachment as evidence of the merchandise that had already been seized by the Razgrad tax authority.

13. The applicant's ensuing appeals were dismissed on 16 October 2000 by the Razgrad Regional Prosecutor's Office and on 17 January 2001 by the Ispirih District Court.

14. In January 2001 a prosecutor from the Razgrad Regional Prosecutor's Office, having inspected the file, noted that there was no evidence of a criminal offence, that the charges against the applicant were unclear and incoherent and that the investigation had not been conducted properly. Ensuing instructions were given to the Ispirih District Prosecutor.

15. On 23 August 2001 the criminal proceedings were terminated by the Ispirih District Prosecutor for lack of evidence. The decision stated that the attached merchandise remained at the disposal of the Razgrad tax authority.

16. On the same day, 23 August 2001, the same prosecutor in Ispirih instituted a fresh inquiry on the suspicion that the applicant might have used counterfeit excise tax labels on the seized bottles of alcohol.

17. On 27 February 2002 a police investigating officer from Ispirih visited the tax authority's storage building and inspected the alcoholic beverages seized from the applicant on 6 June 2000. He drew up minutes noting the presence of 52,118 bottles. The minutes further stated that, after the inspection, the bottles had been seized. The exact legal meaning of this statement is unclear, having regard to the fact that it did not concern attachment and that the bottles were not in fact seized but remained in the Razgrad Tax Authority's storage building.

18. On 22 April 2002, an expert appointed by the police filed her report stating that the labels found on a sample of more than 6,000 bottles (out of 52,118) had been forged.

19. On 13 March 2003 the Ispirih District Prosecutor dropped the criminal charges against the applicant as there was no evidence that she had known that they were forged.

20. The prosecutor ordered that the proceedings should continue against an "unknown perpetrator" and that the seized bottles should be placed under the control of the local tax authority which was competent to decide on a possible confiscation of the bottles carrying counterfeit excise tax labels.

21. On 19 March 2003 the applicant appealed, arguing that there was no valid legal ground to withhold the bottles since the charges against her had been dropped. The appeal was not examined until December 2005. On 15 December 2005 the District Court quashed the prosecutor's order on grounds unrelated to the applicant's appeal. It noted that only a sample of the merchandise had been analysed for counterfeit labels and that, therefore, all bottles had to be attached in relation to the pending criminal proceedings for forgery by an unknown perpetrator.

22. The applicant has not been informed of any new developments since December 2005.

3. The applicant's attempts to have the merchandise sold before it became non-marketable

23. On 18 August 2000, shortly after the seizure, the applicant wrote to the Razgrad tax authority stating that the seized merchandise was perishable and should be sold to avoid loss of value. She requested permission to sell it and offered a bank guarantee for its value. The Razgrad tax authority did not grant the request.

24. On 7 August 2001 the Razgrad tax authority wrote to the District Prosecutor's Office in Ispirich seeking their approval to sell the merchandise at an auction, having regard to the fact that it was perishable. The request was not followed up.

25. On 15 October 2001 the applicant wrote to the Razgrad tax authority insisting that the alcoholic beverages must be sold immediately since the validity of the excise tax labels on them expired on 31 October 2001 and also because new regulations on alcohol content would make it impossible to sell the bottles after 1 January 2002. The applicant did not receive a reply.

26. Between 2001 and 2005, the applicant also addressed to the Razgrad tax authority several unsuccessful requests for the appointment of experts to assess the damage caused during the seizure in June 2000 and any damage caused by inadequate storage conditions.

4. The return to the applicant of the seized tobacco products and the controversy concerning the alcoholic beverages that remained in State hands

27. On 4 February 2002 the applicant wrote to the Razgrad tax authority seeking the restitution of the seized merchandise on the basis that the seizure of 6 June 2000 had been declared unlawful and the decision of 27 June 2000 had been repealed by final judgment of 18 January 2002. The tax authority agreed and on 2 March 2002 the applicant received back all tobacco products. She refused, however, to collect the bottles of wine and other alcoholic beverages as in her view a prior assessment of their condition was needed.

28. By letters of May, September and December 2002 the tax authority reiterated its invitation to the applicant to remove the remaining merchandise, indicating the dates on which this could be done, and warned her that the authority would not be responsible for any damage if she failed to collect the bottles. The applicant was also warned that in such case the bottles might be treated as abandoned and confiscated. The applicant replied, stating that the merchandise had lost its value and that experts should examine it to determine the damage it had sustained. She did not appear on the dates indicated by the tax authority. In her letter of 2 October 2002, addressed to the local tax authority, she explained that she had brought an action for damages against the authority and the relevant

prosecutors and that there was “no reason [for her] to collect the merchandise which had become unfit for use”. In her letter of 14 December 2002 the applicant added that the tax authority should order an expert examination of the bottles.

29. The contacts on this issue continued. According to the applicant, in meetings with the tax authority's representatives she expressed willingness to hire an expert and organise the assessment of the merchandise. At a meeting held on 6 April 2004, the parties had allegedly been close to an agreement.

30. On 12 April 2004 the director of the Razgrad tax authority issued an order under section 106(5) of the Tax Proceedings Code, declaring the merchandise abandoned property acquired by the State. The text of the decision referred to all alcoholic beverages (98,502 bottles) as described in the seizure order of 6 June 2000 (see paragraphs 6 and 7 above) and mentioned that the merchandise was held in a storage house under the responsibility of the tax authority. The applicant appealed, stating that the goods had not been abandoned.

31. By judgment of 11 May 2006 the Varna Regional Court, noting that 52,118 bottles had been seized as evidence in criminal proceedings (see paragraph 17 above) and that the provisions on acquisition of abandoned property by the tax authorities were inapplicable in such situations, quashed the acquisition order in so far as it concerned those bottles. The Regional Court found that with regard to this part of the merchandise the question whether or not the applicant had undertaken the necessary steps to recover it from the tax authorities was irrelevant, since the tax authorities did not have the power to release goods seized as evidence in criminal proceedings.

32. As regards the remainder of the alcoholic beverages (46,384 bottles), the Regional Court upheld the order of 12 April 2004. It found, *inter alia*, that pursuant to an amendment to the Tax Procedure Code (see paragraph 58 below), the tax authorities automatically acquired as abandoned merchandise held by them in the event of its owner not having sought to recover it within nine months of 13 May 2003, the date of the amendment's entry into force. Noting that the applicant had not made requests to recover the bottles between 13 May 2003 and 13 February 2004 and considering that the events outside this nine-month period were irrelevant, the courts found that the tax authorities had lawfully acquired the merchandise. The court rejected the applicant's argument that all relevant events, before or after the statutory nine-month period, should be taken into consideration.

33. On 30 March 2007 the Supreme Administrative Court upheld the Regional Court's judgment.

5. The applicant's claim for damages against the State

34. On 17 May 2002 the applicant brought a claim for damages against the Razgrad tax authority, the police and the prosecuting authorities in

respect of the unlawful seizure of her merchandise and the authorities' failure to allow the marketing of the alcoholic beverages before the expiry of their period of validity. She claimed the full value of the alcoholic beverages, stating that they had become improper for use, as well as compensation for loss of opportunity and moral damage.

35. Between June and November 2002, four adjournments were caused by failure to appear of one or more representatives of the defendant State organs.

36. At the hearing on 20 November 2002 the applicant requested the recusal of the presiding judge as he had participated in the administrative proceedings concerning the June 2000 seizure order against the applicant. The judge accepted the request and withdrew.

37. The next hearing was held on 4 December 2002. The applicant made requests for the collection of evidence.

38. A hearing was held on 12 March 2003.

39. The next hearing, listed for 14 May 2003, could not proceed as one of the defendant State organs had not been summoned.

40. On 11 June 2003 the court admitted documents in evidence, requested information about the pending criminal investigations and appointed an expert to report on the damage caused to the bottles still held by the tax authority and on the applicant's loss of profit resulting from the seizure of her merchandise.

41. In November 2003 the applicant submitted to the Varna Court of Appeal a complaint under Article 217a of the Code of Civil Procedure. In December 2003 the Varna Court of Appeal rejected the complaint.

42. Thereafter, the Regional Court held hearings on 24 September, 27 October and 26 November 2004 and on 25 March, 29 April, 20 May, 27 May, 30 September, 28 October and 25 November 2005.

43. It appears that most hearings were adjourned as the parties sought the production of additional documents and exchanged objections in respect of the admissibility of pieces of evidence.

44. At the hearing on 27 January 2006, the expert appointed to report on the damage to the merchandise and the applicant's loss of profit declared that she had become a member of the Bar and could no longer act as an expert. The court appointed three experts to present a report on the same subject.

45. At some of the hearings that followed, on 14 April, 31 May, 27 July, 10 November and 8 December 2006, the three newly appointed experts complained that the defendant State bodies had not given them access to the relevant documents. The court issued disclosure orders.

46. Hearings were held on 26 January, 9 March and 29 June 2007 and the examination of the case was again adjourned. The hearing held on 29 June 2007 was adjourned as one of the three experts had not been present.

47. On an unspecified date between June and September 2007 the experts appointed by the court submitted their report. The report only concerned analysis of financial documents concerning the activities of the applicant as a merchant and assessment of the loss of profit occasioned by the seizure of her merchandise. The experts did not provide information about missing and damaged bottles, stating that they would submit an additional report later.

48. On 26 October 2007 the court examined and refused the defendants' requests for the judge's recusal and for suspension of the proceedings. The court also dealt with the defendants' objections against the accuracy of the experts' report and adjourned the matter for further deliberation.

49. The hearings listed for 5 December 2007 and 20 February 2008 did not proceed as the experts had not submitted their additional report.

50. The hearing listed for 26 March 2008 was adjourned on unspecified grounds.

51. The next hearing was scheduled for 20 October 2008 but was adjourned as the applicant's lawyer had fallen ill. The court noted that two of the experts appointed to present a joint opinion refused to work together and invited the applicant to propose another expert.

52. In January 2009 the newly appointed experts presented a report, which was discussed at the hearing held on 25 February 2009. The experts gave contradictory answers to some of the parties' questions. Also, the defendants insisted on additional research by the experts. The court did not admit the report in evidence, instructed the experts to submit a new report clarifying their findings and adjourned the hearing until 15 April 2009.

53. On 15 April 2009 the hearing was adjourned as one of the experts had had an accident and was unable to attend.

54. On an unspecified date one of the experts was replaced.

55. On 18 June 2009 the experts submitted their report.

56. At the hearing held on 24 June 2009 the court noted that the report had been signed by one of the experts only and had not been submitted sufficiently in advance of the hearing. It adjourned the examination of the case and scheduled the next hearing for 16 September 2009.

6. Other events

57. As a result of the seizure of her merchandise the applicant became insolvent. She eventually discontinued her commercial activities. In 2006 her business was declared insolvent.

II. RELEVANT DOMESTIC LAW

58. Pursuant to an amendment of 13 May 2003 to the Tax Procedure Code 1999, as in force at the relevant time, commodities that have not been collected by their owner for more than nine months following their seizure

by the tax authorities should be deemed abandoned and become State property (Article 106(5) and additional provision 1(16), in force between 13 May 2003 and 31 December 2005). Pursuant to paragraph 50 of the final and transitory provisions to the May 2003 amendment, in cases of seizures predating the amendment, the nine-month period started to run from the date of the amendment's entry into force.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

59. The applicant complained that the length of the proceedings for damages, which she instituted in 2002, had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. This provision, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

60. The Government submitted that the applicant had not exhausted all domestic remedies as she had not filed a “complaint about delays” under Article 217a of the Code of Civil Procedure, as in force at the relevant time.

61. The applicant replied that she had done so in November 2003 but the complaint had been dismissed. She considered that, in any event, the remedy referred to by the Government was not effective as it could not lead to a finding that her right to a trial within a reasonable time had been violated and could not secure compensation.

62. The Court, noting that the applicant made use of the remedy referred to by the Government (see paragraph 41 above), dismisses their objection regarding the exhaustion of domestic remedies.

63. The Court further notes that the complaint under Article 6 § 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

64. The period to be taken into consideration began on 17 May 2002 and on 16 September 2009 had not yet ended, with the proceedings still pending

at first instance before the Razgrad Regional Court. On that date it had already lasted seven years and four months for one level of jurisdiction.

65. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

66. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above and *Petko Ivanov v. Bulgaria*, no. 19207/04, 26 March 2009).

67. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. The Court notes, in particular, that most adjournments had been caused by reasons imputable to the authorities – failure to summon some of the parties, failure of the defendant State organs to provide access to relevant documents and to submit all their evidence at the beginning of the proceedings and delays in the work of the court-appointed experts (see paragraphs 35, 36, 39, 44-49 and 54-56 above). The Court also notes that the delay imputable to the applicant did not exceed two or three months (see paragraphs 34 and 48 above).

68. There has accordingly been a breach of Article 6 § 1.

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

69. The applicant complained that as a result of a series of unlawful actions by the tax and prosecuting authorities she had been deprived of her property and suffered pecuniary losses in violation of 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.”

70. The Government contested that argument.

A. Admissibility

71. The Government drew attention to the fact that the civil proceedings for damages instituted by the applicant were still pending. They also noted that the applicant was free at any time to renew her request to the prosecuting authorities for the release of the alcoholic beverages attached as evidence in the criminal proceedings against an unknown perpetrator and appeal before a court in case of refusal. The Government also stressed that the applicant had not collected the alcoholic beverages when invited to do so after January 2002 and had not sought their restitution. On the basis of the above the Government invited the Court to reject the complaint for failure to exhaust all domestic remedies.

72. The applicant replied that she had made normal use of the available remedies. The claim for damages, however, was not an effective remedy since the domestic courts were bound by the finding of the Supreme Administrative Court of 30 March 2007 that in 2004 the alcoholic beverages had lawfully been declared abandoned property to be acquired by the State. That finding had been arbitrary and deprived the applicant of any hope of obtaining redress. The applicant also stated that she could not expect a favourable outcome from a fresh request to the prosecuting authorities for the release of the alcoholic beverages attached as evidence in the criminal proceedings. That was so because there had been no new developments to serve as a basis for such a request.

73. The Court observes that the civil proceedings, which concern compensation for the consequences of the seizure of the applicant's merchandise in June 2000, were instituted by her in May 2002 and that as of September 2009, more than seven years and four months later, were still pending before the first level of jurisdiction. Furthermore, it is unclear whether the Razgrad Regional Court eventually succeeded in securing the central piece of evidence necessary in these proceedings – an expert assessment of the disputed bottles and the damage they had suffered (see paragraphs 34 and 44-56 above). As a consequence of their excessive length and the Regional Court's failure to collect the evidence decisive for their outcome, the proceedings in question have proved ineffective. The Court cannot accept, therefore, that the applicant is bound to await their conclusion indefinitely (see, *mutatis mutandis*, *Mikheyev v. Russia*, no. 77617/01, §§ 86, 120 and 121, 26 January 2006). It follows that the Government's objection in this respect must be rejected.

74. The Court also finds that the Government have not demonstrated convincingly that repeated requests to the prosecuting authorities for reconsideration of seizure and attachment orders were effective remedies which had to be exhausted in the circumstances of the present case, having regard, in particular, to the fact that the applicant made use of the available

judicial remedy and the attachment at issue was ordered by a court (see paragraph 21 above).

75. As regards the Government's argument that the applicant had not collected the alcoholic beverages after the judgment of January 2002 declaring their seizure unlawful, the Court considers that it does not concern the exhaustion of a remedy but goes to the merits of the applicant's complaint that her merchandise was unlawfully retained. Accordingly, it will examine it below.

76. It follows that the complaint under Article 1 of Protocol No. 1 cannot be rejected for failure to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention.

77. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

78. The applicant considered that there had been a series of unlawful State acts violating her property rights: the unlawful seizure of the alcoholic beverages in 2000, the unlawful damage caused to the bottles and the “disappearance” of some of them when they were in State hands, the retention of the remaining bottles after 2002 and the decision of 2004, upheld by the courts in 2007, to acquire them as abandoned. In the applicant's view, the above unlawful State acts and the obstruction she had encountered when trying to defend her rights could only be explained by efforts to cover up the “disappearance” of a significant quantity of merchandise during the period 2000-2002, when it had been kept by the local tax office.

79. The Government considered that the applicant had not taken all necessary steps to recover the bottles after 2002. They referred, in particular, to the findings of the domestic courts that the applicant had not requested the return of the bottles within the relevant nine-month period (see paragraph 32 above).

2. The Court's assessment

80. The Court considers that three complaints are discernible in respect of the impugned events and will examine them below. The first concerns the seizure in June 2000 of tobacco products and alcoholic beverages and the ensuing pecuniary loss, allegedly caused by missing and damaged bottles and the authorities' refusal to allow that the merchandise be sold while it was still marketable and fit for consumption. The second concerns the

alleged retention of the seized alcoholic beverages between January 2002 and April 2004, when they were declared abandoned. The third concerns the tax authorities' decision of April 2004, upheld by the courts by final judgment of March 2007, to declare them abandoned and acquire them on that ground.

(a) The seizure of June 2000 and the ensuing damage and pecuniary loss

81. The Court notes that in June 2000 the seizure of the applicant's merchandise was ordered as a sanction for her allegedly having breached relevant regulations (see paragraph 6 above). The applicant's complaint that this seizure, the manner in which the seized merchandise was handled and the resulting damage were unlawful and violated Article 1 of Protocol No. 1 therefore falls to be examined under the second paragraph of this provision, as it concerns measures of control of the use of property (see *AGOSI v. the United Kingdom*, 24 October 1986, § 51, Series A no. 108, and, as a recent example, *Grifhorst v. France*, no. 28336/02, §§ 84-86, 26 February 2009).

82. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). The requirement of lawfulness, within the meaning of the Convention, demands compliance with the relevant provisions of domestic law and compatibility with the rule of law, which includes freedom from arbitrariness (see *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, § 42 and *Kushoglu v. Bulgaria*, no. 48191/99, §§ 49-62, 10 May 2007).

83. In the present case it has been established by final decision of the domestic courts that the seizure of the applicant's merchandise in June 2000 was unlawful under domestic law (see paragraph 10 above). It is furthermore significant that the seizure was ordered in flagrant disregard of the relevant legal requirements – the order was issued on grounds that the applicant did not possess a storage license, while in reality such licenses were not provided for by law and had never been issued in the practice of the relevant authorities (*ibid*).

84. The Court also observes that by January 2002, when the seizure was declared unlawful and the return of the remaining alcoholic beverages to the applicant became in principle possible, part of the merchandise had become unfit for consumption or non-marketable. The applicant's efforts to convince the tax administration to sell it while it was still marketable had remained without response (see paragraphs 23-25 above).

85. Furthermore, when the police inspected the applicant's merchandise held in the tax authority's storage house on 27 February 2002, they noted the presence of 52,118 bottles only, while a significantly larger quantity, 98,502 bottles, had been seized from the applicant in June 2000 (see paragraphs 7 and 17 above). It is true that in its decision of 21 April 2004 declaring the

beverages abandoned property to be acquired by the State, the Razgrad tax authority referred to all 98,502 bottles, allegedly still kept in the storage house. However, the description of the beverages in that decision was not based on a fresh inspection but merely reproduced the list drawn up in June 2000 (see paragraph 30 above).

86. The Court is also struck by the fact that in the civil proceedings for damages, instituted by the applicant in May 2002 and still pending, State institutions, apparently including the Razgrad tax authority, denied the court appointed experts access to relevant documents. Also, it appears that despite the applicant's repeated requests, an assessment of the remaining merchandise and the value of the missing and damaged bottles was never undertaken (see paragraphs 26, 45 and 47 above).

87. In these circumstances, noting that the Government have not disputed the applicant's claim that a very significant number of the seized bottles disappeared between June 2000 and February 2002, the Court finds it established that the authorities were responsible for an unlawful loss of and damage to the applicant's property held by them.

88. The Court further notes that the Government have not provided convincing evidence disproving the applicant's allegation that she had been the victim of an arbitrary abuse of power by the Razgrad tax authority.

89. Having regard to the above the Court finds that the measures enforced against the applicant were unlawful and arbitrary. It follows that there has been a violation of Article 1 of Protocol No. 1 in respect of the June 2000 seizure and the ensuing pecuniary losses.

(b) The alleged unlawful retention of the alcoholic beverages after January 2002

90. The parties are in disagreement on the question of whether the authorities or the applicant were responsible for the fact that the alcoholic beverages were not returned to the applicant after January 2002.

91. In so far as the Government alleged that the applicant had not collected the merchandise when invited to do so by the Razgrad tax authority, the Court observes that despite the applicant's repeated requests, the tax authority did not undertake a prior assessment of the merchandise. The applicant's refusal to collect the remaining bottles without prior inspection was understandable, having regard to the fact that since their seizure a significant quantity had become unfit for consumption or non-marketable or had disappeared (see paragraphs 23-25, 28 and 34 above).

92. It is true that some of the applicant's statements at the relevant time may be interpreted as meaning that she was reluctant to collect the bottles (see paragraph 28 above). It is also true that in May 2002 she brought a civil action claiming compensation for the full value of the merchandise, apparently based on her position that the remaining goods had lost their value (see paragraph 34 above). In the Court's view, however, having regard

to the Razgrad authority's refusal to proceed with an official inspection of the merchandise, these facts cannot lead to the conclusion that the applicant, not the tax authority, was responsible for the retention of the alcoholic beverages.

93. In any event, it is doubtful whether the tax authority was free to return the alcoholic beverages to the applicant after 27 February 2002, when the police ordered their seizure as evidence in criminal proceedings concerning forgery of excise tax labels (see paragraph 17 above). While the seizure order of 27 February 2002 only concerned 52,118 bottles (out of the 98,502 bottles seized in June 2000), it appears that this was the whole quantity found on 27 February 2002 in the tax authority's storage house, the remaining bottles having gone missing. It may appear, therefore, that the negotiations between the applicant and the tax authority on the return of the alcoholic beverages after February 2002 were without relevance, the merchandise having been retained on other grounds (see paragraphs 27-29, 31 and 34 above).

94. The lawfulness and justification of the retention ordered in the context of the criminal proceedings must therefore be examined by the Court.

95. Temporary seizure of evidence in the context of pending criminal proceedings is in principal a measure that is justified under the second paragraph of Article 1 of Protocol No. 1 (see *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A).

96. In the present case, the Court sees no reasons to doubt that the seizure of February 2002 was genuinely necessary, noting, in particular, that the applicant never disputed the police expert's finding that all bottles from a sample of over 6,000 carried forged excise tax labels (see paragraph 17 above).

97. The Court observes, however, that the exact legal nature under domestic law of the initial seizure of 27 February 2002 is unclear. It was only in 2005 when the seizure was upheld by a court (see paragraphs 17 and 21 above).

98. Furthermore, the alcoholic beverages were retained despite the fact that the investigation, which after March 2003 continued against an unknown perpetrator, never made any progress (see paragraphs 19-22 above). It is difficult to accept that the authorities were entitled to retain the applicant's merchandise indefinitely in the context of dormant criminal proceedings. The Government have not submitted information about any new developments since December 2005. While the tax authorities apparently had legal grounds to confiscate the bottles which carried forged labels (see paragraph 20 above), this was never done and they remained the property of the applicant. It appears that an examination of the remaining

bottles in order to establish whether they carried forged labels was not undertaken.

99. In these circumstances, assessing the evidence adduced by the parties and the relevant context (see paragraphs 8, 10, 17, 23-29 and 89 above), the Court considers that the retention of the alcoholic beverages after January 2002 cannot be characterised as a lawful and justified measure. Therefore, it violated Article 1 of Protocol No. 1.

(c) The decision to acquire part of the merchandise as abandoned

100. The Court observes that the Bulgarian courts upheld the tax authority's decision of 12 April 2004 only insofar as it concerned 46,384 bottles (out of the 98,502 bottles seized in June 2000) (see paragraphs 30-33 above). As noted above, however, it is unclear whether the 46,384 bottles in question actually existed in April 2004 or had gone missing before that (see paragraphs 7, 8 and 17 above). It is thus unclear whether the applicant was deprived of this part of the merchandise by virtue of the decision of 12 April 2004 or as a result of the loss and damage in respect of which the Court already found a violation of Article 1 of Protocol no. 1 of the Convention (see paragraphs 87-89 above).

101. Assuming that the decision to acquire part of the applicant's alcoholic beverages as abandoned concerned bottles which actually existed, the Court must examine the applicant's complaint that the resulting deprivation of property was arbitrary and thus contrary to Article 1 of Protocol No. 1 to the Convention.

102. In the Court's view, the domestic provisions according to which the tax authorities acquired as abandoned merchandise held by them in the event of its owner not having sought to recover it for a period of nine months (see paragraphs 32 and 58 above) cannot be seen as problematic under Article 1 Protocol No. 1. Its automatic application to the events in the applicant's case, however, without regard to the particular context – the tax authorities' unlawful acts against the applicant and the proceedings for damages which opposed them – cannot but be described as arbitrary. The relevant context made it clear beyond doubt that the merchandise in question was the object of pending disputes and not abandoned. By refusing to take into account this context and applying a formalistic approach, the Bulgarian courts delivered arbitrary judgments upholding an unlawful deprivation of property contrary to Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

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

A. Damage

1. Pecuniary damage

(a) The parties' submissions

104. In respect of the alcoholic beverages, the applicant claimed their value, which was BGN 125,151, according to her accountancy books and the assessment of experts and, in addition, BGN 128,883 for interest on the above amount for the period from 6 June 2000 (the date of the seizure) to 31 January 2008 (the date on which the applicant submitted her just satisfaction claims).

105. The applicant also claimed BGN 26,480 in respect of interest on the value of the tobacco products (assessed at BGN 104,581) which were seized on 6 June 2000 and returned on 2 March 2002, calculated for the period between those two dates.

106. The applicant further claimed BGN 29,916 in respect of lost profits concerning the tobacco products and the alcoholic beverages taken together.

107. The above amounts taken together are the equivalent of approximately EUR 159,200.

108. In support of her claim the applicant submitted a report drawn up by Mr I.B., one of the court experts who had been appointed in the civil proceedings for damages before the Razgrad Regional Court. Mr I.B.'s report was drawn up at the applicant's request. In calculating the value of the merchandise, he relied on the applicant's accounting books. He calculated the alleged loss of profit on the basis of the applicant's profit in 1999, her last full year of normal commercial activity, applying the assumption that the situation on the relevant market remained unchanged.

109. The applicant also submitted a copy of the experts' report to the Razgrad Regional Court of September 2007 (see paragraph 47 above) and copies of the minutes of several hearings before that court, held in 2007, 2008 and 2009, from which it transpires that the figures indicated in Mr I.B.'s report submitted for the purposes of the Strasbourg proceedings correspond to the figures proposed in the domestic proceedings by the other experts appointed by the Razgrad Regional Court.

110. The Government did not comment.

(b) The Court's assessment

111. The Court notes at the outset that the Government did not comment on the applicant's calculations, which were based on the opinion of experts appointed in the domestic judicial proceedings. In these circumstances, the Court sees no reason to question the accuracy of the figures presented by the applicant in respect of the merchandise's value.

112. Having regard to its findings under Article 1 Protocol No. 1 (see paragraphs 89, 99 and 102 above), the Court considers that the applicant has suffered pecuniary loss as a direct consequence of the unlawful seizure of her merchandise in June 2000 and the damage and losses which ensued, the unjustified retention of the alcoholic beverages after January 2002 and their confiscation as abandoned.

113. It notes, however, that the domestic proceedings for damages brought by the applicant are still pending. While it is true that those proceedings have been excessively lengthy, in violation of Article 6 § 1 of the Convention, it remains the fact that they may result in damages being awarded to the applicant in respect of some of her claims. Therefore, the Court will award just satisfaction under Article 41 of the Convention only in respect of damage that cannot be repaired in the pending domestic proceedings.

114. It notes in particular that the retention of the alcoholic beverages after January 2002 by the tax and investigation authorities, as well as the acquisition of part of them in April 2004 "as abandoned", are considered lawful acts under domestic law (see paragraphs 21 and 33 above). It follows that the applicant stands no chance of obtaining reparation for the consequences of the above acts, which the Court found to be in breach of Article 1 of Protocol No. 1.

115. As regards the remaining claims of the applicant, which concern losses resulting from the seizure of her merchandise in June 2000, declared unlawful by the domestic courts, the Court considers that the relevant domestic law allows in principle for reparation to be made and, accordingly, will not award just satisfaction under Article 41. In particular, as the applicant herself maintained, the alcoholic beverages had lost most of their value before January 2002, as a direct result of the unlawful seizure in June 2000 and the authorities' refusal to sell the perishable goods soon after that (see paragraphs 7, 10, 17, 23-25 and 28 above). The Court cannot speculate on the outcome of the pending civil proceedings for damages instituted by the applicant, which may result in an award being made to her in respect of at least part of this alleged damage, seeing that according to the latest information provided to the Court she has remained the lawful owner of 52,118 of the bottles seized from her (see paragraph 31 above).

116. In addition, the Court observes that the applicant has not disputed the police experts' findings that more than 6,000 bottles of those seized in June 2000 carried forged excise tax labels. The Court will take this fact into consideration. It cannot, however, draw inferences from this fact in relation to the remaining bottles (approximately 92,000) which were never analysed for possible counterfeit labels (see paragraphs 7 and 18-22 above).

117. On the basis of the above considerations the Court considers it appropriate to proceed on the basis that the unjustified retention of the alcoholic beverages after January 2002 and the arbitrary decision to acquire part of them in April 2004 "as abandoned" resulted in the applicant losing 35% of the value of the alcoholic beverages – EUR 22,360 (approximately equivalent to 35% of BGN 125,151).

118. In addition, the applicant is entitled to compensation for loss of opportunity, based on the above amount, for the period after January 2002. Having regard to the material at its disposal, the Court awards EUR 10,000 under this head.

119. In so far as the applicant formulated additional claims for interest and loss of profit, the Court notes that she has failed to substantiate the relationship between them, both being in substance claims for compensation for loss of opportunity. Furthermore, the amounts claimed for loss of profit were calculated globally on the basis of extrapolation of the applicant's 1999 commercial results and the Court finds them speculative (see paragraph 108 above).

120. The applicant should be paid, therefore, EUR 32,360 in respect of pecuniary damage.

2. Non-pecuniary damage

121. The applicant claimed EUR 20,000 in respect of the distress she had suffered as a result of the unlawful acts of the authorities and the excessively lengthy proceedings.

122. The Government did not comment.

123. Deciding on an equitable basis, the Court awards the applicant EUR 7,000 under this head.

B. Costs and expenses

124. The applicant also claimed EUR 161,330 for 2,309 hours of legal work in the domestic proceedings, including in all criminal proceedings in which the applicant was involved, at the hourly rate of EUR 70. The applicant requested that this sum should be paid directly into the bank account of her legal representative in the domestic proceedings, Mr O. Mihaylov. In support of this claim the applicant submitted a written agreement between her and her legal representative.

125. The applicant also claimed EUR 4,200 for 60 hours of legal work on the proceedings before the Court at the hourly rate of EUR 70. She requested that this sum should be paid directly into the bank account of her legal representative before the Court. In support of this claim the applicant submitted a written agreement between her and her legal representative and a time sheet.

126. The Government did not comment.

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

128. With regard to the claim concerning the domestic proceedings, the Court notes that it has found violations of the Convention in relation to the applicant's merchandise and the excessive length of the civil proceedings for damages. Therefore, it cannot be considered that the expenses made in relation to the criminal charges against the applicant were directly relevant to the violations found in the present case. Furthermore, the applicant has not submitted a time-sheet and the manner in which the 2,309 hours of legal work were calculated is unclear. In these circumstances, regard being had to the information in its possession, the Court considers it reasonable to award the sum of EUR 8,000 for costs in the domestic proceedings.

129. The Court also awards in full (EUR 4,200) the claim for costs in the proceedings before it.

130. The total award in respect of costs and expenses is, therefore, EUR 12,200. Since Mr Y. Grozev is the applicant's sole legal representative before the Court, this sum should be paid directly into his bank account.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the seizure of the applicant's merchandise in June 2000 and the ensuing damage;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the unjustified retention of the alcoholic beverages after January 2002;
5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the authorities' decision of April 2004 to declare part of the alcoholic beverages abandoned and confiscate them on that ground.
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian leva at the rate applicable at the date of settlement:
 - (i) EUR 39,360 (thirty nine thousand three hundred and sixty euros), plus any tax that may be chargeable, in respect of damage;
 - (ii) EUR 12,200 (twelve thousand two hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, payable directly into the bank account of the applicant's legal representative;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President