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

THIRD SECTION

DECISION

Applications nos. 24585/18 and 47159/20
Ivo Georgiev PROKOPIEV and Others against Bulgaria
and LANDMARK BULGARIA TZAR EOOD and Others against Bulgaria

The European Court of Human Rights (Third Section), sitting on 10 September 2024 as a Chamber composed of:

Pere Pastor Vilanova*, President,*
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges,*
Mira Raycheva, ad hoc *judge,*

and Milan Blaško, *Section Registrar,*

Having regard to:

the applications lodged on 15 May 2018 and 21 October 2020,

the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

the decision of the Chamber to accept the applicants' request for the recusal of Ms Diana Kovatcheva, the judge elected in respect of Bulgaria (Rule 28 § 4 of the Rules of Court), and

the decision of the President of the Chamber to appoint Ms Mira Raycheva to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court),

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants and their representatives is set out in the appendix.

2. The Bulgarian Government ("the Government") were represented by their Agents, Ms B. Simeonova and Ms I. Stancheva-Chinova, from the Ministry of Justice.

3. The facts of the case, as submitted by the parties and as apparent from documents available to the public, may be summarised as follows.

A. Introduction

4. Mr I. Prokopiev ("the first applicant") is a businessman. He is the main shareholder in Economedia AD, a publishing company operating several newspapers and news outlets. His wife, Ms G. Prokopieva ("the second applicant"), is currently CEO of Economedia AD and the former editor-in-chief of some of the company's newspapers. According to the company's own statements, it is one of the leading online media groups in Bulgaria.

5. The first applicant is also the majority shareholder of Alfa Finance Holding AD ("the third applicant"), a holding company which directly or indirectly controls more than eighty other companies operating in fields such as renewable energy, finance, information technology and real estate. The third applicant owns all the other applicant companies (see appendix).

6. In 2000 and 2001 the third applicant acquired the majority shareholding of Kaolin AD – a formerly State-owned enterprise specialising in mineral extraction. In 2012 and 2013 the third applicant sold its shares to a third party.

B. Criminal proceedings against Mr I. Prokopiev

1. First set of proceedings

7. On an unspecified date the prosecution authorities brought charges against several individuals in connection with the privatisation of Kaolin AD. In particular, the first applicant was charged with abuse of office.

8. In 2002 the accused, including the first applicant, were indicted and brought to court. They were acquitted by the Razgrad Regional Court on 7 February 2003. The judgment became final on 17 December 2004 after being upheld on appeal and in cassation. The domestic courts found that the accused had not exercised any public function in relation to the privatisation, that the decisions they had taken as members of Kaolin AD's management had been lawful, and that their actions had not caused any particular damage to the State's interests, as claimed by the prosecution authorities.

2. Second set of proceedings

9. In December 2016 the first applicant was charged with aiding and abetting a person to commit an abuse of office. In particular, it was alleged that between March 2010 and December 2011, as a member of a consultative body to the Minister of Finance, the applicant had given "advice and explanations" in connection with the privatisation of a State-owned company, thereby assisting the then Minister to interfere with the authority of the head

of the competent body, the Privatisation Agency. The offence had allegedly been committed with the intention of securing illegal profit for a company controlled by the first applicant and operating as a stockbroker, which had eventually been selected to organise the sale of the State-owned shares.

10. In 2018 the first applicant and his alleged accomplices were indicted and brought to court. They were all acquitted by the Specialised Criminal Court on 28 June 2020. The judgment became final on 3 June 2021.

11. As regards the first applicant, the domestic courts held that he had been a member of a consultative body and that his statements there had had no binding force. In addition, it was wrong to state that the Minister of Finance, with the applicant as his accomplice, could have interfered with the work of the head of the Privatisation Agency, given that the relevant decisions had been taken by a collective body of the Agency. At the same time, the applicant's stockbroking company had been selected to organise the sale of the State-owned shares following a public procurement process, its own profit from the transaction was lawful and it had not been shown that the State's interests had been compromised in any way.

3. Third set of proceedings

12. In July 2018 the first applicant was charged with money laundering. The charges related to the 2012 sale of the third applicant's shares in Kaolin AD to another company (see paragraph 6 above). According to the prosecution authorities, in 2001 some of the shares in Kaolin had been acquired by the third applicant after other people had committed a criminal offence and, at the time of the 2012 sale, the first applicant, the third applicant's managing director, had been aware of the criminal origin.

13. At a later date the first applicant was also charged with participation in an organised criminal group. That charge was dropped by the prosecution authorities in August 2020. The whole prosecution was discontinued by a prosecutor's decision of 21 October 2020. Following an appeal by the first applicant, in which he claimed that the prosecutor's decision was unclear as to the grounds for discontinuing the criminal proceedings, in a final decision of 26 March 2021 the Sofia Court of Appeal specified that his actions as described by the prosecution authorities had not amounted to a criminal offence. In particular, the case concerned lawful transactions and not the laundering of proceeds of crime or attempts to conceal the criminal origin of assets.

C. Forfeiture proceedings

1. Proceedings in Burgas

14. In January 2017 the Commission for the Forfeiture of Unlawfully Acquired Assets (hereinafter "the Commission") was notified by the

prosecution authorities of the charges brought against the first applicant in the second set of criminal proceedings (see paragraph 9 above). Since the offence allegedly committed by him was among those listed in the Forfeiture of Unlawfully Acquired Assets Act 2012 (hereinafter "the 2012 Act" – see paragraph 42 below), the Commission initiated a preliminary investigation.

15. Following its request, on 21 November 2017 the Burgas Regional Court froze assets of the applicants in application no. 24585/18 and of other companies controlled by them – immovable property, bank accounts and company shares – in order to secure the prospective forfeiture claim. The domestic court found that the Commission's preliminary analysis had revealed discrepancies between the applicants' income from lawful sources and their expenditure, which at that stage was sufficient, while the interim measures sought were permissible and relevant. Following an appeal by the applicants, the relevant decision was upheld on 30 January 2018 by the Burgas Court of Appeal.

16. On 6 March 2018 the Commission brought a forfeiture application. It was directed against all five applicants in application no. 24585/18 – the first and second applicants, the third applicant and two more companies within the holding structure (see appendix) – and concerned their financial situation between January 2007 and January 2017. The Commission sought the forfeiture of assets worth, according to it, 198,927,389 Bulgarian levs (BGN), or the equivalent of about 101,750,000 euros (EUR), in particular immovable property, shares and proceeds from the sale of other companies, most notably Kaolin AD (see paragraph 6 above).

17. On 17 March 2020 the Burgas Regional Court granted interim injunctions over immovable property – plots of land and buildings – owned by the applicant companies in application no. 47159/20 (see appendix), all of which were indirectly owned by the third applicant. The decision was upheld on 24 April 2020 by the Burgas Court of Appeal, which held that the Commission's 2018 forfeiture application was not fully secured and that the measures were necessary in view of the "probable well-foundedness" of the forfeiture claims.

18. On numerous occasions the applicants applied for the unfreezing of their assets. They contended that the interim measures had been in place for a long period of time and had hampered the companies' business activities. In addition, they argued that the forfeiture claims were unfounded, particularly after Mr Prokopiev's acquittal for the predicate offence. The five applicant companies in application no. 47159/20, for their part, pointed out that the forfeiture claims were not directed against them, and that their property would not be subject to forfeiture.

19. The applications to lift the interim measures were rejected. The domestic courts held in particular that any arguments concerning the well-foundedness of the forfeiture claims were to be examined in the main proceedings. They considered that it had not been established that the

applicant companies' business activities had been seriously hampered, and that the need to secure the forfeiture claims persisted throughout the main proceedings.

20. Following the adoption of the Supreme Court of Cassation's Interpretative Decision no. 4 of 18 May 2023, and in light of the findings reached in that decision (see paragraphs 45-46 below), the Commission carried out a fresh analysis of the applicants' financial situation during the period under examination. This time it concluded that the applicants had had sufficient income from lawful sources to acquire the assets they had held at the end of the period. Accordingly, in the beginning of September 2023 the Commission withdrew its forfeiture application and requested the lifting of all interim measures against the applicants. The measures were accordingly lifted by the Burgas Regional Court on 12 September 2023. The forfeiture proceedings were discontinued on 12 October 2023, with the domestic courts awarding the defendants about BGN 200,000 (EUR 102,000) in court expenses.

2. Proceedings in Sofia

21. In the meantime, the Commission opened a new forfeiture procedure against the first and second applicants based on the charges brought against the first applicant in the third set of criminal proceedings (see paragraph 12 above). It conducted a preliminary analysis of their financial situation between August 2008 and August 2018.

22. On 17 February 2020, at the request of the Commission, the Sofia City Court ordered interim measures against the two applicants, freezing bank accounts, shares in companies and a boat. The decision was upheld on 27 April 2020 by the Sofia Court of Appeal.

23. On 22 May 2020 the Commission brought a forfeiture application against the first and second applicants, seeking the forfeiture of assets it had valued at BGN 451,476 (EUR 231,000).

24. The forfeiture proceedings were discontinued after the Commission withdrew its forfeiture application pursuant to Interpretative Decision no. 4 of 18 May 2023 (see paragraphs 45-46 below). Similarly to the forfeiture proceedings in Burgas (see paragraph 20 above), its fresh analysis of the first and second applicants' financial situation showed that the applicants had had sufficient lawful income to acquire their assets. The freezing order was accordingly lifted on 8 September 2023, and a decision on the discontinuation was taken by the Sofia Court of Appeal on 29 September 2023. The two applicants were awarded BGN 10,560 (EUR 5,400) for their court expenses.

D. Other judicial proceedings

25. On 16 March 2022 the first applicant brought two actions for damages under section 2 of the State and Municipalities Responsibility for Damage

Act (see paragraph 53 below), claiming compensation from the prosecution authorities for unjustifiably pursuing the second and third sets of criminal proceedings against him. In both cases, he claimed that the media coverage of the proceedings, quoting statements made by prosecutors, had caused him additional damage.

26. Two civil cases were opened before the Sofia City Court.

27. In the proceedings concerning the money-laundering charges, which were discontinued by the prosecution authorities (see paragraph 13 above), the Sofia City Court issued a judgment on 16 December 2022. The judgment was upheld upon appeal, and became final on 11 April 2024 after the Supreme Court of Cassation rejected an appeal on points of law.

28. The domestic courts noted that the charges against the first applicant had been widely reported in the national media and publicly discussed by the prosecutors. The language of those publications had been "far from moderate" and the prosecutors' statements "careless". The applicant himself was a public figure – a well-known businessman and media owner with interests in politics – and the public had been aware that he had been investigated, while the eventual dropping of the charges against him had not been widely known. In addition, the applicant was working in the finance sector, where the money-laundering charges had been particularly detrimental. His right to a good name and reputation in society had therefore been unlawfully damaged, and he had been publicly humiliated. This, coupled with the stress and frustration he himself had endured, justified an award of BGN 40,000 (EUR 20,460) in respect of non-pecuniary damage.

29. As to the proceedings concerning the aiding and abetting charges which resulted in the first applicant's acquittal in 2021 (see paragraph 10 above), the first-instance Sofia City Court gave a judgment on 22 April 2024. It noted that the criminal proceedings against the first applicant had been discussed in the media, and that representatives of the prosecution authorities, including the Chief Public Prosecutor, had made statements in that regard. It was nevertheless of the opinion that the first applicant's acquittal, also widely reported by the media, had neutralised or at least reduced any negative impact this might have had on the applicant's good name and reputation. Taking into account other relevant circumstances, such as the duration of the criminal proceedings and the gravity of the charges against the first applicant, the Sofia City Court assessed the non-pecuniary damage inflicted on him at BGN 25,000 (EUR 12,800).

30. Both parties appealed against the judgment above.

E. Statements by public officials

31. The applicants submitted a number of media articles quoting statements by prosecutors and other public officials made between 2017 and 2020 concerning the first applicant or his media outlets, which at the time

were considered to be critical of the government and the work of the prosecution authorities. The most important of these statements are quoted below. The applicants pointed out that two former Chief Public Prosecutors had consistently referred to the first applicant in interviews as an "oligarch", implying that his wealth had been accumulated through unlawful means.

32. In December 2017 a former Chief Public Prosecutor stated:

> "How is he so charming, how does Prokopiev charm the people in power? For me he is one thing: ... money ... Prokopiev should have been put in prison a long time ago."

33. On 5 August 2019 the Deputy Chief Public Prosecutor, I.G., a candidate for the position of Chief Public Prosecutor, stated that he would respond with "all permissible means" to media criticising his candidature. The news portal quoted by the applicants considered this "an unequivocal threat". Several days earlier, on 23 July 2019, I.G. had stated that his biggest critics were the political circles, media and oligarchs "gravitating around the accused Prokopiev". He added that "accused oligarchs and criminals" were working to make the prosecution authorities inefficient, so that "there [would be] no justice so that they [could] spend what they [had] stolen and would not be convicted".

34. On 24 October 2019 I.G. reiterated that he had been the victim of disgraceful publications, propaganda and media lies, and that he had been the subject of attacks by "political and oligarchic circles"; the latter were allegedly unhappy with his "active work" as a prosecutor and were responsible for the low level of public trust in the prosecution authorities. I.G. did not expressly name any media owners or his media outlets, but noted that it was "very clear" to whom he was referring.

35. On 4 March 2020 I.G., who had been elected Chief Public Prosecutor in November 2019, criticised in an interview with Bulgarian National Radio the participation of people "from Prokopiev's circle" in consultations on prospective amendments to the Constitution. According to him, this was "insolence", since the aim of these people was to "block" and "gag" the prosecution authorities so that the latter would be "harmless to those hiding behind [them]".

36. In an interview given on 21 March 2020 in connection with the Covid-19 pandemic, I.G. criticised the first applicant and his media outlets, accusing them of "cynicism" and of only being interested in money, since they allegedly did not care that thousands of people would die.

37. On 28 June 2020 I.G. commented on the first applicant's acquittal in the second set of criminal proceedings (see paragraph 10 above) as follows:

> "We have lost a small battle, but we are determined to win the war against corrupt politicians and oligarchs who have enriched themselves *via* criminal means. In the name of justice and the Bulgarians who have been robbed, [but] deserve a better life."

38. For his part, the then head of the Commission stated in a media interview that he shared I.G.'s views, stating as follows:

"... a small battle has been lost, but by no means the war and it goes on."

39. On 1 July 2020 I.G. criticised a newspaper published by Economedia for shedding light on a high-profile case involving allegedly corrupt prosecutors (described in *Zlatanov v. Bulgaria* (dec.), no. 53050/21, 30 January 2024).

40. On 12 August 2020 I.G. stated in a newspaper interview as follows:

> "All criminals will say that they are innocent and oppressed. The difference is that in prison there are mostly socially weak people. People who have money, power and influence don't go there."

41. In June 2023 I.G. was dismissed from his position as Chief Public Prosecutor by the Supreme Judicial Council for tarnishing the reputation of the judiciary.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Forfeiture of "unlawfully acquired assets"

42. The Forfeiture of Unlawfully Acquired Assets Act (*Закон за отнемане в полза на държавата на незаконно придобито имущество*, "the 2012 Act") was enacted in 2012. The relevant provisions are described in *Yordanov and Others v. Bulgaria* (nos. 265/17 and 26473/18, §§ 27-55, 26 September 2023). The 2012 Act remained in force until 2018, when it was replaced with the Counteraction Against Corruption and Forfeiture of Unlawfully Acquired Assets Act (hereinafter "the 2018 Act"), providing for essentially the same forfeiture regime. Legislative amendments in 2019 provided that the 2018 Act would also be applicable to pending proceedings initiated under the 2012 Act.

43. The body in charge of initiating and pursuing proceedings under the 2012 Act and the 2018 Act is the Commission for the Forfeiture of Unlawfully Acquired Assets ("the Commission").

44. The two Acts provide, in particular, for the forfeiture of unlawfully acquired assets, which are defined as "assets for which no lawful origin has been established". They contain lists of predicate criminal offences, but a conviction is not necessary to initiate forfeiture proceedings. The bringing of charges suffices and the eventual discontinuation of the criminal proceedings, including as a result of acquittal, is not a bar to forfeiture. According to the national courts, forfeiture is "detached" from any predicate offence.

45. On 18 May 2023 the Supreme Court of Cassation adopted Interpretative Decision no. 4 (*Тълкувателно решение № 4 от 18.05.2023 г. по тълк. д. № 4/2021 г.*) concerning the application of the 2018 Act. It noted that there had been conflicting views of the national courts on the question whether assets obtained at earlier times by persons targeted by forfeiture proceedings, even where their lawful origin could not be proven, and in

situations where the assets were unavailable at the end of the period of time reviewed by the Commission, had to be taken into account when assessing the target's financial situation under the 2018 Act and could be the subject of forfeiture. Some of the national courts had considered that only assets available at the end of the period under examination had to be analysed in the sense above, while others had taken into account any assets, regardless of whether they had been within the target's possession at the end of the period at issue.

46. In its decision, which was binding on all domestic authorities, the Supreme Court of Cassation endorsed the former view. It held in particular that only assets which were available could be subject to forfeiture, and that this did not include money which had been gained and spent, or which had "passed through" the target's bank accounts. The 2018 Act could not be construed as providing for the forfeiture of unavailable assets, as this would mean that there was no valid object of forfeiture. The Act was aimed at fighting against unlawful enrichment, but there was no such enrichment if the target's assets had not increased by the end of the period under examination. The rule was not applicable to funds which had been transformed into other assets, transferred to connected parties, or concealed, which were dealt with in specific provisions of the 2018 Act.

47. Sections 37 et seq. of the 2012 Act provided for interim measures. In particular, a court could freeze the assets of defendants where such measures would facilitate the enforcement of any prospective forfeiture order. Identical provisions appear in sections 117 et seq. of the 2018 Act. When dealing with a request to freeze assets, the national courts consider themselves competent to examine whether the forfeiture application is admissible and probably well-founded, whether there is a need to secure the forfeiture claims – which is presumed under the two Acts – and whether the specific measures sought are adequate in the particular circumstances (*Определение № 128 от 6.03.2018 г. на ВнАС по в. ч. гр. д. № 86/2018 г.*; *Определение № 785 от 1.03.2019 г. на САС по в. гр. д. № 285/2019 г.*).

48. The unfreezing of assets is regulated by the Code of Civil Procedure, since the 2012 and 2018 Acts do not contain specific provisions. Under Article 402 of the Code, such a measure can in particular be lifted where the reasons for which it was imposed no longer exist.

49. Article 403 of the Code of Civil Procedure provides that claimants in civil proceedings are liable for any damage caused to defendants by freezing measures ordered to secure the claim, where the proceedings have been discontinued or the claim has been rejected. According to the national courts, such liability can be established even without proof of fault on the part of the claimant, and covers both actual damage and loss of profit (*Решение № 134 от 9.03.2009 г. на ВКС по гр. д. № 4793/2007 г., III г. о.*; *Решение № 67 от 22.04.2013 г. на ВКС по т. д. № 28/2012 г., II т. о.*; *Решение № 50276 от 11.09.2023 г. на ВКС по гр. д. № 4570/2021 г., IV г. о.*; *Решение*

№ 37191 от 10.02.2020 г. на СРС по гр. д. № 41023/2019 г.; *Решение № 260447 от 20.11.2020 г. на РС - Русе по гр. д. № 7758/2019 г.*). Article 403 does not specify whether parties other than the defendant can claim damage on the ground that they were affected by interim measures, but a conclusion that this is so could follow from Interpretative Decision in case no. 6/2013 of 14 March 2014 (*Тълкувателно решение № 6 от 14.03.2014 г. по тълк. д. № 6/2013 г.*); in that decision the Supreme Court of Cassation stated that "anybody whose legal interests [were] affected by an interim measure" was entitled to challenge such a measure.

50. In addition, section 2a of the State and Municipalities Responsibility for Damage Act (*Закон за отговорността на държавата и общините за вреди*) provided for the liability of the Commission for any damage caused by unlawful decisions or actions of administrative bodies and civil servants in application of the 2018 Act. The provision was repealed in October 2023, but in February 2024 the Government introduced in Parliament a bill proposing to reinstate it. In the proceedings before the Court the Government stated that the revocation of the provision at issue had been "a technical omission" on Parliament's part, to be rectified within a short period of time.

51. In proceedings under section 2a of the State and Municipalities Responsibility for Damage Act, as well as in similar proceedings concerning previous proceeds-of-crime legislation, the national courts held that the rejection of forfeiture claims or the discontinuation of forfeiture proceedings, including where the Commission withdrew its claims, gave rise to State liability, as these events retroactively rendered the forfeiture proceedings "unlawful". The courts held that damage had been caused in particular by lengthy and extensive interlocutory measures securing the forfeiture claims; the Commission was liable because it had erred in its initial assessment that there were grounds for bringing a forfeiture claim and had unlawfully initiated the forfeiture procedure (*Определение № 600 от 15.07.2019 г. на ВКС по гр. д. № 1783/2019 г., IV г. о.*; *Решение № 94 от 23.07.2021 г. на ВКС по гр. д. № 4316/2019 г., III г. о.*; *Решение № 125 от 13.06.2022 г. на ВКС по гр. д. № 3622/2021 г., IV г. о.*; *Определение № 909 на ВКС от 28.04.2023 г. по гр. д. № 4540/2022 г.*; *Решение № 106 от 25.07.2022 г. на ВтАС по в. гр. д. № 196/2022 г.*). While in the majority of cases the complainants only claimed compensation in respect of non-pecuniary damage, in one case the Supreme Court of Cassation upheld an award made by a lower court in respect of pecuniary damage (*Решение № 50203 от 1.11.2022 г. на ВКС по гр. д. № 3589/2021 г., IV г. о.*).

B. Liability of the State and public officials for damage

52. Section 1 of the State and Municipalities Responsibility for Damage Act provides that the State is liable for damage caused to private individuals as a result of unlawful decisions or actions by the administration.

53. Section 2(1) lists the situations in which the prosecution authorities or the courts may be held liable. One such situation is that of wrongful accusation, where a person has been charged with a criminal offence and subsequently acquitted, or where the criminal proceedings have been discontinued. In such a case, the criminal prosecution is considered unlawful with retroactive effect.

54. In situations not covered by the State and Municipalities Responsibility for Damage Act, a claim can be brought under the general provisions of tort law contained in the Obligations and Contracts Act (*Закон за задълженията и договорите*). Section 45 provides for individual liability, whereby everyone is obliged to make good damage which they have wrongfully caused to another. Section 49 provides for vicarious liability, whereby a person who has employed another person is liable for damage caused by that person in the course of or in connection with that employment.

55. The Government submitted examples of domestic case-law concerning the application of the two Acts to statements or actions of public officials considered to have damaged the reputation of private individuals.

56. In cases examined under sections 1 or 2 of the State and Municipalities Responsibility for Damage Act brought by people who had been charged with a criminal offence and acquitted, or who had been investigated, the courts took into account the media coverage of the criminal proceedings and assessed the appropriate damages to be awarded (*Решение № 2835 от 26.04.2012 г. на СГС по гр. д. № 10002/2011 г.*; *Решение № 62 от 26.06.2017 г. по адм. д. № 34/2017 г. АС Габрово*; *Решение № 489 от 8.04.2022 г. на САС по в. гр. д. № 3421/2021 г.*). The fact that information about the criminal proceedings had been provided by the investigating bodies was referred to (*Решение № 2647 от 7.05.2011 г. на СГС по гр. д. № 8830/2010 г.*; *Решение № 267 от 26.06.2014 г. на ВКС по гр. д. № 820/2012 г.*; *Решение № 98 от 23.01.2019 г. на ОС-Пловдив по гр. д. № 955/2017 г.*), and in some cases it was noted that "one-sided" statements by prosecutors giving the impression that the claimants were guilty breached the presumption of innocence (*Решение № 482 от 10.12.2018 на ОС-Хасково по гр. д. № 469/2018 г.*; *Решение № 264302 от 29.06.2021 г. на СГС по гр. д. № 8659/2019 г.*).

57. Many cases which did not fall within the ambit of the State and Municipalities Responsibility for Damage Act were examined under section 49 of the Obligations and Contracts Act. They concerned the liability of a public body for the actions of its officials.

58. Thus, in a judgment of the Vidin District Court of 11 July 2011, upheld by the Vidin Regional Court on 23 February 2012 (*Решение от 11.07.2011 г. на РС-Видин по гр. д. № 1352/2010 г.*; *Решение от 23.02.2012 г. на ОС-Видин по в. гр. д. № 14/2012 г.*), a former police officer was awarded damages after the head of the local police had told the media

that the claimant had received bribes (he had eventually been acquitted in that regard) and had called him a "fraud".

59. In another case, the tort action brought by a person who had claimed that the head of the National Police had used defamatory language, in particular calling him a "bandit", was dismissed because the impugned statement had not been proven (*Решение № 11779 от 8.04.2019 г. на САС по в. гр. д. № 3371/2019 г.*).

60. The Sofia Court of Appeal upheld a lower court's judgment awarding damages to a medical practitioner who had been investigated for medical negligence leading to a death, but never formally charged. The investigation had eventually been discontinued, but the prosecutors had in the meantime told the media that the patient had been killed, thus giving the general public the impression that the claimant was a criminal. (*Решение № 2672 от 16.11.2018 г. на САС по в. гр. д. № 1597/2018 г.*).

61. In a case where the claimant had brought a tort action against a prosecutor who had allegedly made defamatory statements about him, the Sofia District Court held that the defendant prosecutor could not rely on her immunity. Such immunity only covered actions and decisions related to the exercise of a magistrate's functions, which had not been the case. Thus, the prosecutor could in principle be held liable, but the particular claim brought against her was not proven and was accordingly dismissed (*Решение № I-25-154 от 8.06.2012 г. на СРС по гр. д. № 1913/2008 г.*).

62. With regard to the immunity of magistrates, the applicants in application no. 24585/18 submitted several examples of domestic case-law where claims under section 45 of the Obligations and Contracts Act, concerning individual liability and not that of a body, had been dismissed. The claims concerned statements by high-ranking prosecutors, including the Chief Public Prosecutor, implying that the claimants were criminals. The cases were dismissed on the grounds of prosecutorial immunity in relation to the performance of duties (*Определение № 141 от 4.05.2017 г. по ч. гр. д. № 1508/2017 г., ВКС*; *Определение № 24811 от 7.11.2018 г. по гр. д. № 5389/2018 г. на СГС*; *Определение № 5343 от 8.06.2022 г. по гр. д. № 783/2022 г. на СГС*; *Определение № 21114 от 21.08.2022 г. по гр. д. № 31491/2022 г. на СРС*).

63. The Government also submitted judgments in cases where public officials had been convicted of insult or defamation (*Присъда № 260148 от 15.10.2021 г. на СГС по в. н. ч. х. д. № 1148/2021 г.*; *Решение № 171 от 15.06.2022 г. на ОС - Пловдив по в. н. ч. х. д. № 2358/2021 г.*; *Решение № 338 от 21.12.2022 г. на ОС-Пловдив по в. н. ч. х. д. № 1166/2022 г.*). Under the Criminal Code, the fact that an insulting or defamatory statement has been made by a public official is an aggravating circumstance, but insult and defamation are offences subject to private prosecution.

COMPLAINTS

64. The applicants complained under Article 1 of Protocol No. 1, also relying on Article 6 § 1 and Article 13 of the Convention, that the freezing of their assets had been based on flawed legislation and had been unjustified, particularly because the forfeiture proceedings had been pursued even in the absence of predicate offences. The applicants also argued that the freezing of their assets had imposed a disproportionate burden on them and that the measures had been in place for an excessively long time.

65. The applicants in application no. 24585/18 complained under Article 18 of the Convention that the freezing of their assets had pursued a purpose other than that stated in the 2012 and 2018 Acts, namely "retaliation against the owners of inconvenient media". The first and second applicants also raised the same complaint under Article 10 of the Convention, contending that the freezing of their assets had aimed to hamper the financing of the newspapers and news outlets they owned and to influence and defame them.

66. Lastly, the first applicant complained under Article 6 § 2 and Article 8 of the Convention about the statements made by public officials (see paragraphs 31-41 above). He pointed out that these statements had implied that he was guilty of the offences with which he had been charged while the examination of those charges had still been pending, and had otherwise been overly critical of him. He did not however specify which of the statements complained of breached, in his view, Article 6 § 2 of the Convention, and which in turn raised issues under Article 8.

THE LAW

A. Joinder of the applications

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

B. Complaints concerning the freezing of the applicants' assets

68. The applicants complained under Article 1 of Protocol No. 1 to the Convention and Article 6 § 1 and Article 13 of the Convention that their assets had been unjustifiably frozen in the forfeiture proceedings. They also complained under Articles 10 and 18 that the measures against them had pursued an ulterior purpose, namely to retaliate against the first and second applicants' media outlets (see paragraphs 64-65 above).

69. The Government invited the Court to strike this part of the applications out of its list of cases in accordance with Article 37 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (b) the matter has been resolved;
>
> ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

70. The Government pointed out that the applicants' assets had been unfrozen in September 2023 and that it was now open to them to seek compensation for any damage suffered as a result, under Article 403 of the Code of Civil Procedure (see paragraph 49 above), or under the relevant provisions of the State and Municipalities Responsibility for Damage Act after the adoption of the proposed amendments to this Act (see paragraph 50 above). The Government pointed out that the applicants had five years in which to seek compensation, after which their claims would become time-barred.

71. The applicants, for their part, contended that the unfreezing of their assets could not "undo" the violations of their rights, that the compensatory remedies referred to by the Government were ineffective in the particular circumstances or unavailable, and that the matters complained of were "far from resolved". They pointed out that, in examining a tort action, the national courts would automatically presume that there were grounds for awarding compensation, would be focused only on determining the amount, and would not therefore examine the substance of their complaints raised before the Court, in particular their argument that the applicable domestic law was flawed. The applicants thus urged the Court itself to review the applicable legislative framework and its application in the case by the administrative and judicial authorities.

72. The Court must answer two questions in order to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention, and that there is therefore no longer any objective justification for the applicants to pursue the applications: firstly, whether the circumstances complained of by the applicants still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002; *Shevanova v. Latvia* (striking out) [GC], no. 58822/00, § 45, 7 December 2007; and *Kerimoğlu v. Türkiye*, no. 58829/10, § 58, 6 December 2022).

73. As regards the first of these two questions, the Court notes that the applicants complained about the freezing of their assets in the framework of the forfeiture proceedings initiated by the Commission (see paragraph 64 above). However, the measures complained of have been lifted and the forfeiture proceedings have been discontinued (see paragraphs 20 and 24

above). Accordingly, the circumstances complained of by the applicants no longer obtain.

74. As to whether the effects of the possible violations of the applicants' rights have been redressed, the Court notes that the fact that the forfeiture proceedings have been discontinued and their assets unfrozen means that the applicants can now sue the domestic authorities for any damage suffered. The Court has previously held that even the prospect of seeking compensation could mean that a possible violation has been redressed (see *Pisano*, cited above, § 47; contrast *Strekalev v. Russia*, no. 21363/09, § 48, 11 April 2017, where there was no possibility of compensation). The applicants in the present case can claim both pecuniary and non-pecuniary damages. They can already bring proceedings under Article 403 of the Code of Civil Procedure (see paragraph 49 above), or can wait for the adoption of the amendments introduced in Parliament aiming to restore the remedy under the State and Municipalities Responsibility for Damage Act (see paragraph 50 above). The applicants' claims will become time-barred after the expiry of five years (see paragraph 70 above).

75. The Court does not agree with the applicants' argument (see paragraph 71 above) that the foregoing considerations cannot lead to the conclusion that "the matter has been resolved". In any future tort proceedings, the freezing of their assets is likely to be considered under national law as unjustified and unlawful, since the Commission's forfeiture claims have been withdrawn (see paragraph 51 above). The fact that the national courts are not likely to discuss the specific deficiencies in the forfeiture proceedings, as claimed by the applicants, is not decisive for the application of Article 37 § 1 (b) of the Convention and the conclusion that the applicants can obtain adequate redress.

76. It should also be pointed out that the main complaint in the present case is about a breach of the applicants' property rights, raised in particular under Article 1 of Protocol No. 1 (see paragraph 64 above). The consequences of a breach of rights protected under that provision should in principle be capable of being made good through an award of compensation, or, as the Court has held more generally, property can be compensated for by a monetary award (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 115, ECHR 2010).

77. In so far as some of the applicants' arguments (see paragraph 71 above) can be seen as meaning that the Court should continue its examination of the case because "respect for human rights as defined in the Convention and the Protocols thereto so requires", it refers to the recent judgment in the case of *Yordanov and Others v. Bulgaria* (nos. 265/17 and 26473/18, 26 September 2023). In that case the Court reviewed the Bulgarian legislation on the forfeiture of "unlawfully acquired assets" and provided guidance as to the circumstances in which it would consider such forfeiture compliant with the requirements of Article 1 of Protocol No. 1. The Court found in particular

that the legislation at issue pursued the legitimate aim of preventing the illicit acquisition of property through criminal or administrative offences, and did not see any additional justified purpose in the prevention of any other "unlawful" acquisition of assets (§§ 103-11 of the judgment). As to proportionality, it stated, in light of its previous case-law and its findings about the legitimate aims served, that the national authorities had to provide "some particulars as to the offences, criminal or administrative, in which the assets subject to forfeiture were alleged to have originated", and had to show in a reasoned manner that there could be a link between such offences and the assets in question (§§ 114-24 of the judgment). In the individual cases under examination in the judgment, the Court found a violation of Article 1 of Protocol No. 1 on the ground that the national courts had not sought to prove the link defined above (§§ 126-40 of the judgment).

78. In the present case, the first applicant was acquitted in the second set of criminal proceedings, and the third set of such proceedings was discontinued on the ground that he had committed no criminal offence (see paragraphs 9-13 above). The existence of any predicate offences was therefore ruled out, which makes it difficult to envisage how the authorities would have been able to substantiate the link required by the Court in *Yordanov and Others*, namely between a criminal or administrative offence and the assets whose forfeiture was being sought.

79. As to the additional complaints under Articles 10 and 18 of the Convention, they should be seen, for the purposes of the present examination, as subsidiary complaints, and there is nothing to suggest that the national courts would not give an adequate response if the allegations raised before the Court were also raised at the domestic level in proceedings of the type referred to above. The Court noted recently that in Bulgaria the Convention is part of national law and that the domestic courts have exhibited a tendency to engage more fully with Convention-based arguments. It concluded that there was a fair chance that tort proceedings under domestic law concerned predominantly with another right could also provide redress in respect of complaints about an ulterior purpose such as those raised here (see *Zlatanov v. Bulgaria* (dec.), no. 53050/21, §§ 179, 196-200 and 227-29, 30 January 2024).

80. Consequently, there are no sufficient grounds for the Court to conclude that it is required to continue the examination of the present case.

81. Having regard to all the above considerations, the Court concludes that the conditions for the application of Article 37 § 1 (b) of the Convention are met in the instant case.

82. Accordingly, the case should be struck out of the Court's list of cases, in so far as the complaints relating to the freezing of the applicants' assets are concerned.

C. Remaining complaints

83. The first applicant also complained, under Article 6 § 2 and Article 8 of the Convention, about statements made by public officials (see paragraphs 31-41 above). He submitted that these statements had implied that he was guilty of the offences with which he had been charged while the investigation of those charges had still been pending, and had otherwise been overly critical of him.

84. In submissions made in March 2023 the Government argued that the complaints were inadmissible because the applicant had failed to exhaust the available domestic remedies. At that juncture both sets of tort proceedings brought by him under the State and Municipalities Responsibility for Damage Act (see paragraphs 25-30 above) were still pending, and according to the Government the remedy had to be considered effective in respect of his complaints. He could in addition sue in tort the bodies whose officials had made defamatory statements under the relevant provisions of the Obligations and Contracts Act (see paragraph 54 above), or the officials themselves for insult and defamation under the provisions of the Criminal Code (see paragraph 63 above). In support of their argument, the Government submitted various examples of domestic case-law (see paragraphs 56-61 and 63 above).

85. The first applicant was of the view that the proceedings under the State and Municipalities Responsibility for Damage Act did not overlap with his complaints under Article 6 § 2 and Article 8 of the Convention, since their subject matter was "limited to the effects of the wrongful accusations". These proceedings would not deal with the statements referring to him as an "oligarch" with wealth obtained through criminality, even though, in his view, they "were an important part of the overall campaign" of the public authorities against him.

86. In previous cases against Bulgaria raising similar issues, the Court considered that a tort claim did not represent an effective remedy with regard to complaints under Article 6 § 2 of the Convention (see, for example, *Maslarova v. Bulgaria*, no. 26966/10, §§ 33-38, 29 January 2019, or *Banevi v. Bulgaria* (no. 25658/19, §§ 135-40, 12 October 2021), finding in particular that an action under the State and Municipalities Responsibility for Damage Act did not constitute an effective remedy because the criminal proceedings against the applicants were pending.

87. The present case can be distinguished from those cited above in that the criminal proceedings against the first applicant were terminated, either by acquittal in judicial proceedings or after being discontinued by the prosecution authorities on the grounds that no criminal offence had been committed (see paragraphs 10 and 13 above). This resulted in him being entitled to seek damages from the State under the State and Municipalities Responsibility for Damage Act (see paragraph 53 above). While the statutory ground for compensation is wrongful accusation after acquittal or

discontinuation of the proceedings (ibid.), the practice of the national courts when awarding compensation is to take into account statements made by the investigating bodies and the resulting breaches of the right to be presumed innocent (see paragraph 56 above).

88. The first applicant brought two sets of proceedings of the type discussed above, concerning his acquittal in the second set of criminal proceedings and the final discontinuation of the third set of proceedings.

89. In one of those cases the domestic courts awarded him compensation. They took into account, among other things, "careless" statements by prosecutors in connection with the criminal proceedings, and "far from moderate" news publications (see paragraphs 27-28 above). The Court is of the view that these findings of the domestic courts represent a sufficient recognition of the violation of the first applicant's right to be presumed innocent. This fact, coupled with the award of what appears to be adequate compensation, means that the applicant can no longer claim to be a victim of the alleged violation of his rights.

90. Accordingly, this part of the complaint under Article 6 § 2 is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4.

91. The other set of proceedings under the State and Municipalities Responsibility for Damage Act are pending, after the first-instance Sofia City Court gave judgment on 22 April 2024 and the parties lodged appeals against it (see paragraphs 29-30 above). In this case the applicant has similarly raised complaints about statements made by prosecutors (see paragraph 25 above).

92. The Sofia City Court discussed these statements and media publications, even though it did not consider it justified to increase on their account the compensation to be awarded to the first applicant (see paragraph 29 above). However, it remains open to the applicant to argue on appeal that his right to be presumed innocent was breached due to the public statements of the prosecution authorities, and that the compensation awarded should take these circumstances into account. In view of the above, the Court concludes that this part of the first applicant's complaint under Article 6 § 2 of the Convention is prematurely raised.

93. In so far as some of the statements the first applicant submitted to the Court do not directly relate to the criminal proceedings against him (see, for example, the one quoted in paragraph 32 above) and thus do not raise an issue under Article 6 § 2, but possibly under Article 8 of the Convention enshrining the right to respect for private life, the case-law submitted by the Government shows convincingly that the applicant has adequate means at his disposal to obtain compensation. He can sue the bodies whose officials made statements which he considered insulting under section 49 of the Obligations and Contracts Act (see paragraphs 57-60 above). Where the relevant officials do not enjoy immunity or their statements do not relate to their public duties, he

can sue the officials themselves, under section 45 of the Obligations and Contracts Act (see paragraph 61 above). The applicant did not claim that these remedies would not have been effective in his case, or that they were unavailable.

94. In view of the above and in the circumstances of the present case, the remainder of the complaints under Article 6 § 2 and Article 8 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

D. Award of costs to the applicants

95. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court." ...

96. In their submissions on the possibility of striking out the applications, the parties did not comment on the matter. The Court is nevertheless of the view that it is appropriate, in the circumstances of the case, to make an award in respect of the costs of the Convention proceedings (see, among other authorities, *Grüne Alternative Wien v. Austria* (striking out), no. 13281/02, § 33, 29 November 2011).

97. When making their claims under Article 41 of the Convention, the applicants in application no. 24585/18 claimed EUR 35,636 for their legal representation before the Court. They presented invoices showing that they had paid that sum in several instalments. The Government considered the claim excessive.

98. As regards the reimbursement of costs in connection with awards of just satisfaction pursuant to Article 41 of the Convention, according to the Court's well-established case-law an award can be made to an applicant in respect of costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum. The Court has held that these requirements should also be observed in the application of Rule 43 § 4 (see *Pisano*, cited above, § 54).

99. In the present case, the Court is of the view that the costs claimed have been actually incurred and are necessary, but agrees with the Government that the amount claimed is excessive. The latter finding also takes into account the fact that part of application no. 24585/18 has been dismissed as inadmissible.

100. Regard being had to the documents in its possession and the above considerations, the Court awards the sum of EUR 7,000 for the applicants' legal representation.

101. The applicants in application no. 47159/20 did not claim the reimbursement of any costs and expenses.

For these reasons, the Court, unanimously,

1. *Decides* to join the applications;

2. *Decides* to strike the applications out of the list in so far as the complaints regarding the freezing of the applicants' assets are concerned;

3. *Declares* the remainder of application no. 24585/18 inadmissible;

4. *Holds*
   (a) that the respondent State is to pay jointly the applicants in application no. 24585/18, within three months, EUR 7,000 (seven thousand euros) for costs and expenses, plus any tax that may be chargeable on that amount;
   (b) that simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and notified in writing on 3 October 2024.

Milan Blaško
Registrar

Pere Pastor Vilanova
President

Appendix

List of cases:

No.	Application no. Case name	Lodged on	Applicant Year of birth or registration Place of residence or registered office	Name of representative Place of practice
1.	24585/18 *Prokopiev and Others v. Bulgaria*	15/05/2018	**Ivo Georgiev PROKOPIEV** 1971 Sofia **Galya Valentinova PROKOPIEVA** 1973 Sofia **Company ALFA FINANCE HOLDING AD** 1999 Sofia **Company ALFA ENERGY HOLDING EAD** 2009 Sofia **Company SOLARPRO HOLDING AD** 2009 Sofia	G.Atanasov Sofia
2.	47159/20 *Landmark Bulgaria Tzar EOOD and Others v. Bulgaria*	21/10/2020	**Company LANDMARK BULGARIA TZAR EOOD** 2002 Sofia **Company LANDMARK BULGARIA AIRPORT EOOD** 2002 Sofia **Company LANDMARK BULGARIA**	S. Kostov Sofia

No.	Application no. Case name	Lodged on	Applicant Year of birth or registration Place of residence or registered office	Name of representative Place of practice
			OFFICE EOOD 2004 Sofia **Company LANDMARK BULGARIA TOWER EOOD** 2006 Sofia **Company SPLENDID VIEW EOOD** 2012 Sofia	