

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

THIRD SECTION

CASE OF ZLATANOV v. BULGARIA

(Application no. 53050/21)

DECISION

STRASBOURG
30 January 2024

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

THIRD SECTION

DECISION

Application no. 53050/21
Yavor Iliev ZLATANOV
against Bulgaria

The European Court of Human Rights (Third Section), sitting on 30 January 2024 as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the above application lodged on 27 October 2021; and

the observations submitted by the respondent Government and the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Yavor Iliev Zlatanov, is a Bulgarian national who was born in 1973 and lives in Sofia. He was represented before the Court by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv.

2. The Bulgarian Government ("the Government") were represented by their Agents, Ms M. Kotseva and Ms M. Dimitrova of the Ministry of Justice.

3. The facts of the case, as submitted by the parties and as appearing on the basis of the material submitted and relied upon by them, including six videos relating to the case (released on YouTube on 24 June, 2 and 31 July and 20 August 2020, and 4 and 8 October 2021),[1] as well as publicly available material, may be summarised as follows.

[1] The videos consisted mainly of interviews with the applicant and his wife, the applicant's father, and a Mr D.L. They were made by a non-governmental organisation, the Anti-Corruption Fund, and the applicant relied on them in his application.

A. Background

1. Companies owned by the applicant and his father

4. Since the 1990s the applicant's father has owned a group of companies whose business is the production of lifts. The companies were structured as follows: there was a holding company – Izamet 1991 OOD – which fully owned four or five single-member limited liability companies, with the applicant's father owning all the shares in that holding company. In 2002 he transferred 40% of those shares to the applicant, retaining the remaining 60% for himself. The applicant and his father were at one time joint managers of both the holding company and its subsidiaries.

2. Conflict between the applicant and his father

5. In 2017 (or even earlier) the applicant and his father fell out. At that time the applicant's father had already fallen out with his wife – the applicant's mother – with whom he had not lived, apparently, since 1997, as well as with his daughter – the applicant's sister – and her husband. In late 2017 the applicant, his mother and his sister applied to the Sofia City Court to place the applicant's father under guardianship, citing unusual behaviour on his part. In June 2018 that court refused the application, finding no evidence that the applicant's father suffered from a mental disability or was unable to take care of his affairs. In December 2018 the Sofia Court of Appeal upheld that decision.

6. In two complaints which he lodged with the Sofia district prosecutor's office in September 2017, the applicant's father alleged that since February 2017 the applicant had been preventing him from accessing the office of their companies. He also alleged that the applicant had been improperly disposing of company assets. He further claimed that his daughter (the applicant's sister) and her husband had been attempting to extort money from him with threats that he would be prosecuted and "destroyed".

7. According to the applicant, the prosecuting authorities took no tangible steps in relation to those complaints. It appears that they opened criminal proceedings and took evidence, but did not proceed to charge anyone or to take any coercive measures in connection with the proceedings.

3. The applicant's taking possession of the company factory

8. On 25 June 2019 the applicant, assisted by an enforcement agent and the police, took possession of a factory in Dupnitsa owned by his and his father's companies (see paragraph 4 above). The applicant did so on the basis of a writ of execution that was apparently issued on the basis of a preliminary contract for the sale of the factory to another company, of which he is alleged to be the beneficial owner – K Korekshan EOOD.

B. Contact with Mr P.P. and resulting proceedings against the applicant

9. In reaction to the events at the factory, the applicant's father contacted Mr P.P., a lawyer in private practice who had previously been the head of the investigation department of the Sofia City prosecutor's office in 2013-15 and is alleged by the applicant to have been implicated in various corrupt schemes. On 27 June 2019 the applicant's father and Mr P.P. met to discuss possible ways of acting against the applicant. Mr P.P. stated that he would "solve [the] problem" and directed the applicant's father to contact two other lawyers working with him.

10. The following day, 28 June 2019, the Chief Prosecutor ordered that three files which had been opened in response to the earlier complaints by the applicant's father (see paragraph 6 above) be joined and sent to the National Investigation Service.

11. The two lawyers working with Mr P.P. drew up a fresh complaint which on 3 July 2019 they lodged with the Specialised Prosecutor's Office on behalf of the applicant's father. It alleged that the applicant, his mother, his sister and her husband, and the former and current managers of K Korekshan EOOD (see paragraph 8 above), as well as several other people, had been conspiring since 2017 to deprive the applicant's father of his companies through, *inter alia*, blackmail and money laundering.

12. The complaint in particular reiterated the allegations that the applicant had been preventing his father from accessing the office of the jointly owned companies (see paragraph 6 above). It further alleged, with regard to the applicant, that he had embezzled money belonging to his father and had siphoned off assets belonging to Izamet 1991 OOD.

13. On the same day, 3 July 2019, the complaint was allocated at random to Mr D.D., a prosecutor of the Specialised Prosecutor's Office; however, the (then) head of the Specialised Prosecutor's Office, Mr D.F.P., specifically chose a second prosecutor, Mr G.M., to also work on the case. The following day, 4 July 2019, that second prosecutor opened a criminal investigation on the basis of the allegations of the applicant's father. According to the applicant, the proceedings were opened with such alacrity because those public prosecutors were acting in concert with Mr P.P.

14. On the same day, 4 July 2019, an investigator attached to the Specialised Prosecutor's Office and a police officer interviewed the applicant's father. Three witnesses were interviewed on 9 July 2019. On 10 July 2019 the material from the earlier complaints of the applicant's father to the Sofia district prosecutor's office (see paragraph 6 above) was added to the case file.

15. On 15 July 2019 (eleven days after the opening of the criminal proceedings), the applicant's father signed a promissory note in favour of

Mr P.P.'s (then) wife, Ms L.P., undertaking to pay her 2,816,395 Bulgarian levs (BGN – 1,440,000 euros (EUR)) on 30 November 2019.

16. The applicant submitted, with reference to various media publications, that Ms L.P. had links with a (previous) Chief Prosecutor and with a non-governmental organisation which had in 2015 organised a campaign in favour of the Chief Prosecutor and against people perceived as hostile to him.

C. First detention of the applicant

1. Arrest and initial charges

17. In the early morning of 17 July 2019 the police arrested the applicant at his home. His mother, his sister and his sister's husband were also arrested, as were the then and former managers of K Korekshan EOOD (see paragraphs 8 and 11 above). At 6.30 a.m. the applicant was placed in police detention for up to twenty-four hours.

18. At 11.15 p.m. on the same day the applicant was charged with three offences: (a) being (with his mother, his sister, his sister's husband, and the then and former managers of K Korekshan EOOD) a member of a gang formed for the purpose of money laundering; (b) blackmailing his father; and (c) money laundering.

19. Immediately after that Mr G.M., the second prosecutor put in charge of the case (see paragraph 13 above), placed the applicant and the former manager of K Korekshan EOOD in detention for up to seventy-two hours pending the hearing of an application by him to the Specialised Criminal Court to place the two of them in pre-trial detention (see paragraph 20 below). The following day, 18 July 2020, the same prosecutor placed the then manager of K Korekshan EOOD in detention for up to seventy-two hours as well.

2. Proceedings before the Specialised Criminal Court

20. At 3.11 p.m. on 19 July 2019 the same prosecutor, Mr G.M., applied to the Specialised Criminal Court to place the applicant and the then and former managers of K Korekshan EOOD in pre-trial detention. According to the applicant, his father had already written several hours earlier, on the morning of 19 July 2019, to all employees in their joint company stating that the applicant would be detained for "a further six months".

21. The Specialised Criminal Court heard the prosecutor's application between 8.30 a.m. and 2 p.m. the following day, 20 July 2019.

22. Counsel for the three accused argued, *inter alia*, that the proceedings had been opened to "make [the applicant's father] happy". That smacked of a "commission" and suggested that the proceedings had been opened for

purposes straying far from those envisaged by the law. Counsel pointed in that connection to:

(a) the haste with which the proceedings had been opened;

(b) the odd decision to assign the case to the National Investigation Service (see paragraph 10 above);

(c) the bragging by the applicant's father that the applicant would be detained (see paragraph 20 *in fine* above);

(d) material suggesting that before the investigation had been opened, the applicant's father had already been aware that it would be opened and that specific charges would be brought and specific people detained; and

(e) suspicious similarities between the legal characterisation of the offences in the complaint lodged by the applicant's father (which had clearly not been written by him personally) and in the ensuing charge sheet.

23. The Specialised Criminal Court gave its decision *ex tempore* at the end of the hearing. The judge placed the applicant, but not the two others, in pre-trial detention. She did not comment on the allegations that there was an ulterior purpose for the proceedings.

3. Proceedings before the Specialised Criminal Court of Appeal

24. On 22 July 2019 both the applicant and the prosecutor appealed to the Specialised Criminal Court of Appeal.

25. On 25 July 2019 the charges against the applicant were amended. The first charge (see paragraph 18 (a) above) was altered to conspiracy (with the same people) for the purpose of aggravated embezzlement. The second and third charges (see paragraph 18 (b) and (c) above) remained unaltered. It was additionally alleged that the applicant had embezzled assets belonging to Izamet 1991 OOD and had attempted to misappropriate money belonging to his father.

26. The hearing took place on 30 July 2019 between 2 p.m. and 7.19 p.m.

27. Besides their comments on the substance of the appeals, counsel for the three accused again suggested that the Specialised Prosecutor's Office had undertaken to carry out the wishes of the applicant's father. According to them, the purpose of the case was to have some sort of charges which could serve as a basis to detain the people whom the applicant's father wished to see out of his way, and to exert pressure on them through their detention.

28. The Specialised Criminal Court of Appeal gave its decision *ex tempore* at the end of the hearing. The panel upheld, by two votes to one, the decision of the judge below to place the applicant in pre-trial detention. It also did not comment on the allegations of ulterior purpose. The dissenting judge stated, *inter alia*, that all the offences alleged against the applicant concerned relations within the family, and that pre-trial detention was hence not an appropriate measure in respect of him.

4. The applicant's medical problems in detention and his release

(a) The applicant's medical problems

29. While in detention the applicant fell seriously ill with kidney problems, among other things. In his interview with the Anti-Corruption Fund, released on YouTube on 4 October 2021 (see paragraph 3 above and footnote 1), he said that (a) while he had been in custody, he had repeatedly been threatened in order to pressure him to transfer his shares in the companies co-owned with his father (see paragraph 4 above) to a straw man selected by Mr P.P., and that (b) an infection which he had acquired (perhaps by design) in a hospital to which he had been taken for treatment had caused him to develop urosepsis and nearly die, owing in particular to the lack of proper medical treatment.

30. From the documents submitted by the applicant, it appears that he was treated in various hospitals in September-December 2019 (for part of which he was still in detention) and underwent a number of surgeries. On 8 November 2019 his left kidney was surgically removed. Because his remaining kidney has impaired function he has had to undergo haemodialysis three times a week since that operation.

(b) First request for release

31. On 13 September 2019 the applicant sought his release from detention and on 7 October 2019 the Specialised Criminal Court acceded to his request.

32. The Specialised Prosecutor's Office appealed against that decision, and on 15 October 2019 the Specialised Criminal Court of Appeal reversed the lower court's decision and decided to keep the applicant in pre-trial detention.

(c) Second request for release and release of the applicant

33. On 16 October 2019 the applicant again sought his release. The Specialised Criminal Court heard the request on 30 October 2019 but decided that in order to come to a decision it would need an expert report on how ill the applicant was, whether he could be treated while in detention, and whether his health was compatible with his remaining in detention.

34. The expert report, which became available on 5 November 2019, stated that the applicant suffered from acute kidney impairment. Initially, he had been suffering from nephrolithiasis (kidney stones), but that had worsened and had led to a chronic inflammation of his pelvicalyceal system, acute bilateral pyelonephritis and pyelitis, and the onset of urosepsis and hepatorenal syndrome. Those conditions required complex medical treatment – including haemodialysis and, possibly, intensive care and surgery – and could only be treated in a specialised medical facility. They were life-threatening and incompatible with the applicant's remaining in detention.

35. On 6 November 2019 the Specialised Criminal Court held a second hearing on the applicant's request for release, and on an application by the prosecution ordered a further expert report on his state of health.

36. On 8 November 2019 the Specialised Criminal Court admitted in evidence the second expert report and heard the opinion of two medical experts, who reiterated that the state of the applicant's health made it impossible for him to remain in a detention facility. The Specialised Criminal Court decided that the applicant was to be released on bail. It found, in particular, that his life-threatening medical condition made it highly unlikely that he would flee, commit an offence or hinder the investigation.

37. The Specialised Prosecutor's Office appealed against that decision. The Specialised Criminal Court of Appeal heard the appeal on 14 November 2019 and upheld the decision of the court below. The judge rapporteur noted, in particular, that for four months no investigative steps had been taken in the criminal proceedings against the applicant.

D. Seized cash and valuables

1. Seizure of those items

(a) Search-warrant applications and search warrants

38. On 16 July 2019 Mr G.M., the second prosecutor put in charge of the case against the applicant (see paragraph 13 above), made more than twenty applications to the Specialised Criminal Courts for search warrants in respect of:

(a) the applicant and certain flats, cars and safe deposit boxes used by him;

(b) the applicant's mother, and a flat and safe deposit boxes used by her;

(c) the applicant's sister and her husband, and flats and cars used by them; and

(d) the former manager of K Korekshan EOOD (see paragraphs 8 and 11 above), and a flat used by him.

39. The applications, which were nearly identical, did not explain specifically why the prosecutor believed that items relevant for the investigation would be found as a result of those searches or why it was necessary to seize such items.

40. The same day, 16 July 2019, two judges of the Specialised Criminal Court – one of whom was the judge who would place the applicant in pre-trial detention four days later (see paragraph 23 above) – allowed all of those applications. Neither of the judges explained in their decisions specifically why they had concluded that the search warrants were to be granted; one of the judges merely referred, in all her decisions, to the "reasons set out in the [application]" and the "material in the case [file]", and the other judge referred to "the steps taken so far [in the investigation]".

41. It is unclear whether the Specialised Criminal Court issued search warrants in respect of the safe deposit boxes. It is also unclear whether those boxes were the same as the ones subsequently searched by the police (see paragraphs 43-45 below).

(b) Searches and seizures carried out on 17 and 18 July 2019

42. On the morning of the following day, 17 July 2019, the police, acting on the basis of one of the above warrants (see paragraphs 39-40 above) and pursuant to instructions by the Specialised Prosecutor's Office, searched the applicant's flat. There, they seized a number of gold coins and one silver coin, and several thousand euros and Bulgarian levs in cash. The applicant noted in the record of the search that all those items belonged to him. In another flat in the same building, which also seems to have been used by the applicant and his mother and was searched by the police, apparently without a judicial warrant, the police found and seized, *inter alia*, a contract between the applicant's mother and a bank for the rental of a safe deposit box.

43. In the early afternoon of the same day, 17 July 2019, the police went to that bank, searched (without a judicial warrant) the safe deposit box rented by the applicant's mother, and seized EUR 550,000 in cash that they found inside. The applicant submitted at the time that that sum belonged to him. In his interview with the Anti-Corruption Fund that was released on YouTube on 8 October 2021 (see paragraph 3 above and footnote 1), he said that only EUR 350,000 of the sum belonged to him and the rest to his mother. On the same or the following day, 18 July 2019, the Specialised Prosecutor's Office asked the Specialised Criminal Court to approve the search *ex post facto*. On 18 July 2019 one of the two judges who had issued the warrants on 16 July 2019 (see paragraph 40 above) did so, holding, without further elaboration, that the search had been carried out as a matter of urgency and in line with the Code of Criminal Procedure.

44. Later the same afternoon the police also searched, likewise without a judicial warrant, a safe deposit box which the applicant was renting in another bank, and seized more than eight hundred gold coins from it. The applicant noted in the record of the search that the gold items were family valuables, and that most of them had been "left to [him] by [his] grandmothers". The same day the Specialised Prosecutor's Office asked the Specialised Criminal Court to approve the search *ex post facto*. The following day, 18 July 2019, the other of the two judges who had issued the search warrants on 16 July 2019 (see paragraph 40 above) did so, holding, without further elaboration, that "there [had been] urgency in the case at hand ... and the carrying out of ... the search without [seeking prior judicial approval had been] the only way of gathering and preserving evidence".

45. On 18 July 2019 the same prosecutor, Mr G.M., who had sought the series of search warrants on 16 July 2019 (see paragraph 38 above) applied for a search warrant in respect of another safe deposit box rented by the

applicant in the same bank as the safe deposit box rented by his mother (see paragraph 43 above). The same day the judge who had approved *ex post facto* the search of the other safe deposit box used by the applicant (see paragraph 44 above) allowed the application, giving the same reasons, nearly word for word, as those that she had given for her decisions of 16 July 2019 (see paragraph 40 above). The same day the police searched the box and seized from it more than a thousand gold coins, a gold plate and several thousand euros in cash. The applicant again noted in the record of the search that the gold items were family valuables "[inherited] from [his] grandmothers".

46. In a subsequent in-house report on the handling of the criminal cases against the applicant (see paragraph 130 below), a prosecutor from the Supreme Cassation Prosecutor's Office noted that none of the seized items had been described in sufficient detail in the records attesting their seizure, and that in his view this had been in breach of the requirement in Article 110 § 1 of the Code of Criminal Procedure that seized items be carefully inspected and described in detail in the seizure record (see paragraph 134 below). Nor was there any indication that that omission had been made good by inspecting the items in more detail later on. The subsequent report also noted the apparent absence of any record attesting that any of the seized cash and valuables had been handed for safekeeping to a bank, as required by Article 110 § 5 of the same Code (see paragraph 134 *in fine* below).

2. Handing over of the seized coins and cash to third parties

(a) Handing over of the seized gold to the applicant's father

(i) As related to the Anti-Corruption Fund

47. In his interview with the Anti-Corruption Fund released on YouTube on 8 July 2020 (see paragraph 3 above and footnote 1), the applicant's father said that in the winter of 2019-20, Mr D.F.P. (at that time head of the Specialised Prosecutor's Office – see paragraph 13 above) had told him that there existed invoices showing that he (the applicant's father) had bought the gold coins seized on 17 and 18 July 2019 from a merchant in Austria. The applicant's father believed that those invoices were false and had been drawn up by someone in the Specialised Prosecutor's Office. On an unspecified later date, the head of a security company providing protection for Mr P.P. had called the applicant's father to tell him to go to the Specialised Prosecutor's Office and meet Ms L.P. (Mr P.P.'s then wife) there. She had met him in a car in front of the building and had told him that "they had found the documents for the [gold]" and that he was to go and take it, adding that "they" would take care of it and give him "his share" the following day. At about 8 p.m. he had gone into the building and been led to Mr D.F.P.'s office, where he had seen one of the lawyers working with Mr P.P. (see paragraphs 9, 11 and 15 above), another lawyer working with him (see paragraph 60 below),

and a prosecutor. The applicant's father had been shown the gold and had seen that some of the coins were missing. He had signed the requisite papers, the prosecutor had carried the gold down in two boxes and had loaded it into Ms L.P.'s car, and she had driven off. A few days later, on 26 March 2020, one of the lawyers working with Mr P.P. had called the applicant's father and asked him to go again to the Specialised Prosecutor's Office and get the remaining gold coins.

48. In his interview with the Anti-Corruption Fund released on YouTube on 8 October 2021, the applicant said that he had first learned about those events when he had seen the YouTube video in which his father had described them (see paragraph 47 above).

(ii) As emerging from the written evidence

49. On 11 October 2019 one of the lawyers allegedly working with Mr P.P. submitted a request to the Specialised Prosecutor's Office, on behalf of the applicant's father, for the gold coins seized on 17 and 18 July 2019 from the applicant's home and the safe deposit boxes rented by him (see paragraphs 42 and 44-45 above) to be handed over to the applicant's father. The subsequent in-house report on the handling of the cases against the applicant (see paragraph 130 below) noted that it was odd that the detailed description of the items in that request fully matched their descriptions in the seizure records and had clearly been copied verbatim from those records, even though the applicant's father had not been present during the searches or been given copies of those records. The lawyer enclosed with the request photocopies of invoices purporting to show that the applicant's father had bought gold coins from a company in Germany. The subsequent in-house report noted that those invoices did not contain any description of the gold coins in issue, which would have made it possible to check whether they were the same as the gold coins seized on 17 and 18 July 2019. The report further noted that in his complaints and interviews the applicant's father had never alleged that the applicant had misappropriated coins belonging to him.

50. On the same day the request was sent for decision to Mr D.D., the prosecutor initially assigned to work on the 2019 case against the applicant (see paragraph 13 above). Prosecutor D.D. dealt with the request on 18 February 2020, when he allowed it in so far as it concerned the items seized on 17 July 2019 from the safe deposit box rented by the applicant (see paragraph 44 above). He noted, without further details, that the return of those items before the conclusion of the proceedings would not hamper the investigation since no further investigative steps were envisaged in relation to them, and since they were not an object or a tool of the alleged offence, or subject to forfeiture. That was not the case, however, with the items seized from the applicant's home and from the other safe deposit box rented by him (see paragraphs 42 and 45 above). According to the subsequent in-house report on the handling of the cases against the applicant (see paragraph 130

below), the decision of prosecutor D.D. was inconsistent, unfounded and arbitrary. In particular, the prosecutor had not even attempted to verify whether the coins allegedly purchased by the applicant's father were the same as those seized from the applicant. The prosecutor had, moreover, decided on the request apparently without checking the case file or consulting with the investigators working on the case.

51. According to a record dated 23 March 2020 that was drawn up and signed by Mr K.P. – another prosecutor of the Specialised Prosecutor's Office who had also been specifically assigned to the case on 16 March 2020 by the (then) head of that office, Mr D.F.P. – and by the applicant's father, the valuables seized from the applicant's home and from the two safe deposit boxes rented by him (see paragraphs 42 and 44-45 above) had been handed over to the applicant's father. The record referred to the decision of prosecutor D.D. of 18 February 2020 but made no attempt to explain the discrepancy. The subsequent in-house report on the handling of the cases against the applicant (see paragraph 130 below), stated that the handing over of items in respect of which there had been no decision had constituted misuse of power on the part of prosecutor K.P., and recommended that he be prosecuted in relation to that.

52. It appears from a record dated 24 March 2020 (the following day) that prosecutor K.P. had handed over more gold coins to the lawyer purporting to act on behalf of the applicant's father (see paragraph 49 above). The subsequent in-house report on the handling of the cases against the applicant (see paragraph 130 below) noted that the record did not make it clear which coins had been handed over, but that prosecutor K.P. had apparently handed over coins not covered by the decision of prosecutor D.D.

53. The same day, 24 March 2020, the same lawyer asked the Specialised Prosecutor's Office to hand over more gold coins seized from the applicant's home and the two safe deposit boxes rented by him (see paragraphs 42 and 44-45 above) to the applicant's father. Two days later, on 26 March 2020, prosecutor K.P. allowed the request and ordered that the coins in issue were to be handed over to the applicant's father. He noted that they had not been returned in the decision of 18 February 2020 (see paragraph 50 above) owing to clerical mistakes, and went on to say that there was no intention to subject the coins to forensic examination or carry out other investigative steps in respect of them. Moreover, the evidence did not suggest that the coins were the proceeds of, or an instrument for the commission of the offence with which the applicant was charged. Prosecutor K.P. then proceeded to hand over the coins in issue to the lawyer. According to the subsequent in-house report on the handling of the cases against the applicant (see paragraph 130 below), that decision of prosecutor K.P. was – like the earlier decision of prosecutor D.D. (see paragraph 50 above) – unfounded, unlawful and arbitrary.

(b) Handing of some of the seized cash to Mr D.L.

(i) As related to the Anti-Corruption Fund

54. In an interview with the Anti-Corruption Fund released on YouTube on 31 July 2020 (see footnote 1), a Mr D.L. said that on 9 March 2020 an acquaintance of his had told him that prosecutor D.F.P. (see paragraph 47 above) had asked him to go to a restaurant where Mr P.P. was holding his meetings. There he had met Mr P.P. and two men, who had told him that everything was happening with the involvement of Mr D.F.P., and that the (then) Chief Prosecutor, Mr I.G., had also been informed. They had threatened Mr D.L. that if he did not cooperate there would be consequences for him and his family. Two days later, on 11 March 2020, the same acquaintance of Mr D.L. had again taken him to a meeting with Mr P.P., who was this time accompanied by a lawyer who had drawn up a letter of authority whereby Mr D.L. would authorise her to act on his behalf, and a "contract for safekeeping of funds" purporting to show that he had given the applicant, whom he did not know and had never met, EUR 650,000 in cash for safekeeping. Mr D.L. had had to sign those two documents.

55. In his interview (see paragraph 54 above), Mr D.L. went on to say that on 16 March 2020 he had been told to go to the Specialised Prosecutor's Office to sign that he had received the cash. Two men, probably prosecutors, had shown him into the building, where he had been invited to sign a document stating that he had been handed the money, in the presence of the same lawyer whom he had authorised on 11 March 2020 (see paragraph 54 above). An employee of the Specialised Prosecutor's Office had handed the cash to that lawyer, and Mr D.L. and the lawyer had left the building. The lawyer had got in Mr P.P.'s car, and she and Ms L.P. had driven off. No record had been given to Mr D.L. to attest that he had been handed the cash; he had only been given a copy of the decision of 16 March 2020 (see paragraph 58 above).

56. In his interview with the Anti-Corruption Fund released on YouTube on 8 October 2021 (see paragraph 3 above and footnote 1) the applicant said that he had first learned about those events when he had seen the video in which Mr D.L. had described them (see paragraph 54 above).

(ii) As emerging from the written evidence

57. On 11 March 2020 the lawyer who was purporting to act on behalf of Mr D.L. asked the Specialised Prosecutor's Office to hand over to Mr D.L. EUR 650,000 which he had allegedly given to the applicant "for safekeeping" in October 2018.

58. On the same day the request was assigned to prosecutor D.D., but five days later, on 16 March 2020, it was reassigned to prosecutor K.P. – who had been specifically assigned to the case on that same day (see paragraph 51 above). Also on the same day, 16 March 2020, prosecutor K.P. ordered that

the EUR 550,000 seized from the safe deposit box rented by the applicant's mother (see paragraph 44 above) be handed over to Mr D.L. He noted that the lawyer acting on behalf of Mr D.L. had enclosed with the request for the return of the cash a contract showing that in 2018 Mr D.L. had given the applicant EUR 650,000 for safekeeping. There was no intention to subject the seized cash to forensic examination or carry out other investigative steps in respect of it. Moreover, the evidence did not suggest that the cash was the proceeds of, or an instrument for the commission of, the offence of which the applicant was accused. It had been given to him for safekeeping and bore no relation to the case against him. The lawyer acting on behalf of Mr D.L. had also enclosed with the request evidence of the lawful origin of the money. The subsequent in-house report on the handling of the criminal cases against the applicant (see paragraph 130 below) analysed that decision and the circumstances in which it had been taken, and concluded that it had been "completely without foundation and arbitrary".

59. The same day, 16 March 2020, prosecutor K.P. handed over the EUR 550,000 to the lawyer purporting to act on behalf of Mr D.L.

E. Second detention of the applicant and his ensuing house arrest

1. Meeting in February 2020

60. According to the applicant, in February 2020 he and his wife had been summoned to a meeting with a lawyer working with Mr P.P., Ms D.K. She had threatened the applicant that unless he transferred his shares in the companies co-owned with his father by 10 March 2020, her "bosses" would place him in detention and that he would not be released as he had been the first time, even if he were dying. When the applicant enquired who "they" were, Ms D.K. had stated that "Mr [P.P.] was a very influential man and that for the next seven years, while Mr I.G. [was] Chief Prosecutor, they [the applicant and his wife] should do as they [we]re told, because if they did not, [the applicant] would remain in prison until he vanished".

61. The applicant did not transfer his shares to anyone within the deadline given to him by Ms D.K.

2. Arrest of the applicant on 16 March 2020 and fresh charge

62. On 13 March 2020 Mr D.D., one of the prosecutors who had been in charge of the 2019 case against the applicant (see paragraphs 13, 18 and 25 above), decided to separate some of the material in the case into a new file on the grounds that it contained information pointing to the existence of a second criminal gang formed for the purpose of money laundering. On 16 March 2020 the (then) head of the Specialised Prosecutor's Office, Mr D.F.P., specifically chose another prosecutor, Mr M.I., to also work on the case. The same day prosecutor M.I. opened fresh criminal proceedings on the basis of

the material separated from the 2019 case, noting, without further elaboration, that it was sufficient for a reasonable suspicion that an offence had been committed. The subsequent in-house report on the handling of the cases against the applicant (see paragraph 130 below) commented that the grounds on which the material had been separated and the lawfulness of doing so were open to question, in particular in view of the absence of any work on the 2019 case during the months preceding the decision to separate that material.

63. At 7.20 a.m. on 16 March 2020 the applicant was arrested by the police in his home in connection with that new case. He was placed in police detention for up to twenty-four hours. In a declaration which he signed at 8 a.m. he informed the police that he needed to undergo haemodialysis.

64. The applicant submitted that when he had told the police officers who were keeping him in custody that he urgently needed to undergo haemodialysis, they had replied that they were awaiting instructions from the Specialised Prosecutor's Office. Fearing for his life, the applicant had contacted his then lawyer, who had told him that he had to pay Mr P.P. EUR 350,000, or he would not be taken for haemodialysis. The applicant had replied that his wife could find a maximum of EUR 200,000, and she had later handed that sum in cash to the lawyer to pass on to Mr P.P. In the evening the applicant was taken to a hospital for haemodialysis. He was later taken to another hospital for a check-up, and then to a detention facility.

65. At 8.12 p.m. the same day, 16 March 2020, the applicant was charged with conspiring with his accountant in September and October 2017 to embezzle assets belonging to Izamet 1991 OOD. At 8.50 p.m. Mr M.I., the second prosecutor put in charge of the case (see paragraph 62 above), placed him in detention for up to seventy-two hours, pending the hearing of an application by prosecutor M.I. to the Specialised Criminal Court to have the applicant placed in pre-trial detention (see paragraph 66 below). The prosecutor stated that it was necessary to detain the applicant owing to a real risk that he might commit an offence or flee, in particular in the light of the seriousness of the charge against him.

3. Application to place the applicant in pre-trial detention

66. The following day, 17 March 2020, prosecutor M.I. applied to the Specialised Criminal Court to have the applicant placed in pre-trial detention. The prosecutor argued that the available evidence, which consisted of the material separated from the 2019 case against the applicant (statements by his father accusing him of embezzling company assets and of entering into unfavourable contracts on behalf of Izamet 1991 OOD, and a report from a tax audit of the company), was sufficient for a reasonable suspicion that he had committed the offence with which he had been charged. Since in the 2019 case the applicant had already been charged with several serious offences allegedly committed over a short time (see paragraphs 18 and 25 above), there was a real risk of his resuming his offending if he were to remain at large. It

had to be borne in mind in that connection that there was evidence to suggest that in his capacity as manager of Izamet 1991 OOD he had made a number of transactions with a view to siphoning off company assets to a company owned by him alone. There was, furthermore, a risk that he could destroy evidence.

4. Hearing of that application by the Specialised Criminal Court

67. The Specialised Criminal Court, sitting in a single-judge formation, heard the application to detain the applicant on the same day, 17 March 2020, between 1.30 p.m. and 3.01 p.m.

(a) Course of the hearing and submissions by the parties

68. Counsel for the applicant first asked the judge to order an expert report on whether the applicant's health was compatible with his being detained, pointing out that he only had one kidney which was moreover not functioning well, and that he thus required regular haemodialysis. They expressed concern that the applicant could die in custody. The judge refused the request, saying that the need to rule quickly on the prosecution's application to detain the applicant precluded adjourning the proceedings to obtain expert evidence, and that he would make findings about the applicant's health on the basis of the evidence already available.

69. Prosecutor M.I. repeated nearly word for word the arguments set out in his application (see paragraph 66 above).

70. Counsel for the applicant submitted that the charge against him had been formulated in unclear and general terms, which in itself was reason enough not to detain him. The charge was based on material obtained in the investigation opened in July 2019 (see paragraphs 13, 18 and 25 above), which meant that the prosecution had had ample time to formulate it properly. Moreover, that material had been separated from the 2019 case on 13 March 2020, many months after that case had been opened. That suggested abuse of process by the Specialised Prosecutor's Office: it could potentially separate material from the case in that manner every few months and use it as the basis for fresh charges and renewed applications to have the applicant detained. The inexplicable haste with which that office had acted in the new case also smacked of arbitrariness. Moreover, it was unclear how the fresh charge was in fact different from those brought in the 2019 case.

71. Counsel for the applicant went on to argue, with respect to the evidence against the applicant, that the audit report by the National Revenue Agency was the subject of a judicial review challenge, and that it was in any event inconclusive for any criminal-law matters. All transactions carried out by the applicant had been legitimate. As for the statement of the applicant's father, it had been made in the context of a family feud and a dispute between shareholders. It was open to the applicant's father to bring a civil action

against the applicant; the prosecuting authorities had no business meddling in a civil dispute such as theirs. The remaining evidence consisted of three invoices, which could not in themselves furnish proof of an offence.

72. Counsel for the applicant also submitted that there was no risk that he would flee. He had made no such attempt since his release from pre-trial detention in the 2019 case against him (see paragraphs 36-37 above), and had been found at home when re-arrested. Moreover, he needed regular haemodialysis. It was fanciful to suggest that he would flee and thus put himself in a situation in which he could not continue undergoing that medical procedure. Nor was there any risk that he would offend. The charge against him concerned events which had taken place three years previously, and there was no indication that he had committed offences since then. He did not have any convictions, and was not in the national police database. It was true that two criminal cases were pending against him, but that second case was the result of the inappropriate and borderline illegal separating of material from the 2019 case. The risk of his destroying evidence was also illusory.

73. Counsel for the applicant lastly noted that the applicant only had one kidney which was moreover not functioning well. His health was therefore particularly fragile, and if he was placed in a detention facility there was a risk that he would die, especially in the light of the ongoing COVID-19 pandemic. All of the criminal proceedings against him had been the result of a "commission" to crush him.

(b) Decision of the Specialised Criminal Court

74. The Specialised Criminal Court gave its decision *ex tempore* at the end of the hearing. The judge placed the applicant in pre-trial detention.

75. The judge first dealt with the alleged lack of clarity of the charge and the presence of a reasonable suspicion against the applicant:

> "The court finds the objection of counsel for the [applicant] in respect of the degree of precision of the charge unfounded, since, in the light of the early stage of the investigation, the [charge] has in fact the requisite precision, [given that it] specif[ies] the ... period of time during which the criminal activity is alleged to have taken place, as well as the degree of involvement of each of the accused in that activity. The facts set out in the charge are fully sufficient to enable the [applicant] to understand the scope of the charge and accordingly to organise his defence adequately.
>
> In view of the early stage of the investigation, the analysis of the evidence gathered in the case leads to the conclusion that a reasonable supposition can be made that [the applicant] has committed the offence with which he has been charged. This is supported by the written and oral evidence in the case.
>
> All of [this] evidence ... contains information that [the applicant] has taken part in a criminal conspiracy and has engaged in concrete acts of embezzlement ... [Such information can be found] in particular in the statement of [his father], as well as the written evidence – the invoices and other documents – which confirm the likelihood that [the applicant] has [engaged in] such activities.

> The overall analysis of the statement of [the applicant's father] and the remaining written evidence points to a very high degree of likelihood that [the applicant] has on the one hand taken part in the conspiracy, and on the other hand taken part in the alleged offences [of aggravated embezzlement]. In conclusion, the court finds that the reasonable suspicion [required by law] is present ..."

76. The judge went on to say that there was no risk that the applicant would flee, but that there was a risk that he would commit an offence:

> "[E]ven though [the applicant] has no previous convictions, the manner of commission and character of his act ... can enable a conclusion that there is a real risk of [his] committing another offence. [T]he fact that [his] act [was] committed in cooperation with others and as part of a complex criminal activity, combined with his concrete participation in the offences charged against him, leads to the unequivocal conclusion that the acts of which [he stands accused] are characterised by a heightened degree of dangerousness in terms of both the offence and the offender, and that they affect ... the inviolability of private property.
>
> That leads the court to conclude that [the applicant] and his acts are characterised by a heightened degree of dangerousness, which leads to the only possible conclusion in view of the findings above, namely that there is a real risk that [the applicant] would commit another offence."

77. Lastly, the judge held that the applicant's personal circumstances and health problems could not alter the conclusion that he was to be placed in pre-trial detention, since the urgent character of the proceedings in which that had to be decided did not permit the examination of such issues.

78. The judge fixed for 24 March 2020 the hearing by the Specialised Criminal Court of Appeal of any appeal against his decision.

5. Visit by the applicant's lawyer in the hospital on 18 March 2020

79. According to the applicant, the following day, 18 March 2020, his lawyer had visited him in the hospital where he was undergoing haemodialysis and had told him that, to obtain his release, he had to pay Mr P.P. a further EUR 150,000 (see paragraph 64 above) and transfer his shares in the companies co-owned with his father. He would otherwise be "sacrificed" and "made an example of". Fearing for his life, the applicant had agreed. Five days later, on 23 March 2020, the applicant's wife withdrew that sum from the bank account of a company owned by the applicant and handed it to a man sent by the lawyer who met her in front of the bank.

6. Share transfer on 20 or 23 March 2020

80. Meanwhile, on 20 March 2020, the applicant was again taken to the same hospital for haemodialysis. After the procedure, he was kept at the hospital and at about 3 p.m. taken to a room where he saw guards, the head of the detention facility where he was being kept, lawyers, and Ms L.P. (Mr P.P.'s then wife), who was allegedly giving orders to everyone present, including the guards. At about 5 p.m. a notary arrived. The applicant's wife

was also present.[2] The applicant signed several documents; it appears that chief among those were notarised minutes of a general meeting of Izamet 1991 OOD (the holding company co-owned with his father – see paragraph 4 above) which resolved to: (a) admit a Mr K.H. as a new, third, shareholder; (b) increase the company's capital by issuing new shares to be subscribed by Mr K.H.; (c) relieve the applicant and his father of their managerial duties; (d) appoint Mr K.H. as the new manager; (e) change the company's registered office; (f) adopt new articles of association; and (g) authorise Mr K.H. to enter into all sorts of contracts on matters falling within the company's object. According to the applicant, Mr K.H., a young boxer training in a sports club run by Ms L.P., was a straw man for Mr P.P. Mr K.H. was not present; the applicant submitted that he had never met him. The process lasted until about 6.30 p.m. or 7 p.m., and after that the applicant was taken back to the detention facility. According to him, on 23 March 2020, when he had been brought back to the same hospital for another round of haemodialysis, he had been forced to re-sign the same documents because those that he had signed three days earlier were full of mistakes. The documents which he signed on 23 March 2020 were again notarised.

81. According to statements by the applicant's father in his interview with the Anti-Corruption Fund released on YouTube on 2 July 2020 (see paragraph 3 and footnote 1 above), on the same date, 20 March 2020, he had been taken to the same hospital, and through, among other things, threats that the applicant would not be permitted to undergo haemodialysis, had likewise been coerced into transferring some of his shares in the companies to Mr K.H.

82. On 24 March 2020 Mr K.H. tried to have the above-mentioned resolutions purportedly adopted by the general meeting of Izamet 1991 OOD registered in the register of companies. On 30 March 2020 his request was refused. He renewed his attempt on 5 May 2020, but the examination of that request by the register of companies was stayed by the Sofia City Court on 13 July 2021.[3]

83. It appears that throughout those developments the security company providing protection for Mr P.P. (see paragraph 47 above) did not let the applicant or his father access the two facilities of the companies in Dupnitsa and Sofia. It is unclear how matters stand at present.

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[2] In her interview with the Anti-Corruption Fund that was released on YouTube on 8 October 2021 (see paragraph 3 above and footnote 1), the applicant's wife said that about thirty people had been present in that room and the corridor outside.

[3] In his interview with the Anti-Corruption Fund that was released on YouTube on 8 October 2021 (see paragraph 3 above footnote 1), the applicant said that his lawyer had involved him without his knowledge in a legal challenge against those refusals, but that he had withdrawn that legal challenge and the proceedings had been discontinued.

7. Placement under house arrest and subsequent release

(a) Proceedings in the Specialised Criminal Court of Appeal

(i) Appeals on behalf of the applicant

84. Meanwhile, on 18 March 2020, one of the applicant's lawyers appealed against the Specialised Criminal Court's decision to place him in pre-trial detention (see paragraphs 74-77 above). He argued that there was no risk that the applicant would flee, commit an offence or hamper the investigation, and pointed to his serious medical conditions.

85. On 19 March 2020 the applicant's second lawyer also appealed against the Specialised Criminal Court's decision to place the applicant in pre-trial detention. He submitted that the material in the case was insufficient to establish a reasonable suspicion that the applicant had committed an offence. Nor was there a real risk that he would flee or commit an offence. He had a clean criminal record, and there was no indication of impending investigative steps which he could hamper if not in detention. The appeal went on to elaborate on the applicant's health problems, and insisted that they were incompatible with his being in detention.

86. The Specialised Criminal Court forwarded the appeals to the Specialised Criminal Court of Appeal on 23 March 2020.

(ii) Hearing of those appeals

(α) Course of the hearing and submissions by the parties

87. A three-member panel of the Specialised Criminal Court of Appeal heard the appeals on the morning of 24 March 2020.

88. The same prosecutor who had applied for the applicant to be placed in pre-trial detention (see paragraph 66 above) argued that the statements of the applicant's father and the invoices and tax documents showed that the applicant had carried out transactions with company assets at abnormally low prices, and had, without any apparent business rationale, transferred company assets to a shell company at prices twenty times lower than normal, with that shell company in turn transferring those assets to companies controlled by him. That was enough for a reasonable suspicion that he and his accountant had formed a conspiracy in that connection. Since there was nothing to prevent the applicant from continuing to transfer such assets, the judge below had correctly found a risk that he could commit an offence if released. The prosecution went on to submit that the charges in the fresh case were distinct from those in the 2019 case (see paragraphs 18 and 25 above), since they concerned a different scheme to embezzle assets that the applicant had kept separate from the one involving his family members, who stood accused alongside him in the 2019 case. However, since the applicant's health was incompatible with conditions in a detention facility, it was more appropriate to place him under house arrest.

89. Counsel for the applicant pointed out that the invoices relied on by the prosecution concerned transactions in respect of which he had already been charged in the earlier criminal case. Moreover, the only proper way of making out a reasonable suspicion that he had embezzled company assets was an expert report analysing the flow of the assets to which the charge related, since embezzlement could only consist in the definitive misappropriation of assets. As for the risk of his committing offences if released, it had to be borne in mind that the charges related to a company in which he was a shareholder alongside his father, with whom he had extremely acrimonious relations. His father's evidence was hence to be taken with some caution. Lastly, his medical problems and the need for him to undergo regular haemodialysis would put his health at risk if he were to remain in detention.

(β) Decision of the Specialised Criminal Court of Appeal

90. The Specialised Criminal Court of Appeal gave its decision *ex tempore* at the end of the hearing. The panel varied the decision of the judge below and instead placed the applicant under house arrest.

91. The court agreed with the judge below that the charge against the applicant had been formulated precisely enough for the purposes of that early stage of the investigation, and held that it had been sufficiently informative to allow him to understand it and challenge his pre-trial detention. The charge was not identical to those brought in the 2019 case: those earlier charges concerned embezzlement committed in concert with the managers of K Korekshan EOOD, whereas the charge under examination concerned a conspiracy to commit an offence with the applicant's accountant. The judge below had correctly analysed the evidence – the invoices and other documents and the statement of the applicant's father – and been right to conclude that it was sufficient for a reasonable suspicion against the applicant. The judge had also been right to find that there was a real risk that the applicant would offend if released, as the criminal activity of which he had been accused was highly dangerous. At that early stage, the existence of such a risk could be established solely on the basis of the nature of the alleged offence and the seriousness of the penalty envisaged for it. The only point on which the judge below had fallen into error had been his failure to take account of the applicant's health issues, since regular haemodialysis was in practice incompatible with detention.

92. According to the applicant, the true reason for the decision to replace his pre-trial detention with house arrest was that he had already transferred the shares and paid the sums that had been requested on behalf of Mr P.P. (see paragraphs 64 and 79-80 above). He was allegedly told that he would remain under house arrest until the share transfer could be registered in the register of companies (see paragraph 82 above), so that he would be unable to prevent that.

(b) The applicant's release on bail

93. On 22 May 2020 prosecutor M.I. released the applicant on bail, citing his health problems and the need for him to undergo medical procedures. On 30 September 2021 the same prosecutor also lifted the bail conditions, citing the expiry of the statutory time-limit for imposing preventive measures on the applicant in connection with the fresh criminal case against him.

F. Investigation of the handing of seized items to the applicant's father

94. In June 2020 the Sofia City prosecutor's office opened an investigation into allegations made by the applicant's father during his interviews with the Anti-Corruption Fund, which had been released on YouTube two days previously, on 24 June 2020 (see paragraph 3 above and footnote 1).

95. On 11 August 2023 Mr P.P. and his (apparently by then former) wife Ms L.P. were charged with concealing the valuables purportedly returned to the applicant's father (see paragraphs 47-53 above), contrary to Article 215 § 1 of the Criminal Code, and prosecutor D.D. was charged with aggravated misconduct in public office, contrary to Article 282 §§ 1 and 2 of the same Code, in relation to his decision of 18 February 2020 to hand the valuables over to the applicant's father (see paragraphs 50 above). Mr P.P. could not be found to be presented with the charges and so became the subject of a nationwide search.

G. Requests for the return of the seized cash and valuables

1. Request made in the summer of 2020

96. On an unspecified date in the summer of 2020 the applicant asked the Specialised Prosecutor's Office to give him back, *inter alia*, various items seized from his home on 17 July 2019 (see paragraph 42 above). On 17 August 2020 one of the prosecutors in charge of the case, Mr K.P. (see paragraph 51 above), agreed to return to the applicant, *inter alia*, cash seized from his home. However, he refused to order the return of the coins seized from there, noting that they had already been handed over to the applicant's father (see paragraphs 51-53 above).

2. Request made in September 2021

97. On 7 September 2021 the applicant asked the Specialised Prosecutor's Office to give him back the valuables and cash seized from his home, from one of the safe deposit boxes rented by him, and from the safe deposit box rented by his mother (see paragraphs 42-43 and 45 above). He submitted that the link between those items and the offences with which he had been charged was unclear and that their retention had become excessively lengthy. He

relied on, *inter alia*, Article 1 of Protocol No. 1, and argued that the continued retention of those items would amount to a disproportionate interference with his possessions. He also pointed out that in accordance with an interpretative decision of the Supreme Court of Cassation (see paragraph 137 below), public prosecutors could not order that items seized as evidence be handed to persons other than those from whom they had been seized.

98. On 16 September 2021 two of the prosecutors in charge of the case, Mr D.D. and Mr K.P. (see paragraphs 50-51 above), refused the request. They noted that the coins that the applicant had requested be returned to him had already been handed over, pursuant to their orders, to the "person entitled" to them in February and March 2020 (see paragraphs 50 and 53 above), after that person had presented purchase invoices attesting his title to them. The prosecutors went on to note that when receiving the items, that person had stated that the coins were his own property. As for the cash seized from the applicant's home, it had already been returned to the applicant himself on 17 August 2020 (see paragraph 96 above). Since all items whose return the applicant was seeking had already been the subject of decisions under Article 111 of the Code of Criminal Procedure (see paragraph 136 below), his request had to be refused.

99. The applicant sought judicial review of that decision. He argued that by deciding to hand the coins to someone else, the Specialised Prosecutor's Office had impermissibly taken on the role of a court. As for the cash, it had not in fact been returned to him, and there was no evidence, such as a written record, that it had been. There was evidence that public prosecutors had committed the offences of embezzlement and handling stolen property. The applicant sought court orders directing that (a) the Specialised Prosecutor's Office cause the person to whom it had handed over the coins to deliver them up, so that they could in turn be returned to the applicant, and that (b) the cash be returned to him unless the Specialised Prosecutor's Office could produce documents attesting that that had already happened.

100. In a final decision 15 October 2021, the Specialised Criminal Court upheld the prosecutors' decision. It noted that there had been three earlier decisions by prosecutors in respect of the items whose return the applicant was seeking (see paragraphs 50, 53 and 98 above). According to Article 111 § 3 of the Code of Criminal Procedure, a prosecutor's refusal to return seized items could be judicially reviewed only if it was based on the grounds set out in Article 111 § 2 (see paragraph 136 below), whereas the refusal at issue had been for a different reason, namely that the items had already been returned by earlier decisions. The court could not review those earlier decisions, since under Article 111 § 3 only a refusal to return items was amenable to review. The logic underlying the relevant provisions, including Article 113 of the Code (see paragraph 137 below), was that the criminal courts had no jurisdiction to decide civil-law disputes relating to evidence. If the applicant claimed title to the items handed to third parties, he had to submit that claim

for adjudication to the civil courts. As for the cash whose return had already been ordered on 17 August 2020, the applicant had to approach the authorities tasked with the safekeeping of evidence to obtain it.

H. Progress of the criminal proceedings against the applicant

101. The July 2020 in-house report on the handling of the cases against the applicant (see paragraph 130 below) noted that no work had been done on the 2020 case against him apart from the initial steps taken in relation to his detention.

102. On 20 January 2022 prosecutors D.D. and K.P. (see paragraphs 13, 51 and 62 above) re-joined the material from the 2020 case against the applicant to that from the 2019 case against him (see paragraphs 13 and 62 above). They noted briefly that the two cases were connected. It appears that they were acting pursuant to a proposal, dated 6 December 2021, by the investigator in charge of the 2020 case, in which she opined that there was no evidence of a criminal gang between the applicant and his accountant.

103. According to a letter from the Sofia City prosecutor's office to the Agent of the Government, dated 18 August 2023, the criminal proceedings against the applicant were still ongoing. Following the closure of the Specialised Prosecutor's Office and the Specialised Criminal Court in July 2022, the case had been transferred to the Sofia City prosecutor's office, which was still investigating it at the time when the letter was written.

I. Ensuing civil proceedings brought by the applicant

1. Proceedings for a declaration that the share transfer was void

104. In June or July 2021 the applicant sought from the Sofia City Court a declaration that all resolutions adopted by the general meeting of Izamet 1991 OOD in March 2020 (see paragraph 80 above) were void. He submitted, with reference to his allegations about the events in the hospital at that time, as well as to all facts relating to his first and second periods of detention and the general context of the case, that all the resolutions reflected in the minutes signed by him on 23 March 2020 had been adopted owing to the threat to his health and life and did not reflect his or his father's true will. The two had in fact not met on that day, nor had the applicant met Mr K.H.

105. The (nominal) defendant to the claim was the company itself; it conceded that all of the applicant's allegations were true. Mr K.H. intervened as an interested party; he argued that the resolutions were valid.

106. The Sofia City Court decided to subject the case to a full examination rather than give a default judgment. Having heard witness evidence about the events of 23 March 2020, including by the notary who had certified the signatures affixed on that date, in a contentious judgment given in August 2023 (*реш. № 1023 от 14.08.2023 г. по т. д. № 1348/2021 г., СГС*), the

court allowed the claim, declared all the resolutions in the minutes of the purported general meeting of shareholders of Izamet 1991 OOD of 23 March 2020 (see paragraph 80 above) void, and found that those resolutions had never actually been adopted, on the basis that the evidence showed that that meeting had not in fact taken place.

107. At the date of the latest information available to the Court (30 January 2024) an appeal by Mr K.H. had been lodged against that judgment, and the proceedings before the Sofia Court of Appeal (*в. т. д. № 1035/2023 г., САС*) were still ongoing.

2. Recent claims for damages against the prosecuting authorities

108. In December 2022 the applicant brought three claims for damages in the Sofia City Court against the Prosecutor's Office. He is represented in those proceedings by the same lawyers who are acting on his behalf before the Court.

(a) Claim relating to the seized items

109. The first claim was under section 49 of the Obligations and Contracts Act 1950 (see paragraph 151 below). It concerned the seizure of the cash and valuables in July 2019 and their subsequent transfer to third parties (see paragraphs 38-59 above). The statement of claim, running to seventy-seven pages, set out at length the events underlying the applicant's application to the Court, and alleged that both the seizure and the subsequent handing over of the bulk of the seized items to third parties had been tortious and in breach of Articles 8 and 18 of the Convention and Article 1 of Protocol No. 1. It referred to the Court's case-law relating to each of those issues, and explained in detail why those provisions had in the applicant's view been infringed in his case. The applicant sought BGN 5,265,799 (EUR 2,692,360) in respect of pecuniary damage, plus BGN 1,256,478 (EUR 642,427) in interest on that sum, as calculated from the date on which he had first requested the return of the seized items until the lodging of his claim, and interest (to be calculated) from the lodging of the claim until payment.

110. Citing the seizure and freezing of the bulk of his assets and the allegedly ruinous effects of the actions of the prosecuting authorities on his business, the applicant sought – under the relevant rules of procedure (see paragraph 156 below) – remission of the applicable court fee of 4% of the amount claimed, which in his case came to BGN 260,891 (EUR 133,392). On 12 June 2023 the Sofia City Court allowed the request in part, holding that in view of the information which the applicant had provided about his resources and income, he should only pay a court fee of BGN 1,000 (EUR 511).

111. The applicant presented written evidence in support of his claim, and asked the Sofia City Court to call witnesses, obtain various documents from other courts, authorities and private persons, and order expert reports.

112. At the date of the latest information available to the Court (30 January 2024), the proceedings before the Sofia City Court (*гр. д. № 13664/2022 г.*) were still ongoing.

(b) Claims relating to the applicant's detention

113. The second claim, or rather claims, were brought under section 2(1)(1) and (1)(2) of the State and Municipalities Liability for Damage Act 1988, as amended in December 2012 (see paragraph 141 below). They concerned the two detentions of the applicant and the transfer of shares he had carried out in March 2020 (see paragraphs 17-37 and 63-93 above). The statement of claim, running to 158 pages, likewise set out at length the events underlying the applicant's application to the Court, and alleged that:

(a) the applicant's successive arrests and detention on 17 July 2019 and 16 March 2020 and the ensuing decisions of the Specialised Criminal Court and the Specialised Criminal Court of Appeal to place him in pre-trial detention (see paragraphs 17, 19, 23, 28, 63-64, 74-77 and 90-91 above) had been in breach of Article 5 § 1 (c) of the Convention;

(b) the charges brought against the applicant in July 2019 and March 2020 had not been sufficiently precise (see paragraphs 18, 25 and 65 above), in breach of Article 5 § 2 of the Convention;

(c) in July 2019 the applicant had not been brought before a judge promptly (see paragraphs 17, 19-21 above), in breach of Article 5 § 3 of the Convention;

(d) the applicant's deprivation of liberty between 17 July and 14 November 2019 and between 17 March and 22 May 2020 (see paragraphs 17-37 and 63-93 above) had not been based on a reasonable suspicion or any other relevant and sufficient reasons, in breach of Article 5 § 3 of the Convention;

(e) in July and September-October 2019 the Specialised Criminal Court and the Specialised Criminal Court of Appeal had failed to conduct a proper review of the applicant's detention and in particular deal with a number of arguments raised on his behalf, in breach of Article 5 § 4 of the Convention (see paragraphs 23, 28 and 31-32 above);

(f) in the autumn of 2019 the Specialised Criminal Court and the Specialised Criminal Court of Appeal had failed to rule on the applicant's two requests for release "speedily", again in breach of Article 5 § 4 of the Convention (see paragraphs 31-37 above);

(g) the applicant's detention in July-November 2019 and March-May 2020 had been for the unavowed ulterior purpose of depriving him of his money, valuables and business rather than for the purpose of prosecuting him in respect of criminal offences, in breach of Article 18 of the Convention; and

(h) by causing the applicant to be placed in detention, where he had suffered near-fatal damage to his health, the prosecuting authorities had acted in breach of Article 3 and possibly even Article 2 of the Convention.

114. The applicant further claimed, with reference to section 2c of the 1988 Act (which provides for liability of the authorities for serious breaches of European Union law) that his detention and some of the judicial decisions relating to that detention had infringed European Union law.

115. The applicant also referred to the Court's case-law relating to each of those issues, and explained in detail why Articles 2, 3, 5 and 18 of the Convention had, in his view, been infringed in his case. He sought BGN 7,000,000 (EUR 3,579,043) in respect of non-pecuniary damage (which he described as a partial claim since he estimated the sum of the actual damage he had suffered at BGN 14,000,000, or EUR 7,158,086), plus BGN 2,442,222.22 (EUR 1,248,688.39) in interest on that sum from the date on which he had first been arrested in 2019 until the lodging of his claim, and interest (to be calculated) from the lodging of the claim until payment.

116. The applicant presented written evidence in support of his claims, and asked the Sofia City Court to call witnesses, obtain various documents from other courts, authorities and private persons, and order expert reports.

117. In February 2023 the Sofia City Court instructed the applicant to (a) state whether his claims related solely to his detention (and specify how long it had lasted in total), and (b) itemise his claims, and explain how he had come to the figure of BGN 7,000,000 and how much specifically he sought (including interest) in respect of each alleged breach of section 2(1)(1) and (1)(2) and section 2c of the 1988 Act.

118. In additional submissions filed in March 2023 the applicant gave the clarifications requested by the court. He emphasised, in particular, that the actions of the authorities had to be examined as a whole and in the light of the overall context of the cases against him.

119. The applicant's claims were then served on the Prosecutor's Office, which filed its response to them in May 2023. It contested the claims in full, stating that the applicant's allegations of misuse of power were simply unfounded "emotional statements" that were not based on any proper evidence.

120. On 29 August 2023 the Sofia City Court instructed the applicant to specify and clarify his claims, in particular as regards their quantum (see paragraphs 113-115 above), gave directions in relation to various evidential matters, and set down the case for hearing on 18 April 2024.

121. In additional submissions filed in October 2023 the applicant gave the further clarifications requested by the court.

122. At the date of the latest information available to the Court (30 January 2024), the proceedings before the Sofia City Court (*гр. д. № 13662/2022 г.*) were still ongoing.

(c) Claim by for breaches of European Union law

123. The third claim was brought jointly by the applicant and a single-member limited liability company wholly owned by him, Izamet 2000 EOOD, under section 2c of the 1988 Act (which provides for liability of the authorities for serious breaches of European Union law). The statement of claim, running to 128 pages, likewise set out at length the events underlying the applicant's application to the Court, and alleged that, among other things, the applicant's detention in 2019 and again in 2020, his reduction to physical helplessness and the seizure of the cash and valuables had all been in breach of Article 63 of the Treaty on the Functioning of the European Union (freedom of movement of capital), and Articles 34 and 35 of the same Treaty (freedom of movement of goods). The applicant and his company explained in detail why those provisions had in their view been infringed in their case.

124. The applicant sought BGN 80,000 (EUR 40,903) in respect of non-pecuniary damage, plus BGN 24,377.77 (EUR 12,464.16) in interest on that sum for the three years preceding the claim. The company sought (a) BGN 9,252,000 (EUR 4,730,472) in respect of pecuniary damage, and (b) BGN 10,000 (EUR 5,113), plus BGN 3,047.23 (EUR 1,558.02) in interest on that sum for the three years preceding the claim. They both also sought interest (to be calculated) for the period from the lodging of the claim until payment.

125. The applicant and his company presented written evidence in support of the claims, and asked the Sofia City Court to call witnesses, obtain various documents from other courts, authorities and private persons, and order expert reports. However, they requested that the examination of the claim be stayed until the adjudication of the two other claims lodged by the applicant (see paragraphs 109 and 113-115 above).

126. In March 2023 the Sofia City Court instructed the applicant and his company to clarify (a) precisely how the actions of the prosecuting authorities had prevented the free movement of capital or goods of the company, and thus engaged European Union law; (b) how such actions had caused the company damage, and what damage; and (c) whether the applicant was seeking an award in respect of non-pecuniary damage in his capacity as manager of the company.

127. In additional submissions filed in April 2023 the applicant and his company gave the clarifications required by the court.

128. At the date of the latest information available to the Court (30 January 2024), the proceedings before the Sofia City Court (*гр. д. № 13663/2022 г.*) were still ongoing.

J. In-house report by the Supreme Cassation Prosecutor's Office

129. Following media publications about the applicant's case, in June 2020 the (then) Chief Prosecutor, Mr I.G., and the (then) Deputy Chief

Prosecutor, Mr B.S., instructed a prosecutor from the Supreme Cassation Prosecutor's Office to review the case and report on it.

130. In his report, dated 21 July 2020, that prosecutor criticised various aspects of the proceedings against the applicant, characterising some of the prosecutors' decisions in them as wanton, inexplicable and arbitrary (see paragraphs 46, 49 *in fine*, 50 *in fine*, 51 *in fine*, 52 *in fine*, 53 *in fine* and 58 *in fine* above).

131. The report was presented to the (then) Chief Prosecutor, Mr I.G., who took no action on it. On 5 July 2023 the (new) Chief Prosecutor *ad interim*, Mr B.S., sent the report to the Supreme Judicial Council, and the report was then made publicly available.

132. On 25 August 2023 the Chief Prosecutor *ad interim*, Mr B.S., asked the Prosecutors' Section of the Supreme Judicial Council to open disciplinary proceedings against prosecutors D.D., K.P., another prosecutor who had worked on the 2019 case against the applicant, the prosecutor in charge of the 2020 case against the applicant, and three investigators who had worked on those cases. On 13 September 2023 the Prosecutors' Section of the Supreme Judicial Council agreed to do so.

RELEVANT LEGAL FRAMEWORK

A. Retention and return of real evidence in criminal proceedings

1. Items which can be seized as evidence

133. Items which have been intended for use or have been used in the commission of an offence, items which bear traces of an offence or have been the object of an offence, and items which may serve to elucidate the facts of a criminal case can be obtained as evidence (Article 109 of the Code of Criminal Procedure).

2. Storage of cash and valuables seized and retained as evidence

134. Items seized as evidence must be carefully inspected, set out in detail in the seizure record, and if possible photographed (Article 110 § 1 of the Code of Criminal Procedure). The general rule is that they are to be enclosed with the case file (Article 110 § 2), and that whenever the case is transferred from one authority to another, the evidence is to be moved along with it (Article 110 § 3). Evidence consisting of cash or other valuables is, however, to be kept in a commercial bank servicing the State budget or in the Bulgarian National Bank (Article 110 § 5).

135. In a 2009 criminal case, a police investigator who had failed to comply with his duties under Article 110 § 5 of the Code in relation to seized cash was convicted of dereliction of duty and ordered to pay the person from whom the cash had been seized damages equalling the value of that cash (see

реш. № 67 от 28.09.2009 г. н. о. х. д. № 56/2009 г., ВАпС, upheld by *реш. № 5 от 28.01.2010 г. по н. д. № 645/2009 г., ВКС, III н. о.*). In 2014 a bank was ordered to pay the prosecuting authorities damages equivalent to the value of cash seized as evidence, deposited in a vault operated by that bank and subsequently stolen from there (see *реш. № 129 от 21.05.2014 г. по в. т. д. № 28/2014 г., ВтАС*, appeal on points of law not admitted for examination by *опр. № 674 от 03.08.2015 г. по т. д. № 3173/2014 г., ВКС, I т. о.*).

3. Retention and return of items seized as evidence

136. Under Article 111 § 1 of the Code of Criminal Procedure, items seized as evidence are to be retained until the end of the criminal proceedings in which they have been seized. Such items may, however, be returned to the "persons entitled to them, from whom they have been seized" before the end of the proceedings if that would not impede the establishment of the facts and if the items are not the object of an administrative offence. The decision as to whether to do so is for the prosecutor in charge of the case (Article 111 § 2). That prosecutor must respond to any such request within three days. His or her refusal to return the items is amenable to judicial review by the relevant first-instance court, at the instance of the "entitled person". The court, sitting in a single-judge formation and dealing with the claim without a hearing, must rule within three days. Its decision is final (Article 111 § 3).

137. In accordance with Article 113 of the same Code, if a dispute arises in respect of items seized as evidence, and that dispute falls to be examined in proceedings governed by the Code of Civil Procedure, the items are to be retained until the civil court's judgment becomes final. In a November 2014 interpretative decision (*тълк. реш. № 2 от 12.11.2014 г. по тълк. д. № 2/2014 г., ВКС, ОСНК*) the Supreme Court of Cassation held that the prosecutor must retain disputed items on the basis of Article 113 when faced with a request for their return even if the dispute has not already been submitted for adjudication to the civil courts. The existence of conflicting claims by two or more persons is sufficient, and it is irrelevant whether the prosecutor has become aware of those claims because they have been submitted to him or her or because he or she has learned about them otherwise. Such claims may concern the right to property over the items or other rights to them.

B. Liability of the authorities for measures taken in criminal cases

138. Section 2(1) of the State and Municipalities Liability for Damage Act 1988 ("the 1988 Act"), as originally enacted and subsequently amended, provides for no-fault liability on the part of the investigating and prosecuting authorities and the courts in several kinds of situations, listed in several subsections, arising chiefly in relation to criminal proceedings.

139. Pursuant to section 4 of the 1988 Act, compensation must cover all pecuniary and non-pecuniary damage directly and proximately resulting from the wrongful act.

140. None of the situations envisaged in section 2(1) of the 1988 Act has to do with the seizure or retention of evidence (for details, see *Tsonev v. Bulgaria* (dec.), no. 9662/13, §§ 29-32, 30 May 2017, and *Kolev v. Bulgaria* (dec.), no. 69591/14, §§ 12-14, 30 May 2017).

1. Liability for breaches of Article 5 §§ 1 to 4 of the Convention

141. In 2012 section 2(1)(1) and (1)(2) of the 1988 Act was amended. The amendments came into force in December 2012. Under the new wording of those two subsections, the State is liable for damage caused to individuals by the investigating or prosecuting authorities or the courts in cases involving (a) any deprivation of liberty in breach of Article 5 § 1 of the Convention (section 2(1)(1) *in fine*), and (b) a breach of rights protected under Article 5 §§ 2 to 4 of the Convention (section 2(1)(2)).

142. The explanatory notes to the bill which led to the amendments stated that the purpose of the reworded subsections 2(1)(1) and (1)(2) was to provide for compensation for breaches of Article 5 of the Convention, with the courts hearing claims under those provisions assessing "whether, when ordering an [otherwise] lawful deprivation of liberty, the competent authorities have not violated" paragraphs 2 to 4 of that Article. The notes went on to say that "[e]ach detention which fails to meet the criteria of Article 5 of the Convention should be grounds to engage the State's liability", and that the direct reference to the Convention was meant to "preclude a narrow application of the [1988 Act] only to the situations specifically provided for by it" and to "enable the courts to assess the actions of the national authorities under the Convention and the [Court's] case-law" (for more details, see *Tsonev*, cited above, § 34).

143. Details about the application of the reworded subsections 2(1)(1) and (1)(2) of the 1988 Act by the Bulgarian courts until 2021 can be found in *Tsonev* (cited above, §§ 38-40), *Kolev* (cited above, §§ 19-20), *Staykov v. Bulgaria* (no. 16282/20, §§ 53-56, 8 June 2021) and *Banevi v. Bulgaria* (no. 25658/19, §§ 60-63, 12 October 2021).

144. Here it should be added that in a decision given in March 2018 the Supreme Court of Cassation held that claims under subsections 2(1)(1) and (1)(2) based on an alleged breach of Article 5 of the Convention could be brought even if the order for pre-trial detention had not been previously quashed (see *опр. № 120 от 14.03.2018 г. по ч. гр. д. № 580/2018 г., ВКС, III г. о.*).

145. Another point which gave rise to doubt was whether in such proceedings the civil courts could collaterally review the well-foundedness of decisions of the criminal courts in relation to pre-trial detention. In a judgment given in February 2021 pursuant to a claim brought by the applicant

in *Staykov* (cited above), the relevant passages of which are cited in full in paragraphs 39-40 of the judgment in that case (and which is also mentioned in *Banevi*, cited above, § 62), the Sofia City Court held that they could not. Its judgment was later quashed by the Sofia Court of Appeal on other grounds (see *реш. № 1227 от 23.11.2021 г. по в. гр. д. № 966/2021 г., САС*).

146. In December 2019 and November 2020 respectively, another panel of the Sofia City Court and the Plovdiv Court of Appeal came to the same conclusion (see *реш. № 8604 от 16.12.2019 г. на по гр. д. № 4807/2019 г., СГС*, and *реш. № 260039 от 10.11.2020 г. по в. гр. д. № 378/2020 г., ПАС*). In July 2021 the Sofia City Court's ruling was upheld by the Sofia Court of Appeal (see *реш. № 10473 от 15.07.2021 г. по в. гр. д. № 933/2020 г., САС*), and in January 2023 the appeal on points of law against the latter's judgment was not admitted for examination by the Supreme Court of Cassation (see *опр. № 50044 от 27.01.2023 г. по гр. д. № 2315/2022 г., ВКС, IV г. о.*). However, following an appeal on points of law against the Plovdiv Court of Appeal's judgment which was admitted for examination, in August 2022 the Supreme Court of Cassation specifically disagreed with that ruling, saying that a proper examination of a claim under section 2(1)(2) unavoidably entailed an assessment of whether the standards flowing from Article 5 of the Convention had been infringed, proceeded to examine in detail whether the pre-trial detention of the claimant in that case had been ordered and maintained in line with the requirements of Article 5 § 3 of the Convention, held that it had not been, and awarded damages on that ground (see *реш. № 36 от 12.08.2022 г. по гр. д. № 730/2021 г., ВКС, IV г. о.*).

147. In a (not yet final) judgment given in July 2023 pursuant to a claim under section 2(1)(1) and (1)(2) of the 1988 Act by the applicants in *Banevi* (cited above), the Sofia City Court likewise held that it was not bound by the decisions of the criminal courts in relation to their detention but had to review for itself whether those decisions had resulted in a breach of Article 5 §§ 1 to 4 of the Convention (see *реш. № 260945 от 11.07.2023 г. по гр. д. № 7392/2020 г., СГС*).

148. In the judgment cited in paragraph 146 *in fine* above, the Supreme Court of Cassation also made it plain that a claim under section 2(1)(2) of the 1988 Act could be brought and decided before the end of the criminal case in which the pre-trial detention had been imposed.

149. It should also be mentioned that in a judgment given in September 2018 the Supreme Court of Cassation, in allowing a claim under section 2(1)(1) of the 1988 Act, had regard not only to the claimant's rights under Article 5 of the Convention, but also to his rights under Article 4 of Protocol No. 7 (see *реш. № 117 от 25.09.2018 г. по гр. д. № 4815/2017 г., ВКС, III г. о.*).

2. Liability for the seizure or retention of items as evidence

150. The Bulgarian courts have held that in cases not covered by section 2(1) of the 1988 Act (see paragraphs 138 and 140 above), a claim for damages could be pursued under section 49 of the Obligations and Contracts Act 1950 ("the 1950 Act"), which lays down the general rule of the Bulgarian law of tort that a person who has entrusted another with a job is liable for the damage caused by that other person in the course of or in connection with the job (see *Apostolovi v. Bulgaria*, no. 32644/09, § 59, 7 November 2019). This vicarious liability is premised on the wrongfulness of the impugned conduct. It does not require fault on the part of the person entrusting the job, but does require fault – which by virtue of section 45(2) of the 1950 Act is presumed – on the part of the person carrying out the job (see *Apostolovi*, cited above, § 60). The compensation must cover all damage which results directly and proximately from the tortious act (section 51(1) of the 1950 Act).

151. In the past decade or so, the Bulgarian civil courts have dealt with a number of claims for damages against the prosecuting authorities under section 49 of the 1950 Act relating to the allegedly unjustified retention of items as evidence in criminal proceedings. In those cases, the courts examined, *inter alia*, whether (a) the items had truly been necessary for the purposes of the criminal proceedings in which they had been seized, and whether (b) those proceedings, and the consequent retention of the items, had lasted too long (see, for instance, *реш. № 1478 от 12.08.2011 г. по в. гр. д. № 1330/2011 г., САС*, appeal on points of law not admitted for examination by *опр. № 640 от 30.05.2012 г. по гр. д. № 1728/2011 г., ВКС, IV г. о.*; *реш. № 465 от 20.12.2011 г. по гр. д. № 1794/2010 г., ВКС, IV г. о.*; *реш. № 425 от 07.03.2013 г. по в. гр. д. № 4636/2012 г., САС*, appeal on points of law not admitted for examination by *опр. № 191 от 06.02.2014 г. по гр. д. № 4706/2013 г., ВКС, IV г. о.*; *реш. № 8620 от 28.11.2016 г. по в. гр. д. № 7650/2016 г., СГС*, appeal on points of law not admitted for examination by *опр. № 1114 от 28.11.2017 г. по гр. д. № 2107/2017 г., ВКС, IV г. о.*; *реш. № 64 от 07.06.2019 г. по в. гр. д. № 161/2019 г., ВнАС*, appeal on points of law not admitted for examination by *опр. № 246 от 08.04.2020 г. по гр. д. № 3574/2019 г., ВКС, III г. о.*; *реш. № 916 от 30.10.2019 г. по гр. д. № 1117/2019 г., ОС-Бургас*, appeal on points of law not admitted for examination by *опр. № 509 от 03.07.2020 г. по гр. д. № 803/2020 г., ВКС, IV г. о.*; *реш. № 1589 от 27.02.2020 г. по в. гр. д. № 12203/2019 г., СГС*, appeal on points of law not admitted for examination by *опр. № 31 от 22.01.2021 г. по гр. д. № 2861/2020 г., ВКС, III г. о.*; and *реш. № 260048 от 07.12.2022 г. по гр. д. № 542/2019 г., ОС-Перник*, apparently final).

152. In recent years the Bulgarian civil courts have also allowed claims for damages against the prosecuting authorities under section 49 of the 1950 Act in relation to failures to return items seized as evidence to the persons from whom they had been seized (see *реш. № 137 от 18.02.2019 г.*

по гр. д. № 2957/2017 г., ВКС, III г. о., and *реш. № 136 от 27.06.2019 г. по гр. д. № 501/2019 г., ВКС, III г. о.*), for instance because (a) the items had been mislaid owing to the prosecuting authorities' failure to ensure that they were stored properly (see *реш. № 11853 от 12.08.2020 г., по в. гр. д. № 117/2020 г. АС-София*, appeal on points of law not admitted for examination by *опр. № 384 от 13.05.2021 г. по гр. д. № 4162/2020 г., ВКС, III г. о.*), or because (b) the investigators or prosecutors in charge of the case had, in excess of their powers, handed the items over to persons other than those from whom the items had been seized, in the absence of a final judgment of a civil court showing those other persons had title to the items (see paragraph 137 above, and *реш. № 1189 от 17.10.2006 г. по гр. д. № 1908/2005 г., ВКС, IV-А г. о.*, and *реш. № 70 от 02.08.2021 г. по гр. д. № 2401/2020 г., ВКС, IV г. о.*).

153. The Bulgarian civil courts have also held that the prosecuting authorities can be liable in damages under section 49 of the 1950 Act for physical damage to items seized and retained as evidence (see *реш. № 76 от 16.05.2017 г. по гр. д. № 2926/2016 г., ВКС, IV г. о.*; *реш. № 1458 от 03.07.2020 г., по в. гр. д. № 4773/2019 г., АС-София*, appeal on points of law not admitted for examination by *опр. № 60659 от 14.10.2021 г. по гр. д. № 1274/2021 г., ВКС, IV г. о.*; *реш. № 23 от 08.04.2020 г. по гр. д. № 1944/2019 г., ВКС, III г. о.*; and *реш. № 737 от 15.04.2021 г., по гр. д. № 3220/2020 г. ОС-Варна*, appeal on points of law not admitted for examination by *опр. № 60747 от 18.11.2021 г. по гр. д. № 2394/2021 г., ВКС, IV г. о.*).

154. In 2017 a joint panel of the Supreme Court of Cassation and the Supreme Administrative Court clarified that a claim for damages relating to an alleged failure by the investigating authorities to return cash retained as evidence in criminal proceedings fell to be examined under the relevant provisions of the 1950 Act, and that the claim was hence within the jurisdiction of the civil rather than the administrative courts (see *опр. № 20 от 15.03.2017 г. по адм. д. № 69/2016 г., ВКС и ВАС, см. петчл. с-в*).

155. The limitation period for bringing a claim under section 49 of the 1950 Act is five years (section 110 of the same Act). In the two judgments mentioned in paragraph 152 (b) above, the Supreme Court of Cassation held that for claims concerning items seized as evidence, the limitation period started to run when the claim accrued, which was at the end of the criminal proceedings in which the items had been seized, because it was then that they became subject to restitution. However, in a case concerning physical damage to such items (*реш. № 23 от 08.04.2020 г. по гр. д. № 1944/2019 г., ВКС, III г. о.*, cited in paragraph 153 above), the same court held that if an item was returned before the end of the proceedings, the claim accrued at that point instead, and the limitation period started to run from then.

C. Remission of court fees and costs

156. Under Article 83 § 2 of the Code of Civil Procedure, individuals found by the court to be unable to afford court fees or court costs (the latter comprise the remuneration of experts – Article 75) do not have to pay them. In such cases, court costs are paid from the court's budget (Article 83 § 3). If the case is then decided in favour of the party exempted from court costs, the losing party must pay those costs into the court's budget (Article 78 § 6). If, conversely, the case goes against the party exempted from court costs, they remain at the expense of the court's budget (see, for instance, *реш. № 631 от 05.12.2018 г. по т. д. № 666/2017 г., ОС-Пловдив*; *реш. № 260014 от 08.03.2022 г. по гр. д. № 236/2020 г., ОС-София*; and *реш. № 260044 от 21.11.2022 г. по т. д. № 85/2019 г., ОС-София*).

COMPLAINTS

157. The applicant complained under Article 1 of Protocol No. 1 that: (a) the seizure of the cash and the valuables from his home and from the safe deposit boxes rented by him and his mother and their subsequent transfer to third parties had been arbitrary; and (b) he had been coerced into transferring shares by being kept in detention and threatened with being denied healthcare.

158. The applicant also complained under Article 18 of the Convention taken in conjunction with Article 1 of Protocol No. 1 that: (a) the cash and valuables had been seized and retained with a view to their being misappropriated by Mr P.P. and his associates; and (b) he had been kept in detention and threatened with being denied healthcare precisely with a view to being coerced into transferring the shares.

159. Lastly, the applicant complained: (a) under Article 13 taken in conjunction with Article 18 of the Convention that his allegations of misuse of power had not been duly investigated; and (b) under Article 13 of the Convention taken in conjunction with Article 1 of Protocol No. 1 that he had not had an effective remedy in respect of (i) the seizure and subsequent loss of the cash and valuables, and (ii) his being kept in detention without healthcare with a view to being coerced into transferring shares.

THE LAW

A. Complaints relating to the seized items

160. In respect of his complaints that (a) the seizure of the cash and valuables from his home and from the safe deposit boxes rented by him and his mother, and the subsequent handing of those items over to third parties had been arbitrary, and that (b) those items had been seized and retained with a view to their being misappropriated by Mr P.P. and his associates, the

applicant relied on Article 1 of Protocol No. 1 and Article 18 of the Convention.

161. Those provisions read:

Article 1 of Protocol No. 1 (protection of property)

"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."

Article 18 (limitation on use of restrictions on rights)

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

1. The parties' submissions on the admissibility of the complaints

(a) The Government

162. The Government submitted that the applicant had not presented any evidence that the cash and valuables belonged to him. It followed that they could not be seen as his possessions, and that the complaint under Article 1 of Protocol No. 1 was incompatible *ratione materiae* with the provisions of the Convention or the Protocols thereto.

163. In any event, the applicant had not exhausted domestic remedies in respect of those complaints, for the following reasons.

(a) He had not sought the return of the seized cash and valuables at a much earlier stage. Had he done so, the prosecuting authorities would have had to retain them until the resolution of any dispute between the applicant and the people to whom those items had been handed over about title to them.

(b) He had not pursued to its conclusion a claim against the prosecuting authorities under section 49 of the 1950 Act, although he could have aired his allegations of ulterior purpose in such proceedings. In the light of the fresh evidence which had emerged – in particular, the in-house report by the Supreme Cassation Prosecutor's Office – regarding misconduct by public prosecutors in relation to the handing over of the seized items to the applicant's father and Mr D.L., and of the admissions by the applicant's father and Mr D.L. that they had used forged documents to obtain those items, such a claim had had a real chance of success. It was true that such claims in principle accrued only at the end of the criminal proceedings in which the items had been seized. But the applicant's case had possessed a particularity warranting an exception to that rule. By law, the prosecuting authorities could hand seized items over to third parties only if those persons had obtained a

final judgment establishing that they had title to the items. However, the prosecutors had, unlawfully, handed over the cash and valuables to the applicant's father and Mr D.L. without such a judgment. It had become open to the applicant to claim damages in respect of that act from the moment when he had learned of it.

(c) He had not brought a claim for damages against his father under the general provision of the Bulgarian law of tort, section 45 of the 1950 Act, or under the Act's unjust enrichment provision, section 55.

(d) Criminal proceedings were still ongoing in relation to the handing over of the cash and valuables to the applicant's father and Mr D.L.

(e) The applicant could have sought the return of the part of the cash which was still being retained by the prosecuting authorities.

164. Even if it were assumed that none of those remedies were effective, the complaints had been lodged out of time. The applicant ought to have become aware of the handing over of the items to third parties in mid-2020 at the latest, when the videos in which his father and Mr D.L. had spoken about the handovers had been released on YouTube, but he had only applied to the Court in October 2021. His September 2021 request for the return of the items had been bound to fail and had been made merely to reset the time-limit for applying to the Court.

(b) The applicant

165. The applicant submitted that under Bulgarian law, items seized as evidence in criminal proceedings had to be returned to the "person entitled to them, from whom they have been seized". That phrase had been interpreted by the Bulgarian courts to refer to any sort of legal entitlement to the seized items. This was because the prosecuting authorities could not decide disputes about title to seized items; that was a prerogative of the civil courts. He had an arguable claim that the valuables had been bequeathed to him by his grandmother by means of a handwritten will. Although still alive at the time of the seizure, she had clearly expressed her wish that he should inherit the valuables, and had handed them over to him. As for the cash, there was evidence that the applicant had received significant dividends before the seizure. In any event, all those items had been seized from him, and were thus his "possessions" for the purposes of Article 1 of Protocol No. 1.

166. The applicant went on to dispute that any of the remedies cited by the Government would have been effective in his case. He submitted the following arguments.

(a) Any earlier attempt to seek the return of the seized cash and valuables would have been bound to fail, given that they had been seized as part of a scheme, involving public prosecutors, to misappropriate them. Such an attempt would in any event have been difficult to carry out in the light of the applicant's pre-trial detention and life-threatening health problems.

(b) The prospects of the claim against the prosecuting authorities under section 49 of the 1950 Act which the applicant had brought in late 2022 were hard to gauge, in particular in the light of the Bulgarian courts' case-law to the effect that such claims for damages in relation to seized items only accrued when the proceedings in which the items had been seized and retained had ended. Such claims were, moreover, subject to a court fee of 4% of the value of the claim, payable up front. That came to a sizable sum in the applicant's case, in view of the high value of the seized items. Barring a remission of court fees, the claim would be impossible for him to pursue. In addition, an expert report on the value of the gold would be difficult to carry out and also entail high costs. Lastly, the Bulgarian courts had no case-law under Article 18 of the Convention, and the applicant's allegations of misuse of power and ulterior purpose would probably not be taken seriously by them.

(c) The same sort of hurdles would beset a claim for damages against the applicant's father or Mr D.L., and in such proceedings the applicant would be unable to rely on Article 18 of the Convention because the alleged breach of that provision was not directly linked with his father's role in the events.

(d) The criminal investigation in relation to the handing of the items to the applicant's father and Mr D.L. could remain pending for an unreasonably long time, and could hardly be expected to be impartial and objective.

(e) As for the small amount of seized cash still retained by the authorities, it had been frozen under legislation on the proceeds of crime, and could not, therefore, be returned to the applicant.

167. Lastly, the complaints had not been lodged out of time. It was not until the applicant had sought the return of the seized cash and valuables that he had been formally notified that they had been handed to third parties. The time-limit for applying to the Court could not run from the release of a video on YouTube; the final domestic decision in relation to the complaints had been the court decision upholding the prosecuting authorities' refusal to return the items to him. The alleged breaches were in any event of an continuing character.

2. The Court's assessment

(a) Compatibility *ratione materiae*

168. In this case, some of the cash and valuables in respect of which the applicant complained were seized from his home, some from two safe deposit boxes rented by him, and some from a safe deposit box rented by his mother, where he claimed that he had placed them (see paragraphs 42-45 above). The question to whom that cash and those valuables belong is plainly an important aspect of the case. However, in the light of the findings below on whether the applicant has exhausted domestic remedies (see paragraphs 172-201 below), there is no need to go into that point (see, *mutatis mutandis*, *Dimitar Krastev v. Bulgaria*, no. 26524/04, § 67, 12 February 2013, and *Lolov and Others*

v. Bulgaria, no. 6123/11, § 73, 21 February 2019). It is in any event not for the Court to determine such disputes about title, which are normally for the competent national courts to decide (see *Dimitar Krastev*, cited above, § 67). Those courts are better placed and equipped to act as fact-finding tribunals (see *McKerr v. the United Kingdom*, no. 28883/95, § 117, ECHR 2001-III).

169. The analysis here will thus proceed on the assumption that Article 1 of Protocol No. 1 applies in respect of all the seized items in relation to which the applicant complained (see, *mutatis mutandis*, *Saccoccia v. Austria*, no. 69917/01, § 85, 18 December 2008, and contrast *Delev v. Bulgaria* (dec.), no. 1116/03, § 31, 19 November 2013).

170. If Article 1 of Protocol No. 1 applies, Article 18 of the Convention must also be seen as applicable (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 663, 20 September 2011; *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, §§ 316-17, 18 July 2019; and *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 98, 14 October 2021).

171. The analysis below is thus based on the hypothesis that the complaints are compatible *ratione materiae* with the provisions of the Convention or the Protocols thereto within the meaning of Article 35 § 3 (a).

(b) Exhaustion of domestic remedies

172. It should be noted at the outset that the requirement to exhaust domestic remedies laid down in Article 35 § 1 of the Convention applies also to complaints under Article 18 of the Convention (see *Rustamzade v. Azerbaijan*, no. 38239/16, § 58, 7 March 2019; *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, § 144, 13 February 2020; and *Savalanli and Others v. Azerbaijan*, nos. 54151/11 and 3 others, § 107, 15 November 2022).

(i) Remedy tried by the applicant and remedy cited by the Government

173. In September 2021 the applicant attempted to obtain the return of the seized items in the standard manner: by way of a request to the prosecutors in charge of the case in which the items had been seized, and then by way of a claim for judicial review of their refusal (see paragraphs 97-100 and 136 above, and compare *Togrul v. Bulgaria*, no. 20611/10, § 32, 15 November 2018). However, it appears that in the unusual circumstances of his case that avenue was not capable of properly redressing his grievance. A request for the return of seized items could only yield a positive result if those items were still in the custody of the authorities. In September 2021 that was plainly not the case, since the Specialised Prosecutor's Office had long before then handed over most of the seized items to third parties (see paragraphs 49-53 and 58-59 above). The applicant must have become aware of that when the interviews with the Anti-Corruption Fund in which his father and Mr D.L.

spoke about the matter were released on YouTube in July 2020. Indeed, in his own interview with the Anti-Corruption Fund the applicant said that he had learned about those events when he had seen the YouTube videos in which his father and Mr D.L. had described them (see paragraphs 48 and 56 above). There is, moreover, clear proof that by August 2020 he was already aware that some valuables had been returned to his father (see paragraph 96 above). It was therefore unrealistic for him to seek the return of the items from the Specialised Prosecutor's Office more than a year later. It is furthermore open to question whether the return of the seized items could make good any damage resulting from their retention.

174. At the same time, the Government cited a remedy which appears far more suited to this situation: a claim for damages against the prosecuting authorities under section 49 of the 1950 Act (see paragraphs 150-154 and 163 (b) above). To comply with the exhaustion rule in Article 35 § 1 of the Convention, applicants who have at their disposal a domestic remedy plainly more suited to their situation must attempt it, even if they have already resorted to a less effective one (see *Dumpe v. Latvia*, no. 71506/13, §§ 61 and 70-76, 16 October 2018; *Mirenić-Huzjak and Jerković v. Croatia* (dec.), no. 72996/16, §§ 54-56, 24 September 2019; and *Köhler v. Germany* (dec.), no. 3443/18, §§ 67-74, 7 September 2021).

175. The salient questions are whether that remedy (a) can afford the applicant adequate redress, (b) is available and has a sufficient prospect of success in his case, and (c) would permit an examination of the substance of his complaints.

(ii) Adequate redress

(α) General principles

176. It is settled that the nature of the right under the Convention or the Protocols thereto alleged to have been breached has implications for the nature of the remedy required under Article 13 of the Convention in respect of the alleged breach (see, in general, *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports of Judgments and Decisions* 1996-VI; *Kaya v. Turkey*, 19 February 1998, § 107, *Reports* 1998-I; and, more recently, *Maksimov v. Russia*, no. 43233/02, § 60, 18 March 2010, and, for illustrations of this principle, see, for instance, *Kamburov v. Bulgaria* (dec.), no. 14336/05, §§ 56-57, 6 January 2011, and *Svoboden Zheleznicharski Sindikat "Promyana" v. Bulgaria* (dec.), no. 5044/04, § 58, 28 May 2013).

177. The nature of the alleged breach is also relevant in this respect (see, by way of example, *Donnelly and Others v. the United Kingdom*, nos. 5577/72-5583/72, Commission decision of 15 December 1975, Decisions and Reports 4, p. 4, at pp. 78-79, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 117, *Reports* 1998-VIII, as regards deliberate ill-treatment; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08,

§ 98, 10 January 2012, and *Ulemek v. Croatia*, no. 21613/16, § 86, 31 October 2019, as regards ongoing or resolved poor conditions of detention; *Jabari v. Turkey*, no. 40035/98, § 50, ECHR 2000-VIII, as regards removal to another State where the person concerned risks ill-treatment; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 207-08, 22 December 2020, as regards ongoing or completed deprivation of liberty; *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII, as regards unreasonably lengthy proceedings; *Bączkowski and Others v. Poland*, no. 1543/06, §§ 81-83, 3 May 2007, as regards a ban on assemblies whose dates were crucial for the organisers; *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 91-92, 9 July 2015, as regards structural difficulties preventing a disabled person from obtaining education; and *Petkov and Others v. Bulgaria*, nos. 77568/01 and 2 others, § 79, 11 June 2009, as regards omissions preventing parliamentary candidates from running).

178. The position under the exhaustion rule in Article 35 § 1 of the Convention, which has a close affinity with Article 13 of the Convention (see *Aksoy*, cited above, § 51), is the same: applicants are only required to resort to remedies which, if successful, can adequately redress their complaints under the Convention or the Protocols thereto (see, by way of example, *Van Oosterwijck v. Belgium*, 6 November 1980, § 29, Series A no. 40).

(β) Application of those principles

179. The rights alleged to have been breached in the present case are those under Article 1 of Protocol No. 1 to the peaceful enjoyment of one's possessions and under Article 18 of the Convention not to have one's Convention rights restricted for a non-prescribed (ulterior) purpose. The consequences of a breach of the right protected by Article 1 of Protocol No. 1 – even when resulting from unlawful actions of the authorities – should in principle be capable of being made good through an award of compensation (see, specifically with reference to the retention of items as evidence, *Karamitrov and Others v. Bulgaria*, no. 53321/99, § 77 *in fine*, 10 January 2008). More generally, from the Convention's perspective 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). As for the right under Article 18 of the Convention, it is, from this perspective, an accessory one.

180. The alleged breach has, apparently, already materialised in this case (compare *Delev*, cited above, § 34 *in fine*): a *post hoc* remedy thus appears sufficient in respect of it.

181. It is true that there are serious indications that the alleged interference with the applicant's possessions appears to have resulted from criminal acts by State officials and others. For the purpose of assessing whether he has exhausted domestic remedies, the applicant's allegations in that respect

must be assumed, as a working hypothesis, to be well-founded (see *Van Oosterwijck*, cited above, § 27).

182. However, the situation at hand, though raising extremely serious rule-of-law concerns, cannot be likened in terms of its gravity to the wanton and purposeful destruction of property by the security or armed forces, which is the only kind of situation in relation to which the Court has so far held that the remedy required under Article 13 of the Convention in respect of an alleged breach of Article 1 of Protocol No. 1 entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selçuk and Asker v. Turkey*, 24 April 1998, § 96, *Reports* 1998-II; *İpek v. Turkey*, no. 25760/94, § 198-99, ECHR 2004-II (extracts); *Doğan and Others v. Turkey*, nos. 8803/02 and 14 others, § 106, ECHR 2004-VI (extracts); *Esmukhambetov and Others v. Russia*, no. 23445/03, §§ 159 and 163, 29 March 2011; *Khamzayev and Others v. Russia*, no. 1503/02, § 153, 3 May 2011; and *Kerimova and Others v. Russia*, nos. 17170/04 and 5 others, § 217, 3 May 2011).

183. It should also be noted in this connection that when it comes to interferences with possessions by private persons which are of a criminal nature, the positive obligations under Article 1 of Protocol No. 1 have been held to require an effective criminal investigation, but the possibility of civil proceedings against the alleged perpetrators has also been deemed sufficient to discharge those obligations – provided, naturally, that the civil claim has a reasonable prospect of success and that that prospect is not somehow jeopardised by the absence of an effective criminal investigation (see *Blumberga v. Latvia*, no. 70930/01, §§ 67-68, 14 October 2008; *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 276, 12 December 2013; *Gherardi Martiri v. San Marino*, no. 35511/20, §§ 107-08, 15 December 2022; and *Korotyuk v. Ukraine*, no. 74663/17, §§ 36-37, 19 January 2023). Moreover, although a criminal investigation into the alleged serious misuse of power by law-enforcement officials in the applicant's case appears to be an appropriate response as a matter of policy, there is no evidence before the Court that the applicant himself has sought, in terms, the opening of such criminal proceedings.

184. In the light of all the above, it can be accepted that in the instant case a remedy which can only result in an award of compensation, such as a claim for damages against the prosecuting authorities under section 49 of the 1950 Act, would be capable of affording the applicant appropriate redress.

185. It must also be noted here that, to be appropriate, an award of compensation must, as regards in particular pecuniary damage, be such as to put the applicant, as far as possible, in the position he or she would have enjoyed if the alleged breach had not occurred (see, *mutatis mutandis*, *Portanier v. Malta*, no. 55747/16, § 55, 27 August 2019, and *Marshall and Others v. Malta*, no. 79177/16, § 78, 11 February 2020). Nothing sems to

prevent that result being attained in this case via proceedings under section 49 of the 1950 Act: by section 51(1), the award must cover all damage which results directly and proximately from the tortious act (see paragraph 150 *in fine* above).

(iii) Availability and prospect of success

186. It is true that a claim under section 49 of the 1950 Act, which sets out the general rule of vicarious liability in Bulgarian tort law, is – unlike a claim under the various subsections of section 2(1) of the State and Municipalities Liability for Damage Act 1988 – a remedy of a general character (see paragraphs 138 and 150 above). However, as can be seen from the domestic judgments set out in paragraphs 151-154 above, this remedy has been successfully used in situations comparable to that of the applicant (compare, *mutatis mutandis*, *Vakrilov v. Bulgaria* (dec.), no. 18698/06, § 37, 9 October 2012, and contrast, *mutatis mutandis*, *Lolov and Others*, cited above, §§ 48-51, and *Vasil Vasilev v. Bulgaria*, no. 7610/15, § 70 *in fine*, 16 November 2021). Those judgments are final (contrast *Maslarova v. Bulgaria*, no. 26966/10, § 36, 29 January 2019).

187. Contrary to what was apparently the position until about 2010-11 (see *Karamitrov and Others*, cited above, § 78, and *Georgi Atanasov v. Bulgaria*, no. 5359/04, § 43, 7 October 2010), in the past decade or so the Bulgarian courts have awarded damages under section 49 of the 1950 Act in respect of both (a) the unjustified retention of items seized as evidence in criminal proceedings (see *Pendov v. Bulgaria*, no. 44229/11, §§ 38-39, 26 March 2020), and (b) the failure of the prosecuting authorities to return such items to the persons from whom they have been seized, including when it was impossible to do so because the items had been unlawfully handed over to third parties. Those cases – in particular the two mentioned in paragraph 152 (b) above – are sufficiently similar to the applicant's case to permit a conclusion that a claim by him under section 49 of the 1950 Act offers a reasonable prospect of success, especially in the light of the findings of the in-house report on the handling of the criminal cases against him drawn up in July 2020 by the Supreme Cassation Prosecutor's Office (see paragraphs 46, 49 *in fine*, 50 *in fine*, 51 *in fine*, 52 *in fine*, 53 *in fine*, and 58 *in fine* above, and compare, *mutatis mutandis*, *Kateliev v. Bulgaria* (dec.), no. 18594/06, § 53, 25 June 2013, and contrast, *mutatis mutandis*, *Maslarova*, cited above, §§ 35-36). The final judgments in those cases were given long enough before the applicant applied to the Court (contrast *Pendov*, cited above, §§ 38-39).

188. Indeed, in late 2022 the applicant did bring such a claim, basing it on the same allegations as the ones which he made before the Court (see paragraph 109 above, and compare, *mutatis mutandis*, *Saure v. Germany* (dec.), no. 78944/12, §§ 38-53, 25 August 2015). His misgivings that he would be unable to pursue that claim owing to the high court fee due in

respect of it turned out to be without foundation, since at his request the Sofia City Court remitted the bulk of that fee, requiring him to pay BGN 1,000 (EUR 511) instead of the full fee of BGN 260,891 (see paragraph 110 above). There is nothing to suggest that the applicant faced serious difficulties in paying that sum (compare *Apostolovi v. Bulgaria*, no. 32644/09, § 72 *in fine*, 7 November 2019).

189. According to the latest information available to the Court, those proceedings are still in progress at first instance (see paragraph 112 above). It cannot be speculated as to whether the applicant will be able to make out his claim, owing in particular to the high costs of the expert report which he sees as necessary for that purpose. It is in any event open to him to seek a full or partial remission of court costs, including the remuneration of any court-appointed experts, if he is unable to pay them (see paragraph 156 above). One aspect of the exhaustion requirement is that in the domestic proceedings applicants must make a reasonable effort to use procedural means capable of preventing or remedying, as the case may be, the breach of the Convention, including evidential requests (see, among other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014; and *G.S. v. Bulgaria*, no. 36538/17, § 71 *in fine*, 4 April 2019).

190. The applicant further argued that the Bulgarian courts would see his claim as premature, owing to its having been lodged before the conclusion of the criminal proceedings in which the items in issue had been seized, which were still in progress (see paragraph 103 above) and could drag on for a long time.

191. It is true that in the two cases which likewise concerned seized items handed over by the authorities to persons other than those from whom they had been seized, the Bulgarian Supreme Court of Cassation held that claims under section 49 of the 1950 Act in relation to that accrued to the claimants when the criminal proceedings in which the items had been seized had ended (see paragraph 155 above). But it cannot be overlooked that in those cases that court was concerned with ascertaining the end point of the relevant limitation period rather than with the question whether the claims had been brought prematurely. Moreover, in both cases the court based its rulings that the claims had accrued at the end of the criminal proceedings on the proposition that under the general rule in the Bulgarian Code of Criminal Procedure items seized as evidence in a criminal case are to be retained until the end of the proceedings (see paragraph 136 above). However, the position in cases, such as the present one, in which the items are returned – in the event, handed over for the most part to third parties (see paragraphs 50, 53 and 58 above) – before the end of the criminal proceedings appears to be that the claim accrues when that return takes place (see paragraph 155 *in fine* above).

192. In the light of the above, it appears open to the applicant to argue that in his case the claim under section 49 of the 1950 Act has already accrued. It cannot be presumed that this argument would be bound to fail (see, *mutatis mutandis*, *Posevini v. Bulgaria*, no. 63638/14, § 54, 19 January 2017). Nor can the Court speculate on how the Bulgarian courts will approach this aspect of the case (see, *mutatis mutandis*, *Stefanov v. Bulgaria* (dec.), no. 51127/18, § 77 *in fine*, 8 September 2020). Mere doubts about the prospects of a remedy which appears to offer a reasonable possibility of redress are not a sufficient ground to eschew it (see, among other authorities, *Vučković and Others*, cited above, § 74).

193. The claim could naturally come up against other hurdles. For instance, faced with evidence that the items had not been returned to the applicant owing to criminal offences, the civil courts could stay the proceedings pending the outcome of any criminal proceedings relating to those acts (see paragraphs 94-95 above, and compare *Djangozov v. Bulgaria*, no. 45950/99, § 38, 8 July 2004, and *Anna Todorova v. Bulgaria*, no. 23302/03, § 81, 24 May 2011). That could then lead to undue delay or enable the prosecuting authorities to attempt to block the examination of the claim by unduly protracting any such criminal proceedings (should the civil courts choose to keep the civil proceedings stayed pending the outcome of any such criminal proceedings). But such considerations are, for the time being, in the realm of speculation (see, *mutatis mutandis*, *Atanasov and Apostolov v. Bulgaria* (dec.), nos. 65540/16 and 22368/17, § 63, 27 June 2017).

194. That said, the courts dealing with the claim must be careful not to permit any undue delays or omissions in any related criminal proceedings to impede the claim's examination or prospects (compare, *mutatis mutandis*, *Nikolay Kostadinov v. Bulgaria*, no. 21743/15, § 74, 8 November 2022).

195. It follows that, as matters stand, the applicant's claim for damages against the prosecuting authorities under section 49 of the 1950 Act appears to offer a reasonable prospect of success.

(iv) Examination of the substance of the complaints

196. In the claim he lodged with the Sofia City Court in December 2022, the applicant described in detail all the allegations which he made before the Court (see paragraph 109 above, and contrast, *mutatis mutandis*, *Pendov*, cited above, § 34). Nothing suggests that the Bulgarian courts dealing with the claim would be unable or unwilling to deal properly with those allegations or examine them in the light of Article 1 of Protocol No. 1 and Article 18 of the Convention (see, *mutatis mutandis*, *Posevini*, cited above, § 55). In Bulgaria the Convention is part of domestic law, and has been held by the courts either to regulate directly the relations between private persons and the authorities, or at least to constitute an aid to the interpretation of domestic-law provisions (see *Neshkov and Others v. Bulgaria*, nos. 36925/10

and 5 others, §§ 95-97, 27 January 2015). Moreover, the Bulgarian courts have recently exhibited a tendency to engage more broadly with Convention-based arguments (see *Stefanov*, cited above, § 80). It cannot be presumed that they will not do so in this case (see, *mutatis mutandis*, *Van Oosterwijck*, cited above, § 33, and *Azinas v. Cyprus* [GC], no. 56679/00, § 39, ECHR 2004-III). In such situations it is for the national courts to avail themselves of their powers of interpretation to address directly the impugned state of affairs and provide appropriate redress (see, *mutatis mutandis*, *Dimitrova and Others v. Bulgaria* (dec.), no. 39084/10, § 74 *in fine*, 11 July 2017).

197. If the Bulgarian courts are to deal properly with the applicant's complaints, they will, however, need to take into account not only the principles flowing from the Court's case-law under Article 1 of Protocol No. 1 – which are settled, including as regards the retention of items as evidence in criminal proceedings (see, for instance, *Petyo Petkov v. Bulgaria*, no. 32130/03, §§ 102 and 105, 7 January 2010, as well as *Georgi Atanasov*, §§ 28 and 31; *Togrul*, § 49; and *Pendov*, §§ 42 and 44, all cited above) – but also the principles flowing from the Court's case-law under Article 18 of the Convention, which have undergone some more recent developments.

198. Those latter principles were set out and reiterated in three recent judgments of the Court's Grand Chamber (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 264-317, 28 November 2017; *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018; and *Selahattin Demirtaş*, cited above, §§ 421-22). They have also been applied in several recent Chamber judgments (see, among other authorities, *Kavala v. Turkey*, no. 28749/18, §§ 215-32, 10 December 2019; *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, §§ 67-80, 18 February 2021; and *Miroslava Todorova v. Bulgaria*, no. 40072/13, §§ 203-14, 19 October 2021).

199. Those principles require, in particular, (a) an active approach on the part of the courts to the gathering of evidence (in recognition of the fact that a strict application of the principle *affirmanti incumbit probatio* is often ill-suited to the examination of allegations of ulterior purpose), (b) the drawing of inferences where appropriate, and (c) a willingness of the courts to rely on circumstantial evidence and more specifically to take into account contextual facts or sequences of events which can form a basis for inferences about the primary facts (see *Merabishvili*, cited above, §§ 311-17). In other words, the Bulgarian courts will need to carry out a broad contextual examination of the applicant's allegations and be prepared to go beyond appearances. Indeed, a formalistic approach to evidence may deprive a remedy of its effectiveness (see *Stelian Roşca v. Romania*, no. 5543/06, § 99, 4 June 2013).

200. Another important aspect of the Court's approach to Article 18 of the Convention is that when a "restriction" of a Convention right is applied both for an ulterior purpose and a purpose prescribed by the Convention (that is,

when it pursues a plurality of purposes), it can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose not prescribed by the Convention – in other words, if that other (ulterior) purpose was predominant. The assessment of which purpose was predominant in a given case depends on all the circumstances, and must be guided by (a) the nature and degree of reprehensibility of the alleged ulterior purpose, and (b) the consideration that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (see *Merabishvili*, cited above, §§ 292, 305 and 307). In continuing situations, the assessment of which purpose was predominant may vary over time (ibid., § 308).

(v) Conclusion

201. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

202. If the applicant is unable to obtain redress domestically, it will be open to him to apply again to the Court (see *Tsonev*, cited above, § 67).

(vi) Further remedies and objection that the complaints are out of time

203. In the light of the above conclusion, there is no need to examine the effectiveness of the other remedies cited by the Government (see paragraph 163 (a) and (c)-(e) above). In so far as they consisted in the possibility of bringing tort claims against private persons, they are in any event not relevant for assessing compliance with the exhaustion rule (see *Zlínsat, spol. s r.o., v. Bulgaria*, no. 57785/00, § 55 *in fine*, 15 June 2006), but concern the procedural duties under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, §§ 84 and 86, 20 September 2011).

204. Nor is it necessary to examine the Government's objection that the complaints were raised after the expiry of the time-limit in Article 35 § 1 of the Convention (see paragraph 164 above).

B. Complaints relating to the transfer of the applicant's shares

205. In respect of his complaints that (a) he had been coerced into transferring shares by being kept in detention and threatened with the denial of healthcare despite having a life-threatening medical condition, and that (b) the purpose of his detention had been to threaten him with a denial of healthcare with a view to coercing him into transferring shares, the applicant again relied on Article 1 of Protocol No. 1 and Article 18 of the Convention.

206. The text of those provisions has been set out in paragraph 161 above.

207. However, an observation needs to be made in relation to the legal characterisation of the complaint under Article 18 of the Convention (see paragraph 158 (b) above). In this case, the attempt to interfere with the applicant's possessions (to force him to transfer his shares to other private persons) was the alleged ulterior purpose of the interference with his liberty and security. In other words, the alleged infringement of the applicant's rights under Article 1 of Protocol No. 1 was the ulterior purpose of the "restriction" of his right to liberty and security under Article 5 of the Convention (on which the applicant did not rely – see paragraphs 157 (b) and 158 (b) above). That was already pointed out to the parties in the questions which the Court posed to them when giving notice of the application to the Government. Article 18 of the Convention must therefore be taken in conjunction with Article 5 §§ 1 and 3 of the Convention rather than with Article 1 of Protocol No. 1 as submitted by the applicant.

208. Article 5 of the Convention reads, so far as relevant:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

1. The parties' submissions on the admissibility of the complaints

(a) The Government

209. The Government submitted that the applicant had not exhausted domestic remedies in respect of these complaints, for the following reasons.

(a) Criminal proceedings were still ongoing in relation to the events.

(b) The applicant could claim damages in respect of his detention under section 2(1) of 1988 Act, and in those proceedings he could air his allegations that he had been detained and threatened with the denial of healthcare for the purpose of being coerced into transferring shares. In such proceedings, the courts would take into account evidence demonstrating arbitrariness and ulterior purposes.

(c) He could try to rescind the share transfers as having been made under duress, or seek a judicial declaration that the resolution of the general meeting of the company to allow the shares to be transferred to a third party was void.

In the absence of a registration of the share transfer in the register of companies, such proceedings could result in appropriate redress.

210. Even if it were to be assumed that none of those remedies would be effective, the complaints were out of time. The applicant's pre-trial detention had ended in March 2020 and his house arrest in May 2020, and the share transfer had taken place in March 2020, yet he had applied to the Court in October 2021, more than six months after those events.

211. In their supplementary observations, made in reply to those of the applicant, the Government cited two further remedies in respect of the way in which the applicant had been treated in detention: the dedicated preventive and compensatory remedies in respect of poor conditions of detention put in place in 2017. In their initial observations, the Government had already referred to the preventive remedy in their submissions relating to the merits of the complaint.

212. In those supplementary observations, the Government also submitted that since the applicant had not exhausted domestic remedies in respect of the restriction of his rights under Article 5 of the Convention, his complaint under Article 18 of the Convention was not arguable.

(b) The applicant

213. The applicant disputed that any of the remedies cited by the Government would have been effective in his case. He submitted the following arguments.

(a) It was doubtful whether a proper criminal investigation would be carried out in relation to his allegations about the share transfer.

(b) In late 2022 he had brought claims under section 2(1) of 1988 Act, but the manner in which the first-instance court had instructed him to clarify his claim and the prosecuting authorities' response to it suggested that that court would not engage properly with his allegations of ulterior purpose or take into account the context in which he had been placed in detention. The Government had not pointed to any decisions suggesting that any other approach might be taken in his case. Moreover, in proceedings under section 2(1) of the 1988 Act he could seek compensation only in respect of breaches of Article 5 of the Convention, but not in respect of a breach of Article 1 of Protocol No. 1. There was no statutory provision or case-law in Bulgaria under which one could seek compensation for a breach of that latter provision.

(c) He had already sought a judicial declaration that the share transfer was void. However, the Government had not asserted that such a claim could constitute a remedy in respect of his complaint under Article 18 of the Convention. The scope of such claims did not permit the examination of allegations of misuse of power by public officials.

214. The applicant also submitted that the complaints were not out of time. His complaints were under Article 18 of the Convention and Article 1

of Protocol No. 1, not under Article 5 of the Convention standing alone, and the proceedings for a judicial declaration that the share transfer was void, which concerned specifically that aspect of the case, were still ongoing.

2. The Court's assessment

215. In the light of the findings on whether the applicant has exhausted domestic remedies (see paragraphs 216-230 below), there is no need to examine whether his complaint under Article 18 of the Convention is arguable (contrast *Akhalaia v. Georgia* (dec.), nos. 30464/13 and 19068/14, § 68, 7 June 2022). As noted in paragraph 181 above, when assessing whether the applicant has exhausted domestic remedies the Court must assume, as a working hypothesis, that his complaints are well-founded.

216. The analysis of the issue of exhaustion of domestic remedies in relation to the present complaints must start with the observation that the applicant was (allegedly) coerced into transferring shares by being placed in pre-trial detention and then threatened with the denial of vital healthcare (see paragraphs 60-61 and 79-80 above). In other words, the (alleged) interference with his possessions took the form of pre-trial detention.

217. However, a dedicated remedy has existed for more than ten years in Bulgaria in respect of any kind of detention, including pre-trial detention, alleged to have fallen foul of Article 5 §§ 1 to 4 of the Convention – namely a claim for damages under section 2(1)(1) or (1)(2) of the 1988 Act, as amended in December 2012 (see paragraph 141 above).

(a) Adequate redress

218. Claims under section 2(1)(1) or (1)(2) of the 1988 Act, as amended in December 2012, although purely compensatory in nature, have been accepted as a remedy capable of providing adequate redress in respect of periods of detention which have ended, as in the present case (see paragraph 93 above, and compare *Tsonev v. Bulgaria* (dec.), no. 9662/13, § 58, 30 May 2017; *Kolev v. Bulgaria* (dec.), no. 69591/14, § 35, 30 May 2017; *Stefanov*, cited above, §§ 68-69, and *Ali Reza v. Bulgaria*, no. 35422/16, § 54, 17 May 2022, and contrast *Staykov v. Bulgaria*, no. 16282/20, § 71, 8 June 2021, and *Banevi v. Bulgaria*, no. 25658/19, § 86, 12 October 2021).

219. It may be accepted in this case also that the alleged breach can be made good through an appropriate award of compensation. It should be noted in that connection that even if the applicant's deprivation of liberty was in breach of Article 5 §§ 1 and 3 and Article 18 of the Convention, he was not kept in undocumented or unacknowledged detention – which would have required in addition a thorough and effective investigation capable of leading to the identification and punishment of those responsible (contrast *Kurt v. Turkey*, 25 May 1998, § 140, *Reports* 1998-III; *El-Masri v. the former*

Yugoslav Republic of Macedonia [GC], no. 39630/09, § 259, ECHR 2012; and *Nasr and Ghali v. Italy*, no. 44883/09, §§ 334-35, 23 February 2016). It is also significant that in his application to the Court the applicant, who was represented by lawyers with substantial knowledge of the Court's case-law, practice and procedure, did not raise a complaint under Article 2 of the Convention that the threats to deny him healthcare had put his life at risk, or a complaint under Article 3 of the Convention that the suffering caused by his kidney disfunction had been exacerbated by the way in which he was treated while in detention between 17 and 24 March 2020 (which under the Court's case-law could likewise require a criminal-law response at national level); he limited his complaints to those under Article 1 of Protocol No. 1 and Article 18 of the Convention (see paragraphs 157 (b) and 158 (b) above). He did raise such complaints under Articles 2 and 3 of the Convention in the domestic proceedings for damages which he brought in late 2022 (see paragraph 113 (h) above).

220. It must also be noted at this point that, to be appropriate, an award of compensation must, in particular, properly reflect any damage suffered by the applicant (see *Georgi Marinov v. Bulgaria*, no. 36103/04, §§ 47-49, 15 March 2011). There would appear to be nothing preventing this in proceedings under section 2(1)(1) and (1)(2) of the 1988 Act: in accordance with section 4 of the Act, the award must cover all pecuniary and non-pecuniary damage suffered as a result of the wrongful act (see paragraph 139 above).

(b) Availability and prospect of success

221. The remedy under section 2(1)(1) and (1)(2) of the 1988 Act, as amended in December 2012, has been available for a number of years. Although the Bulgarian courts' case-law under those provisions remains somewhat scarce, it is developing. A perusal of the decisions of those courts summarised in paragraphs 144-149 above shows that this case-law is no longer in the embryonic form that it had when the Court first reviewed it in 2017 (see *Tsonev*, §§ 63-65, and *Kolev*, §§ 36-40, both cited above). In particular, the Bulgarian Supreme Court of Cassation has since clarified that (a) such claims may be brought before the end of the criminal case in which the detention was imposed, and that (b) in such proceedings the civil courts have jurisdiction to review with reference to the standards flowing from Article 5 of the Convention the decisions of the criminal courts in relation to pre-trial detention (see paragraph 146 *in fine* above). There was previously some doubt on both of those points, and in particular on the latter one (see *Tsonev*, §§ 51, 61 and 63; *Staykov*, §§ 62 and 71 *in fine*; and *Banevi*, §§ 62 and 73, all cited above). In fact, the latter point had been decided differently by some of the lower courts (see paragraphs 145-146 above). The most recent approach taken by the Bulgarian Supreme Court of Cassation on the issue contrasts starkly with the approach it took several years earlier regarding the possibility of collateral review in civil proceedings of decisions

by the criminal courts to authorise secret surveillance (see *Ekimdzhiev and Others v. Bulgaria*, no. 70078/12, §§ 138 (f) and 272, 11 January 2022). In the light of those recent cases, and the findings in the July 2020 in-house report on the handling of the criminal cases against the applicant (see paragraphs 62 *in fine* and 130 above), a claim under the above-mentioned provisions can be seen as offering a reasonable prospect of success.

222. Indeed, in late 2022 the applicant brought such claims, basing parts of them on allegations identical to those that he made before the Court (see paragraph 113 (a), (d), (g) and (h) above, and compare, *mutatis mutandis*, *Saure*, cited above, §§ 38-53). It was his choice to limit his claims to non-pecuniary damage, apparently in the light of the concurrent claim under section 2c of the 1988 Act brought by him and a company owned by him in respect of alleged breaches of European Union law, whereby that company sought substantial pecuniary damages (see paragraphs 123-125 above). According to the latest information available to the Court, those claims are still pending at first instance (see paragraphs 122 and 128 above).

223. No issue arises with respect to the costs of those proceedings. Court fees for claims under the 1988 Act are flat-rate: BGN 10 (EUR 5.11) to bring the claim, BGN 5 (EUR 2.56) to appeal, and BGN 5 (EUR 2.56) to appeal on points of law. These sums can hardly be seen as excessive for any but the most indigent litigants (see *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, § 63, 18 June 2013). Moreover, claimants under the 1988 Act have to pay defendants' costs only if the claim is dismissed in full, and a successful claimant is able to recoup his or her own costs (ibid., § 64).

224. The Court cannot speculate as to whether the applicant will be able to make out his claims. However, the mere fact that the Sofia City Court instructed him to specify and itemise the claims (see paragraph 117 above) and that the defendant resisted them (see paragraph 119 above) cannot be seen as suggesting that the Bulgarian courts will not engage properly with the applicant's allegations. In any event, as noted in paragraph 189 *in fine* above, one aspect of the exhaustion requirement is that in the domestic proceedings the applicants must make a reasonable effort to resort to procedural means capable of preventing or remedying, as the case may be, the breach of the Convention, which includes making evidential requests. It can therefore be accepted that the remedy in question offers a reasonable prospect of success.

225. The claims could naturally come up against other hurdles. The courts dealing with them must, in particular, be careful not to allow any undue delays or omissions in any related criminal proceedings to impede the claims' examination or prospects (compare, *mutatis mutandis*, *Nikolay Kostadinov*, cited above, § 74).

226. It follows that, as matters stand, the applicant's claims for damages against the prosecuting authorities under section 2(1)(1) and (1)(2) of the 1988 Act appear to offer a reasonable prospect of success.

(c) Examination of the substance of the complaints

227. Although claims under section 2(1)(1) and (1)(2) of the 1988 Act are geared towards providing redress for breaches of Article 5 §§ 1 to 4 of the Convention, it cannot be ruled out on the face of it that they could also serve as a remedy with respect to the applicant's grievances under Article 1 of Protocol No. 1 and Article 18 of the Convention based on the allegation that his detention was intended to interfere with his possessions, which was pleaded in detail in the claim that he lodged with the Sofia City Court in December 2022 (see paragraph 113 (g) above). In a 2018 judgment, the Bulgarian Supreme Court of Cassation had regard in such proceedings not only to Article 5 §§ 1 to 4 of the Convention but also to Article 4 of Protocol No. 7 (see paragraph 149 above). In the light of that, and more generally of the Bulgarian courts' recent tendency, including in proceedings under the 1988 Act, to engage more broadly with arguments based on the Convention, it cannot be presumed that in those proceedings those courts would treat grievances under Article 1 of Protocol No. 1 and Article 18 of the Convention, raised expressly or in substance, as irrelevant (see *Stefanov*, cited above, § 80).

228. Moreover, as noted in paragraph 196 above, in Bulgaria the Convention is part of domestic law, and has been held by the courts either to regulate directly the relations between private persons and the authorities, or at least to constitute an aid to the interpretation of domestic-law provisions. It cannot be presumed that the Bulgarian courts will not adhere to that approach in the present case. The absence hitherto of a ruling along those specific lines does not mean that the possibility of having such arguments duly taken into account is illusory (see, *mutatis mutandis*, *Banevi*, §§ 126-27, and *Ali Reza*, §§ 55-56, both cited above). The lack of case-law could be due simply to the absence of such claims, and the applicant's case is unusual (see, *mutatis mutandis*, *Stefanov*, cited above, § 80). As noted in paragraph 196 above, in such situations it is for the national courts to avail themselves of their powers of interpretation to address directly the impugned state of affairs and provide appropriate redress.

229. If the Bulgarian courts are to deal properly with the applicant's complaints, they will, however, need to take into account not only the principles flowing from the Court's case-law under Article 5 of the Convention, but also those flowing from the Court's case-law under Article 1 of Protocol No. 1 and Article 18 of the Convention. In that connection, the Court would refer once more to the principles set out in paragraphs 199-200 above, which require (a) a broad contextual examination of the applicant's allegations, based, if necessary, on circumstantial evidence and inferences, plus a willingness on the part of the courts to go beyond appearances, and (b) a recognition that a restriction may be in breach of Article 18 of the Convention even if it pursues a permissible purpose, if it also pursues, predominantly, an ulterior one. It should also be noted here that there is

already case-law under this provision in respect of the use of detention as a means to coerce someone into transferring shares (see *Gusinskiy v. Russia*, no. 70276/01, §§ 75-77, ECHR 2004-IV).

(d) Conclusion

230. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

231. As noted in paragraph 202 above, if the applicant is unable to obtain redress domestically, it will be open to him to apply again to the Court.

(e) Further remedies and objection that the complaints are out of time

232. In the light of the above conclusion, there is no need to examine the effectiveness of the other remedies cited by the Government (see paragraphs 209 (a) and (c) and 211 above), or the related question whether they are estopped from relying on the conditions-of-detention remedies which they cited in support of their non-exhaustion plea in their supplementary observations (see, *mutatis mutandis*, *G.S. v. Bulgaria*, cited above, §§ 69-70). As noted in paragraph 203 above, in so far as the remedies to which the Government pointed offered the possibility of suing private persons, they are in any event not relevant for assessing compliance with the exhaustion rule, but concern the procedural duties under Article 1 of Protocol No. 1.

233. Nor is it necessary to examine the Government's objection that the complaints were raised after the expiry of the time-limit in Article 35 § 1 of the Convention (see paragraph 210 above).

C. Complaints under Article 13 of the Convention

234. In respect of his complaints that he had not had effective remedies in respect of his grievances under Article 1 of Protocol No. 1 and Article 18 of the Convention, the applicant relied on Article 13 of the Convention.

235. That provision reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. The parties' submissions on the admissibility of the complaint

236. The Government submitted that the applicant had had at his disposal the remedies cited in paragraphs 163 and 209 above.

237. The applicant submitted that the remedies available in Bulgaria would not permit consideration of questions relating to ulterior purpose – which were central to his grievances – or vindicate his property rights in an effective manner.

2. The Court's assessment

238. There is no need to examine whether the applicant's complaints under Article 1 of Protocol No. 1 and Article 18 of the Convention were arguable, and whether Article 13 of the Convention thus applies, because there is nothing to suggest that the requirements of this provision have been breached.

239. It has already been found that the applicant had and still has at his disposal remedies which would appear to be effective in respect of all his complaints under Article 1 of Protocol No. 1 and Article 18 of the Convention (see paragraphs 172-201 and 215-230 above). In view of the close affinity between Article 35 § 1 and Article 13 of the Convention, that finding is equally valid with respect to the present complaints (see *Stefanov*, cited above, § 87, with further references).

240. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 22 February 2024.

Milan Blaško
Section Registrar

Pere Pastor Vilanova
President