



## Forfeiture of alleged criminal assets under Proceeds of Crime Act

In today's **Chamber judgment**<sup>1</sup> in the case of **Todorov and Others v. Bulgaria** (application nos. 50705/11, 11340/12, 26221/12, 71694/12, 44845/15, 17238/16 and 63214/16) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights in respect of four of the applications (nos. 50705/11, 11340/12, 26221/12, and 71694/12), and

**no violation of Article 1 of Protocol No. 1** in respect of the three other applications (nos. 44845/15, 17238/16, and 63214/16)

The case concerned the seizure of property belonging to the applicants believed to be the proceeds of crime.

The Court found in particular that the domestic courts in three of the cases had examined the issues thoroughly and balanced the rights of the applicants with the public good. However, in the cases where it found a violation, the Court held that the domestic courts had failed to establish a link between the goods forfeited and criminal activity or between the value of the property and the difference between income and expenditure found. The ordering of forfeiture had thus been disproportionate.

There are approximately 40 similar applications pending before the Court.

### Principal facts

The applicants are 14 Bulgarian nationals who live in various places in Bulgaria and, in the case of Zheko Zhekov, in Athens (Greece).

At least one applicant in each application was convicted of crimes – among them illegal logging, deprivation of liberty, attempted extortion, aggravated embezzlement, possession of firearms, robbery, aggravated document forgery, illegal possession of drugs, and tax evasion – by courts in various parts of Bulgaria between 2000 and 2012.

All of them had convictions which fell under the aegis of the Proceeds of Crime Act 2005.

This Act enabled the authorities to declare certain property believed to have been the proceeds of crime forfeit. The applicants were investigated by the Commission for Uncovering Proceeds of Crime, which examined, among other things, their income and expenditure in the relevant period of time.

Following applications by the Commission, certain property belonging to the applicants – such as real property, businesses, vehicles, cash, and so forth – was forfeited to the State. The domestic courts concluded that the relevant expenditure of the applicants during the period under examination had significantly exceeded their legal income. The courts declared that it could be reasonably presumed that the other assets acquired were the proceeds of crime.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Arguments made by some of the applicants that the property had been a result of gifts or inheritance were dismissed by the courts. Applicants' arguments that there was no link between those assets and criminality were held to be without merit.

Those decisions were upheld by the higher courts.

The State has not been able to seize all of the property in question, in particular as some of it was sold on.

## Complaints, procedure and composition of the Court

Relying, in particular, on Article 1 of Protocol No. 1 (protection of property), the applicants complained of various aspects of the procedure by which their property had been forfeit.

The applications were lodged with the European Court of Human Rights on various dates after 2 August 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Tim Eicke (the United Kingdom), *President*,  
Yonko Grozev (Bulgaria),  
Faris Vehabović (Bosnia and Herzegovina),  
Iulia Antoanella Motoc (Romania),  
Armen Harutyunyan (Armenia),  
Gabriele Kucsko-Stadlmayer (Austria),  
Ana Maria Guerra Martins (Portugal),

and also Ilse Freiwirth, *Deputy Section Registrar*.

## Decision of the Court

Emilia Zhekova (application no. 71694/12) is now deceased and the court ruled that her heirs were allowed to continue the application in her stead.

### Article 1 of Protocol No. 1

The Court reiterated that under the Convention deprivation of property was subject to certain conditions, and that Contracting States could control the use of property in accordance with the general interest. It has not been disputed that the forfeiture was an interference with the applicants' property rights. The Court was satisfied that the forfeiture had been lawful as it had been based on the Proceeds of Crime Act. Furthermore, it stated that the seizure of assets obtained through criminality was in line with the general interest, as in these cases.

Concerning proportionality, the Court reiterated that a fair balance had to be struck between the general interest and the protection of an individual's fundamental rights. Part of that may include a chance to put your case to the relevant authorities. The Court noted that the wide scope of the governing Act in this case, both in terms of the offences that could engage its powers, and the length of time that could pass before proceedings being brought, could present difficulties for applicants. It stated that such problems in the law might push the balance of proceedings towards the State. Thus it was essential that this advantage be counterbalanced by, in particular, an obligation to show some links to actual criminality in the provenance of the assets to be forfeit. The Court stated that it would defer to the domestic courts if such counterbalancing had taken place, unless it could be shown that the courts' reasoning had been arbitrary or manifestly unreasonable.

In the cases of *Todorov and Others* (application no. 50705/11), *Gaich* (no. 11340/12), *Barov* (no. 26221/12), and *Zhekovi* (no. 71694/12) the Court found that there had not been enough guarantees

to achieve the requisite fair balance to secure the applicants' rights under Article 1 of Protocol No. 1, including no effort being made to examine the link between the property and alleged criminal activity, nor the establishment by the courts as to whether the assets forfeited had equalled the difference between the applicants' expenditure and income. The forfeiture of their property had been disproportionate, leading to a violation of the Convention.

However, in the cases of *Rusev* (no. 44845/15), *Katsarov* (no. 17238/16), and *Dimitrov* (no. 63214/16), the Court found that the domestic courts had examined the matters in detail – in particular their expenditure and income at the time –, provided an opportunity for these applicants to make arguments, addressed those arguments, and given sufficient reasoning. The forfeiture of the applicants' possessions had not been disproportionate, and there had been no violation of Convention rights in those cases.

### Other articles

The Court considered that there was no need to examine the other complaints in applications nos. 50705/11, 71694/12 and 11340/12.

### Just satisfaction (Article 41)

The Court held that Bulgaria was to pay 4,000 euros (EUR) in respect of non-pecuniary damage each to Mr V.I. Todorov, Ms Todorova, Ms Z.D. Gaich and Ms Z.M. Gaich, EUR 3,000 to Mr Barov, and EUR 2,000 each to Mr I.I. Todorov and Ms Ivanova. It also held that a total of EUR 6,150 be paid in respect of costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.