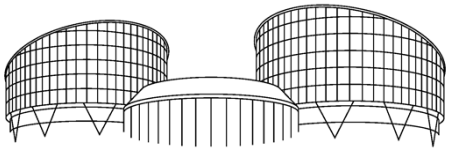

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BOYADZHIEVA AND GLORIA INTERNATIONAL LIMITED EOOD v. BULGARIA

(Applications nos. 41299/09 and 11132/10)

JUDGMENT

STRASBOURG

5 July 2018

FINAL

05/10/2018

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

In the case of Boyadzhieva and Gloria International Limited EOOD v. Bulgaria,

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

Angelika Nußberger, *President,*
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 12 June 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 41299/09 and 11132/10) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms Radostina Venelinova Boyadzhieva ("the first applicant"), and a Bulgarian limited liability company, Gloria International Limited EOOD ("the second applicant", together "the applicants"), on 21 July 2009 and 21 January 2010 respectively.

2. The applicants were represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimitrova, of the Ministry of Justice.

3. The applicants alleged, in particular, relying on Article 1 of Protocol No. 1 and Articles 6 § 1 and 13 of the Convention, that they had been unfairly deprived of their possessions following the application to them of avoidance provisions in the context of insolvency proceedings against a third party.

4. On 16 May 2017 the above complaints were communicated to the Government and the remaining parts of the two applications were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1954 and lives in Sofia. The second applicant was registered in 1992 and has its registered place of business in Sofia.

6. At the time of the events in question the first applicant was registered as a sole trader. At that time the main commercial activity of the two applicants was trade in medicaments.

A. Company K.'s insolvency

7. In February and March 2006 the first applicant sold medicaments to a company called K., for which she was paid 22,043.23 Bulgarian levs (BGN), the equivalent of 11,275 euros (EUR), in total.

8. Between December 2005 and April 2006 the second applicant also sold medicaments to K., receiving a total of BGN 33,344.05 (the equivalent of EUR 17,055) by way of payment.

9. In September 2006 other companies which were creditors of K., including E., applied for the commencement of insolvency proceedings against K. Their request was allowed in a judgment of 17 November 2006 of the Plovdiv Regional Court (hereinafter "the Regional Court"), which declared company K. insolvent, opened insolvency proceedings and appointed a trustee. It noted that K. had ceased its payments to E. and other creditors in October 2005, and held that the initial date of the company's insolvency was therefore 30 October 2005.

10. In January 2007 the trustee prepared the first list of K.'s creditors, which included company E.

B. Avoidance proceedings against the first applicant

11. In May 2007 company E. brought proceedings against the first applicant under section 646(2) of the Commerce Act, as in force at the time (see paragraph 25 below), seeking to have the payments K. had made to her during the so-called "suspect period" – the period between the initial date of insolvency as declared by the Plovdiv Regional Court and the commencement of the insolvency proceedings (the payments described in paragraph 7 above) − declared null and void and the sum received by her returned to the insolvency estate.

12. The action was allowed in a judgment of the Regional Court of 31 October 2007. Observing that it was undisputed that K. had paid the first applicant BGN 22,043.23 during the "suspect period", and without

analysing the matter any further, it ordered her to pay back this sum to the insolvency estate, plus default interest.

13. That judgment was upheld on 12 March 2008 by the Plovdiv Court of Appeal (hereinafter "the Court of Appeal").

14. The Court of Appeal's judgment was enforceable and, at the request of K.'s trustee, a bailiff opened enforcement proceedings against the first applicant for the sums due to the insolvency estate. In December 2008 the applicant settled that debt, which also included interest and costs and expenses related to the enforcement proceedings.

15. In the judicial proceedings against the first applicant, in a final decision of 21 January 2009 the Supreme Court of Cassation refused to accept for examination an appeal on points of law lodged by her.

C. Avoidance proceedings against the second applicant

16. In April 2007 company E. brought proceedings against the second applicant under section 646(2) of the Commerce Act, as in force at the time (see paragraph 25 below), seeking to have the payments K. had made to it during the "suspect period" between 30 October 2005 and 17 November 2006 (payments described in paragraph 8 above) declared null and void and the sum received by the applicant returned to the insolvency estate.

17. The action was allowed in a judgment of 23 January 2008 of the Regional Court. While it acknowledged that the transactions between the second applicant and K. had not damaged the latter's interests, because K. had received equivalent goods in exchange for its payments to the applicant, the Regional Court added that the Commerce Act "did not take account" of such considerations. It thus ordered the second applicant to pay back to the insolvency estate the sum of BGN 33,344.05, plus default interest.

18. Upon appeal by the second applicant, on 10 June 2008 that judgment was upheld by the Court of Appeal, which stated once again that section 646(2) of the Commerce Act did not require any proof that the contested payment had damaged the interests of K.'s remaining creditors; such damage, as well as the knowledge about it, were to be considered "presumed".

19. Since the Court of Appeal's judgment was enforceable, a bailiff opened enforcement proceedings against the second applicant for the sums owed by it to the insolvency estate. The second applicant settled that debt, which included interest and costs and expenses related to the enforcement proceedings, in October 2008.

20. In the main judicial proceedings against the second applicant, in a final decision of 29 July 2009 the Supreme Court of Cassation refused to accept for examination an appeal on points of law lodged by it.

D. Insolvency proceedings and winding up of K.

21. In the insolvency proceedings against K., the majority of its assets were distributed among its creditors between November 2007 and October 2008. In two decisions delivered in November and December 2008 the trustee in bankruptcy added the State to the list of creditors, with claims exceeding BGN 5,000,000. As the State was a privileged creditor, almost all payments from the insolvency estate after that were made to it, but a substantial proportion of the debts owed to it by K. nonetheless remained unpaid.

22. The applicants did not make use of the possibility afforded to them by section 648 of the Commerce Act (see paragraph 29 below) to join the insolvency proceedings as creditors of K. Two other companies in a similar situation – they had also been obliged to return sums to the insolvency estate on the basis of section 646(2) of the Commerce Act – did join the insolvency proceedings, but received no part of the sums owed to them.

23. The insolvency proceedings continued until 2014, when company K. was wound up.

II. RELEVANT DOMESTIC LAW

24. Insolvency proceedings are regulated by the Commerce Act 1991. Avoidance provisions, in particular, are regulated in its sections 646 and 647.

25. At the relevant time, section 646(2) provided the following:

> "The following actions and transactions, carried out by the debtor after the initial date of insolvency ... shall be null and void with respect to the bankruptcy creditors:
>
> 1. fulfilment of a monetary obligation, regardless of the manner of payment."

26. In 2013 section 646 was amended. Its paragraph 2 currently provides:

> "The following actions and transactions, if carried out by the debtor after the initial date of insolvency ... may be considered voidable with respect to the bankruptcy creditors:
>
> 1. fulfilment of a non-exigible monetary obligation, regardless of the manner of payment, carried out less than a year earlier.
>
> ...
>
> 3. fulfilment of an exigible monetary obligation of the debtor, regardless of the manner of payment, carried out less than six months earlier."

The above periods are extended to two years and one year respectively if the person receiving the payment had knowledge of the debtor's insolvency (section 646 (3)).

A new paragraph 5 was also added to section 646, reading as follows:

"Subparagraphs 1 and 3 of paragraph 2 shall not apply where the fulfilment of an obligation falls within the debtor's usual activity and where:

1. it has been carried out as agreed by the parties and the debtor has received equivalent goods or services simultaneously or within 30 days of the receipt of payment, or

2. following payment, the creditor actually provided equivalent goods or services."

27. These amendments were proposed in two bills, examined jointly by Parliament. The explanatory note attached to the first of these bills contained the following reasons:

"[Paragraph 1 of section 646(2)] unjustifiably affects the rights of third parties who have entered into transactions with the debtor. After the payment received by them has been declared null and void, they are obliged to pay back the sum received. ...

According to the courts' interpretation and application of paragraph 1 of section 646(2) of the Commerce Act, the fulfilment of any monetary obligation, after the initial date of insolvency, by a debtor who has been declared insolvent, is null and void. Taking that provision literally, the courts accept that the question as to whether the payment at issue actually reduced the insolvency estate is of no significance. The consequences of the transaction at issue remain equally insignificant, as it is irrelevant whether or not it damages the interests of the insolvent company's creditors.

The proposed amendments are justified in the light of the requirements for the rule of law and foreseeability in business activities and legal transactions."

28. The explanatory note attached to the second bill pointed out that the rules in force until then had resulted in abuse and had proved to be deficient, in particular in the following ways:

"– lack of proper balance between the requirements of the insolvency proceedings and those of legal certainty;

– lack of any legal protection whatsoever for the defendants in the respective legal actions;

– extensive possibilities to invalidate ordinary daily transactions which in no way damage the creditors' interests;

– "suspect periods" unlimited in time, and sometimes exceeding 10 years;

...

– extensive possibilities to invalidate payments in respect of services which are vital for the debtor's continued business activity (telephone, electricity, water, heating, accounting, legal counsel, etc.) ..."

29. Section 648 of the Commerce Act deals with the situation of persons who have had their transactions with an insolvent company invalidated under section 646 and have been ordered to make payments to the insolvency estate. They are entitled to receive back the goods they have delivered, or if this is not possible, to join the insolvency proceedings as non-privileged creditors.

THE LAW

I. JOINDER OF THE APPLICATIONS

30. Given that the two applications at hand concern similar facts and complaints and raise identical issues under the Convention, the Court decides that the they should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

31. The applicants complained, relying on Article 1 of Protocol No. 1 and Article 6 § 1 and Article 13 of the Convention, that they had been ordered to pay into the insolvency estate the money received from K. without any proof of bad faith on their part and without any reasonable chance to recover that money, in particular by joining the insolvency proceedings.

32. The Court is of the view that it suffices to examine the complaints under Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Arguments of the parties

1. The Government

33. The Government acknowledged that the court decisions, based on section 646(2) of the Commerce Act, amounted to interference with the applicants' "possessions", as protected by Article 1 of Protocol No. 1. They considered that interference lawful and in pursuit of a legitimate aim in the public interest, namely the protection of the bankruptcy creditors' interests.

34. The Government contended that States had to be understood as enjoying a particularly wide margin of appreciation when regulating matters such as insolvency proceedings, which necessitate the careful balancing of the different parties' competing interests. They also argued that the applicants should be seen as assuming "certain risks" when undertaking business activities, and that the authorities could not be held responsible for K.'s insolvency.

35. Lastly, the Government pointed out that the applicants could have joined the insolvency proceedings against K., as they were entitled to do under section 648 of the Commerce Act. They considered the applicants' assertions that this procedure was of no use to them to be "speculative and devoid of any reason". On this basis, the Government concluded that the applicants had not been made to bear an excessive individual burden and that Article 1 of Protocol No. 1 had not been breached.

2. The applicants

36. The applicants pointed out that the transactions with company K. which had been nullified in the procedures complained of had in no way damaged the interests of K.'s creditors because they had not reduced K.'s assets. However, section 646(2) of the Commerce Act as in force at the time did not take account of this fact, and automatically obliged them to return to the insolvency estate the sums K. had paid to them in exchange for the goods they had delivered. The applicants could not have been aware of K.'s inability − by the time they received payments from it − to meet its obligations towards other creditors, seeing that the initial date of its insolvency had only been set later.

37. The applicants argued that section 646(2) of the Commerce Act, as applicable to them, had failed to achieve a fair balance between the interests of the different parties participating in the insolvency proceedings. They considered that the lack of such balance had been acknowledged by Parliament, which in 2013 amended section 646, and referred to the explanatory notes attached to the bills proposing those amendments. The applicants argued that if in their cases section 646(2) had been applicable as worded after 2013, the payments received by them would not have been invalidated.

38. As to the possibility of joining the insolvency proceedings, as provided under section 648 of the Commerce Act, the applicants considered it completely ineffective. They pointed out that by the time they could join those proceedings, namely towards the end of 2008 after they had paid to the insolvency estate the sums owed by them, the majority of K.'s assets had already been distributed and the State had joined as a privileged creditor. Moreover, even if they had joined the insolvency proceedings before the State had done so, the applicants calculated that they would have received only small and unsatisfactory amounts (BGN 2,142 for the first applicant and BGN 5,630 for the second applicant) when, in October 2008, about BGN 45,000 of K's assets had been distributed between the creditors participating in the proceedings at that moment. Thus, the applicants concluded that they had been made to bear an excessive individual burden, in breach of Article 1 of Protocol No. 1.

B. The Court's assessment

1. Admissibility

39. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

40. The Court considers, and it is not in dispute between the parties, that the measures complained of constituted an interference with the two applicants' "possessions", within the meaning of Article 1 of Protocol No. 1.

41. The Court refers to its established case-law on the structure of Article 1 of Protocol No. 1 and the manner in which the three rules contained in that provision are to be applied (see, for example, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 52, ECHR 2007-III). In the present cases the applicants were required to pay sums of money and were thus effectively deprived of what was their property. However, those measures were elements of a wider arrangement meant to regulate insolvency proceedings and in particular to guarantee the interests of the insolvent company's creditors. The Court is therefore of the view that the measures complained of fall to be considered under the so-called third rule, contained in the second paragraph of Article 1 of Protocol No. 1 and relating to control of the use of property (see *AGOSI v. the United Kingdom*, 24 October 1986, § 51, Series A no. 108; *Capital Bank AD v. Bulgaria*, no. 49429/99, § 131, ECHR 2005-XII (extracts); *Zehentner v. Austria*, no. 20082/02, § 71, 16 July 2009).

42. This provision must be construed in the light of the general principle enunciated in the opening sentence of the first paragraph of Article 1 of Protocol No. 1. The Court must therefore determine whether the interference with the applicants' "possessions" was lawful and in the public interest, and whether it struck a fair balance between the demands of the general interest and the applicants' rights (see, among others, *Bittó and Others v. Slovakia*, no. 30255/09, § 95, 28 January 2014, and *Microintelect OOD v. Bulgaria*, no. 34129/03, § 37, 4 March 2014).

43. The interference was provided for under domestic law, namely section 646(2) of the Commerce Act, as in force at the time, and was thus lawful for the purposes of Article 1 of Protocol No. 1. Moreover, the interference clearly pursued a legitimate aim in the public interest, namely protecting the interests of the bankruptcy creditors. The salient question is therefore whether the interference struck a fair balance between the public interest involved and the applicants' rights.

44. The question of whether or not section 646(2) of the Commerce Act as worded before 2013 struck, in principle, such a balance, was answered in the negative by the Bulgarian Parliament, which in 2013 amended that provision, adding in the new paragraphs 3 and 5 of section 646 further preconditions for successful avoidance claims (see paragraph 26 above). The explanatory note attached to the first of the bills proposing these amendments justified them with reference to the rule of law and the "foreseeability of business activities and legal transactions", and criticised the manner in which section 646(2) had been applied by the national courts, namely without any assessment of whether a contested payment had reduced the insolvency estate or otherwise damaged the interests of the bankruptcy creditors (see paragraph 27 above). The second note also stated that section 646(2), as applicable at that time, could undermine legal certainty and that it did not offer sufficient protection to persons in a situation such as the applicants'. It criticised the existing risk of indefinitely lengthy "suspect periods" (see paragraph 28 above). The amendments to section 646 introduced in 2013 remedied these deficiencies, most notably by allowing the courts discretion in deciding whether a payment should be considered voidable, by limiting the maximum duration of the "suspect periods", and by excluding payments made within the insolvent company's "usual business activity" and for which equivalent goods or services had been received (see paragraphs 25-26 above).

45. The Court sees no reasons to reject the national Parliament's view that section 646, as applicable to the applicants before the 2013 amendments, did not offer a balanced approach. While acknowledging that States enjoy a wide margin of appreciation in regulating economic and social matters, such as, in this case, insolvency proceedings where a number of competing private interests are at stake (see, for example, *Kotov v. Russia* [GC], no. 54522/00, § 131, 3 April 2012), it cannot but conclude that, in the circumstances of the present cases, through the application of the original version of section 646(2) of the Commerce Act, the applicants were placed in a particularly disadvantageous position. Factors which appear relevant for a fair balance exercise, such as the fact that the applicants had delivered to company K. the goods for which they had received payment, that this had been done in the course of the normal line of business of those companies and that there was absolutely no evidence of bad faith on the part of the applicants, were not taken into consideration by the domestic courts. Instead, in line with the effective domestic legislation at the time, the applicants were automatically, namely without the national courts having any discretion on the matter, ordered to return the money they had received from company K. As accepted by the domestic courts (see paragraph 17 above concerning the proceedings against the second applicant), the payments at issue had not reduced the insolvency estate or damaged the interests of the bankruptcy creditors. Finally, no evidence has been

presented that at the time when they accepted K.'s payments the applicants were or could have been aware of its inability to meet its debts, or that the nature of the transactions they had entered into was such as to damage the interests of the creditors of K.

46. Lastly, the Court has to look into whether the remedies provided for by law in order to rectify the applicants' situation, under section 648 of the Commerce Act (see paragraph 29 above), were efficient. The Court notes in that respect that at no point in the domestic proceedings or in the proceedings before it was it argued that it was possible for the applicants to request the return of the goods delivered to K. It is true that the Government argued that it was possible for the applicants to join the insolvency proceedings and claim the money they had lost. However, their arguments in that regard were general (see paragraph 35 above), and they did not contest the applicants' specific calculations, showing that in their particular case the procedure provided for under section 648 would have been of little, if any, use to them (see paragraph 38 above). Thus, the Court concludes that after the applicants were ordered to pay back the sums they had received from K. − under a provision that breached the principle of legal certainty and failed to protect their rights satisfactorily (as acknowledged by Parliament) − they had had no effective means at their disposal to make good their losses.

47. The above is sufficient for the Court to conclude, in the circumstances of the present case, that the interference with the applicants' "possessions" failed to strike a fair balance between the public interest and the applicants' rights, and that the applicants were made to bear an excessive and unjustified individual burden.

48. There has thus been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

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

A. Damage

1. The first applicant

50. In respect of pecuniary damage the first applicant claimed reimbursement of the money paid by her to the insolvency estate following the successful avoidance proceedings against her. The amount paid, including interest and costs and expenses related to the enforcement

proceedings, totalled BGN 28,523.97 (the equivalent of EUR 14,590). The applicant also claimed default interest on that sum, calculated in accordance with the domestic rules, for the period between 20 June 2009 and 30 November 2017; in her calculations, the interest for that period totalled BGN 24,861.07 (the equivalent of EUR 12,716).

51. In respect of non-pecuniary damage the first applicant claimed EUR 40,000, arguing that she had suffered distress and frustration. She pointed out that she had remained in a strained financial situation for years after having paid the sum indicated above.

52. The Government contested the claims. They urged the Court to dismiss them or to make an award "significantly lower" than that requested.

53. The Court found – as stated above − that the avoidance provisions of the Commerce Act had been applied to the applicant in a manner which breached Article 1 of Protocol No. 1 and that the respondent Government had put forward no relevant justification. Accordingly, the Court considers it justified to award the first applicant the entire sum she had to repay as a result of the application of those provisions, namely EUR 14,590 (see paragraph 50 above).

54. The first applicant claimed in addition default interest (see paragraph 50 above). The Court points out that an award of pecuniary damages under Article 41 of the Convention is intended to put applicants, as far as possible, in the position they would have been had the breach of their rights not occurred (see *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). The interest rate applied, which is intended to compensate for loss of value of the award over time, should therefore reflect national economic conditions, such as levels of inflation and rates of interest during the relevant period (see *Runkee and White v. the United Kingdom*, nos. 42949/98 and 53134/99, § 52, 10 May 2007, and *Vaskrsić v. Slovenia*, no. 31371/12, § 98, 25 April 2017). The Court notes that the first applicant claimed interest based on domestic statutory default interest rates (see paragraph 50 above). However, the Court is in principle not bound to follow domestic law, as domestic rules might pursue other purposes, beyond putting the applicants in the position they would have been had the breach of their rights not occurred. This principle is even more relevant where the principal compensation does not stem from an obligation of the Respondent Government under national law (contrast *Chorbov v. Bulgaria*, no. 39942/13, § 56, 25 January 2018).

55. In the light of the above considerations, the Court considers it reasonable to apply an interest rate equal to the base interest rate of the Bulgarian National Bank during the relevant period plus one percentage point and to award the first applicant EUR 1,500 under the present head. The global award in respect of pecuniary damage is thus EUR 16,090.

56. In respect of non-pecuniary damage, the Court awards the first applicant EUR 3,000.

2. The second applicant

57. In respect of pecuniary damage the second applicant claimed reimbursement of the money paid by it to the insolvency estate as a result of the successful avoidance proceedings. The amount paid, including interest and costs and expenses related to the enforcement proceedings, totalled BGN 47,207.49 (the equivalent of EUR 24,150). The second applicant also claimed default interest on that sum, calculated in accordance with the domestic rules, for the period between 27 October 2009 and 30 November 2017; the interest for that period, as calculated by the applicant, totalled BGN 45,520.08 (the equivalent of EUR 23,280).

58. The second applicant also claimed EUR 20,000 in respect of non-pecuniary damage, relying on earlier cases in which the Court had awarded such damage to legal persons or organisations (*Markass Car Hire Ltd v. Cyprus*, no. 51591/99, § 50, 2 July 2002; *Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97, §§ 114-16, 16 December 2004; and *Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, § 56, 20 December 2007). It contended that the events complained of had caused distress and frustration to its sole owner and manager.

59. The Government contested the claims. They urged the Court to dismiss them or to make an award "significantly lower" than that requested.

60. The Court found – as stated above − that the avoidance provisions of the Commerce Act had been applied to the second applicant in a manner which breached Article 1 of Protocol No. 1 and that the respondent Government had put forward no relevant justification. Accordingly, the Court considers it justified to award the applicant the total sum it had to pay as a result of the application of those provisions, namely EUR 24,150 (see paragraph 57 above).

61. The second applicant claimed in addition default interest on that sum (see paragraph 57 above). The Court, referring to its considerations on that point with regard to the claims of the first applicant (see paragraphs 54-55 above), finds it reasonable to award the second applicant EUR 2,200 under the present head. The global award in respect of pecuniary damage is thus EUR 26,350.

62. As regards non-pecuniary damage, the Court reiterates that it may, in principle, award compensation to a commercial company. Non-pecuniary damage suffered by such companies may take the form of damage to their reputation, uncertainty in decision-planning, disruption in the management of the company and lastly, albeit to a lesser degree, anxiety and inconvenience caused to the members of the management team (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 221, ECHR 2012). In the present case, the Court accepts the applicant's assertion that its manager and sole owner suffered anxiety and

inconvenience as a result of the breach of its rights. Judging on an equitable basis, it awards EUR 3,000 under this head.

B. Costs and expenses

1. Claims related to the domestic proceedings

63. The first applicant claimed BGN 1,832.37 (the equivalent of EUR 937) in respect of the court fees payable by her in the domestic proceedings, and BGN 4,025 (the equivalent of EUR 2,058) for the costs and expenses awarded to the successful claimant in those proceedings, namely company E. As regards the court fees, the applicant presented evidence that she had paid BGN 630.79 (the equivalent of EUR 323). As regards the award for costs and expenses in favour of E., the applicant presented a writ of execution against her and a letter from a bailiff informing her of the opening of enforcement proceedings.

64. The first applicant also claimed default interest on the above amounts; calculated in accordance with the domestic rules, for different periods starting in December 2007 or January 2009 and ending on 30 November 2017, the interest totalled BGN 5,501.37 (the equivalent of EUR 2,814).

65. The second applicant claimed BGN 2,697.76 (the equivalent of EUR 1,380) for the court fees payable by it in the domestic proceedings, BGN 1500 (the equivalent of EUR 715) for the fees charged by its lawyer, and BGN 7,290.13 (the equivalent of EUR 3,730) for the costs and expenses awarded to the successful claimant in those proceedings, namely company E. As regards the court fees, the second applicant presented evidence that it had paid BGN 696.88 (the equivalent of EUR 356). It presented evidence showing that it had also paid the sum indicated above to its legal representative. On the other hand, it did not present any documents showing that it had paid the costs and expenses awarded to E.

66. The second applicant also claimed default interest on the above amounts; calculated in accordance with the domestic rules, for different periods starting between February 2008 and July 2009 and ending on 30 November 2017, the interest totalled BGN 10,151.44 (the equivalent of EUR 5,190).

67. The Government contested the claims, without making any specific comments.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present cases, the first applicant showed that she had actually paid EUR 323 (see paragraph 63 above), and the second applicant – that it had paid EUR 1,071 (EUR 356 for court fees plus EUR 715 for legal

representation, see paragraph 65 above). Accordingly, the Court awards these sums. In the absence of any proof, it is unable to conclude that the applicants actually paid the remainder of the sums claimed by them, or that these sums are still owed (see *Kirov and Others v. Bulgaria* (dec.), no. 57214/09, §§ 42-45, 9 January 2018). Lastly, it is not in the Court's practice to award default interest on costs and expenses awarded for a period preceding its judgment.

2. Claims related to the proceedings before the Court

69. The applicants claimed EUR 6,720 for the work performed by their legal representatives before the Court, namely 56 hours at an hourly rate of EUR 120. In support of this claim they presented contracts for legal representation and the corresponding time-sheets. The applicants claimed an additional EUR 283.21 for office expenses, postage and translation, presenting postage invoices and contracts with a translator. The applicants requested that, of any award to be made by the Court under this head, EUR 1,002.13 be paid to the first applicant, EUR 1,200.10 be paid to the second applicant, and the remainder be transferred directly into the bank accounts of their legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva.

70. The Government contested the claims, considering in particular that the translation expenses had been unnecessary since the applicants' representatives had to be able to use one of the Court's official languages.

71. As already pointed out, the Court may award costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 4,000, covering costs under all heads. As requested by the applicants, EUR 1,002.13 out of this sum is to be paid to the first applicant, EUR 1,200.10 to the second applicant, and the remainder is to be transferred directly into the bank accounts of the applicants' legal representatives.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds*
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
(i) EUR 16,090 (sixteen thousand and ninety euros) to the first applicant and EUR 26,350 (twenty-six thousand three hundred and fifty euros) to the second applicant in respect of pecuniary damage, and EUR 3,000 (three thousand euros) to each applicant in respect of non-pecuniary damage, plus any tax that may be chargeable;
(ii) EUR 5,394 (five thousand three hundred and ninety-four euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, out of which EUR 1,325.13 (one thousand three hundred and twenty-five euros and thirteen cents) is to be paid to the first applicant, EUR 2,271.10 (two thousand two hundred and seventy-one euros and ten cents) to the second applicant, and the remainder directly to the applicants' legal representatives;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 5 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President