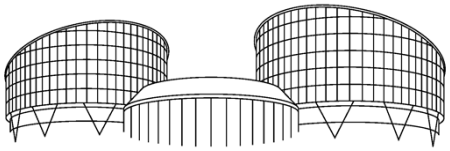

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DIMITAR YORDANOV v. BULGARIA

(Application no. 3401/09)

JUDGMENT

STRASBOURG

6 September 2018

FINAL

06/12/2018

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

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In the case of Dimitar Yordanov v. Bulgaria,

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

Angelika Nußberger, *President,*
Erik Møse,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 10 July 2018,

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

PROCEDURE

1. The case originated in an application (no. 3401/09) 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, Mr Dimitar Pavlov Yordanov ("the applicant"), on 17 December 2008.

2. The applicant was represented by Ms N. Sedefova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Ms M. Kotseva and Ms M. Dimitrova, of the Ministry of Justice.

3. The applicant alleged, in particular, that the State had been responsible for damage to property of his, due in his view to unlawful mining activities in close proximity, and that the domestic courts had wrongly dismissed his tort claim related to that damage.

4. On 15 September 2016 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Sofia.

6. The applicant owns one half of a plot of land in the village of Golyamo Buchino, close to the city of Pernik. He also owned one half of a

house standing on the plot, in which he lived until 1997, and one half of two smaller buildings, a barn and a pen. Those buildings no longer exist.

7. On an unspecified date towards the end of the 1980s or the beginning of the 1990s the State took a decision to create an opencast coalmine near the village. In a decision of 8 May 1990 the local mayor expropriated about ninety properties in the area for that purpose, including the applicant's land and buildings.

8. The expropriation decision stated that the applicant should receive in compensation another plot of land in the village. The applicant received additionally a sum of money (the parties have not presented the decision of the mayor on the additional compensation). The majority of the remaining owners received either monetary compensation or flats in the city of Pernik. As another plot was not provided to the applicant within the statutory time-limit of one year, on 21 August 1992 he requested that the expropriation be cancelled, as he was entitled to under section 102 of the Property Act (see paragraph 24 below). Another person who was due a plot of land in compensation also applied to have the expropriation of her property cancelled. In a decision of 2 October 1992 the Pernik regional governor cancelled the two expropriations, noting that the plots of land due in compensation had not been provided "owing to the impossibility for the municipality to ensure such plots". The decision stated furthermore that the owners had to pay back the monetary compensation they had additionally received. On 22 December 1993 the applicant paid back that compensation.

9. The applicant remained in his house. In the years which followed the mine approached the house, due to its gradual enlargement. Coal was extracted from it by means of detonations, which, according to the applicant, shook the house on a daily basis. On unspecified dates cracks appeared on the walls of the house, and the barn and the pen collapsed. Towards the beginning of 1997 the applicant's family moved out of the house, judging it too dangerous to stay.

10. Subsequently, the applicant contacted the mine, seeking to obtain compensation, but the negotiations failed. At the time, the mine was managed by a company which was wholly State-owned. In 2005 it was privatised.

11. In 2001 the applicant brought a tort action against the company operating the mine, seeking compensation for the damage caused to his property.

12. The Pernik Regional Court ("the Regional Court"), which examined the case at first instance, heard a witness, a neighbour of the applicant, who stated during a court hearing of 13 December 2001 that the walls of the applicant's house were cracked, that its state continued to deteriorate, and that the barn had collapsed three or four years earlier. He thought that the house had been well constructed, and explained that after the initial damage the applicant had attempted to repair it. On 7 March 2002 the Regional

Court heard another witness, who stated that most of the damage to the applicant's house had been caused three or four years earlier.

13. The Regional Court appointed an expert, who established that the house had been constructed between 1948 and 1950, when there had been no requirements as to seismic resistance. At the time of drawing up the expert report the house was uninhabitable, as its walls were bent and cracked, with the cracks sometimes reaching 20-35 cm in width. The distance between the house and the mine's periphery was about 160-180 metres. This meant that the house was situated well inside the so-called "sanitation zone" consisting of land within 500 metres of the mine's edge, inside which the law prohibited any dwellings. The "security zone" for the mine, within which no unauthorised person was to be present during detonation works, had a radius of 600 metres. The expert confirmed his conclusions at a court meeting on 24 January 2002.

14. In a judgment of 27 June 2003 the Regional Court dismissed the applicant's action. It considered it established that the applicant's property had been seriously damaged and that the damage had coincided in time with the beginning of detonation works in the mine. Still, it concluded that the applicant had not proven that a causal link existed between the damage and the detonations. He had relied in that regard on the witness testimony provided by two neighbours, but according to the Regional Court it was impossible to establish what had caused the damage to the property by way of witness testimony. The burden of proof to establish such a circumstance lay on the applicant and the other party had argued that the damage had been due to the manner of construction of his house.

15. The applicant lodged an appeal. Before the Sofia Court of Appeal ("the Court of Appeal") he called an additional witness, who stated during a hearing on 2 February 2004 that many houses in the area had already collapsed, and that all the other houses in the applicant's neighbourhood had cracks.

16. On 25 June 2004 the Court of Appeal upheld the Regional Court's judgment, confirming its reasoning. It held that while witness testimony could establish the extent and the timing of the damage to the applicant's property, it could not prove the causal link between that damage and the detonation works at the mine.

17. The applicant lodged an appeal on points of law. In a judgment of 5 April 2006 the Supreme Court of Cassation quashed the Court of Appeal's judgment and remitted the case for fresh examination. It was of the view that the lower courts had not duly accounted for the fact that the mine operated in a prohibited area close to the applicant's house, the house being situated within both the "sanitation zone" and the "security zone" around the mine. The lower courts had had to examine this fact in light of the statements of the witnesses, which had "established the circumstance" that the damage to the applicant's property had been the result of the detonation

works. It was also necessary to assess compliance by the company operating the mine with other statutory requirements, such as those concerning environmental protection.

18. After the case was remitted, the Court of Appeal commissioned a new expert report. The expert noted that, owing to the passage of time and the destruction of some documents, it was impossible to determine the exact distance between the applicant's house and the area where the detonations had been carried out in 1997. Nevertheless, it was clear that the house had been well inside the "sanitation zone" around the mine. The expert additionally noted that the detonations had been carried out by qualified workers, in accordance with the mine's internal rules.

19. The Court of Appeal heard an additional witness for the applicant, who stated during a court hearing of 23 November 2006 that many houses in the village had collapsed, and that he thought that this was due to the detonations at the mine. He added that the detonations took place on a daily basis, that they caused "earthquakes", and that the houses shattered as a result. The first cracks on the applicant's house had appeared even before the time when the mine had operated closest to it. The witness was not aware of any landslides in the area.

20. In a judgment of 2 April 2007 the Court of Appeal once again upheld the Regional Court's judgment of 27 June 2003, dismissing the applicant's claim. It found it "indisputable" that employees of the mine had acted in breach of law, by carrying out detonations in a prohibited area close to residential buildings, including at the time when, according to the applicant, the damage to his property had started. Nevertheless, on the basis of the material submitted, the applicant had not proved the causal link between the mine's work and the damage to his property. The Court of Appeal reasoned in that regard:

> "The causal link ... cannot be assumed – it is to be fully proven by the claimant. It has not been shown in the case that the claimant's building, constructed in the 1950s, has been damaged precisely because of the detonation works at the mine. The claimant has not shown that the residential building and the auxiliary buildings, given [their] manner of construction, the materials [used] and the time of [their] construction, would not have been damaged, or would not have been damaged to such an extent, had it not been for the detonation works at the mine. It has not been shown whether and to what degree the buildings' state described by the expert [heard by the Regional Court] was due to normal wear and tear, taking into account the year [they were built] and the manner of [their] construction, and any lack of maintenance by the owner after the 1990 expropriation."

21. Upon a further appeal by the applicant, in a final judgment of 3 July 2008 the Supreme Court of Cassation upheld the Court of Appeal's judgment, affirming its conclusions. It pointed out in particular that the expert report presented to the Court of Appeal (see paragraph 18 above) had only established that the applicant's property had been situated within the "sanitation zone" around the mine, but "was insufficient to prove the

existence of a causal link between the damage ... and the unlawful behaviour of employees of the respondent company".

22. In the meantime, the applicant's house has collapsed and no longer exists. The property has been abandoned.

II. RELEVANT DOMESTIC LAW

A. Expropriations for public needs under the Property Act

23. Section 101 of the Property Act (*Закон за собствеността*), as worded at the relevant time, allowed the expropriation of private property for "especially important State needs", which could not be met otherwise.

24. Section 102 stated in addition that the owner would receive compensation through other property or in cash, and that the authorities could take possession of the expropriated property only after the provision of the compensation due. If such compensation was not provided within one year of the entry into force of the expropriation decision, the owner could seek the cancellation of the expropriation. In 1996 section 102 of the Property Act was superseded by other legislation.

B. Health and safety requirements with regard to industrial installations

25. Ordinance No. 7 of 25 May 1992 concerning the health and safety requirements for the protection of health in residential areas (*Наредба № 7 от 25.05.1992 г. за хигиенните изисквания за здравна защита на селищната среда*), adopted by the Minister of Health in implementation of the Public Health Act (see paragraph 27 below), provided for the creation of "sanitation zones" around industrial installations which represented an environmental hazard. The width of such zones was to be between 50 and 3,000 metres, depending on the specific characteristics of each installation, and the construction of non-industrial buildings was not permitted inside the zones. If such buildings already existed, the owners of installations concerned by the "sanitation zone" requirement were obliged to limit any harmful activities "to the statutory levels" by the end of 1997; otherwise, they were obliged to close down the respective installation or move it to another area. This ordinance remained in force until 2011.

26. In addition, "security zones" around detonation sites, within which no person is allowed during any detonation works, are provided for in a document entitled Security Rules During Detonation Works (*Правилник по безопасността на труда при взривните работи*), adopted on 28 December 1996 by the Minister for Work and Social Assistance.

27. The 1973 Public Health Act (*Закон за народното здраве*), in force until 2005, and after that the Health Act (*Закон за здравето*), regulate the functioning and powers of health protection bodies. Among other things, those bodies are entitled to conduct checks and inspections, and if necessary suspend the functioning of industrial objects or installations operating in breach of health protection rules, and impose administrative punishments.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

28. The applicant complained under Article 6 § 1 of the Convention of the manner in which the national court had decided on his claim against the company operating the mine. He complained furthermore under Article 8 of the Convention of an infringement of his right to a home. Lastly, he complained under Article 1 of Protocol No. 1 that he had been deprived of the possibility to "use freely" his property.

29. Article 6 § 1, in so far as relevant, reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 8 of the Convention and Article 1 of Protocol No. 1 read:

Article 8

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 1 of Protocol No. 1

> "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. The parties' arguments

1. The Government

30. The Government pointed out that the complaint under Article 6 § 1 of the Convention was related to the outcome of the civil proceedings, and argued that it was of a fourth-instance character.

31. Under Article 8 of the Convention, the Government contested the applicant's claim that the house in Golyamo Buchino had been his "home", pointing out that after 1997 he had not lived there.

32. As concerns the complaint under Article 1 of Protocol No. 1, the Government pointed out that if the applicant had considered that employees of the mine had handled explosives in breach of the relevant rules, he could have requested that criminal proceedings be initiated against them on that account.

33. The Government contended that the State could not be held responsible for the damage caused to the applicant's property, as he had not shown that it was due to any action of the public authorities. Nor had the applicant shown that the damage at issue was indeed the result of the operation of the mine, and, this being so, the State could not have been expected to take measures to prevent "events the cause of which is unknown or cannot be reasonably predicted". Moreover, the State could not be required to close down the mine, an enterprise of "crucial economic importance", for the sole reason that "an individual upon his free will chose to continue living in its vicinity".

34. The Government submitted that the State's responsibility was limited to guaranteeing the effectiveness of judicial proceedings between private parties. In such proceedings, the applicant had failed to substantiate his claim, and the claim had thus been dismissed "due to the objective facts of the case". In any event, at the beginning of the 1990s the State had expropriated the applicant's property and had offered him compensation.

2. The applicant

35. The applicant reiterated that his rights had been breached. He pointed out that the Government had not contested the fact that the mine had operated in a prohibited area close to his property, which had also been acknowledged by the domestic courts.

36. Under Article 6 of the Convention, the applicant argued that the national courts had reached the wrong conclusion in the tort proceedings initiated by him in finding that he had not proved the causal link between the mine's work and the damage to his property. In his view, that causal link had been clearly established by the witnesses and the experts heard by the courts. The applicant added that, prior to being obliged to leave the house, he had repaired and maintained it, and that it had been well constructed.

37. As regards his complaint under Article 8 of the Convention and the question as to whether the case concerned his "home", the applicant pointed out that he had a "strong emotional connection" with the house in Golyamo Buchino, where he had grown up and where he had lived predominantly with his family until 1997. He had not left the house of his own free will, but had been forced to do so after it had become dangerous to live there. The unlawful damage to the house rendering it uninhabitable meant that Article 8 of the Convention had been breached.

38. Under Article 1 of Protocol No. 1, as to the Government's argument that he could have sought the criminal prosecution of employees of the mine (see paragraph 32 above), the applicant considered that such prosecution could not have provided the redress he sought, and in any event he had pursued another remedy, claiming damages.

39. The applicant pointed out that detonation works were inherently dangerous, and that the State had therefore established safety rules. In the event of a mine operating near to a house, the State required a protective "sanitation zone", but even though his house had remained well inside such a zone, the mine had been allowed to continue to operate. The applicant argued that after the cancellation of the expropriation of his property the State had had to step in to exercise control and ban the unlawful activity. The applicant additionally pointed out that his request that the 1990 expropriation of his properties be cancelled had been motivated by the State's failure to provide the compensation due to him within the statutory time limit. He had not been obliged to await this compensation indefinitely.

B. The Court's assessment

1. Admissibility

(a) Article 8 of the Convention

40. The applicant complained of a breach of his right to respect for his home (see paragraph 28 above).

41. Under Article 35 § 1 of the Convention, the Court may examine a matter only where it has been submitted to it within six months of the date on which a final decision was taken. The primary purpose of this rule is to maintain legal certainty by ensuring in particular that cases raising issues under the Convention are examined within a reasonable time. Furthermore, the rule facilitates the establishment of facts in a case, since with the passage of time any fair examination of the issues raised is rendered problematic (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 39, 29 June 2012).

42. As was also pointed out by the Government (see paragraph 31 above), the house in Golyamo Buchino, which is the subject of this complaint, ceased to be the applicant's home in 1997 when he moved out of

it, judging it too dangerous to stay (see paragraph 9 above). The tort proceedings the applicant brought subsequently were not aimed at recovering the house or enabling him to return there, and there were no other developments in relation to his right to respect for his home. For these reasons the Court is of the view that as concerns the applicant's complaint under Article 8 the six-month time-limit under Article 35 § 1 of the Convention started running in 1997 when he moved out of his house.

43. That complaint, lodged in December 2008 (see paragraph 1 above), has thus been lodged out of time, and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Remainder of the application

44. Concerning the complaint under Article 1 of Protocol No. 1, the Government appeared to raise an objection of non-exhaustion of domestic remedies, since they stated that the applicant had failed to seek the criminal prosecution of employees of the mine who might have handled explosives in breach of the relevant rules (see paragraph 32 above). However, the Government have not shown that the remedy at issue could have provided any adequate redress to the applicant, enabling him to return to his house or to obtain compensation, and the Court thus dismisses the objection.

45. It finds in addition that the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, or inadmissible on any other ground. They must therefore be declared admissible.

2. Merits

(a) Article 6 § 1 of the Convention

46. The applicant argued that the national courts had wrongly decided in the tort proceedings brought by him against the company operating the mine, in particular in concluding that no causal link had been shown to exist between the detonations at the mine and the damage to his property (see paragraph 36 above).

47. The Court has said on numerous occasions that it is not called upon to deal with errors of fact or law allegedly committed by the national courts, as it is not a court of fourth instance, and that it is not called upon to reassess the national courts' findings, provided that they are based on a reasonable assessment of the evidence (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012). Thus, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments submitted to them for consideration are not normally for the Court to review (see *Bochan v. Ukraine (no. 2)*

([GC], no. 22251/08, § 61, ECHR 2015, and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, ECHR 2017 (extracts)).

48. Nevertheless, the Court may entertain a fresh assessment of evidence where the decisions reached by the national courts can be regarded as arbitrary or manifestly unreasonable (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 803-4, 25 July 2013, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 90, ECHR 2016 (extracts)). Thus, for instance, in the case of *Dulaurans v. France* (no. 34553/97, §§ 36-38, 21 March 2000), the Court found a violation of the right to a fair trial because the sole reason why the French Court of Cassation had arrived at its contested decision rejecting the applicant's appeal on points of law as inadmissible was the result of "a manifest error of assessment". In *Anđelković v. Serbia* (no. 1401/08, § 27, 9 April 2013), the Court also found that the domestic court's decision, which principally had had no legal basis in domestic law and had not established any connection between the facts, the applicable law and the outcome of the proceedings, was arbitrary. In *Bochan (no. 2)* (cited above, §§ 63-65), the Supreme Court had so "grossly misinterpreted" a legal text (an earlier judgment of the Court) that its reasoning could not be seen merely as a different reading of that text, but was "grossly arbitrary" or entailing a "denial of justice". In *Carmel Saliba v. Malta* (no. 24221/13, §§ 69-79, 29 November 2016), the Court criticised the domestic courts for having relied on the inconsistent testimony of one witness and having failed to adequately comment on the remaining evidence; combined with other less significant shortcomings of the civil proceedings, this meant that those proceedings had not been fair.

49. In the present case the domestic courts appointed experts and heard witnesses, former neighbours of the applicant, and found on the basis of this evidence that the applicant's house and the other buildings in his yard were seriously damaged and had become unusable. They found furthermore that the detonations in the nearby mine had been carried out in breach of law (even though by qualified workers and in accordance with the mine's own internal rules), including at the time when, according to the applicant, the damage to his property had started (see paragraphs 14 and 20 above).

50. It was also established that, when the detonations were carried out closest to the applicant's property, they were within 160-180 metres of it (see paragraph 13 above). However, while the applicant has not at any stage specified when the mining activity of which he complained commenced, it would appear that this occurred sometime in the early 1990s (see paragraph 7 above). In contrast, the expert reports on which the domestic courts relied were only drawn up in 2001-02 and 2006-07 as the applicant waited until 2001 to initiate his tort action. Those expert reports found that it was impossible to say whether the distance just referred to had been the

distance in 1997 when the damage to the applicant's house had become so significant that he had had to leave (see paragraphs 13 and 18 above).

51. The Court is of the view that, unlike the cases referred to in paragraph 48 above, the present case does not concern "a manifest error of assessment" on the part of the national courts, or a "gross misinterpretation" of the relevant circumstances, or reasoning disregarding the bulk of the evidence presented or failing to connect the established facts, the applicable law and the outcome of the proceedings. The present case concerns the national courts' assessment of the applicant's claim as argued by him and in light of the evidence presented. The courts discussed and took into account the findings of the experts which they had appointed and the testimony of the witnesses put forward by the applicant, and made their own assessment as to their evidentiary value, stating in particular that the witness evidence was insufficient to prove the causal link alleged by the applicant (see paragraphs 14, 16 and 20-21 above).

52. After the case was remitted by the Supreme Court of Cassation (see paragraph 17 above), the Court of Appeal complied with its instructions to take into account the unlawfulness of the detonation works carried out at the mine, and expressly discussed that aspect, but still, on the balance, considered that the causal link between those detonations and the damage to the applicant's house had remained unproven (see paragraph 20 above). As already noted, due to the passage of time and the destruction of some documents, it had proved impossible to determine the distance between the applicant's house and the area where the detonations had been carried out in 1997 – the year in which he had abandoned his property. While it had been established that damage to the property had occurred, the cause or causes of that damage or the extent to which the mining activities had caused the damage and when could not be established.

53. The above conclusion was upheld when the case reached the Supreme Court of Cassation for the second time (see paragraph 21 above).

54. The applicant's complaint under Article 6 § 1 of the Convention concerns thus the weight attached by the national courts to the evidence presented, in particular the witness testimony, and their assessments of the issues raised before them. As mentioned above (see paragraph 47), it is not normally for the Court to review such matters.

55. In view of the above, the Court cannot conclude that the decisions of the national courts, in particular their conclusion contested by the applicant as to the existence of a causal link between the detonation works at the mine and the damage to his property, reached the threshold of arbitrariness and manifest unreasonableness described in paragraph 48 above, or amounted to a "denial of justice". Accordingly, the applicant did have a "fair hearing" of his case, as required by Article 6 § 1 of the Convention

56. Hence, there has been no violation of that provision.

(b) Article 1 of Protocol No. 1

57. The applicant owned one half of the plot of land and the buildings located in the village of Golyamo Buchino (see paragraph 6 above). Accordingly, the Court finds that he had "possessions", within the meaning of Article 1 of Protocol No. 1.

58. On an unspecified date towards the end of the 1980s or the beginning of the 1990s the State took a decision to create an opencast coalmine close to the applicant's village. An expropriation procedure concerning numerous properties in the area of the future mine, including the applicant's house and land, was commenced in 1990 (see paragraph 7 above). However, as regards the applicant's property the procedure failed, as the expropriation was quashed at the request of the applicant after part of the compensation designated for him, namely another plot of land in the village, was never provided to him (see paragraph 8 above). While, as mentioned, it was the applicant himself who sought the quashing of the expropriation (ibid.), the Court is of the view that he cannot be blamed for the expropriation procedure's failure. He had waited to receive another plot of land in the village for more than two years, from May 1990 to August 1992, and the Government have not shown that the authorities intended to honour their legal obligations under the expropriation procedure and that such a plot could have indeed been provided to the applicant.

59. The applicant and his family remained in the house, whereas the mine started operating close to it (see paragraph 9 above). It has not been disputed – and it was confirmed by the domestic courts in the tort proceedings initiated by the applicant – that the mine, where coal was extracted by means of detonations, represented an environmental hazard, and that the health-and-safety requirements contained in the Minister of Health's Ordinance No. 7 of 25 May 1992, in particular the maintenance of "sanitation zones" around non-industrial buildings such as dwellings (see paragraph 25 above), applied to it. The "sanitation zone" required in the case was 500-metre wide. However, the mine gradually expanded, and at the closest operated within 160-180 metres from the applicant's house.

60. At the relevant time the mine was managed by a company which was entirely State-owned (see paragraph 10 above). For the Court, the fact that that company was a separate legal entity under domestic law (see, for example, *Ilieva and Others v. Bulgaria*, no. 17705/05, § 36, 3 February 2015) cannot be decisive to rule out the State's direct responsibility under the Convention (see *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, § 188, 9 October 2014, and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 114, ECHR 2014). The parties have provided no information on the extent of State supervision and control of the company at the relevant time. Of relevance is that it was not engaged in ordinary commercial business, operating instead in a heavily

regulated field subject to environmental and health-and-safety requirements (see, *mutatis mutandis*, *Mykhaylenky and Others v. Ukraine*, nos. 35091/02 and 9 others, § 45, ECHR 2004-XII). It is also significant that the decision to create the mine was taken by the State, which also expropriated numerous privately-owned properties in the area to allow for its functioning, under legislation concerning "especially important State needs" (see paragraphs 7 and 24 above). All of the above factors demonstrate that the company was the means of conducting a State activity and that, accordingly, the State must be held responsible for its acts or omissions raising issues under the Convention.

61. In view of the considerations above, the Court is of the view that the authorities, through the failed expropriation of the applicant's property and the work of the mine under what was effectively State control, were responsible for the applicant's property remaining in an area of environmental hazard, namely daily detonations in close proximity to the applicant's house. That situation, which led to the applicant abandoning his property in 1997 (see paragraph 9 above), amounted to State interference with his "possessions" within the meaning of Article 1 of Protocol No. 1.

62. Such an interference cannot be regarded as either a deprivation of property or a control of use within the meaning of the first and second paragraphs of Article 1 of Protocol No. 1. However, it falls within the meaning of the first sentence of that provision as an interference with the peaceful enjoyment of possessions (see, *mutatis mutandis*, *Loizidou v. Turkey* (merits), 18 December 1996, § 63, *Reports of Judgments and Decisions* 1996-VI).

63. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see, for example, *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I). This means, in the first place, compliance with the requirements of national law (see *Iatridis v. Greece* [GC], no. 31107/96, §§ 58-62, ECHR 1999-II).

64. In the present case, domestic law required the maintenance of protective "sanitation zones" around industrial installations representing environmental hazard, on the territory of which there could be no residential buildings (see paragraph 25 above). As regards in particular the mine in the vicinity of the applicant's village, the required buffer area was 500-metre wide. Despite that, the mine operated, conducting daily detonations much closer, at the closest within 160-180 metres (see paragraphs 13 and 19 above).

65. In the tort proceedings initiated by the applicant, the Court of Appeal stated that the carrying out of detonations by the mine in such vicinity to the residential buildings was "indisputably" in breach of the domestic legislation (see paragraph 20 above). This means that the interference with the peaceful enjoyment of the applicant's possessions as defined above,

manifestly in breach of Bulgarian law, was not lawful either for the purposes of the analysis under Article 1 of Protocol No. 1. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the applicant's rights (see *Iatridis*, cited above, § 62).

66. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. In respect of pecuniary damage, the applicant claimed 9,040.70 Bulgarian levs (BGN – the equivalent of 4,622.51 euros (EUR)) for the value of his share of the property in Golyamo Buchino, plus default interest. He presented valuation reports prepared by experts. He pointed out that, as a result of the conduct of the State complained of, his house and the auxiliary buildings had collapsed and had become unusable. In respect of non-pecuniary damage, the applicant claimed EUR 9,000.

69. The Government contested the claims.

70. The Court finds that it is justified to award the applicant compensation for the breach of his property rights as a result of the exposure of his property to environmental hazard. It considers in addition that it is appropriate to award a lump sum, covering any pecuniary and non-pecuniary damage. In view of all the circumstances of the case, including the value of the applicant's property as indicated by him (see paragraph 68 above), the Court fixes that sum at EUR 8,000.

B. Costs and expenses

71. For the proceedings before the Court, the applicant claimed BGN 2,800 (the equivalent of EUR 1,431) for the fee charged by his legal representative, the expert valuations submitted in support of his claim for pecuniary damage (see paragraph 68 above) and translation. In support of the claim he submitted the relevant receipts and a contract with a translator.

72. The applicant also claimed expenses incurred by him in the domestic tort proceedings, amounting to BGN 961.30 in total (the equivalent of

EUR 491). These included court fees and the cost of an expert report. In support of this claim the applicant submitted the relevant receipts.

73. The Government contested the claims.

74. In accordance with 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 case, regard being had to the documents in its possession and the above criteria, the Court allows the claim in respect of costs and expenses in full. As to the claim concerning the expenses incurred in the domestic tort proceedings, it notes that, in bringing those proceedings, the applicant sought to obtain compensation for the violation of his property rights. The total amount awarded under this head is thus EUR 1,922.

C. Default interest

75. 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. *Declares* the complaint under Article 8 of the Convention inadmissible and the remainder of the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 1,922 (one thousand nine hundred and twenty-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President