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La CEDU sugli obblighi positivi di protezione della proprietà privata
(CEDU, sez. III, sent. 3 marzo 2026, ric. n. 4711/20)

La decisione in commento riguarda i danni arrecati all'abitazione della ricorrente da parte di privati che conducevano illegalmente attività di estrazione di carbone nell'area.
Nella pronuncia, la Corte EDU ha ricordato che l'articolo 1 del Protocollo n. 1 pone a carico degli Stati anche obblighi di tipo positivo, l'esercizio effettivo del diritto al pacifico godimento dei propri beni, infatti, presuppone non soltanto l'astensione dello Stato da ogni interferenza, ma anche l'adozione da parte di quest'ultimo delle misure necessarie a proteggere la proprietà privata. Non essendo il diritto in questione un diritto assoluto, tali obblighi positivi non si estendono oltre quanto sia ragionevole nelle circostanze del caso.
Nel caso di specie, pur tenuto conto della complessità della situazione e delle sfide economiche, organizzative e sociali incontrate dalle autorità bulgare, la Corte ha ritenuto che le stesse avessero violato il loro obbligo positivo di adottare misure ragionevoli per proteggere la proprietà della ricorrente. I Giudici hanno rilevato, in particolare, oltre all'inadeguatezza delle risposte alla condotta illecita, la mancanza di chiarezza, a monte, in merito agli enti da ritenersi responsabili dell'adozione delle misure.
È stata riscontrata pertanto una violazione dell'articolo 1 del Protocollo n. 1 alla Convenzione.

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

THIRD SECTION

CASE OF XXX v. BULGARIA
(Application no. 4711/20)

JUDGMENT
STRASBOURG
3 March 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Ioannis Ktistakis, *President*,
Lətif Hüseynov,
Darian Pavli,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović,
Vasilka Sancin, *judges*,
and Milan Blaško, *Section Registrar*,
Having regard to:
the application (no. 4711/20) 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, OMISSIS (previously OMISSIS, hereinafter "the applicant"), on 15 January 2020;
the decision to give notice of the application to the Bulgarian Government ("the Government");
the parties' observations;
Having deliberated in private on 27 January 2026,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns, most notably, a complaint under Article 1 of Protocol No. 1 that the Bulgarian State had failed to take adequate measures to protect the applicant's property from the illegal actions of third parties. The applicant's house is situated in an area containing shallow coal reserves, and private individuals have dug tunnels under it to extract coal for the black market, causing irreparable structural damage to the applicant's house.

THE FACTS

2. The applicant was born in 1957 and lives in Pernik. She was represented by Ms R. Stoilova and Mr A. Kodzhabashev, lawyers practising in Sofia, and Ms J. MacLeod, a lawyer practising in London.
3. The Government were represented by their Agent, Ms B. Simeonova from the Ministry of Justice.
4. The facts of the case may be summarised as follows.

I. Coal mining and illegal mining in pernik

5. Pernik is a city in Western Bulgaria known for its mining industry.
6. An underground coal mine in the area in which the events of the present case occurred was opened in 1906. It operated until 1962, when it was closed owing to the depletion of its capacity for industrial mining.
7. Coal mining continued in other areas, and in 2003 the government granted a concession for underground coal extraction in the Pernik Coal Basin to the company Mini Otkrit Vagledobiv EAD (hereinafter "the mining company"). At the time of the granting of the concession, the mining company was State-owned, but it was later privatised.
8. According to the concession contract, the designated concession area spans approximately 14,000 hectares, encompassing the entire city of Pernik. Under section 10 of the contract, the mining

company is required to conduct operations conscientiously, safely and efficiently. Section 27 provides that it must comply with environmental-protection legislation, and take measures to prevent landslides, land collapses and erosion. Additionally, the mining company is obliged to afford compensation for any damage that is the result of operations which it undertakes in violation of good mining practices.

9. Illegal small-scale underground mining by private individuals ("the illegal miners") began between 1996 and 1998 in areas where the mining company was not operating. Typically led by former miners, groups of workers excavated pits and tunnels and collected coal, usually using basic tools such as pickaxes. The police regularly had the pits and tunnels filled up and launched awareness campaigns about the risks involved, but the mining continued. Over the years, several individuals lost their lives to land implosions or to intoxication by gas. According to a police report issued in 2015, illegal mining declined around 2008-10, but resurged after an earthquake of 22 May 2012, which opened cracks in the soil and exposed relatively shallow coal deposits. According to the same report, between 150 and 200 individuals were at that time engaged in illegal mining in the city.

10. In 2014, according to media reports from that year, about 400 individuals were engaged in illegal mining. Each day they extracted between 60 and 70 tonnes of coal. Extracted coal was sold on the local black market quickly, owing to its low price and good quality. However, the illegal mining endangered houses, and there are also reports of it threatening infrastructure such as a railway line and an electricity pylon. On many occasions inhabitants of the city protested against the authorities' failure to tackle the problem.

11. The parties submitted police statistics indicating that 52 checks of sites where illegal mining was taking place were carried out by police officers and municipal officials in 2013, and 83 in 2014. That information contained few details, but it indicated that offenders caught by these checks were taken into short-term police custody.

12. More recent media reports – some published as late as 2024 – also refer to the arrests of persons engaged in illegal mining and to the discovery of caches of illegally extracted coal. For example, several individuals were arrested in 2019 in the neighbourhood of the applicant's house (see below).

13. The parties submitted documents concerning the initiation of criminal proceedings for theft against individuals caught transporting illegally mined coal. Those proceedings preceded the criminalisation of illegal mining – see paragraph 48 below. However, those cases were discontinued owing to the low value of the coal in question, which rendered them legally insignificant.

14. The mining company also took measures to counter the illegal mining, occasionally seeking the assistance of the municipal authorities and the police.

II. damage caused to the applicant's house

15. In 1995, the applicant's mother purchased a house measuring 52 square metres in the Rudnichar district of Pernik, which she and the applicant then moved into.

16. In 2010, the two women began noticing groups of individuals entering underground tunnels in order to extract coal. It was later confirmed that those tunnels passed directly beneath their house, which was situated on a hill. The entrances were located on a plot that was owned by the mining company and which was adjacent to the plot owned by the applicant's mother. The applicant and her mother frequently heard voices and the sounds of pickaxes striking the ground; those sounds were sometimes accompanied by vibrations. Those activities took place mostly at night.

17. The applicant's mother repeatedly lodged complaints with the Pernik municipal authorities, urging them to take action against the illegal mining. For example, in a complaint dated 17 November 2011 she described the distress and fear that she was experiencing, and referred to cracks that were appearing on the walls of her house. In another letter dated 21 February 2012, she explained that, although the tunnel entrances had been filled in (see below), the miners had reopened them and had continued their operations. On 7 March 2012 she reported hearing pickaxes directly beneath the house, and stated that the miners had threatened her. Later, on 26 June 2013, she noticed that part of the street in front of the house had subsided.

18. The applicant's mother also lodged complaints with the mining company. Three such documents – dated 21 March and 13 September 2012 and 7 March 2013 – have been submitted to the Court. Additionally, she wrote to the police, to the national Ombudsman and to Parliament.

19. The applicant's mother received 3,114 Bulgarian levs (BGN), the equivalent of 1,590 euros (EUR) of governmental aid to cover minor repairs made to her house after the earthquake of 22 May 2012 (see paragraph 9 above).

20. The applicant's mother died in August 2013, and the applicant inherited the house.

21. The applicant vacated the house in the summer of 2013 – considering it no longer safe to live in – and moved into a flat elsewhere. She stated that until that time, she had actively maintained the house, making repairs in order to address the ongoing structural damage.

22. The following damage to the house occurred over the years: cracks formed on the walls and on bathroom tiles, reaching widths measuring between 5-6 cm and 12 cm; window frames became deformed, leading to leaks and draughts; cracks and holes also appeared on the land outside, and part of the house's floor sank. In April or May 2018, when the property was inspected by an expert appointed in the course of the tort proceedings initiated by the applicant (see below), the house was found to be severely damaged and tilted to one side; by that stage, the expert asserted, it was irreparable and uninhabitable.

23. As illegal mining continued, on 8 May 2014 a group of residents of the Rudnichar district complained to the city mayor, urging immediate action.

24. On 1 July 2015, a massive landslide occurred in the area, damaging several buildings, including the applicant's house. Further smaller landslides followed in November 2015 and January 2016.

III. Actions of the authorities with regard to the illegal mining in rudnichar

25. As early as 2009, the authorities in Pernik were seeking to implement measures aimed at combating illegal mining in Rudnichar.

26. In February 2012 the mayor of Pernik appointed a five-member commission to check the situation in the neighbourhood. Over the following months the municipality held meetings with representatives of the mining company and the Ministry of Economics to discuss the problem.

27. Beginning in early 2012, the Pernik municipal authorities sent multiple letters to the Ministry of Economics, the prosecution authorities and the police, requesting them to take action against the illegal mining in Rudnichar.

28. The Ministry of Economics responded with letters confirming that its experts had verified the damage caused in Rudnichar. It urged the municipality to take action and offered assistance. In particular, in a letter of 12 November 2014, the Ministry referred to various provisions of the Underground Resources Act (including section 90(5) – see paragraph 45 below), stating that those

provisions assigned to the mayor responsibility for monitoring and controlling illegal mining. Additionally, the Ministry sent urgent recommendations to the mining company, noting that the affected area was covered by the mining concession.

29. The local police directorate also sent letters urging the municipality to take action, noting that police officers had visited the area and had confirmed that illegal mining was still ongoing.

30. The municipality contacted the mining company numerous times, asking it to take urgent measures to secure the affected area. Several such letters were sent in 2014 and 2015, emphasising the need for urgent action. The municipality also pointed out that the illegal miners were using an abandoned bunker that was owned by the mining company.

31. In April and December 2012 the mining company attempted to block access to the tunnels used by the miners, by covering up their entrances with soil. After the tunnels were quickly reopened, the entrances were again filled in with soil in June, August and October 2014, as well as on three further occasions in 2015. In letters to the authorities the mining company explained that it was unable to take more comprehensive action owing to the nearby presence of residential buildings and underground water and electricity infrastructure. In a letter to the Ministry of Economics dated 13 February 2014, the mining company requested governmental assistance, stating that the scale of the problem was beyond its capacity to handle alone.

32. Between February 2015 and August 2017 the Pernik mayor imposed fines on individuals caught engaging in illegal mining, citing the Ordinance on Public Order on the Territory of the Pernik Municipality (see paragraph 47 below). The fines ranged between BGN 50 (EUR 25.5) and BGN 70 (EUR 36). It remains unclear whether the offenders actually paid those fines.

33. As previously noted (see paragraph 24 above), a landslide occurred on 1 July 2015 in the area where the applicant's house was located, followed by two smaller landslides in the subsequent months.

34. On 1 July 2015, the mayor of Pernik declared an emergency situation in the Rudnichar district. An initial damage assessment confirmed a lengthy crack on the street on which the applicant's house stood. Three houses were damaged, one of which was the applicant's. It was decided that the houses were no longer habitable at and should be evacuated.

35. After the landslide of 1 July 2015, a permanent police post was established in the Rudnichar district; staffed around-the-clock by two to three officers, it enabled the continuous monitoring of the tunnel entrances.

36. A comprehensive geological assessment was conducted in the area, with the results being presented in a report dated December 2015 (the document's first page indicates that it was part of a project of the mining company and a geological research company to envisage means to address the consequences of industrial mining's cessation on the territory of Pernik). The experts identified at least two parallel mining galleries, measuring between 120 and 150 metres in length and up to 1.8 metres in width, with possible connecting galleries. The tunnels – located between 5 and 15 metres underground – had significantly altered the natural structure and stability of the terrain. Deformations had for the first time been observed in 2013, and further deterioration was likely to occur owing to the compacting of the soil. The report confirmed that the illegal mining was responsible for the damage to the houses and infrastructure on the surface. It recommended filling

in the tunnels, sealing them, and destroying the bunkers used to access them. It outlined different technical solutions aimed at achieving that end.

37. Such works were ultimately carried out after government funds were received, leading to the lifting of the local state of emergency in December 2017.

38. According to an expert appointed later in the course of the judicial proceedings brought by the applicant (see below), no technical obstacles had prevented those works from being conducted at an earlier stage.

39. Illegal mining in the area of the applicant's house was observed in 2017 and 2018. According to the applicant, the mining activities were resumed after the round-the-clock police presence (see paragraph 35 above) was discontinued in December 2017.

IV. Tort proceedings brought by the applicant

40. In 2017 the applicant brought tort proceedings against the municipality of Pernik. She argued that the municipality had failed to take the necessary action to protect her property between 2011 and 2015, despite it having been aware of the problem with illegal mining in Rudnichar. According to the applicant, the mayor had been obliged to take action – in particular under section 90(5) of the Underground Resources Act (see paragraph 45 below). The mayor had had the possibility to deploy various measures; she had done so after the landslide of 1 July 2015, but by then it had been too late. The municipality was thus liable for the damage caused to the applicant's house. The applicant claimed BGN 80,000 (EUR 40,920) for the value of the house, BGN 7,250 (EUR 3,700) in compensation for loss of profit, and BGN 10,000 (EUR 5,112) in compensation for non-pecuniary damage.

41. In a judgment of 22 October 2018 the Pernik Administrative Court dismissed the claims. It accepted, on the basis of an expert report, that the damage to the applicant's house had been caused by deformations of the terrain caused by the illegal mining below ground. According to the expert, the damage had not been the result of earthquakes or other natural disasters. However, the domestic court was of the view that the mayor would have been obliged to take action under section 90(5) of the Underground Resources Act only if the area had not been part of a mining concession. This had not been the case, as a concession had been granted to the mining company, whose responsibility it had been to put a stop to the illegal mining. Furthermore, the mayor had in any event taken adequate measures that had fallen within her area of competence – such as asking other authorities and the mining company to take action, and imposing fines (see paragraphs 27 and 32 above). Any obligation under section 90(5) of the Underground Resources Act was one of means, and not of result.

42. Following an appeal lodged by the applicant, the above judgment was upheld on 16 July 2019 by the Supreme Administrative Court, which fully endorsed the lower court's conclusions.

RELEVANT LEGAL FRAMEWORK

I. The Underground resources Act

43. The Underground Resources Act, adopted in 1999, governs the extraction and use of underground resources.

44. Section 90 assigns to various State and local bodies the responsibility of overseeing the Act's implementation. Overall authority in that regard rests with the Minister of Economics.

45. At the relevant time the duties of the mayor of each municipality were outlined in section 90(5) of the Act. In particular, the mayor was responsible for exercising control over the activities of

concessionaires outside the territory of their respective concessions, and over "the extraction of underground resources without a duly granted concession".

46. Under section 91 of the Act, the bodies assigned responsibilities under section 90 have the authority to conduct checks of the activities and equipment of mining companies and impose fines.

II. Other provisions

47. The Ordinance on Public Order on the Territory of the Municipality of Pernik was issued in 2000 by the city's municipal council. Its section 23 prohibits mining without a concession, while section 32 provides for fines to be imposed for breaches of that prohibition. Where the value of the resources extracted is low (below the minimum monthly wage), the fines provided range between BGN 50 (EUR 25.5) and BGN 300 (EUR 153).

48. In 2017 the illegal extraction of underground resources was criminalised under Article 240a of the Criminal Code.

49. Article 239 § 6 of the Code of Administrative Procedure provides that an interested party may request the reopening of administrative judicial proceedings in a case where a "judgment of the European Court of Human Rights has found a violation of the [Convention]". The Supreme Administrative Court has clarified that it would order reopening where the violation established by the Court was "related to the specific judicial proceedings" and where the reopening is "necessary in order to repair the consequences of the violation" (*Решение № 4014 от 3.04.2024 г. на ВАС по адм. д. № 12135/2023 г.*; *Решение № 4936 от 13.05.2025 г. на ВАС по адм. д. № 419/2025 г., IV о.*).

THE LAW

I. Alleged violation of Article 1 of protocol no. 1

50. The applicant complained under Article 1 of Protocol No. 1 of a violation of her right to the peaceful enjoyment of her possessions. She argued that the authorities had had an obligation to stop the illegal mining that had caused the damage to her house, but had failed. She had received no compensation for the damage at issue.

51. Article 1 of Protocol No. 1 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. Admissibility

1. The parties' submissions

52. The Government raised an objection of non-exhaustion of domestic remedies, contending that the applicant should have pursued tort proceedings against the mining company or the State, rather than against the municipality of Pernik. They referred to the domestic courts' findings in the proceedings initiated by the applicant (see paragraph 41 above). They further pointed out that it had not been the applicant but her mother who had complained to the authorities after the illegal mining under their house had begun.

53. The Government argued additionally that the complaint under Article 1 of Protocol No. 1 was time-barred. According to them, the six-month time limit under Article 35 § 1 of the Convention – as worded before the entry into force of Protocol No. 15 – had begun in 2015, when the applicant's house had been damaged beyond repair.

54. The applicant contested the Government's objection of non-exhaustion of domestic remedies. She argued that the tort action that she had pursued had been the only remedy available under Bulgarian law. She could not have brought an action against the mining company, because the company had not been conducting mining operations in Rudnichar. It had acted to cover up the entrances to the tunnels as it owned the land providing access to them; however, it bore no responsibility for the safety or property of the residents of Rudnichar.

55. The applicant pointed out that her mother had approached every possible State body in her search for a solution to the problem of the deterioration of their house. Although it had been her mother who had penned the letters, she had clearly done so on behalf of the applicant as well.

56. In response to the Government's argument that the complaint under examination was time-barred, the applicant stated that she still considered the house to be her home. She had lodged a claim against the municipality, seeking compensation for non-pecuniary damage (namely, the violation of her right to respect for her home). The violation of her rights was ongoing.

2. The Court's assessment

57. The rules concerning the requirement to exhaust domestic remedies have been summarised in *Vučković and Others v. Serbia* (preliminary objection) ([GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

58. The present case concerns the State's positive obligations under Article 1 of Protocol No. 1. Accordingly – and in view of the fact that the applicant argued before the Court that it was the public authorities who had failed to take timely and appropriate measures to protect her home – it is not evident how legal proceedings against the mining company (a private entity – see paragraph 7 above) could have constituted an effective remedy within the meaning of Article 35 § 1 of the Convention.

59. In addition, even though the domestic courts, in adjudicating the applicant's action against the municipality of Pernik, suggested that the mining company might bear liability for the damage sustained by the applicant's property (on the basis that its concession area included the affected zone – see paragraph 41 above), it has not been explained how such a finding aligned with the terms with the concession contract. Under the terms of that contract, the mining company's liability is limited to damage directly resulting from its operational activities (see paragraph 8 above).

60. Furthermore, while the mining company did participate in initiatives aimed at curbing illegal mining activities in the Pernik region, such efforts were undertaken in coordination with the public authorities. The company itself acknowledged that it lacked the requisite resources to effectively address the issue (see paragraphs 14 and 31 above). In view of these circumstances, the Court is not persuaded that the mining company could reasonably be held liable for damage caused by illegal mining activities – particularly with respect to the applicant's property – to an extent that would render a legal action against it viable and likely to succeed. Consequently, such proceedings cannot be deemed to constitute an effective remedy for the purposes of Article 35 § 1 of the Convention.

61. The applicant initiated legal proceedings against the municipality of Pernik, invoking statutory provisions that could be interpreted as imposing a duty on the city mayor to take action against illegal mining operations (see paragraph 40 above). Although the domestic courts ultimately concluded that the mayor did not have such an obligation (see paragraph 41 above), the applicant cannot be faulted for having pursued a claim against a public authority that could have appeared, on the face of it, to have the responsibility for resolving the question at hand. Given that the applicant exhausted that remedy but was not awarded any compensation for the damage to her house, it would be unreasonable to expect her to have lodged further claims against other public entities (this time at the State level) in an effort to resolve the same underlying issue. The Government, in lodging a preliminary objection on the grounds of non-exhaustion (see paragraph 52 above), have not demonstrated that the remedy suggested by them was both accessible to the applicant and offered a reasonable prospect of success.

62. The Government put forward an additional argument related to the exhaustion of domestic remedies, namely that the applicant had not herself complained to the authorities and only her mother had done so (see paragraph 52 above *in fine*). The Court rejects this objection. As noted by the applicant (see paragraph 55 above), even though it had been her mother who had penned the letters, she had clearly done so on behalf of the applicant as well.

63. For the same reasons as those outlined in paragraph 61 above the Court rejects the Government's additional objection (see paragraph 53 above) that the complaint under Article 1 of Protocol No. 1 was lodged outside the six-month time-limit provided by Article 35 § 1 of the Convention, as in force at the relevant time. Indeed, the damage to the applicant's house occurred predominantly prior to, or as a result of the landslide of 1 July 2015 (see paragraphs 22 and 24 above), whereas the application was submitted in 2020. However, during the intervening period, the applicant actively pursued compensation through domestic legal avenues. The remedy she resorted to cannot be considered to have been so manifestly inappropriate or misconceived as to have been devoid of any legal relevance or incapable of affecting the computation of the six-month period (see, for an explanation of the rule, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 132, 19 December 2017).

64. Finally, the Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

65. The applicant observed, in response of the Government's argument that she should have insured her house (see paragraph 69 below), that when she and her mother had bought the house, the area had not been considered to be dangerous and that all mining activities had ceased more than 30 years earlier (see paragraph 6 above). In addition, house insurance was not mandatory in Bulgaria.

66. According to the applicant, the mayor of Pernik and other public bodies had for years been aware of the illegal mining problem in Rudnichar. However, before 1 July 2015 the authorities had failed to take timely and effective measures to address it; those measures that they had implemented before 1 July 2015 had been inadequate. For example, although the entrances to the mining tunnels had been repeatedly filled in with soil, they had quickly been reopened. The mayor had imposed several fines on the illegal miners, but those fines had been very low and probably had not even

been paid. Inspections had been conducted, but they had not had the effect of halting the illegal mining. The authorities had provided data regarding the number of such inspections that had been conducted throughout the whole of the city (see paragraph 11 above), but it remained unclear how many inspections had been conducted in Rudnichar. Moreover, at the time the prosecution authorities had refused to pursue criminal proceedings against illegal miners (see paragraph 13 above).

67. According to the applicant, effective measures had only been implemented after the landslide of 1 July 2015, when it had been too late to save her house. At that point, the mining galleries had been filled in and sealed, the bunker used for access had been demolished, and a permanent police post had been established (see paragraphs 35-37 above). If those measures had been taken earlier, the damage to the applicant's house could have been prevented. It had to be noted, however, that after the removal of the police post the illegal mining had resumed.

68. Lastly, the applicant stated that before the problems had begun, her house had been "nice and comfortable". Over time, it had become uninhabitable and unsafe.

(b) The Government

69. The Government argued that the applicant and her mother should have insured their house. They described this as a "more than reasonable step", given that, according to the Government, the area had been "classified [as being] among the endangered zones". The applicant had herself taken the risk of living in such an area without insurance. In support of this argument, the Government referred to the case of *Vladimirov v. Bulgaria* (dec.) (no. 58043/10, § 37, 25 September 2018).

70. The Government also pointed out that the damage to the applicant's house had been caused by private individuals, and not by the State. While acknowledging the State's positive obligations to protect private property, they argued that that responsibility did not extend beyond what was reasonable in the circumstances. In any event, the authorities had acted in an effective manner, taking "all possible and reasonable" steps. The different State and local bodies had coordinated their actions, and had made continuous efforts. Those efforts had to be assessed in the light of budgetary restraints. The issue with illegal mining was particularly challenging to resolve, as the illegal miners had continued their activities despite the measures taken. After the landslide of 1 July 2015 the authorities had implemented measures that, according to the Government, could not have been expected to have been implemented earlier, when there had been no emergency situation.

71. The Government maintained that the authorities had acted in a diligent and timely manner and that the Court should not retrospectively place on them an impossible or disproportionate burden. They argued that Article 1 of Protocol No. 1 did not go "as far as requiring the Contracting States to take preventive measures to protect private possessions in all situations". The applicant's argument that the authorities had had an absolute obligation to prevent at all costs the damage to her house was unreasonable and inconsistent with the Court's approach in similar cases.

72. The Government argued that some of the damage to the applicant's house had also been due to the earthquake of 22 May 2012.

2. The Court's assessment

73. The Court has repeatedly held that Article 1 of Protocol No. 1 also establishes some positive obligations (see *Kotov v. Russia* [GC], no. 54522/00, § 109, 3 April 2012). Thus, in the case of *Öneryıldız v. Turkey* ([GC], no. 48939/99, § 134, ECHR 2004-XII), which concerned the destruction of the

applicant's property as a result of a gas explosion, the Court held that the genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 did not depend merely on the State's duty not to interfere, but might require positive measures of protection – particularly where there was a direct link between the measures applicants might legitimately expect from the authorities and the effective enjoyment of their possessions. Allegations of a failure on the part of the State to take positive action in order to protect private property should be examined in the light of the general rule set out by the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention, which lays down the right to the peaceful enjoyment of one's possessions (see *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, § 213, 28 February 2012).

74. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". Where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time and in an appropriate and consistent manner (see *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 168, ECHR 2006-VIII).

75. The case at hand concerns damage caused to the applicant's house by private individuals engaged in illegal coal mining. Unlike environmental cases – such as *Kolyadenko and Others* (cited above), which concerned the operation of a water dam – this case does not relate to hazardous conduct within an established legal framework. Instead, the damage resulted from the actions of private actors (potentially organised in criminal groups) operating entirely outside the law and any form of regulation. The Court will take these considerations into account when examining whether the authorities took adequate action to prevent significant damage being caused to the applicant's property (see, for similar considerations, but within the context of complaints under Article 2 of the Convention, *Cannavacciuolo and Others v. Italy*, nos. 51567/14 and 3 others, § 384, 30 January 2025).

76. The damage to the applicant's house has been described in paragraph 22 above. As noted above, it occurred mainly before or at the time of the landslide of 1 July 2015 (see paragraph 24 above) – although in the summer of 2013 the applicant had already deemed the house to be unsafe and had moved out (see paragraph 21 above). Following the landslide the house was deemed irreparable and uninhabitable (see paragraph 22 *in fine* above). Accordingly, the Court will focus on the authorities' actions prior to the landslide, as any measures taken afterwards could not have remedied the loss.

77. The Court will analyse different aspects of the authorities' response to illegal mining in Pernik – both throughout the whole of the city and specifically in the Rudnichar district. It will examine whether the authorities (a) conducted a comprehensive assessment of the phenomenon, identifying affected areas and the nature and extent of the damage, (b) took meaningful steps to mitigate identified risks, especially in the applicant's district, and (c) implemented effective measures to combat the conduct underlying the illegal mining phenomenon (for such a three-step approach, see, *mutatis mutandis*, *Cannavacciuolo and Others*, cited above, § 395).

78. The Court has not received any properly collated data about illegal mining in Pernik. This possibly means that no official, comprehensive assessment of the issue has been conducted. The only documentation provided to the Court was a brief police report containing rough estimates of the number of people involved (see paragraph 9 above); media sources have offered differing figures and additional details (see paragraph 10 above).

79. As to the assessment of the nature and extent of the damage in the applicant's district, a thorough geological assessment of the illegal mining operations and the condition of the terrain was carried out following the landslide of 1 July 2015. The resulting report, completed in December 2015, recommended the undertaking of extensive measures aimed at stabilising the area and preventing further damage being caused (see paragraph 36 above). However, this report came too late – it was completed after the applicant's house had already suffered serious damage. Prior to that, when the damage was occurring, the authorities seemed unaware of the full extent of the problem or how to address it effectively.

80. Regarding the question whether the authorities took meaningful steps to mitigate identified risks (point b) of the list detailed in paragraph 77 above), general information submitted to the Court by the parties indicates that in the early stages of the illegal mining in Pernik the police responded by regularly having the pits and tunnels filled in (see paragraph 9 above). Inspections were carried out in 2013 and 2014 (see paragraph 11 above). The Court does not have any further detailed information regarding any other measures taken throughout the whole of the city.

81. As to Rudnichar, it was submitted that since 2009 the authorities had been seeking to implement unspecified measures aimed at combating illegal mining (see paragraph 25 above). A commission tasked with examining that issue was set up in 2012 (see paragraph 26 above).

82. In the area around the applicant's house – particularly during 2012-2013 (when the illegal underground mining operations had reached an intense level and the applicant's mother submitted numerous complaints and requests to various public bodies) – the mining company repeatedly filled in the tunnel entrances with soil (see paragraph 31 above). These actions appear to have constituted the only tangible efforts made to stop the illegal activities in the area and to protect property (see paragraph 77 above). However, these actions were clearly ineffective, as the tunnels were reopened each time and the illegal mining continued.

83. At the same time – as revealed later by an expert appointed during the judicial proceedings brought by the applicant (see paragraph 38 above) – there was no obstacle preventing the public authorities from taking the action recommended in the 2015 geological assessment – even in the years preceding the 2015 landslide, when the damage to the applicant's house began and could still have been prevented. Another potentially helpful measure that also came too late was the setting-up of a permanent police post for the continuous monitoring of the tunnel entrances (see paragraph 35 above).

84. The Court does not accept the Government's argument that before 2015 there had been no urgent need to take measures (see paragraph 70 above *in fine*). It refers in that regard to the damage caused to the applicant's house (which the applicant had already left in 2013), to the fact that the illegal mining had apparently affected other people as well before 2015 (see paragraph 23 above), and to the wide extent of the illegal mining phenomenon in Pernik.

85. The Court has received copies of extensive correspondence between various entities – including the Ministry of Economics, the mining company, the municipality of Pernik, and the police – regarding illegal mining in Rudnichar. Many of those letters contained appeals from one body to another urging the addressee to react (see paragraphs 27-30 above).

86. In that regard the Court notes that, while the different public bodies seemed to agree that measures should be undertaken against the illegal mining, it was unclear which public body should

take the necessary action. Domestic law seemed to place responsibility in that regard mainly on the mayor of the municipality – both the Underground Resources Act and the Ordinance on Public Order on the Territory of the Pernik Municipality contained provisions that could be interpreted in that sense (see paragraphs 45-47 above) – but the national courts rejected such an argument (see paragraph 41 above). Authority is also vested in the Ministry of Economics (see paragraph 44 above). However, it appears that – although correspondence was exchanged between them (see paragraphs 27-30 above) – before 2015 none of the public bodies involved considered itself competent to act. As already mentioned above, the mining company, which was privately-owned, was the only entity to take meaningful action before the 2015 landslide. The company itself recognised that it was unable to take more comprehensive action, and that it needed support from the authorities (see paragraph 31 above).

87. In view of the above, the Court is not convinced that the authorities made adequate efforts to manage the risks posed by illegal mining and to prevent property damage – particularly in Rudnichar (the Court does not have sufficiently detailed information about the city of Pernik), where the applicant's house was situated (see paragraph 80 above).

88. As regards point c) of the analysis introduced in paragraph 77 above – namely, whether effective measures were implemented to combat the conduct underlying the illegal mining phenomenon – the parties informed the Court of several measures. The police organised awareness campaigns among the population (see paragraph 9 above), and briefly detained some of the offenders (see paragraph 11 above). The mayor of Pernik issued small fines, which might not have been paid (see paragraph 32 above). The prosecution authorities refused to bring theft charges, in view of the low value of the coal extracted by those investigated (see paragraph 13 above).

89. The Government did not argue that these measures had had any meaningful impact on the scale or consequences of illegal mining in Pernik (either throughout the whole of the city or specifically in Rudnichar). Although criminalising the illegal extraction of underground resources might have deterred the offenders, this legal change only came into effect in 2017 (see paragraph 48 above) – that is, after the period that the Court is reviewing in respect of the instant case (see paragraph 76 above *in fine*). Moreover, the Government have not submitted information regarding any proceedings against or convictions of illegal miners in Pernik under the new provision.

90. In view of the above, the Court concludes that the authorities did not take sufficient action in response to the illegal mining, in particular in the Rudnichar district and with regard to the applicant's house (which was damaged beyond repair).

91. Nevertheless, the Court also takes into account the following considerations:

92. A distinction must be drawn between the authorities' positive obligations under Article 2 of the Convention and those under Article 1 of Protocol No. 1: on the one hand, the fundamental importance of the right to life requires that the scope of the positive obligations under Article 2 include a duty to do everything within the authorities' power in the sphere of disaster relief for the protection of that right; on the other hand, the obligation to protect the right to the peaceful enjoyment of one's possessions (which is not absolute) cannot extend further than what is reasonable under the circumstances (see, among other authorities, *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 175, ECHR 2008 (extracts)).

93. In that regard, the Court is also mindful of the Government's argument that the authorities' efforts had to be examined in the light of budgetary restraints (see paragraph 70 above). It has in addition held that, within the context of positive obligations under Article 1 of Protocol No. 1, the State enjoys a certain margin of appreciation in determining the steps to be taken (see, among other authorities, *Kotov*, cited above, § 110).

94. The Court does not accept the Government's argument that some of the damage to the applicant's house could have been caused by the earthquake of 22 May 2012 (see paragraph 72 above). Such an assertion was clearly disproved during the domestic judicial proceedings (see paragraph 41 above).

95. As regards the failure of the applicant and her mother to insure their house, the Court does not consider it decisive for the outcome of the instant case. It differentiates between the present case and that of *Vladimirov* (cited above, § 37) – which the Government referred to (see paragraph 69 above) – because it has not been shown that the applicant and her mother should have been aware of a "latent hazard" (as had been the applicant in *Vladimirov*) in respect of the land on which their house was situated. Nevertheless, it is clear that if they had taken out the appropriate form of insurance, this could have offset the risk posed later on by the illegal mining.

96. At the same time, the Court does not consider that the applicant and her mother could have themselves taken any action against the individuals responsible for the damage to their house. It appears that the illegal mining in their district involved numerous people, who were well-organised. The applicant's mother did the only thing she could – that is to say she complained repeatedly to the authorities and asked them for help (see paragraph 17 above). As for the applicant – later on she attempted to seek compensation for the damage caused to the house, but was unsuccessful (see paragraphs 40-42 above).

97. Finally, the Court observes that it is not its intention, or its task, to re-examine the findings of the national courts in the tort proceedings brought by the applicant, namely that the Pernik mayor had not been responsible under section 90(4) of the Underground Resources Act to take action to protect the applicant's property, or that any action taken had at all events been adequate (see paragraph 41 above). What the Court is examining here is the much wider question of the State's international liability – a question which encompasses the actions of different bodies on State and municipal level and the adequacy of the applicable legal framework.

98. Having considered all relevant factors and the various interests at stake, the Court concludes that the authorities failed in their positive obligation to take reasonable measures to protect the applicant's property. It noted above in particular (i) the lack of clarity regarding the bodies whose responsibility it was to take action, (ii) the fragmented information regarding the illegal mining phenomenon and the lack of clarity as to what countermeasures might be taken, and (iii) the inadequacy of the responses to the underlying conduct – both in terms of domestic legal provisions and as regards the actions actually undertaken by the authorities. The Court recognises the complexity of the situation in Pernik following the onset of illegal coal mining, as well as the economic, organisational, financial and social challenges the authorities likely faced in addressing this issue. Nevertheless, it considers that some meaningful action should have been taken by the authorities – even in the event of their first needing a reasonable amount of time to identify appropriate solutions (compare, regarding the last point, *Papachela and AMAZON S.A. v. Greece*,

no. 12929/18, § 63, 3 December 2020). By failing to take any such meaningful action in respect of a situation that significantly affected the applicant's property rights, the authorities failed to strike a fair balance between the general interest of the community and the applicant's individual rights.

99. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. alleged violations of Article 8 and Article 13 of the Convention

100. The applicant complained under Article 8 of the Convention of a violation of her right to respect for her home. She further complained under Article 13 in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 that she had had no effective domestic remedy for the alleged violations of her rights.

101. Having regard to the facts of the case, the submissions of the parties, and its finding above of a violation of Article 1 of Protocol No. 1, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on these additional complaints (see, among other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 120,500 Bulgarian levs (BGN) – 61,600 euros (EUR), representing what she asserted would have been the value of her house had the damage that had prompted her application not occurred. In support of her claim, she submitted a valuation prepared by an expert engaged by an ecological association that had provided her with legal representation. The expert noted that the applicant's house had a surface of 52 square metres and consisted of one storey and a basement. He based his valuation of the house on two factors: a) the prices of other houses offered for sale in Pernik, and b) the estimated cost (as at August 2024) of constructing a similar house.

104. The applicant also claimed compensation for lost rental income. She asserted that, between 1 July 2015 and 31 July 2024, she could have earned approximately EUR 14,000 in rent. Furthermore, she estimated that the monthly rent for the property after 31 July 2024 would be around EUR 130.

105. Lastly, the applicant claimed BGN 10,000 (EUR 5,112) in respect of non-pecuniary damage.

106. The Government disputed the applicant's claims, arguing that there was no causal link between any alleged violation of her rights and the compensation for pecuniary damage that she sought. Alternatively, they maintained that such compensation was unnecessary, as the applicant would have the opportunity to request the reopening of domestic judicial proceedings following any finding of a violation of her rights.

107. The Government also challenged the amount claimed for the value of the applicant's house. They questioned the reliability of the above-mentioned valuation report (see paragraph 103 above), noting that the expert who had prepared it was not independent (having been retained by the association representing the applicant). Moreover, the valuation assumed that the house would have been in excellent condition – a claim that the applicant had not substantiated. The Government further argued that the properties used for comparison were significantly different in quality and

located in other districts of Pernik. Regarding the Rudnichar district, they cited a sale listing for a house twice the size of the applicant's, whose asking price was BGN 85,000 (EUR 43,500).

108. As to the claim relating to non-pecuniary damage (see paragraph 105 above), the Government considered the amount "excessive and unjustified".

109. The Court finds it appropriate to award damages. It is not persuaded by the Government's argument (see paragraph 106 above) that the applicant could obtain redress through the reopening of the domestic proceedings previously initiated against the municipality of Pernik (see paragraphs 40-42 above). The Bulgarian Supreme Administrative Court's practice is to grant reopening in cases where the Court has found a violation of the Convention "related to the specific judicial proceedings" and where the reopening is "necessary in order to repair the consequences of the violation" (see paragraph 49 above). In the present case the Court has not taken issue with the fairness or outcome of the specific judicial proceedings, basing instead of that its finding of a violation of Article 1 of Protocol No. 1 on more general considerations related to the failure of different public authorities to react adequately to the situation with illegal mining in Pernik. The Court is not thus persuaded that an application for reopening by the applicant would satisfy the Supreme Administrative Court's requirements set out above.

110. The situation in the present case should moreover be distinguished from that in other cases where the Court found violations of Article 1 of Protocol No. 1 and held that it was open to the applicants to apply for the reopening of the domestic proceedings. In those cases the violations found were of a procedural character and thus amenable to be repaired during a new examination of the cases at the domestic level (see, for example, *Denisova and Moiseyeva v. Russia* (just satisfaction), no. 16903/03, §§ 14-15, 14 June 2011, and *Yordanov and Others v. Bulgaria*, nos. 265/17 and 26473/18, §§ 146-48, 26 September 2023).

111. The applicant claimed compensation equivalent to the market value her house would have had if it had not been damaged by illegal mining activities (see paragraph 103 above). She estimated that value at EUR 61,600 (ibid.). However, taking into account the Government's objections, as summarised in paragraph 107 above, the Court considers that the house's value if it had not been damaged by illegal mining, may have been significantly lower.

112. The applicant's house measures 52 square metres (see paragraphs 15 and 103 above). Even though the applicant described it as "nice and comfortable" (see paragraph 68 above), she has not shown its state of repair before the above-mentioned damage.

113. The Court has held that the nature and the extent of any just satisfaction to be afforded under Article 41 of the Convention depends directly on the nature of the breach found, and there must be a clear causal connection between the damage claimed by the applicant and that breach. The Court enjoys a certain discretion in the exercise of the power conferred by Article 41, as is borne out by the adjective "just" and the phrase "if necessary" in its text (see, among other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV, and *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, § 101, 20 September 2011).

114. In the present case, the violation of Article 1 of Protocol No. 1 is based on the finding that the respondent State did not comply with its positive obligations to protect the applicant's rights. This cannot be equated to a deprivation of property; moreover, in the Court's view, the compensation to be awarded does not have to reflect the idea of a total elimination of the consequences of the

violation (see, by way of a recent authority, *Nikolay Kostadinov v. Bulgaria (just satisfaction)*, no. 21743/15, § 22, 2 April 2024).

115. Having regard to the above considerations, and deciding on an equitable basis, the Court awards the applicant EUR 20,000 in respect of pecuniary damage.

116. The Court finds no basis for awarding additional compensation for the lost rental income claimed by the applicant (see paragraph 104 above). It has not been demonstrated that, had the above-mentioned damage not been caused by illegal mining, the applicant would have rented out her house (compare, in respect of similar considerations, *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98 and 3 others, § 30, 14 June 2007). On the contrary, she complained of a breach of her right to respect for her home, and the evidence suggests that she would have resided in the property had it remained intact. The Court accordingly rejects this part of the applicant's claim.

117. Lastly, as regards non-pecuniary damage, having regard to the circumstances of the case, the Court awards the entirety of the sum claimed by the applicant (see paragraph 105 above), namely EUR 5,112.

B. Costs and expenses

118. The applicant claimed the reimbursement of BGN 1,587 (EUR 811) for the costs and expenses incurred in respect of two expert reports commissioned by the courts during the domestic proceedings brought by her against the municipality of Pernik (see paragraphs 40-42 above). As regards the proceedings before the Court, the applicant claimed the reimbursement of BGN 1,500 (EUR 767) for the valuation report referred to in paragraph 103 above. In support of those claims, the applicant submitted bank transfer statements, indicating that in all cases the money had been paid by the association that had ensured her legal representation at the national level and before the Court.

119. The applicant claimed another EUR 6,800 for her legal representation before the national courts and the Court. In support of this claim she presented a time sheet. She also submitted a contract for legal representation at the domestic level, in which it is indicated that, in event of a negative outcome of the judicial proceedings, any expenses would be covered by the association providing legal representation.

120. The Government contested the claims, in particular because the applicant had not herself incurred any of the costs claimed, and arguing that it had not been demonstrated that she was liable to pay anything.

121. 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 were actually and necessarily incurred and are reasonable as to quantum.

122. The Court has previously held that the fees of a representative before the Court are actually incurred if the applicant has paid them or is liable to pay them. The fees of a representative who has acted free of charge are not actually incurred (see, among other authorities, *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017).

123. In the instant case, it appears from the documents submitted that the applicant has not actually paid any of the costs and expenses for which she seeks reimbursement, incurred both at the domestic level and before the Court (see paragraphs 118-119 above). The contract submitted to the Court and

concerning the expenses at the domestic level provides that any such expenses would be covered by the association ensuring the applicant's legal representation (see paragraph 119 above). As to the applicant's representation before the Court, she submitted no documents apart from a timesheet (ibid.), and there is no basis for concluding that the applicant will be liable to pay any sums on that account.

124. Accordingly, having concluded that none of the costs and expenses claimed have been actually incurred by the applicant, the Court rejects her claims under the present head.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the complaint under Article 1 of Protocol No. 1 admissible;
2. *Holds*, by five votes to two, that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*, unanimously, that there is no need to examine the admissibility and merits of the complaints under Article 8 and Article 13 of the Convention;
4. *Holds*, by five votes to two,

(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:
(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 5,112 (five thousand one hundred and twelve euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(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*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.
Milan Blaško Registrar
Ioannis Ktistakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Ní Raifeartaigh, Đurović and Sancin is annexed to this judgment.

DISSENTING OPINION OF JUDGES NÍ RAIFEARTAIGH, ĐUROVIĆ AND SANCIN

1. We regret that we cannot join the majority in this judgment, in particular when it comes to declaring the application admissible. The issue of non-exhaustion of domestic remedies was raised by the Government in its objection to admissibility. We disagree with the majority that the Government failed to demonstrate that the remedy suggested by them was both accessible to the applicant and offered a reasonable prospect of success.

2. It is important to underline that the present case concerns a complaint under Article 1 of Protocol No. 1 alleging that the Bulgarian State failed to take adequate measures to protect the applicant's property from the illegal actions of third parties (see paragraph 1 of the judgment), in particular illegal mining activities. The applicant's application to the Court followed her unsuccessful domestic tort proceedings against the municipality of Pernik, initiated in 2017, seeking compensation for

damage to her property (see paragraph 40 of the judgment). In a judgment of 22 October 2018, the Pernik Administrative Court dismissed her claims, observing that the mayor would have been obliged to take action under section 90(5) of the Underground Resources Act only if the area had not been part of a mining concession. The judgment was upheld on 16 July 2019 by the Supreme Administrative Court, which fully endorsed the lower court's conclusions (see paragraphs 41-42 of the judgment). Bulgarian law, namely section 90 of the Underground Resources Act, assigns responsibility for overseeing that Act's implementation to various State and local bodies, with overall authority falling to the Bulgarian Ministry of Economics (see paragraph 44 of the judgment).

3. In its objection for non-exhaustion of domestic remedies, the Government contended that the applicant should have pursued tort proceedings against the mining company or the State, rather than the municipality of Pernik. They referred to the above findings in the proceedings initiated by the applicant, where the domestic court had indicated that the tort proceedings ought to have been brought against the concessionaire or the State. The applicant, contesting the Government's non-exhaustion objection, argued that the tort action that she had pursued had been the only remedy available to her under Bulgarian law. She further pointed out that she could not have brought an action against the mining company, which had not been conducting mining operations in Rudnichar, but failed to provide any explanation as to why such an action was barred and why she had not brought any tort proceedings against the State. This is particularly pertinent in light of the fact that section 90 of the Underground Resources Act assigned overall authority for its implementation exclusively to the Ministry of Economics, as a State authority.

4. It is our opinion that, bearing in mind all the circumstances of the case, the applicant failed to do everything that could reasonably be expected of her to exhaust obvious domestic remedies (compare *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 116-22, ECHR 2007-IV). Tort proceedings against the State cannot be regarded as having been obviously futile, and, importantly, they were also suggested by the Pernik Administrative Court, which therefore guided the applicant as to the further concrete steps that needed to be taken (see *P. v. Ukraine* (dec.), no. 40296/16, §§ 52-55, 11 June 2019).

5. In circumstances where the domestic courts stated outright that the remedy used by the applicant was inappropriate given the nature of her claim and explicitly directed her to different and more appropriate remedies, we find it difficult to agree with the majority on the issue of non-exhaustion. We consider that it would not be unreasonable to expect her to have lodged further claims against other public entities (this time at State level) in an effort to resolve the same underlying issue.

6. We also disagree with the majority that the Government, in lodging a preliminary objection on grounds of non-exhaustion, failed to demonstrate that the remedy suggested by them was both accessible to the applicant and offered a reasonable prospect of success. It is interesting to note that the applicant's mother had successfully brought a claim against the Government and received 3,114 Bulgarian levs, the equivalent of around 1,590 euros, to cover minor repairs made to her house after the earthquake of 22 May 2012 (see paragraph 19 of the judgment). This lends support to the idea that it was reasonable to expect individuals claiming compensation for damage to their property to seek redress from the State. In fact, contrary to the majority's conclusion, we consider that, following the domestic courts' express ruling on the inappropriateness of the remedy pursued

and clear indication of other available remedies, the remedy to which the applicant resorted in this case must be considered to have been manifestly inappropriate or misconceived.

7. On the basis of the above, and in keeping with the Court's well-established position that the rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention (see *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 84-89, 9 July 2015; *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 221 et seq., ECHR 2014 (extracts); and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), this important aspect of the subsidiary nature of the Convention system of protection leads us to conclude that the applicant's complaint should have been declared inadmissible.