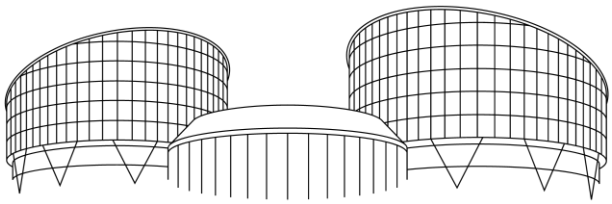

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF IVAN ATANASOV v. BULGARIA

(Application no. 12853/03)

JUDGMENT

STRASBOURG

2 December 2010

FINAL

11/04/2011

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

In the case of Ivan Atanasov v. Bulgaria,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
and Claudia Westerdiek, *Registrar*,

Having deliberated in private on 9 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 12853/03) 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 Ivan Atanasov Atanasov ("the applicant"), on 20 March 2003.

2. The applicant, who had been granted legal aid, was represented by Ms A. Gavrilova-Ancheva, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Ms S. Atanasova and Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged that a reclamation scheme for the tailings pond of a former copper mine had had an adverse impact on his private and family life and his home, and had impinged on the peaceful enjoyment of his possessions. He also alleged that he had not had effective remedies in that respect, and that a set of judicial review proceedings relating to those matters had failed to comply with various requirements of Article 6 § 1 of the Convention.

4. On 16 June 2008 Zdravka Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 1 October 2008 the Government appointed Mirjana Lazarova Trajkovska, the judge elected in respect of the "former Yugoslav Republic of Macedonia", to sit in her place (Article 27 § 2 of the Convention and Rule 29 § 1 (a) of the Rules of Court, as in force before 1 June 2010).

5. By a decision of 10 November 2009 the Court declared the application admissible.

6. The applicant, but not the Government, filed further written observations (Rule 59 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

7. The applicant was born in 1959 and lives in the village of Elshitsa, in the Panagyurishte municipality, in a house owned by him and his former wife. His parents also live in that house. His daughter, from whose mother the applicant is divorced, stays with him every first and third weekend of the month and one month in the summer. The applicant's house is situated about one kilometre from the tailings pond (*хвостохранилище*) and the flotation plant (*обогатителна фабрика*) of a former copper-ore mine. The applicant cultivates agricultural land located about four kilometres from the pond. On 23 December 2008 the applicant's father donated to him more agricultural land in Elshitsa; the applicant did not specify its exact location.

8. The pond, whose surface area is 98.3 ha, was in operation until 1991. The mine continued to be worked until 1999. After decommissioning, measures for the conservation and reclamation of the pond were taken. In June 1994 a scheme, drawn up in March 1994, was subjected to an environmental impact assessment ("EIA"). The conclusion was positive. In December 1994 the EIA was submitted for public discussion by the inhabitants of Elshitsa and modified in line with their comments. The scheme was approved by the Interdepartmental Expert Council of the Ministry of Industry in October 1997 and began to be implemented in January 1999. It consisted in laying earth and soil and planting vegetation on the pond. Its implementation was stopped in April 1999.

B. The new reclamation scheme and its approval

9. In May 1999 Mr Marin Blagiev, operating as a sole trader under the business name "ET Marin Blagiev", proposed to the Ministry of Industry a new solution for the reclamation of the tailings pond. It consisted in the temporary capping of the pond's surface and slopes with soil cement, to prevent the spreading of dust, and in the use of sludge from a waste-water treatment plant in Plovdiv for biological reclamation.

10. On 1 June 1999 the Pazardzhik Regional Inspectorate of Environment and Water gave a negative opinion on the new scheme. It expressed doubts as to the sustainability and the stability in acidic environments of the soil cement intended to be used for capping the pond. The proposed technology would provide a provisional solution for

containing the dust spread from the pond, but would not lead to the pond's full reclamation. Moreover, ET Marin Blagiev had not specified the chemical composition of the sludge from the Plovdiv waste-water treatment plant. It appeared to contain heavy metals, as the plant treated not only domestic, but also industrial waste water. According to the relevant classifier, sludge resulting from the treatment of the latter was hazardous waste.

11. On 2 June 1999 Panagyurishte's mayor also expressed a negative opinion on the new scheme. He noted, among other things, that the previous scheme had been fully approved and had begun to be implemented. In addition, the composition of the sludge from the Plovdiv plant was unclear, as it treated not only domestic, but also industrial waste water. This meant that the sludge might contain heavy metals.

12. However, on 3 June 1999 the Ministry of Industry's Interdepartmental Expert Council approved ET Marin Blagiev's proposal and allowed him to submit a new scheme.

13. In a letter of 24 June 1999 to the Minister of Industry, the regional governor said that the new reclamation scheme was not technologically superior to the previous one and should not be approved.

14. On 1 July 1999 the Minister of Industry transferred the tailings pond from the assets of the State-owned company Panagyurski Mini EAD to those of a specially formed State-owned company, Eco Elshitsa EOOD.

15. On 27 August 1999 ET Marin Blagiev presented its scheme to the Ministry of Industry. At about the same time Panagyurski Mini EAD, which had been implementing the initial reclamation scheme (see paragraph 8 above), presented the Ministry of Industry with an update to the initial scheme.

16. The Ministry appointed a specialist board of experts to assess the two schemes. The board comprised experts from the Ministry of Industry, of Environment and Water, and from the Ministry of Finance, as well as from Panagyurski Mini EAD and ET Marin Blagiev. It held a meeting on 7 September 1999 to discuss the relative merits of the two schemes. It noted that both lacked checks on the stability of the pond. However, according to an expert's report, neither of them would impair the pond's stability. Both lacked climatological and hydrological descriptions of the area and data on the expected consolidation of the sludge after the reclamation had ended. The problems relating to the neutralisation of the acid water were partially addressed in ET Marin Blagiev's scheme and not addressed in Panagyurski Mini EAD's scheme. According to an expert's report, it was possible to use stabilised waste-water sludge from the Plovdiv treatment plant. The area around the pond did not have enough humus for the biological reclamation envisaged by Panagyurski Mini EAD's scheme; it would thus be necessary to enrich the existing soil artificially. ET Marin Blagiev's scheme envisaged finishing the reclamation in eighteen months and resolving the dust-spread

problem even before that. Panagyurski Mini EAD's scheme also had an eighteen-month timeline, but it was unrealistic. ET Marin Blagiev's scheme provided for the restoration of the productive qualities of 19.2 ha of polluted soil outside the tailings pond and its use for the production of specialised grass. According to accounts submitted by the two firms, ET Marin Blagiev's scheme would cost 5,139,356 Bulgarian levs (BGN) and Panagyurski Mini EAD's scheme BGN 5,878,945. On that basis, the board recommended that the Ministry of Industry's Interdepartmental Expert Council approve ET Marin Blagiev's scheme. Two experts representing Panagyurski Mini EAD disagreed, saying that this scheme did not meet various regulatory requirements. In particular, waste-water sludge was not appropriate for reclamation; humus was much better suited for that task. It was also unclear whether the use of sludge would yield stable and safe results. According to the relevant classifier, the sludge from the Plovdiv plant was hazardous waste, because it came not only from domestic but also from industrial waste water. The documents relating to the scheme did not specify the exact toxic-substance content of the sludge. Lastly, the scheme's scope and potential effects on the environment warranted an EIA. The updated initial scheme suffered from none of these drawbacks, but, on the contrary, would provide a sustainable solution.

17. The Ministry of Industry's Interdepartmental Expert Council, comprising representatives from several ministries, considered the two schemes on 9 September 1999. It examined the findings of the specialist board of experts, as well as the opinions of the Pazardzhik Regional Inspectorate of Environment and Water, of Panagyurishte's mayor, and of the regional governor. It also heard Mr Blagiev's explanations. Following a discussion, which touched upon, among other matters, the alleged heavy-metal content in the sludge from the Plovdiv plant, the Council unanimously resolved to approve ET Marin Blagiev's scheme. The resolution was later approved by the Minister for Industry.

18. In a newspaper interview published on 21 September 1999 the Minister for the Environment said that the new reclamation scheme was controversial and that she intended to challenge it. In her view, a fresh method of reclamation was to be sought, if need be with the help of university scientists.

19. The new scheme began to be implemented in October 1999. Eco Elshitsa EOOD was the investor and ET Marin Blagiev the contractor.

C. The granting of the waste carriage and treatment licence

20. On 13 January 2000 the Pazardzhik Regional Inspectorate of Environment and Water found that the company carrying sludge from the Plovdiv plant to the pond was doing so without the licence required under section 12(1) the 1997 Limitation of the Adverse Impact of Waste on the

Environment Act (see paragraph 52 below), which corresponded to an administrative offence. On 29 March 2000 it fined the company.

21. Consequently, ET Marin Blagiev applied for such a licence, which was granted by the Minister for the Environment and Water on 22 February 2000. In her decision the Minister allowed ET Marin Blagiev to process up to four hundred tonnes of domestic waste-water sludge a day. In particular, it could carry stabilised sludge from the Plovdiv treatment plant to the pond, store it in pits or other open-air containers and use it for fertilising soils or improving the environment. The sludge was to be carried in lorries, with between six and eleven runs from the Plovdiv plant to the pond per day. It was to be laid on the pond in keeping with the technology approved by the Interdepartmental District Council and with certain other precautionary measures. The laying of sludge had to be finished before 30 December 2001. In the meantime, ET Marin Blagiev had to present quarterly chemical analyses of the sludge to the Ministry of Environment and the Pazardzhik Regional Inspectorate of Environment and Water.

D. The applicant's attempt to obtain judicial review of the licence

22. After finding out about the above licence, on 21 December 2000 the applicant applied to the Supreme Administrative Court (*Върховен административен съд*) for judicial review of the Minister's decision to grant it. He started by contending that he had a sufficient legal interest to contest the decision, because it impacted on his right under Article 55 of the Constitution (see paragraph 47 *in limine* below) to live in a "healthy and favourable environment corresponding to the established standards and norms". He pointed out that he lived in Elshitsa, close to the place where the licence allowed sludge to be laid, and that the sludge could have adverse effects on the environment and human health. He also referred to Article 120 § 2 of the Constitution (see paragraph 47 *in fine* below). He further argued that the decision was null and void, as its implementation was impossible. The decision allowed ET Marin Blagiev to carry and process domestic waste-water sludge. However, this could not be done, because the waste water treated in the Plovdiv plant came from both domestic and industrial sources. It was unfeasible to separate the domestic from the industrial sludge and for this reason it was impossible to carry and process solely domestic sludge. The applicant further argued that the Minister's decision unlawfully classified the sludge as industrial waste, as under the relevant rules it was hazardous waste; this was also evident from various analyses. Furthermore, the Minister had taken the decision in breach of the rules of procedure, as no EIA had been drawn up.

23. In his application the applicant also requested the court to stay, as an interim measure, the enforcement of the impugned decision, as failure to do so could frustrate the purpose of the proceedings and cause irreparable harm

to the environment, thus infringing the right of Elshitsa's inhabitants to a safe and healthy environment. As the court did not rule on that request, on 21 February 2001 the applicant renewed it. He argued that the continuing implementation of the decision could lead to irreparable harm for the environment, as the spreading of sludge was still going on at a regular pace.

24. On 21 March 2001 (опр. № 1826 от 21 март 2001 г. по адм. д. № 732/2001, ВАС, II отд.) a three-member panel of the Supreme Administrative Court declared the application inadmissible. It found that the applicant had not been party to the administrative proceedings and therefore had no standing to seek review of the Minister's decision. His interests could not be adversely affected by the decision, but solely by the potential unlawful actions of those whom the decision authorised to carry and process waste.

25. On an appeal by the applicant, on 14 June 2001 a five-member panel of the Supreme Administrative Court quashed the three-member panel's ruling and remitted the case for an examination on the merits (опр. № 4333 от 14 юни 2001 г. по адм. д. № 3777/2001, ВАС, петчленен състав). It held that in view of the aim of the environmental protection legislation – to prevent or at least reduce the adverse effects of waste on the environment and human health – all individuals living in an area at risk of pollution due to waste-treatment operations could be considered as interested parties. The applicant, as well as all persons living near the tailings pond, had an interest in preventing activities, such as those allowed by the impugned ministerial decision, which could pollute their environment and thus possibly impair their health.

26. On 28 August 2001 the applicant reminded the court once more of his request for a stay of execution of the decision. On 18 September 2001 the three-member panel turned down the request, saying that the materials in the file did not point to any danger for the applicant's interests.

27. A hearing listed for 16 October 2001 did not take place, as ET Marin Blagiev had not been properly summoned. It took place on 15 January 2002. The court heard the parties' arguments. A public prosecutor participating in the proceedings *ex officio* submitted that the application should be allowed.

28. In a decision of 23 January 2002 (опр. № 605 от 23 януари 2002 г. по адм. дело № 4993/2001, ВАС, II отд.) the three-member panel discontinued the proceedings, holding that the case had become devoid of object as the licence granted to ET Marin Blagiev had expired on 30 December 2001.

29. The applicant appealed, arguing, among other things, that he had a continuing legal interest in seeking judicial review of the decision, because it had allowed waste disposal near his home, which could lead to problems for his health. The annulment of the decision was in addition a prerequisite for successfully prosecuting a claim in respect of the harm occasioned by the unlawful waste disposal. The decision's effects had not ended on

30 December 2001, as the negative results of the activities which it had made possible could persist for years to come.

30. On 24 September 2002 a five-member panel of the Supreme Administrative Court upheld the discontinuance (опр. № 8432 от 24 септември 2002 г. по адм. д. № 7232/2002, ВАС, петчленен състав). It noted that the subsistence of a legal interest in seeking the annulment of an administrative decision was mandatory throughout the proceedings. The three-member panel had had regard to a fresh development – the expiry of the licence – which had come to pass while the proceedings were pending. The allegation that the applicant had suffered damage at the time when the licence had still been in force was not sufficient to establish the existence of a continuing legal interest, as reparation for such damage could be sought in civil proceedings.

E. Efforts to have the reclamation scheme halted

31. The new reclamation scheme drew widespread disapproval from Elshitsa's inhabitants. On 10 and 19 April 2000 Mr A.P., member of the Panagyurishte Municipal Council, sent letters to the Ministry of Health and to the National Centre for Hygiene, Medical Ecology and Nutrition (a subdivision of the Ministry of Health). He asked them to give their expert opinion on the question whether the implementation of the scheme could put at risk the health of the people living near the pond.

32. The Centre replied on 25 April 2000. It said that there was a risk of heavy-metal contamination impacting on the population's health within a ten-kilometre perimeter around the pond. The reclamation scheme lacked a suitable system for monitoring the underground water, where the migration of such metals could be expected, as the polymer cover was not stable in the long term. According to an expert in the Centre's toxicology laboratory, the heavy-metal content of the sludge spread on the pond was above the regulatory maximum, as shown by the chemical analysis of samples. The high levels of copper, zinc, cadmium, nickel, cobalt and chrome led to a pollution risk and a risk to the population's health. So did the presence in the sludge of lead and manganese. Those metals could have a negative impact on the nerve, respiratory and cardiovascular systems, the kidneys, the liver and the production of blood. Some of them were allergens, mutagens and carcinogens. The scheme's implementation would thus lead to a risk of dust from the sludge spreading in the atmosphere. There was also a risk that those metals would migrate through the surface and underground water, because of the acid pH of the water in the pond. The methodology for reclaiming old polluted areas classified the area situated ten to twenty kilometres from the source of the pollution as being at risk.

33. Having received the Centre's opinion, on 17 May 2000 Mr A.P. asked the Chief Sanitary Inspector to stop the operation of the site. He did not receive a reply. Mr A.P. also alerted the mayor of Panagyurishte.

34. On 29 May 2000 Panagyurishte's mayor appointed a commission to take samples from the place where the sludge was being spread and to submit it to a laboratory for an analysis of its heavy-metal content. Such samples were taken and sent to the National Centre for Hygiene, Medical Ecology and Nutrition. In a letter of 6 June 2000, accompanied by the expert opinion of a researcher in its toxicology laboratory, the Centre said that the lead, cadmium, copper, zinc, chrome and nickel content of the sample was well above the maximum permitted levels. Copper and zinc had a negative effect on agricultural crops and livestock. Lead, cadmium, chrome and nickel were systematically toxic for mammals and humans: they could harm the peripheral and central nervous systems, the production of blood, the liver and the kidneys. Those metals also had mutagenic and carcinogenic effects. In addition, chrome, cadmium and nickel were strong allergens. The underlying soil cement cover would provide some protection for the underground water in the region, but it was unclear how it would prevent the migration of heavy metals to the surface water.

35. On 12 June 2000 Panagyurishte's mayor and the regional governor wrote to the Deputy Prime Minister. They urged him to halt the scheme's implementation and noted that its continuation could lead to civil unrest in Elshitsa. Apparently no reply was received.

36. On 13 December 2001 the Ministry of Environment and Water granted Eco Elshitsa EOOD a permit to discharge waste water, setting certain limits on the content of heavy metals and other toxic substances in it, and requiring the company to report to the competent authorities on a monthly basis.

37. On 25 September 2002 the works on the pond were accepted by the authorities.

38. On 11 August 2004 Elshitsa's mayor asked the environmental inspection authorities in Pazardzhik to provide him with information about Eco Elshitsa EOOD's monthly self-monitoring reports. On 8 September 2004 those authorities replied that they did not have such reports on file and that they were pressuring the company to comply with its reporting obligations.

F. The attempts to carry out an EIA and other assessments of the scheme

39. On 9 January 2001, as a result of pressure from inhabitants of Elshitsa, the Minister for the Environment and Water ordered Eco Elshitsa EOOD to commission an EIA. In an additional decision of 1 March 2001 she specified that the EIA was to be ready by 31 March 2001.

40. As a result of a hunger strike by three members of a public committee opposed to the scheme and of a visit by the Minister for the Environment and Water to Elshitsa, on 10 November 2001 the Pazardzhik Regional Inspectorate of Environment and Water, noting that no EIA had been drawn up, ordered that the implementation of the scheme be stopped pending completion of the assessment. However, by that time about 97 ha of the 98.3 ha of the pond had been covered with sludge. It seems that the total amount deposited was forty-eight thousand cubic metres.

41. The EIA was ready in March or April 2002. It was submitted for a public discussion, at which three experts from the University of Sofia's faculty of geology and geography expressed their misgivings about the scheme.

42. On 4 July 2002 the Minister for the Environment and Water decided not to accept the EIA and sent it back for revision. She noted some serious omissions in its estimation of the health risk to the population arising from the reclamation scheme, the lack of information about the hazardous substances involved in the scheme, and the fact that the team which had drawn it up did not include an expert on the health and hygiene-related aspects of the environment. The Minister instructed the experts to revise the EIA and, in particular, to make a comparative study of the existing analyses and make an additional chemical analysis of the sludge laid on the pond. It was to be specifically checked for heavy metals and mercury content. The taking of samples for that analysis had to be done in the presence of the persons concerned. The experts were also to indicate the tailings' permeability, before and after the pond's capping with soil cement, as well as the permeability of the underlying rocks and the stability and the permeability of the soil cement after eighteen months of use. The revised EIA was to analyse all aspects of the scheme with reference to their effect on the health of the inhabitants of the villages surrounding the pond, and to propose concrete measures to tackle the problem. The analysis had to focus specifically on the penetration of heavy metals in the food chain.

43. In October 2003 Eco Elshitsa EOOD and the company which it had hired to draw up the EIA submitted additional documents to the Ministry. In a letter of 17 October 2003 the Minister said that those documents did not contain the information requested in her decision of 4 July 2002. It was thus impossible to draw any reliable conclusions as to the effect of the reclamation scheme on the people and the environment. However, under the regulations in force, it was not necessary to pursue the matter further and finalise the EIA. As the works on the site had already been completed, it was sufficient for Eco Elshitsa EOOD to produce a self-monitoring report on the scheme's impact.

44. Following pressure from Elshitsa's inhabitants and the local authorities, on 6 April 2004 the Minister of Health ordered the National Hygiene and Ecology Centre to carry out an assessment of the environment

and the impact of the reclamation scheme on the local population's health. In a letter of 14 June 2004 the Centre informed the Ministry that its experts were ready to complete the task, but that it could come up with only twenty per cent of the necessary funding, amounting to BGN 8,000. In 2007, 2008 and February 2009 the applicant asked the municipality of Panagyurishte to cover the remaining eighty per cent of the amount, but the municipality made no provision for such an outlay in its budget. At the time of the latest information from the applicant on that point (29 January 2010) the money had not been found and the assessment had not been completed.

45. The first self-monitoring report by Eco Elshitsa EOOD was drawn up in November 2007 and covered the period between November 2006 and November 2007. It gave an account of, among other things, the heavy-metal content of water coming out of the pond and of grass near it. These measurements were based on two water samples and five grass samples. One of the water samples did not show a heavy-metal content above the regulatory maximum levels, whereas the other did, leading the report to conclude that the pond's drainage water was heavily polluted. According to the report, the polluting content of the grass samples was below the regulatory maximum level, but the applicant submitted that its authors had used the wrong comparators, using the regulatory maximum levels for soil, not grass, which were considerably lower. The report said that the pond should continue to be monitored, but at a decreasing pace, with sample-taking once a year for grass and twice a year for water. Further reporting was envisaged in 2010.

G. Other information

46. In its report on the state of the environment in 1997 the Ministry of Environment and Water noted, on page 98, that the Plovdiv waste water treatment plant had generated 45,601 tonnes of dangerous waste. In its annual report for 2004 the Environmental Protection Agency (*Изпълнителна агенция по околната среда*) noted, on page 4, that out of approximately 50,175 tonnes of sludge monitored by its Plovdiv branch, approximately 41.5 tonnes could be classified as dangerous. In its reports for 2006 and 2007 the Agency noted, on pages 9 and 9 respectively, that the chromium content of the sludge coming from the Plovdiv waste-water treatment plant was above the regulatory maximum. That sludge was therefore not appropriate for the reclamation and regeneration of agricultural land.

II. RELEVANT DOMESTIC LAW

A. The Constitution

47. The relevant provisions of the 1991 Constitution read as follows:

Article 15

"The Republic of Bulgaria shall ensure the preservation and the reproduction of the environment, the conservation of the variety of living nature, and the reasonable utilisation of the country's natural and other resources."

Article 55

"Citizens shall have the right to a healthy and favourable environment corresponding to the established standards and norms. They must preserve the environment."

Article 120

"1. The courts shall review the lawfulness of the administration's acts and decisions.

2. Natural and legal persons shall have the right to seek judicial review of any administrative act or decision which affects them, save as expressly specified by statute."

B. The Environmental Protection Acts and related regulations

48. Under section 19(1) of the 1991 Environmental Protection Act (*Закон за опазване на околната среда*), repealed and replaced by the 2002 Environmental Protection Act, all activities of private individuals and entities and State bodies could be subjected to an EIA. Section 20(1)(1) of the 1991 Act, superseded by section 92(1) of the 2002 Act, provided that an EIA was mandatory for all the schemes listed in a schedule to the Act. Those schemes included the dumping of industrial and domestic waste and of waste-water sludge (point 27.4 of the Schedule, as in force between 1997 and 2001). An EIA could be carried out in other cases as well, pursuant to a proposal made by those concerned to the competent authorities (section 20(3) of the 1991 Act, superseded by section 93 of the 2002 Act, which lays down more detailed rules in that domain).

49. The EIA was to be commissioned by the investor and carried out by independent experts having no connection with the scheme's planning and no vested interest in its completion (section 21(1) of the 1991 Act). The expenses were to be borne by the investor (section 23(2) of the 1991 Act). The final report was to be submitted to the competent authority, which had

to organise a public discussion on it (sections 23(1) and 23a(1) of the 1991 Act). The public had to be notified of the discussion at least one month in advance, through the mass media or other appropriate channels (section 23a(2) of the 1991 Act). The authority was to decide on the scheme's feasibility not later than three months (after an amendment in 2001, one month) after the discussion (section 23b(1) of the 1991 Act). The decision was to be notified to the investor and made public through the mass media or other appropriate channels (section 23b(2) of the 1991 Act). Those concerned could seek judicial review (section 23b(3) of the 1991 Act). Under section 23c of the 1991 Act, the authorities had to ban or halt schemes whose EIAs were negative or which had not been subjected to an EIA if one was mandatory.

50. Under section 29 of the 1991 Act, whose text has been reproduced in section 170 of the 2002 Act, everyone was bound to make good the damage which they had, through their own fault, caused to another by polluting or spoiling the environment. The amount of compensation could not be less than the money needed to repair the damage. Under section 30(1) of the 1991 Act, the text of which has been reproduced in section 171 of the 2002 Act, those who had suffered damage as described in section 29 could bring proceedings to enjoin the polluter to put an end to the breach and eliminate the pollution's effects. Section 30(2) provided that such proceedings could be brought by any individual, the municipal authorities and non-profit associations. There is no reported case-law under those provisions.

51. The 1992 Regulations on hygienic requirements for the protection of health in the urban environment (*Наредба № 7 от 25 май 1992 г. за хигиенните изисквания за здравна защита на селищната среда*), issued by the Minister of Health on 25 May 1992 and amended several times after that, lay down minimum permitted distances between urban areas and sources of pollution. Schedule No. 1 to the Regulations provides, in point 184, that tailings ponds used for depositing hazardous industrial waste for up to ten years must be situated farther than two kilometres from urban areas. Point 184a lays down the same requirement in respect of tailings ponds used for depositing non-hazardous industrial waste for more than ten years. Point 335 provides that non-hazardous waste periodically covered with soil must be stored more than three kilometres from urban areas. Point 335a lays down the same requirement in respect of hazardous waste which is intended to remain in the storage area for more than ten years. The Ministry of Health may authorise a reduction of those distances on the basis of an opinion by the local hygiene and epidemiology inspectorate and of an EIA (regulation 4(1)). If no EIA is required in respect of the installation in issue, before authorising a reduction the Ministry must obtain a comprehensive ecological expert's report containing a health-impact assessment, drawn up by an independent expert (regulation 4(2)).

C. Waste Management Legislation

52. Under section 12(1) of the 1997 Limitation of the Adverse Impact of Waste on the Environment Act (*Закон за ограничаване на вредното въздействие на отпадъците върху околната среда*), superseded by section 12(1)(1) of the 2003 Waste Management Act (*Закон за управление на отпадъците*), a licence was required for all activities relating to the collection, storage or decontamination of waste. The decision to grant such licence was subject to judicial review (section 50 of the 1997 Act, superseded by section 49 of the 2003 Act).

53. Section 37(2) of the 1997 Act provided that facilities and installations for the storage and decontamination of waste could be built only following a positive EIA.

D. The State Responsibility for Damage Act

54. Section 1(1) of the Act originally called the 1988 State Responsibility for Damage Caused to Citizens Act, renamed on 12 July 2006 the State and Municipalities Responsibility for Damage Act, provides that the State is liable for the damage suffered by private persons as a result of unlawful decisions, actions or omissions by civil servants, committed in the course of or in connection with the performance of their duties. Section 1(2) provides that compensation for damage flowing from unlawful administrative decisions may be claimed after the decisions concerned have been annulled in prior proceedings. The court examining the claim for compensation cannot enquire into the validity of a voidable decision; it may merely examine whether a decision is null and void. Section 8(2) provides that if another statute provides for a special avenue of redress, the Act does not apply.

III. RELEVANT INTERNATIONAL MATERIALS

55. The text of a number of international instruments and documents concerning the environment, including that of the 1998 United Nations Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention, which Bulgaria signed on 25 June 1998 and ratified on 17 December 2003) may be found in the Court's judgment in the case of *Tătar v. Romania* (no. 67021/01, ECHR 2009-... (extracts)).

56. On 4 November 1999 a standing committee acting on behalf of the Council of Europe's Parliamentary Assembly adopted Recommendation 1431 (1999), entitled “Future action to be taken by the Council of Europe in the field of environment protection”. Point 8 of the recommendation said that “[i]n the light of changing living conditions and growing recognition of

the importance of environmental issues, ... the Convention could include the right to a healthy and viable environment as a basic human right". It urged the Committee of Ministers to, among other things, "instruct the appropriate bodies within the Council of Europe to examine the feasibility of ... drafting an amendment or an additional protocol to the [Convention] concerning the right of individuals to a healthy and viable environment".

57. On 27 June 2003 the Parliamentary Assembly adopted Recommendation 1614 (2003), entitled "Environment and human rights". Point 3 of the recommendation stated that "in view of developments in international law on both the environment and human rights as well as in European case-law, especially that of the [Court], the time has now come to consider legal ways in which the human rights protection system can contribute to the protection of the environment". Point 8 referred to "the case-law of the [Court] concerning States' positive obligations in the area of protection against environmental nuisances which are harmful or dangerous to health" and said that it "wishe[d] to encourage this process by adding provisions concerning the recognition of individual procedural rights, intended to enhance environmental protection, to the rights set out in the [Convention]". It therefore recommended to the governments of the Member States to "ensure appropriate protection of the life, health, family and private life, physical integrity and private property of persons in accordance with Articles 2, 3 and 8 of the [Convention] and by Article 1 of its Additional Protocol, by also taking particular account of the need for environmental protection". It also called upon the Committee of Ministers to "draw up an additional protocol to the [Convention] concerning the recognition of individual procedural rights intended to enhance environmental protection, as set out in the Aarhus Convention" and to "draw up, as an interim measure in preparation for the drafting of an additional protocol, a recommendation to member states setting out the ways in which the [Convention] provides individual protection against environmental degradation, proposing the adoption at national level of an individual right to participation in environmental decision making, and indicating a preference, in cases concerning the environment, for a broad interpretation of the right to an effective remedy guaranteed under Article 13".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

58. The applicant complained that by allowing the second reclamation scheme to proceed, the authorities had failed to comply with a number of legal requirements and to strike a fair balance between the various interests at stake, consequently putting his and his family's health at risk and preventing him from enjoying his home. He relied on Article 8 of the Convention, which provides as follows:

> "1. Everyone has the right to respect for his private and family life [and] his home ...
>
> 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."

A. The parties' submissions

59. The Government submitted that the environment in Elshitsa had not deteriorated after the decommissioning of the mine. The applicant's worries in that respect were misplaced and had not materialised. This could be seen from the self-monitoring report drawn up by Eco Elshitsa EOOD. There was thus no indication that the applicant's private life or home had been affected in any way.

60. The Government further argued that the reclamation scheme had been implemented in line with the applicable regulations. It had been approved in strict compliance with the regulatory requirements. There was no indication that the decision of the Minister for the Environment and Water to grant ET Marin Blagiev a licence to carry waste-water sludge had been unlawful. In particular, the law did not require a prior EIA for reclamation projects, as they were intended to reduce the effects of earlier contaminating activities and improve the environment. The health concerns of Elshitsa's inhabitants had been fully taken into account by the authorities.

61. The applicant disputed the Government's assertion that the reclamation scheme had not increased pollution in the area where he lived. Firstly, Eco Elshitsa EOOD's report was actually indicative of pollution, as it had found that the heavy-metal content of the water flowing out of the pond was higher than the regulatory maximum. The report was in parts misleading because it used erroneous comparators, and covered only the time between November 2006 and November 2007. No information was

available in respect of the preceding period and it was not envisaged to provide such information in the future. Moreover, the report did not contain any estimate of the scheme's effects on the health of the local population. In any event, it could not be seen as a reliable source of information as it had been drawn up by the very company which should have been monitored. The applicant secondly relied on the official reports mentioned in paragraph 46 above, which stated that the sludge from the Plovdiv plant contained heavy metals and constituted hazardous waste. Furthermore, an expert opinion obtained by the mayor of Elshitsa in 2004 had shown that the scheme had increased the pond's toxicity instead of providing a sustainable solution to the problem through its reclamation.

62. The applicant further pointed out that, as no studies had been carried out to assess the scheme's effects on the health of the local population, it was extremely hard to prove actual harm to his health. However, such harm was very likely, especially in the long term, in view of the air, plant and water pollution coming from the sludge and the consequent introduction of harmful substances in the food chain. In his view, the existence of such risk, which weighed heavily on his private and family life and the enjoyment of the amenities of his home, was sufficient to trigger the application of Article 8.

63. In the applicant's submission, the scheme's approval and implementation had not been lawful. First, it did not comply with the applicable technical regulations. Second, since the laying of sludge in fact amounted to a waste-disposal operation, it had been necessary to carry out an EIA under the law, both as it stood at the time of the implementation of the scheme and as amended after the 2002 changes. The discontinuance of the EIA procedure had therefore been unwarranted. Moreover, even if an EIA was not mandatory, it should have been carried out to dispel or confirm the local population's well-founded fears. However, the authorities had chosen to ignore their continued protests, had not completed the EIA and had not made funding available for an assessment of the scheme's effect on the population's health.

64. In the applicant's view, the authorities had not struck a proper balance between his rights and the interests of the community. They had opted for a controversial and polluting reclamation scheme over a benign one only because of the former's presumed lower cost, which had eventually turned out to be higher. When reaching their decision, they had not taken into account the opinion of the local authorities and had not notified those likely to be affected. Later they had ignored the applicant's requests to stay the scheme's implementation, and had not imposed on the contractor any obligations to minimise the impact of its activities on the environment.

65. In his further observations (see paragraph 6 above) the applicant submitted that under the applicable legislation and regulations, which he described in detail, reclamation schemes such as the one proposed and

implemented by ET Marin Blagiev required a prior EIA. However, no such assessment had been carried out before the scheme's implementation and the one commissioned after that had remained unfinished. In the applicant's view, in approving that scheme and in granting ET Marin Blagiev a waste-disposal licence, the authorities had acted in breach of domestic law. As a result of that, and of the authorities' passive attitude, there was no reliable information on the scheme's effects on the environment and the health of those living near the pond. Although the scheme's effects were not as tangible as noise or smell, they were nonetheless extremely harmful to the environment and to human health, as evidenced by the expert opinions of the National Centre for Hygiene, Medical Ecology and Nutrition. The toxic substances contained in the sludge, which exceeded many times the maximum regulatory levels and which migrated through the underground water, the atmosphere and the nutrition chain, had a direct effect on the applicant's home and his private and family life and attained the minimum level of severity required to bring Article 8 into play. It was also significant that the impugned situation had lasted more than ten years. It could not therefore be regarded as trivial or negligible. It was sufficiently serious to prompt the authorities to assess the pollution and find ways to tackle it. However, they had not taken effective steps in that regard, and had not followed appropriate procedures allowing the applicant's views to be heard.

B. The Court's assessment

66. In today's society the protection of the environment is an increasingly important consideration (see *Fredin v. Sweden (no. 1)*, 18 February 1991, § 48, Series A no. 192, recently cited in *Hamer v. Belgium*, no. 21861/03, § 79, ECHR 2007-XIII (extracts); *Turgut and Others v. Turkey*, no. 1411/03, § 90, 8 July 2008; and *Rimer and Others v. Turkey*, no. 18257/04, § 38, 10 March 2009). However, Article 8 is not engaged every time environmental deterioration occurs: no right to nature preservation is included as such among the rights and freedoms guaranteed by the Convention or its Protocols (see *Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI; *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96 *in limine*, ECHR 2003-VIII; and *Fadeyeva v. Russia*, no. 55723/00, § 68, ECHR 2005-IV). Indeed, that has been noted twice by the Council of Europe's Parliamentary Assembly, which urged the Committee of Ministers to consider the possibility of supplementing the Convention in that respect (see paragraphs 56 and 57 above). The State's obligations under Article 8 come into play in that context only if there is a direct and immediate link between the impugned situation and the applicant's home or private or family life (see, *mutatis mutandis*, *Botta v. Italy*, 24 February 1998, § 34 *in limine*, *Reports of Judgments and Decisions* 1998-I). Therefore, the first point for decision is whether the

environmental pollution of which the applicant complains can be regarded as affecting adversely, to a sufficient extent, the enjoyment of the amenities of his home and the quality of his private and family life.

67. The Court has considered the question whether pollution can trigger the application of Article 8 in a number of cases. The issue first came up in a case concerning a plant for the treatment of liquid and solid waste situated twelve metres from the applicant's home. Based on medical reports and expert opinions showing that hydrogen sulphide emissions from the plant exceeded the permitted limit and could endanger the health of those living nearby, and that there could be a causal link between those emissions and health problems suffered by the applicant's daughter, and the acceptance of the domestic courts that, without being a grave health risk, the nuisances in issue impaired the quality of life of those living in the plant's vicinity, the Court was satisfied that Article 8 was engaged (see *López Ostra v. Spain*, 9 December 1994, §§ 7, 49 and 50, Series A no. 303-C). In that case the Court famously said that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health" (ibid., § 51 *in limine*).

68. In a case concerning a factory producing fertilisers and caprolactam and situated about one kilometre from the town where the applicants lived, in finding that Article 8 was applicable the Court took into consideration that the factory had been classified as high-risk under domestic law, that in the course of its production cycle it released large quantities of inflammable gas and other toxic substances, that an incident had occurred in which several tonnes of toxic gases had escaped, leading to the acute arsenic poisoning of one hundred and fifty persons, and that local experts had said that owing to the factory's geographical position, emissions from it into the atmosphere were often channelled towards the town where the applicants lived (see *Guerra and Others v. Italy*, 19 February 1998, §§ 12 and 57, *Reports* 1998-I).

69. By contrast, in a case concerning the destruction of a swamp adjacent to the applicants' property, the Court found that the applicants had not put forward convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their rights under Article 8. The Court noted that the crucial element which must be present in determining whether, in a given case, environmental pollution has adversely affected one of the rights safeguarded by that provision was the existence of a harmful effect on a person's private or family sphere and not simply the general deterioration of the environment (see *Kyrtatos*, cited above, §§ 52 and 53).

70. In a case concerning a mine where gold was extracted by sodium cyanide leaching, and which was located at distances ranging from three to nine hundred metres from the homes of most of the applicants, the Court

held that Article 8 was applicable. To reach that conclusion, it had regard to the findings of the domestic courts, based on an environmental impact assessment, that the operation of the mine had caused widespread environmental degradation and had affected the applicants (see *Taşkın and Others v. Turkey*, no. 46117/99, §§ 12 and 111-14, ECHR 2004-X). It reiterated those findings in a follow-up case concerning the same mine (see *Öçkan and Others v. Turkey*, no. 46771/99, § 40, 28 March 2006).

71. In a case concerning the largest iron smelter in Russia, the Court formulated with precision the applicable test. It held that to raise an issue under Article 8, environmental pollution must directly affect the applicant's home, family or private life and that its adverse effects must attain a certain minimum level. It went on to say that the assessment of that minimum was relative and depended on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects. The general context of the environment should also be taken into account, there being no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in a modern city (see *Fadeyeva*, cited above, §§ 68-70, with further references). In finding Article 8 applicable, the Court took into consideration that the concentration of polluting substances in the air near the applicant's home had continuously exceeded the applicable norms, that the State had recognised that the environmental situation had caused an increase in the morbidity rate for the local residents, that the domestic courts had recognised the applicant's right to be resettled away from the "sanitary security zone" in which she lived, and that there was a "very strong combination of indirect evidence and presumptions" which made it possible to conclude that the applicant's prolonged exposure to emissions from the plant had caused her health to deteriorate or had at least made her more vulnerable to various illnesses and had adversely affected her quality of life at home (ibid., §§ 80-88). The Court made similar findings in a later case concerning the same iron smelter (see *Ledyayeva and Others v. Russia*, nos. 53157/99, 53247/99, 53695/00 and 56850/00, §§ 96-100, 26 October 2006).

72. In a case concerning a plant for the storage and treatment of special waste and the detoxification of hazardous waste, involving treatment of industrial waste using chemicals, whose operation had been found to be incompatible with environmental regulations by the domestic authorities, and which was located thirty metres away from the applicant's home, the Court considered it evident that Article 8 was applicable, and did not consider the point in detail (see *Giacomelli v. Italy*, no. 59909/00, §§ 76-98, ECHR 2006-XII).

73. More recently, in a case concerning a gold-mining plant and its pond, situated a hundred metres away from the applicants' home, the Court took into account the findings of domestic experts, the fact that a large-scale

accident had occurred, resulting in severe pollution, and environmental impact assessments produced by the Government during the course of the proceedings. On that basis, and notwithstanding the lack of domestic decisions or official documents showing clearly the risks that the plant's operations posed, the Court concluded that Article 8 was applicable (see *Tătar*, cited above, §§ 89-97).

74. The Court and the former Commission have also had to deal with a number of cases concerning noise nuisances. A summary of those may be found in paragraphs 92 and 93 of the Court's judgment in the recent case of *Mileva and Others v. Bulgaria* (nos. 43449/02 and 21475/04, 25 November 2010).

75. The above-mentioned cases make it plain that the question whether pollution can be regarded as affecting adversely an applicant's Article 8 rights depends on the particular circumstances and on the available evidence. In that connection, the Court would add that, in assessing evidence, it has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact, and it has been the Court's practice to allow flexibility in that respect, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved (see *Fadeyeva*, cited above, § 79). The salient question is whether the applicant has been able to show to the Court's satisfaction that there has been an actual interference with his private sphere, and, secondly, that a minimum level of severity has been attained (see *Fadeyeva*, cited above, § 70). The mere allegation that the reclamation scheme did not comply with domestic rules – such as the 1992 Regulations on hygienic requirements for the protection of health in the urban environment (see paragraph 51 above) – is not sufficient to ground the assertion that the applicant's rights under Article 8 have been interfered with (see, *mutatis mutandis*, *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008, and *Galev and Others v. Bulgaria* (dec.), no. 18324/04, 29 September 2009).

76. In the instant case, the Court, while not in doubt that the laying of sludge from the Plovdiv waste-water treatment plant on the tailings pond created an unpleasant situation in the surroundings, is not persuaded that the resulting pollution affected the applicant's private sphere to the extent necessary to trigger the application of Article 8, for several reasons. First, unlike the situation in the majority of the above-mentioned cases, the applicant's home and land are situated at a considerable distance from the pollution's source: his house is about one kilometre from the tailings pond and the land which he cultivates is about four kilometres away (see paragraph 7 above). Secondly – and this point is closely related to the first – the pollution emanating from the pond is not the result of active production processes which can lead to the sudden release of large amounts of toxic

gases or substances (contrast *López Ostra*; *Guerra and Others*; and *Fadeyeva*, cited above). This also means that there is less risk of a sudden deterioration of the situation (contrast *Tătar*, cited above). Thirdly, there is no indication that there have been incidents entailing negative consequences for the health of those living in Elshitsa (contrast *Guerra and Others* and *Tătar*, both cited above). Admittedly, various domestic authorities found that the sludge laid on the pond, coming as it does partly from industrial waste water, contains substances – chiefly heavy metals – which are not suited for reclamation purposes and are capable of adversely affecting human health when spreading in the environment (see paragraphs 10, 11, 32, 34, 45 and 46 above). However, there are no materials in the case file to show that the pollution in and around the pond has caused an increase in the morbidity rate of Elshitsa's residents (contrast *Fadeyeva*, cited above) or has had a sufficiently adverse impact on the applicant's enjoyment of the amenities of his home and the quality of his private and family life. Indeed, the applicant conceded that he could not show any actual harm to his health or even a short-term health risk, but merely feared negative consequences in the long term (see paragraph 62 above and contrast *López Ostra* and *Fadeyeva*, both cited above). Nor did the applicant provide particulars showing that the degree of disturbance in and around his home had been such as to considerably affect the quality of his private or family life (contrast, *mutatis mutandis*, *Hatton and Others*, cited above, § 118).

77. It is true that in declaring the applicant's application for judicial review admissible the Bulgarian Supreme Administrative Court found that the applicant, as well as all persons living near the pond, had a sufficient interest in bringing proceedings in relation to that situation (see paragraph 25 above). However, unlike the Turkish court in *Taşkın and Others* (cited above, §§ 12 and 111-14), it did not base that ruling on findings about the extent to which the applicant had been personally affected by the impugned reclamation scheme. It rather had regard to the general aim of the domestic environmental protection legislation, which are quite different from the aims of Article 8 of the Convention. It should be pointed out in this connection that the conditions governing individual applications under the Convention are not necessarily the same as the national criteria relating to *locus standi* in domestic proceedings. National rules on that point may serve different purposes and, while those purposes may sometimes be analogous, they need not always be. Indeed, the underlying object of the Convention mechanism is to provide a safeguard to those personally affected by violations of fundamental human rights (see, *mutatis mutandis*, *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V (extracts)). As already noted, neither Article 8 nor any of other provision of the Convention or its Protocols were specifically designed to provide protection of the environment; other international instruments and domestic legislation are better suited to address such issues (see *Kyrtatos*, cited above, § 52 *in fine*).

78. Naturally, given the lack of conclusive official information on the subject, owing to the authorities' failure to complete the EIA which they decided to carry out in 2001 and to the lack of reliable data from other sources (see paragraphs 39-45 above), it is understandable that the applicant had and continues to have misgivings about the risk to his and his family's health and well-being on account of the pollution resulting from the toxic substances contained in the waste-water sludge laid on the pond. However, he has not apparently suffered any actual harm to date. In the absence of proof of any direct impact of the impugned pollution on the applicant or his family, the Court is not persuaded that Article 8 is applicable on that ground either (contrast *McGinley and Egan v. the United Kingdom*, 9 June 1998, §§ 96 and 97, *Reports* 1998-III, which concerned direct exposure to radiation from a nuclear explosion, and *Roche v. the United Kingdom* [GC], no. 32555/96, §§ 155 and 156, ECHR 2005-X, which concerned direct exposure to mustard and nerve gas).

79. There has therefore been no violation of Article 8 of the Convention.

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

80. The applicant complained that he could not fully enjoy his property, as his agricultural activities had become risky as a result of the pollution around the tailings pond. He also complained that the value of his property had declined owing to the widely publicised environmental problems surrounding the pond's reclamation. He relied on Article 1 of Protocol No. 1, which provides 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. The parties' submissions

81. The Government argued that the applicant's rights under this provision had not been infringed in any way.

82. In the applicant's submission, the laying of polluting sludge near his property had prevented him from using it normally, had reduced its value and had put his business at risk. Those activities, which fully disregarded his economic interests, had failed to strike a fair balance under Article 1 of

Protocol No. 1 for the same reasons as those set out in respect of Article 8 of the Convention.

B. The Court's assessment

83. Article 1 of Protocol No. 1 does not guarantee the right to enjoy one's possessions in a pleasant environment (see *Galev and Others v. Bulgaria* (dec.), no. 18324/04, 29 September 2009, with further references). That said, a severe nuisance may seriously affect the value of real property and thus amount to a partial expropriation (see *Rayner v. the United Kingdom*, no. 9310/81, Commission decision of 16 July 1986, Decisions and Reports (DR) 47, p. 5, at p. 14, and *Taşkın and Others* (dec.), cited above). However, the applicant has not produced evidence to show that the reclamation scheme had any effect on his property or affected adversely its value (see, *mutatis mutandis*, *Ashworth and Others v. the United Kingdom* (dec.), no. 39561/98, 20 January 2004; *Fägerskiöld v. Sweden* (dec.), no. 37664/04, 26 February 2008; and *Galev and Others*, cited above). Nor has he produced evidence to show the extent of the losses allegedly suffered by his agricultural business as a result of the reclamation scheme (see, *mutatis mutandis*, *Taura and Others v. France*, no. 28204/95, Commission decision of 4 December 1995, DR 83-B, p. 112, at p. 133).

84. There has therefore been no violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

85. The applicant complained that the Supreme Administrative Court had refused to consider the merits of his application for judicial review, and had failed to address a number of decisive arguments raised by him and to rule properly and in good time on the request to stay the implementation of the impugned decision. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

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

A. The parties' submissions

86. The Government made no submissions on this complaint.

87. The applicant submitted that Article 6 was applicable, as the proceedings concerned his constitutionally guaranteed rights to a healthy environment and respect for his personal sphere. Those rights undoubtedly had a civil character, and the outcome of the proceedings was decisive for their exercise and also for the right to seek compensation for the damage

caused by an unlawful administrative decision. Moreover, the decision of which he had sought review had not been a discretionary one.

88. The applicant further submitted that he had not been able to obtain a ruling on the substance of his claim. That had been the result of the slow pace of the proceedings and of the court's failure to stay the reclamation scheme's implementation and to address the argument that despite the expiry of the licence its effects had not ceased to exist.

B. The Court's assessment

89. The applicability of one of the substantive clauses of the Convention constitutes, by its very nature, an issue going to the merits of the case, to be examined independently of the respondent State's attitude. The Court must therefore examine whether the proceedings in issue in the present case concerned a dispute over the applicant's "civil rights and obligations" (see, among other authorities, *H. v. France*, 24 October 1989, § 47, Series A no. 162-A).

90. For Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "civil right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play. The character of the legislation which governs how the matter is to be determined or that of the authority invested with jurisdiction in the matter are of little consequence (see, as a recent authority, *Micallef v. Malta* [GC], no. 17056/06, § 74, ECHR 2009-...).

91. The Court does not doubt that Bulgarian law gave the applicant a right to a "healthy and favourable environment" (see paragraph 47 above). It is also willing to accept that the right in question can be regarded as "civil" for the purposes of Article 6 § 1, and that the proceedings before the Supreme Administrative Court concerned a serious and genuine dispute between the applicant and the authorities as to whether the licence granted to ET Marin Blagiev was valid. However, the question remains whether those proceedings were directly decisive for the right in question.

92. In the Court's view, on this point the position in the present case closely resembles that in *Balmer-Schafroth and Others*. In that case, the Court found that Article 6 § 1 did not apply to proceedings in which the applicants had challenged the extension of a nuclear power station's licence, because they had not "establish[ed] a direct link between the operating conditions of the power station which were contested by them and their right to protection of their physical integrity, as they [had] failed to show

that the operation of [the] power station exposed them personally to a danger that was not only serious but also specific and, above all, imminent" (see *Balmer-Schafroth and Others v. Switzerland*, 26 August 1997, § 40, *Reports* 1997-IV). Later, in *Athanassoglou and Others v. Switzerland* ([GC], no. 27644/95, §§ 46-55, ECHR 2000-IV), the Court fully confirmed that position. Much like the applicants in those two cases, in his application to the Supreme Administrative Court the applicant in the instant case did not point to concrete health hazards, but complained about the reclamation scheme's hypothetical consequences for the environment and human health (see paragraphs 22 and 23 above). It must therefore be concluded that the connection between the proceedings – whose sole object was the lawfulness of the decision to grant a licence allowing ET Marin Blagiev to carry and lay sludge – and the right invoked by the applicant was too tenuous.

93. It is true that in an earlier case, *Zander*, where the applicants had sought to challenge a licence allowing a company to lay waste in a dump adjacent to their property, the Court found Article 6 § 1 applicable, saying that the outcome of the proceedings was decisive for the applicants' entitlement to protection against pollution (see *Zander v. Sweden*, 25 November 1993, §§ 24 and 25, Series A no. 279-B). However, that conclusion was clearly influenced by the fact that the dump was indisputably polluting the water in the applicants' well, which was their only source of drinking water. The adverse effects on their health were thus, unlike the situation in the present case, immediate and certain. Similarly, in *Taşkın and Others* the Court found that the applicants' right to protection of their physical integrity was directly at stake in the proceedings before the Turkish Supreme Administrative Court, because the scale of the risk had been established by that court (see *Taşkın and Others*, cited above, § 133, as well as *Öçkan and Others*, cited above, § 52). In *Okyay and Others*, the Court made similar findings, and regarded the fact that the domestic courts had ruled in the applicants' favour on the merits as decisive (see *Okyay and Others v. Turkey*, no. 36220/97, §§ 65-68, ECHR 2005-VII). The position in the present case, in which the Supreme Administrative Court discontinued the proceedings and did not make any findings about the reclamation scheme's effect on the applicant's health or well-being (see paragraphs 28 and 30 above), is different.

94. Lastly, the Court cannot subscribe to the applicant's argument that Article 6 § 1 applied to the proceedings before the Supreme Administrative Court because, if that court had decided to annul the licence, the applicant would have been able to apply, in separate proceedings, for compensation under section 1 of the State Responsibility for Damage Act (see paragraph 54 above). There is no question that if the applicant had brought such compensation proceedings Article 6 § 1 would have applied to them (see, among other authorities, *Editions Périscope v. France*, 26 March 1992, §§ 37 and 40, Series A no. 234-B). However, that does not mean that it is

applicable, on that ground alone, to earlier proceedings whose outcome is capable of supplying the cause of action for such compensation proceedings. Proceedings do not become "civil" merely because they have economic implications, and the application for judicial review lodged by the applicant pursued the sole aim of having the licence annulled (see, *mutatis mutandis*, *SARL du Parc d'activités de Blotzheim and SCI Haselaecker v. France* (dec.), no. 48897/99, ECHR 2003-III).

95. In sum, the Court finds that the outcome of the proceedings before the Supreme Administrative Court was decisive for the question whether the licence granted to ET Marin Blagiev was valid, but not for the "determination" of any "civil right" which Bulgarian law conferred on the applicant as a private individual.

96. It follows that Article 6 § 1 is not applicable in the present case and has therefore not been violated.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

97. The applicant complained that he had not had an effective remedy for his complaints under Article 8 of the Convention and Article 1 of Protocol No. 1. He relied on Article 13 of the Convention, which provides as follows:

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

A. The parties' submissions

98. The Government argued that there was no indication that attempts had been made to challenge the decision of the Interdepartmental Expert Council of the Ministry of Industry to approve the scheme proposed by ET Marin Blagiev. They also argued that the actions under sections 29 and 30 of the 1991 Environmental Protection Act, superseded by sections 170 and 171 of the 2002 Environmental Protection Act, were effective remedies against anyone – private persons or public authorities – who caused pollution or degradation of the environment.

99. The applicant submitted that the above-mentioned Council's decision had not been made public. It had therefore not been possible to challenge it. Moreover, the instruments on the basis of which that body functioned did not make clear provision for its decisions to be open to legal challenges by those concerned. He had tried another remedy, which had been just as likely to provide him with adequate redress: an application for judicial review of the waste-treatment licence. As regards claims under the Environmental Protection Acts, there were no examples of one having been used

successfully to date. In addition, such actions presupposed existing harm, whereas he should not have been made to wait for the emergence of such harm. Finally, an action under the SRDA would have been admissible only if the administrative decision alleged to have caused damage had been overturned in prior proceedings, which was not the case.

B. The Court's assessment

100. Article 13 guarantees the availability of a remedy at national level to enforce – and hence to allege non-compliance with – the substance of the Convention rights in whatever form they may happen to be secured in domestic law. However, that Article cannot reasonably be interpreted as requiring such remedy in respect of any supposed grievance under the Convention that a person may have, no matter how unmeritorious; the grievance must be an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court has abstained from giving an abstract definition of the notion of arguability, preferring in each case to determine, in the light of the particular facts and the nature of the legal issues raised, whether a claim forming the basis of a complaint under Article 13 was arguable. It has said that the admissibility decision in the case is not binding in that respect, but may provide useful pointers (ibid., §§ 54 and 55, as well as *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 27, Series A no. 139).

101. As a rule, the fact that a complaint has been declared admissible is a strong indication that it can be regarded as arguable for the purposes of Article 13, even if the Court ultimately finds no breach of the substantive provision in issue (see, for example, *Hatton and Others*, cited above, § 137). However, as pointed out above, the determination whether a claim is arguable does not depend so much on the case's procedural posture as on the particular facts and the nature of the legal issues raised. Unlike *Hatton and Others*, in the present case the Court, having regard to the particular circumstances and the available evidence, was not persuaded that the impugned reclamation scheme had had a sufficiently direct impact on the applicant's private sphere to even trigger the application of Article 8 (see paragraphs 76-79 above). Likewise, the Court found no breach of Article 1 of Protocol No. 1 on the basis that there was no evidence that the reclamation scheme had had any effect on the applicant's possessions (see paragraphs 83 and 84 above). The position here is therefore akin to that in cases such as *Halford v. the United Kingdom* (25 June 1997, §§ 69 and 70, *Reports* 1997-III) and *Russian Conservative Party of Entrepreneurs and Others v. Russia* (nos. 55066/00 and 55638/00, § 90, ECHR 2007-I), in which the Court, having regard to the particular circumstances, departed from its usual approach and found that complaints which had been declared admissible were nonetheless not arguable in terms of Article 13.

102. No arguable claim that Article 8 of the Convention and Article 1 of Protocol No. 1 were violated has thus been made out; Article 13 therefore does not apply.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 8 of the Convention;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1;

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

4. *Holds* that there has been no violation of Article 13 of the Convention.

Done in English, and notified in writing on 2 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Section Registrar	President