



Lustration proceedings against Constitutional Court president were unfair

The case of [Ivanovski v. “The former Yugoslav Republic of Macedonia”](#) (application no. 29908/11) concerned lustration proceedings against the then president of the Constitutional Court of ‘The former Yugoslav Republic of Macedonia’, as a result of which he was dismissed from office.

In today’s **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 (right to a fair trial) of the European Convention on Human Rights as regards the alleged lack of access to court;

a violation of Article 6 on account of the overall unfairness of the lustration proceedings; and

a violation of Article 8 (right to respect for private and family life).

The Court found in particular that an open letter by the Prime Minister stating that a member of the Constitutional Court had been a collaborator with the security services, published in the media while the lustration proceedings against Mr Ivanovski were pending, had been incompatible with the notion of an “independent and impartial tribunal” within the meaning of Article 6.

The national courts’ analysis in Mr Ivanovski’s case had not been sufficiently thorough to conclude that the interference with his rights under Article 8 had been necessary. Moreover, the interference with his rights, in particular a ban on taking any employment in the public service or academia for a period of five years, had been disproportionate to the legitimate aim sought to be achieved.

Principal facts

The applicant, Trendafil Ivanovski, is a Macedonian national who was born in 1946 and lives in Skopje.

In 2009 Mr Ivanovski – who was then the president of the Constitutional Court – submitted a declaration of non-collaboration with the security services to the Lustration Commission, pursuant to the 2008 Lustration Act, which made collaboration with the State security services between 1944 and 2008 an impediment to holding public office. In 2010 the Commission requested the State Archive to provide it with access to all documents and files in respect of Mr Ivanovski. On the basis of the material it had obtained, the Commission found that his declaration had not been in conformity with the evidence, a finding which Mr Ivanovski denied during a public session before the Commission held on 27 September 2010. The Commission rejected his objection on 29 September 2010. It found that he did not fulfil the requirement for holding public office under the Lustration Act, stating that from 1964, following his involvement with a high-school nationalist group, he had been providing information on students whose activities were monitored by the security services; in 1983 he had been deregistered.

Before and during the lustration proceedings against Mr Ivanovski there was a controversial public debate between several politicians of the Government party on the one hand and the Constitutional

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

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

Court on the other, in which the politicians severely criticised that court's decisions to review, suspend and then invalidate certain provisions of the Lustration Act. In particular, while the lustration proceedings against Mr Ivanovski were still pending before the Commission, on 24 September 2010, the Prime Minister published an open letter – disseminated in the media and addressed to “opponents of the lustration” – in which he stated that the Commission had revealed that a member of the Constitutional Court had been a collaborator with the security services. The letter maintained that that collaborator had been behind the court's decisions invalidating a number of legislative reforms of the Government.

Mr Ivanovski brought an action for judicial review of the Commission's decision of 29 September 2010, complaining that the proceedings had been unfair. He maintained in particular: that he had not had an opportunity to fully present his arguments concerning classified information in the file; that the time-limit for the preparation of his appeal had been reduced; and that there were discrepancies between the files of the State Archive and the ones on which the Commission had relied. His action was dismissed by the Administrative Court. In March 2011 the Supreme Court rejected his appeal against that decision. He was dismissed from office in April 2011.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Mr Ivanovski complained in particular: that the lustration proceedings had been unfair overall; that the Commission and the courts had lacked impartiality – having regard in particular to the statement of the Prime Minister in his open letter and to the fact that certain judges who had been sitting in Mr Ivanovski's case had been promoted after the judicial review proceedings; and that he had lacked access to court, since the courts did not establish full jurisdiction over the facts of the case and erred on the facts. He further complained of a violation of Article 8 (right to respect for private and family life), stating in particular that the authorities' decisions in the lustration proceedings had had a complex impact on his reputation, dignity and moral integrity. Finally, he alleged a breach of Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 9 May 2011.

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

Päivi **Hirvelä** (Finland), *President*,
Ledi **Bianku** (Albania),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Paul **Mahoney** (the United Kingdom),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 6

The Court found **no violation of Article 6 § 1 on account of the alleged lack of access to court**. It was satisfied that the courts which had reviewed the decision of the Lustration Commission in Mr Ivanovski's case – the Administrative Court and the Supreme Court – had exercised full jurisdiction over the facts and law in addressing the substance of the case. In particular, during the hearing before the Administrative Court, an expert, who had been invited at Mr Ivanovski's suggestion, had been heard. Mr Ivanovski had accordingly had access to court.

As regards the alleged overall unfairness of the proceedings, the Court attached particular importance to the open letter, published while the lustration proceedings were pending, in which the Prime Minister had used the initial findings of the Lustration Commission to denounce Mr Ivanovski as a collaborator of the secret police of the former regime. The Court saw no reason to speculate on what effect the Prime Minister's statement might have had on the course of the lustration proceedings. It was sufficient to note that the lustration proceedings had ended in Mr Ivanovski's disfavour and that the statement, in view of its content and the manner in which it was made was incompatible with the notion of an "independent and impartial tribunal".

The Court moreover referred to the European Commission's Progress Report on "The former Yugoslav Republic of Macedonia" of November 2010, which had found that the lustration proceedings in Mr Ivanovski's case had "raised concerns about pressure on the independence of the judiciary". That opinion further reinforced the Court's finding.

Those considerations were sufficient to conclude that the proceedings, taken as a whole, had not satisfied the requirements of a fair hearing. The Court therefore did not consider it necessary to address Mr Ivanovski's other arguments as regards a lack of impartiality, in particular those related to the career advancements of judges who had participated in the proceedings in his case.

There had accordingly been a **violation of Article 6 § 1 on account of overall unfairness of the proceedings.**

Article 8

It was undisputed between the parties that the decision of the Lustration Commission in Mr Ivanovski's case had constituted an interference with his right to respect for his private life. That interference had been based on the relevant provisions of the Lustration Act, it was thus in accordance with the law, as required by Article 8 § 2. Furthermore, the Court was ready to accept that the interference had pursued the legitimate aim of the protection of national security for the purpose of Article 8.

As regards the question of whether the interference had been justified, the Court noted that taking into account whether Mr Ivanovski had acted under compulsion when starting to collaborate with the secret police would have been an essential factor in balancing the interests of national security and the protection of his rights. However, under the applicable domestic law, the authorities, including the courts, had not been called on to address this issue. As a result, his arguments relating to his alleged lack of consent to the collaboration had been dismissed as irrelevant by the national courts. Their analysis in his case had therefore not been sufficiently thorough to conclude that the interference had been "necessary in a democratic society" within the meaning of Article 8.

In any event, the interference with Mr Ivanovski's rights under Article 8 had been disproportionate to the legitimate aim sought to be achieved. As a result of the Commission's decision, he had not only been dismissed from the office of judge of the Constitutional Court, but he had also been banned from taking any employment in the public service or academia for a period of five years. Furthermore, the Lustration Act had been enacted some 16 years after "The former Yugoslav Republic of Macedonia" had adopted its democratic Constitution. Given that any threat which the persons being lustrated could have initially posed to the new democracy had to have considerably decreased with the passage of time, this was a relevant factor when assessing the proportionality of the interference.

Moreover, the Court could not overlook the fact that Mr Ivanovski had been recruited by the former secret police while he was still a minor. While it was true that the findings of the domestic courts suggested that he had continued to collaborate as an adult, his contact with the secret police had ceased at the latest in 1983, some 27 years before the lustration proceedings were brought against him. The Court was not convinced that after such a lapse of time he had posed such a threat, if any,

to a democratic society as would justify wide-ranging restrictions on his professional activities for a period of five years.

There had accordingly been a violation of Article 8.

Other articles

In view of its findings under Article 6, the Court did not consider it necessary to examine whether there had also been a violation of Article 13.

Just satisfaction (Article 41)

The Court held that “The former Yugoslav Republic of Macedonia” was to pay Mr Ivanovski 4,500 euros (EUR) in respect of non-pecuniary damage and EUR 850 in respect of costs and expenses.

The judgment is available only in English.

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