



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

FIRST SECTION

CASE OF BILESKI v. NORTH MACEDONIA

(Application no. 78392/14)

JUDGMENT

STRASBOURG

6 June 2019

FINAL

06/09/2019

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

In the case of Bileski v. North Macedonia,

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

Ksenija Turković, *President*,

Aleš Pejchal,

Armen Harutyunyan,

Pere Pastor Vilanova,

Tim Eicke,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having deliberated in private on 14 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 78392/14) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Dragi Bileski (“the applicant”), Macedonian/citizen of the Republic of North Macedonia, on 11 December 2014.

2. The applicant, a trial court judge at the time, was represented by Mr V. Donevski, a lawyer practising in Skopje. The Government of North Macedonia (“the Government”) were represented by their former Agent, Mr K. Bogdanov, succeeded by their current Agent Ms D. Djonova.

3. On 19 May 2015 notice of the complaints of the unfairness of the lustration proceedings in which the applicant’s rights under Article 8 were allegedly violated, as well as the lack of an effective remedy in that respect, was given to the Government, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Kičevo.

A. The applicant's lustration

5. On 2 February 2010 the applicant submitted a written statement in which he denied that he had collaborated with the State security bodies after 1944. Such a statement was to be submitted to the Fact Verification Commission ("the Lustration Commission") by public officials and was required under the Additional Requirement for Public Office Act of 2008 ("the 2008 Lustration Act"). By a decision of 12 September 2011, the Lustration Commission confirmed that the applicant satisfied the additional condition for the performance of the office of a judge, having confirmed that he had not collaborated with the security bodies of the past regime.

6. On 16 November 2012 the Lustration Commission, on a request by its chairman, reopened the lustration proceedings in respect of the applicant and, on the basis of "new facts and evidence", quashed its decision of 12 September 2011. The Commission's decision, which referred to submissions made by a third person (namely a certain Z.T., who was identified in connection with the chairman's request) in its introduction, relied on three files concerning three people (one of whom was Z.T.), from which it established that the applicant – referred to in those files as an "operational liaison" (*оперативна врска*) – had provided relevant information to the State security bodies in the 1970s. The relevant parts of those notes read as follows:

"... I [the handler] met with [the applicant], a law student [at the time], on two occasions on which he expressed a wish to collaborate with the State Security Office (*Служба за државна безбедност*) ...

... the relationship (*пријателската врска*) – [the applicant] informed me that [code name] had exchanged letters with ...

... the conversation with [the applicant] was on my [the handler's] initiative ... the source [the applicant] was used occasionally, during his stay in Skopje. He was reassigned for use to ..."

7. The Lustration Commission found that, under the Law on determining conditions limiting the exercise of public office, access to documents and the publication of information about cooperation with State security bodies ("the 2012 Lustration Act", which had replaced the 2008 Lustration Act), the applicant had collaborated with the State security bodies. Its decision stated, *inter alia*:

"... [the applicant] had provided the security bodies with information about certain people of interest for the State Security Office ... on the basis of documentary evidence, it was established that the State Security Office had used [the applicant] as an operational liaison ...

... the Lustration Commission established that [the applicant], as a secret collaborator, informant or operational liaison, [in the process of] creating and storing information about certain people, by which their rights and freedoms had been violated on political or ideological grounds, had collaborated with the State security

services in a conscious, secret, organised and continuous manner, in return for favours in getting promoted, by which the condition specified in sections 4 and 18 of the [2012 Lustration Act] is fulfilled.”

8. After the Lustration Commission published the above decision (and the notes of the security bodies referred to in the decision) on its website, the applicant requested (making a non-disclosure statement) and obtained a redacted copy of those documents, in the form in which they were published on the Commission’s website. They were redacted to withhold the identities of the handler(s) who had drawn them up and the third persons in respect of whom the applicant had allegedly provided information to the security bodies. The documents were not signed by the applicant or the handler. The applicant also asked to be provided with a complete and unredacted copy (*целосна копија*) of those documents.

9. In a written statement of 27 November 2012, certified by a notary public, P.K., the handler who had drawn up some of the notes to which the Lustration Commission had referred in its decision, stated, *inter alia*:

“... I drafted [the notes] (*содржината*) concerning [the applicant] without [his] knowledge, according to my interpretation (*по мое видување*) and following a spontaneous conversation that he had not requested, let alone intended to be used for a role as a secret collaborator or informant. I avow that [the applicant] was not recorded or registered by the security bodies as such ... Neither I nor my colleagues, as far as I know, had requested that he be registered as a secret collaborator, informant, operational liaison ... neither had [the applicant] made a request to collaborate with the security service ...

I submit that the contents of the official records are not truthful (*веродостојни*) and at times [the applicant] had not provided the information in any organised manner, i.e. ... he had not been an organised liaison with the State Security Office ...”

10. On 30 November 2012 the applicant challenged the Commission’s decision before the Administrative Court. He complained that, *inter alia*, the Lustration Commission had not held an oral hearing and it had not provided sufficient reasoning for its findings, in particular to show that his alleged collaboration had satisfied the criteria specified in section 18 of the 2012 Lustration Act. In support of this complaint, he referred to P.K.’s statement, which he appended to his claim. He also argued that according to the documents in his case file, no measures had been taken against the persons in respect of whom he had allegedly provided information to the security bodies. He further challenged the veracity and authenticity of the documents in question, claiming that only copy documents had been admitted into evidence, that they had not been signed by the handler or himself and that no official stamp had been affixed on them. In that connection, he subsequently submitted a letter from the Intelligence Service (*Управа за безбедност и контраразузнавање*) dated 2013, in which it was confirmed that the applicant had not been registered in its records and that the documents used in the impugned proceedings had not been from its archives. Given the complexity of the case, the applicant requested that the

court hold a public and oral hearing in order to establish the relevant facts. In that regard he requested that the court hear oral evidence from P.K. and an expert (*стручен помагач*), V.P., a university professor and former intelligence officer, regarding the reliability of the documentary evidence against the applicant and whether he could be regarded as a collaborator within the meaning of the 2012 Lustration Act. In this respect, he submitted a copy of a statement made by V.P. and published on a news portal in which V.P. had underlined the qualitative criteria of such collaboration and the difference between “an informant” and “a collaborator”. In that statement V.P. defined “an informant” as “a person who had not established a relationship of collaboration (*соработнички однос*), but had provided information to the security services without having signed a collaboration agreement”.

11. At a hearing held in private, and in the absence of the parties, on 20 December 2013, the Administrative Court dismissed the applicant’s claim. Referring to the information in the relevant documents (see paragraph 6 above), which it found truthful (having compared the copy documents in the applicant’s case file with the originals), the court confirmed the Lustration Commission’s findings that the applicant had collaborated with the security services in a conscious, secret, organised and continuous manner as a secret informant, notably as an operational liaison. The relevant parts of the decision read as follows:

“[the applicant] had followed, provided and transferred information about people ... whereby their rights and freedoms had been violated on political or ideological grounds during the communist era ... irrespective of whether [those people] had been criminally prosecuted.

... [the applicant] had agreed to cooperate with the State Security Office. His friendly relationship with the handler did not preclude collaboration within the meaning of the law, and indeed such a relationship suggests that the collaborator knew to whom and why he had been providing information. For these reasons, the court does not accept (*не ја прифаму*) the certified statement appended to the claim.

The court made its decision at a hearing held in private because the Commission had correctly established the relevant facts on the basis of written material and [the applicant] had not submitted any evidence that led to different facts.”

12. On 24 January 2014 the applicant requested that the Lustration Commission grant him access to the original documents in his case file. In reply, the Commission informed him that the originals had been returned to the State Archives.

13. The applicant appealed against the above-mentioned decision of the Administrative Court reiterating his complaints and arguing that that court had not held an oral hearing at which it could hear the testimony of the parties, P.K. and V.P., in order to establish as a fact whether there had been any collaboration within the meaning of the 2012 Lustration Act, that is whether the applicant’s actions had been conscious, secret, organised and

continuous. The reasoning provided by the lower bodies in that respect had not been sufficient. Furthermore, there was no evidence that in return for providing information he had obtained any favours in getting promoted, which was a requirement for the alleged collaboration to fall within the meaning of section 18(4) of the 2012 Lustration Act. On the other hand, there was evidence that the materials on which the impugned decisions were based had not been reliable (see paragraph 9 above) and that he had not been aware that the information would reach the State Security Office. The authenticity of the files used against him had also been compromised in that they had not been from the archives of the Intelligence Service on the one hand, but that they had seemingly been drawn up by handlers at the State Security Office – which was the predecessor of the Intelligence Service – on the other hand. Furthermore, they had been admitted into evidence as copy documents, without having their authenticity confirmed by the security bodies. He asked for an oral hearing to be held.

14. At a hearing held in private, and in the absence of the parties, on 12 June 2014, the Higher Administrative Court dismissed the applicant's appeal and upheld the lower court's decision without hearing the testimony of the witnesses proposed by the applicant. The court confirmed the findings of the lower authorities after it had verified that the contents of the documents in the applicant's case file, admitted as copy documents, were identical to the originals from the State Archives. It held that, owing to the applicant's conduct, the human rights and freedoms of others had been violated. The court added:

“Taking into consideration that the Lustration Commission carries out only a verification of facts to determine if there has either been collaboration or no collaboration with State security bodies, reports drawn up by handlers in [such bodies] are to be regarded as facts”.

15. On 15 July 2014 the State Judicial Council declared that the applicant's position as a judge had been terminated (*престанок на вршење на судиската функција*).

B. Additional evidence submitted by the applicant

16. On 13 November 2015 the applicant submitted audio recordings and a transcript of taped telephone conversations which allegedly involved the then chairman of the Lustration Commission and a member of parliament from the ruling political party. The material concerned conversations in which that member of parliament informed the chairman of the Lustration Commission that certain material regarding the applicant had been submitted before the Commission by Z.T. and asked that the proceedings be conducted as quickly as possible. The applicant contended that on 6 April 2015 the audio material was made public by the then political opposition in the respondent State and was also made available online.

II. RELEVANT DOMESTIC LAW

17. The statutory provisions relevant to the present case are set out in *Karajanov v. the former Yugoslav Republic of Macedonia* (no. 2229/15, §§ 18-37, 6 April 2017).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

18. Details of the relevant Council of Europe documents are set out in *Ivanovski v. the former Yugoslav Republic of Macedonia* (no. 29908/11, §§ 106-08, 21 January 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained under Article 6 of the Convention that he had been deprived of the opportunity to present his case effectively. In this connection he complained that he had been given limited access to the security files, as the copies supplied to him had been redacted; that there had been no oral hearing; that the authorities had refused to examine witnesses proposed by him; and that they had not provided sufficient reasons for their decisions. He further complained under Article 6 § 2 of the Convention about the publication of the Commission's decision on its website before it had become final. In his submissions of 13 November 2015, the applicant also alleged a lack of impartiality on the part of the State Judicial Council which had declared his position as a judge terminated, given the participation of V.B., a former judge in the Administrative Court, who had presided over the adjudicating panel in the lustration proceedings against him and had been elected as a member of the State Judicial Council three days after the Administrative Court had decided the applicant's lustration case. Article 6 §§ 1 and 2 of the Convention, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. Admissibility

1. *Applicability of Article 6 to the lustration proceedings against the applicant*

20. The parties disagreed as to whether Article 6 of the Convention was applicable under its civil or criminal head, with the applicant having argued in favour of the latter. For the reasons stated in the *Karajanov* case, which likewise apply to the present case, the Court considers that the civil limb of Article 6 is applicable in the present case. Consequently, the applicant's complaint under Article 6 § 2 of the Convention regarding the publication of the decision of the Lustration Commission before it became final is incompatible *ratione materiae* with that provision within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4 of the Convention (see *Karajanov v. the former Yugoslav Republic of Macedonia*, no. 2229/15, §§ 44-45, 6 April 2017).

2. *Alleged restricted access to documents created by the former security services*

(a) The parties' submissions

21. The Government objected that the applicant had failed to exhaust the domestic remedies. In particular, he had not complained before the administrative courts that the documents of the security bodies to which the Lustration Commission had referred in its decision had been redacted.

22. The applicant submitted that he had raised the issue of being allowed to consult only a redacted copy of the security files before the Lustration Commission and had sought to obtain the originals. According to him, he had made those same allegations before the administrative courts.

(b) The Court's assessment

23. The relevant Convention principles have been summarised in the Court's judgment in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

24. The Court notes that the applicant, when consulting his case file before the Lustration Commission, objected that he had been provided with only a redacted copy of the relevant documents of the security bodies, in which the identities of the handlers and the other people mentioned therein had been withheld. He also asked to be provided with a full copy of those documents (see paragraph 8 above).

25. In his claim before the Administrative Court, the applicant complained that those documents had been admitted as copy documents and argued that, since they had not been signed and certified by the security bodies, they were not reliable and the Lustration Commission could not rely on them. He made the same observations in his appeal before the Higher

Administrative Court. Accordingly, in the judicial review proceedings he limited his complaints in this respect to the admissibility and authenticity of those documents. He made no mention before the courts of the limitations on his access to the materials allegedly created by the former security services and used in the proceedings against him. Neither did he point to the fact that the identities of the people mentioned in those materials had been withheld from him nor did he argue, either expressly or in substance, whether, and if so to what extent, that non-disclosure curtailed his ability to present effectively his case. The applicant's request to consult the originals pending the proceedings before the Higher Administrative Court, which was not accompanied by such an argument, cannot be regarded as sufficient in this respect (see paragraph 12 above). In the Court's opinion, that explains the scope of the domestic courts' examination of the applicant's complaint under this head (see paragraphs 11 and 14 above). Owing to the manner in which the applicant formulated his complaint, the domestic courts were deprived of the opportunity to examine the alleged impact of those limitations on the applicant's Article 6 rights. Having regard to the subsidiary character of the Convention, this failure on the part of the applicant also prevents the Court from examining the merits of his complaint under this head.

26. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. Subsequent complaint of 13 November 2015

27. The Court notes that the complaint of the alleged lack of impartiality of the State Judicial Council, which terminated the applicant's position as a judge following the finding in the lustration proceedings, was not included in the application form submitted to the Court on 11 December 2014. It was submitted more than six months after the State Judicial Council's decision of 15 July 2014 (see paragraph 19 above).

28. Accordingly, this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

4. Remaining complaints

29. The Government did not raise any objection as to the admissibility of the remaining complaints.

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

B. Merits

1. *The parties' submissions*

31. The applicant submitted that the domestic courts had not adduced or assessed any of the evidence that he had proposed nor had they provided any reasons for failing to do so. The Government's own conclusions in that respect had been wrong (see paragraph 32 below). The examination of P.K. and V.P. had been requested in order that they could provide oral evidence about the reliability of the documentary evidence on the basis of which the Commission had established that he had collaborated with the security bodies. Owing to the absence of an oral hearing during the proceedings, the applicant had been prevented from presenting his defence and challenging the authenticity and veracity of the evidence against him. Whether there had been collaboration with the former security bodies was a fact to be determined in each case separately on the basis of concrete evidence and facts. Accordingly, no general approach, as the Government seemed to have suggested (see paragraph 32 below), could have been applied. He further reiterated his arguments that the impugned decisions had lacked sufficient reasoning. The additional evidence (see paragraph 16 above) confirmed that his lustration had been politically motivated and had violated his rights.

32. The Government maintained that the applicant had been able to present his case effectively and challenge the findings of the Lustration Commission. In the proceedings before the administrative courts, he had contested the authenticity and veracity of the documentary evidence against him, as well as the findings that his collaboration with the security services from the former regime had met the qualitative criteria specified by the 2012 Lustration Act. Both courts had taken into consideration P.K.'s written statement in which he had confirmed the authenticity and veracity of the notes which he had drawn up. The Government further stated that the domestic courts had extensive experience (having decided over sixty lustration cases) regarding the working methods of the State Security Office at the time and had an established practice that had focused on *de facto* collaboration, irrespective of whether there had been a formal arrangement in that respect. V.P.'s definition of a "secret informant" in his interview had been in line with that approach (see paragraph 10 above). For those reasons, it had not been necessary to examine them. Furthermore, it had been possible to decide all the issues of fact and law, the latter not being complex, on the basis of the documentary evidence and so holding an oral hearing would have been in conflict with the principles of economy and efficiency. The Government maintained that the courts had provided sufficient reasons for their decisions. Lastly, they asked the Court not to take the additional evidence submitted by the applicant (see paragraph 16 above) into consideration since it had neither been submitted to any domestic authority, nor had its authenticity and veracity been verified.

2. *The Court's assessment*

33. The general principles relevant to the present case have been summarised in *Karajanov* (cited above, §§ 49-53).

34. As in that case, the Court will examine different aspects relevant to the present case in order to determine whether the impugned proceedings, seen as a whole, met the requirements of fairness within the meaning of Article 6 of the Convention.

(a) **Right of the applicant to present his case effectively**

35. In the present case, the Lustration Commission's decision was based on documentary evidence about the applicant regarding his alleged collaboration with the former security services. Relying on that evidence, the Commission found that the applicant had collaborated with those bodies as a "secret collaborator, informant or operational liaison" and that that collaboration had satisfied the qualitative criteria specified in the 2012 Lustration Act, namely that it had been "conscious, secret, organised and continuous", by which "the rights and freedoms [of other people] had been violated on political or ideological grounds ... in return for favours in getting promoted" (see paragraph 7 above). It is to be noted that the applicant was not involved in the proceedings before the Commission and accordingly could not present any arguments in his defence.

36. In the ensuing proceedings before the administrative courts, the applicant challenged the authenticity and veracity of the documentary evidence used against him and contested the Commission's findings regarding the alleged collaboration, in particular that it had been conscious, that it had caused harm to third persons and that he had obtained career-related favours. In that connection he proposed that the courts hear oral evidence from P.K., the handler who had recognised himself as the author of some of the security-service files relied on by the Commission. In the same vein, he asked that the court examine V.P., a university professor and former intelligence officer, as an expert.

37. The administrative courts did not hear the proposed witnesses and did not explain why examining them would not have contributed to the establishment of the facts challenged by the applicant. The Administrative Court confirmed the facts established by the Commission by relying solely on the documents against the applicant. It made no reference to the conflicting evidence contained in P.K.'s written statement. The Higher Administrative Court confirmed those findings, holding that "reports drawn up by handlers in [such bodies] are to be regarded as facts" (see paragraph 14 above). The Court, however, notes that the documents used against the applicant were not from the archives of the Intelligence Service (see paragraph 10 above), which was the successor to the State Security Office, the agents of which had drawn up the records in question. Furthermore, and

more importantly, P.K., who was the handler to whom the applicant had allegedly provided information about third persons, clearly stated that he had drafted the records “according to his interpretation” and “without [the applicant’s] knowledge” and that they “... [were] not truthful” (see paragraph 9 above). Those elements, in the Court’s view, required more detailed scrutiny by the domestic courts. A mere declaration that P.K.’s statement would not be taken into account (see paragraph 11 above), without enabling that witness to provide first-hand information relevant to the applicant’s complaints, is not sufficient. Given the particular circumstances of the case, similar considerations apply to the court’s failure to hear oral evidence from V.P., an expert. Accordingly, Article 6 of the Convention required the domestic courts to provide a more substantial statement of their reasons rather than simply saying that “[the applicant] had not submitted any evidence that led to different facts” (see paragraph 11 above). The Government’s own arguments that it had not been necessary for the national authorities to adduce the evidence presented by the applicant (see paragraph 32 above) cannot offset that deficiency.

38. The Court considers that such a state of affairs was detrimental to the exercise of the applicant’s right to present effectively his case, within the meaning of Article 6 § 1 of the Convention.

(b) Right to an oral hearing

39. The Court notes that there was no oral hearing in the presence of the applicant at any stage of the impugned proceedings, notwithstanding his explicit requests to that effect (see paragraphs 10 and 13 above). The Court is not convinced that the disputed issues of fact and law (see paragraph 36 above) could have been dealt with more effectively in writing than in oral argument. The issues concerned were neither technical nor purely legal (see *Karajanov*, cited above, § 60).

40. In view of the foregoing, the Court is not persuaded that there were any exceptional circumstances that justified dispensing with an oral hearing.

(c) Reasoned judgment

41. Lastly, the Court considers that the applicant’s arguments that the alleged collaboration did not meet the qualitative criteria specified in the 2012 Lustration Act were crucial for the outcome of the case and therefore required a specific response. That was so because under the 2012 Lustration Act, collaboration which had not been “conscious, secret, organised and continuous” could not serve for lustration purposes. Furthermore, the person concerned was to have acted as a secret collaborator or secret informant, collecting information regarding individuals, in violation of their human rights and freedoms, in return for material benefits or favours during employment or in getting promoted (sections 4 and 18(4) of the 2012 Lustration Act). The relevant European standards confirm the above

statutory qualifying conditions (see paragraph 18 above, and in particular point *k.* of the Council of Europe's Guidelines quoted in *Ivanovski v. the former Yugoslav Republic of Macedonia* (no. 29908/11, § 107, 21 January 2016).

42. The Court notes that the Administrative Court addressed certain aspects of the alleged collaboration (see paragraph 11 above). However, given the specific circumstances of the case, the Court does not consider that such reasoning was a sufficient response to the applicant's submissions and the available evidence. The other authorities that examined the case did not provide any further explanation and merely concluded that the alleged collaboration had complied with the statutory qualifying conditions, without pointing to any specific evidence to confirm those findings (see paragraphs 7 and 14 above).

43. In those circumstances, the Court considers that the domestic courts fell short of their obligation under Article 6 § 1 to give sufficient reasons for their decisions.

(d) Conclusion

44. Having regard to the above issues, taken together and cumulatively, the Court finds that the applicant's right to a fair hearing within the meaning of Article 6 § 1 of the Convention was infringed. This conclusion stands notwithstanding the additional evidence submitted by the applicant (see paragraph 16 above), the use of which was contested by the Government (see paragraph 32 above). Therefore, the Court does not consider it necessary to examine the parties' submissions as regards this evidence. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. The applicant complained that the use of the files of the security services from the former regime in the lustration proceedings, as well as his inability to challenge effectively the findings of the national authorities, had violated his rights under Article 8 of the Convention. This Article provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

46. The Government argued that the interference with the applicant's rights under this head had been based on the 2012 Lustration Act. They further maintained that States enjoyed a wide margin of appreciation in lustration matters, and that the 2012 Lustration Act regulated lustration proceedings in order to balance the public interest *vis-à-vis* the private interest of an individual. Such proceedings had contained sufficient procedural safeguards against any arbitrary interference; in particular, they had provided the individual with the following rights: the right to legal representation; the right to appeal; and access to all the documents available in the file. Furthermore, the administrative courts had provided relevant and sufficient reasons for their decisions.

47. The applicant disagreed that the 2012 Lustration Act had protected the private interests of the person concerned. Referring to *Rotaru v. Romania* ([GC], no. 28341/95, § 57, ECHR 2000-V), he submitted that the 2012 Lustration Act had not specified the kind of information that could be recorded, the circumstances in which such information could be taken or the procedure to be followed, the limits on the age of the information held or the length of time for which it could be kept. The Government had failed to point to any legitimate aim that the Act had pursued.

B. The Court's assessment

48. The Court notes that the subject of the lustration proceedings against the applicant was his alleged collaboration with the security bodies from the former regime, to which he had allegedly provided information about third persons. Accordingly, this case is to be distinguished from *Rotaru* (ibid., §§ 47-63), which concerned the powers of intelligence services relating to the storage, use and release of information relating to an individual's private life. Furthermore, the Court considers that the procedural safeguards enjoyed by the applicant in the lustration proceedings lie at the heart of the application. Since the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8 (see *Turek v. Slovakia*, no. 57986/00, § 111, ECHR 2006-II (extracts)), the Court declares the complaint under this head admissible. However, having regard to its findings under Article 6 § 1 of the Convention (see paragraphs 33-44 above) and the parties' submissions, it finds no grounds that would justify a separate examination of the same set of facts under Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicant also complained of a lack of an effective remedy with respect to his grievances under Articles 6 and 8 of the Convention. He relied on Article 13 of the Convention, which reads 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.”

50. The applicant reiterated that the impugned proceedings had been an ineffective remedy for his complaints under Articles 6 and 8.

51. The Government contested the applicant’s arguments.

52. Having regard to its findings under Article 6 § 1, the Court declares the complaint under this head admissible, but considers that it is not necessary to examine whether there has also been a violation of Article 13 (see *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI, and *Ivanovski*, cited above, § 107).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed the equivalent of 9,100 euros (EUR) in respect of pecuniary damage for loss of income, that is for unpaid salary and other related allowances for six months, which he would have earned had his position not been terminated early as a result of the outcome of the lustration proceedings (see paragraph 15 above). He further claimed EUR 30,000 in respect of non-pecuniary damage for physical and mental suffering, fear and a feeling of defencelessness.

55. The Government contested these claims and submitted that they were unsubstantiated. They further alleged that there had been no causal link between the pecuniary damage claimed and the alleged violations.

56. The Court observes that an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of all the guarantees of Article 6 § 1 of the Convention. However, the Court cannot speculate as to what the outcome of the proceedings would have been had they been compatible with Article 6 § 1 of the Convention. In the present case the Court sees no causal link between the breach of Article 6 § 1 of the Convention and the alleged pecuniary damage. There is, therefore, no ground for an award under this head (see *Mitrinovski v. the former Yugoslav Republic of Macedonia*, no. 6899/12, § 56, 30 April 2015).

57. On the other hand, the Court considers that the applicant must have suffered distress and anxiety on account of the violation found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 2,400 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

58. The applicant also claimed EUR 34 for the costs and expenses incurred before the domestic courts (specifically for court fees) and EUR 266 for those incurred before the Court. This latter figure included legal fees for the applicant's representation before the Court, as well as mailing and translation expenses. The applicant provided an invoice regarding the legal fees and payment slips in support of the court fees, mailing and translation expenses.

59. The Government contested these claims as excessive and unsubstantiated.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). Regard being had to the documents in its possession and to its case-law, the Court awards in full the sum claimed under all heads, namely EUR 300, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 6 § 1 about the right to present effectively the case, the right to an oral hearing and to obtain a reasoned judgment, as well as the complaints under Articles 8 and 13 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the overall unfairness of the lustration proceedings;
3. *Holds* that it is not necessary to examine the complaints under Articles 8 and 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Ksenija Turković
President