



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

SECOND SECTION

CASE OF BASTYS v. LITHUANIA

(Application no. 80749/17)

JUDGMENT

Art 13 (+ Art 8) • Effective remedy • Reputation • Inability to challenge findings in intelligence note compensated by possibility to contest decision refusing security clearance on its basis • Remedy not used due to free resignation of Deputy Speaker without waiting for Speaker to adopt decision on his security clearance

STRASBOURG

4 February 2020

FINAL

04/06/2020

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

In the case of Bastys v. Lithuania,

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

Robert Spano, *President*,

Marko Bošnjak,

Valeriu Grițco,

Egidijus Kūris,

Arnfinn Bårdsen,

Darian Pavli,

Saadet Yüksel, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 7 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 80749/17) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Mindaugas Bastys (“the applicant”), on 21 November 2017.

2. The applicant was represented by Mr E. Losis, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms L. Urbaitė.

3. The applicant alleged that he had not had a possibility to defend himself against allegations made by the State Security Department in a document addressed to the Speaker of the Seimas, in violation of Article 13 of the Convention taken in conjunction with Article 8.

4. On 27 November 2018 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1965 and lives in Vilnius. He served as a member of the Seimas (the Lithuanian parliament) during the 2000-04, 2008-12 and 2012-16 parliamentary terms.

A. Refusal to issue the applicant with security clearance

6. In October 2016 the applicant was again elected as a member of the Seimas. In December 2016 the Seimas elected him as Deputy Speaker. As part of the standard procedure, the Speaker of the Seimas (hereinafter “the

Speaker”) asked the State Security Department (hereinafter “the SSD”) to assess whether the applicant could be issued with security clearance that would allow him to access classified information, including information categorised as “top secret” and constituting State secrets which required the highest level of protection.

7. The applicant consented to the screening. He filled in a questionnaire provided by the SSD and was interviewed by it twice (see paragraph 23 below).

8. On 8 March 2017 the SSD advised the Speaker not to issue the applicant with security clearance. In a note sent to the Speaker and to the applicant (hereinafter “the SSD note”), the SSD stated that there were grounds to doubt the applicant’s trustworthiness. The note referred in particular to his relationships with several individuals who had various links to Russia, including a former employee of the KGB, and whose activities were considered contrary to the national security interests of Lithuania, as well as individuals who had been accused or convicted of multiple crimes. According to the SSD, the applicant maintained personal relationships with the aforementioned individuals and had in the past fulfilled their various requests. The note stated that the applicant himself, in an interview with the SSD, had acknowledged that some of them might be able to put pressure on him. It further stated that when filling in the questionnaire the applicant had not disclosed that he knew some of these individuals and had failed to mention certain occasions when he had met them, which he had later claimed to have forgotten. The SSD therefore opposed granting him security clearance.

9. On 9 March 2017 the Speaker informed the applicant orally that he would not be issued with security clearance, and asked him to resign from the office of Deputy Speaker. On 10 March 2017 the applicant submitted his resignation in writing, which the Seimas approved the same day. He remained a member of the Seimas.

10. The contents of the SSD note were reported on by the media, and the Speaker made public comments on the issue.

11. On 14 March 2017 the applicant requested the SSD to provide him with the information on which it had based its findings, in order to be able to contest the SSD note before a court. On 28 March 2017 the SSD refused his request, stating that the note had been based in part on classified information and that the applicant did not have the right to access such information. The SSD also stated that the note had been only an interim document which could not be contested before a court.

12. On 14 and 31 March 2017 the applicant sent written requests to the Speaker to provide him with a copy of the Speaker’s decision refusing to issue the applicant with security clearance, in order to be able to contest that decision before a court. On 4 April 2017 the Speaker replied that the applicant did not, at the time, hold any office which required security

clearance and that therefore a decision to issue or refuse to issue him with such clearance could not be adopted.

B. Proceedings instituted by the applicant

13. On 6 April 2017 the applicant lodged a complaint against the Seimas and the SSD in the Vilnius Regional Administrative Court. He submitted that the conclusions in the SSD note had been unfounded, and he disputed the alleged nature of his relationships with the individuals mentioned in that note. Furthermore, he complained that the Speaker had not adopted a written decision on the refusal to issue security clearance. Lastly, the applicant submitted that the Speaker had made the SSD note public and had thereby seriously damaged the applicant's reputation as a politician. He asked the court to annul the SSD note and to order the Speaker to issue him with security clearance.

14. On 13 April 2017 the Vilnius Regional Administrative Court refused to examine the applicant's complaint. It stated that the SSD note had not created any legal consequences for the applicant because it had only been an interim document, whereas the final decision on whether to issue him with security clearance had to be made by the Speaker, not the SSD. In accordance with the case-law of the Supreme Administrative Court (see paragraph 37 below), such an interim document could not be contested before a court, but arguments against it could be presented when contesting the final decision refusing to issue security clearance. The court further stated that the applicant had applied for security clearance as a Deputy Speaker but had since resigned from that office and had not applied for security clearance on any other grounds. Accordingly, the Speaker's refusal to issue him with security clearance no longer created any legal consequences for him and thus could not be contested before a court either.

15. The applicant lodged an appeal against that decision. He argued that the SSD note had not been an interim document because it had contained a decision to oppose issuing him with security clearance. He also submitted that the refusal to examine his complaint had been contrary to the right of access to a court under Article 6 § 1 of the Convention and that it had denied him an effective remedy against possible abuse of office by the SSD.

16. On 14 June 2017 the Supreme Administrative Court dismissed the applicant's appeal. It reiterated that the SSD note had been an interim document which had not created any legal consequences for the applicant and thus could not be contested before a court. As for the complaint against the Speaker, the Supreme Administrative Court upheld the lower court's conclusion but adopted different reasoning. It emphasised that the administrative courts had the authority to examine decisions adopted by the Speaker only when those decisions constituted acts of public administration (see paragraph 35 below); it was for the claimant to demonstrate that the

contested acts fell within the scope of public administration. The Supreme Administrative Court pointed out that, in his claim, the applicant had not asked the courts to annul a decision refusing to issue him with security clearance, but had asked them to order the Speaker to issue him with such clearance. It ruled that the latter request did not concern acts of public administration and thus the administrative courts could not examine it.

C. Proceedings against the applicant

17. On 16 March 2017 the Seimas instructed the Seimas' Committee on National Security and Defence to conduct an inquiry to establish whether the applicant might pose a threat to national security and to assess whether there were grounds for his impeachment. The Committee concluded that the applicant maintained close relationships with former or current officials in the Russian secret services and therefore posed a threat to the national security of Lithuania.

18. On 6 June 2017 the Seimas decided to begin impeachment proceedings against the applicant and requested the Constitutional Court to examine whether the applicant had violated the Constitution by failing to disclose to the SSD his relationships with certain individuals (see paragraph 31 below). The applicant provided written submissions to the Constitutional Court in which he argued that he had properly disclosed all relevant relationships and that those relationships had not posed a threat to national security.

19. On 22 December 2017 the Constitutional Court held that the applicant had failed to disclose to the SSD his relationships with certain individuals and had attempted to obtain security clearance in bad faith. He had thereby breached his oath and grossly violated the Constitution.

20. On 13 March 2018 the Seimas in a majority vote decided against revoking the applicant's mandate as a member of the Seimas. However, on 15 March 2018 the applicant resigned from the office of member of the Seimas.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

21. Article 22 of the Constitution provides, in its relevant parts, as follows:

“Private life shall be inviolable.

...

The law and courts shall protect everyone from arbitrary or unlawful interference with his or her private and family life, as well as from encroachment upon his or her honour and dignity.”

22. Article 30 of the Constitution provides:

“A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.

Compensation for material and moral damage inflicted upon a person shall be established by law.”

B. Law on State and Service Secrets

23. Article 18 of the Law on State and Service Secrets lays down the procedure for assessing whether an individual may be issued with security clearance. The screening procedure begins after he or she fills in a questionnaire and consents to the screening (Article 18 § 2). The entity which carries out the screening may interview the individual, ask him or her to provide documents or additional written explanation and, in cases provided by law, conduct a polygraph test (Article 18 § 5).

24. Under Article 19 § 1, security clearance is issued by the head of the entity which manages the relevant classified information, after he or she has taken into consideration the results of the assessment carried out under Article 18.

25. Article 17 § 9 provides that decisions refusing to issue security clearance may be appealed against in accordance with the Law on Administrative Proceedings.

26. The Law on State and Service Secrets does not explicitly indicate whether the results of the screening may be made public.

C. Law on Administrative Proceedings

27. Article 17 § 1 (1) of the Law on Administrative Proceedings provides that the administrative courts examine cases concerning the lawfulness of the decisions, acts and omissions of the entities of State administration.

28. Article 18 § 2 provides that the administrative courts do not have competence to examine, *inter alia*, acts of the President, the Seimas, members of the Seimas, the Prime Minister or the Government.

29. Article 18 § 2 has been interpreted by the Constitutional Court and the Supreme Administrative Court as precluding the administrative courts from examining only such acts of the aforementioned institutions which concern their functions relating to State governance, but not acts which relate to public administration (see paragraphs 33 and 35 below).

D. Civil Code

30. Article 2.24 § 1 of the Civil Code provides that a person has the right to demand, in judicial proceedings, the retraction of disseminated statements

which insult his or her honour and dignity and are erroneous. He or she also has the right to compensation for pecuniary and non-pecuniary damage caused by the dissemination of such statements. Statements which have been disseminated are presumed to be erroneous unless the publisher can prove the opposite to be true.

E. Law on the Constitutional Court

31. Article 73 § 4 of the Law on the Constitutional Court provides that the Constitutional Court has the authority to examine whether acts of members of the Seimas or State officials against whom impeachment proceedings have been launched violated the Constitution. Article 74 provides that a request for such examination is submitted by the Seimas.

F. Case-law of the Constitutional Court

32. In a ruling of 7 July 2011 the Constitutional Court emphasised the importance of trustworthiness and loyalty to the State when handling classified information:

“According to the Constitution, individuals who hold or seek to hold a position in the civil service relating to the use of classified information or its protection, are subject to especially high standards of trustworthiness and loyalty to the State of Lithuania. [Their] trustworthiness and loyalty must be assessed by taking account of all important circumstances characterising the person, including his or her activities, committed violations of the law, his or her professional and personal qualities, reputation, and relationships with other persons. Therefore, the legislature enjoys a broad discretion when regulating the protection of State secrets and official secrets, *inter alia*, when establishing the criteria for determining the trustworthiness and loyalty of persons [who seek to work with classified information], as well as the procedures for screening of such persons. When implementing the said discretion, the legislature must act in accordance with the norms and principles enshrined in the Constitution, *inter alia*, the constitutional principle of a State under the rule of law.”

33. In a ruling of 13 May 2010 the Constitutional Court held that the provision of the Law on Administrative Proceedings, under which the administrative courts did not have the competence to examine, *inter alia*, acts of the President or the Government (see paragraph 28 above), concerned only acts relating to functions of State governance:

“The provision that ‘the administrative courts do not have competence to examine ... acts of the President ... or the Government’ ... is to be construed as meaning that the subject matter of a case before an administrative court may not be such acts of the President or the Government which concern functions of State governance.

It must be noted that, in addition to the functions of State governance, [the President and the Government] also perform other functions, *inter alia*, those concerning internal administration. Furthermore, acts of the President or the Government may violate individuals’ rights or freedoms and may cause damage.

...

Accordingly, the provision that ‘the administrative courts do not have competence to examine ... acts of the President ... or the Government’ ... does not preclude an individual who believes that his or her rights and freedoms have been violated by acts or omissions of the President or the Government from exercising his or her right of access to a court, which is entrenched in Article 30 § 1 of the Constitution.”

34. In a ruling of 15 May 2007 the Constitutional Court held that judges examining a case had the right to access classified information when that was necessary for the examination of the case:

“[The Constitution] ... enshrines the duty of courts to examine cases fairly and objectively and to adopt reasoned and substantiated decisions. Therefore, there cannot be a situation where a court is not able to familiarise itself with case-file materials that contain [classified] information. In its ruling of 19 December 1996 the Constitutional Court held that ‘the right of a judge who examines a case to familiarise himself or herself with [classified] information is based on [Articles 109 and 117 of the Constitution]’ and that ‘the right of a judge to familiarise himself or herself with [classified] information that is necessary for the examination of a case stems from the function of the court as a State institution designed to implement justice ...”

G. Case-law of the Supreme Administrative Court

35. In a decision of 27 January 2012 in case no. AS⁴⁴²-21/2012 the Supreme Administrative Court, relying on the case-law of the Constitutional Court (see paragraph 33 above), held that the Law on Administrative Proceedings (see paragraph 28 above) did not preclude the administrative courts from examining decisions adopted by the Speaker concerning security clearance:

“The decision ... of the Speaker [to revoke previously issued security clearance] was adopted in accordance with the Law on State and Service Secrets, as a decision of an entity which manages classified information ... [T]he Law on State and Service Secrets provides that decisions revoking security clearance can be appealed against before the courts. That Law does not provide for any exceptions in cases where the decision revoking security clearance has been adopted by the Speaker. Accordingly, the lawfulness of the Speaker’s decision revoking the claimant’s security clearance can be examined by a court.

The Law on Administrative Proceedings ... provides, *inter alia*, that the administrative courts do not have competence to examine acts of the Seimas and of members of the Seimas. This provision must be understood as precluding the courts from interfering with the Seimas’ legislative function and other functions of State governance [as defined in the Constitution], as well as the functions which members of the Seimas perform as representatives of the nation. However, the [impugned] decision of the Speaker was not adopted in the exercise of the functions of the Seimas or of a member of the Seimas as a representative of the nation. That decision was merely designed to fulfil the administrative obligations of the Speaker, set out in the Law on State and Service Secrets and concerning the issuance of security clearance to a particular individual or the revocation thereof. [The Law on Administrative Proceedings] does not preclude the administrative courts from examining the lawfulness of such decisions adopted by the Speaker.”

36. In a decision of 25 September 2008 in case no. AS⁵²⁵-540/2008 and a decision of 22 October 2010 in case no. AS¹⁴³-560/2010, the Supreme Administrative Court held that decisions or acts which did not create any legal consequences could not be examined by the administrative courts:

“Cases before the administrative courts may only concern decisions, acts or omissions of public or internal administrative entities which objectively create legal consequences for the individuals concerned (breach their rights or legitimate interests). If it is clear [when a complaint is lodged] that the decision or act which is being contested does not create any legal consequences and thus cannot be the subject of a case before the administrative courts, the court must refuse to examine it. If the court examined a complaint against acts which did not create legal consequences, it would not be defending the claimant’s rights ... and the proceedings would be essentially meaningless.”

37. In a decision of 6 April 2012 in case no. AS¹⁴³-241/2012 the Supreme Administrative Court held that arguments against interim documents adopted during the screening procedure could be submitted when the final decision on security clearance was contested:

“In the present case the State Security Department ... asked the Ministry of the Interior to revoke the claimant’s security clearance, the Central Special Expert Commission ... recommended the Minister of the Interior [to do so], and the Minister of the Interior ... adopted a decision revoking the security clearance. It is clear that the request from the State Security Department and the recommendation of the Central Special Expert Commission were procedural documents (part of the procedure for revoking the claimant’s security clearance) which did not determine the claimant’s rights and obligations. Arguments against those procedural documents (but not separate claims) may be submitted when contesting the final decision adopted by the Minister of the Interior ... and it is then possible to examine those documents and assess their impact on the lawfulness of the final decision. Accordingly, the request from the State Security Department and the recommendation of the Central Special Expert Commission in this case did not create legal consequences for the claimant and thus may not be contested before an administrative court in accordance with the Law on Administrative Proceedings ...”

38. In a decision of 20 December 2012 in case no. A-858-2894/2012 the Supreme Administrative Court examined a complaint by a member of the Seimas against the decision of the Speaker revoking his security clearance. That decision had been taken following a finding by the SSD that the claimant’s actions, which had been found by the Constitutional Court to constitute a breach of his oath and a gross violation of the Constitution, had given grounds to doubt his trustworthiness. The Supreme Administrative Court examined the grounds provided in the Speaker’s decision and in the SSD’s findings. It found them to be sufficient to cast doubt on the claimant’s trustworthiness as defined in the Law on State and Service Secrets, and upheld the Speaker’s decision.

39. On several occasions the Supreme Administrative Court examined complaints lodged by various officials against the decisions adopted by different ministries refusing to issue them with security clearance or

revoking a previously issued security clearance; the decisions had been taken following the findings of the SSD or other relevant public entities. The court examined whether the information provided by those entities, including classified information, constituted sufficient grounds to doubt the claimants' trustworthiness and to refuse or revoke their security clearance. In some cases the Supreme Administrative Court ruled that the decisions adopted by the ministries had been lawful and based on sufficient grounds (decision of 4 October 2010 in case no. A-662-788/2010, decision of 14 June 2012 in case no. A-520-2360/2012, decision of 5 December 2012 in case no. A-662-3221/2012, decision of 8 September 2014 in case no. A-552-775/2014, and decision of 5 February 2015 in case no. A-148-146/2015). In other cases the court ruled that the impugned decisions had not been adopted in accordance with the law or had not been based on sufficient grounds, and annulled them (decision of 23 September 2013 in case no. A-492-939/2013, and decision of 27 October 2014 in case no. A-146-1606/2014).

H. Case-law of the Supreme Court

40. In a decision of 6 November 2006 in civil case no. 3K-3-569/2006 and a decision of 13 November 2007 in civil case no. 3K-3-488/2007, the Supreme Court held that a person's honour and dignity could be defended by the retraction of erroneous statements, or by a court declaration to the effect that such statements were erroneous and insulted the person's honour and dignity, or by an award of compensation in respect of pecuniary and non-pecuniary damage. These remedies are independent of one another.

41. In a decision of 12 November 2003 in civil case no. 3K-3-108/2003 the Supreme Court examined a complaint lodged by a private company against the SSD. The claimant argued that the SSD had published on its website erroneous statements about the claimant which had damaged its reputation. The Supreme Court held that the SSD had failed to provide sufficient evidence to substantiate the impugned statements and ordered it to retract them.

42. In a decision of 8 August 2011 in civil case no. 3K-3-340/2011 the Supreme Court examined a complaint lodged by several claimants against the SSD and a newspaper. The claimants argued that, in an interview published in the newspaper, the director of the SSD had made erroneous and insulting statements about the claimants. The Supreme Court examined the information provided by the SSD in support of the impugned statements and found it to be insufficient to prove their veracity. The court also held that, since the newspaper had merely printed the director's statements without altering them in any way, it was the SSD and not the newspaper which had to be held liable. The SSD was ordered to retract the impugned statements.

43. In a decision of 12 December 2018 in civil case no. e3K-7-471/2018 the Supreme Court examined a complaint lodged by a private company against the SSD. The claimant argued that a note prepared by the SSD had erroneously alleged that the claimant had engaged in unlawful activities; that note had been presented to the Seimas' Committee on National Security and Defence, which had released it to the public, thereby damaging the claimant's reputation. The first-instance and appellate courts refused to accept the complaint for examination, holding that the SSD note had been drafted in accordance with the Law on Operational Activities and that complaints concerning operational activities had to be lodged with the Seimas' Ombudsperson. The Supreme Court quashed those decisions and remitted the case for examination to the first-instance court. It held that the Seimas' Ombudsperson did not have the authority to adopt binding decisions and that therefore a complaint to the Ombudsperson did not constitute an effective remedy with regard to the right to reputation. The Supreme Court stated that the right of access to a court required that the complaint concerning the alleged damage to the claimant's reputation by the SSD be examined on the merits by the courts.

I. Other relevant case-law

44. In a decision of 15 March 2019 in civil case no. e2-1021-433/2019 the Vilnius District Court examined a complaint lodged against the Seimas. The claimant submitted that the Seimas' Committee on National Security and Defence had made public statements alleging that he had carried out various unlawful activities; those statements had been erroneous and had insulted his honour and dignity. The court found for the claimant. It examined the material on the basis of which the Committee had made the impugned statements and considered that it was insufficient to prove their veracity. The court declared the statements to be erroneous.

45. In a decision of 19 April 2019 in civil case no. 2-783-1077/2019 the Vilnius District Court examined a complaint lodged against the SSD. The claimant submitted that the SSD had provided a note to the Seimas' Committee on National Security and Defence in which it alleged that he had carried out various unlawful activities; those statements had been erroneous and had insulted his honour and dignity. The court found for the claimant. It held that, even though the SSD had conveyed the impugned statements only to the Committee and not to any other persons, this had nonetheless constituted "dissemination" within the meaning of Article 2.24 § 1 of the Civil Code (see paragraph 30 above), in particular since the SSD had not taken any measures to prevent the Committee from making the statements public. The court examined the material on the basis of which the SSD had made the impugned statements and considered that it was insufficient to prove their veracity. It declared the statements to be erroneous.

46. At the time of the Government's last submissions to the Court (23 July 2019), the aforementioned two decisions of the Vilnius District Court were not yet final.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

47. The applicant complained that he had not had a possibility to defend himself against the allegations set out in the SSD note. He relied on Article 6 § 1, Article 8 and Article 13 of the Convention. The Court, as the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined under Article 13 of the Convention taken in conjunction with Article 8. Those provisions read as follows:

Article 8

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

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

Article 13

"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. Admissibility

48. The Government submitted that the applicant had had at his disposal effective domestic remedies in respect of his complaint concerning his right to reputation (see paragraphs 54-60 below). They therefore argued that the application should be declared inadmissible for failure to exhaust domestic remedies.

49. The applicant contended that none of the remedies suggested by the Government had been available and effective in his case (see paragraphs 61-64 below).

50. The Court observes that the applicant complained about the lack of a possibility to defend himself against the allegations presented in the SSD note. It has held that the applicant's complaint falls to be examined under Article 13 of the Convention taken in conjunction with Article 8 (see

paragraph 47 above). In the Court's view, the Government's submissions concerning the remedies which the applicant could have used to protect his right to reputation do not concern the admissibility of the complaint under Article 13 taken in conjunction with Article 8. It is therefore more appropriate to address them when examining the merits of that complaint.

51. The Court further notes that Article 13 applies only where an individual has an "arguable complaint" under the Convention (see, among many other authorities, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 268, 15 December 2016). Whether a claim of a violation forming the basis of a complaint under Article 13 is arguable has to be determined in each case, in the light of the particular facts and the nature of the legal issue or issues raised (see *M.A. v. Cyprus*, no. 41872/10, § 117, ECHR 2013 (extracts), and the cases cited therein).

52. In the present case, the applicant's complaint concerned the SSD note adopted during the screening for security clearance, in which it was alleged that his relationships with certain individuals and the failure to disclose those relationships gave grounds to doubt his trustworthiness (see paragraph 8 above). Following the adoption of that note, the Speaker refused to issue the applicant with security clearance, and the applicant resigned from the office of a Deputy Speaker (see paragraph 9 above). In the Court's view, the nature and purpose of the screening procedure, and the submissions which the applicant made before the domestic authorities (see paragraph 13 above) may raise doubts as to whether he put forward an "arguable complaint" under Article 8 of the Convention. At the same time, it observes that the Government did not make any submissions to that effect. In any event, the Court considers that, in the circumstances of the present case, that question should be joined to the merits. It will therefore proceed on the assumption that Article 13 of the Convention is applicable.

53. Lastly, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

54. The Government submitted that several effective domestic remedies had been available to the applicant but that he had failed to avail himself of them.

55. Firstly, they argued that there was well-established case-law of the administrative courts relating to decisions by various public authorities refusing to issue security clearance or revoking a previously issued security

clearance. In accordance with domestic law, decisions taken by State institutions on the issuance of security clearance could be contested before the administrative courts (see paragraph 25 above), and the Supreme Administrative Court had explicitly acknowledged that this included decisions taken by the Speaker (see paragraphs 35 and 38 above). Furthermore, when examining such decisions, the courts also assessed the accuracy of the information on which those decisions had been based, including classified information (see paragraphs 34 and 37 above).

56. With regard to the applicant's case, the Government contended that the dismissal of his complaint to the administrative courts had resulted from his own actions. In particular, the applicant had resigned from the office of Deputy Speaker before the Speaker had adopted any decision concerning his security clearance (see paragraph 9 above). After his resignation, he had no longer occupied any position in which security clearance had been necessary and therefore the Speaker had not been required to adopt any such decision (see paragraph 12 above). However, if he had not resigned and if the Speaker had adopted a decision refusing to issue security clearance, the administrative courts could have examined that decision and the SSD note on which it had been based, as demonstrated by the existing case-law (see paragraphs 37-39 above).

57. Secondly, the Government submitted that a civil-law remedy had been available to the applicant in order to defend his reputation. While complaints against decisions refusing to issue security clearance had to be lodged before the administrative courts, the courts of general jurisdiction had the authority to examine complaints about erroneous public statements which insulted the person's honour and dignity. In proceedings before the courts of general jurisdiction, claimants could obtain different types of redress in respect of their honour and dignity (see paragraphs 30 and 40 above). The Government submitted that when examining such claims the domestic courts relied on the principles established in the Court's case-law under Articles 8 and 10 of the Convention.

58. The Government referred to several cases in which the courts of general jurisdiction had examined complaints lodged against the SSD (see paragraphs 41-45 above).

59. They also submitted that the civil-law remedy was still available to the applicant because claims arising from violations of personal non-pecuniary rights such as honour and dignity were not subject to a statute of limitations.

60. Lastly, the Government contended that during the proceedings before the Constitutional Court the applicant had been able to contest "essentially the same circumstances" as those described in the SSD note (see paragraphs 18 and 19 above).

(b) The applicant

61. The applicant firstly contended that a complaint before the administrative courts had not been an effective remedy in his case. He submitted that under domestic law it was mandatory for the Speaker to adopt a decision refusing to issue security clearance. However, the Speaker had deliberately omitted to do so and had thus deprived the applicant of the possibility of lodging a successful complaint before a court. Furthermore, in the applicant's view, even if the Speaker had adopted a decision refusing to issue him with security clearance, Article 18 § 2 of the Law on Administrative Proceedings (see paragraph 28 above) would have nonetheless precluded the courts from examining that decision. He submitted that there was a contradiction between that Law and the Law on State and Service Secrets (see paragraph 25 above).

62. The applicant further submitted that the SSD note had created legal consequences for him: the information contained therein had become public, which had damaged his reputation and had led to the proceedings for his impeachment (see paragraphs 17-20 above). He argued that the inability to contest the SSD note before a court independently of the final decision refusing to issue security clearance constituted a "systemic legal problem".

63. With regard to the civil-law remedy, the applicant submitted that the courts of general jurisdiction did not have the authority to examine documents adopted by the SSD during the screening procedure because, in accordance with the Law on State and Service Secrets, all such complaints had to be lodged before the administrative courts (see paragraph 25 above). He therefore argued that the cases referred to by the Government in which the courts had examined public statements made by the SSD online and in a newspaper (see paragraphs 41 and 42 above) were not relevant to his case. He also contended that before the adoption of the Supreme Court's decision of 12 December 2018 (see paragraph 43 above) complaints against the SSD relating to screening for security clearance had been routinely declared inadmissible by the courts of general jurisdiction.

64. Lastly, the applicant submitted that the proceedings before the Constitutional Court (see paragraphs 18, 19 and 60 above) had not provided him with an effective opportunity to challenge the findings of the SSD because that court had refused to consider nearly all of his arguments.

2. The Court's assessment

(a) General principles

65. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy by which to complain of a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy

allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention, but the remedy must in any event be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the State. In certain circumstances, the aggregate of remedies provided for under domestic law may satisfy the requirements of Article 13 (see *De Tommaso v. Italy* [GC], no. 43395/09, § 179, 23 February 2017, and the cases cited therein).

66. The "effectiveness" of a "remedy" within the meaning of Article 13 of the Convention does not depend on the certainty of a favourable outcome for the applicant (see *Khlaifia and Others*, cited above, § 268, and the cases cited therein).

(b) Application of the above principles in the present case

67. The Government submitted that three different domestic remedies had been available to the applicant in order to defend his right to reputation: proceedings before the administrative courts (see paragraphs 55 and 56 above), proceedings before the courts of general jurisdiction (see paragraphs 57-59 above) and proceedings before the Constitutional Court (see paragraph 60 above). The Court will examine whether those remedies could be considered effective in the circumstances of the applicant's case.

(i) Proceedings before the Constitutional Court

68. In the present case the Constitutional Court examined whether the applicant had violated the Constitution by not disclosing his relationships with certain individuals to the SSD during the screening procedure (see paragraphs 18 and 19 above). The Government argued that in those proceedings the applicant had been able to challenge essentially the same allegations that had been set out in the impugned SSD note (see paragraph 60 above) and the Court is satisfied that it was indeed so (see paragraph 18 above).

69. However, it points out that, in accordance with domestic law, only the Seimas has the authority to request the Constitutional Court to examine whether a member of the Seimas has violated the Constitution (see paragraph 31 above). Therefore, as those proceedings were not directly accessible to the applicant, they did not constitute an effective remedy for the purposes of the Convention (see *Tănase v. Moldova* [GC], no. 7/08, § 122, ECHR 2010).

(ii) Proceedings before the courts of general jurisdiction

70. The Government submitted that it had been open to the applicant to institute civil proceedings against the SSD before the courts of general jurisdiction in order to protect his reputation (see paragraphs 57-59 above).

71. In accordance with domestic law, the courts of general jurisdiction have the authority to examine whether publicly disseminated statements are erroneous and insult the claimant's honour and dignity. They can declare the impugned statements erroneous, order their retraction, and award claimants compensation in respect of pecuniary and non-pecuniary damage (see paragraphs 30 and 40 above).

72. In this connection the Court reiterates that the existence of a remedy must be sufficiently certain not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness (see, among many other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II). It is incumbent on the respondent Government to illustrate the practical effectiveness of the remedies they suggest in the particular circumstances in issue with examples from the case-law of the relevant domestic courts or decisions of the administrative authorities (see *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, § 50, 10 March 2015).

73. In the present case the Government referred firstly to two cases decided by the Supreme Court in which statements made by the SSD on its website and during a newspaper interview had been declared to be erroneous (see paragraphs 41 and 42 above). However, the applicant did not complain about any statements made in the media. His complaint concerned allegations contained in the SSD note which had been adopted during the screening for security clearance and presented to the Speaker. Accordingly, the Court does not find the aforementioned cases to be sufficiently similar to the applicant's situation.

74. The Government also referred to the Supreme Court's decision of 12 December 2018 in which that court, overturning the decisions of the lower courts, held that a complaint concerning the claimant's reputation, which had allegedly been violated by the SSD in a document issued after the screening procedure and presented to a committee of the Seimas, had to be examined by the courts on the merits (see paragraph 43 above). The applicant argued that, prior to that decision of the Supreme Court, the courts of general jurisdiction had declined to examine similar complaints against the SSD (see paragraph 63 above), and the Government have not provided any case-law examples to refute that argument. The Court has not been made aware of any relevant domestic decisions dating back to the period before the application was lodged (see paragraph 1 above, and *Voynov v. Russia*, no. 39747/10, § 44, 3 July 2018). Furthermore, it appears that at the time when the last observations in the present case were submitted (23 July 2019), no domestic cases concerning similar complaints had been concluded by final decisions (see paragraphs 46 and 58 above).

75. Accordingly, the Court finds that it has not been demonstrated that the possibility of lodging a civil claim against the SSD before the courts of general jurisdiction was sufficiently certain in practice in the circumstances of the applicant's case (see, *mutatis mutandis*, *Voynov*, cited above, § 45, and the case-law cited therein).

(iii) Proceedings before the administrative courts

76. The applicant instituted proceedings before the administrative courts, asking them to annul the SSD note and to order the Speaker to issue him with security clearance (see paragraph 13 above). The courts refused to examine his complaint, finding that the SSD note had been an interim document which had not created any legal consequences, and that a request to order the Speaker to issue security clearance did not concern acts of public administration (see paragraphs 14 and 16 above).

77. The Government argued that the applicant had failed to use the remedy properly. They submitted that decisions refusing to issue security clearance could be challenged before the administrative courts, but that the applicant had resigned from the office of Deputy Speaker before the Speaker had adopted such a decision, and for that reason the courts had been unable to examine his complaint (see paragraphs 55 and 56 above).

78. The Court observes that, in accordance with the Law on State and Service Secrets, decisions refusing to issue security clearance may be appealed against to the administrative courts (see paragraph 25 above). Although the Law on Administrative Proceedings provides that those courts do not have competence to examine, *inter alia*, acts of the Seimas and of members of the Seimas (see paragraph 28 above), the Supreme Administrative Court ruled that that provision applied only to acts which exercised the functions of State governance. In a case concerning a decision by the Speaker revoking security clearance, the Supreme Administrative Court held that the decision in question had merely been designed to fulfil the Speaker's administrative obligations and thus could be examined by the administrative courts (see paragraph 35 above). When reaching this conclusion, the Supreme Administrative Court relied on the previous case-law of the Constitutional Court (see paragraph 33 above).

79. The Court notes, in particular, the Supreme Administrative Court's decision of 20 December 2012 in which the latter examined the decision adopted by the Speaker to revoke the security clearance of a member of the Seimas (see paragraph 38 above). It also takes note of a number of cases in which the administrative courts examined decisions adopted by various ministries refusing or revoking security clearance, and in some cases annulled the impugned decisions (see paragraph 39 above). In the Court's view, those cases are sufficiently similar to the applicant's situation, and it is therefore satisfied that a decision of the Speaker refusing to issue security

clearance to a Deputy Speaker could be examined by the administrative courts.

80. Furthermore, in accordance with the case-law of the Supreme Administrative Court, the findings presented in interim documents adopted during the screening procedure, such as the impugned SSD note, can be assessed when examining the final decision refusing to issue or revoking security clearance (see paragraphs 37-39 above). In such proceedings, courts have the right to access classified information (see paragraph 34 above; see also *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 152 and 161, 19 September 2017). They examine whether the information on which the impugned decision was based, including the information contained in interim documents, constitutes sufficient grounds for refusing or revoking the claimant's security clearance, and have the authority to annul those decisions (see paragraph 39 above). Accordingly, the Court is satisfied that lodging a complaint before the administrative courts against the decision refusing to issue security clearance offered the applicant a sufficient possibility of presenting arguments against the findings contained in an interim document adopted by the SSD and of having those arguments duly considered by the courts.

81. The applicant argued, however, that the Speaker had deliberately omitted to adopt a decision refusing to issue him with security clearance and that he had thereby been precluded from having access to a court (see paragraph 61 above).

82. The parties have not indicated to the Court any provision of domestic law which would explicitly oblige the Speaker, following the screening carried out by the SSD, to adopt a decision on whether to issue or refuse to issue security clearance to a Deputy Speaker. Nonetheless, they were in agreement that such an obligation existed (see paragraphs 56 and 61 above). Accordingly, the Court has no reason to doubt that, had the applicant remained in the office of Deputy Speaker, the Speaker would have been required to adopt a decision refusing to issue him with security clearance.

83. However, the applicant resigned from the office of Deputy Speaker after the Speaker had orally asked him to do so (see paragraph 9 above). He did not argue that complying with the Speaker's request had been mandatory for him, or that he had been under an obligation to resign on any other grounds. Furthermore, the Court has no reason to believe that at the time of his resignation the applicant was not aware that no official decision refusing to issue him with security clearance had been adopted. It therefore considers that he chose of his own free will to resign from the office of Deputy Speaker without waiting for the Speaker to adopt a decision on his security clearance.

84. The Court takes note of the position expressed at the domestic level and in the Government's observations, according to which, after the

applicant resigned and no longer occupied any position in which security clearance was required, there were no legal grounds for the Speaker to adopt a decision on issuing or refusing to issue him with security clearance (see paragraphs 12 and 56 above).

85. In the Court's view, the conditions subject to which the domestic remedy in question, namely, instituting proceedings before the administrative courts, was available to the applicant – that is to say, that he had to remain in the office of Deputy Speaker at least until the Speaker adopted an official decision refusing to issue him with security clearance – did not unjustifiably hinder the exercise of that remedy so as to make it ineffective (see *De Tommaso*, cited above, § 179).

86. Having found that an effective remedy was available to the applicant to challenge the allegations against him contained in the SSD note, the Court considers that it is not necessary to make a separate finding on whether he had an “arguable complaint” under Article 8 of the Convention (see paragraph 52 above and, *mutatis mutandis*, *Tabbakh v. the United Kingdom* (dec.), no. 40945/09, §§ 32-34, 21 February 2012).

(iv) Conclusion

87. In the light of the foregoing considerations, the Court concludes that there has been no violation of Article 13 of the Convention taken in conjunction with Article 8.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the question of whether the applicant had an “arguable complaint” under Article 8 of the Convention;
2. *Declares* the application admissible;
3. *Holds* that there has been no violation of Article 13 of the Convention taken in conjunction with Article 8;
4. *Holds* that, in the light of the finding of no violation of Article 13 of the Convention, it is not necessary to make a separate finding on whether the applicant had an “arguable complaint” under Article 8.

Done in English, and notified in writing on 4 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President