



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

SECOND SECTION

CASE OF UAB BRAITIN v. LITHUANIA

(Application no. 13863/19)

JUDGMENT

Art 6 § 1 (civil) • Administrative proceedings concerning refusal on national security grounds to issue applicant company with permit to acquire a commercial real estate management company • Refusal based only partly on non-disclosed classified information of no apparent decisive value • Applicant company could effectively participate in proceedings • Due exercise by administrative courts of powers of scrutiny, giving reasons for decisions with regard to specific case-circumstances • Restrictions on rights to adversarial proceedings and equality of arms offset in such a manner that fair balance between parties not affected to such an extent as to impair very essence of right to a fair hearing

STRASBOURG

13 June 2023

FINAL

13/09/2023

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

In the case of UAB Braitin v. Lithuania,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 13863/19) 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 company registered in Lithuania, UAB Lewben Investment Management, which later changed its name to UAB Braitin (see paragraph 38 below) (“the applicant company”), on 4 March 2019;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaints concerning the applicant company’s right to a fair hearing and right to protection of its reputation and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 9 May 2023,

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

INTRODUCTION

1. The case mainly concerns the applicant company’s complaint, under Article 6 § 1 of the Convention, that it did not have a fair hearing during administrative court proceedings in which an administrative decision refusing it permission to acquire a commercial real estate management company was upheld.

THE FACTS

2. The applicant company is registered in Vilnius. It was represented by Mr R. Audzevičius, a lawyer practising in Vilnius. According to an operating licence issued by the Bank of Lithuania in November 2015 under its former name of Lewben Investment Management, the applicant company was authorised to manage collective investment schemes.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 16 August 2017 the applicant company asked the Commission for Assessment of Compliance of Potential Participants with National Security Interests (*Potencialių dalyvių atitikties nacionalinio saugumo interesams įvertinimo komisija* – hereinafter “the Commission”) to assess its compliance with national security interests. It intended to acquire an investment company registered in Vilnius, UAB Prosperus Real Estate Fund II, which in February 2017 had been issued a licence by the Bank of Lithuania to engage in investment activity. The applicant company noted that 100% of its shares belonged to a private individual, R.K..

6. On 29 August 2017 the Chancellery of the Government (hereinafter “the Chancellery”) asked a number of State authorities whether they had any relevant information regarding the applicant company, but they replied in the negative. On 6 September 2017 the State Security Department (hereinafter “the SSD”) asked the Commission to postpone examination of the applicant company’s request so that it could provide it with classified information about the applicant company.

7. On 21 September 2017, by protocol decision no. NS-41, the Commission held, with ten members voting in favour and one member abstaining, “on the basis of information provided by competent State authorities”, that the applicant company’s sole shareholder “had connections” with individuals (*asmenimis*) who had links to institutions or persons (*institucijomis ar tų valstybių asmenimis*) of States not belonging to the European Union (EU) or the North Atlantic Treaty Organisation (NATO). This meant that the condition set out in Article 7 § 10 (3) of the Law on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security (hereinafter “the Law on Enterprises and Facilities of Strategic Importance”) had not been complied with (see paragraph 34 below).

On 22 September 2017 a copy of that protocol decision was sent to the applicant company.

I. PROCEEDINGS BEFORE THE VILNIUS REGIONAL ADMINISTRATIVE COURT

8. The applicant company appealed against the Commission’s protocol decision, arguing, among other things, that the decision did not state on what evidence or facts it was based.

9. By a ruling of 25 October 2017 the Vilnius Regional Administrative Court included the SSD in the proceedings as a third party. It also asked the SSD to provide the court with a response to the applicant company’s appeal, as well as all material related to the dispute.

10. In its response of 16 November 2017, the SSD stated that the Commission's protocol decision was reasoned; it was also supported by public and classified material which it had provided to the Commission.

11. On 21 November 2017 the SSD provided the Vilnius Regional Administrative Court panel (*tik byla nagrinėsiančiai kolegijai*) which was to hear the case regarding the Commission's protocol decision with twelve pages of documents marked either "secret" (*slaptai*) or "confidential" (*konfidencialiai*).

12. On 11 December 2017, in reply to the Vilnius Regional Administrative Court's request of 25 October 2017, the SSD also provided fifty-nine pages of publicly accessible information in connection with the applicant company's complaint regarding the lawfulness and reasonableness of the Commission's protocol decision. Those documents included the translation into Lithuanian of various articles by the Belarusian and Latvian press and Euobserver.com, written in Russian and English, regarding two businesspeople, A.O. and J.Č. It appeared that A.O. had been arrested in Belarus pending criminal proceedings, while J.Č., as well as some of his companies, had been under EU sanctions pursuant to EU Regulation no. 265/2012 of 23 March 2012, for having provided financial support, via his company, to the Lukashenko regime. A.O. and J.Č. had also been mentioned in the Belarusian news in connection with some business operations linked to the Belarusian State; J.Č. was a board member of the President's Sports Club in Belarus, which was headed by Mr Dmitry Lukashenko, Mr Aleksandr Lukashenko's son. The President's Sports Club had been trading in the Russian Federation, with transactions in 2015 amounting to billions of Russian roubles.

13. On 13 December 2017 the Vilnius Regional Administrative Court asked the SSD whether it would consider declassifying the documents added to the case file, but on 10 January 2018 the SSD responded that the reasons for keeping the documents classified remained and that they therefore could not be declassified.

14. In its response to the applicant company's appeal, the Chancellery, acting on the behalf of the Commission, stated that the latter had adopted its protocol decision on the basis of information provided in the SSD's report of 20 September 2017 marked "classified" (*slaptai*), that information having been presented to the members of the Commission during its hearing of 21 September 2017. The Chancellery also stated that the information in the SSD's report confirmed that the applicant company's sole shareholder had links to individuals from non-EU and non-NATO countries. Furthermore, given that the Commission in its hearings always examined classified (*įslaptinta*) information, all of its members had permission to work with and see information marked "classified" (*slaptai*), and its hearings were not public (point 23 of the Rules of the Commission). The Commission would not invite to its hearings either persons submitting requests for authorisation,

or their representatives or third parties. Accordingly, the applicant company was not correct in arguing that the Commission had not provided it with an opportunity to explain itself. Lastly, given that the information constituting State secrets provided in the SSD's report of 20 September 2017 was classified and not public, the Commission would not be able to explain in any more detail the reasons and factual circumstances behind its decision in its response to the applicant company's appeal. For objective reasons, the Commission did not have right to provide more comprehensive information on what it had based the protocol decision. The Chancellery considered that the Commission's decision had been reasonable.

The Chancellery also provided the court with twenty-eight pages of material relevant to the case, none of which contained information constituting State or official secrets. It appears that the response was given to the applicant company in accordance with the rules of administrative proceedings.

15. On 19 March 2018 the Baltic News Service, a news agency in Lithuania, made public information regarding the SSD having blocked the applicant company's intention to acquire Prosperus Real Estate Fund II, the latter having intended to invest in buildings situated near the Lithuanian *Seimas* (Parliament). A representative of the SSD confirmed to the press that a negative decision had been adopted by the Commission in respect of the applicant company based on the public and classified material it had provided, and that the SSD considered the Commission's decision to be reasonable. The representative of the SSD also stated that it was relations with individuals from non-EU and non-NATO countries that posed a risk to national security. Lastly, the article quoted the applicant company's representative, who observed that the company was contesting the Commission's decision in court. She did not respond to the question whether the Lewben group of companies had connections which caused the State institutions to consider that they posed risks to national security.

16. According to the hearing records provided by the Government, the Vilnius Regional Administrative Court held oral and closed (*uždari*) hearings on 5 February, 8 March and 27 March 2018, with the participation of the applicant company's lawyers and representatives of the Commission, the Chancellery and the SSD (one of the members of the Commission). During the proceedings a number of witnesses – nine members of the Commission – were examined by the applicant company's lawyers. The sole shareholder of the applicant company, R.K., was also examined and confirmed that "she had seen Belarusian citizens J.Č. and A.O., the latter ... at a private party ... outside ... Lithuania". R.K. explained, however, that she had no personal connection with those two individuals.

As stated in the applicant company's lawyers' pleadings, during the last court hearing on 27 March 2018, "they could guess" (*mes galime spėti*) that the SSD was of the view that R.K. had dangerous connections with persons

listed “in the material provided”, namely Belarusian citizens A.O, D.L., A.K. and J.Č. Yet, in the view of those lawyers, the SSD had not proved that any of those individuals posed any kind of clear and present danger to national security because, among other things, EU sanctions with regard to some of them had been lifted.

17. On 26 March 2018 the SSD provided “only the court panel which was to hear the case” with a classified document dated 21 March 2018, which, according to the SSD, confirmed the reasonableness and lawfulness of the Commission’s protocol decision, and refuted R.K.’s statements made in court.

18. On 26 April 2018 the Vilnius Regional Administrative Court dismissed the applicant company’s complaint as unfounded.

19. The court noted that the applicant company’s connections with persons posing a risk to the national security of Lithuania were confirmed not only by the non-public material (*nevieša medžiaga*) the SSD had provided, which the court had examined (*su kuria teismas susipažino*), but also the SSD’s response to the appeal and the material provided with it (see paragraphs 11 and 12 above). Sufficient information had been disclosed in court about the applicant company’s shareholder’s connections with persons posing a threat to national security. There was therefore no basis for holding that, without declassifying the SSD’s information and without providing the applicant company with the opportunity to see that information, its right to an effective defence in court had been restricted. It had to be noted that the applicant company’s shareholder R.K. explained in court that “she knew” (*jai žinomi*) Belarusian citizens J.Č. and A.O., the latter whom she had seen at a private party outside Lithuania. The members of the Commission, when examined in court, explained that the non-public (classified) material provided by the SSD had led them to the conclusion that the applicant company’s links to persons linked to institutions of foreign States not belonging to the EU and NATO or to the interests of those States did not comply with national security interests.

20. For the Vilnius Regional Administrative Court, “taking into account both public and non-public information, as well as witness testimony, it ha[d] to be concluded that [the Commission’s] decision [was] not limited to mere references to provisions of law; rather, factual circumstances [were] clearly set out therein, and those factual circumstances [were] linked to the legal provisions applied”. It followed that the applicant company had connections to non-EU and non-NATO States, or persons in those States, and thus did not meet the requirements of Article 7 § 10 (3) of the Law on Enterprises and Facilities of Strategic Importance (see paragraph 34 below). The disputed decision had been adopted on the basis of public material (*vieša medžiaga*) contained in the case file, as well as explanations by the witnesses, the Commission and the representative of the SSD. That public material was

supported by the non-public material provided by the SSD on 21 November 2017 and 26 March 2018 (see paragraphs 11 and 17 above).

21. The Vilnius Regional Administrative Court also dismissed as unfounded the applicant company's statements that it could not have defended its rights at the time its requests were being examined by the Commission. The court pointed out that, under the legal regulation in force, the Commission had a right but not an obligation to invite to its hearing experts, representatives of the companies' management bodies or other persons, as its hearings were closed. The applicant company had had the opportunity to provide explanations or submit documents when submitting a request for authorisation of the business transaction (see paragraph 5 above). The fact that the Commission had adopted its decision without the applicant company's representative being present, had not been unlawful.

22. The court could not agree with the applicant company's claim that the contested decision was disproportionate. It referred to the Constitutional Court's ruling of 25 January 2013, in which it was held that the principle of proportionality was one of the elements of a State under the rule of law, and that legal regulation had to be proportionate to the aims sought and could not restrict a person's rights more than necessary. For the administrative court, in the case at hand, national security, as virtue (*kaip vertybė*) prevailed over private business interests, and "in the presence of even the slightest (minimal) risk to State security, the State had the right to protect itself". There was therefore no legal basis for holding that the contested decision breached the principle of proportionality. By the impugned decision, the Commission had not barred the applicant company from the ability to freely engage in business; it had only decided the question regarding the threat to State security.

23. In reply to the applicant company's suggestion that the threat to national security had to be clear and present (*reali ir akivaizdi*), the court noted that neither the Law on Enterprises and Facilities of Strategic Importance nor other legal acts provided a definition of the concept "could be a threat" (*gali grėsti*). Accordingly, when assessing the question of possible threats to national security, their clarity (*realumas*) and the presence of a possibility of such a threat had to be assessed when adopting relevant decisions. It was also important to guarantee a fair balance between the interests of the State and society, on the one hand, and the potential participant in a transaction, on the other. Against that background, it followed that a positive decision by the Commission could be taken only where the potential participant met the criteria listed in Article 7 § 10 of the Law on Enterprises and Facilities of Strategic Importance (see paragraph 34 below). In the instant case, in its decision the Commission had reasonably held that the applicant company did not qualify because of its sole shareholder's connections (see paragraph 7 above).

24. The court also disagreed with the applicant company's statements that without declassifying the SSD's information and allowing it to see that information, its right to an effective defence in court had been restricted. In fact, the SSD had also provided the court with public information, which the applicant company had had the opportunity to consult. Furthermore, the applicant company's representatives could lodge requests, submit evidence and examine the Commission's members in court. The applicant company's shareholder R.K. had also taken part in the court proceedings and testified.

25. Lastly, the court referred to Article 56 § 6 of the Law on Administrative Proceedings (see paragraph 35 below), and noted that the applicant company had not refuted the Commission's conclusion. At the same time, it had not provided the court with any other information which would call into question the reasonableness of that decision. Overall, the Commission had correctly applied the law, comprehensively assessed the factual circumstances of the case and reached a reasonable and lawful decision.

26. On 26 April 2018 the Baltic News Service announced that the Vilnius Regional Administrative Court had upheld the Commission's September 2017 decision refusing Lewben Investment Management permission to acquire Prosperus Real Estate Fund II because of non-compliance with national security interests. The court's representative stated that, under the Law on Enterprises and Facilities of Strategic Importance, a potential participant was declared as complying with national security interests where he, she or it did not have links to individuals from non-NATO and non-EU countries which would pose a risk to national security.

27. On 27 April 2018 the Vilnius Regional Administrative Court returned to the SSD the classified documents marked either "confidential" or "secret" (see paragraph 11 above).

II. PROCEEDINGS BEFORE THE SUPREME ADMINISTRATIVE COURT

28. The applicant company appealed, complaining, among other things, that the information contained in the SSD's classified report had not been disclosed to it or its shareholder either at the time of adoption of the Commission's decision or during the proceedings before the Vilnius Regional Administrative Court. The applicant company could not therefore have disputed circumstances unknown to it. It also argued that "one meeting" (*vienas susitikimas*) with a citizen of a third State had been insufficient to hold that its shareholder posed a threat to Lithuania's national security.

The applicant company also argued that although both the Commission and the first-instance court had heard the case in closed hearings, both the SSD and that court had still disclosed certain information about the case, including the Commission's decision, which had not yet entered into force.

Such actions of the SSD and the first-instance court had been in breach of Article 8 of the Convention. The applicant company requested that the court examine the case in closed court hearings, and that it take into account the unlawful disclosure of information when deciding whether to annul the decisions of the Commission and the first-instance court.

29. By a final ruling of 17 October 2018, the Supreme Administrative Court left the lower court's decision unchanged. It noted that when the Commission had assessed the applicant company's request on 21 September 2017, it had assessed the classified information provided by the SSD and then adopted the contested protocol decision (see paragraph 7 above).

30. It further held that, "having assessed the evidence in the case file", it was clear that publicly available factual information confirmed that applicant company's sole shareholder had links with individuals who had connections with persons from States not belonging to the EU and NATO. Inasmuch as it concerned the assessment of evidence, and taking into account all the circumstances relevant to the case, on the basis of procedural rules set out in the law regarding the assessment of evidence, as well as on the basis of the criteria of fairness and reasonableness, there was no basis for rejecting or acknowledging as unfounded the publicly accessible information provided by the SSD to the Commission. Given that the first-instance court had thoroughly and comprehensively examined the information forming the factual basis for the Commission's decision, the Supreme Administrative Court would not assess those circumstances in detail. Yet, it was worth noting that the sole shareholder of Lewben Investment Management, when examined in the first-instance court as a witness, "confirmed that she was acquainted with the Belarusian citizens concerned" (*patvirtino pažintį su atitinkamais Baltarusijos piliečiais*).

31. Although the first-instance court had also relied on "classified data provided by the SSD", Article 56 § 3 of the Law on Administrative Proceedings did not impose an absolute ban on the use of information constituting a State or official secret as evidence in an administrative case. It was only important that no court decision could be based exclusively on classified information which was not known to the parties (or one party) to the proceedings. On this point, the Supreme Administrative Court referred to the Constitutional Court's ruling of 15 May 2007 (see paragraph 36 below). In the case at hand, the first-instance court, when admitting the classified information in evidence and having assessed that information together with the other – unclassified information – contained in the case file, in accordance with Article 56 § 6 of the Law on Administrative Proceedings, had not departed from the principles regarding the use of classified information as evidence set out in the case-law of the Court and the Constitutional Court (referred to by the first-instance court), as well as the case-law of the Supreme Administrative Court (ruling of 27 June 2018 in administrative case no. eA 4143-442/2018).

32. On 17 October 2018 the Baltic News Service published news about the Supreme Administrative Court's ruling: the court's representative announced that the applicant company's appeal had been dismissed, and that the court was unable to provide more information on the subject because of the closed nature of the proceedings. The applicant company's lawyer, R.A., for his part, "could not believe the Supreme Administrative Court's decision" and stated his intention to lodge an application with the Court. He also said that the Commission's decision had been adopted in the context of a specific transaction and that it was no longer relevant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

33. The Constitution reads:

Article 30

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

Article 46

"Lithuania's economy shall be based on the right of private ownership, freedom of individual economic activity and initiative.

The State shall support economic efforts and initiative that are useful to society.

The State shall regulate economic activity so that it serves the general welfare of the Nation. ..."

34. The relevant provisions of the Law on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security (*Strateginę reikšmę nacionaliniam saugumui turinčių įmonių ir įrenginių bei kitų nacionaliniam saugumui užtikrinti svarbių įmonių įstatymas*) at the material time read as follows:

Article 2. Definitions

"1. National security interests mean protection of the independence and sovereignty of the State, European and transatlantic integration, reducing threats and risks to the energy and other economic sectors of fundamental importance to public security. ..."

Article 3. State and municipal enterprises of strategic importance to national security and facilities belonging to the State by the right of ownership

"3. The following economic sectors shall be of considerable strategic importance to national security:

...

4) finance and credit. ..."

Article 7. Assessment of compliance of potential participants with national security interests

“1. Assessment of the compliance of potential participants with national security interests shall be carried out in the manner and cases stipulated herein.

...

10. A potential participant shall be recognised as complying with national security interests provided that [he, she or it]:

...

(3) does not maintain relations with institutions of foreign States which are not members of the European Union and the North Atlantic Treaty Organisation or with persons from those States which might increase the risk or pose a threat to national security;

...

11. If the Commission finds that a potential participant does not comply with national security interests, the decision must indicate the legal and factual basis. A negative decision by the Commission means that the State objects to that person becoming a potential participant, and that the person may not become a potential participant in the manner referred to in paragraph 2 until [he, she or it] eliminates the reasons for [his, her or its] non-compliance with national security interests and the Commission has taken a new decision confirming compliance of that person with national security interests.

12. The decision of the Commission may be appealed against before the Vilnius Regional Administrative Court in accordance with the procedure established by the Law on Administrative Proceedings of the Republic of Lithuania.”

35. The Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*) at the material time read as follows:

Article 8. Publicity of court proceedings

“1. Cases before the administrative courts shall be heard in public ...

2. The hearing may be closed to protect the confidentiality of a person’s personal or family life, and if a public hearing can reveal a State, official, professional or commercial secret. In this regard, the court shall adopt a reasoned ruling. In a closed hearing, participants in the proceedings may be present and, where appropriate, witnesses, specialists, experts and interpreters.

3. In a closed hearing, the case shall be heard in accordance with all the rules of procedure. The operative part of the judgment shall be made public, unless otherwise provided for by law.”

Article 56. Evidence

“1. Evidence in an administrative case is all factual information found admissible by the court hearing the case and based on which the court finds ... that there are circumstances which justify the claims and rebuttals of the parties to the proceedings and other circumstances which are relevant to the fair disposal of the case, or that there are no such circumstances ...

3. As a rule (paprastai), factual information which constitutes a State or official secret may not be used as evidence in an administrative case, until the information has been declassified in a manner prescribed by law.

...

6. No evidence before the court shall have any predetermined effect. The court shall assess the evidence according to its inner conviction based on a detailed, comprehensive and objective review of all the circumstances of the case on the basis of the law, as well as the criteria of justice and reasonableness.”

36. In its ruling of 15 May 2007, the Constitutional Court pointed out that no court decision could be based exclusively on information constituting a State secret (or other classified information) which was not known to the parties (or one party) to the case.

THE LAW

I. PRELIMINARY REMARKS

37. In its observations of 29 January 2021, the applicant company submitted that a distinction had to be made between its activities, which were focused on investment management on Lithuanian territory, and those of the Lewben group of companies, which provided various international consultancy activities to a very diversified clientele, which differed according to the origin of their State, their nationality, citizenship or establishment in one region of the world or another.

The applicant company also stated that at the time of the screening process it had been controlled by a sole shareholder, R.K.

38. In their observations of 19 March 2021, the Government raised an objection regarding the applicant company’s victim status. They referred to information – based on the applicant company’s submissions of 29 January 2021 to the Court and some information in the public domain – that on 17 October 2019 the company name Lewben Investment Management had been changed to Braitin, and that the owners of the company had also changed. The Government pointed out that the negative decision within the screening process had been adopted due to the fact that R.K., at the relevant time the sole shareholder of Lewben Investment Management, had relations posing a threat to national security. Once 100% of the shares had been sold to other persons, those relations had become irrelevant for Braitin. The eligibility of the new owners to invest in a sector of strategic importance had not been questioned by the Lithuanian authorities in the disputed screening process. The Government also stated that not only had Braitin not been involved in the contested domestic proceedings while disputing the Commission’s decision, it had also presented itself as a completely new entity.

39. On 23 March 2021 the Government's submissions were forwarded to the applicant company "for information". The applicant company was also requested "not to reply to those submissions".

40. The Court considers that the fact that the applicant company changed its name and shareholders has no decisive impact regarding the issue of victim status. It suffices to note that the Government have not argued that the applicant company ceased to exist. Accordingly, their preliminary objection that the application should be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention must be rejected.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. The applicant company complained that it had not had a fair hearing when in the administrative courts challenging the Commission's decision finding that it did not comply with the interests of national security. It argued that the Commission's decision had been very succinct, that the courts had examined the classified information behind closed doors, and that it could not effectively respond, even though the respondent had exercised such a right. Any publicly available information had been too scarce or unreliable to justify the conclusion that it constituted a threat to national security.

In support of its complaint, the applicant company relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. *The parties' submissions*

42. The Government did not deny that the present case concerned a "dispute" between the applicant company, as a potential participant in a sector of strategic importance, and the Commission. The Commission's decision had therefore had an effect on the applicant company's civil rights. The Government thus agreed that Article 6 § 1 of the Convention was applicable under its civil limb.

43. They submitted, however, that the applicant company's complaint of a lack of a fair hearing and adversarial proceedings was manifestly ill-founded.

44. The applicant company agreed that the Commission's decision regarding it not meeting the national security interests criteria and the subsequent administrative court proceedings had affected its and its former shareholder's civil rights. It also submitted that the complaint of a lack of a fair hearing was well-founded.

2. The Court's assessment

45. The Court notes that the dispute between the applicant company and the Commission, examined by the administrative courts, concerned the assessment of the applicant company's compliance with national security interests in connection with its intention to acquire another company (see paragraph 5 above). It therefore considers that its grievances related to the fairness of the proceedings, in which the lawfulness and reasonableness of the decision had been assessed, fall to be examined under the civil head of Article 6 § 1 of the Convention. The applicability of that provision to the circumstances of the present case and the applicant company's complaint not having been contested by the Government (see paragraph 42 above), the Court sees no reason to hold otherwise.

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

B. Merits

1. The parties' submissions

(a) The applicant company

47. The applicant company submitted that, on the facts of the case, it was clear that the requirements of the principles of adversarial proceedings and equality of arms had not been respected in the administrative proceedings regarding the Commission's decision. Firstly, it had never been aware (was still not aware) and could not be aware of the grounds on which the unfavourable decision and the administrative court rulings had been based. Secondly, the administrative procedure and the procedural measures adopted had not provided means for it to prepare its defence in respect of the most important matters of the case. Thirdly, it had been put at a significant disadvantage as compared to the respondent (the Commission and the SSD) in the administrative case. Fourthly, it had not had effective means of appealing against the ruling of the first-instance court because no specific grounds or reasoning had been indicated in the ruling of the first-instance court. Fifthly, the decision not to disclose classified information to the applicant company had been arbitrary and unjustified.

48. The applicant company considered that it, or its former shareholder could not have reasonably posed a real or obvious threat to national security through the acquisition of a commercial real estate management company. Domestic law and the practice of the administrative and constitutional courts, according to which no court decision could be exclusively based on classified evidence, had not been followed in its case. The Commission, the SSD and the administrative courts had communicated and exchanged the most pertinent evidence in the case, without the applicant company being provided

with access to such information. This had resulted in a situation where the case had been effectively decided only by the respondent (the Commission and the SSD) and the administrative courts, whereas it had had absolutely no means of defending or rebutting the Commission's and the SSD's claims or of providing its comments or counterarguments. It had been kept "totally in the dark", whereas the Commission, the SSD and the administrative courts had enjoyed full access to the classified evidence. Such a process had in no way guaranteed equality of arms to the parties.

49. The issue of the declassification of the confidential information, which had been the basis of the Commission's decision and the administrative courts' findings, had been left to the discretion of one party, the SSD, which had been the source of the classified information and had therefore effectively been the respondent in the case. This meant that the SSD had had a significant advantage in the case *vis-à-vis* the applicant company, because the former had had the discretion to decide whether to provide access to the most pertinent evidence to the latter, and had eventually decided to withhold it. This, in essence, had provided the Commission and the SSD with absolute and unchallengeable means of influencing the result of the administrative case to their own advantage.

50. The fact that the applicant company had lodged numerous requests with the administrative courts, such as for the case to be examined in non-public oral hearings or for witnesses to be examined in court, had been to no avail. An oral examination of the case had had no benefit for the applicant company, since, as could be seen from the hearing transcripts provided by the Government, the representatives of the Commission and the SSD, when examined by the applicant company's lawyers, had not disclosed any pertinent information. In fact, the examination of the Commission's members had been of absolutely no use for the applicant company. Clearly, after the examination of the witnesses, the applicant company could not have known and still did not know what kind of relations could be identified by the SSD as potentially posing a risk to national security.

51. Since the applicant company and its former shareholder R.K. had not and could not have known what sort of relations and with whom had been considered a threat to national security, the applicant company and its shareholder had had to play a guessing game in the administrative court proceedings in order to at least try to defend such unknown allegations. In fact, since the applicant company had had to defend itself "blindfolded", it had collected every name and surname of all the persons mentioned in the so-called "public information" submitted by the SSD and asked R.K. if she had ever heard or knew anything about them.

52. The administrative courts' reference to "public information" in the case file had been insufficient, given that none of the court decisions had provided any explanation or reasoning or referred to the material which was allegedly "public" and allegedly proved the relations alleged by the SSD. In

other words, the administrative courts had not provided any arguments as to what that “public information” had actually proven. Besides, the statements of the administrative courts and the Government that the administrative courts had allegedly relied on “public information”, that is, excerpts from articles posted online in Russian, had also violated the applicant company’s right to due process. Such “public information” published on the Internet was obviously unreliable – it could not be objectively verified, nor could the authenticity of those sources or their authors be verified. In addition, the decisions of the administrative courts had not even mentioned that the “public information” provided by the SSD contained detailed and accurate information about the applicant company’s conduct, its alleged improper contacts or other circumstances which could endanger national security. No such information had been provided in the Commission’s decision or in the rulings of the administrative courts. Furthermore, the so-called “public information” had only contained excerpts from the various news articles in Russian. None of the excerpts from those articles had even mentioned the applicant company or its former shareholder or the Lewben group. In that context, the applicant company also argued that the EU sanctions in relation to Belarusian citizens J.Č. and A.O. and some of their companies had been lifted in 2015, that is, well before the Commission’s decision. It was clear that, similarly to the facts in the case of *Pocius v. Lithuania* (no. 35601/04, 6 July 2010), the Commission, the SSD and the administrative courts had relied to a decisive extent on classified information, which had been the only evidence in the case.

53. In sum, the applicant company had not had a fair hearing and adversarial proceedings, as it had been put at a disadvantage as compared to another party, and that the decision-making procedure had not ensured compliance with the requirements of equality of arms and had not incorporated adequate safeguards to protect its interests. That, in its view, amounted to a violation of Article 6 § 1 of the Convention.

(b) The Government

54. The Government were of the view that the requirements of the principles of adversarial proceedings and equality of arms had been complied with in the court proceedings in respect of the applicant company.

55. Firstly, the applicant company had been aware of the grounds on which the unfavourable decisions adopted in respect of it had been based. Whereas the Commission’s decision had been reached mainly on the basis of the information submitted by the SSD, which had been to a certain extent classified, the SSD, within the course of the judicial proceedings had submitted with its response publicly available information clearly identifying the contacts, explicitly mentioning specific individuals and companies and their links to the Lukashenko regime, thus allowing the defence to be aware of the reasons for the conclusions adopted by the Commission. As this

information had been provided to the applicant company prior to the examination of the case at first instance, the defence had had an opportunity to effectively prepare its defence.

56. Secondly, as was apparent from the material of the administrative case file, the applicant company had actively exercised its procedural rights and guarantees. No obstacles to the defence had been created and the judicial authorities had followed all the necessary procedures to avoid unnecessary restrictions. Throughout the administrative proceedings the applicant company had successfully availed itself of the right to submit various requests: during the proceedings before the first-instance court the request for an oral examination of the case in closed hearings had been granted, and the court had also granted the defence's request to examine witnesses in court, the defence having been provided with the opportunity to examine members of the Commission at length concerning the relevant circumstances within the screening process. The defence could also present its position during the examination of the sole shareholder of the company, R.K., and the oral hearings had enabled the defence to ask for clarification of the relevant circumstances from the legal representatives of the Commission and the SSD. Taking into account the questions of the defence, despite the fact that certain material had not been disclosed, the publicly available information had provided an understanding of what kind of relations could have been identified by the SSD as potentially posing risks to national security.

57. Thirdly, the case had been heard by independent and impartial courts, which had had access to all the documents and information on which the decision unfavourable to the applicant company had been based; yet, those courts had not relied to a decisive extent on classified information, as it was not the only evidence. The courts had had competence to properly assess the lawfulness and reasonableness of the Commission's decision, referring to all the relevant material in the course of the judicial proceedings in order to adopt a lawful and reasoned decision. The first-instance court noted, in particular, that the applicant's shareholder, R.K., had explained in court that she knew the Belarusian citizens J.Č. and A.O. (both of them having been named in various public material submitted by the SSD). In this regard, the Government wished to note that, within the proceedings, the defence had sought to undermine those acknowledged relations by stating that R.K. had merely met one of those people at a private party. However, in the Government's view, those circumstances could prove the solidity of the relations, as it had not merely been accidental contact at some public event, but a private party which, as had been pointed out by the court, had taken place outside the territory of Lithuania. The decision of the courts to take particular notice of this fact could not be considered arbitrary.

58. Fourthly, the decision not to disclose classified information to the applicant company had not been arbitrary and had been justified: the right to disclosure of all relevant evidence was not absolute and could be subject to

restrictions designed to protect the rights of third parties or an important public interest such as national security, which, as a value, took precedence over private business interests, and the State was entitled to protect itself. Having regard to the proceedings as a whole, the nature of the dispute and the margin of appreciation enjoyed by the national authorities, the State had had the legitimate aim of maintaining the secrecy of the intelligence service's investigation methods. There had been no arbitrariness or abuse of process in the limitation of the applicant company's procedural rights; any limitations had been sufficiently counterbalanced by the procedures followed by independent and impartial judicial authorities which had played an active role in the proceedings and had thus provided not only adequate safeguards to protect the interests of the applicant company but had also struck a fair balance between the State's interests and those of the applicant company.

59. It followed that the right to a fair hearing and, in particular, the principles of adversarial proceedings and equality of arms, for the purposes of Article 6 § 1 of the Convention, had not been infringed.

2. *The Court's assessment*

60. The Court's case-law regarding the principle of adversarial proceedings and the principle of equality of arms, which are closely linked, and are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention, are summarised in *Regner v. the Czech Republic* ([GC], no. 35289/11, §§ 146-49, 19 September 2017):

"146. The Court reiterates that the adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention. They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent or opponents (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 119 and other references, ECHR 2016).

147. However, the rights deriving from these principles are not absolute. The Court has already ruled, in a number of judgments, on the particular case in which precedence is given to superior national interests when denying a party fully adversarial proceedings (see *Miryana Petrova [v. Bulgaria]*, no. 57148/08, §§ 39-40[, 21 July 2016] and *Ternovskis [v. Latvia]*, no. 33637/02, §§ 65-68[, 29 April 2014]). The Contracting States enjoy a certain margin of appreciation in this area. However, it is for the Court to determine in the last instance whether the requirements of the Convention have been complied with (see, for example, *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, 10 July 1998, § 72, *Reports of Judgments and Decisions* 1998-IV; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, ECHR 2001-VIII; and *Devenney v. the United Kingdom*, no. 24265/94, § 23, 19 March 2002).

148. The Court reiterates, moreover, that the entitlement to disclosure of relevant evidence is not an absolute right either. In criminal cases it has found that there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be

weighed against the rights of the party to the proceedings. However, only measures restricting the rights of a party to the proceedings which do not affect the very essence of those rights are permissible under Article 6 § 1. For that to be the case, any difficulties caused to the applicant party by a limitation of his or her rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see, *mutatis mutandis*, *Fitt v. the United Kingdom* [GC], no. 29777/96, § 45 with other references, ECHR 2000-II, and *Schatschaschwili v. Germany* [GC], no. 9154/10, § 107, ECHR 2015).

149. In cases where evidence has been withheld from the applicant party on public interest grounds, the Court must scrutinise the decision-making procedure to ensure that, as far as possible, it complied with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the person concerned (see *Fitt*, cited above, § 46)."

61. Turning to the facts of the present case, the Court observes that, in accordance with the requirements of Lithuanian law, during the legal proceedings concerning the lawfulness and reasonableness of the Commission's protocol decision assessing the applicant company's compliance with national security interests in the context of the business transaction it wished to undertake, that company faced two restrictions: firstly, the classified documents and information on which the Commission had based its decision were not made available to either the applicant company or its lawyers, and secondly, those classified documents were not disclosed to the applicant company during the proceedings in the administrative courts, even though they had based their findings on that classified information. The Court, accordingly, has the task of examining whether those restrictions infringed the very essence of the applicant company's right to a fair hearing (*ibid.*, *mutatis mutandis*, § 150).

62. In carrying out that examination, the Court will have regard to the proceedings considered as a whole and will determine whether the restrictions on the adversarial and equality-of-arms principles, as applicable in the civil proceedings, were sufficiently counterbalanced by other procedural safeguards (*ibid.*, § 151).

63. On the facts of the case, the Court observes that in reaching protocol decision no. NS-41 the Commission concluded, "on the basis of information provided by the competent State authorities", that the applicant company's sole shareholder had connections with individuals who had links to institutions or persons of States not belonging to the EU and NATO (see paragraph 7 above). It is safe to say that that information was provided to the Commission by the SSD, and the Government has not disputed this fact (see paragraphs 6 and 7 above). It is also clear that at least some of the material classified information – that the SSD provided to the Commission was not disclosed to the applicant company (see paragraphs 7 and 14 above). The Court also finds that although the Commission's decision was sent to the applicant company, that decision was rather succinct, without giving details about its shareholder's connections. That being so, the question remains

whether this limited disclosure of evidence against the applicant company was compensated during the administrative court proceedings that followed.

64. The Court firstly observes that the Vilnius Regional Administrative Court included the SSD in the proceedings as a third party, asking it to provide all the material relevant to the dispute (see paragraph 9 above). That material, marked either “secret” or “classified”, was provided by the SSD, on condition that only the court panel would see it (see paragraph 11 above). In response to the court’s request whether those documents could be declassified, the SSD replied in the negative, stating that the reasons for keeping the documents classified remained valid (see paragraph 13 above). The Court cannot find this to have been arbitrary. Nor can it consider that at that stage the administrative court neglected the applicant company’s right to adversarial proceedings and right to equality of arms. At this stage, the Court also reiterates that the entitlement to disclosure of relevant evidence is not absolute (see *Regner*, cited above, § 148 *in limine*). As explained during the administrative court proceedings by the Chancellery, the members of the Commission had clearance to work with classified information, and as the SSD’s report was classified and not public, it could not be disclosed to the applicant company for objective reasons (see paragraph 14 above).

65. Whilst acknowledging that so far only the State authorities – the Commission, based on the classified information provided by the SSD, and the administrative court – had knowledge of the documents regarding the applicant company’s shareholder’s lack of compliance with the interests of national security, the Court finds that this restriction of the applicant company’s right to adversarial proceedings was appeased as early as in December 2017, when the SSD provided the Vilnius Regional Administrative Court with fifty-nine pages of publicly available information regarding specific individuals – businesspeople in Belarus, a non-EU and non-NATO country (see paragraph 12 above). It is safe to say that, under the rules of administrative proceedings, this information was transferred to the applicant company, and the latter did not argue otherwise. Even though that information did not refer to the applicant company or its sole shareholder, its pertinence was revealed during the first-instance court hearings, to which the Court turns next (see paragraphs 66 and 67 below).

66. The Court finds that the applicant company could have actively participated in the administrative court proceedings to effectively defend its interests. As noted by the Government, during the proceedings before the first-instance court, oral hearings were held at the applicant company’s request; the case was examined in closed hearings (see paragraphs 16 and 56 above). The applicant company, represented by two lawyers, could examine the members of the Commission, the representative of the SSD, as well as its own sole shareholder R.K., in an attempt to refute the latter’s connections with individuals from non-EU and non-NATO countries, those connections being considered, by the Lithuanian authorities, to pose a threat to Lithuania’s

national security (see paragraph 16 above). As the hearing records indicate, the applicant company's lawyers "could guess" that it was the latter connection, which was not denied by the applicant company's sole shareholder R.K., that was at issue (see paragraphs 16 and 19 above). After the initial hearings of the case before the Vilnius Regional Administrative Court, a further report was provided by the SSD to contradict the applicant company's sole shareholder's in-court testimony (see paragraph 17 above). That being so, the Court cannot find that, as the applicant company argued before it, it was "blindfolded" and could not comprehend what made R.K.'s connections a threat to Lithuania's national security (see paragraph 51 above). The Court also refers to the Vilnius Regional Administrative Court's findings that neither the Law on Enterprises and Facilities of Strategic Importance nor other legal acts provided for a definition of the concept "could be a threat" (see paragraph 23 above). The Court has already held that it is not for it to take the place of the States Parties to the Convention in defining their national interests, a sphere which traditionally forms part of the inner core of State sovereignty (see, *mutatis mutandis*, *Stoll v. Switzerland* [GC], no. 69698/01, § 137, ECHR 2007 V, and *Zarubin and Others v. Lithuania* (dec.), no. 69111/17, § 54, 26 November 2019).

67. Furthermore, whilst it is true that the material marked by the SSD as classified or secret was referred to by the Commission and the administrative courts, without ever being disclosed to the applicant company, that material formed only a certain part of the evidence. This was pointed out by the domestic courts, which, whilst referring to that classified material, also based their findings on witness testimony, including that of the applicant company's sole shareholder R.K., and publicly available information (see paragraphs 19, 20 and 24 above). In line with the administrative court's practice, based on Article 56 §§ 3 and 6 of the Law on Administrative Proceedings, as well as in line with the position of the Constitutional Court, the classified information does not appear to have been of decisive value in the proceedings at issue (see paragraphs 25, 31 and 57 above). In such circumstances, the Court concludes that the circumstances of the instant case differ from those examined by the Court in *Pocius v. Lithuania* (no. 35601/04, 6 July 2010), in which an "operational records file" was deemed to be essential evidence of the applicant's alleged danger to society and, having examined it behind closed doors, the Lithuanian judges merely presented their conclusions to him.

68. Lastly, the Court refers to the Vilnius Administrative Court's statement that "in the presence of even the slightest (minimal) risk to State security, the State had the right to protect itself" (see paragraph 22 above), a conclusion that cannot be considered arbitrary (see paragraph 58 above). Nor, for that court, were any reasons presented by the applicant company to hold that the Commission's decision was disproportionate (see paragraphs 22 and 23 above). The Commission's decision, which concerned merely one business transaction (see paragraph 5 above), did not prevent the applicant

company from freely engaging in business, a fact which was pointed out by the court (see paragraph 22 *in fine* above) and even by the applicant company's lawyer to the press (see paragraph 32 above).

69. Having regard to the proceedings as a whole, the nature of the dispute and the margin of appreciation enjoyed by the national authorities, the Court finds that the domestic law and practice of the administrative courts in the case at issue provided the required level of protection to the applicant company. The courts duly exercised the powers of scrutiny available to them in this type of proceedings (see paragraph 31 above), both regarding the need to preserve the confidentiality of classified documents and regarding the assessment of the reasonableness and lawfulness of the Commission's protocol decision, giving reasons for their decisions with regard to the specific circumstances of the present case (see *Regner*, cited above, § 154). The Court thus considers that the restrictions curtailing the applicant company's enjoyment of the rights afforded to it in accordance with the principles of adversarial proceedings and equality of arms were offset in such a manner that the fair balance between the parties was not affected to such an extent as to impair the very essence of the applicant company's right to a fair hearing.

70. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

71. The applicant company complained that its reputation had been tarnished because, although the Commission and the administrative courts had examined its case in closed hearings, certain information had been disclosed to the media by the State authorities – first by the SSD (see paragraph 15 above) and then by the administrative courts (see paragraphs 26 and 32 above).

72. The applicant company relied on Article 8 of the Convention, which reads 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

1. The Government

73. The Government firstly submitted that if, in the applicant company's view, as was apparent from its application, the State institutions, namely the SSD and administrative courts, had acted unlawfully in disclosing the facts of the case to the media, it could have brought civil proceedings against the State for damages. However, the applicant company had failed to institute such court proceedings, even though they were available pursuant to Articles 6.271 and 6.272 of the Civil Code and settled case-law of the Supreme Court, and could have dealt with the essence of its complaint regarding alleged damage to its reputation and provided redress.

74. In the alternative, the Government submitted that, as far as the complaint under Article 8 was related to the disclosure of the material in the case file, they wished to draw attention to the six-month rule and stated that the complaint with regard to the comments of the SSD and the first-instance administrative court was time-barred as the application had been submitted more than six months after the respective articles (see paragraphs 15 and 26 above). Whilst the application had been submitted within six months of the decision of the Supreme Administrative Court, the specific complaint under Article 8 of a violation of the right to protection of reputation by disclosure of the material in the case file had not been submitted in time. The information provided to the media following the announcement of the Supreme Administrative Court's decision had been related exclusively to the information that the appeal of the applicant company had been rejected, revealing no additional information at all (see paragraph 32 above).

75. Lastly, the Government wished to add that the case at issue had not been related to a virulent media campaign reporting about the course of the proceedings; there was nothing to suggest that the articles had negatively influenced the proper administration of justice impairing the fairness of the proceedings.

2. The applicant company

76. The applicant company referred to the Court's case-law that if domestic law provided for several parallel remedies in different fields of law, an applicant who had sought to obtain redress for an alleged breach of the Convention through one of these remedies was not required to use others which essentially had the same objective. In that regard, the Government had failed to mention that the applicant company had indeed submitted the Convention complaint regarding the breach of Article 8 of the Convention at national level, that is, to the Supreme Administrative Court in the course of the administrative proceedings, and had therefore in fact exhausted the "effective remedies" (see paragraph 28 *in fine* above; it referred to *Vučković*

and Others v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, § 75, 25 March 2014). However, the Supreme Administrative Court had not addressed at all the applicant company's arguments in relation to the disclosure of confidential case information to the public by the officers of the SSD and the administrative courts. The Supreme Administrative Court's ruling was totally silent in that regard.

77. As regards the Government's proposition of the possibility of claiming compensation for damage incurred due to such actions of the public authorities, the applicant company considered that such a remedy was discretionary and that it had not been required to use it.

78. Furthermore, as it had been established that the applicant company had alleged a breach of Article 8 of the Convention before the Supreme Administrative Court, this rebutted the Government's six-month rule argument. The application had been submitted within six months after the decision of the Supreme Administrative Court, which meant that the complaint under Article 8 had been lodged in time.

B. The Court's assessment

79. The Court observes that the applicant company, despite considering that the aforementioned information in the media breached the right to protection of its reputation (see, *mutatis mutandis*, *Gawlik v. Liechtenstein*, no. 23922/19, § 51, 16 February 2021, and *Halet v. Luxembourg* [GC], no. 21884/18, § 108 *in fine*, 14 February 2023), did not actually lodge a claim for damages with the domestic courts. The Court has already had an occasion to hold that a claim for damages is an appropriate remedy under Lithuanian law, something which was pointed out by the Government (see, *mutatis mutandis*, *A.Č. v. Lithuania* (dec.), no. 59076/08, § 50, 4 October 2016, and *Kužmarskienė v. Lithuania* (dec.), no. 54467/12, §§ 75 and 76, 11 July 2017; see also paragraph 73 above).

80. Be that as it may, the Court in any case considers that the information referred to in paragraphs 15, 26 and 32 above contains nothing more than news about the Commission's decision and the outcome of the administrative litigation (see also Article 8 § 3 in paragraph 35 above). In fact, the press secretary of the Supreme Administrative Court stated that she could not provide any more information about the proceedings given their closed nature (see paragraph 32 above).

81. In the light of the foregoing, the Court considers that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the fairness of the proceedings regarding the Commission's protocol decision admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Derenčinović is annexed to this judgment.

A.R.B.
D.V.A.

CONCURRING OPINION OF JUDGE DERENČINOVIĆ

1. In this case, I voted with the majority that Article 6 had not been violated to the detriment of the applicant company. However, I cannot subscribe to some parts of the reasoning. Like the connected case of *UAB Ambercore DC and UAB Arcus Novus v. Lithuania* (no. 56774/18, 13 June 2023), this is also a borderline case which encroaches on the very foundations of the right to a fair trial. Therefore, it was necessary to carry out a detailed analysis of the counterbalancing factors put in place by the national authorities and to determine whether they meet the high standards of this Court. Detailed analysis and close scrutiny of those factors (compensatory measures) are necessary in order to strike the requisite balance between the security interests of the State and the individual's right to a fair trial. Unfortunately, this in-depth analysis is missing.

2. The arguments advanced in my concurring opinion in the above-mentioned case are largely applicable in this case too. In order to avoid unnecessary repetition, I refer the reader to that separate opinion. In so far as certain passages are not pertinent to the present case (for instance, part of the reasoning from *UAB Ambercore DC and UAB Arcus Novus* addressing the issue of “geopolitical orientation”, §§ 3 and 9-10), the reader should simply disregard them as irrelevant for the present case.

3. In this case, the applicant company's lawyers could “...examine the members of the Commission, the representative of the SSD, as well as its own sole shareholder R.K.” (see paragraph 66 of the judgment). However, the reasoning also refers to the fact that “...as the hearing records indicate, the applicant company's lawyers ‘could guess’ that it was the latter connection, which was not denied by the applicant company's sole shareholder R.K., that was at issue (see paragraphs 16 and 19 above)” (ibid.). The fact that the Court is satisfied with a mere assumption by the applicant company as to the factual elements relevant for the resolution of the case seems to fall short of the standard of actual knowledge (awareness) as clarified in *Muhammad and Muhammad v. Romania* ([GC], no. 80982/12, 15 October 2020). As the Court does in paragraph 69, it may be argued that “[h]aving regard to the proceedings as a whole ... the domestic law and practice of the administrative courts in the case at issue provided the required level of protection to the applicant company.” While I can accept this argument of overall fairness, allied to the fact that the case concerns a matter of national security, an area in which the Contracting Parties have a broad margin of appreciation, I cannot subscribe to the part of the reasoning that leaves some doubt as to whether the applicant company's effective, and not just formal, participation in the proceedings was ensured. I firmly believe that applying the standards established in *Muhammad and Muhammad* (cited above) would avoid this shortcoming in a borderline case such as this and make the reasoning more convincing.

UAB BRAITIN v. LITHUANIA JUDGMENT – SEPARATE OPINION