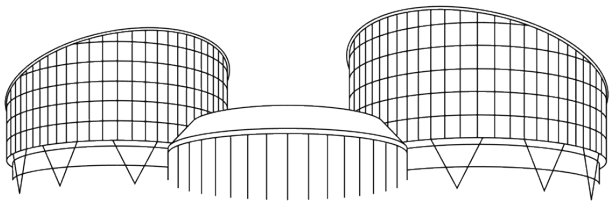

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MOŚCICKI v. POLAND

(Application no. 52443/07)

JUDGMENT

STRASBOURG

14 June 2011

FINAL

14/09/2011

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

In the case of Mościcki v. Poland**,**

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 52443/07) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Jacek Mościcki ("the applicant"), on 19 November 2007.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that the lustration proceedings brought against him had been unfair.

4. On 12 March 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time.

5. Written submissions were received from the Helsinki Foundation for Human Rights in Warsaw, which had been granted leave by the President to intervene as a third party (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Koszalin. He began to practise as an advocate in 1971.

7. On 11 April 1997 the parliament passed the Law on disclosing work for or service in the State's security services or collaboration with them between 1944 and 1990 by persons exercising public functions *(ustawa o ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne)* (the "1997 Lustration Act"). Persons falling under the provisions of the Lustration Act, i.e. candidates or holders of public office such as ministers and members of parliament, were required to declare whether or not they had worked for or collaborated with the security services during the communist regime. The provisions of the Act extended to, *inter alia*, judges, prosecutors and advocates.

8. In May 1999 the applicant in his lustration declaration stated that he had not been an intentional and secret collaborator of the communist-era security services.

9. On 11 May 2005 the Commissioner of Public Interest (*Rzecznik Interesu Publicznego*) notified the applicant that he had instituted proceedings aimed at verifying the truthfulness of the applicant's declaration.

10. The Commissioner heard the applicant on 2 June 2005. The applicant stated that in the 1980s he had been harassed by two officers of the security service. However, he averred that his contacts with the security service had not amounted to secret and conscious collaboration. He stated that he had ceased all the contacts with the security services in August 1984. The applicant unsuccessfully requested the Commissioner to hear eight advocates of the Koszalin Regional Bar Association.

11. On 8 August 2005 the Commissioner made an application to the Lustration Chamber of the Warsaw Court of Appeal, in which he challenged the truthfulness of the applicant's declaration.

12. On 11 August 2005 the Warsaw Court of Appeal instituted lustration proceedings in the applicant's case.

13. On 15 September 2005 the court held a hearing. The applicant stated that he would not make any statements and would not answer any questions put to him by the court. He upheld his statements given before the Commissioner on 2 June 2005. The applicant did not request the court to call advocates of the Koszalin Bar as witnesses. However, the court decided to hear two of those advocates (K.G. and R.K.). They stated that the applicant had informed them about the meetings with the security services but not about their contents.

14. On 5 January 2006 the Warsaw Court of Appeal, acting as the first-instance lustration court, held that the applicant's declaration had been untruthful. The court relied, in particular, on evidence given by J.B., an officer of the security services who had managed the applicant as a secret collaborator. It further had regard to the applicant's statements given before the Commissioner and documentary evidence. It found that the applicant,

albeit for a limited period of time, had been an intentional and secret collaborator with the security services within the meaning of the Lustration Act.

15. The applicant lodged an appeal. He argued that his meetings with the officers of the security services had not amounted to secret collaboration as he had informed his fellow advocates (K.G. and R.K.) about those meetings. Furthermore, he had never consented to collaborate with the security services and there had been no material evidence of his alleged collaboration. The applicant also argued that he had been registered as a "secret collaborator" without his knowledge. He requested the court to call further witnesses.

16. On 25 April 2006 the Warsaw Court of Appeal agreed to hear four witnesses called by the applicant (M.C., A.B.-S., J.T. and W.W.). It refused to hear the remaining witnesses since their evidence was not strictly related to the applicant's alleged collaboration with the security services and thus would be irrelevant for the case.

17. On 30 May 2006 the Warsaw Court of Appeal heard three witnesses called by the applicant (M.C., J.T. and W.W.). It did not hear A.B.-S. as the applicant withdrew his request to hear that witness.

18. On 30 May 2006 the Warsaw Court of Appeal, acting as the second-instance lustration court, upheld the judgment of 5 January 2006. It found that the first-instance court had duly assessed all relevant evidence and provided sufficient reasons for its findings which were confirmed by the additional witnesses heard by the appellate court. It held that according to the evidence given by J.B. the applicant had not signed a collaboration declaration, but had been orally providing information to the security services about advocates of the Koszalin Bar.

19. The applicant lodged a cassation appeal with the Supreme Court. He contested, amongst others, the Court of Appeal's refusal to hear some of his witnesses. On 22 May 2007 the Supreme Court dismissed the cassation appeal. It found that the Court of Appeal's refusal to hear certain witnesses had been justified and duly reasoned.

20. On 17 September 2007 the Koszalin Regional Bar Association struck the applicant off the roll of advocates. It found that in accordance with section 30 of the Lustration Act the applicant had lost his right to practise as an advocate following the dismissal of his cassation appeal by the Supreme Court. On 23 October 2007 the National Bar Association upheld the impugned decision. The applicant appealed to the Minister of Justice who however dismissed his appeal on 13 May 2008.

21. The applicant filed an appeal against the Minister's decision with the Warsaw Regional Administrative Court. On 13 August 2008 the applicant requested the court to stay the proceedings on the ground that the Ombudsman had challenged the constitutionality of a relevant section of the amended Lustration Act and proceedings had been instituted before the

Constitutional Court. On 11 December 2008 that court stayed the proceedings as requested. On 16 March 2010 the court resumed the proceedings at the applicant's request. On 10 June 2010 the court again stayed the proceedings. On 8 November 2010 the applicant filed a complaint with the Supreme Administrative Court under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act"). On 30 November 2010 the Supreme Administrative Court dismissed his complaint. The proceedings before the Constitutional Court appear to be pending.

22. By a letter dated 9 March 2009 the Szczecin Branch of the Institute of National Remembrance notified the applicant that doubts had arisen as to the truthfulness of his lustration declaration. He was summoned for 17 April 2009. The applicant has submitted no further information as regards the notification.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Lustration laws

23. The relevant law and practice concerning lustration proceedings in Poland are set out in the Court's judgment in the case of *Matyjek v. Poland*, no. 38184/03, § 27-39, ECHR 2007-V.

B. Resolution no 9/1999 of the National Bar Association of 17 April 1999 (amended by Resolution no. 17/1999 of 9 October 1999).

24. In the Resolution the National Bar Association expressed the view that a secret and conscious collaboration of advocates with the security services between 1944 and 1990 amounted to a betrayal of the basic moral values and fundamental principles of advocates' ethics. It called on advocates who had collaborated with the security services to leave the Bar.

The Resolution stated further that:

> "The Bar will resort to all legally available means within the framework of disciplinary proceedings aimed at removing from the Bar all those advocates who by their work or service for or collaboration with the security services have lost the public trust [...] and who do not guarantee that they will correctly exercise their profession.
>
> [...]
>
> III. The National Bar Association obliges the organs of the Bar to carry out disciplinary investigations in the form of explanatory actions or disciplinary proceedings, or to institute proceedings under section 74 of the Bar Association Act, while respecting the principle of individual responsibility."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION REGARDING UNFAIRNESS OF THE PROCEEDINGS

25. The applicant complained under Article 6 of the Convention about the unfairness of the lustration proceedings. He alleged that he had had restricted access to the classified documents in the case file and could not take and use notes from it.

The Court raised, of its own motion, the appropriateness of examining under Articles 6 § 1 and 8 of the Convention the significant delay which occurred between the date of the lodging of the applicant's lustration declaration and the date of the institution of the proceedings by the Commissioner. It further raised of its own motion the question of whether the fact that the applicant was likely to be disbarred, pursuant to the Resolution of the National Bar Association, if he had admitted collaboration with the security services, amounted to a breach of Articles 6 § 1, 8 and Article 1 of Protocol No. 1 of the Convention.

The Court considers that the applicant's principal grievances concern the alleged unfairness of the lustration proceedings. For this reason it is appropriate to examine this complaint under Article 6 of the Convention. Article 6, in so far as relevant, provides:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ...by [a] ... tribunal...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;"

A. Admissibility

26. The Government claimed that the applicant had not exhausted relevant domestic remedies. Firstly, he had never raised before the domestic courts the issue of the alleged unfairness of the lustration proceedings which he subsequently brought before the Court. He had not complained about the alleged hindrance in his access to the case file or restrictions on taking notes from it. In his appeal and cassation appeal the applicant contested the assessment of evidence by the courts, but had not raised the issue of access to the case file. Had he raised such objections, it was not excluded that that the case could have been remitted to the first-instance lustration court with a view to applying the necessary arrangements to facilitate the applicant's

access to the case file. Secondly, the applicant had not lodged a constitutional complaint, challenging the constitutionality of the provisions of the Protection of Classified Information Act which had been applied in his case.

27. The applicant disagreed.

28. The Court recalls that it has already considered the question of whether the applicant could effectively challenge the set of legal rules governing access to the case file and setting out the features of the lustration proceedings. The Court notes that the arguments raised by the Government are similar to those already examined and rejected by the Court in previous cases against Poland (see *Matyjek v. Poland*, no. 38184/03, § 64, ECHR 2007-V; *Luboch v. Poland*, no. 37469/05, §§ 69-72, 15 January 2008; *Rasmussen v. Poland*, no. 38886/05, §§ 52-55, 28 April 2009; and *Górny v. Poland*, no. 50399/07, § 22, 8 June 2010) and the Government have not submitted any new arguments which would lead the Court to depart from its previous findings. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

29. The Court further observes that it has already found that Article 6 of the Convention under its criminal head applied to lustration proceedings (see, amongst others, *Matyjek v. Poland* (dec.), no. 38184/03, ECHR 2006-VII).

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

31. The applicant alleged that the principle of equality of arms had been breached in the proceedings since the Commissioner of Public Interest, contrary to the applicant's position, had had a statutory right of access to all relevant documents. Furthermore, the applicant was prohibited from taking notes from the case file and from making copies of it.

2. The Government's submissions

32. The Government submitted that each case had to be assessed by the Court taking into account its special circumstances. In the present case, the applicant had never raised before the domestic authorities the issue of unfairness, allegedly caused by the confidentiality of the case file, limitations on his access to it and the restrictions on taking notes from it.

Secondly, the applicant had access to all evidence and all decisions given in the case. The only limitations which applied to him with regard to taking notes were of a technical nature. The applicant could consult the case file in the secret registry but could not use his notes based on the file outside the secret registry. The same restrictions applied to the Commissioner of Public Interest and the judges examining the case.

33. The Government referred to the Court's case-law which recognised that the need to protect the public interest may justify withholding certain evidence from the defence in criminal proceedings (see, amongst others, *Edwards and Lewis v. the United Kingdom*, nos. 39647/98 and 40461/98, § 53, 22 July 2003). In this respect, they underlined that in the instant case all evidence had been disclosed to the applicant. The only difficulty for the applicant had been related to the fact that part of the evidence had been confidential. However, the rules applied by the domestic courts regarding arrangements on access to the case file had respected the principle of equality of arms. The Government rejected as unsubstantiated the applicant's allegation that he could not take notes from the case file.

34. The situation where the lustration court had to apply the rules concerning the use of classified documents had been assessed by the Supreme Court in its judgment of 9 December 2004 (case no. II KK 342/03). The Supreme Court stated that the application of those rules could possibly hinder the preparation of an appeal by the lustrated person; however it rejected the view that the procedure followed could deprive or even restrict the rights of the defence. The Supreme Court further stressed that the application by the lustration court of a procedure provided for by the law could not be considered an infringement of the rights of the defence.

35. The Government submitted that the Commissioner's initial assessment of the classified evidence had not been in any way binding on the lustration courts. Those courts conducted the proceedings anew and were entitled to assess freely all evidence before them. The applicant was guaranteed the right to challenge all the documents in his case. The Government observed that the applicant had benefited from an examination of his case at two instances by ordinary courts with full jurisdiction to assess the relevant facts and law. He further availed himself of an extraordinary appeal to the Supreme Court. For the Government there had been no appearance of a violation of the applicant's right to a fair trial in the impugned proceedings. They concluded that there had been no breach of Article 6 § 1 in the present case.

3. The Court's assessment

36. The Court recalls that the procedural guarantees of Article 6 of the Convention under its criminal head apply to lustration proceedings (see paragraph 29 above). In several cases against Poland concerning fairness of those proceedings (see, *inter alia*, *Matyjek*, § 56; *Luboch*, § 61;

Rasmussen, § 43; *Górny*, § 31, all cited above) it considered it appropriate to examine the applicant's complaints under Article 6 §§ 1 and 3 taken together. The relevant case-law concerning the principle of equality of arms is stated in the above-cited judgments.

37. The Court has already dealt with the issue of lustration proceedings in *Turek v. Slovakia* (no. 57986/00, § 115, ECHR 2006 - (extracts)) and in *Ādamsons v. Latvia* (no. 3669/03, 24 June 2008). In *Ādamsons* the Court underlined that if a State is to adopt lustration measures, they must fulfil certain conditions in order to be compatible with the Convention. Firstly, the lustration law should be accessible to the person concerned and foreseeable as to its effects, such conditions being inherent in the expression "in accordance with the law" within the meaning of the Convention. Secondly, lustration should not exclusively serve the purpose of retribution or revenge, as the punishment of offenders should be limited to the criminal law sphere. Thirdly, if domestic law allows restrictions on the rights guaranteed under the Convention, it must be precise enough to allow for the individualisation of the responsibility of each person affected thereby and contain adequate procedural safeguards. Finally, the national authorities should keep in mind that lustration measures are by their nature temporary and that the objective need to restrict individual rights as a result of such proceedings diminishes over time (see *Ādamsons*, cited above, § 116). The Court confirms that the above principles are also applicable to the Polish lustration laws.

38. In the *Turek* judgment the Court held that, unless the contrary is shown on the facts of a specific case, it cannot be assumed that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes. This is because lustration proceedings are, by their very nature, oriented towards the establishment of facts dating back to the communist era and are not directly linked to the current functions and operations of the security services. Lustration proceedings inevitably depend on the examination of documents relating to the operations of the former communist security agencies. If the party to whom the classified materials relate is denied access to all or most of the materials in question, his or her possibilities of contradicting the security agency's version of the facts will be severely curtailed. Those considerations remain relevant to the instant case despite some differences with the lustration proceedings in Poland (see *Matyjek*, § 56; *Luboch*, § 61; *Rasmussen*, § 43; *Górny*, § 33, all cited above).

39. In the present case, the Court observes firstly that the Government have admitted that part of the evidence had been secret. In the previous cases concerning lustration proceedings in Poland the Court observed that under the series of successive laws the communist-era security services' materials continued to be regarded as a State secret. The confidential status of such materials had been upheld by the State Security Bureau. Thus, at

least part of the documents relating to the applicant's lustration case had been classified as "top secret". The Head of the State Security Bureau was empowered to lift the confidentiality rating. However, the Court recalls that it has considered the existence of a similar power of a State security agency inconsistent with the fairness of lustration proceedings, including with the principle of equality of arms (see *Turek*, § 115; *Matyjek*, § 57; *Luboch*, § 62; *Rasmussen*, § 44; *Górny*, § 34, all cited above).

40. Secondly, the Court notes that, at the pre-trial stage, the Commissioner of Public Interest had a right of access, in the secret registry of his office or of the Institute of National Remembrance, to all materials relating to the lustrated person created by the former security services. After the institution of the lustration proceedings, the applicant could also access his court file. However, pursuant to Article 156 of the Code of Criminal Procedure and section 52 (2) of the Protection of Classified Information Act, no copies could be made of materials contained in the court file and confidential documents could be consulted only in the secret registry of the lustration court.

41. The applicant has claimed that he had not been authorised to take notes from his case file, while the Government have disputed that assertion. Even accepting the Government's argument, the Court observes that the applicant's possibility of taking notes was considerably restricted. Any notes which he took could be made only in special notebooks that were subsequently sealed and deposited in the secret registry. The notebooks could not be removed from this registry and could be opened only by the person who had made them. The same restrictions applied to the applicant's lawyers.

42. The Court reiterates that the accused's effective participation in his criminal trial must equally include the right to compile notes in order to facilitate the conduct of his defence, irrespective of whether or not he is represented by counsel (see *Pullicino v. Malta* (dec.), no. 45441/99, 15 June 2000 and *Matyjek*, cited above, § 59). The fact that the applicant could not remove his own notes, taken in the secret registry, in order to show them to an expert or to use them for any other purpose, effectively prevented him from using the information contained in them as he had to rely solely on his memory. Regard being had to what was at stake for the applicant in the lustration proceedings – not only his good name but also his right to practise as an advocate – the Court considers that it was important for him to have unrestricted access to those files and unrestricted use of any notes he made, including, if necessary, the possibility of obtaining copies of relevant documents (see *Górny*, cited above, § 37).

43. Thirdly, the Court is not persuaded by the Government's argument that at the trial stage the same limitations as regards access to confidential documents applied to the Commissioner of Public Interest. Under the domestic law, the Commissioner, who was a public body, had been vested

with powers identical to those of a public prosecutor. Under section 17(e) of the 1997 Lustration Act, the Commissioner of Public Interest had a right of access to full documentation relating to the lustrated person created by, *inter alia*, the former security services. If necessary, he could hear witnesses and order expert opinions. The Commissioner also had at his disposal a secret registry with staff that obtained official clearance allowing them access to documents considered to be State secrets and were employed to analyse lustration declarations in the light of the existing documents and to prepare the case file for the lustration trial.

44. The Court accepts that there may be a situation in which there is a compelling State interest in maintaining secrecy of some documents, even those produced under the former regime. Nevertheless, such a situation will only arise exceptionally given the considerable time that has elapsed since the documents were created. It is for the Government to prove the existence of such an interest in the particular case because what is accepted as an exception must not become a norm. The Court considers that a system under which the outcome of lustration trials depended to a considerable extent on the reconstruction of the actions of the former secret services, while most of the relevant materials remained classified as secret and the decision to maintain the confidentiality was left within the powers of the current secret services, created a situation in which the lustrated person was put at a clear disadvantage (see *Matyjek*, § 62; *Luboch*, § 67; *Rasmussen*, § 50; *Górny*, § 40, all cited above).

45. In the light of the above, the Court considers that due to the confidentiality of the documents and the limitations on access to the case file by the lustrated person, as well as the privileged position of the Commissioner of the Public Interest in the lustration proceedings, the applicant's ability to prove that the contacts he had had with the communist-era secret services did not amount to "intentional and secret collaboration" within the meaning of the 1997 Lustration Act were severely curtailed. Regard being had to the particular context of the lustration proceedings, and to the cumulative application of those rules, the Court considers that they placed an unrealistic burden on the applicant in practice and did not respect the principle of equality of arms (see *Matyjek*, cited above, § 63).

46. The Court notes that in the present case the applicant lost his right to practise as an advocate following the standard lustration proceedings in which the domestic courts established that his lustration declaration, in which he had denied collaboration with the security services, had been untruthful. In those circumstances there is no need for the Court to examine issues related to the Resolution of the National Bar Association which provided that advocates who admitted collaboration would be disbarred.

47. Having regard to the foregoing, the Court concludes that the lustration proceedings against the applicant, taken as a whole, cannot be considered as fair within the meaning of Article 6 § 1 of the Convention taken together with Article 6 § 3. There has accordingly been a breach of those provisions.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

48. The applicant complained under Article 6 of the Convention that the Commissioner of Public Interest had refused to call advocates of the Koszalin Regional Bar as witnesses for him. Furthermore, the lustration courts had refused to hear a number of the applicant's witnesses who were to testify that he had not been a secret and conscious collaborator of the security service. He also complained that he had been deprived of the right to practise as an advocate for ten years and accordingly sustained significant moral and pecuniary damage. Lastly, the applicant alleged that judges of the Lustration Chamber of the Warsaw Court of Appeal had not been permanently assigned to either the first or the second-instance lustration court but had heard cases sometimes sitting on the first-instance court and sometimes sitting on the second-instance court.

49. The Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national court (see *Garćia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references). The applicant took issue with the Court of Appeal's refusal to hear some of his witnesses. However, it was convincingly established by the Court of Appeal that the evidence of those witnesses would not be relevant to determine the fact of the applicant's collaboration with the security services. Furthermore, the Supreme Court confirmed the Court of Appeal's decision and found that it had been duly reasoned.

In so far as the applicant appears to contest the principles underlying lustration proceedings, the Court recalls that it has examined and declared inadmissible as manifestly ill-founded similar allegations raised in the case of *Chodynicki v. Poland* ((dec.), no. 17625/05, 2 September 2008). As regards the sanction imposed on the applicant in consequence of the outcome of the lustration proceedings, the Court finds no grounds on which

that sanction could be contested under Article 6 of the Convention. Lastly, in respect of the complaint concerning the position of judges of the Lustration Chamber, the Court considers that the applicant failed to demonstrate how his Article 6 rights were effected in this respect.

50. It follows, notwithstanding other possible grounds of inadmissibility, that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 4 OF THE PROTOCOL No. 7 TO THE CONVENTION

51. In his observations of 23 October 2009 the applicant complained of the institution of the second set of lustration proceedings against him by the Szczecin Branch of the Institute of National Remembrance which amounted to a breach of Article 4 of the Protocol No. 7 to the Convention.

52. The Court notes that the applicant submitted a copy of the notification of 9 March 2009 made by the Szczecin Branch of the Institute of National Remembrance in which he was informed about doubts concerning the truthfulness of his lustration declaration. It notes that the applicant has submitted no further information regarding any follow-up to the said notification.

53. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

55. The applicant claimed 23,827.94 Polish zlotys (PLN) (EUR 5,950) in respect of pecuniary damage for lost earnings. He further claimed EUR 100,000 in respect of non-pecuniary damage for suffering and stress related to the breach of the Convention.

56. The Government submitted that there was no causal link between the alleged violation and the claim for pecuniary damage. In respect of the claim for non-pecuniary damage, they invited the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction.

57. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It considers that in the particular circumstances of the case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which may have been sustained by the applicant (see *Matyjek*, § 69; *Luboch*, § 83, both cited above).

B. Costs and expenses

58. The applicant claimed in total 16,259.56 PLN (EUR 4,000) for costs and expenses, broken down as follows:

a) PLN 2,100 for the costs of his defence counsel in lustration proceedings;

b) PLN 3,045.56 for fees incurred in the lustration proceedings;

c) PLN 1,114 for the costs of photocopying the case file in respect of related criminal proceedings against the officers of the former security services;

d) PLN 10,000 for preparation of his application and his submissions to the Court.

59. The Government requested the Court to make an award, if any, only in so far as the costs and expenses were actually and necessarily incurred and were reasonable as to quantum.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicant produced copies of documents related to the costs of his legal representation in the lustration proceedings and fees incurred in those proceedings (PLN 5,145.56). It observes that the costs claimed under c) were not relevant for the issues raised in his application to the Court. Consequently, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 of the Convention regarding the unfairness of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President