



## Judgments and decisions of 6 June 2019

The European Court of Human Rights has today notified in writing 29 judgments<sup>1</sup> and 60 decisions<sup>2</sup>: two Chamber judgments are summarised below; a separate press release has been issued for one other Chamber judgment in the case of *Nodet v. France* (application no. 47342/14);

separate press releases have also been issued for four decisions, in the cases of *Pula v. North Macedonia* (no. 48835/13), *Abokar v. Sweden* (no. 23270/16), *Doğan and Çakmak v. Turkey* (nos. 28484/10 and 58223/10), and *Garamukanwa v. the United Kingdom* (no. 70573/17);

26 Committee judgments, concerning issues which have already been submitted to the Court, and the 56 other decisions, can be consulted on [Hudoc](#) and do not appear in this press release.

*The judgments below are available only in English.*

### Bosak and Others v. Croatia (applications nos. 40429/14, 41536/14, 42804/14, and 58379/14)

The applicants, Željko Bosak, Ramazan Keskin, Ahmet Basalan, and Dubravko Šošo, were born in 1973, 1979, 1984, and 1957 respectively. Mr Bosak and Mr Šošo are Croatian nationals who live in Zagreb, and Mr Keskin and Mr Basalan are Dutch nationals who live in Rotterdam (the Netherlands).

The four applicants were convicted in February 2009 on drugs-related charges and were sentenced to terms of prison ranging from six to 10 years. The trial court relied in particular on secret surveillance recordings of telephone calls made during the investigation.

The applicants appealed to the Supreme Court, complaining that the surveillance measures had not been duly authorised with proper reasons and had not been based on the correct legislation, which should have been the special law on organised crime and not the Code of Criminal Procedure.

The second and third applicants also contended that the secret surveillance orders had not been issued in respect of them, and that the secret surveillance had been conducted outside Croatian territory without a request for international legal assistance in criminal matters.

The fourth applicant complained about the trial court's refusal to examine two defence witnesses. During the appeal proceedings the prosecutor submitted a reasoned opinion proposing that the applicants' appeals be dismissed. That opinion was not forwarded to the defence.

The Supreme Court dismissed their appeals in March 2010, having decided that none of the applicants could attend the appeal session. Constitutional appeals were dismissed in January 2014.

The applicants complained that they had been subjected to secret surveillance measures in violation of Article 8 (right to respect for private and family life, the home, and the correspondence) of the European Convention on Human Rights.

<sup>1</sup> Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

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

<sup>2</sup> Inadmissibility and strike-out decisions are final.

They also raised complaints under Article 6 §§ 1 and 3 (c) and (d) (right to a fair trial / right to defend oneself in person / right to obtain attendance and examination of witnesses) of the European Convention.

In particular, they complained that evidence had been obtained through unlawful secret surveillance; the first three applicants alleged a violation of the principle of equality of arms as the prosecution's submission to the Supreme Court had not been forwarded to the defence; the first applicant complained about not being allowed to attend the appeal session; and the fourth complains about the failure of the trial court to call two defence witnesses.

**Violation of Article 8** – in respect of Mr Šošo as regards the secret surveillance order issued on 4 May 2007 and extended on 2 July 2007 on account of lack of adequate reasoning

**No violation of Article 8** – as regards the remainder of the applicants' complaints concerning the secret surveillance measures

**Violation of Article 6 § 1** – in respect of Mr Bosak, Mr Keskin, and Mr Basalan concerning the failure to forward the submission of the State Attorney's Office to the defence

**Violation of Article 6 §§ 1 and 3 (c)** – in respect of Mr Bosak concerning his absence from the session of the appeal panel

**No violation of Article 6 §§ 1 and 3 (d)** – in respect of Mr Šošo

**Just satisfaction:** 4,000 euros (EUR) each to Mr Bosak, Mr Keskin, and Mr Basalan and EUR 1,500 to Mr Šošo for non-pecuniary damage and EUR 3,000 to Mr Bosak, EUR 2,600 each to Mr Keskin and Mr Basalan, and EUR 2,666.64 to Mr Šošo for costs and expenses.

## Bileski v. North Macedonia (no. 78392/14)

The applicant, Dragi Bileski, is a Macedonian/citizen of the Republic of North Macedonia who was born in 1951 and lives in Kičevo (North Macedonia).

The case concerned proceedings brought against him for alleged collaboration with the security services of the former communist regime. At the end of the proceedings in 2014 his position as a trial judge was terminated.

In 2012 the Fact Verification Commission found that Mr Bileski had been an "operational liaison" with the former security services in return for promotion, that his collaboration had been conscious and that it had caused harm to others. The decision was based in particular on notes from one of his alleged handlers.

In proceedings before the administrative courts, he challenged both the Commission's findings and the authenticity of the documents. He requested that the courts hear oral evidence from the handler and an expert, namely a university professor and former intelligence officer.

The administrative courts dismissed his claims without examining the proposed witnesses. In 2013 the lower administrative court found in particular that the applicant "had not submitted any evidence that led to different facts". In 2014 the Higher Administrative Court upheld that decision, holding that the alleged collaboration had complied with the statutory qualifying conditions and that "reports drawn up by handlers are to be regarded as facts".

Relying in particular on Article 6 § 1 (right to a fair trial / hearing) of the Convention, Mr Bileski complained he had not been given the opportunity to present his case effectively. In particular, the courts had not assessed any of the evidence he had proposed, refusing to examine witnesses or hold an oral hearing, despite repeated requests; nor had they provided sufficient reasons for their decisions. He had also been given limited access to the security service files.

**Violation of Article 6 § 1** – on account of the overall unfairness of the lustration proceedings

**Just satisfaction:** EUR 2,400 (non-pecuniary damage) and EUR 300 (costs and expenses)

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