

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

FIRST SECTION

CASE OF ŞENER v. POLAND

(Application no. 53371/18)

JUDGMENT

Art 1 P7 • Procedural safeguards relating to expulsion of aliens • Entry of the applicant's details in the Register of Undesirable Foreigners and the Schengen Information System on national security grounds, decided on the basis of classified information not disclosed to the applicant, without sufficient counterbalancing safeguards • Art 1 P7 applicable • Entry of his details in the Registers producing the effect of an expulsion • Significant restriction of the applicant's right to be informed of the facts and the content of the documents underlying his expulsion • Lack of reasoned and individualised assessment • Strict scrutiny of counterbalancing factors, in the absence of any examination by the domestic authorities of the need for the significant limitation of his rights • Applicant not afforded an effective opportunity to secure representation by a lawyer • Involvement of highest judicial authority a significant safeguard, but insufficient given scarce information available • Essence of the applicant's procedural rights not preserved
Art 8 • Private and family life • Domestic proceedings concerning the entry of the applicant's details in the Registers not attended by appropriate and sufficient procedural guarantees • Interference not necessary in a democratic society

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 May 2026

FINAL

21/09/2026

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



In the case of Şener v. Poland,

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

Ivana Jelić*, President*,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 53371/18) 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 Turkish national, Mr Adin Şener ("the applicant"), on 9 November 2018;

the decision to give notice of the application to the Polish Government ("the Government");

the decision by the Government of Türkiye not to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Helsinki Foundation for Human Rights and the Hungarian Helsinki Committee, who were granted leave to intervene by the President of the Section;

the death of the applicant on 13 October 2024 and the wish expressed by his daughter, Ms Derya Şener, to pursue the case in his stead;

Having deliberated in private on 2 December 2025 and 10 April 2026,

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

INTRODUCTION

1. The case concerns the expulsion of the applicant (a lawfully resident alien) on the grounds of national security. The applicant complained that he had never been informed about the reasons for his expulsion. The case raises issues under Article 1 of Protocol No. 7 to the Convention and Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1971 and died in 2024. The applicant and subsequently his daughter were represented by Mr M. Pietrzak and Ms M. Radziejowska, lawyers practising in Warsaw.

3. The Government were represented by their Agent, Mr J. Sobczak, subsequently replaced by Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

A. The applicant's life and residence in Poland

5. The applicant entered Poland in 1989. He had been in an informal relationship with K., a Polish national, since 1995. Their daughter, Derya, was born in 2001. The couple married in 2008.

6. The applicant ran a small business. He lived in Poland on temporary residence permits which had been repeatedly renewed. His last temporary residence permit was issued on 23 March 2015 and had an expiry date of 2 March 2018.

7. While residing in Poland, the applicant was convicted twice (between 2004 and 2009) of fraud and corruption. He had been the subject of a further criminal investigation under the supervision of the Gdańsk Regional Prosecutor's Office and concerning charges of fraud and tax evasion since at least 2013. Another set of criminal proceedings against the applicant had also been pending before the Prudnik District Court since 2013.

B. The applicant's application for a permanent residence permit

8. While his temporary residence permit was still valid (see paragraph 6 above), the applicant applied for permanent residence. On 10 August 2015 the Mazowiecki Governor (*Wojewoda Mazowiecki*) refused to grant the applicant a permanent residence permit on the grounds that he was a threat to national security and public order. The Governor noted that the applicant had previously been convicted of tax related criminal offences. Even though his conviction was spent, there was no basis to believe that he would respect the Polish legal order in future. The Governor further found that the permit could not be granted since the applicant had concealed the fact that there were various criminal proceedings pending against him.

9. The first-instance decision was upheld by the Head of the Office for Foreigners (*Szef Urzędu do Spraw Cudzoziemców*) on 15 March 2016. The second-instance body agreed with the applicant that, since his convictions were spent, there were no grounds for applying the provisions concerning

national security and public order. Nevertheless, having confirmed that the applicant had indeed concealed information about pending criminal proceedings, the Head of the Office for Foreigners upheld the first-instance decision because that concealment meant he was required to refuse to grant a residence permit.

It appears that this decision did not affect the applicant's then valid temporary residence permit, which was not revoked until a decision by the Mazowiecki Governor of 6 October 2016 (which, in turn, only became final on 1 February 2018).

C. The applicant's most recent criminal conviction

10. On 4 April 2016, the Prudnik District Court convicted the applicant in the criminal proceedings (see paragraph 7 above *in fine*) on multiple counts of forgery (Article 270 § 1 of the Criminal Code), misrepresentation in order to procure a document (Article 272 of the Criminal Code) and use of a fraudulently obtained document (Article 273 of the Criminal Code) and sentenced him to a total of 1 year and 8 months' imprisonment suspended pending 4 years' probation.

The applicant appealed and in the final judgment of 27 July 2018 the Opole Regional Court amended the sentence by reducing the period of probation to two years.

II. THE ENTRY OF THE APPLICANT'S DETAILS IN THE REGISTER OF UNDESIRABLE FOREIGNERS FOR REASONS OF NATIONAL SECURITY

11. On 6 July 2016 the Head of the Office for Foreigners entered the applicant's details in the Register of Foreigners whose Residence in Poland is Undesirable ("*Wykaz cudzoziemców, których pobyt na terytorium Polski jest niepożądany*" – hereinafter referred to as "the Register of Undesirable Foreigners"), for a period to end on 4 July 2021. At the same time, the applicant's details were transferred to the Schengen Information System ("SIS") for the purposes of refusing him entry. Hereinafter, the Court will refer to the Register of Undesirable Foreigners and to SIS jointly as "the Registers". The applicant was not involved in the process, which resulted in his details being entered in the Registers.

12. Neither the authority which requested the entry of the applicant's details in the Register of Undesirable Foreigners nor the content of the information on which that request was based have ever been disclosed to the applicant. This information has likewise not been disclosed to the Court in the present proceedings.

13. On 12 July 2016, on his way back to Poland from a holiday in Türkiye, the applicant was stopped at the Turkish-Bulgarian border and refused entry

to the Schengen area. The Bulgarian authorities informed him that his name was on the Register of Undesirable Foreigners.

14. On 15 and 18 July 2016 the applicant's lawyer asked the Head of the Office for Foreigners why the applicant was on the Registers, and for permission to access the applicant's file.

15. On 4 August 2016 the Head of the Office for Foreigners dismissed the above-mentioned requests. It was noted that the applicant's details had been entered in the Registers due to the fact that considerations of national defence or security, or the protection of public security and public order, or the interests of the Republic of Poland so required, as provided by Section 435 (1) 4 of the Aliens Act of 12 December 2013 (see paragraph 28 below). It was therefore not possible to provide the facts on which the decision had been based or to allow the applicant an opportunity to review the evidence on his file. The authority concluded that providing the applicant with the requested information would be tantamount to a breach of law.

III. PROCEEDINGS TO REMOVE THE APPLICANT'S DETAILS FROM THE REGISTERS

16. On 8 September 2016 the applicant applied to the Head of the Office for Foreigners for the removal of his details from the Registers and for a certificate confirming that his details did not appear in either database. He relied on, *inter alia*, Article 8 of the Convention and argued that the entry of his details in the Registers had prevented him from remaining in Poland with his wife and minor child.

17. On 6 October 2016 the Head of the Office for Foreigners, relying on Sections 435 (1) 4, 438 (1) 8 and 443 (1) 3 of the 2013 Aliens Act (see paragraph 28 below), refused the applicant's application on the ground that his entry and stay in Poland would present a risk to national security.

18. On 18 October 2016 the applicant asked for his case to be reconsidered. He emphasised that the order for the entry of his details in the Registers had been made under a legal regime which did not provide the necessary safeguards against arbitrariness.

19. On 27 March 2017 the Head of the Office for Foreigners, after having reconsidered the case, upheld the first-instance decision. The authority found no reasons to remove the applicant from the Registers given that his entry and stay in Poland would present a risk to national security.

20. The applicant made a further appeal, which was dismissed by the Warsaw Regional Administrative Court on 6 September 2017. The court noted that the information on which the order for the entry of the applicant's details in the Registers was based was secret. The court had examined that information and held that there were no grounds to find that there had been no legal basis for entering the applicant's details in the Registers or that it had been in breach of the law.

21. The applicant brought a cassation appeal in the Supreme Administrative Court, which was dismissed on 26 March 2018. The court repeated the reasons given by the administrative authorities and the Regional Administrative Court. The judgment was served on the applicant's lawyer on 11 May 2018.

IV. LATER DEVELOPMENTS

22. On 12 February 2019 the applicant made a further application for the Head of the Office for Foreigners to remove his details from the Registers and to issue a certificate that his details were not on the Registers. The application was considered at two levels but ultimately refused by a decision of the Head of the Office for Foreigners of 22 July 2019. In giving reasons, the Head of the Office for Foreigners explained that at the date of the decision and until 26 July 2020 there were two independent grounds for putting the applicant's details on the Registers. The first one was national security (see paragraph 15 above) and that applied until 4 July 2021 (see paragraph 11 above). The second ground cited by the authority was the applicant's most recent criminal conviction (see paragraph 10 above), which had resulted in his details being put on the Registers for the two-year probation period imposed on him in the final judgment (that is, from 27 July 2018 to 26 July 2020). The legal basis for entering the applicant's name on the Registers was Section 435 (1) 2 (c) in conjunction with Section 438 (1) 6 of the of the Aliens Act of 12 December 2013 (see paragraph 28 below). The applicant did not appeal further to the Regional Administrative Court against that decision.

23. On 4 July 2021 the prescribed period for the applicant's details to remain on the Registers for reasons of national security ended (see paragraph 11 above) and the applicant's details were removed from the Registers.

24. It appears that, following the removal of his details from the Registers, the applicant first returned to Poland in September 2021 and that he then travelled in and out of Poland on the basis of a valid visa. Most recently, he appears to have entered Poland on 4 September 2023, after which he made an application for a temporary residence and work permit, which was refused on 8 April 2024 by the Małopolski Governor. On 13 October 2024 the applicant died in Poland.

RELEVANT LEGAL FRAMEWORK

I. POLISH CONSTITUTION

25. Article 47 of the Constitution reads as follows:

> "Everyone shall have the right to legal protection of his private and family life, to his reputation and to make decisions about his personal life."

26. Article 51 in its relevant parts reads as follows:

"2. Public authorities shall not acquire, collect nor make accessible information about citizens other than that which is necessary in a democratic state ruled by law.

3. Everyone shall have a right of access to official documents and data collections concerning himself. Restrictions on such rights may be established by statute.

4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute.

5. Principles and procedures for collection of and access to information shall be specified by statute."

27. Article 52 of the Constitution in its relevant part reads as follows:

"1. Freedom of movement and the choice of the place of residence and stay within the territory of the Republic of Poland shall be assured to everyone."

II. THE ALIENS ACT OF 2013

28. The Aliens Act of 12 December 2013 (*ustawa o cudzoziemcach* – "the 2013 Aliens Act"), as applicable at the material time, read as follows in its relevant parts:

"Section 302

1. A decision ordering a foreigner to leave the country shall be made where:

...

7) the foreigner's details are on the register of foreigners whose stay on the territory of the Republic of Poland is considered undesirable ...

Section 434

The register of foreigners whose stay on the territory of the Republic of Poland is considered undesirable, hereinafter referred to as "the register", shall be maintained by the Head of the Office [for Foreigners].

Section 435

1. The personal details of a foreigner shall be entered in and stored in the register if at least one of the following grounds is met:

1) a decision has been made requiring the foreigner to leave the territory, accompanied by a prohibition on entry into the territory of the Republic of Poland, or a prohibition on entry into the territory of the Republic of Poland and other Schengen states;

2) the foreigner has been convicted by a final judgment:

a) in the Republic of Poland – of an intentional offence or a fiscal offence for which the foreigner has been given a penalty of a fine or imprisonment, or

b) in a State other than a Schengen state – of an offence constituting a serious crime (*zbrodnia*) within the meaning of Polish law, or

c) in the Republic of Poland or another Schengen state – of an offence punishable by a term of imprisonment exceeding one year;

3) the entry or stay of the foreigner on the territory of the Republic of Poland is undesirable because of obligations arising from international agreements ratified by and binding on the Republic of Poland;

4) considerations of national defence or security, or the protection of public security and public order, or the interests of the Republic of Poland so require;

5) after having been arrested in connection with an unlawful border crossing, the foreigner has been transferred to a third state pursuant to an international agreement on the transfer and readmission of persons.

2. A foreigner's details may be entered in the register without his or her knowledge or consent.

Section 438

1. The details of a foreigner shall be entered in the register for the following periods:

1) for the period specified in the decision requiring the foreigner to leave the territory, where that decision imposed a prohibition on re-entry into the territory of the Republic of Poland, or into the territory of the Republic of Poland and other Schengen states;

2) for three years from the date on which the foreigner was transferred to a third state under an international agreement on the transfer and readmission of persons, following his or her apprehension in connection with an unlawful border crossing;

3) for five years from the date of completion of a sentence of imprisonment imposed in the judgment in which the entry of the foreigner's details in the register is ordered, where the foreigner was sentenced to at least three years' imprisonment;

4) for three years from the date of completion of a sentence of imprisonment imposed in the judgment in which the entry of the foreigner's details in the register is ordered, where the foreigner was sentenced to less than three years' imprisonment;

5) for three years from the date on which the judgment ordering the entry of the foreigner's details in the register became final, where a fine was imposed on the foreigner;

6) for the duration of the conditional suspension of a sentence of imprisonment, from the date on which a judgment referred to in Section 435 (1) 2 became final, where the foreigner was given a suspended sentence of imprisonment;

7) for the period resulting from an international agreement binding on the Republic of Poland on which the entry of the foreigner's details in the register is based;

8) for a period not exceeding five years, with the possibility of extension for further periods none of which may exceed five years, in the case of entries made on the grounds that the foreigner's entry or stay may pose a threat to national defence or security, to the protection of public security and public order, or may prejudice the interests of the Republic of Poland.

2. A foreigner's details shall be entered in the register for the period referred to in subsection 1, starting from the date of:

1) enforcement of the decision obliging the foreigner to leave the territory;

2) expiry of the time-limit for leaving the country voluntarily as specified in the decision requiring the foreigner to return, where there is no information as to the enforcement of that decision;

3) the decision requiring the foreigner to leave the territory, where no time-limit for voluntary departure was specified.

3. In the situation referred to in subsection 2 (2), where the Head of the Office [for Foreigners] has received confirmation that a decision requiring a foreigner to leave the territory on which an entry in the Register was based, has been enforced, the period of validity of the entry shall be adjusted so that its starting point is the date of enforcement of that decision.

4. A foreigner's details shall be removed from the register on expiry of the periods referred to in subsections 1–3.

Section 440

1. The entry of a foreigner's details in the register, the extension of the period of validity of an entry, or the removal of the details from the register shall be effected by the Head of the Office [for Foreigners], either on his or her own initiative or at the request of one of the following authorities:

1) the Minister of National Defence;

2) the Minister for Public Finances;

3) the Minister for Foreign Affairs;

4) the Chief Commander of the Police;

5) the Chief Commander of the Border Guard;

6) the Head of the Internal Security Agency;

7) the Head of the Intelligence Agency;

8) the Head of the Customs Service;

9) the President of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation;

10) the regional governor (*wojewoda*).

2. Where the Head of the Office [for Foreigners] does not grant a request referred to in subsection 1, the requesting authority may apply to the minister responsible for internal affairs for a decision in the matter.

3. Where the minister responsible for internal affairs grants an application referred to in subsection 1, he or she shall order the Head of the Office [for Foreigners] to enter the foreigner's details in the register, to extend the period of validity of the entry, or to remove the foreigner's details from the register.

Section 443

1. The Head of the Office [for Foreigners] shall transmit the details of a foreigner as held on the register to be held for the duration of their retention by the Schengen Information System for the purpose of refusing entry, where the basis for retaining those details on the register is:

1) a final decision requiring the foreigner to return, containing a prohibition on re-entry into the territory of the Republic of Poland and other Schengen States, or

2) a final judgment referred to in Article 435 § 1 (2) (b) or (c), or

3) a finding that the entry or stay of the foreigner on the territory of the Republic of Poland is undesirable on account of a threat to national defence or security, or is required for the protection of public security and public order, or is undesirable because it may prejudice the interests of the Republic of Poland, or

4) the transfer of the foreigner to a third State under an international agreement on the transfer and readmission of persons, following his or her arrest in connection with an unlawful border crossing, or

5) Section 77 of the Act of 14 July 2006 on the entry into, residence in, and departure from the territory of the Republic of Poland of citizens of the Member States of the European Union and their family members.

2) Details entered in the Schengen Information System shall be removed in the event of suspension of the validity of the entry on the register, as referred to in Section 437, until the circumstances justifying that suspension cease.

3) Upon expiry of the suspension period, the foreigner's details shall again be entered in the Schengen Information System for the purpose of refusing entry.

Section 444

1. A foreigner whose details have been entered in the register or in the Schengen Information System for the purpose of refusing entry shall have the right to apply to the Head of the Office [for Foreigners] for:

1) access to information concerning the entry of his or her details in the register or in the Schengen Information System for the purpose of refusing entry, the duration of the entry, and its legal and factual basis;

2) rectification of the details, where they are incomplete, outdated, or inaccurate;

3) removal of the details, where they have been entered or are stored in breach of law.

2. The Head of the Office [for Foreigners] shall refuse to provide the foreigner with information concerning the factual basis of the entry [in the register] where his or her details have been entered in the register or in the Schengen Information System on the basis of Section 435 (1) 4."

THE LAW

I. LOCUS STANDI

29. The applicant died after he had lodged the present application and his daughter informed the Court that she wished to pursue the proceedings in his stead. The Government submitted that she could not have standing in the case as the rights under examination were not transferable.

30. The Court reiterates its constant approach: where an applicant dies after lodging an application, it accepts that the next of kin or heir may in principle pursue the application, provided that he or she has sufficient interest

in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014, with further references). The issue is not whether the rights in question are or are not transferable to any persons wishing to continue the process but whether those persons can in principle claim a legitimate interest in asking the Court to deal with the case on the basis of the applicant's wish to exercise his or her individual and personal right to lodge an application with the Court (see *Singh and Others v. Greece*, no. 60041/13, § 26, 19 January 2017).

31. The Court is satisfied that the applicant's daughter has a legitimate interest in ensuring that the application is pursued on behalf of the deceased applicant. It has no reason to doubt that they had a sufficiently close relationship. The Court finds that Ms Derya Şener has standing to pursue the late applicant's complaints before the Court. However, for reasons of convenience, the text of this judgment will continue to refer to Mr Adin Şener as "the applicant" (see *Gaggl v. Austria*, no. 63950/19, § 35 *in fine*, 8 November 2022, and the case-law cited therein).

II. SCOPE OF THE CASE

32. The Court reaffirms that as a matter of well-established international law and subject to their treaty obligations, the States have the right to control the entry, residence and expulsion of aliens; that the Convention does not guarantee the right of an alien to enter or to reside in a particular country; and that, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences (see, among many other authorities, *De Souza Ribeiro v. France* [GC], no. 22689/07, § 77, ECHR 2012).

33. Given the above, the Court finds it important to note the following circumstances, which were not in dispute between the parties:

- the applicant was convicted in criminal proceedings in the domestic courts of the Respondent State on three occasions (see paragraphs 7 and 10 above);
- the first two convictions were spent (expunged from the record) before the applicant's details were first entered in the Registers (see paragraph 9 above);
- the domestic authority which considered the applicant's application for a permanent residence permit decided that because the two first convictions were spent there was no reason to refuse the applicant a permanent residence permit for reasons of national security (see paragraph 9 above);
- the applicant's most recent (third) criminal conviction did not become final until after the applicant's details were first entered in the Registers (see paragraphs 10 and 11 above);
- the applicant's details were entered in the Registers on two separate occasions and for two separate reasons (see paragraph 22 above): initially, for

national security reasons, for the period between 6 July 2016 and 4 July 2021; and subsequently, on the basis of the applicant's most recent (third) criminal conviction, for the period between 27 July 2018 and 26 July 2020;

- the applicant did not challenge the entering of his details in the Registers on the basis of his most recent criminal conviction, either at the domestic level or before the Court.

34. Taking the above into consideration the Court will now examine the precise scope of the case before it, in so far as the applicant's criminal convictions are concerned.

Firstly, the Court observes that it was never suggested that the applicant's spent convictions were the basis on which the applicant's details were entered into the Registers for reasons of national security. In this connection, the Court also observes that even when those convictions were addressed by the domestic authorities (as was the case in the proceedings for a permanent residence permit, about which the applicant has made no complaint), the authorities expressly stated that the applicant's application could not be refused on the basis of those convictions. Since there is no indication that those spent convictions constituted any part of the basis for the entry of the applicant's details in the Registers, the Court finds that they fall outside the scope of the present case.

Secondly, the Court observes that the parties agree that the applicant's most recent conviction could constitute a valid basis for putting the applicant's name on the Registers. Therefore, since the applicant has not raised any complaints about his details being put on the Registers on that basis, the Court finds that conviction and its consequences to be likewise outside the scope of the present case.

35. Consequently, the Court finds that the present case does not directly concern the Respondent State's right to expel an alien convicted of criminal offences. The parties agree that the Respondent State had the right to enter the applicant's details in the Registers on the basis of a final conviction and to bar the applicant from entering its territory for the period associated with that conviction. The Court notes, in this connection, that the applicant clearly stated that his application did not concern the domestic proceedings terminated with the decision of 22 July 2019 (see paragraphs 39 and 41 below). The issue is therefore whether the Respondent State respected the applicant's Convention rights when it entered his details in the Registers solely for reasons of national security.

36. In view of the above, including because there is no disagreement between the parties on the facts, the Court is not called upon to examine whether the entering of the applicant's details in the Registers on the basis of his most recent criminal conviction for the period between 27 July 2018 and 26 July 2020, and the resulting bar on his returning to Poland during that period, affected the applicant's Convention rights.

37. The remaining issue is then whether the case discloses any violations of the applicant's rights by the original decision to enter his details into the Registers for reasons of national security, which prevented his return to the Respondent State.

III. PRELIMINARY OBJECTION OF NON-EXHAUSTION REGARDING THE APPLICATION AS A WHOLE

A. The parties' submissions

38. The Government submitted that the application as a whole was inadmissible on account of a failure to exhaust domestic remedies, in so far as the applicant:

(i) did not appeal against the Head of the Office for Foreigners' decision of 22 July 2019 (see paragraph 22 above), and

(ii) did not lodge a constitutional complaint to challenge the relevant provision of the 2013 Aliens Act (namely, according to the Government, Section 435 (4) of the 2013 Aliens Act) which, if successful, would have enabled him to apply for the proceedings which had terminated with the judgment of the Supreme Administrative Court of 26 March 2018 (see paragraph 21 above) to be reopened and to claim compensation under Section 417-1 (1) of the Civil Code, that is, on the basis of the State Treasury's liability in tort for the harm caused by the enactment of a law incompatible with the Constitution (see *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 25, ECHR 2002-X).

39. In response, the applicant submitted that:

(i) his application concerned the proceedings that had terminated with the Supreme Administrative Court's judgment of 26 March 2018, to which the decision of 22 July 2019 was irrelevant, and

(ii) a constitutional complaint was not an effective remedy in his case, notably because the Constitutional Court was no longer an independent and impartial judicial authority and there were significant doubts as to the validity of its rulings.

B. The Court's assessment

40. The Court refers to the general principles concerning exhaustion of domestic remedies as recently summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], (no. 21881/20, §§ 138-45, 27 November 2023).

41. It should be noted, at the outset, that the application under review was lodged with the Court within the six-month time-limit after the final judgment of the Supreme Administrative Court of 26 March 2018 had been served on the applicant's lawyer (see paragraph 21 above). The Government's first

argument in support of their objection that the applicant had not exhausted domestic remedies was that he had not lodged an appeal against the unfavourable decision of the Head of the Office for Foreigners of 22 July 2019 given in the subsequent set of proceedings (see paragraph 22 above). The Court reiterates that, in so far as that decision concerned the applicant's name having been put on the Registers on the basis of his final criminal conviction, it remains outside the scope of the present case (see paragraphs 35-37 above), as the applicant made no complaints in that respect.

42. Concerning the applicant's complaint regarding expulsion on the grounds of national security (see paragraph 51 below), the Court observes that the applicant had used the same legal avenue before (see paragraphs 16-21 above) without success. When one remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 50, 2 November 2010 and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019, both with further references). It thus follows *a fortiori* that, in the specific circumstances of the present case, that is, where there has been no change of the underlying situation, the applicant cannot be required to make repeated use of the same remedy, especially after having already filed the application with the Court.

43. The other remedy the Government said the applicant had not exhausted was a constitutional complaint to challenge the relevant provision of the 2013 Aliens Act. In their observations the Government identified the provision as "Section 435 (4)". The 2013 Aliens Act does not contain a provision with that reference (see paragraph 28 above). The Court will therefore assume, in the Government's favour, that they meant Section 435 (1) 4 of the Act. In the Government's view the applicant could have challenged the application of that provision as incompatible with Articles 47, 51 (2)-(4) and 52 (1) of the Constitution (see paragraphs 25-27 above). The Government claimed that if this were to have been successful it could have been followed by an application for the proceedings that terminated with the judgment of the Supreme Administrative Court of 26 March 2018 to be reopened and by a civil action for compensation.

44. The Court considers the summary of the process for making a constitutional complaint in Poland from the judgment given in *Xero Flor w Polsce sp. z o.o. v. Poland* (no. 4907/18, 7 May 2021) to be relevant here:

> 197. The Court reiterates that in the decision in *Szott-Medyńska v. Poland* (no. 47414/99, 9 October 2003) concerning the right of access to a court, when examining the question of the effectiveness of a constitutional complaint for the purposes of Article 35 § 1 of the Convention, it considered two important limitations of the Polish model of a constitutional complaint, namely its scope and the form of redress it provided.
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> 198. The first limitation is that a constitutional complaint can only be lodged against a statutory provision or another type of provision, and not against a judicial or administrative decision as such. Therefore, recourse to a constitutional complaint can

> only be had in a situation in which the alleged violation of constitutional rights and freedoms has resulted from the application of a legal provision which can reasonably be questioned as unconstitutional. Furthermore, such a provision has to constitute the direct legal basis for the individual decision in respect of which the violation is alleged. Thus, the constitutional complaint procedure cannot serve as an effective remedy if the alleged violation has resulted only from the erroneous application or interpretation of a statutory provision which, in its content, is not unconstitutional (see, for example, *Palusiński v. Poland* (dec.), no. 62414/00, 3 October 2006; and *Długołęcki v. Poland*, no. 23806/03, § 25, 24 February 2009, both cases concerning freedom of expression).
>
> 199. The second limitation of a constitutional complaint under Polish law concerns the redress which a constitutional complaint provides to an individual. The Court notes that, in accordance with Article 190 of the Constitution, the only direct effect of a judgment of the Constitutional Court is the repeal of the statutory or other type of provision which has been found unconstitutional. Such a judgment, however, does not automatically quash an individual decision in relation to the constitutional complaint which has been lodged. Article 190 § 4 of the Constitution grants a person who lodges a successful constitutional complaint the right to request that the procedure in his case be reopened or otherwise revised, "in a manner and on the basis of principles specified in provisions applicable to the given proceedings".

45. The Court finds the Government's argument unconvincing in the light of the first limitation described in *Szott-Medyńska*, in so far as it restricts the remedy of a constitutional complaint to situations in which the alleged violation of constitutional rights and freedoms resulted from the application of a legal provision which can reasonably be questioned as unconstitutional.

46. The Government contended that the applicant should have lodged a constitutional complaint about Section 435 (1) 4 of the 2013 Aliens Act (see paragraph 43 above). The Court notes, in this respect, that the provision in question indeed constituted the basis of the decision to enter the applicant's details in the Register of Undesirable Foreigners for reasons of national security. However, regard must be had to the fact that the applicant did not challenge – either at the domestic level or before this Court – the general power of the Respondent State to declare the presence of certain foreigners on Polish territory to be undesirable and to expel them or bar them from entering the country. It is also worth reiterating that the applicant did not even contest the entering of his details in the Registers on the basis of his criminal conviction. Rather, the complaints aired at the domestic level and submitted to this Court were about the lack of procedural safeguards in the domestic proceedings.

47. In view of the above, the Court is not persuaded by the Government's argument that the applicant could have remedied his situation by challenging the constitutionality of Section 435 (1) 4 of the 2013 Aliens Act. While the Court is not called upon to speculate on the outcome of any proceedings that might be instituted before the Constitutional Court, it observes that the general aim of the provision in question – namely, preventing individuals posing a threat to national security from entering or remaining in Poland – could not reasonably be expected to be found incompatible with the

provisions of the Constitution cited by the Government. This observation is further reinforced by the fact that the Government have not submitted any case-law examples to the contrary.

48. Consequently, the Court finds that the constitutional complaint suggested by the Government could not have constituted an effective remedy in the applicant's specific situation.

49. Having regard to the above considerations, the Court concludes that the Government's objection to the application as a whole, namely that the applicant had failed to lodge a constitutional complaint, must be rejected under the *Szott-Medyńska* criteria, and that there is no need to examine the applicant's arguments about the composition and operation of the Constitutional Court.

50. In the light of the foregoing, the Court dismisses the Government's objection regarding the applicant's failure to exhaust domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 7 TO THE CONVENTION

51. The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 7 to the Convention that he had not been afforded sufficient procedural safeguards and therefore had not been able to defend himself effectively in proceedings which had resulted in his being expelled from Poland on national security grounds. More specifically, he alleged that he had not been told what the allegations against him were, and that neither he nor his lawyer had been given access to the case file in the domestic proceedings.

52. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 113-15 and 126, 20 March 2018), finds it appropriate to examine the applicants' allegations solely under Article 1 of Protocol No. 7 to the Convention (see *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 90, 15 October 2020), which reads as follows:

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons against his expulsion,
>
> (b) to have his case reviewed, and
>
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.
>
> 2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

A. Admissibility

1. The parties' submissions

53. The Government argued that the applicant had left the territory of the Respondent State voluntarily (that is in order to take a holiday in Türkiye) and therefore had not been "expelled" for the purposes of Article 1 of Protocol No. 7 to the Convention. Consequently, in the Government's view, the complaint was incompatible *ratione materiae* with that provision.

54. The applicant responded that he had been a lawful resident of Poland at the relevant time and that the short holiday in Türkiye had no bearing on that status. He further contended that the entry of his details in the Registers had been tantamount to and had produced the effect of an "expulsion".

2. The Court's assessment

55. The Court reiterates that the safeguards provided for by Article 1 of Protocol No. 7 apply only to foreigners who are "lawfully resident" in the territory of a State which has ratified this Protocol (see *Georgia v. Russia (I)* [GC], no. 13255/07, § 228, ECHR 2014 (extracts); *Sejdovic and Sulejmanovic v. Italy* (dec.), no. 57575/00, 14 March 2002; and *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 91, 15 October 2020).

56. In the present case the applicant arrived in Poland in 1989. He lived there on temporary residence permits, the last one of which, valid until March 2018, was granted in March 2015, that is more than a year before his details were entered in the Registers (see paragraph 6 above). The Court notes that the applicant was refused a permanent residence permit shortly thereafter, and that this refusal apparently did not affect the validity of the applicant's temporary residence permit (see paragraph 9 above). The Court finds that the applicant was "lawfully resident" in Poland in 2016 when his details were first entered in the Register of Undesirable Foreigners (see paragraph 11 above).

57. "Expulsion" is an autonomous concept which is independent of any definition in domestic legislation (see *Bolat v. Russia*, no. 14139/03, § 79, ECHR 2006-XI). With the exception of extradition, any measure compelling a foreigner's departure from the territory where he was lawfully resident constitutes "expulsion" for the purposes of Article 1 of Protocol No. 7 (ibid.; see also the Explanatory Report to Protocol No. 7 cited in *Nolan and K. v. Russia*, no. 2512/04, § 50, 12 February 2009; compare *mutatis mutandis* with the notion of expulsion under Article 4 of Protocol no. 4 to the Convention in *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 174, ECHR 2012).

58. Against that background, the Court notes that proceedings for entering details in the Register of Undesirable Foreigners are distinct from proceedings to expel a foreigner from state territory. However, it appears that

if the applicant had not left the country to go on holiday, a decision ordering him to leave the country would have been issued as a result of his details being entered in the Registers (as provided for in Section 302 (1) 7 of the 2013 Aliens Act – see paragraph 28 above); this, in turn, would have produced the same effect of depriving the applicant of the right to remain in Poland under his temporary residence permit.

59. The Court therefore finds that by entering the applicant's details in the Registers, the Polish authorities sought to prevent him from re-entering Polish territory and to compel his departure from Poland where he was lawfully residing at the time (compare with *Nolan and K.*, cited above, § 112). Thus, the Court holds that the applicant was "expelled".

60. In the light of the above considerations, the Court therefore finds that Article 1 of Protocol No. 7 is applicable *ratione materiae* in the present case.

3. Conclusion as to admissibility

61. The Court 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

62. The applicant submitted that the decision to expel him from Poland had not complied with the procedural requirements of Article 1 of Protocol No. 7 to the Convention. He maintained that he had never been told the facts on which the order for the entry of his details in the Register of Undesirable Foreigners was based. As a result, he was deprived of the right to submit reasons against his expulsion.

63. Referring to *Muhammad and Muhammad* (cited above), the applicant submitted that the restrictions on his procedural rights as guaranteed by Article 1 of Protocol No. 7 to the Convention meant that the process against him had failed the two-stage test established in that case. The applicant submitted that he had been prevented from participating in the proceedings which had led to his expulsion by the restrictions put on his procedural rights, and had only learned that his details had been entered in the Registers when he was refused entry into the Schengen area. He stressed that the domestic law (Section 435(2) of the 2013 Aliens Act) not only allows for the entry of a foreigner's details in the Register of Undesirable Foreigners without that person's knowledge but also requires the authorities to refuse the foreigner any information about the facts on which the decision to order that entry was based (Section 444(2)). Those rules resulted in a significant restriction of the

applicant's right to be informed of the facts and the content of the documents on which the disputed decision was based.

64. As to whether the restriction was justified, the applicant emphasised that the domestic authorities had limited their reasons to noting that the material on which the disputed decision was based had been classified as secret and therefore it was not possible for an authority or court to refer to it in detail when giving reasons for subsequent decisions and judgments. The applicant further argued that the domestic courts did not of their own motion examine whether the reasons of national security genuinely required the refusal to disclose the material in the case file.

65. The applicant submitted that: (i) no information was ever disclosed to him as to the grounds for his expulsion; (ii) neither he nor his lawyer was ever given an opportunity to access any of the information on which the order for the entry of his details in the Register was based; (iii) there was no independent review in place in the disputed proceedings (the applicant referred to *Muhammad and Muhammad*, cited above, § 156); and (iv) the reasoning given in the domestic decisions and judgments did not allow for an assessment of whether the applicant's expulsion had been sufficiently justified in the circumstances of the case.

(b) The Government

66. The Government submitted that the applicant's entry in the Register of Undesirable Foreigners had been made pursuant to law, that is under Section 435 (1) 4 of the 2013 Aliens Act, because it was required for reasons of national security.

67. They reiterated that the facts on which the order for the entry of the applicant's details in the Register of Undesirable Foreigners had been based had been in a document classified as "secret" and therefore could not be disclosed – neither to the applicant in the domestic proceedings, nor to the Court in the present proceedings. The Government argued that that approach was in line with Article 1 section 2 of Protocol No. 7 to the Convention, which refers to "reasons of national security". The Government conceded that even where national security was involved, a foreigner had a right to the minimum level of procedural guarantees. However, in the Government's view, this could not be interpreted as requiring full disclosure of the case file.

68. Referring to the Court's case-law (*C.G. and Others v. Bulgaria*, no. 1365/07, 24 April 2008; *Lupsa v. Romania*, no. 10337/04, ECHR 2006-VII; and *Liu v. Russia*, no. 42086/05, 6 December 2007) the Government argued that the focus should be on the protection against arbitrariness by State authorities, notably by way of ensuring effective judicial control, rather than on the denial of access to classified material. Moreover, relying on the judgment in *Regner v. the Czech Republic* [GC] (no. 35289/11, 19 September 2017), the Government submitted that the entitlement to the disclosure of relevant evidence was not an absolute right,

and where it was restricted, that could be counterbalanced within proceedings by the judicial authorities.

69. The Government referred to the case-law cited above and argued that the Polish legislation refusing access to classified documents which constituted direct evidence of a threat to national security and limited reasons to be given for decisions where that was necessary to protect classified information met the Convention standards in terms of quality of law.

70. The Government then referred to the case-law of the domestic administrative courts (notably judgment of the Supreme Administrative Court of 17 October 2014, case no. II OSK 829/13) and contended that even though it did not allow disclosure of classified material in any way, Polish law provided equally effective protection and which fulfilled the requirements of the Convention by having administrative judges review any relevant undisclosed material. The Government referred to a pronouncement of the Supreme Administrative Court that where administrative courts had on occasion refused to accept the arguments of an authority applying for the suppression of certain material, that proved that the system met the requisite standard.

71. In the present case, the Government emphasised that the disputed administrative decision to order the entry of the applicant's details in the Register of Undesirable Foreigners had been subject to judicial review by the Warsaw Regional Administrative Court and the Supreme Administrative Court, both of which had had the opportunity to familiarise themselves with all the evidence, including the classified documents, as had been confirmed in the written reasons of both judgments. The Government stressed that the administrative courts of both levels did not confine themselves to merely finding that a specific classified document existed but went on to analyse it.

72. The Government confirmed that the applicant had had the opportunity to initiate a procedure involving judicial review at two levels that could lead to the removal of his details from the Registers. Their view was that the order to enter the applicant's details in the Registers therefore complied with requirements of Article 1 of Protocol No. 7 to the Convention.

2. The third-party interveners

73. The Helsinki Foundation for Human Rights and the Hungarian Helsinki Committee submitted joint observations in which they presented, firstly, the European Union's standards on the right to present a defence and on procedural safeguards in immigration cases involving national security, and, secondly, the relevant Polish context.

74. The interveners highlighted that the procedural guarantees of Article 47 of the Charter of Fundamental Rights of the EU applied to all cases based on EU law, including those concerning the entry of foreigners' details in the SIS (as regulated by Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment,

operation and use of the second generation Schengen Information System (SIS II)). In the interveners' opinion, foreigners had to be made aware of the facts underlying the expulsion so that they could make use of their procedural rights and so that the proceedings would be consistent with the case-law of the Court of Justice of the European Union.

75. The interveners then outlined the applicable domestic provisions in Poland and argued that they were among the most restrictive in the EU in so far as the rights to present a defence were concerned. They further submitted that the secrecy surrounding immigration cases involving national security considerations could lead to abuse. Judicial review, in its current form, could not be considered an effective safeguard because the evidence submitted by the authorities might not be reliable or might omit essential issues. Administrative judges might not be able to carry out a thorough review of the case even if they had full access to the material, if they did not know about essential issues in the case.

76. The interveners further submitted that the relevant national legislation had been criticised by Polish legal scholars and Poland's Commissioner for Human Rights.

3. The Court's assessment

77. Referring to its considerations concerning the scope of the case (see paragraphs 32-37 above), the Court reiterates that, in pursuance of their task of maintaining public order, States have the power to expel an alien convicted of criminal offences. The respondent State did not, however, make use of that power in the present case but relied on grounds of national security for entering the applicant's details in the Registers.

(a) General principles

78. The Court emphasises that in adopting Article 1 of Protocol No. 7 the Contracting States agreed to "minimum" procedural safeguards in the event of expulsion, as set out in the Explanatory Report on Protocol No. 7 (see *Muhammad and Muhammad*, cited above, § 117).

79. The general principles governing the application of those safeguards are set out in *Muhammad and Muhammad* (cited above, §§ 125-57). In the Polish context, the Court has most recently reiterated and applied them in *Poklikayew v. Poland* (no. 1103/16, §§ 60-83, 22 June 2023), although in respect of the previous domestic legal framework (ibid., §§ 31-35; compare with paragraph 28 above).

80. In *Muhammad and Muhammad* the Court held in particular that Article 1 § 1 of Protocol No. 7 required that the foreigners concerned should be informed of the facts which had led the domestic authorities to consider that they represented a threat to national security, and also that they should be given access to the content of the documents and the information in the

case file on which those authorities had relied when deciding on their expulsion (ibid., § 129, and *Hassine v. Romania*, no. 36328/13, § 51, 9 March 2021).

81. The Court further stated that any restrictions on the rights in question should not negate the procedural protection guaranteed by Article 1 of Protocol No. 7 by impairing the very essence of the safeguards enshrined in this provision. Even in the event of restrictions, the foreigner should be offered an effective opportunity to submit reasons against his expulsion and should be protected against any arbitrariness. The Court should therefore first ascertain whether the restrictions on the foreigner's procedural rights had been found to be duly justified by the competent independent authority in the light of the particular circumstances of the case. The Court would then examine whether the difficulties for the foreigner resulting from those restrictions were sufficiently compensated for by counterbalancing factors. Only restrictions which, in the circumstances of each case, were duly justified and sufficiently counterbalanced would be permissible under Article 1 of Protocol No. 7 (see *Muhammad and Muhammad*, § 133, and *Hassine*, § 52, both cited above).

82. The less stringent the examination by the national authorities of the need to place restrictions on the foreigner's procedural rights, the stricter the Court's scrutiny of the counterbalancing factors would have to be (ibid., § 145). In its assessment, the Court would be guided by two basic principles: the more the information available to the foreigner was limited, the more the safeguards would be important, in order to counterbalance the restriction of his or her procedural rights; where the circumstances of a case showed that there would be particularly significant repercussions for the foreigner's situation, the counterbalancing safeguards had to be strengthened accordingly (see *Muhammad and Muhammad*, § 146, and *Hassine*, § 53, both cited above).

83. Restrictions on a foreigner's "procedural rights" could be adequately compensated for by: (i) the disclosure to the foreigner of sufficient information relevant to the grounds for his or her expulsion and access to the content of the documents relied upon; (ii) disclosure to the foreigner of information as to the conduct of the proceedings and the domestic mechanisms in place to counterbalance the restriction of his or her rights; and (iii) whether the foreigner was represented and whether an independent authority was involved in the proceedings (see *Muhammad and Muhammad*, §§ 147-56, and *Hassine*, § 54, both cited above).

84. Lastly, the Court pointed out that compliance with Article 1 § 1 of Protocol No. 7 did not necessarily require that questions as to all the above-mentioned matters should be answered cumulatively in the affirmative. The assessment of the nature and extent of the counterbalancing factors might vary depending on the circumstances of a given case. In each case the Court would be required to determine, in the light of the proceedings

as a whole, whether the essence of the rights secured to the foreigner by Article 1 § 1 of Protocol No. 7 had been preserved (see *Muhammad and Muhammad*, § 157, and *Hassine*, § 54, both cited above).

(b) Application of the general principles to the present case

(i) The restriction of the applicant's procedural rights

85. The Court observes that the applicant was not involved in and had no knowledge of the proceedings which resulted in his details being entered in the Registers. He only understood what had happened when he was refused entry to the Schengen area on his return from holiday on 12 July 2016 (see paragraph 13 above).

86. He then asked the appropriate authority to provide him with the information and documents on which the disputed decision had been based. It was not until the decision of 4 August 2016 (see paragraph 15 above) that the applicant was provided with official confirmation of the legal basis for the entry of his details in the Registers. The Court notes that the Head of the Office for Foreigners made no reference whatsoever to the facts of the applicant's case when giving reasons for the decision and that he limited himself to noting that the 2013 Aliens Act expressly precluded disclosure of classified information if an entry in the Registers was made for reasons of national security (Section 435 (1) 4).

87. Subsequently, the applicant brought proceedings requesting the removal of his details from the Registers (see paragraphs 16-21 above). None of the ensuing administrative and judicial decisions contained any additional facts about the entry of the applicant's details in the Registers. All the decision-making authorities and judicial bodies relied on national security as the basis for refusing to disclose further information.

88. This clearly entailed a significant restriction of the applicant's right to be informed of the facts and the content of the documents underlying both the application for his entry in the Registers, which had been made by an unnamed authority, and the decision of the Head of the Office for Foreigners to order the entry of his details in the Register of Undesirable Foreigners, which produced the effect of expelling him from Poland (compare with *Poklikayew*, cited above, § 67; and *Muhammad and Muhammad*, cited above, § 160).

89. It remains for the Court to establish whether the restrictions on the applicant's procedural rights were duly justified and whether counterbalancing measures were put in place by the national authorities to mitigate those restrictions, before it assesses the impact of the restrictions on the applicant's situation in the light of the proceedings as a whole (ibid., § 161, and *Hassine*, cited above, § 56).

(ii) Whether the restrictions on the applicant's procedural rights were duly justified

90. The decisions refusing disclosure relied solely on the classified nature of the material and on blanket reasons of national security without a reasoned, individualised assessment of whether the refusal was necessary which weighed up the national security interests against the foreigner's interests (see *Muhammad and Muhammad*, cited above, § 143). Moreover, the authorities emphasised that to disclose any information to the applicant would be in breach of the law (see paragraph 15 above). The nature of those national security reasons was not in any way clarified by the national authorities (compare with *Poklikayew*, cited above, § 70).

91. Consequently, in the absence of any examination by the domestic authorities of whether it was necessary to restrict the applicant's procedural rights, the Court must exercise strict scrutiny in order to establish whether the counterbalancing factors put in place were capable of effectively mitigating those restrictions (see *Muhammad and Muhammad*, § 165, *Hassine*, § 57, and *Poklikayew*, § 71, all cited above).

(iii) Counterbalancing factors in the present case

92. The Government's main argument in support of their contention that the applicant's Convention rights had been respected is that – having learned the reasons for his details being entered in the Registers – the applicant was able to initiate proceedings aimed at having his details removed (see paragraph 16 above), and that – in those proceedings – the legality of the entry was examined at two judicial levels, by decision-makers who had the opportunity to access the classified evidence material (see paragraphs 20-21 above).

93. The Court finds that both: (i) the involvement of an independent authority in the proceedings reviewing the legality or merits of the expulsion measure, and (ii) the possibility for that authority to examine the supporting evidence adduced are important counterbalancing factors to be taken into account in deciding whether the rights to submit reasons against expulsion and to have one's case reviewed have been respected (see *Muhammad and Muhammad*, cited above, § 156). The applicant has not suggested that the administrative courts were not sufficiently independent within the meaning of the Court's case-law, and the Court finds no reason to hold otherwise. The Court also attaches particular weight to the fact that the proceedings were heard by the highest courts in the Polish legal system; the Supreme Administrative Court is the highest judicial authority in administrative cases. Moreover, the Court also notes that the administrative courts of both instances had access to the information relied upon by the authority requesting the applicant's inclusion in the Registers. In the Court's view, all of the above are significant safeguards which should be taken into account in assessing any mitigation of the effects of the restrictions on the applicant's procedural

rights (compare with *Poklikayew*, § 78, and *Muhammad and Muhammad*, § 193, both cited above; see also, *mutatis mutandis*, *Cimpaka Kapeta v. Belgium*, no. 55000/18, § 81, 26 June 2025).

94. However, even in those judicial proceedings, given the scarce information available to him, the applicant could not effectively challenge the authorities' statements that national security was at stake (see *Poklikayew*, cited above, § 79).

95. As regards the relevance of the information disclosed to the applicant about the grounds for his expulsion and the access provided to the content of the documents relied upon by the domestic authorities, the Court observes that the applicant was never informed that the disputed proceedings had been commenced (compare and contrast with *Poklikayew*, cited above, § 7, and with *F.S. v. Croatia*, no. 8857/16, § 64, 5 December 2023, where the applicants were made aware that proceedings to expel them had been commenced). Moreover, he was not made aware what specific authorised body had asked for his details to be entered into the Registers (compare and contrast with *Poklikayew*, cited above, § 6, where that information was made available to the applicant). Furthermore, and most importantly, the applicant was never told what facts were relied on to conclude that he posed a risk to national security, so allowing for the decision to enter his details into the Registers (compare with *F.S. v. Croatia*, cited above, § 64; contrast with *Muhammad and Muhammad*, cited above, §§ 12 and 161, where the applicants had at least been made aware that the concerns about them involved terrorism; and *Poklikayew,* cited above, §§ 6 and 66, where the decision notifying the applicant that his continued stay in Poland constituted a threat to national security also stated that he had collaborated with the Belarusian secret services).

96. The applicant in the present case was not given even an outline of the facts on which the conclusion that he represented a threat to national security was based. In the Court's view the applicant was not able to present his case adequately in the subsequent judicial review proceedings (see *F.S. v. Croatia*, cited above, § 64; see also *Ljatifi v. the former Yugoslav Republic of Macedonia*, no. 19017/16, § 39, 17 May 2018). The applicant's rights were therefore even more restricted than those of the applicant in *Poklikayew* (cited above, § 73). No additional facts were given in the above-mentioned judicial review. The Court therefore finds that the information provided to the applicant in the proceedings was not capable of counterbalancing the restriction of his procedural rights (compare with *Muhammad and Muhammad*, cited above, § 177).

97. With regard to the applicant's participation in the proceedings, the Court has already noted that the applicant was unaware of the disputed proceedings (see paragraph 11 above) and only learned about them when he was refused entry into the Schengen area. The applicant was indeed subsequently represented by a lawyer, including in the proceedings for the

removal of his details from the Registers. However, the procedural rules did not allow his lawyer an effective opportunity to submit reasons why the applicant's details should not be on the Registers, as he also had no access to the documents in the case file.

98. In view of the above, having regard to the specific nature of the proceedings, the Court finds that he was not given an effective opportunity to secure representation by a lawyer.

99. In the light of the foregoing, the Court finds that the applicant's representation was not sufficiently effective to counterbalance the restrictions on the applicant's procedural rights.

(iv) Conclusion as to compliance with Article 1 of Protocol No. 7

100. The Court finds that in the present case the applicant was subjected to significant restrictions on his right to be informed of the facts underlying the decision to expel him and on his right of access to the information and the content of the documents relied on by the decision-maker. However, in view of the above considerations, it does not appear that the need for such limitations was examined and identified as duly justified by an independent authority at domestic level. The Court is therefore required to exercise strict scrutiny of the measures put in place in the proceedings against the applicant in order to counterbalance the effects of those limitations, for the purposes of preserving the essence of his rights under Article 1 § 1 of Protocol No. 7 (see paragraph 82 above; and *Poklikayew*, cited above § 63).

101. The Court has already observed that the applicant received no information whatsoever about the allegations against him, let alone such which would indicate any specific actions by him which allegedly endangered national security. The lawyer who represented him in the proceedings concerning his application for his details to be removed from the Registers had no access to the classified information either. In these circumstances, the fact that the final decision was taken by independent judicial authorities at a high level does not suffice to counterbalance the restrictions on the applicant's exercise of his procedural rights.

102. In conclusion, having regard to the proceedings as a whole and taking account of the margin of appreciation afforded to States in such matters, the Court finds that the restrictions imposed on the applicant's enjoyment of his rights under Article 1 of Protocol No. 7 were not counterbalanced in the domestic proceedings so as to preserve the essence of those rights.

103. There has accordingly been a violation of Article 1 of Protocol No. 7 to the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

104. The applicant also complained under Article 8 of the Convention that, as a result of his details being included in the Register of Undesirable Foreigners and reported to the SIS for reasons of national security, he could not continue residing in Poland, where he had a business, and he was unable to continue his family life with his wife and daughter. Article 8 reads as follows:

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

105. The Court 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

106. The applicant submitted that there had been an interference with his right to respect for family life and that it had not met any of the requirements of Article 8 § 2 of the Convention.

107. He argued that the inclusion of his details in the Registers on national security grounds had been arbitrary and unfounded. He reiterated that he was unaware of the proceedings and learned about them on his return from a holiday abroad with his family when he was immediately prevented from entering and staying in Poland.

108. The applicant further submitted that his private and family life had been connected with and developed in Poland since 1995, when he had formed a relationship with a Polish citizen (whom he later married in 2008 and with whom he had a daughter born in 2001). He emphasised that until 12 July 2016 he had lived in Poland with his family and developed his professional activities there (as a business owner of many years).

109. The applicant argued that the interference with his private and family life did not meet the requirement of being "in accordance with the law" within the meaning of Article 8 § 2 of the Convention because entering his details into the Registers for national security reasons was not "foreseeable" in the legal sense, in that it did not enable him to regulate his conduct in order to

avoid that result. In other words, domestic law had not met the "quality" requirements, as it was impossible for him to foresee that his details would be entered in the Registers and that he would then be in effect expelled. The applicant referred to *Al-Nashif v. Bulgaria* (no. 50963/99, 20 June 2002) and argued that the domestic proceedings in his case, in which he was neither given access to the case file nor provided with the reasons for the decision – even if they were known to the public authorities and courts – could not constitute the adversarial proceedings required by the Court's case-law.

110. The applicant submitted that the Polish legal system recognised – within criminal proceedings – that the parties to the proceedings should have an opportunity to consult any classified material in the case file. The applicant argued that it was unclear why – in the context of foreigners' rights – a similar solution was not adopted.

111. As for the criterion of "legitimate aim", the applicant pointed out that the Government had relied on the "prevention of disorder and crime", but that this had never been mentioned in any of the domestic proceedings; the first time this reason was cited by the Respondent State was in the Government's observations in the present proceedings.

112. The applicant further argued that in order for the Court to recognise that a right had been restricted in pursuance of a legitimate aim not only must the Government have identified one of the aims referred to in the second paragraph of Article 8 of the Convention but they also must have substantiated the link between the violation and the need to ensure the observance of the aim in question. In this context, the applicant reiterated that he had never been told the reasons for his details being included in the Registers and that therefore he had had no opportunity to address those reasons in the proceedings.

113. Finally, the applicant argued that the interference with his rights had failed to meet the criterion of being "necessary in a democratic society" because the proceedings had not been adversarial. He had had no opportunity to find out the reasons for the decision that his details should be entered into the Registers beyond that it was for reasons of national security; likewise, he was unable to challenge the assertions made by the authorities based on that information.

(b) The Government

114. The Government did not dispute that the impugned decision to enter the applicant's details into the Registers for reasons of national security resulted in the separation of the applicant from his family and, therefore, disrupted the applicant's family and seriously limited his enjoyment of his private and family life. Nevertheless, the Government maintained that the interference with the applicant's rights was made in accordance with the law, pursued a legitimate aim and was necessary in a democratic society.

115. As regards the criterion of legality, the Government submitted that the applicant's details were entered into the Registers pursuant to Section 435 (1) 4 of the 2013 Aliens Act.

116. The Government reiterated that investigations of the applicant's alleged criminal activity were conducted at the relevant time and that the applicant was sentenced, at first instance, to a term of imprisonment on 4 April 2016. Against that background, the Government argued that the interference with the applicant's rights pursued the legitimate aims of "interests of national security" and "the prevention of disorder and crime".

117. As to whether the interference had been necessary in a democratic society, the Government argued that it had come about following adversarial proceedings before independent administrative courts which were competent to review the reasons and the evidence for the decision to have the applicant's details entered into the Registers.

2. The Court's assessment

(a) General principles

118. The Court reiterates that States are entitled to control the entry, residence and expulsion of aliens on their territory (see paragraph 32 above). However, their decisions in this field, in so far as they may interfere with a right protected under paragraph 1 of Article 8, must be in accordance with the law and necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Slivenko v. Latvia* [GC], no. 48321/99, § 113, ECHR 2003-X).

119. Where there is an arguable claim that a measure threatens to interfere with an alien's right to respect for his or her private and family life, States must give the individual concerned an effective opportunity to challenge that measure and to have the issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (see *Gaspar v. Russia*, no. 23038/15, § 42, 12 June 2018). The procedural guarantees inherent in Article 8 of the Convention will vary depending on the context of the case in question and in some circumstances may not be as demanding as those which apply under Articles 5 and 6 (*Saeed v. Denmark* (dec.), no. 53/12, § 35, 24 June 2014).

120. The Court further notes that a judgment by national authorities in any particular case that there is a danger to national security is one which it is not well equipped to review. Mindful of its subsidiary role and the wide margin of appreciation open to the States in matters of national security, the Court accepts that it is for each State, as the guardian of its people's safety, to make its own assessment on the basis of the facts known to it. Significant weight must, therefore, attach to the judgment of the domestic authorities, and especially of the national courts, which are better placed to assess the

evidence relating to the existence of a national security threat (see *Liu v. Russia (no. 2)*, no. 29157/09, § 85, 26 July 2011, and *Gaspar,* cited above, § 43).

121. At the same time, the Court reiterates that the decision-making process leading to measures of interference must be fair and afford due respect to the interests safeguarded to the individual by Article 8 of the Convention (see *Gaspar,* cited above, § 44).

122. In this connection, the Court reiterates that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions (see, among many other authorities, *Marguš v. Croatia* [GC], no. 4455/10, § 128, ECHR 2014 (extracts), and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, § 133, 15 November 2016). In keeping with that principle of harmonious interpretation of the Convention, the Court has already held that, where a measure affects an alien's residence permit in a manner that may potentially lead to his or her expulsion, the procedural safeguards under Article 8 of the Convention must be interpreted in the light of those provided by Article 1 of Protocol No. 7, in so far as relevant (see *Mirzoyan v. the Czech Republic*, nos. 15117/21 and 15689/21, § 82, 16 May 2024). Furthermore, the Court has already applied the same approach in a case concerning the expulsion of a foreign national on national security grounds, accompanied by a bar on re-entry (see *Trapitsyna and Isaeva v. Hungary*, no. 5488/22, §§ 57-61 and §§ 63-85, 19 September 2024).

(b) Application of the general principles to the present case

123. In the present case there was no dispute that the applicant had been residing in Poland since 1989, and, at the relevant time, held a temporary residence permit there (see paragraph 56 above). The Court reiterates in this connection that the applicant was married to a Polish national with whom he had a daughter who was an adolescent at the relevant time (see paragraph 5 above). The applicant has thus been allowed to take part in the host country's society, to form relationships and to enjoy a family life there (compare *Mirzoyan*, cited above, § 77). The Court also notes in this connection that the applicant was expelled from Poland (see paragraph 59 above), where he had developed the network of personal, social and economic relations that make up the private life of every human being (see *Slivenko*, cited above, § 96), and where he had evidently had an established "family life".

124. The Government did not dispute that the actions undertaken by the authorities resulted in the separation of the applicant from his wife and child and, consequently, entailed limitations on his private and family life (see paragraphs 106 and 114 above). The Court agrees and finds that the entering of the applicant's details into the Registers on national security grounds and the resulting expulsion constituted an interference with the applicant's

"private and family life" within the meaning of Article 8 § 1 of the Convention.

125. The Court will therefore examine whether that interference was justified or not. An interference will be in breach of Article 8 unless it is (i) "in accordance with the law", (ii) pursues a legitimate aim or aims under paragraph 2, and (iii) is "necessary in a democratic society" to achieve the relevant aim or aims.

126. An interference must be "in accordance with the law". The Court reiterates that this does not merely require that the disputed measure should have a basis in domestic law (the existence of which was not contested in the instant case – see paragraph 17 above) but also refers to the quality of the law in question. There must be, among other things, a measure of legal protection against arbitrary interference or abuse by public authorities. That issue, including procedural safeguards against abuse, overlaps with similar issues analysed in the examination of the decision-making process by means of the proportionality test under Article 8 § 2 of the Convention (see *Liu (no. 2)*, § 86, and *Gaspar,* § 41, both cited above). Given the above, the Court may dispense with ruling on whether the "quality of law" requirements were satisfied, as the disputed measures fell short of being necessary in a democratic society for the reasons set out below (see *Trapitsyna and Isaeva*, cited above, § 69).

127. The Court considers it necessary to reaffirm the wide margin of appreciation open to the States in matters of national security, and its own subsidiary role in this respect (see paragraph 120 above). It is therefore prepared to accept that the expulsion of the applicant may have pursued the legitimate aim of protecting national security (compare *Trapitsyna and Isaeva*, cited above, § 70).

128. What remains to be ascertained in the present case is therefore whether the decision-making process which led to an interference with the applicant's private and family life sufficiently protected the applicant's interests under Article 8 of the Convention. The Court must therefore examine whether the domestic proceedings had sufficient procedural guarantees (see *Trapitsyna and Isaeva*, cited above, § 71).

129. Against that background, and following the approach of interpreting procedural safeguards under Article 8 of the Convention on the right to respect for private and family life in the light of Article 1 of Protocol No. 7 on procedures in expulsion cases (see paragraph 122 above), the Court reiterates and reaffirms its findings and conclusion on the applicant's complaint under Article 1 of Protocol No. 7 that the restrictions imposed on the applicant were significant and were not counterbalanced so as to preserve the essence of those rights (see paragraphs 91 and 100-103). The Court therefore finds that the domestic proceedings concerning the entry of the applicant's details into the Registers on national security grounds were not

attended by appropriate and sufficient procedural guarantees (compare *Trapitsyna and Isaeva*, cited above, § 81).

130. The above considerations are sufficient for the Court to conclude that the relevant domestic proceedings as examined in the light of relevant safeguards of Article 1 of Protocol No. 7 to the Convention were deficient and that the interference with the applicant's right to respect for his private and family life has not been shown to have been necessary in a democratic society.

131. There has accordingly been a violation of Article 8 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

134. The Government argued that the claim was unsubstantiated, exorbitant and inconsistent with the Court's case-law (in which respect they referred to the award made in *Muhammad and Muhammad,* cited above, § 212).

135. Making an assessment on an equitable basis, the Court awards the applicant EUR 12,500, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

136. The applicant also claimed EUR 2,706 for the costs and expenses incurred before the Court. In support of his claim, he submitted a legal services agreement concluded between his representative and his wife, as well as invoices issued in his wife's name for the total amount equivalent (in Polish zloty) to the amount claimed before the Court.

137. The Government left it for the Court to decide on quantum.

138. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 2,706, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant's daughter Derya Şener has standing to pursue the application in his stead;

2. *Declares* the complaints concerning Article 1 of Protocol No. 7 to the Convention and Article 8 of the Convention admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 7 to the Convention;

4. *Holds* that there has been a violation of Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant's daughter Derya Şener, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,500 (twelve thousand five hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,706 (two thousand seven hundred six euros), plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 May 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President