CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF TUREK v. SLOVAKIA

(Application no. 57986/00)

JUDGMENT

STRASBOURG

14 February 2006

FINAL

13/09/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Turek v. Slovakia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 24 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 57986/00) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovakian national, Mr Ivan Turek ("the applicant"), on 15 April 2000.

2. The applicant was represented by Mr M. Benedik, a lawyer practising in Bratislava. The Slovakian Government ("the Government") were represented by their Agents, Mr P. Kresák, succeeded by Mrs A. Poláčková.

3. The applicant alleged that his registration as its agent in the files of the former Czechoslovak communist Security Agency, the issuance of a security clearance to that effect, the dismissal of his action challenging that registration and the resultant effects constituted a violation of his right to respect for his private life pursuant to Article 8 of the Convention. In substance the applicant also complained that the length of the proceedings in his action was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 14 December 2004, the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations. In addition,

third-party comments were received from the Helsinki Foundation for Human Rights (Warsaw, Poland), which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties replied to those comments (Rule 44 § 5).

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within the former Section IV.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1944 and lives in Prešov.

A. The applicant's "security clearance" and its effects

9. The applicant worked in the State administration of the school system. He occupied a leading post that fell within the purview of section 1 of Act No. 451/1991 Coll. ("the Lustration Act") which defined some supplementary requirements for holding certain posts in public administration.

10. In January 1992 the applicant's employer requested, pursuant to section 6 of the Lustration Act, that the Ministry of the Interior of the Czech and Slovak Federal Republic ("the Federal Ministry") issue a clearance (*lustračné osvedčenie*) concerning the applicant under section 9 of the Lustration Act (see below).

11. On 19 March 1992 the Federal Ministry issued a negative security clearance. It stated that it was based on section 9 (1) of the Lustration Act and certified that the applicant "[was] registered as a person referred to in section 2 (1) (b) of the Lustration Act". This provision defined six categories of collaborators of the [former] State Security Agency (*Štátna bezpečnosť*, "StB") who, if registered as such in the StB's files in the period from 25 February 1948 to 17 November 1989, were disqualified from holding certain posts in public administration. The document was served on the applicant on 26 March 1992.

12. The applicant resigned from his post. In 1994 he left his employer completely, having felt compelled to do so. Since then the applicant has been commuting to work in a location remote from his place of residence.

13. The information about who was registered in the StB files in the categories referred to in section 2 (1) (b) of the Lustration Act has been

made public in newspapers and, unofficially as well as officially, on the internet.

B. The action under Article 11 of the Civil Code

14. On 25 May 1992 the applicant lodged an action against the Federal Ministry for protection of his good name and reputation under Article 11 et seq. of the Civil Code with the Prague (the Czech Republic) City Court (*Městský soud*). He claimed that his registration as a collaborator of the StB was wrongful and unjustified. He requested that the Federal Ministry issue a new clearance to the effect that he was not registered as a person referred to in section 2 (1) (b) of the Lustration Act.

15. The City Court subsequently sent a copy of the action to the defendant, invited the applicant to pay the court fee and listed a hearing for 6 August 1992.

16. On 23 July 1992 the applicant filed a request under Article 12 §§ 2 and 3 of the Code of Civil Procedure for a transfer of his action to the Košice Regional Court (*Krajský súd*). On 29 July 1992 he demanded that the hearing scheduled for 6 August 1992 be cancelled in view of his request for transfer of the action.

17. On 7 August 1992, after the applicant had paid the court fee, the City Court sent a copy of the request of 23 July 1992 to the defendant for comments. On 23 September 1992 the latter objected to the transfer.

18. On 24 September 1992 the City Court submitted the case file to the Supreme Court (*Najvyšší súd*) of the Czech and Slovak Federal Republic for a determination as to which court was to entertain the action at first instance.

19. On 4 November 1992 the Supreme Court ruled that the action fell to be determined by the Regional Court. The case file was sent to it on 13 November 1992.

20. On 16 November 1992 the Regional Court requested the defendant's observations in reply. In a letter of 25 November 1992 the defendant replied that it had already filed its observations with the City Court. On 10 December 1992 the City Court transferred those observations to the Regional Court.

21. On 18 February 1993 the Regional Court invited the applicant to specify which public body possessed the powers conferred by the Lustration Act in the area of security screening after the dissolution of the Czech and Slovak Federal Republic on 1 January 1993. On 26 February 1993 the applicant responded that the body currently responsible for security screening in Slovakia was the Ministry of the Interior of the Slovak Republic ("the Slovak Ministry"). It was thus understood that the action was directed against the said Ministry.

22. On 9 March and 8 April 1993 the Regional Court invited the applicant to submit within ten days second copies of the action and of the submissions of 26 February 1993.

23. On 21 April 1993 the Regional Court invited the Slovak Ministry to present its observations in reply to the action. In its response of 6 May 1993 the Ministry primarily contested its standing to be sued in the case, arguing that it had not assumed the authority of the Federal Ministry under the Lustration Act. Relying on Resolution no. 276 of the Government of Slovakia of 20 April 1993 ("Resolution no. 276"), the defendant asserted that the body which had taken over those powers under the Lustration Act was the Slovak Intelligence Service (*Slovenská informačná služba* – "the SIS"). The Ministry also maintained that under the said resolution the Prime Minister of Slovakia was entrusted with the task of preparing jointly with the Minister of Justice of Slovakia a petition to the Slovak Constitutional Court (*Ústavný súd*) for a review of the constitutionality of the Lustration Act.

24. On 4 October 1993 the applicant amended his submissions of 26 February 1993 on the ground that the Federal Ministry's powers under the Lustration Act had devolved to the SIS, against which the action was accordingly directed.

25. On 21 October 1993 the Regional Court invited the SIS to present its observations in reply. The defendant submitted the observations on 16 November 1993 and on 9 December 1993 the Regional Court sent their copy to the applicant.

26. On 9 May 1994 the Regional Court held a hearing at which the applicant modified the subject-matter of the action in that he sought a judicial ruling declaring that his registration as a person referred to in section 2 (1) (b) of the Lustration Act was wrongful. The applicant further informed the court that he wished to call ex-StB agents P., K. and M. as witnesses. He submitted the addresses of P. and K. and stated that he would submit the address of M. later. The defendant consented to the modification of the action and maintained that the relevant ex-StB documents were held in the archives of the Federal Ministry. The hearing was adjourned with a view to obtaining these documents.

27. On 10 June 1994 the Regional Court sent a letter to the Federal Ministry inviting it to submit copies of the relevant ex-StB documents. The letter was returned unanswered as "undelivered".

28. On 12 September 1994, on the basis of a treaty of 29 October 1992 between the Slovak Republic and the Czech Republic on mutual legal assistance ("the mutual legal assistance treaty of 1992"), the Regional Court sent a letter rogatory to the City Court requesting that it obtain from the Ministry of the Interior of the Czech Republic ("the Czech Ministry") copies of all ex-StB documents in its possession concerning the applicant.

29. On 27 September 1994 the City Court advised the Regional Court that the request had been submitted to the Czech Ministry, which would reply directly to the Regional Court.

30. In a letter of 3 October 1994 the Czech Ministry informed the Regional Court that all ex-StB documents concerning Slovakia had been transmitted to the Slovak Ministry and that, accordingly, the documents concerning the applicant had to be searched for there.

31. On 12 October 1994 the Regional Court requested that the Slovak Ministry submit within 15 days copies of all ex-StB documents concerning the applicant.

32. The request of 12 October 1994 was answered on 2 November 1994 by the SIS to the effect that, apart from a database in which the applicant was listed as an ex-StB agent, there were no ex-StB materials concerning him in its possession. The defendant relied on a treaty between the governments of the Slovak Republic and the Czech Republic on joint usage of information and archives generated by ministries of the interior in the area of internal order and security which had been signed on 29 October 1992 and promulgated in the Collection of Laws under No. 201/1993 ("the treaty of 1992"). The SIS submitted that under this treaty the relevant documents were with the Czech Ministry. The SIS again contested its standing to be sued in the case, arguing that the powers in the area of security screening which had been conferred on it under Resolution no. 276 were limited to 9 months. As this period had already expired, there was presently no official body entrusted with these powers in Slovakia.

33. On 21 December 1994 the Regional Court reiterated its request to the Czech Ministry for copies of ex-StB documents concerning the applicant. On the same day it also addressed a request to the Office of the Government of the Slovak Republic for information as to which authority was currently vested with the powers under the Lustration Act as regards security screening. As no answer had been received, the Regional Court repeated the requests in May 1995.

34. On 22 May 1995 the Office of the Government informed the Regional Court that the question of legal succession in respect of the powers under the Act was not currently addressed in the existing legislation. However, by analogy, the powers of the Federal Ministry had been assumed by the Slovak Ministry.

35. In a letter of 24 May 1995 the Czech Ministry informed the Regional Court that there were no documents concerning the applicant in its archives. Considering the relevant part of the letter of the SIS of 2 November 1994 to be confused, it relied on the Protocol to the treaty of 1992 and maintained that the documents searched for were stored in Slovakia.

36. On 9 August 1995 the Regional Court ordered that the SIS deliver within 20 days copies of all ex-StB documents concerning the applicant which were in its possession. The SIS complied on 24 August 1995 and

proposed that the proceedings be discontinued on the grounds of its lack of standing to be sued. The SIS also pointed out that the documents submitted were top secret and that the applicable confidentiality rules had to be observed.

37. Another hearing was held on 11 December 1995. The applicant extended the action by directing it also against the Government of the Slovak Republic, as a collective constitutional body with distinct legal personality. The hearing was adjourned in order for the applicant to re-submit the extended action in writing. He did so on 13 December 1995.

38. On 15 December 1995 the SIS filed its observations in reply to the extended action.

39. At an unspecified later point the Vice-President of the Regional Court exercised his power under section 2 § 2 of the State Administration of Justice Act of 1992 and assigned the case to another Chamber of that court on the ground that the original Chamber had an excessive workload.

40. On 9 September 1996 the Regional Court allowed the extension of the action against the Government of Slovakia. On the same day it invited the applicant to disclose the address of witness M.

41. In a written submission of 19 September 1996 the Office of the Government asserted that the Government was not the legal successor of the Federal Ministry and possessed no powers under the Lustration Act. It was thus not the correct defendant to the action.

42. On 28 October 1996 the applicant informed the Regional Court that he had no information as to the address of M. and requested that the court itself make an inquiry as to the address.

43. The hearing called for 15 January 1997 had to be adjourned as the representatives of the applicant and the Government did not appear.

44. On 21 April 1997 the Regional Court held another hearing. It made a formal ruling allowing the modification of the subject matter of the action, as sought by the applicant on 9 May 1994. The Regional Court then heard the parties and examined the StB file concerning the applicant.

45. On 21 May 1997 the SIS informed the Regional Court of M.'s address.

46. On 2 July 1997 the applicant submitted a pleading in which he commented on the documentary evidence submitted by the defendant.

47. By letters of 9 September, 20 November and 10 December 1997 the Regional Court requested that the Slovak Ministry discharge witnesses P., K. and M. from the obligation of confidentiality in respect of the subject matter of the proceedings. The Ministry agreed on 29 June 1998.

48. On 13 August 1998 the Regional Court held another hearing at which witnesses P., K. and M. failed to appear. Witness K. apologised for his absence and submitted in writing that he had "no recollection of the applicant and no knowledge that the StB would have ever had any file in respect of him".

The applicant admitted having met K. and M. several times before and after his journeys abroad when they had, respectively, instructed him on how to behave abroad and asked for information about his stay. Their discussions were of a general nature and included the situation at the applicant's workplace. The applicant also admitted having obtained and provided to K. a list of students who had been preparing for studies abroad, information he considered public in any case. He had never had the impression that he was considered a collaborator and had never been asked to keep his contacts with K. and M. secret.

The hearing was adjourned until 24 August 1998 with a view to calling the witnesses again.

49. At the hearing of 24 August 1998 the Regional Court heard M. and K. Witness M. confirmed that he had been in charge of recruiting the applicant as a collaborator. However, if there had ever been any act of formal undertaking to cooperate (*viazací akt*) on the part of the applicant, M. had not been present at it. He had received the impression that the applicant had not been interested in meeting him. Their conversation had concerned ordinary affairs and the applicant had not submitted any documents. The reports mentioned in the StB file had been drawn up by M. on the basis of his conversation with the applicant. According to M., the applicant had never given any information that was capable of harming any specific person. There had been norms as to how many new agents were to be recruited. As a result, new "recruitments" had frequently been only formal, with the new "agents" conceivably having no knowledge of them.

Witness K. claimed to know the applicant only by face. He did not remember having ever met him and denied having ever received any information or documents from him. The applicant's StB file was partially created by K. In the given period the situation in the StB had been such that, in order to meet their statistical objectives, it was possible for officers to run a file in respect of an "agent" by filing information from their own sources and declaring them as having been obtained from that "agent".

The witness P. did not appear and the court observed that it had been impossible to deliver the summons to him. In response to the court's request, the parties stated that they intended to adduce no further evidence apart from hearing P. and examining the relevant Internal Guideline of the Federal Ministry of 1972 ("the 1972 guideline") concerning secret collaboration.

50. On 10 September 1998 the Regional Court ordered that the summons for the forthcoming hearing be served on P. by the police. No service was however actually effected.

51. At a hearing held on 24 September 1998 the SIS submitted the 1972 guideline. As this document was classified, the applicant had no access to it. Apart from proposing to hear P. the parties adduced no other evidence.

52. The Regional Court listed a hearing for 24 February 1999 and ordered that the summons be served on P. by the police. At this hearing P. finally appeared and gave evidence. He acknowledged that he had been the chief district police officer during the relevant period and that he remembered the applicant. However, he could not recollect clearly the details of their collaboration. P. pointed out that the StB's organisation had been very strict and considered that, if something had been recorded, it must have been true. In contradiction to M., P. considered that it was not possible that the applicant had not known that he was acting for the StB as an "agent".

The applicant submitted that the majority of his foreign travel had taken place before 1984, when he was allegedly acquired as an agent. The contention that he had agreed to collaborate in return for the StB's support in connection with travel was therefore unfounded.

53. On 19 May 1999, following another hearing held on the same day, the Regional Court dismissed the action.

54. First of all, the Regional Court found that the Government of the Slovak Republic had no standing to be sued in the proceedings and that the correct entity to defend the action was the SIS. The Regional Court considered that the crucial criterion for establishing standing was which entity *de facto* possessed the ex-StB archives.

On the basis of the StB file pertaining to the applicant, the Regional Court established that the applicant had been listed since 1983 as a "candidate for secret collaboration" and as an "agent" of the StB since 1984. For tactical reasons it had been decided not to have the applicant sign a formal undertaking to collaborate. This was permitted under the 1972 guideline. The applicant's StB file contained only an index indicating which reports and documents he had provided. There was a note that the reports and documents themselves had been officially destroyed in late 1989 when, according to the file, cooperation with the applicant had been terminated.

The Regional Court also noted that the applicant had on thirteen occasions travelled abroad to western Europe at the relevant time and that it was then usual for a person to be interviewed by the StB prior to and after such travel. The applicant himself acknowledged having met the StB in connection with his travels. He also admitted having been in contact with K., M. and P. and having unwillingly met with them. However he categorically denied ever having given them any intelligence information.

The other witness evidence was contradictory. The Regional Court based its finding on the testimony of P., holding it to be credible and consistent with the case file, and did not accept the testimony of K., observing that it contradicted the applicant's own submissions. In the light of all the information in its possession, including what was known of the applicant's intellectual capacity, the Regional Court found that he must have known that he had been meeting StB agents and that their contact had actually

amounted to formal collaboration. In so far as the applicant had disputed such a conclusion and asserted that his registration in the StB files had been unjustified, he had failed to prove his case; in particular, he had failed to show that the registration was contrary to the applicable rules.

55. On 6 July 1999 the applicant lodged an appeal with the Supreme Court. He challenged the credibility of witness P., objected that he had had no access to the 1972 guideline, which was a crucial piece of evidence, and argued that the Regional Court had erred in its factual assessment of the case.

56. On 4 August 1999 the SIS filed its observations in reply to the appeal. On 24 August 1999 the Regional Court transmitted the case file to the Supreme Court for a decision on the appeal.

57. On 26 October 1999, following a hearing held on the same day, the Supreme Court upheld the Regional Court's judgment.

It found that the Regional Court had adequately established the facts of the case and found no logical or other errors in the Regional Court's assessment of the evidence.

The Supreme Court held that the fact that the applicant was registered in the StB files as a person referred to in section 2 (1) (b) of the Lustration Act did not by any means constitute evidence that he had been a conscious collaborator of the StB.

In line with established judicial practice, the Supreme Court pointed out that the procedure concerning the issuance of a security clearance under the Act could not amount to a violation of an individual's good name and reputation. Only unjustified registration in the StB files would amount to such a violation.

The Supreme Court considered that it was crucial for the applicant to prove that his registration had been contrary to the rules applicable at the material time and concurred with the Regional Court's conclusion that the applicant had failed to do so. No appeal lay against this decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

58. Article 48 § 2 provides, *inter alia*, that every person has the right to have his or her case tried without unjustified delay.

B. The Code of Civil Procedure

59. Pursuant to Article 6, as applicable at the relevant time, courts were to work together with the parties to ensure that contentious facts were

established reliably and that the parties' rights were protected speedily and effectively.

60. Under Article 100 § 1, once proceedings commence, the court is to act without further procedural motions so that the matter is examined and determined as expeditiously as possible.

61. Under Article 114 § 1, a hearing is to be prepared by the President of the Chamber so that the matter can be decided, usually (*spravidla*) in a single session.

62. Article 120 § 1 provides that the parties to the proceedings are to adduce evidence in support of their assertions. The court may also take and examine (*vykonať*) evidence which has not been adduced [by the parties]. The court decides on the facts as established on the basis of the evidence taken and examined.

63. The mechanism of legal protection of personal integrity under Article 11 et seq. of the Civil Code has primarily found its practical application in defamation proceedings. Certain judicial decisions (see the judgments of the Supreme Court file nos. 1Co 23/94 and 5Cdo 39/2000) and academic views (see J. Švestka, *Ochrana osobnosti*, Linde Praha, a.s., 1996, p. 138 and J: Drgonec; *Tlačové právo na Slovensku*, Archa, 1995, p. 148) seem to suggest that, in actions of that type, the burden of proving that an interference with the plaintiff's good name and reputation was justified lies with the defendant.

C. The Civil Code

64. Under Article 11, natural persons have the right to protection of their personality rights (personal integrity), in particular of their life and health, civil and human dignity, privacy, name and personal characteristics.

65. Under Article 13 § 1, natural persons have the right to request that unjustified infringement of their personality rights be ended and that the consequences of such infringement be eliminated. They also have the right to appropriate just satisfaction.

66. Article 13 § 2 provides that, in cases where the satisfaction obtained under Article 13 § 1 is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party is also entitled to financial compensation for non-pecuniary damage.

D. Act of the Federal Assembly of the Czech and Slovak Federal Republic of 4 October 1991 (Law no. 451/1991 Coll.)

67. The Act laid down supplementary requirements for the holding of certain important posts and functions in State organs and institutions which were filled by election, designation or appointment. The Act prevented

persons mentioned in section 2 (1) under letters (a) through (h) from exercising the functions enumerated in section 1.

68. Under section 2 (1) (b), the functions covered by the Act could be exercised only by persons who were not registered in the [former] StB files in the period between 25 February 1948 and 11 November 1989 as "resident", "agent", "holder of a conferred flat", "holder of a conspiratorial flat", "informer" or "ideological collaborator of the StB".

69. Under section 2 (1) (c), the functions covered by the Act could only be exercised by persons who had not been conscious collaborators of the StB in the above period. On 26 November 1992 the Constitutional Court of the Czech and Slovak Federal Republic (*Ústavný súd Českej a Slovenskej Federatívnej Republiky*) found that this condition was in contradiction with the Charter of Fundamental Rights and Freedoms (*Listina základných práv a slobôd*) and with the International Covenant on Economic, Social and Cultural Rights. Accordingly, this condition was repealed as from 15 December 1992.

70. The fact that a person met the requirements of section 2 of the Act was to be proven by means of a security clearance issued by the Ministry of the Interior under section 9 of the Act. Under paragraph 1 of that section the security clearance was to be delivered into the hands of the person concerned alone.

71. Under section 14 (1), if a person does not meet the requirements of section 2 of the Act, the employer is to terminate that person's employment by notice within 15 days unless the employment terminates earlier by agreement or otherwise or the person concerned is transferred to another post outside the scope of section 1 of the Act.

72. Under section 18 (2), such termination of employment can be challenged before the courts within two months from the date on which the employment purportedly ended.

73. Section 19 provides that any disclosure of the clearance or of the information contained in it is prohibited, save with the consent of the person concerned.

74. The temporal application of the Act is governed by its section 23, under which the Act ceased to have effect in Slovakia on 31 December 1996.

75. It has been established by judicial doctrine and the relevant case law that persons who consider themselves adversely affected by their registration in the former StB files can seek redress before civil courts by means of an action for protection of their personal integrity under Article 11 et seq. of the Civil Code.

E. National Memory Act (*Zákon o pamäti národa*) (Law no. 553/2002 Coll., as amended)

76. Since 29 September 2002 the keeping of files generated by the StB in respect of its collaborators, purported or real, has been regulated by the Act on the Disclosure of Documents regarding the Activity of State Security Authorities in the period 1939-1989 and on Founding the National Memory Institute (the National Memory Act) (*Zákon o sprístupnení dokumentov o činnosti bezpečnostných zložiek štátu 1939 - 1989 a o založení Ústavu pamäti národa*).

77. The Act regulates (a) the establishment of the National Memory Institute; (b) the recording, collecting, disclosing, publishing, managing and use of documents created by defined security forces in the period from 18 April 1939 to 31 December 1989 in respect of crimes committed against persons of Slovakian nationality or citizenship; (c) the manner of detecting and prosecuting such crimes; (d) the protection of the personal data of persecuted persons; and (e) activity in the area of public education.

III. RELEVANT INTERNATIONAL INSTRUMENTS

Parliamentary Assembly of the Council of Europe Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems

78. "9. The Assembly welcomes the opening of secret service files for public examination in some former communist totalitarian countries. It advises all countries concerned to enable the persons affected to examine, upon their request, the files kept on them by the former secret services.

...

11. Concerning the treatment of persons who did not commit any crimes that can be prosecuted in accordance with paragraph 7, but who nevertheless held high positions in the former totalitarian communist regimes and supported them, the Assembly notes that some states have found it necessary to introduce administrative measures, such as lustration or decommunisation laws. The aim of these measures is to exclude persons from exercising governmental power if they cannot be trusted to exercise it in compliance with democratic principles, as they have shown no commitment to or belief in them in the past and have no interest or motivation to make the transition to them now.

12. The Assembly stresses that, in general, these measures can be compatible with a democratic state under the rule of law if several criteria are met. Firstly, guilt, being individual, rather than collective, must be proven in each individual case - this emphasises the need for an individual, and not collective, application of lustration laws. Secondly, the right of defence, the presumption of innocence until proven guilty,

and the right to appeal to a court of law must be guaranteed. Revenge may never be a goal of such measures, nor should political or social misuse of the resulting lustration process be allowed. The aim of lustration is not to punish people presumed guilty - this is the task of prosecutors using criminal law - but to protect the newly emerged democracy.

13. The Assembly thus suggests that it be ensured that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law, and focus on threats to fundamental human rights and the democratisation process. Please see the "Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law" as a reference text."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. As to the compatibility of the complaint under Article 6 § 1 of the Convention with the provisions of the Convention

79. As at the admissibility stage, the Government maintained that the applicant's negative security clearance of 19 March 1992 had primarily had damaging repercussions on his employment in the public administration, where he had occupied a leading position falling within the ambit of the notion of "public service". Although his action of 1992 formally aimed at the protection of his personal integrity, it *de facto* concerned his employment in the public service, disputes over which were excluded from the scope of Article 6 § 1 of the Convention (see, e.g. *Pellegrin v. France* [GC], no. 28541/95, §§ 65-67, ECHR 1999-VIII). In their view, the proceedings at issue did not therefore enjoy *ratione materiae* the protection of Article 6 § 1 of the Convention.

80. The applicant contested that argument.

81. Relying on Resolution no. 1096 of the Parliamentary Assembly of the Council of Europe, the third party submitted that lustration, as such, was punitive in character and was capable of producing a wide range of effects in the economic and social sphere of the persons concerned. It also had an impact on their good name and reputation. Not all persons who were subject to lustration had necessarily to fall within the category of "public service", which was excluded from the scope of Article 6 § 1 of the Convention. They maintained that the said Article, including all its procedural safeguards, applied to proceedings concerning lustration.

82. The Court recalls that it had already examined the question of the applicability of Article 6 § 1 of the Convention to the present proceedings at the admissibility stage. It observed that the outcome of the proceedings had no effects on the applicant's employment. Should his employment in the public service be at stake, he had other means which were specifically designed for asserting his interests in this area, namely an action under section 18 (2) of the Lustration Act. The applicant's action was however aimed at protecting his personal integrity. This being so, the action enjoyed the protection of the Article relied upon. The Court finds nothing to justify reaching a different conclusion now. The Government's preliminary objection is therefore dismissed.

B. As to the scope of the complaint under Article 8 of the Convention and its compatibility with the Convention

1. The applicant's submissions

83. In his original application form the applicant complained of his registration in the ex-StB files, the issuance of a negative security clearance and the outcome of his proceedings, combined with the resulting repercussions on his personal life and social relations.

The applicant later specified that he understood that his "registration" in the former StB files indicated that there continued to exist records at the State's disposal which linked him to the StB. He considered that such "continued registration" lacked a good legal basis and acceptable justification.

2. The Government's submissions

84. The Government objected that the scope of the applicant's original complaint under Article 8 of the Convention, as expressed in his initial submission and defined by the Court's admissibility decision, did not cover his subsequent objections in respect of the continued existence of his StB file in the State's hands, its legal framework, legitimacy and proportionality. They maintained that, in any event, the last-mentioned criteria were met.

85. As to the specific complaint regarding the issuance of the applicant's security clearance, the Government asserted, as they had at the admissibility stage, that the primary effect of such clearance was that the applicant no longer qualified for certain leading posts in the public service.

Pursuant to section 9 (1) of the Lustration Act, the clearance was delivered exclusively into the hands of the person concerned. Under section 19 of that Act, any disclosure of the clearance or its contents without the consent of the person concerned was prohibited. Even an employer

could not learn about the contents of the clearance unless the person concerned revealed it.

The applicant's security clearance was therefore never meant to become public and it was relevant exclusively for his employment in the civil service, the right of access to which, as such, fell outside the scope of Article 8 of the Convention *ratione materiae*. If the clearance became public knowledge and produced any effects on the applicant's private life, it was either the responsibility of the applicant himself or of a third person against whom the applicant could vindicate his rights.

3. The third party's submissions

86. The third party submitted that, given their complex impact on the good name and reputation of the person concerned and the fact that personal data from secret registers was involved, lustration measures fell within the ambit of Article 8 of the Convention.

4. The Court's assessment

87. The Court reiterates that the scope of the case before it is determined by the decision on admissibility (see, *mutatis mutandis*, the *Çiraklar v. Turkey*, judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VII, p. 3070, § 28).

88. In its decision of 14 December 2004 the Court declared admissible the applicant's complaints concerning the continued existence of the contested files, the issuance of a negative security clearance on the basis of his registration in such files, the fact that he was unable to rebut that registration and the effects of the above on his private life.

89. In view of the parties' controversy over the scope of the case, the Court finds it appropriate to reiterate, first of all, that it has no jurisdiction *ratione temporis* to examine events that took place prior to the entry into force of the Convention with respect of the Contracting Party concerned, namely 18 March 1992 in the present case (see, among many other authorities, *Omasta v. Slovakia* (dec.), no. 40221/98, 31 August 2000). Further, it has no power to examine, as such, any facts that took place more than six months before the introduction of an application, namely 15 April 2000 in this case. Finally, the Court observes that it has no jurisdiction to examine legislation or practice in the abstract (see *the Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 30-31, § 55).

90. In the present case the applicant's initial registration by the StB in their files as a collaborator brought about a series of consequences which are interconnected and must be examined in their context. The issuance of the applicant's security clearance was based on that registration and resulted in the subsequent proceedings. Although, admittedly, the security clearance

itself concerned predominantly the applicant's qualification for service in the senior levels of public administration, it cannot be dissociated from the above context. Thus, the Government's plea of incompatibility *ratione materiae* with the Convention provisions in respect of the issuance of the clearance cannot be sustained.

91. Bearing in mind the above criteria, the Court observes that there continues to exist a file of the former StB in which the applicant is registered as their agent, that, on the basis of that file, the applicant was issued with a negative security clearance, that he unsuccessfully challenged this registration before the courts and that this registration has arguably had effects on his private life. In line with its decision on admissibility, the Court will examine these facts on the merits under Article 8 of the Convention.

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

92. The applicant complained that the length of the proceedings had been excessive. He relied on Article 6 § 1 of the Convention which, insofar as relevant, provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

93. The applicant accepted that the issue of which entity had standing to be sued after the dissolution of the Czech and Slovak Federal Republic had been of some complexity. However, he contented that the courts had not handled it efficiently and there was nothing to justify the overall length of the proceedings. Moreover, there had been periods of obvious inactivity or ineffective activity on the part of the courts. All delays which had been caused by the State authorities, judicial or otherwise, were imputable to the respondent State.

94. The Government considered that the subject matter of the proceedings was complex. There had been some delays, which, however, were immaterial and, except for these, the proceedings had been expeditious.

95. The third party suggested that judicial proceedings concerning lustration called for special promptness, given that they concerned such sensitive issues as the reputation of the person concerned.

96. The period to be taken into consideration began on 25 May 1992 and ended on 26 October 1999. It thus lasted seven years and some five months for two levels of jurisdiction.

97. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake

for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

98. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

99. Having examined all the material submitted to it, including what was at stake for the applicant, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

100. The applicant also complained about his registration in the StB files, the issuance of a negative security clearance and the outcome of his proceedings with the attendant effects on him. He alleged a violation of his right to respect for his private life pursuant to Article 8 of the Convention which, insofar as relevant, provides that:

> "1. Everyone has the right to respect for his private ... 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."

1. The Government's submissions

101. The Government maintained that the issuance of the clearance had had a clear legal basis in the Lustration Act and had been necessary in the interests of national security. The Lustration Act afforded comprehensive substantial and procedural guarantees, in the light of which the issuance of the applicant's clearance was to be considered proportionate. Moreover, as from 1 January 1997, the Lustration Act had lost any legal force in Slovakia. It thus no longer prevented the applicant from living his life as he saw fit.

The sole sphere in which the applicant's security clearance had had an impact was his employment in the senior levels of public administration. The applicant had failed to show that there was a direct connection between his negative security clearance and his resignation in 1994.

In so far as the contents of the clearance might have become public through the actions of a third person, the Government declined any responsibility.

102. The Government further pointed out that the applicant's case had been thoroughly examined at two levels of jurisdiction in proceedings which had met the relevant standards. In their view those standards were those of a fair hearing as set out in Article 6 § 1 of the Convention.

The proceedings had been adversarial and the applicant, who had been represented throughout by a lawyer, had had ample opportunity to state his arguments, challenge the submissions made by the adversary parties and submit whatever materials he found relevant.

The applicant had not had full access to the 1972 guideline as it was top secret. However, the sole information which the applicant had sought from the guideline was whether it was possible to become an StB "agent" without a formal undertaking to collaborate by the person concerned. The courts had examined the guideline and familiarised the applicant with the relevant section, including the information about acquiring new "agents". Thus, the fact that the applicant had been unable to see the 1972 guideline as such had not had any effect on the outcome of the proceedings.

In addition, the courts had obtained and examined the evidence adduced by the applicant and, in any event, the admissibility of evidence was primarily a matter for regulation by the domestic law and courts.

The dismissal of the applicant's action was duly supported by relevant and sufficient reasons (see, for example, *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII).

As to the distribution of the burden of proof, the applicant was not accused or charged. On the contrary, he was the claimant. It was therefore up to him to prove his allegations. The Government discerned no arbitrariness or unfairness in the way the courts had treated the action and assessed the evidence.

In conclusion, the Government considered that the proceedings and their outcome were not vitiated in such a way as to make them incompatible with the procedural guarantees inherent in Article 8 of the Convention.

2. The applicant's submissions

103. The applicant maintained that the StB was generally known for suppressing human rights and that it was commonly seen as discreditable. Labelling him an "StB collaborator" was a serious interference with his moral and psychological integrity and with his good name and reputation.

104. The issuing of security clearances conceivably pursued the legitimate aim of protecting national security. However, his security clearance had been based on a wrongful registration and was therefore unacceptable.

105. The manner in which the courts had handled the applicant's action did not enable him to secure effective protection of his right to respect for his private life.

106. Throughout the proceedings he had had no access to the 1972 guideline which defined the category of "agent" and established rules of cooperation with agents, including the rules for their recruitment. This guideline was a crucial piece of evidence. Without it the applicant was not in a equal position vis-à-vis his opponent as regards the choice of an adequate procedural strategy. Moreover, it was questionable whether continuing to classify this instruction as "top secret" had any real justification years after the fall of the communist system, especially since the instruction had already been formally repealed.

107. The imposition on the applicant of the burden of proving the inaccuracy of his registration by the StB as a collaborator was in breach of established judicial practice in actions for the protection of one's good name and reputation. It was especially disproportionate in the present case, in that the registration which gave rise to all the subsequent grievances had been carried out by the State in secret. It was virtually impossible for the applicant to prove that he was not an StB agent, since he had no access to the definition of this term.

A corollary of the imposition of the burden of proof is the imposition of consequences should that burden not be borne. Placing the burden of proof on the applicant in this case amounted to presuming his collaboration with the StB, contrary to Resolution no. 1096 (1996). It failed to respect the presumption *boni viri* which, according to the applicant, was to be applied in interpreting and applying the Convention. Although the applicant was not accused in a formal sense, the State authorities had made him out to be an StB collaborator, and it should have been up to them to prove that assertion.

108. Finally, the applicant argued that the assessment of witness statements and other evidence by the domestic courts had been arbitrary and prejudicial in that, *inter alia*, the courts had failed to examine and take account of the testimony by witness M. They had dismissed the action without establishing whether he had ever actually provided any intelligence information and without even seeing the entire StB file concerning him, and had been satisfied with its formal remains, the substantial contents of the file having allegedly been destroyed in the late 1980s.

3. The third party's submissions

109. The third party maintained that lustration measures were more than capable of interfering with the rights protected under Article 8 of the Convention. In general, such interference was justified by the legitimate interest in social information and clearance and in the protection of new democracies during a transition period. However, the interference had to be balanced against the individual interests of those concerned, so that their

good name and reputation were duly protected. This included substantive as well as procedural guarantees. Finally, the third party considered that the Contracting Parties enjoyed a wide margin of appreciation in this area.

4. The Court's assessment

110. The Court notes that the applicant's registration by the StB as their "agent" lies at the heart of the application. Although the Court has no jurisdiction *ratione temporis* to examine the registration as such, it observes that, further to his registration, the applicant was issued with a negative security clearance and his name and reputation were called into question. The legal system provided an opportunity for the applicant to seek protection of his rights by way of challenging his registration before the courts, which he did without success.

These facts constitute an interference with the applicant's right to respect for his private life (see *Leander v. Sweden*, judgment of 26 March 1997, Series A no. 116, p. 22, § 48, *Rotaru v. Romania* [GC], no. 28341/95, § 46, ECHR 2000-V and *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-...).

111. The Court reiterates that, whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8 (see *Buckley v. the United Kingdom*, no. 20348/92, § 76, ECHR 1996-IV).

112. The Court also reiterates that the difference between the purposes pursued by the safeguards afforded by Article 6 § 1 and Article 8 of the Convention, respectively, may justify an examination of the same set of facts under both Articles (see, for example, *Görgülü v. Germany*, no. 74969/01, § 58, 26 February 2004). In the circumstances of the present case the Court finds it appropriate to examine the fairness of these proceedings under Article 8 of the Convention.

113. In particular, the Court will examine whether the procedural protection enjoyed by the applicant at the domestic level in respect of his right to respect for his private life under Article 8 of the Convention was practical and effective (see, among many other authorities, *Papamichalopoulos and Others v. Greece*, judgment of 24 June 1993, Series A no. 260-B, § 42), and consequently compatible with that Article.

114. In so doing, the Court will bear in mind that, according to Article 19 of the Convention, its duty is to ensure the observance of the undertakings of the Contracting States to the Convention. In particular, it is not its function to act as a court of appeal and to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Furthermore, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which

defendants seek to adduce (see *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, p. 32, § 33). However, the Court must ascertain whether, taken as a whole, the proceedings, including the way in which the evidence was dealt with, were fair for the purposes of Article 8 of the Convention.

115. The Court recognises that, particularly in proceedings related to the operations of state security agencies, there may be legitimate grounds to limit access to certain documents and other materials. However, in respect of lustration proceedings, this consideration loses much of its validity. In the first place, lustration proceedings are, by their very nature, oriented towards the establishment of facts dating back to the communist era and are not directly linked to the current functions and operations of the security services. Thus, unless the contrary is shown on the facts of a specific case, it cannot be assumed that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes. Secondly, lustration proceedings inevitably depend on the examination of documents relating to the operations of the former communist security agencies. If the party to whom the classified materials relate is denied access to all or most of the materials in question, his or her possibilities to contradict the security agency's version of the facts would be severely curtailed. Finally, under the relevant laws, it is typically the security agency itself that has the power to decide what materials should remain classified and for how long. Since, it is the legality of the agency's actions which is in question in lustration proceedings, the existence of this power is not consistent with the fairness of the proceedings, including the principle of equality of arms. Thus, if a State is to adopt lustration measures, it must ensure that the persons affected thereby enjoy all procedural guarantees under the Convention in respect of any proceedings relating to the application of such measures.

116. In the present case the applicant was asserting his rights in the context of an interference with them which had been occasioned by State power and arguably without his knowledge. The courts considered it crucial for the applicant to prove that the interference was contrary to the applicable rules. These rules were, however, secret and the applicant did not have full access to them. On the other hand, the State – in the person of the SIS – did have full access. In those circumstances, and irrespectively of whether the placing of the burden of proof on the applicant was compatible with domestic law, that requirement placed an unrealistic burden on him in practice and did not respect the principle of equality. It was thus excessive. The applicant's proceedings therefore cannot be considered as offering him effective protection of his right to respect for his private life. The Court arrives at this conclusion without embarking on an examination of the assessment of evidence in this case, which, in its view, is also open to criticism.

There has accordingly been a breach of Article 8 of the Convention on account of the lack of a procedure by which the applicant could seek effective protection of his right to respect for his private life.

117. The Court cannot speculate as to what would have been the outcome of the applicant's proceedings had they been conducted in a manner compatible with Article 8 of the Convention. In view of the above finding (paragraph 116), and observing that its role in relation to that of the domestic courts is subsidiary, the Court considers that it is unnecessary to examine separately the effects on the applicant's private life of his registration in the StB files and his negative security clearance.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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

119. The applicant claimed 300,000 Slovakian korunas (SKK) in damages for the breach of his right to a hearing within a reasonable time and SKK 500,000 in damages for the breach of his right to respect for his private life. He did not specify whether he sought pecuniary or non-pecuniary damages. As to his second claim, the applicant emphasised that his good name was at issue. It was being associated with a regime which had terrorised its own citizens, and it was impossible for him to clear it. As a result, the applicant felt frustrated and helpless and had lost trust in the rule of law.

120. The Government contested that claim, considering that it was unacceptable, overstated and not supported by any evidence.

121. In so far as the claim has been substantiated, the Court does not discern any pecuniary damage. On the other hand, it accepts that the applicant must have suffered non-pecuniary damage as a result of the violations found (see paragraphs 99 and 116 above). Ruling on an equitable basis, it awards him 8,000 euros (EUR) under this head.

B. Costs and expenses

122. The applicant sought SKK 9,641 in compensation for the costs of the domestic proceedings, SKK 8,900 for various travel expenses and SKK 23,800 for his representation before the Court.

123. The Government considered these claims to be overstated and pointed out that the travel expenses were not documented. They requested that the Court award only such costs and expenses as were actually and reasonably incurred and adequate as to the quantum.

124. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession, including the complexity of the case and the above criteria, the Court considers it reasonable to award the sum of EUR 900 to cover costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* by 6 votes to 1 that there has been a violation of Article 8 of the Convention on account of the lack of a procedure by which the applicant could seek effective protection of his right to respect for his private life;

4. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 900 (nine hundred euros) in respect of costs and expenses, to be converted into Slovakian korunas at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 14 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Maruste is annexed to this judgment.

N.B.
M.O'B.

DISSENTING OPINION OF JUDGE MARUSTE

The Chamber has found a violation of Article 8 of the Convention on the ground that there was no procedure by which the applicant could seek effective protection of his right to respect for his private life. The Chamber has also found that the domestic proceedings were unfair because the principle of equality was not respected and an unrealistic burden was placed on the applicant.

The Chamber pointed out that if a party to whom classified materials relate is denied access to "all or most of the materials in question, his or her possibilities to contradict the security agency's version of the facts would be severely curtailed" (see paragraph 115). I agree with that statement of principle and regard it as correct in general. However, I disagree with its application in this particular case since, as I understand them, the facts of this case do not support such a general conclusion. It is clearly not the case that "all or most of the materials in question" were classified and inaccessible to the applicant. Only one document was not ultimately disclosed, namely the 1972 Guidelines, which the applicant invokes and relies upon as the ground for his allegations of inequality. I do not believe that the failure to disclose one old Act renders all the available proceedings unfair and incompatible with the Convention requirements. In my opinion, the domestic courts were right not to take a formalistic approach, and to choose instead to address the substance of the case rather than rely on the Guidelines, which were only distantly related to the particular circumstances of the applicant's case and to the assessment of his conduct at the material time. Having said that, I share the Chamber's view that there should be no limitations on access to materials classified as confidential or even secret under the former totalitarian communist regimes. Certainly, it must not be a security agency itself that decides what materials should or should not remain classified, and for how long.

But to return to the facts of this case: on 19 March 1992 the Federal Ministry issued a negative security clearance, stating that the applicant was registered as a person referred to in section 2 (1) (b) of the Lustration Act. Under that provision, such an individual could have been registered as a 'resident', 'agent', 'holder of a conferred flat', 'holder of a conspiratorial flat', 'informer' or 'ideological collaborator of the StB'. The applicant initiated court proceedings, which were not without difficulties but eventually resulted in a Supreme Court ruling in which the Regional Court judgment of 19 May 1999 was upheld. The Regional Court had held, *inter alia*, that the applicant must have known that he had been meeting StB agents and that their contacts had actually amounted to formal collaboration. This was not denied by the applicant himself and was substantiated by some other evidence. Thus, after several sets of proceedings, the fairness of which was not as such disputed, it was confirmed that this particular individual

belonged to a certain category (set out above), and nothing more. It must also be noted that the efficacy of the procedure does not mean the right to obtain a decision in one's favour and that the assessment of facts is primarily a matter for the domestic courts.

Although the difficulties faced by the applicant in the early stages of the procedure are to be regretted and some signs of unwillingness to cooperate on the part of the authorities are to be avoided in future, I consider that the proceedings as such were in conformity with the need for procedural protection of Article 8 rights in such cases.