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

FIRST SECTION

CASE OF ZOLTÁN VARGA v. SLOVAKIA

(Applications nos. 58361/12 and 2 others)

JUDGMENT

Art 8 • Private life • Practically unfettered power exercised by intelligence service implementing surveillance operation, without adequate legal safeguards • Lack of clarity of the applicable jurisdictional rules, lack of procedures for the implementation of the existing rules and flaws in their application • Storage of primary and derivative material subject to confidential internal rules without external control • Lack of lawful basis for retention of primary material

STRASBOURG

20 July 2021

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 Zoltán Varga v. Slovakia,

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

Ksenija Turković, *President,*
Péter Paczolay [present via video link],
Krzysztof Wojtyczek,
Gilberto Felici,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
Ladislav Duditš, ad hoc *judge* [present via video link],
and Renata Degener, *Section Registrar,*

Having regard to:

three applications (nos. 58361/12, 25592/16 and 27176/16) 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 Slovak national, Mr Zoltán Varga ("the applicant"), on 6 September 2012 and 4 and 9 May 2016, respectively;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the complaints under Articles 8 and 13 of the Convention about (i) the implementation of three surveillance warrants concerning the applicant, (ii) the creation and retention of various material on the basis of that surveillance, (iii) the alleged lack of safeguards against abuse, (iv) the alleged leak of information concerning the applicant, and (v) the alleged lack of an effective remedy, and to declare the remainder of the applications inadmissible;

the decision not to have the applicant's name disclosed;

the decision of the President of the Section to appoint Mr Ladislav Duditš to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Ms A. Poláčková, the judge elected in respect of Slovakia, having withdrawn from sitting in the case (Rule 28 § 3);

the parties' observations;

the Chamber's decision to lift anonymity previously granted to the applicant (Rule 47 § 4);

Having deliberated in private on 29 June 2021,

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

INTRODUCTION

1. The three applications originate from various facts linked to a surveillance operation carried out in 2005 and 2006 by the Slovak Intelligence Service ("the SIS"). In 2011 the existence of that operation became publicly known, with reference to the codename "Gorilla". Since then, the operation and matters allegedly revealed by it have given rise to a

number of investigations, have generated an extensive amount of litigation, have received significant media coverage, and have had multiple political implications.

THE FACTS

2. The applicant was born in 1966 and lives in Bratislava. He was represented by Škubla & Partneri s.r.o., a law firm with its registered office in Bratislava.

3. The Government were represented by their Agent, Ms M. Pirošíková, succeeded by their co-Agent, Ms M. Bálintová.

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

I. BACKGROUND

5. The applicant is a former police officer who at the relevant time was working in cooperation with an influential finance group. He is the owner of a flat in which, at the material time, he did not live but "intermittently spen[t] time", and which he admits having occasionally let other persons use.

A. Warrants 1 and 2

6. On 23 November 2005, at the request of the SIS, the Bratislava Regional Court issued a warrant authorising a surveillance operation code-named "Gorilla" ("warrant 1"). It was aimed at monitoring the applicant and meetings taking place in the above-mentioned flat. On 18 May 2006 the Regional Court issued another similar warrant authorising the continuation of the operation ("warrant 2"). While a copy of these warrants has not been submitted to the Court, it can be understood that, in addition to the applicant, warrant 2 was concerned with monitoring a third party. The identity of that person has not been officially disclosed. Nevertheless, the applicant submitted that he had reasons to believe that it was a prominent businessman associated with the above-mentioned finance group, who himself has separate applications pending before the Court about matters similar to those obtaining in the present case.

7. Warrants 1 and 2 were implemeanted by the SIS between November 2005 and August 2006 by way of audio surveillance of the flat. In the course of the operation, the SIS monitored the applicant and other persons.

8. In so far as warrants 1 and 2 concerned the applicant, in 2012 they were annulled by the Constitutional Court as being unjustified and unlawful

due to the lack of several fundamental elements (for details see paragraph 33 below).

9. On the basis of the quashing of the two warrants, in 2020 the Regional Court ruled in the context of an action by the applicant against the SIS that their implementation had violated his right to protection of his personal integrity (see paragraph 59 below).

B. Warrant 3

10. Meanwhile, on 26 January 2006, the Regional Court had issued a further warrant authorising the SIS to monitor the applicant ("warrant 3"), following an application by the SIS of the same date. A copy of it has likewise not been made available to the Court. However, the information available indicates that warrant 3 authorised the SIS to use "technical means of gathering intelligence in the process of production and use of video, audio and other recordings in relation to [the applicant] in a flat [owned by him at a given address]". Warrant 3 was valid until 26 July 2006. It was implemented by the SIS between the dates mentioned.

11. In 2016 the Constitutional Court annulled warrant 3 on similar grounds as warrants 1 and 2 (for details see paragraph 55 below).

12. The Regional Court's above-mentioned 2020 ruling concerning the violation of the applicant's right to protection of personal integrity also extended to the implementation of warrant 3.

C. Products of implementation of warrants 1, 2 and 3

13. The implementation of warrants 1, 2 and 3 resulted in primary and derivative material. The former is understood to be a recording (audio or its transcription) and the latter to be material based on it (summaries and analytical notes). Such material was or has been kept within the control of the SIS.

14. It was later taken by the domestic authorities as established that the SIS had destroyed the primary material resulting from the implementation of warrants 1 and 2 on 2 April 2008. The destruction of this material took place without any judge being present. Minutes were drawn up but no copy has been provided to the Court. It appears that the reason why the material was destroyed was that it was found that it contained nothing that could serve the purpose pursued by the operation.

15. The primary material resulting from the implementation of warrant 3, as well as the derivative material resulting from the implementation of all three warrants, is archived by the SIS in the manner specified in section 17(6) of the SIS Act (Law no. 46/1993 Coll., as amended), that is "in a way that excludes access to it by anyone". The rules

for the retention of such material are provided in an internal regulation issued by the Director of the SIS under section 17(8) of the SIS Act.

16. In addition, some further material based on or linked to these warrants was kept within the control of the Regional Court. This consisted of the SIS's applications for the said warrants, an SIS report on the implementation of warrant 1, an SIS application for early discontinuance of the operation under warrant 2, the SIS report of 16 June 2006 on the implementation of warrant 3 and the SIS report of 1 August 2006 on the discontinuance of its implementation.

17. The case files of the Regional Court concerning all three warrants, including the further material mentioned in the previous paragraph, were destroyed on 13 April 2016 (warrant 1) and 8 March 2017 (warrants 2 and 3), on the grounds that the prescribed archiving term had expired.

D. Written and audio material linked to operation Gorilla

18. In December 2011 some written text was anonymously posted on the Internet. This material indicated that it was the result of the implementation of warrant 1 and warrant 2. It could be defined as a descriptive analytical summary, purportedly produced by the SIS, of what had occurred at the flat. There had purportedly been meetings between the applicant, the businessman referred to above and other persons, including a minister and other public officials, discussing and coordinating massive corruption in the context of the denationalisation of strategic State-owned enterprises, various personal appointments, and bribing of members of the National Council of the Slovak Republic ("the Parliament"). By the applicant's count the material mentioned his name more than a hundred times.

19. In the course of a home search conducted in 2018 in an unrelated criminal investigation into a suspected murder, a portable data storage device was seized containing a digital audio track that appeared to be the audio recording on which the text mentioned in the preceding paragraph was based.

20. After it had been established that the content of this device had no link to the investigation in question, it was transmitted to the investigation that had meanwhile been opened into suspicions of corruption, as revealed by the material posted on the Internet (for details see below). It appears that copies of the recording are being used in other criminal investigations as well.

21. In December 2018 the fact of the above-mentioned seizure was reported by the media. In October 2019 a digital audio track was anonymously transmitted to the media and posted on the Internet. It purported to be the recording on the basis of which the text mentioned in paragraph 18 above had been compiled.

22. The authenticity of the text and of the audio recording has not been officially confirmed. They are however commonly referred to as having a connection to operation Gorilla.

E. Public response and official investigations

23. From December 2011, when the said written text was posted on the Internet, the affair attracted – and has until the present day retained - extraordinary public attention. The Head of the Office of Special Prosecutions of the Public Prosecution Service ("PPS") reported on it in Parliament. A book was published about it, a Minister of the Interior and other persons commented on it at press conferences, and former investigators involved in the investigation into the suspected corruption appeared in a talk show on TV.

24. In connection with the above-mentioned matters, three lines of inquiry were pursued by the authorities.

Firstly, an investigation was carried out into whether the SIS had failed to transmit the outcome of the operation to the prosecuting authorities and whether its agents had abused their authority by using that outcome for the purposes of extortion. As a complement to that inquiry, an investigation was carried out into suspected abuse of official powers in connection with the SIS's applications for the warrants in question and the issuance of those warrants by the Regional Court. Those investigations have been stayed and no one has been charged.

Secondly, an investigation was opened into suspected corruption, as revealed by the material posted on the Internet. This is ongoing and no one is currently facing charges.

Thirdly, an investigation was carried out into suspected slander by the Minister of the Interior in his press-conference statements. The status of this investigation is uncertain, but no charges have been brought to date.

25. The applicant himself has never been charged in connection with the matters referred to above.

II. APPLICANT'S INITIAL RESPONSE

26. The applicant has submitted that he learned about the surveillance operation from an anonymous document left in his mailbox. In order to verify the facts and obtain more information, he turned to various public authorities. Their responses included the following.

27. In a letter of 30 May 2011 the Regional Court confirmed that a warrant had been issued on 23 November 2005 following an application by the SIS. However, no further information could be provided as it was classified. The only body authorised to declassify it was the SIS, which had not done so.

28. In a letter of 17 June 2011 the Secretariat of Parliament addressed the issue of the exercise at the relevant time of parliamentary supervision over the activities of the SIS by a special parliamentary committee ("the Special Parliamentary Committee") to be established under the Privacy Protection Act (Law. no. 166/2003 Coll., as amended – "PP Act"). In particular, on 17 March 2005 Parliament had set up the Committee on supervision of the use of technical means of gathering intelligence ("TMGI") to carry out that supervision. The committee had drawn up a report concerning the year 2005, but the report had never been debated by the plenary session of Parliament. As from 4 August 2006 the task had been assigned to the Defence and Security Committee. That committee had, however, never produced any report for the first half of 2006.

III. FIRST CONSTITUTIONAL COMPLAINT

29. On 6 June 2011 the applicant lodged a complaint with the Constitutional Court. Identifying the Regional Court and the SIS as the respondents, he alleged that a number of his fundamental rights had been violated on account of the issuance of warrants 1 and 2, their implementation and the creation of the various types of material based on the surveillance operation. In addition, he sought orders for the destruction of any such material and payment of 33,000 euros (EUR) in compensation for non-pecuniary damage.

30. On 6 March 2012 the Constitutional Court declared the complaint admissible in so far as it concerned the proceedings before the Regional Court in relation to the contested warrants and the issuance of those warrants, and the remainder inadmissible.

31. The merits of the admissible part of the complaint were determined in a constitutional judgment of 20 November 2012, whereby the Constitutional Court found that the Regional Court had violated the applicant's rights to a fair hearing and to respect for his private life, as well as their constitutional equivalents.

Accordingly, in so far as warrants 1 and 2 concerned the applicant, the Constitutional Court annulled them and made an award in respect of the applicant's legal costs.

However, it dismissed the applicant's claim for just satisfaction in respect of non-pecuniary damage, as well as his other claims.

32. The relevant part of the Constitutional Court's reasoning may be summarised as follows.

Under the subsidiarity principle, the Constitutional Court had no jurisdiction in respect of the SIS because the supervision of SIS operations which had been authorised by the Regional Court lay within the jurisdiction of the latter court. For similar reasons, the Constitutional Court had no power to order the destruction of any material resulting from an authorised

surveillance operation which fell within the control of the SIS. The relevant part of the complaint was thus inadmissible.

33. Warrants 1 and 2 were unjustified and unlawful as they lacked several fundamental elements. For example, the time-frame within which the SIS was to report to the Regional Court on their implementation was not indicated clearly, and the warrants were not susceptible to review on account of a complete lack of individual reasoning. Moreover, they did not identify the judge who had issued them.

34. As to the applicant's claim that, on the basis of the annulment of the warrants, the Constitutional Court should order the destruction of any material linked to operation "Gorilla" within the control of the Regional Court, the Constitutional Court observed that the material "was in court files, did not originate from the actions of the Regional Court and was not the product of secret surveillance, or was so at best partly and indirectly". Furthermore, the Constitutional Court pointed out that the admissible part of the complaint only concerned the warrants and the procedure in respect of them. It concluded that, in such circumstances, the annulment of the warrants could not serve as a basis for ordering the Regional Court to destroy the material in question.

35. The Constitutional Court also observed that any interference by the SIS with the applicant's personal integrity could be the subject of an action for the protection of personal integrity under the Civil Code. A claim for damages could also be pursued against the State under the State Liability Act (Law no. 514/2003 Coll., as amended – "SL Act"). It held that, for similar reasons, the applicant's claim in respect of non-pecuniary damage was to be dismissed.

36. As to the ruling concerning the applicant's costs, the Constitutional Court calculated the amount of its award on the basis of the number of "acts of legal assistance" rendered and the value of such an "act" established under the calculation formula applicable at national level. It compensated the applicant for three such acts and, by implication, dismissed his claim in respect of other acts in the constitutional proceedings (e.g. consultations between the applicant and his lawyer) and beyond (e.g. requests for action addressed to the SIS and the Regional Court).

IV. SUBSEQUENT RESPONSE

37. Relying on the Constitutional Court's conclusions outlined above, the applicant and the other person presumably concerned (see paragraph 6 above) took various steps essentially aimed at obtaining the destruction of all primary, derivative and other material resulting from the surveillance operation that fell within the control of the Regional Court and of the SIS. The results included the following.

38. In a letter of 10 January 2013 the Regional Court informed the applicant that his request for the destruction of any material resulting from operation "Gorilla" that fell within its control had to be dismissed. It made reference to the same grounds as those cited by the Constitutional Court for refusing to issue an order to the same effect. A similar request to the SIS was dismissed as unfounded.

39. In a letter of 6 September 2013 the Office of the Prosecutor General confirmed its previous position that the PPS had no power to examine whether the SIS had breached the law by allegedly failing to destroy material resulting from the implementation of warrants 1 and 2.

40. In letters of 22 October and 29 November 2013 the Office of the Government informed the applicant that it had no power to deal with his complaint about the SIS's refusal to destroy the said material. Although the director of the SIS was answerable to the Security Council of the Slovak Republic, there was no organ hierarchically superior to the SIS as such. Nevertheless, the applicant's complaint had been transmitted to the Special Parliamentary Committee. The Secretariat of Parliament ultimately responded to the complaint in a letter of 13 February 2014. It was noted that the applicant had, in the meantime, been asserting his rights before the administrative-law judiciary (see the following paragraph) and concluded that, accordingly, his complaint had become moot.

41. On 29 January and 5 February 2014 the Supreme Court declared inadmissible two administrative-law actions by which the applicant had complained of, respectively, an interference with his rights by the SIS and the SIS's inactivity in connection with the continued existence of material resulting from the implementation of the warrants in question. In both cases, the Supreme Court concluded that although the SIS was a State authority, it was not a body of public administration. Accordingly, its actions and omissions did not fall within the jurisdiction of the administrative courts.

42. In a judgment of 31 October 2014 the Regional Court dismissed an administrative-law action (*správna žaloba*) lodged by the applicant's lawyer against the SIS's decisions denying him access to the SIS internal regulation issued under section 17(8) of the SIS Act to govern the type of records to be kept by the service and various related modalities. The SIS had acknowledged the existence of such regulation but refused access to it on the grounds that it was classified. This decision was upheld by the courts, the final decision being given by the Constitutional Court on 15 February 2018. It noted in particular that legal rules governing the area of State security were based on trust in the intelligence held by the SIS and on supervision that was mainly political in nature. By implication, any element of judicial supervision in relation to matters such as, for example, what material fulfilled the statutory requirements for being classified was limited.

43. On 3 February 2015 the Special Parliamentary Committee passed resolution no. 81. It responded to a complaint by the applicant about the

setting aside by the SIS of his previous complaint of 13 September 2014. The parties submitted before the Court that the latter complaint had concerned the matter of access to information and destruction of the products of the surveillance under warrant 3. The applicant for his part added that that complaint had been set aside by the SIS on procedural grounds without any position being taken on the merits. In resolution no. 81, the Special Parliamentary Committee referred to the applicant's submissions as well as the observations in reply of the SIS and dismissed his complaint as unfounded. The text of the resolution however contains no details at all.

44. On 12 January 2017, in response to the applicant's repeated requests, a judge of the Regional Court maintained a position previously taken, namely that, in the context of its supervisory jurisdiction in relation to the SIS's surveillance operation authorised by its warrants, the Regional Court had no power to order or authorise the destruction of the material produced by that operation. The judge added that although in their observations in reply to the applicant's request the SIS had submitted a detailed answer to his arguments, it could not be provided to him as it was classified. It could only be declassified by the SIS, which had not done so.

45. In a written statement made on 15 August 2017 for the purposes of the present proceedings before the Court, the President of the Regional Court confirmed that he had enquired with the judges and personnel of his court who might be concerned and had thereby established the following. A judge who was responsible for the files concerning the three warrants had been assigned those cases on 31 March 2016. The physical files had been destroyed on 13 April 2016 and 8 March 2017. In the given period that judge had neither been invited to attend, nor had been present at, any act of destruction by the SIS of material originating from the implementation of those warrants. Moreover, she had not been privy to any confirmed information in that respect. Another judge had submitted that the SIS had not provided the Regional Court with any records obtained by implementing the warrants or with any minutes certifying the destruction of any such records. The President endorsed the submissions of his fellow judges and concluded that his court had no other documentation concerning the matter.

V. FURTHER CONSTITUTIONAL COMPLAINTS

46. Meanwhile, in addition to the above efforts, the applicant had lodged a series of constitutional complaints challenging warrant 3, the failure of the SIS and the Regional Court to destroy the material resulting from the implementation of warrants 1 and 2 within their respective control, the failure of the Regional Court to supervise the implementation of those warrants, in particular after they had been annulled by the Constitutional Court (see paragraph 31 above), and the dismissal of his administrative-law actions (see paragraph 41 above). Among many other arguments, he relied

on a document from the Regional Court dated 6 March 2014, in which it was observed that when the three warrants had been issued, the Regional Court had not had at its disposal the technical equipment required by law for the processing of classified information. As a result, such warrants had *de facto* been produced by the agency applying for them. Moreover, he argued that there had been unjustified delays in the exercise of the Regional Court's jurisdiction in relation to what he considered to be a duty on the part of the SIS to destroy the material in question in the presence of a judge and that there was a general lack of effective control over surveillance measures.

In terms of just satisfaction in respect of non-pecuniary damage, he claimed a symbolic amount of EUR 1.

47. The Constitutional Court joined those complaints in a single set of proceedings and determined their admissibility by a decision of 6 October 2015. It declared them admissible in so far as they concerned the proceedings before the Regional Court in relation to warrant 3 and the issuance of that warrant, and inadmissible as to the remainder.

The relevant part of the Constitutional Court's reasoning may be summarised as follows.

48. In so far as the applicant wished to complain about the implementation of warrants 1 and 2 by the SIS, the Constitutional Court had already rejected such complaint in its decision of 6 March 2012 on the grounds that it had no jurisdiction to deal with it and the applicant had failed to exhaust the ordinary remedies available (see paragraphs 30 et seq. above). As there was no new relevant information in that respect, the complaint was inadmissible.

49. The Constitutional Court noted that, in the applicant's own submission, the underlying fundamental motive of all his complaints was to achieve the destruction of the material resulting from the implementation of the contested warrants that fell within the control of the SIS. In that respect, the Constitutional Court acknowledged that when surveillance warrants were annulled, any recordings made as a result of them had to be destroyed, this being the responsibility of both the issuing court and the SIS.

50. However, as noted by the SIS in its observations in reply to the applicant's constitutional complaints, and as certified by minutes of 2 April 2008 that the SIS had submitted in support of those observations, the SIS had itself destroyed the recordings resulting from warrants 1 and 2. As to the applicant's specific contention that the SIS had failed to discharge its duty to inform him of the destruction of that and any other products of the implementation of the three warrants, the Constitutional Court noted that the applicable statute provided for no such duty. Nevertheless, as unlawful interference by the State with the privacy of individuals was a serious matter, it was for the lawmaker to define precisely not only the conditions for the use of TMGI but also the conditions in which an individual could be apprised of the warrants for such measures and of their discontinuance.

51. As to the "data extracted from the recordings", the Constitutional Court observed that the statute did not provide for their destruction. Under section 17(6) of the SIS Act, such material had to be deposited by the SIS "in a way that excluded access to it by anyone". It was accordingly inadmissible to use that material for any official purpose and it could not obtain a lawful status and be used as evidence in any proceedings before public authorities in the future.

Therefore, the relevant part of the applicant's constitutional complaints had become moot and was accordingly manifestly ill-founded.

52. In the course of the proceedings on the merits, on 24 November 2015, the applicant's lawyer was allowed to consult a redacted version of the minutes of 4 February 2008 concerning the destruction of the primary material originating from the implementation of warrant 1 and warrant 2. This document has not been made available to the Court. The applicant submitted that the minutes indicated that a certain number of data storage media containing material produced in the course of the implementation of the two warrants had been destroyed, but provided no details whatsoever.

53. Moreover, the Regional Court, as the respondent to the admissible part of the applicant's constitutional complaints, submitted observations in reply, in which it stated *inter alia* that the SIS had applied for warrant 3 because it had considered it necessary to be able to gather information about "matters susceptible seriously to jeopardise or damage the economic interests of the Slovak Republic". In the same observations, the Regional Court further submitted:

> "[The SIS] had not advised the [Regional] court about the specific matters concerned. [The SIS] indeed did not submit to the [Regional] court any records obtained by [implementing the warrant] or minutes of the destruction of any records so obtained.
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> ...
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> ... it is necessary to observe that the Regional Court issued the warrant in a procedure that was common at that time, without proper reasoning, though with reference to the application [by the entity making it] and under the respective provisions of the [PP Act]. The procedure mentioned was not governed by any procedural rules at the relevant time."

54. The merits of the admissible part of the complaint were determined in a constitutional judgment of 2 February 2016. Referring to its conclusions in its judgment of 20 November 2012 as regards warrants 1 and 2, the Constitutional Court found a violation of a number of the applicant's rights, including those under Articles 6 and 8 (private life) of the Convention, and annulled warrant 3.

55. In particular, the Constitutional Court noted that the Regional Court had issued warrant 3 despite the fact that the SIS's application for it had failed to define the specific TMGI to be used or the specific purpose that it would serve. Its mere reference to the applicable statutory provisions had

been insufficient in that context. Moreover, the Regional Court had failed to examine whether it had been impossible to achieve the aim of warrant 3 by other less intrusive means and to address the question whether the warrant could be implemented also on premises that were inaccessible to the public. In addition, the indication of the time frame for the statutory duty on the part of the SIS to inform the court whether the reasons for warrant 3 persisted had been drafted unclearly. On those grounds, the Constitutional Court found warrant 3 unlawful and unjustified. Furthermore, it could not be established from warrant 3 which specific judge had issued it. The Constitutional Court considered this to be a particularly serious shortcoming, rendering it impossible to establish whether the warrant had actually been issued by a lawful judge.

56. In so far as the primary and derivative material resulting from the implementation of the contested warrant had not yet been destroyed, the Constitutional Court held that, in the exercise of the statutory duty of the Regional Court to supervise the implementation of surveillance warrants it had issued, it was incumbent on the latter to ensure that the SIS destroyed any primary material resulting from it. The derivative material had to be handled as specified in paragraph 51 above. As any duties on the part of the Regional Court in this context stemmed directly from the statute, there was no need for the Constitutional Court to issue any orders in that respect. Referring to the same grounds, the Constitutional Court dismissed the applicant's claim that there had been unjustified delays in the exercise of the Regional Court's jurisdiction in this matter.

57. As to the ruling concerning the applicant's costs, the Constitutional Court applied the formula as specified in paragraph 36 above, compensating the applicant for three "acts of legal assistance" in the constitutional proceedings. By implication, it dismissed his claim in respect of other acts in the constitutional proceedings (e.g. procedural submissions) and beyond (e.g. correspondence with other authorities).

VI. ACTION FOR PROTECTION OF PERSONAL INTEGRITY

58. In addition to the above-mentioned actions, on 14 April 2014 the applicant lodged an action against the SIS with the Bratislava I District Court. Relying on the Constitutional Court's decision and judgment of 6 March and 20 November 2012 (see paragraphs 30 and 31 above), the SL Act and the legal rules concerning protection of personal integrity (Article 11 et seq. of the Civil Code), he pointed out that warrants 1 and 2 had been quashed as unconstitutional and sought orders obliging the respondent to refrain from making any use of and to destroy any material within its control resulting from the implementation of warrants 1 and 2. In the course of the proceedings he extended the action to the material

resulting from the implementation of warrant 3, relying on the constitutional judgment of 2 February 2016 (see paragraph 54 above).

59. The action was first dismissed by the District Court in a judgment of 23 March 2017, which was however reversed by the Regional Court on 21 January 2020, following an appeal by the applicant.

The declaratory ruling thus adopted by the Regional Court was that, by unjustified use of the TMGI as previously authorised by the three warrants and by unjustified production of intelligence material resulting from that use of the TMGI, the SIS had violated the applicant's right to protection of personal integrity.

The courts' reasoning may be summarised as follows.

60. In so far as the applicant had relied on the SL Act, in the given context the SIS had not been involved in the capacity of a body of public administration such as to provide for standing to be sued under that Act. The claim based on it therefore fell outside its purview.

61. To the extent that the applicant had based his claim on the rules governing protection of personal integrity, irrespective of the fact that at the time of their implementation the respective warrants were valid, the Constitutional Court's subsequent finding that they had been issued unlawfully and in violation of the applicant's rights meant that their implementation too had constituted an unlawful interference with his rights. The same was true for the production of the material in question.

62. As to any consequences to be drawn from the said ruling, it was noted that the applicant had claimed no compensation in respect of non-pecuniary damage. In so far as he was seeking orders requiring the SIS to refrain from using, and to destroy, any and all material resulting from the implementation of the three warrants, the particulars of his claim lacked precision, especially as regards the definition of the material concerned. This shortcoming inherently could not be rectified since, in view of the nature of the tasks entrusted to the SIS, it was impossible for the applicant to do so. The same limitations applied to the court and to any judicial enforcement officer who would be called upon to ensure enforcement of the judgment. The relevant part of the claim, therefore, could not serve as a basis for an enforceable ruling and no such ruling could be made.

63. Moreover, as to the primary material originating from warrants 1 and 2, the claim for its destruction had become moot in view of the actual destruction of that material in the meantime. That material had been destroyed as having no use, an act which did not presuppose the presence of a judge (section 7(4) of the PP Act). The constitutional judgments annulling the respective warrants as unlawful had not intervened until later. It had therefore been out of the question to have the respective material destroyed in the presence of a judge, as otherwise required by section 7(3) of the PP Act.

64. As regards the material originating from warrant 3, it had been deposited by the SIS in accordance with section 17(3) of the SIS Act and an ordinary court had no jurisdiction to order the SIS to treat it differently.

65. No ordinary appeal lies against the Regional Court's judgment.

VII. ACTION TAKEN BY THE APPLICANT'S ASSOCIATE

66. In his submissions before the Court, the applicant has also referred to the efforts of the other person concerned (see paragraph 6 above) as follows. On the assumption of being the other addressee of warrant 2 and being concerned by the implementation of warrants 1 and 2, the applicant's associate filed a similar action against the SIS, seeking orders requiring the respondent to refrain from making any use of, and to destroy, any material resulting from the implementation of those warrants.

67. In the course of its examination, the Regional Court gave a judgment (of 21 September 2017) in which it held, *inter alia*, that the Special Parliamentary Committee had no power to decide on any individual claims against the SIS for the protection of personal integrity and for compensation in respect of non-pecuniary damage resulting from any erroneous official conduct of the SIS, the supervision it provided being of no more than an abstract nature. The action is ongoing.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. PRIVACY PROTECTION ACT

68. Under section 3:

> "1. [TMGI] may only be used where it is necessary in a democratic society for ensuring the safety or defence of the State, the prevention or investigation of crime or for the protection of the rights and freedoms of others. The use of [TMGI] may limit human rights or fundamental freedoms only to an extent that is necessary and not for longer than is unavoidable for the attainment of the statutorily recognised goal which they pursue.
>
> 2. Information obtained by way of [TMGI] may be used exclusively for the attainment of a goal in the discharge of the functions of the State, which is compatible with the requirements of [the preceding] subsection."

69. The relevant provisions of section 4 provide:

> "1. [TMGI] may] only be used upon a prior written warrant issued by the lawful judge.
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> ...
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> 3. An application for a warrant for the use of [TMGI] ... must specify:
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> (a) the type of [TMGI] that is to be used, the place and proposed duration of its use and the person against whom it is to be used,

(b) that it has previously been futile or significantly more difficult to investigate and document the activity on account of which the application is made,

(c) reasons for the use of the TMGI.

...

6. The issuing judge is duty bound systematically to examine the continued existence of the reasons for the use of the [TMGI]. If those reasons cease to exist, the judge is duty bound to decide without delay on the termination of their use."

70. Relevant parts of section 7 read as follows:

"3. If [TMGI] has been used in violation of this Act, no record or other outcome thus obtained or produced may be used in evidence ... other than in criminal or disciplinary proceedings against the person who unlawfully produced or ordered the production of such record. An unlawfully obtained record or other outcome must be destroyed in the presence of a lawful judge competent to issue a warrant [for the use of the TMGI]] within twenty-four hours of the unlawful use of the [TMGI].

4. If the use of [TMGI] leads to the production of a record and it is later established that no facts have been revealed thereby that are of relevance to the fulfilment of the statutorily determined purpose of the use of such means, the State body which produced the record shall be duty bound to destroy it without delay.

5. The destruction of a record or other outcome shall be documented in written minutes, indicating ... personal data concerning the lawful judge who was present at the act of destruction .... Prior to the destruction, the record or other outcome ... may neither be copied nor transcribed in written or any other form."

71. Section 8 includes specific legislative references providing as follows:

"Use of [TMGI] and the production or copying of a record [of such use] in violation of this Act shall give rise to liability on the part of the State [under the respective legislation on State liability] as well as of the person who has breached the law [under the respective provisions of the Criminal Code and the civil-law provisions on protection of personal integrity] by ordering, approving or otherwise committing unlawful behaviour."

72. By way of an amendment (Law no. 404/2015 Coll.), which entered into force on 1 January 2016, section 8a was introduced into the Act. It provides for the creation of a commission, under the authority of the Parliament, for supervision of the use of TMGI (subsection 1). The commission would carry out periodical yearly reviews and occasional reviews at any time by own initiative, at the request by the Special Parliamentary Committee or a similar committee for supervision of the functioning of the military intelligence service and upon application of any person believing to have been affected by the use of TMGI (subsection 6). Findings of the commission are to be transmitted to the Special Parliamentary Committee or, as the case may be, the committee for supervision of the functioning of the military intelligence service (subsection 13). Should these committees identify a suspicion of a breach of the Act, they are to report it to the Speaker of the Parliament and to the

Prosecutor General (subsection 14). Deliberations of the commission are in camera and without prejudice to judicial or other legal remedies (subsections 6 and 15).

II. THE SIS ACT

73. In accordance with section 17(1) of the SIS Act, as applicable at the current time, for the purposes of the fulfilment of its statutory tasks and within the scope of its is competence, the SIS is entitled to create and operate information systems and to process the personal data of individuals.

74. Under section 17(6), where data in the registers of the SIS are no longer needed for the fulfilment of its statutory tasks or if there is any other statutory ground, the SIS is entitled to deposit such data "in a manner which prevents anyone except a court from accessing it".

75. Under section 17(8) the Director of the SIS is to issue an internal regulation to govern details of the information systems and registers kept by the service, in particular of (a) their protection, (b) access to them, (c) provision of information from them, and (d) the modalities for the destruction of the data contained therein.

III. PROTECTION OF PERSONAL INTEGRITY

76. Protection of personal integrity is governed by the provisions of Articles 11 et seq. of the Civil Code (Law no. 40/1964 Coll., as amended). In so far as relevant, they provide as follows:

Article 11

"Every natural person shall have the right to protection of his or her personal integrity, in particular his or her life and health, civil honour and human dignity, as well as privacy ...

..."

Article 13

"1. Every natural person shall have the right, *inter alia*, to request an order restraining any unjustified interference with his or her personal integrity, an order cancelling out the effects of such interference and an award of appropriate compensation.

2. If the satisfaction afforded under paragraph 1 of this Article is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party shall also be entitled to financial compensation for non-pecuniary damage.

3. When determining the amount of compensation payable under paragraph 2 of this Article, the court shall take into account the seriousness of the harm suffered by the injured party and the circumstances in which the violation of his or her rights occurred."

IV. STATEMENT BY THE PRESIDENT OF THE CONSTITUTIONAL COURT

77. On 31 July 2017 (applications nos. 58361/12 and 27176/16) and 9 May 2018 (application no. 25592/16) the President of the Constitutional Court issued two written statements for the purposes of the present proceedings before the Court. She addressed the constitutional proceedings resulting in the constitutional judgments of 20 November 2012 and 2 February 2016 (see paragraphs 31 and 54 above).

78. The President emphasised that the jurisdiction of the Constitutional Court in matters of individual complaints was subsidiary to that of the ordinary courts. In so far as her court had rejected parts of the applicant's constitutional complaint because they fell within the jurisdiction of the ordinary courts, this had been mainly with reference to the action for the protection of personal integrity and the provisions of the PP Act.

79. In her comments concerning warrant 3, the President pointed out that the reason behind its quashing had been its unlawfulness. As it had to be quashed already on that ground, it had not been necessary to examine it also under the criteria of "legitimate aim" and "necessity in a democratic society".

80. As explained in the constitutional judgments concerned, there were different legal regimes that applied to primary material and derivative material resulting from the use of TMGI. As regards any primary material, which was obtained by an unlawful use of TMGI or which turned out to be useless for the given purpose, it had to be destroyed under section 7(3)-(5) of the PP Act. It was the Regional Court, which had issued the warrants for the use of the TMGI, that had jurisdiction and was under a duty to ensure that such material be destroyed. In that context, the quashing of the warrants by the Constitutional Court was a precondition for the procedure leading to the destruction of the said material.

81. In contrast to the primary material, the derivative material could not be destroyed and had to be deposited under section 17(6) of the SIS Act, to which the President added that, in the discharge of its jurisdiction and statutory duty to ensure the destruction of the primary material, the Regional Court as the issuing court also had access to the derivative material retained by the SIS under section 17(6) of the SIS Act.

V. JUDICIAL PRACTICE

82. In judgment no. 1Cdo 66/09 of 27 January 2011 on an appeal on points of law in an unrelated case concerning an action for protection of personal integrity against the SIS, the Supreme Court held that the given type of action did not provide the claimant, whose telephone communication had been monitored by the SIS upon a judicial warrant, with

any protection in respect of such monitoring. A judge sitting in that type of action had no power to assess the justification for a warrant for the use of TMGI. Such warrant was a final and binding decision of the issuing judge and the judge sitting in an action for protection of personal integrity was bound by that decision. There was no other court to provide persons whose telephone communication had been monitored with protection of their rights, thus activating the jurisdiction of the Constitutional Court pursuant to Article 127 § 1 of the Constitution.

83. In judgment of 26 November 2013 the Trenčín Regional Court upheld a judgment of the Ružomeberok District Court of 15 February 2012 in another unrelated case, no. 5C 163/09, concerning an action for the protection of personal integrity by two individuals against the State in the person of the Ministry of the Interior. The case involved a situation where the claimants' mobile telephone communication had been recorded under a warrant issued by the Office of the Prešov Reginal Prosecutor. The recording had been transcribed and a copy of that transcript had been included in a case file of the Regional Court in another criminal case not involving the claimants. However, the Constitutional Court had annulled the relevant warrant as it had violated the fundamental rights of one of those individuals, in particular in that the grounds on which the warrant relied had been insufficient and merely formal. In line with those findings, the District Court acknowledged that the monitoring of the claimants' telephone communication had been unlawful and constituted an interference with their personal integrity. It noted that the police units carrying out the monitoring had a primary duty to verify whether the monitoring was justified and whether there were facts on which the warrant had been based. Moreover, they were duty bound to destroy any recordings if they contained no information relevant to a criminal prosecution and not, as in the case at hand, to transmit a copy of it to a court file concerning another criminal case not involving the claimants. The State was liable for the failure by the police to do so and the claimants were awarded financial compensation in respect of non-pecuniary damage.

THE LAW

I. PRELIMINARY REMARKS

84. The Court notes that matters associated with the surveillance operation at the heart of the present three applications have been a subject of concern and intense general interest for a decade or so. This has been reflected particularly in the media attention that the subject has been given and in the many associated and interrelated investigations and other types of official proceedings, some of which are still ongoing.

85. The Court further notes that the present three applications are interrelated, between themselves and with the similar applications of the applicant's associate. They all comprise an extensive number of factual and procedural elements that have been submitted to the Court gradually as matters have evolved at the national level over time.

86. As a result, some of the facts and the parties' observations submitted in the present proceedings before the Court have been superseded by further national developments.

87. In these circumstances the Court finds it opportune at the outset to delineate the parameters of the present three applications for the purposes of its review.

88. First of all it is observed that, in so far as the applicant's Article 8 complaints specifically concerned the issuance of warrant 1 and warrant 2, they were declared inadmissible at the time of the notification of applications nos. 58361/12 and 27176/16 to the respondent Government (Rule 54 § 3 of the Rules of Court). Therefore, those complaints are no longer within the scope of this case. The Court further notes that, in application no. 25592/16 the applicant made no specific complaint in relation to the issuance of warrant 3 as such.

89. In generic terms, the applicant's complaints may be characterised as concerning the implementation of the three warrants, which to a large extent corresponds to the production of the primary and derivative material. He further complained about the partly past, and partly still persisting, retention of that and some other material, the alleged leak of information and associated procedural matters.

90. It is not disputed that the applicant was concerned by the implementation of the three warrants and that this implementation resulted in the production of primary, derivative and other material that also, at least in part, pertained to him.

91. It is likewise uncontested that, following their implementation, the three warrants were annulled by the Constitutional Court essentially as having been unlawful, that their implementation and the creation of various material on the basis thereof by SIS was found by the Regional Court to have violated the applicant's right to protection of his personal integrity, and that some material originating from the implementation of warrants 1 and 2 was destroyed by the SIS in 2008, as was any other material stemming from the implementation of the three warrants that fell within the control of the Regional Court, in 2016 and 2017.

92. The issues remaining in dispute are essentially the effectiveness and exhaustion of other remedies, the applicant's victim status and the existence of adequate safeguards against abuse of State power.

93. As the present case involves an allegation of an individual interference with the applicant's rights, there is no need for the Court to rule *in abstracto* on the Slovakian legislation regulating covert surveillance in

the intelligence-gathering context. Rather, the Court must confine itself to the circumstances of the case and take into account the nature and extent of the interference alleged by the applicant (see, for example, *Pastyřík v. the Czech Republic* (dec.), no. 47091/09, 31 May 2011).

II. JOINDER OF THE APPLICATIONS

94. Having regard to the interrelated factual background and similar subject matter of the three applications, the Court finds it appropriate to examine them jointly in a single judgment.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

95. The applicant complained that the implementation of warrants 1, 2 and 3 had arbitrarily interfered with his right to protection of his privacy, that there had been a lack of effective supervision and review of the implementation of those warrants, that their implementation had resulted in the production of various intelligence material, that such material continued to exist or there were doubts about its destruction, that the internal rules applicable to the retention of such material by the SIS were inadequate, that the SIS had failed to prevent a leak of information originating from the implementation of the warrants, and that he did not have any effective remedy in that connection.

The Court considers that, on the particular facts, these complaints fall to be examined under Article 8 of the Convention, the relevant part of which reads as follows:

> "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."

A. Admissibility

1. Victim status and exhaustion of domestic remedies

(a) The parties' arguments

(i) The Government

96. The Government raised two interrelated objections, concerning the applicant's victim status and the exhaustion of domestic remedies. They substantiated these objections as follows.

97. In line with the established domestic practice, as noted by the Constitutional Court, there had been no remedy before an ordinary court

available to the applicant in relation to the proceedings leading to the issuance of the contested warrants and to the warrants themselves. Thus, having regard to the subsidiarity principle, these matters fell within the jurisdiction of the Constitutional Court. Moreover, there had been no remedy before an ordinary court by which to complain of being subjected to surveillance measures *per se*.

98. The Constitutional Court had accordingly examined the merits of the relevant part of the applicant's constitutional complaints and had afforded him adequate redress by quashing the three warrants. In so far as any financial compensation might be necessary, this could have been pursued before the ordinary courts. Nevertheless, it was indicative that in his constitutional complaint concerning warrant 3 the applicant had sought no more than EUR 1 in respect of non-pecuniary damage, specifying that he was not interested in perpetuating a situation at variance with his rights by receiving any financial compensation.

99. As to any remaining associated aspects, mainly the alleged unauthorised or otherwise inappropriate use of the data obtained by the surveillance, these matters fell within the jurisdiction of the ordinary courts and the Constitutional Court had duly and rightly informed the applicant in that connection.

100. In particular, the applicant had at his disposal an action for protection of personal integrity and an action for damages under the SL Act. The applicant had in fact pursued that type of action and, at the time of the Government's observations, it was still pending, which was why the Government considered the applications to be premature.

101. Moreover, the Government argued that the applicant's action of 14 April 2014 had been aimed at obtaining redress that was not envisaged by and was contrary to the law and that, in so far as it relied on the SL Act, it had been incorrectly formulated in that it pursued a claim against the SIS on the basis of an erroneous decision issued by a third party, in particular the Regional Court.

102. In addition, the Government argued that the question of the destruction of the primary material gleaned from the implementation of warrant 3, which still existed under the control of the SIS, fell within the jurisdiction of the Regional Court as part of its supervisory role in relation to the implementation of the surveillance warrants that it had issued. In that regard, they relied on the decision of the Constitutional Court of 6 October 2015 and on the statement of its President of 9 May 2018. Should the Regional Court fail in the discharge of this duty, the applicant could bring a fresh complaint before the Constitutional Court.

103. Lastly, the Government argued that further redress had been provided to the applicant by the destruction of any material originating from the surveillance that had been retained by the Regional Court. As to the

relevant part of his complaints before the Court, the applicant had accordingly lost his victim status.

(ii) The applicant

104. The applicant submitted that he had resorted to using an action for the protection of personal integrity only by way of precaution, being convinced that it was not an effective remedy in the circumstances of his case. This was mainly because it had no potential to bring about the destruction of the material resulting from the implementation of the three warrants and because it could not lead to a substantive review of the lawfulness of, or the justification for, the use of TMGI. This was not altered by the final judgment of the Regional Court (see paragraph 59 above). The original interference with his rights dated back to 2005 and 2006 and he had, in vain, exhausted all remedies available in that connection.

105. Moreover, the applicant pointed out that the alleged violation of his rights had been acknowledged at the domestic level in some aspects only and that he had not received any form of compensation, in particular as regards the destruction of the material resulting from the implementation of the three warrants. While the other material under the control of the Regional Court appeared ultimately also to have been destroyed, this was on account of the expiry of the prescribed archiving term and involved no acknowledgment of a violation of his rights.

(b) The Court's assessment

(i) Victim status

106. In so far as the three warrants have been quashed by the Constitutional Court, the Court notes at the outset that their issuance is or no longer is, the object of its review in the present judgment (see paragraph 88 above).

107. The Government's inadmissibility objection concerning the applicant's victim status thus mainly pertains to (i) the fact that the primary material from the implementation of warrants 1 and 2 under the control of the SIS, and the other material linked to the implementation of all three warrants under the control of the Regional Court, have been destroyed and (ii) the fact that in the proceedings in the applicant's action of 14 April 2014 the Regional Court found that the implementation of the three warrants and the production by the SIS of the various material linked to their implementation had violated the applicant's right to protection of his personal integrity.

108. In that connection, the Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of the status of "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either

expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts), with further references). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see, for example, *Albayrak v. Turkey*, no. 38406/97, § 32, 31 January 2008, with further references).

109. As to the destruction of the primary material originating from the implementation of warrants 1 and 2 in the control of the SIS and the other material resulting from the implementation of all three warrants in the control of the Regional Court, the reason indicated was, respectively, that the material was unusable (see paragraph 14 above) and that its archiving period had expired (see paragraph 17 above). In other words, there was no acknowledgment, express or implied, of a violation of the applicant's rights, let alone any other redress with regard to the past existence of that material being afforded or at least arguably available.

110. To the extent that the Regional Court found that the implementation of the three warrants and the creation by the SIS of the various material on the basis thereof had violated the applicant's right to respect for his personal integrity (see paragraphs 59 et seq. above), the Court considers that this finding may to some extent in substance be accepted as an acknowledgment of a violation of his right to respect for his private life. Nevertheless, noting the scope of that finding and the reasons behind it, the Court considers that it fails to address the essence of the applicant's complaints, in so far as they have to do with the existence of adequate safeguards against abuse and other aspects of the lawfulness of the implementation of the three warrants in Convention terms.

111. For this reason alone, the Government's objection with regard to the applicant's victim status must be dismissed.

(ii) Exhaustion of domestic remedies

112. The Court notes that, in so far as the Government argued that any of the applicant's complaints were premature in view of the fact that his action of 14 April 2014 was pending, this argument has become moot as that action has in the meantime been disposed of.

113. At a general level, the Court reiterates that, under Article 35 § 1 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

114. On the facts of this case, to place the Government's non-exhaustion plea in context, the Court observes that the action of 14 April 2014 concerned the implementation of the three warrants and the production by the SIS – and the existence under its control – of the primary and derivative material resulting from the implementation of the three warrants.

115. The Court notes that the implementation of the warrants was intrinsically interrelated with the production and existence of the said material and the question of exhausting domestic remedies in that respect inherently correlates with the possibility of obtaining its destruction.

116. It further reiterates that, in a comparable context, in the case of *Klass and Others v. Germany* (6 September 1978, § 71, Series A no. 28) the Court found a set of remedies effective for Convention purposes which included the possibility of seeking the destruction of surveillance material on the person concerned (in that regard see also, *mutatis mutandis*, *Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 359, 25 May 2021, with further references).

117. In the present case, where the continued existence of the impugned material is alleged in itself to constitute a violation of the applicant's rights, for a remedy to be effective for Convention purposes it must in principle be capable of leading to the destruction of that material.

118. As established by the Regional Court and argued not only by the applicant but in fact also by the Government themselves, the action of 14 April 2014 could not have brought about the destruction of the primary and derivative material within the control of the SIS.

119. To the extent that the Government contended that the applicant could and should have pursued the destruction of the primary material resulting from the implementation of warrant 3 before the Regional Court, in the framework of its supervisory jurisdiction in respect of the surveillance under the warrants it had issued, the Court notes that the Regional Court itself repeatedly denied having any such jurisdiction once the implementation of the warrants had been terminated (see paragraph 44 above). It did so despite the Constitutional Court's findings in relation to the material resulting from the implementation of the first two warrants (see paragraph 32 above). In fact, the Regional Court's attitude has been expressed in definitive terms by the destruction of its own files concerning those warrants, together with the third warrant (see paragraphs 17 and 45 above). When the applicant complained of this attitude before the Constitutional Court (see paragraph 46 above), he was referred back to the Regional Court (see paragraph 56 above), and the Government have argued that if he is unsuccessful in asserting his rights there, he could then turn to the Constitutional Court again (see paragraph 102 above). The course of action suggested by the Government thus amounts to a vicious circle, which is clearly incompatible with the notion of an effective remedy under the Convention.

120. Accordingly, in so far as the Government's non-exhaustion objection has been substantiated, it must be dismissed.

2. Alleged leak of information

(a) The parties' arguments

(i) The Government

121. The Government contended that, despite several investigations, it had not been confirmed that the material posted anonymously on the Internet had come from the SIS. Those persons who appeared in it had denied its authenticity. Moreover, the actions of the SIS had been reviewed by the Special Parliamentary Committee with no shortcomings having been established. The complaint of a leak, in the Government's submission, was accordingly unfounded.

122. In so far as the applicant might be understood as seeking to extend the scope of his complaints (see paragraph 124 below) by contesting the authorities' investigation into the origin of the recording found in the context of another investigation (see paragraphs 19 and 20 above), the Government argued that they were under a positive obligation to investigate suspected criminality and that, up until then, the recording had not been identified as originating from the SIS or, in other words, as being a primary product of the implementation of the warrants in question.

(ii) The applicant

123. The applicant contended that the SIS had failed to take an official stance as regards the authenticity of the publicly available material, suggesting that it had to do with operation Gorilla, the need for such stance being all the greater as that material was generally presented and seen as being based on operation Gorilla and was harmful to the applicant's reputation.

124. Furthermore, the applicant referred to the Constitutional Court's findings, which he interpreted as meaning that following the quashing of the three warrants all primary products of their implementation should be destroyed. However, despite this position, the audio recording retrieved by the investigators in another case, which was generally seen as resulting from the implementation of the contested warrants, was being exploited in a number of other sets of proceedings (see paragraphs 19 and 20 above).

(b) The Court's assessment

125. The Court notes that, in so far as the applicant argues that material from the implementation of the said warrants was leaked by the SIS, this allegation has not been proven. His complaint in that respect is thus manifestly ill-founded.

126. The Court also observes that, in so far as his complaints before the Court have been formulated in accordance with Rule 47 of the Rules of Court, they do not contain any complaint of a failure to fulfil any positive obligation that the State might have in connection with a claim that the material on the Internet originated from the SIS, that it damaged the applicant's reputation, or that the SIS had failed to protect it from unauthorised disclosure (see, *mutatis mutandis*, *Ageyevy v. Russia*, no. 7075/10, §§ 193-200, 18 April 2013). Although the Government have not raised any separate non-exhaustion objection in that regard, in establishing the nature of the applicant's complaints before the Court it has also taken into account the fact that no such complaints have been made at the domestic level, in particular before the Constitutional Court.

127. The factual allegations in the applicant's observations in the course of the examination of his case before the Court (see paragraphs 123 and 124 above) thus amount to no more than background information for the purposes of the assessment of his original complaint and they do not constitute a separate matter in the framework of the present proceedings.

3. Conclusions

128. In so far as it has been substantiated, the complaint about the alleged leak of information must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

129. As to the remaining complaints, namely those concerning the implementation of the three warrants, the production and existence of the various material on the basis thereof and the alleged lack of safeguards against abuse, the Court notes that they are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

130. The applicant complained that the implementation of the three warrants had violated his right to respect for his private life, that there had been a lack of effective supervision and review of the implementation of those warrants, that their implementation had resulted in the production of various material about him, that some material continued to exist or that there were doubts as to its destruction, and that the internal rules applicable to the retention of such material by the SIS and any other safeguards were inadequate.

131. In reply to the Government's submissions (see paragraphs 138-143 below) the applicant contended that the three warrants had been flawed to

such a fundamental extent that they had been a legal nullity. Their implementation therefore could not have been lawful and legitimate.

132. Any destruction of material under the control of the SIS in 2008 had only concerned the primary material resulting from the implementation of warrant 1 and warrant 2. In so far as the minutes of that act had been made available to him, they were extremely vague, did not enable the identification of what exactly had been destroyed and provided no guarantee that all the material of the given type had been destroyed. In any event, that operation did not involve the destruction of the original material resulting from the implementation of warrant 3, in respect of which the Regional Court denied having any jurisdiction despite the Constitutional Court's indications to the contrary.

133. Furthermore, the derivative material originating from the implementation of all three warrants still existed under the control of the SIS and no official body had assumed the power to inspect it with a view to ensuring compliance with the rules for the retention of such material.

134. To the extent that the Constitutional Court directed the applicant to an action for the protection of personal integrity, the applicant raised similar arguments to those in his response to the relevant part of the Government's non-exhaustion plea (see paragraph 104 above).

135. In so far as any supervision was exercised by the Special Parliamentary Committee, this body had failed to provide him with any individual protection and, in any event, it was not a court within the meaning of section 17(6) of the SIS Act for the purposes of access to the derivative material. In addition, the rules for its retention by the SIS were inaccessible to the public.

136. The applicant submitted that, irrespective of its subsequent destruction, the retention of information resulting from the implementation of the three warrants by the State in what he considered to be a violation of his Article 8 rights continued to be a Convention problem with reference to the period until such material was destroyed. In his view, there were no reasons for treating this material in different regimes under the PP Act and the SIS Act. Furthermore, as the SIS had themselves acknowledged, the primary material resulting from the implementation of warrant 1 and 2 had been destroyed as it contained nothing usable for the pursuance of the goals of the operation. It was thus incomprehensible how any derivative material based on that primary material could still serve any legitimate purpose.

137. There were no adequate safeguards against arbitrary use of TMGI and the applicant had no effective remedy at his disposal. The authorities had transferred the matter among themselves without providing any genuine solution. Moreover, the applicant was disadvantaged in the assertion of his rights in that, unlike the authorities, he did not have unrestricted access to the relevant information and material.

(b) The Government

138. The Government noted that the crux of the applicant's argument was that the SIS had not destroyed all primary and derivative material originating from the use of TMGI in relation to him and that such material continued to exist. The regime applicable to the primary material was defined by the PP Act, while the derivative material was governed by the SIS Act.

139. The primary material originating from the implementation of warrants 1 and 2 had been destroyed under section 7(4) of the PP Act as unusable in 2008, which was before the annulment of those warrants by the Constitutional Court in 2012. In contrast to the destruction of material obtained unlawfully, which was governed by section 7(3) of that Act, the destruction of unusable material under section 7(4) did not necessitate the presence of a judge. Neither did any need for the presence of a judge at the act of such destruction stem from the case-law of the Court. The applicant's claim that in the absence of judicial or similar guarantees he could not be certain whether all primary material originating from the surveillance under warrants 1 and 2 had actually been destroyed was purely speculative and hypothetical and the Convention imposed no duty on the States to refute such arguments. Nevertheless, in the constitutional proceedings concerning warrant 3 the applicant's lawyer had been afforded and had made use of the opportunity to inspect a redacted version of the minutes of the destruction on 2 April 2008 of the primary material resulting from the implementation of warrants 1 and 2 (see paragraph 52 above).

140. The primary material stemming from the implementation of warrant 3, for its part, had not been destroyed, on the grounds that it continued to be needed for the purposes of obtaining evidence. It had accordingly been deposited in compliance with section 17(6) of the SIS Act. In that regard, however, the applicant still had an avenue at his disposal for the assertion of his rights as specified in the relevant part of the Government's non-exhaustion objection (see paragraph 102 above).

141. The derivative material originating from the surveillance under all three warrants had been deposited in the SIS archives in the same way. The Government left it for the Court to determine whether this complied with the Convention.

142. In any event, prior to the Regional Court's judgment of 21 January 2020 the Government had argued – and they have not subsequently amended their argument – that at the time of the implementation of the three warrants they were valid and it had been legitimate for the SIS to presume that the surveillance under those warrants was lawful. Its actions had accordingly been free from any arbitrariness.

143. The applicant's complaints at the national level fell within the jurisdiction of the Constitutional Court and the ordinary courts. In so far as he had sought redress before the administrative-law judiciary, his claims

had been unsuccessful because they had fallen outside the jurisdiction of the administrative courts.

2. The Court's assessment

(a) Applicability of Article 8

144. Although this matter has not been in dispute between the parties, the Court finds it appropriate to reiterate that, under its case-law, measures of secret surveillance and storage, processing and use of personal data in principle fall within the scope of the notion of private life for the purposes of Article 8 of the Convention (see, for example, *Hambardzumyan v. Armenia*, no. 43478/11, 5 December 2019, and *Leander v. Sweden*, 26 March 1987, Series A no. 116).

(b) Compliance with Article 8

(i) Whether there was an interference

145. While the existence of an interference with the applicant's Article 8 rights has likewise not been contested, the Court observes that the present case features certain peculiarities, in connection with the status of the premises on which warrants 1 and 2 were implemented, the fact that their implementation might, at least in part, have affected third persons alone, and the uncertainty as to what was taking place on the said premises and what was actually monitored, recorded and later used by the SIS or any other authority.

146. In that regard, the Court observes that no products of the implementation of the three warrants have been submitted to it for assessment, in particular as to whether the monitoring and collection, storing and use of data actually concerned the applicant's "private life".

147. It is true that the Constitutional Court found a violation of the applicant's rights under Article 8 of the Convention, in connection with the issuance of the three warrants by the Regional Court, and that, essentially on the basis of that finding and by extension, the Regional Court found in a different set of proceedings that there had been a violation by the SIS of the applicant's right to protection of his personal integrity through the implementation of these warrants and the production of the various material originating from their implementation. While these findings essentially presuppose the existence of an interference with the applicant's right to protection of his "private life", neither has been supported or accompanied by any analysis or particulars in that respect.

148. However, as already noted above, it is undisputed that the applicant was subjected to surveillance on the basis of the three warrants and that various material originating from the implementation of those warrants and concerning him was or still is retained by the SIS and the Regional Court. In view of the findings of the said domestic courts and the specific nature of

measures of covert surveillance, which inherently makes it difficult if not impossible for the person concerned to establish the facts in any detail, the Court is prepared to accept that the implementation of the three warrants and the material resulting from it, at least in part, concerned the "private life" of the applicant.

149. The implementation of the three warrants and the production and retention of the various material resulting from it accordingly constituted an interference with the applicant's right to respect for his private life.

(ii) Whether the interference was justified

150. To determine whether the interference entailed a violation of Article 8 of the Convention, the Court must examine whether it was "in accordance with the law", pursued one or more legitimate aims as defined in the second paragraph of that Article and was "necessary in a democratic society" to achieve such aim or aims (see, for example, *Kvasnica v. Slovakia*, no. 72094/01, § 77, 9 June 2009).

151. As regards the criterion "in accordance with the law", the Court reiterates its settled case-law according to which this criterion not only requires the impugned measure to have some basis in domestic law, but also refers to the quality of the law in question, meaning that it should be accessible to the person concerned and foreseeable as to its effects. The law must be compatible with the rule of law, which means that it must provide a measure of legal protection against arbitrary interference by public authorities with the rights safeguarded by paragraph 1 of Article 8. Especially where a power of the executive is exercised in secret, the risks of arbitrariness are evident. Since the implementation in practice of measures of secret surveillance is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see, for example, *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, § 76, ECHR 2006-VII, with further references).

(1) Implementation of the warrants

152. The Court notes that the implementation of the warrants directly led to the production of the primary material. Accordingly, they were intrinsically connected and will be examined together.

153. It is undisputed that the implementation of the three warrants in principle had a statutory basis, namely the respective provisions of the PP Act, and that, as required by those provisions, the warrants were issued by a

judge. No reproach has been made as to the clarity or accessibility of the said rules.

154. However, as the Constitutional Court subsequently established, the warrants were fundamentally flawed such as to render them unlawful and unconstitutional. While these deficiencies were attributable to the issuing court, it was essentially on the basis of the quashing of the warrants by the Constitutional Court that the Regional Court found, ruling on the applicant's appeal in his action for the protection of personal integrity, that the implementation of the warrants by the SIS had also violated his rights.

155. The Court observes that the Regional Court's judgment involved no assessment of the SIS' acts as such and that no such assessment had been made by the Constitutional Court.

156. For its part, the Court notes that in the proceedings before the Constitutional Court the applicant submitted a document originating from the issuing court according to which, at the relevant time, the issuing court had not had at its disposal the technical equipment required by law for the processing of classified information. As a result, warrants as in the present case had in fact been produced by the agency applying for them (see paragraph 46 above). The Court notes that in the same constitutional proceedings the issuing court added that it had been common practice at the given time for the SIS not to specify in any detail the individual reasons behind an application for TMGI (see paragraph 53 above). These submissions tend to portray the image of an intelligence agency that itself drafts the warrants authorising its interference with individual human rights and fundamental freedoms and that of a court which endorses those drafts without genuinely checking the facts.

157. In these circumstances, the Court finds that the deficiencies of the three warrants as established by the Constitutional Court inherently tainted the use of the TMGI by the SIS against the applicant on that basis.

158. As regards any other means of legal protection against arbitrary interference, the Court notes that section 4(6) of the PP Act provides for a duty on the part of the issuing judge systematically to examine whether the grounds on which the use of the TMGI was authorised continue to exist. However, in the present case, there is no indication that the judges who issued the warrants in question undertook any supervisory task on the basis of that provision. In so far as the contents of their files are known to the Court (see paragraph 16 above), they rather suggest a pattern of inaction, which is again supported by the submission of the Regional Court in the constitutional proceedings concerning warrant 3 (see paragraph 53 above). In particular, it stated that, as was common at that time, the SIS had not submitted to the Regional Court any records on the implementation of that warrant or the minutes of the destruction of any records so obtained. What is more, the Regional Court added that, at that time, these matters had not been governed by any specific rules.

159. As to any subsequent review of the implementation of the impugned warrants, the passive attitude of the issuing court culminated in the destruction of its files concerning the implementation of the three warrants. Other authorities, such as the PPS and the Office of the Government, have directly denied having any jurisdiction with regard to the lawfulness of actions by the SIS. Although the applicant's situation was referred to the Special Parliamentary Committee, the material submitted to the Court contains nothing to show that the Committee could or did examine any individual aspect of it. In that connection, the Court also notes the findings of the Regional Court, in an action for access to the internal SIS regulation concerning the retention of its records, to the effect that the control of that agency was mainly political (see paragraph 42 above) and that in the case of the applicant's associate the Committee had no power to decide on any individual claims against the SIS for the protection of personal integrity or compensation for erroneous official conduct of the SIS (see paragraph 67 above). In so far as there should have been any strengthening of parliamentary supervision by the creation of a special commission for the supervision of the use of the TMGI, the Court notes that although the respective amendment of the PP Act has since long been in force (see paragraph 72 above), there is no indication that the commission has actually been created and taken up its duties. In addition, as established by the courts and partly acknowledged by the Government, the implementation of the warrants fell outside the purview of the administrative-law judiciary and beyond the scope of the SL Act.

160. It is true that the Regional Court, sitting as an appellate court in the applicant's action for protection of personal integrity, ultimately found the implementation of the three warrants to have violated his rights. However, as already noted, this appears to have been based on the mere fact of the warrants having been annulled, without any substantive review of the actions of the SIS being made by the Constitutional Court or the Regional Court (see, *mutatis mutandis, Akhlyustin v. Russia*, no. 21200/05, § 25, 7 November 2017).

161. The Court also notes that the judgment of the Regional Court appears to be a turn of events after nearly a decade of the applicant's having actively, albeit in vain, sought a forum in which to have his claims examined. That effort was marked by an unworkable legislative reference from the PP Act to the SL Act (see paragraphs 35, 60 and 71 above), circular jurisdictional referrals from the Constitutional Court to the Regional Court (see paragraphs 32, 44 and 56 above), together with futile referrals between other authorities and from them to the administrative courts (see paragraph 40 above).

162. In sum, in view of the lack of clarity of the applicable jurisdictional rules, the lack of procedures for the implementation of the existing rules and flaws in their application, when implementing the three warrants the SIS

practically enjoyed a discretion amounting to unfettered power, not being accompanied by a measure of protection against arbitrary interference as required by the rule of law (see paragraph 151 above). Accordingly, it was not "in accordance with the law" for the purposes of Article 8 § 2 of the Convention.

163. In that connection, the Court notes that the question of the efficiency of the judicial supervision in the context of authorising TMGI appears to be of lasting concern irrespective of the enactment and entry into force of the PP Act in 2003 (see *Kvasnica*, cited above, § 20).

(2) Retention by the SIS of the primary material resulting from the implementation of warrant 3 and of the derivative material resulting from the implementation of all three warrants

164. As regards the primary material resulting from the implementation of warrant 3, as has already been noted above, this warrant was annulled by the Constitutional Court as unlawful and unconstitutional and its implementation was found by the Regional Court to have violated the applicant's right to protection of his personal integrity. It would accordingly appear beyond any controversy, and is in fact so argued by the Government themselves, that the primary material in question falls under the regime of section 7(3) of the PP Act, calling for its destruction in the presence of a lawful judge.

165. However, as established by the Constitutional Court, the said material was not destroyed but stored by the SIS in its information system under section 17(6) of the SIS Act. Although the Constitutional Court specifically found that it was a matter within the Regional Court's jurisdiction to ensure compliance by the SIS with the cited provision of the PP Act, the latter had repeatedly denied having jurisdiction to do so.

166. In that connection, the Court also observes the Regional Court's conclusions, in the context of the applicant's action for protection of personal integrity, with regard to his claim for an order for the destruction of the impugned material, that it was impossible for him, the court or a judicial enforcement officer to identify the material concerned with any precision (see paragraph 62 above), which in practice also meant that no such claim could be made before the ordinary courts (in that regard see also, *mutatis mutandis*, *Centrum för rättvisa v. Sweden* [GC], no. 35252/08, § 342, 25 May 2021).

167. Moreover, as to the storing of both the primary material from the implementation of warrant 3 and the derivative material from the implementation of all three warrants under section 17(6) of the SIS Act, the Court notes that important aspects of the applicable legal regime are governed by an internal regulation of the SIS Director issued under section 17(8) of the SIS Act. Under the said provision, this regulation is to govern issues such as the rules on authority to access that material,

disclosure of data from it and the scope and timing of its destruction. Its actual content, however, cannot be assessed since the regulation is classified and has been disclosed neither to the Court nor to the applicant.

168. Furthermore, as has already been noted above, there appears to be no body vested with authority to review the actions taken by the SIS in implementing warrants for the use of TMGI and, by extension, to supervise its compliance with its own internal regulation.

169. In other words, the storing of both the primary material from the implementation of warrant 3 and the derivative material from the implementation of all three warrants under section 17(6) of the SIS Act was subject to confidential rules which were both adopted and applied by the SIS, with no element of external control. Such rules were clearly lacking in accessibility and provided the applicant with no protection against arbitrary interference with his right to respect for his private life.

170. In addition, in the absence of any argument by the Government to the contrary, the Court finds that, since the annulment of warrant 3 by the Constitutional Court, the retention by the SIS of the primary material from its implementation has as such been lacking sufficient basis in law.

171. The retention of the said material therefore has not been "in accordance with the law" within the meaning of the second paragraph of Article 8 of the Convention.

172. In view of the conclusion in the preceding paragraph, and similarly in view of that in paragraph 162 above, it is not necessary to examine whether the other requirements of Article 8 § 2 were complied with (see, for example, *Amann v. Switzerland* [GC], no. 27798/95, § 63, ECHR 2000-II). Accordingly, no assessment is made in relation to the compatibility of the actual or potential retention of such material with the said requirements if it were in accordance with the law for the Convention purposes.

(c) Conclusion

173. It follows from the foregoing that, on account of the implementation of the three warrants and the retention by the SIS of the primary material from the implementation of warrant 3 and of the derivative material from the implementation of all three warrants, there has been a violation of the applicant's right under Article 8 of the Convention to respect for his private life.

174. At the same time, in view of that finding, the Court considers that it is not necessary to examine on the merits the remainder of the applicant's Article 8 complaint.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. 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

176. In the context of applications nos. 58361/132 and 27176/16 the applicant claimed 33,000 euros (EUR) in respect of non-pecuniary damage. In application no. 25592/16 he made a separate claim for an identical amount under the same head.

177. The Government contested both claims as being excessive.

178. The Court awards the applicant EUR 9,750 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

179. In applications nos. 58361/12 and 27176/16 the applicant also claimed compensation in respect of legal costs before the Constitutional Court, consisting of the difference between what he had claimed before the Constitutional Court and what had been awarded to him in its judgments of 20 November 2012 and 2 February 2016, that difference amounting to EUR 3,234.64 and EUR 2,327.11, respectively, thus totalling EUR 5,561.75. In application no. 25592/16 he made no separate claim for costs and expenses, referring to the claim already made in applications nos. 58361/12 and 27176/16.

180. The Government contested the claim made in applications nos. 58361/12 and 27176/16 as follows. In so far as it concerned the constitutional proceedings leading to the judgment of 2 February 2016, they argued that it was unrelated to the subject matter of applications nos. 58361/12 and 27176/16. As to the claim made in the constitutional proceedings leading up to the judgment of 20 November 2012, a part of it had been granted. The remainder had been found unsubstantiated and there were accordingly no grounds for awarding him more under the same head before the Court.

181. The Court notes first that the claim made in the context of applications nos. 58361/12 and 27176/16 in relation to the constitutional judgment of 2 February 2016 was later integrated into the applicant's just-satisfaction claims in the context of application no. 25592/16.

182. The Court further observes that, at the domestic level, the applicant's claims in respect of his costs before the Constitutional Court

were principally determined under the criterion of an "act of legal assistance" pursuant to the national rules (see paragraphs 36 and 57 above).

183. A claim in respect of costs and expenses under Article 41 of the Convention, however, falls to be examined under autonomous criteria stemming from the Court's case-law. In particular, 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 (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 54 and 55, ECHR 2000‑XI, with further references).

184. In this case, regard being had to the documents in the Court's possession and the above criteria, it considers that the claim should be awarded in full.

Accordingly, it awards the applicant EUR 5,561.75, plus any tax that may be chargeable to him, for costs and expenses in the domestic proceedings.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint concerning the alleged leak of information inadmissible and the remainder of the applications admissible;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of the implementation of the three warrants and the retention by the SIS of the primary material from the implementation of warrant 3 and of the derivative material from the implementation of all three warrants;

4. *Holds* that it is not necessary to examine on the merits the remainder of the applicant's complaint under Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 9,750 (nine thousand seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 5,561.75 (five thousand five hundred and sixty-one euros and seventy-five cents), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener
Registrar

Ksenija Turković
President