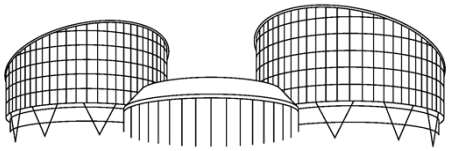

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Applications nos. 38334/08 and 68242/16
Haralambi Borisov ANCHEV
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 5 December 2017 as a Chamber composed of:

Angelika Nußberger, *President*,
Erik Møse,
Nona Tsotsoria,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov, *judges*,
Maiia Rousseva, ad hoc *judge*,

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above applications lodged on 11 August 2008 and 11 November 2016 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Noting that on 17 April 2015 and 29 November 2016 Mr Yonko Grozev, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 § 3 of the Rules of Court) and that, accordingly, on 22 November 2017 the President selected Ms Maiia Rousseva as *ad hoc* judge from the list of five persons whom the Republic of Bulgaria had designated as eligible to serve in that office (Article 26 § 4 of the Convention and Rule 29 § 1 (a)),

Having deliberated, decides as follows:

THE FACTS

1. The applicant in both applications, Mr Haralambi Borisov Anchev, is a Bulgarian national who was born in 1953 and lives in Sofia. He was represented by Ms A. Gavrilova-Ancheva, a lawyer practising in Sofia.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms V. Hristova of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties and established by the Court of its own motion on the basis of publicly available documents, may be summarised as follows.

1. State Security

4. Like other former communist countries in Eastern Europe, at the time of the communist regime (1944-89) Bulgaria had a security service, called State Security, one of whose main tasks was to supress dissent against the regime. It chiefly operated by keeping people seen as dangerous to the regime under surveillance, which it carried out through a network of secret collaborators. At first, State Security was part of the Ministry of Internal Affairs. In 1965 it was brought under the direct supervision of the Council of Ministers, but in the period 1968-69 was again placed under the umbrella of the Ministry of Internal Affairs. It was also directly accountable to the Bulgarian Communist Party's Central Committee, Politburo and Secretary General.

(a) Internal structure

5. Between 1969 and 1990, when it closed (see paragraph 9 below), State Security had six directorates. The first dealt with intelligence; the second with counterintelligence; the third with military counterintelligence; the fourth with technical and economic espionage; the fifth with security and protection; and the sixth with "the fight against ideological diversion and anti-State acts". In addition to those directorates, there were five stand-alone departments: investigation; external surveillance and research; records and archiving; encryption and communications; and military and combat readiness.

6. After 1975 State Security's sixth directorate was composed of seven departments. The first was tasked with "the fight against ideological diversion and other subversive activities of the enemy through the intelligentsia"; the second with "the fight against ideological diversion and other subversive activities" among graduate and postgraduate students; the third with countering "subversive activities of the enemy" in religious organisations; the fourth with supressing nationalist activities by various ethnic minorities; and the fifth with countering the activities of Bulgarian emigrant organisations. The sixth department's task was thwarting "anti-State activities". The seventh department dealt with information and analysis. In 1981 a new department was added, the new seventh department,

which made the former seventh department the eighth department. It was tasked with "combatting terrorism, anonymous enemy activities and escapes" and with tracking down "State criminals". In 1985 a new "T" (terror) unit was spun off from that department.

(b) Types of files and records kept by State Security

7. By section 7(1) of a secret 1978 Instruction by the Minister of Internal Affairs, which remained in effect until the closing of the organisation in early 1990 (see paragraph 9 below), State Security kept nine types of files. They fell into two broad categories. The first consisted of seven types of files relating to targets: "operative inquiry files", "operative development files", "operative tracing files", "operative surveillance files", "operative files", "object development files" and "literal files". The second category comprised two types of files relating to resources used by State Security: "secret collaborator files" and "secret meeting premises files".

8. Reference data about the files were recorded in several card indexes and registration journals (sections 50 to 59 of the 1978 Instruction). Index no. 4 contained cards relating to active and retired collaborators, people groomed for recruitment, and people whose recruitment had been aborted. Index no. 5 contained similar cards to those in Index no. 4, but was ordered according to operative pseudonym, and Index no. 6 contained cards relating to active collaborators arranged according to department, as well as secret premises (section 50(2)). The other indexes contained cards relating to surveillance targets: dissidents, emigrants, "anti-State" groups, and so on (section 15(2)).

(c) The closing of State Security and the partial destruction of its files

9. In January 1990, shortly after the fall of the communist regime in late 1989, the Government decided to close State Security.

10. At about the same time, noting the "complicated political and operative situation", on 25 January 1990 the Deputy Minister of Internal Affairs in charge of the Ministry's archive secretly proposed that a number of the files kept by State Security be destroyed. The Minister approved the proposal the same day. A few days later, on 5 February 1990, the Deputy Minister secretly proposed that steps be taken to speed up the files' destruction. The Minister approved the proposal the same day.

11. According to an inventory drawn up by the Ministry of Internal Affairs in 1994, that covert operation resulted in the destruction of 134,102 of the total 331,995 files kept by State Security.

2. The applicant's exposure as having been affiliated with State Security

12. The applicant is a lawyer. He has been a member of the Sofia Bar Association since 1980. From 1992 to 1995 he was the Secretary General of the Supreme Bar Council, and from 1994 to 1996 he was the Secretary General of the Central Electoral Commission. From 1996 to 1997 he was the liquidator of an insolvent bank. For a few months in 1997 he was the Minister of Justice and Deputy Prime Minister in a caretaker government.

(a) First investigation

13. Government ministers must be checked for affiliation with the security services of the communist regime under section 3(1) of the statute that lies at the heart of this case, the Access to and Disclosure of Documents and Exposure of the Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian People's Army Act 2006 ("the 2006 Act" – see paragraphs 44, 45 and 47 below). Following an investigation into government ministers, on 12 February 2008 the Commission administering the Act (see paragraphs 53-56 below) issued a decision exposing the applicant as having been affiliated with the seventh department of the sixth directorate of State Security (see paragraphs 5 and 6 above) between 1982 and 1990. It also put the decision on its website. The Commission relied on a registration form, an entry in the registration journal, an index card, a report on the applicant's recruitment, and a proposal to discharge him, the latter two documents having been drawn up by the officer who, according to the records, had been the applicant's handler.

14. Two days later, on 14 February 2008 the applicant was able to consult these documents. Shortly after that he published them on his website.

15. He did not seek judicial review of the Commission's decision. According to him, this would have been pointless, as this was not an effective remedy.

16. Two days later, on 16 February 2008 a weekly newspaper published information about the applicant's exposure. A couple of days after that, on 18 February 2008 the applicant wrote an article in a daily newspaper in which, among other things, he denied having been a collaborator, said that he had been unaware of the existence of a file relating to him, and contested the truthfulness of the documents in that file, pointing out that all of them emanated from officers of State Security and that those officers might have put false information in them out of a wish to fill their recruitment quotas or for other ulterior motives. He also stated that he had not been particularly impressed or upset by the publication of the information about him.

(b) Second investigation

17. Following an investigation into members of the Supreme Bar Council – who must be checked for affiliation with the former security services under section 3(2) of the 2006 Act (see paragraph 49 below) – on 24 February 2014 the Commission issued another decision exposing the applicant as having been affiliated with the seventh department of the sixth directorate of State Security (see paragraphs 5 and 6 above). It relied on the same documents as those serving as a basis for the 2008 decision (see paragraph 13 above), plus two index cards.

18. This time, the applicant sought judicial review. He argued that the Commission should only have exposed him if, having carefully examined the former security services' records, it had been satisfied that they were sufficiently reliable and attested to actual collaboration on his part, which was not the case. The Sofia City Administrative Court allowed the claim and quashed the Commission's decision. It agreed with the applicant's argument, and noted that the only records showing that he had been affiliated with the former security services were documents drawn up by the officer who had allegedly been his handler, entries in the registration journals, and index cards. Since those did not clearly prove that the applicant had actually collaborated with those services, the decision to expose him had been unlawful (реш. № 541 от 02.02.2015 г. по адм. д. № 2971/2014 г., АС-София-град).

19. The Commission appealed on points of law. In a judgment of 17 June 2016 (реш. № 7361 от 17.06.2016 г. по адм. д. № 4068/2015 г., ВАС, III о.), the Supreme Administrative Court reversed the lower court's judgment. It noted that the Commission's first decision to expose the applicant in 2008 had not been challenged by him and had become final, and that the applicant's claim for judicial review of the third decision to expose him in June 2014 had already been dismissed in a final judgment (see paragraphs 13 above and 22 below). Those facts were crucial for the determination of the case, and in the light of those facts it had to be concluded that the exposure at issue was lawful.

(c) Third investigation

20. Following an investigation into the board members of private companies which had bought parts of State-owned companies – who must be checked for affiliation with the former security services under section 3(2) of the 2006 Act, as amended in 2012 (see paragraph 50 below) – on 4 June 2014 the Commission issued a third decision exposing the applicant as having been affiliated with the seventh department of the sixth directorate of State Security (see paragraphs 5 and 6 above). It relied on the same documents as those serving as a basis for the February 2014 decision (see paragraph 17 above).

21. The applicant again sought judicial review. He raised the same arguments as those that he had made with respect to the Commission's second decision in relation to him (see paragraph 18 above). This time, however, the Sofia City Administrative Court upheld the Commission's decision. Relying on the Supreme Administrative Court's prevailing case-law under section 25(3) of the 2006 Act and the Constitutional Court's decision to uphold the constitutionality of that provision (see paragraphs 71 and 76 below), the Sofia City Administrative Court held that the Commission did not have to check whether the applicant had in fact collaborated or consented to be recruited as a collaborator, but had been bound to expose him, as it had found records relating to him. It was immaterial whether or not there was enough evidence to show that he had actually collaborated (реш. № 1947 от 24.03.2015 г. по адм. д. № 6086/2014 г., АС-София-град).

22. The applicant appealed on points of law, reiterating his arguments. In a judgment of 11 May 2016 (реш. № 5566 от 11.05.2016 г. по адм. д. № 5343/2015 г., ВАС, III о.), the Supreme Administrative Court upheld the lower court's judgment, fully agreeing with its reasoning. It likewise held that since the 2006 Act did not provide for the exposure of the actual activities of those concerned, but simply the exposure of their affiliation with the former security services, the Commission did not have to assess the nature or extent of their collaboration or establish their actual activities.

(d) The applicant's public activities since 2008

23. Since 1998 the applicant has been a member of the supervisory board of Bulgarian Holding Company AD, an investment company listed on the alternative-market segment of the Bulgarian Stock Exchange. He is still a member of the Sofia Bar Association.

24. In November 2009 the applicant published an article in a daily newspaper in which he commented on the rules governing the use of firearms by the police.

25. In January 2014 he was appointed a member of the civil society council assisting a parliamentary committee tasked with drafting a new Electoral Code. In February 2014 he gave a radio interview on his work there.

26. Between 2014 and 2015 he took part in several television and radio programmes where he was invited, in his capacity as former Minister of Justice, to comment on problems in the judicial system and possible ways of reforming it. In May 2015 he co-signed an open letter in which a number of lawyers and public figures expressed their indignation at the work of the Supreme Judicial Council.

B. Relevant domestic law and practice

1. Relevant constitutional provisions

27. Article 5 § 4 of the 1991 Constitution provides that international treaties which have been ratified and promulgated and have come into force with respect to Bulgaria are part of domestic law and take precedence over any conflicting provisions of domestic legislation.

28. Article 32 of the Constitution enshrines the right to protection of one's private life and some related rights in the following terms:

> "1. Citizens' private life shall be inviolable. All shall be entitled to protection against unlawful interferences with their private or family life and against infringements of their honour, dignity or good name.
>
> 2. No one may be placed under surveillance, photographed, filmed, recorded, or subjected to any similar action without his or her knowledge or in spite of his or her express disagreement, save in the cases provided for by law."

29. In defamation cases, the courts have held that infringement of the rights set out in Article 32 of the Constitution is a tort (see реш. № 358 от 23.02.2015 г. по в. гр. д. № 3719/2014 г., САС, and реш. № 1376 от 07.01.2016 г. по в. гр. д. № 1173/2016 г., САС). The Supreme Court of Cassation has done the same in a case concerning unauthorised filming (see реш. № 878 от 16.06.2006 г. по гр. д. № 721/2005 г., ВКС, IV-Б г. о.).

30. Article 41 of the Constitution enshrines the right to information in the following terms:

> "1. Everyone shall have the right to seek, receive and impart information. The exercise of that right may not be directed against the rights and the good name of other citizens or against national security, public order, public health or morals.
>
> 2. Citizens shall have the right to information from State bodies or agencies on any matter of legitimate interest to them, unless the information is a State secret or a secret protected by law or affects the rights of others."

31. Article 56 of the Constitution enshrines the right to a remedy in the following terms:

> "Every citizen shall have the right to a remedy if his or her rights or legitimate interests have been infringed or threatened. ..."

32. Article 120 of the Constitution provides for judicial review of administrative action in the following terms:

> "1. The courts shall review the lawfulness of the administrative authorities' decisions and actions.
>
> 2. Citizens and legal persons may seek judicial review of any administrative decision which affects them, save as expressly specified by statute."

2. Attempts to put in place lustration laws

33. In 1992 members of parliament put forward several bills providing for the lustration of ex-communist cadres and collaborators of the former security services. Four bills seeking to bar ex-communist cadres from holding any public office did not reach a plenary vote. Three more limited ones were enacted: paragraph 9 of the transitional and concluding provisions of the Banks and Credit Act 1992, which barred such persons from holding executive positions in commercial banks for five years; a new section 10a of the Pensions Act 1957, which provided that time served in an executive position in the former Bulgarian Communist Party and its related outfits would not count for retirement pension purposes; and an Act Provisionally Laying Down Certain Additional Requirements for the Management of Scientific Organisations 1992, which barred ex-communist cadres and collaborators of the former security services from holding posts in academia. All three provisions were immediately challenged before the Constitutional Court. The court struck down the first and the second on the basis that they were discriminatory and interfered disproportionately with the fundamental rights to choose one's profession and receive a pension (see реш. № 8 от 27.07.1992 г. по к. д. № 7/1992 г., КС, обн., ДВ, бр. 62/1992 г., and реш. № 11 от 29.07.1992 г. по к. д. № 18/1992 г., КС, обн., ДВ, бр. 64/1992 г.). The third Act survived the constitutional challenge (see реш. № 1 от 11.02.1993 г. по к. д. № 32/1992 г., КС, обн., ДВ, бр. 14/1993 г.), but was repealed approximately two years later in March 1995.

34. Lustration initiatives were resumed in 1998, with the enactment of paragraph 1(1) of the additional provisions of the Administration Act 1998, which barred ex-communist cadres and staff members or collaborators of the former security services from holding executive posts in State administration for five years, and sections 26(3) and 59(2)(3) of the Radio and Television Act 1998, which barred such persons from working in the media regulatory authority and in management at Bulgarian National Radio and Bulgarian National Television. The first provision was declared unconstitutional, chiefly on the basis that it was discriminatory and interfered disproportionately with the fundamental right to work (see реш. № 2 от 21.01.1999 г. по к. д. № 33/1998 г., КС, обн., ДВ, бр. 8/1999 г.). The two others survived an initial constitutional challenge (see реш. № 10 от 25.06.1999 г. по к. д. № 36/1998 г., КС, обн., ДВ, бр. 60/1999 г.), but were struck down by the Constitutional Court fourteen years later in 2013, again chiefly on the basis that they were discriminatory and interfered disproportionately with the right to work (see реш. № 8 от 11.10.2013 г. по к. д. № 6/2013 г., КС, обн., ДВ, бр. 91/2013 г.).

35. A third wave of lustration laws were passed between 2009 and 2011. The first lustration law, Rule 3 of the Standing Rules of Parliament, barred members of parliament who had been collaborators of the former security

services from serving in Parliament's presidency, from acting as presidents or deputy presidents of parliamentary committees or members of certain key committees, and from becoming members of international parliamentary delegations. The second law, sections 27(4), 31(3) and 33(3) of the Diplomatic Service Act 2007, as amended in 2011, barred such collaborators from serving as ambassadors, deputy ambassadors or general consuls, or from holding certain executive posts in State administration. The third law, section 11(1)(8) of the Bulgarian Telegraph Agency Act 2011, barred collaborators from holding the posts of general director, deputy general director or secretary general of that agency. Between 2009 and 2012 all those provisions were declared unconstitutional, on the same basis as that declared previously: that they were discriminatory and interfered disproportionately with the fundamental right to work (see реш. № 11 от 03.12.2009 г. по к. д. № 13/2009 г., КС, обн., ДВ, бр. 98/2009 г.; реш. № 11 от 22.11.2011 г. по к. д. № 8/2011 г., КС, обн., ДВ, бр. 95/2011 г.; and реш. № 11 от 02.10.2012 г. по к. д. № 1/2012 г., КС, обн., ДВ, бр. 78/2012 г.).

3. Laws on the exposure of certain staff members and collaborators of the former security services

(a) Attempt between 1990 and 1991 to expose members of the Grand National Assembly who had been collaborators of the former security services

36. On 23 August 1990 the Seventh Grand National Assembly ("the Assembly") – the first democratically elected legislature after the fall of the communist regime in 1989 – resolved to set up an *ad hoc* committee to inquire whether any Assembly members had been collaborators of the regime's security services. The committee, called the Tambuev Committee after its chairman, submitted its report to the Bureau of the Assembly on 17 April 1991. However, following a leak in the press of the names of about thirty Assembly members who had allegedly been such collaborators, a scandal erupted in the Assembly on 23 April 1991, and the committee was disbanded without completing its work.

(b) 1994 decision to declassify information about agents of the former security services

37. In a decision of 13 October 1994 (обн., ДВ, бр. 86/1994 г.), Parliament decreed that information about agents of the former security services relating to the period before 13 October 1991 was not a State secret. However, in the absence of legal provisions specifying the manner in which this information could be made public, the decision did not lead to any specific steps.

(c) The 1997 Exposure Act

38. In August 1997 Parliament passed an Act – the Access to Documents of the Former State Security and the Former Intelligence Department of the General Staff Act – providing that some State officials (the President and Vice-President, ministers and deputy ministers, members of parliament, Constitutional Court judges, members of the Supreme Judicial Council, judges of the Supreme Court of Cassation and the Supreme Administrative Court, prosecutors in the Chief Prosecutor's Office, regional governors, heads of some executive and regulatory agencies, and the directors general of Bulgarian National Television, Bulgarian National Radio and the Bulgarian Telegraph Agency) and the executives of State-owned banks and insurance companies were to be checked for affiliation with the former security services. By section 4, the check was to be carried out by a commission chaired by the Minister of Internal Affairs and comprising the heads of the various intelligence services.

39. Fifty-two members of parliament almost immediately challenged the constitutionality of the entire Act. In September 1997 the Constitutional Court dismissed the bulk of the application, but, despite the dissent of four judges, struck down the provisions concerning the investigations into the President, the Vice-President and Constitutional Court judges. It held that it would be unconstitutional for them to be checked for affiliation by a commission controlled by the executive. Despite the dissent of four judges, the court also struck down the provision concerning people who only featured in the former security services' secondary records – the card indexes and registration journals (see paragraph 8 above). It held that these records were not sufficient proof that those people had collaborated, and that this could only be proved with documents emanating from the alleged collaborators themselves. Although the files' partial destruction had restricted the efforts to uncover such documents, the difficulty was not insurmountable, and the burden to do so fell on the State (see реш. № 10 от 22.09.1997 г. по к. д. № 14/1997 г., КС, обн., ДВ, бр. 89/1997 г.). It later transpired that three judges from the majority had themselves been collaborators (see paragraph 68 below); they had not declared that when dealing with the case.

40. In February 2001 the Act was amended, with Parliament taking on board the criticisms levelled by the Constitutional Court: the amendment made the commission administering the Act independent from the executive, and specifically stated that the card indexes and registration journals (see paragraph 8 above) were not categorical proof of affiliation. The amended Act survived a further constitutional challenge (see реш. № 14 от 30.05.2001 г. по к. д. № 7/2001 г., КС, обн., ДВ, бр. 52/2001 г.), but was repealed just over a year later in April 2002. A constitutional challenge to the repealing Act, chiefly based on its alleged

discrepancy with the constitutional right to information, was dismissed (see реш. № 3 от 25.09.2002 г. по к. д. № 11/2002 г., КС, обн., ДВ, бр. 94/2002 г.).

(d) The 1999, 2001 and 2005 laws providing for checks of election candidates for affiliation with the former security services

41. In 1999 Parliament added a new subsection 4 to section 42 of the Local Elections Act 1995. It provided that all mayoral and municipal councillor candidates were to be checked for affiliation to the former security services in the manner provided for by the 1997 Act (see paragraph 38 above), and that the results of the investigation were to be given to the political parties or coalitions which had nominated them, so that they could decide whether to withdraw the nominations. The Constitutional Court unanimously dismissed a challenge to that provision, holding that it did not strip candidates of the right to run for office, but simply enabled the parties or coalitions which had put the candidates forward to see whether to keep them on the ballot (see реш. № 12 от 24.08.1999 г. по к. д. № 12/1999 г., обн. ДВ, бр. 77/1999 г.). The Central Electoral Commission for Local Elections instructed local electoral commissions to make the results of such investigations public, but the Supreme Administrative Court quashed that decision, holding that it impermissibly extended the purview of section 42(4) (see реш. № 4830 от 21.09.1999 г. по адм. д. № 5749/ 1999 г., ВАС, III о.). The provision was repealed in April 2002, alongside the 1997 Act (see paragraph 40 above).

42. Paragraph 6 of the transitional and concluding provisions of the Election of Members of Parliament Act 2001 provided for a similar investigation into parliamentary candidates, but only at the request of the political parties or coalitions which had nominated them. By section 48(5) of the Act, a party or a coalition could withdraw a candidate revealed by such an investigation to have been a collaborator of the former security services. The Central Electoral Commission directed that the results of the investigation could be provided by the Commission under the 1997 Act (see paragraph 40 above) by means of a full report or a simple certificate. The Supreme Administrative Court quashed that decision in part, holding that the only lawful means of establishing that someone had been a collaborator was via a full report, not a certificate (see реш. № 4270 от 13.06.2001 г. по адм. д. № 4623/2001 г., ВАС, III о.). Both provisions were repealed in April 2002, alongside the 1997 Act (see paragraph 40 above).

43. A new section 3(3) of the 2001 Act, added in 2005, provided that the Security of Information Commission – the body overseeing the storage and use of classified information – had to check whether parliamentary candidates were affiliated to the former security services, and give the results of the investigation to the leadership of the political party or

coalition which had nominated the candidates. The provision was repealed in 2009.

(e) The 2006 Act and its application

(i) Enactment

44. In 2006, shortly before Bulgaria's accession to the European Union, there was fresh impetus to reveal the identities of staff members and collaborators of the former security services. In May, June and August members of parliament introduced three separate bills to this effect. In August Parliament's Standing Committee on Internal Security and Public Order and its Standing Committee on Defence reviewed the bills and, by large majorities, proposed that they be examined jointly and approved at first reading. Later that same month Parliament debated the bills, which were supported during the discussion by all major parliamentary parties, and approved them at first reading. The first bill was approved by 114 votes to 53, with 28 abstentions, the second by 167 votes to 11, with 18 abstentions, and the third by 186 votes to 10, with 5 abstentions. The second reading, at which stage the bills had been consolidated into one, took place several months later in late November and early December. Nearly all provisions of the consolidated bill were adopted almost unanimously. In particular, the provisions which laid down the sources of information that could be used to establish affiliation with the former security services (see paragraphs 60 and 62 below) were adopted by 124 votes to nil, with 3 abstentions, following a lengthy debate and the rejection of two alternative proposals.

45. The Act, whose full name was the Access to and Disclosure of Documents and Exposure of the Affiliation of Bulgarian Citizens to State Security and the Intelligence Services of the Bulgarian People's Army Act, was published in the State Gazette on 19 December 2006 and came into effect on 23 December 2006.

(ii) Scope ratione personae

46. By sections 1(2) and 26(1)(2) of the Act (the latter provision's wording was amended in 2012), all those who have held specified "public office" or engaged in a specified "public activity" at any point since 10 November 1989 – the date on which the communist regime in Bulgaria is deemed to have fallen – must be checked for affiliation with the former security services, and exposed if found to have been so affiliated. By section 26(1)(3), everyone who accedes to "public office" or engages in a "public activity" in the future must also be checked for affiliation.

47. The list of the types of "public office" – similar to that in the 1997 Act (see paragraph 38 above), but more extensive – was set out in section 3(1). At first, it comprised: (a) the President and Vice-President;

(b) members of parliament and of the European Parliament; (c) the Prime Minister, his or her deputies, ministers, and deputy ministers; (d) judges of the Constitutional Court; (e) the Ombudsperson, the Deputy Ombudsperson and the secretary general of the Ombudsperson's administration; (f) chairpersons and deputy chairpersons of State agencies, and members of State commissions; (g) judges, prosecutors and investigators; (h) members of the Supreme Judicial Council; (i) members of the Commission for the Protection of Competition; (j) members of the Commission for the Regulation of Communications; (k) chairpersons, deputy chairpersons, members of the management and supervisory boards, directors, deputy directors, and heads of unit and sector of the Bulgarian National Bank, the Court of Auditors, the National Social Security Institute, and the National Health Insurance Fund; (l) executive directors of executive agencies and heads of State institutions created by statute or by decision of the Council of Ministers, as well as their deputies; (m) members of the management and supervisory boards of the Privatisation Agency and the Agency for Post-Privatisation Control; (n) secretaries general, general directors, deputy general directors, main directors, deputy main directors, directors, deputy directors, heads of local police departments, heads of unit, and heads of sector of the Ministry of Internal Affairs; (o) heads and deputy heads of the General Staff of the Bulgarian Army, and heads and deputy heads of staff of the different types of troops; (p) directors, deputy directors, directorate directors, heads of unit and heads of sector of military intelligence, the military police and the military counterintelligence services of the Ministry of Defence, the National Intelligence Service, and the National Protection Service; (q) regional governors and their deputies; (r) mayors and their deputies, as well as secretaries of municipalities and municipal councillors; (s) chairpersons, deputy chairpersons, general directors, members of the management and supervisory boards, members, and heads of directorates, units or sectors of the Electronic Media Council, Bulgarian National Television, Bulgarian National Radio, and the Bulgarian Telegraph Agency; (t) members of the central electoral commissions; (u) the head of the National Centre for Sociological Surveys attached to Parliament; (w) members of the political cabinets of the Prime Minister, his or her deputies, or ministers; (x) ambassadors, consuls general and deputy heads of diplomatic missions; (y) secretaries general, directors, heads of unit and sector of Parliament administration, as well as staff members attached to Parliament's standing committees; (z) secretaries general, head of cabinet, secretaries, and heads of unit and sector of the President's administration; (aa) secretaries general, directors general, deputy directors general, main directors, deputy main directors, directors, deputy directors, and heads of unit and sector in the central and territorial administration of the executive power; (ab) members of the Supreme Attestation Commission; (ac) people employed by the European Union, the North Atlantic Treaty Organisation,

or any other international organisation of which Bulgaria is member or in whose activities it takes part; and (ad) people holding office to which they were appointed by the President, Parliament, the Council of Ministers, or the Prime Minister.

48. In 2009, 2010 and 2011 the list underwent modifications related to the changes in structure of the authorities concerned. In 2012 Parliament expanded it to include (a) investigating police, military police and customs officers, and (b) members of the scientific councils of scientific organisations, such as universities. In early 2017 Parliament expanded the list further, to include (a) municipal ombudspersons and their deputies; (b) lay judges; (c) secretaries general and directorate directors of the Commission for the Protection of Competition and the Commission for the Regulation of Communications; (d) chairpersons, deputy chairpersons, members, secretaries general and directorate directors of the Commission for Financial Control and the Commission for Energy and Water Regulation; (e) chief architects of municipalities and local mayoral deputies; and (f) members of the regional and municipal electoral commissions.

49. The list of "public activities" was set out in section 3(2). At first, it comprised (a) owners, directors, deputy directors, editors-in-chief, deputy editors-in-chief, members of editorial boards, political commentators, presenters and newspaper or electronic media columnists, as well as owners and managers of sociological agencies, advertising firms or public-relations firms; (b) the chairperson, deputy chairpersons, main scientific secretary, members of the management boards, directors, deputy directors, and scientific secretaries of the Bulgarian Academy of Sciences and its scientific institutes and other independent units; (c) rectors and deans, their deputies, heads of branches and departments, and heads of cathedrae (faculty subdivisions) of State-owned and private colleges and universities, as well as heads and deputy heads of schools; (d) managers, executive directors, and members of the management and supervisory boards of health-care institutions, as well as chairpersons, deputy chairpersons, secretaries general and members of the management boards of the Bulgarian Doctors' Union and the Bulgarian Dentists' Union, as well as the chairperson, the director general and the deputy directors general of the Bulgarian Red Cross; (e) chairpersons, deputy chairpersons and registered members of the management and supervisory bodies of political parties and coalitions, trade unions, employers' unions, and other not-for-profit legal entities; (f) heads and members of the management bodies of religious communities; (g) chairpersons, deputy chairpersons and members of the Supreme Bar Council, the Bar's Supreme Supervisory Council, and the Bar's Supreme Disciplinary Court; (h) chairpersons and members of the management and supervisory bodies of national sport organisations and the Bulgarian Olympic Committee; (i) members of the management, controlling and supervisory bodies and representatives of banks, insurance and reinsurance

companies, stock exchanges, companies organising unofficial securities markets, investment brokers, and investment companies; (j) sole traders, as well as members of the management, controlling and supervisory bodies and representatives of companies engaging in gambling; (k) sole traders, as well as members of the management, controlling and supervisory bodies and representatives of companies providing long-distance communication services; (l) sole traders, as well as the members of the management, controlling and supervisory bodies and representatives of companies which are radio or television operators; and (m) persons authorised to act as the liquidators of insolvent companies or banks.

50. In 2012 Parliament expanded this list to include (a) media company managers; (b) founders of not-for-profit legal entities; (c) members of the management, controlling and supervisory bodies of privatised State and municipal companies, members of the managing or supervisory bodies of private companies or sole traders which have acquired shares in, or parts of, such privatised companies, and members of privatisation funds; and (d) some categories of defaulting debtors of banks which had become insolvent in the 1990s. In early 2017 Parliament expanded the list further, to include (a) chairpersons and deputy chairpersons of the general meetings of universities and faculties; (b) chairpersons, deputy chairpersons and members of Bar councils, Bar budget councils and Bar disciplinary courts; (c) chairpersons and members of the management and supervisory bodies of licensed sport organisations; (d) individuals who have acquired shares in, or parts of, privatised companies; (e) special administrators of banks appointed by the Bulgarian National Bank; (f) members of the management, controlling and supervisory bodies of State and municipal companies, companies in which the State or a municipality holds half or more of the shares, and subsidiary companies in which such companies hold half or more of the shares; and (g) various categories of suspected insider debtors of insolvent banks.

51. By section 26(1)(1), anyone who has been registered as a candidate for the office of President, Vice-President, member of parliament, member of the European Parliament, mayor or municipal councillor must likewise be checked for affiliation with the former security services. By section 26(1)(5), added in early 2017, anyone who becomes a candidate for any type of "public office" must likewise be checked.

52. By section 27(4), added in 2011, anyone recommended for an order or a medal must be checked as well, and by section 11(6) of the Orders and Medals Act 2003, also added in 2011, any recommendation that the President confer an order or a medal must be accompanied by the results of that check. The 2010 private member's bill which led to the enactment of those provisions initially proposed to bar anyone found to have been affiliated with the former security services from receiving an order or a

medal. It was, however, modified by Parliament between the first and second reading to provide for a mere check for such affiliation.

(iii) The Commission administering the Act

53. By section 4(1) and section 29(1) and (2), the check is carried out by a special Commission.

54. This Commission has nine members elected by Parliament for five years (section 5(1)). Before being voted on, candidates must undergo a security check and be heard by Parliament's Standing Committee on Internal Security and Public Order (section 6(2) to (6)). Parliament then votes on each candidature, and elects the Commission's chairperson, deputy chairperson and secretary (section 6(7)).

55. No political party may have a majority in the Commission (section 5(2)). Only people enjoying public trust and authority are eligible to serve on it (section 5(3)). During their term, the Commission's members may not hold elected office or be in a management position in a political party or professional organisation (section 5(4) and (6)). They may only be removed from office before the end of their term if they cease to fulfil the eligibility requirements (section 5(7)).

56. The first Commission members were elected by Parliament in April 2007. After the expiry of their initial five-year term of office, in May 2012 four of the original nine members were re-elected by Parliament for another five-year term, and five new members were elected.

(iv) Manner of checking and exposing staff members and collaborators of the former security services

57. By sections 1(3) and 11, the Commission was given custody of the archives of the former security services, which were to be centralised under its control. By sections 16-20 and paragraph 8 of the Act's transitional and concluding provisions, all public authorities which had records of those services in their custody had to turn them over to the Commission within eight months of the Act's entry into force. The Commission's task was then to go through those records and check whether the people who had held any of the types of "public office" set out in section 3(1) of the Act, or engaged in any of the "public activities" set out in section 3(2) (see paragraphs 47-50 above), featured in them (section 9(2)).

58. The question of whether someone was to be exposed as having been affiliated with the former security services was governed by sections 24 and 25. By section 24, as originally enacted, those who had been staff members or collaborators of those services were to be considered as affiliated to them. Section 25, as originally enacted, provided that this was to be established on the basis of documents contained in the services' records. It then set out, in subsections 1, 2 and 3, the types of documents capable of proving service as, respectively, a regular staff member, a

supernumerary staff member, or a collaborator. By paragraph 1(1) of the Act's additional provisions, a "document" is any recorded information, regardless of the medium used to record the information, and includes information in automated and complex information systems and databases.

59. In December 2012, in the wake of an unsuccessful constitutional challenge to section 25(3), the subsection concerning collaborators (see paragraphs 74-76 below), Parliament deleted section 24 and moved part of it, in a slightly amended form, to section 25. The explanatory notes to the bill proposing this amendment said that it would clarify a point made by the Constitutional Court (see paragraph 76 below) – that the Commission's task was not to examine the real activities of those whom it checked for affiliation with the former security services, but simply to see whether a record of them being affiliated with those services existed. The amendment came into force on 1 January 2013.

60. By section 25(1) and (2), as worded since the December 2012 amendment, someone's affiliation to the former security services as a regular or supernumerary staff member can be established on the basis of organisational charts, payrolls, or data in his or her personal file.

61. Paragraph 1(2) and (3) of the additional provisions define "regular staff members" as Bulgarian nationals formally employed by the former security services as operatives or investigators, and "supernumerary staff members" as Bulgarian nationals drafted in by those services to carry out tasks and assignments relating to their mandate.

62. By section 25(3), as worded since the December 2012 amendment, someone's affiliation to the former security services as a collaborator can be established on the basis of: (a) handwritten or signed collaboration declarations; (b) handwritten surveillance reports; (c) remuneration documents; (d) documents handwritten or signed by the collaborator and contained in a surveillance file; (e) documents drawn up by the officer who was the collaborator's handler; and (f) data about the collaborator in the registration journals, card indexes, records relating to the destruction of files, or other sources.

63. Paragraph 1(4) of the additional provisions defines "secret collaborators" as Bulgarian nationals who have covertly assisted the former security services as residents, agents, keepers of secret meeting premises, keepers of covert operative premises, trusted persons, or informers. All these categories were taken from the internal instructions of the former security services.

64. A Commission decision exposing staff members must set out their names, dates and places of birth, all documents pertaining to their career, the departments where they have worked, and the "public office" or "public activity" which they held or engaged in at the time of the investigation (section 29(2)(1)).

65. A Commission decision exposing collaborators must set out their names, dates and places of birth, the names of the officers who recruited them and acted as their handlers, the exact capacity in which they collaborated, their operative pseudonyms, the documents showing their affiliation, the time of their discharge, and the "public office" or "public activity" which they held or engaged in at the time of the investigation (section 29(2)(2)). By section 29(3), if information about someone is only found in the card indexes and registration journals (see paragraph 8 above), the lack of other data must specifically be mentioned in the Commission's decision.

66. The Commission must notify those concerned of its findings and then, within seven days of completing the investigation, publish the findings on its website, and later in its bulletin (sections 26(3) and 29(4)). The individuals concerned must also be given, upon request, access to the documents in their personal and professional files (section 31(8)). Section 29(5), added in 2012, provides that the documents which have served as a basis for the Commission's decision must likewise be published on its website.

67. Those born after 16 July 1973 are exempt from being checked (section 26(4)). Those who only collaborated before turning eighteen or who are dead at the time of the investigation are not to be exposed (section 30(1)(1) and (1)(2)). The same goes for those who, when notified of the discovery of information showing that they collaborated, withdraw their candidacy for office (section 30(1)(3)), unless they have already been formally registered as election candidates (section 30(2)).

68. The Commission gave its first decision on 24 April 2007. It has thus far checked more than 290,000 people and exposed more than 12,000 of them, including a President of the Republic, three judges in the Constitutional Court, more than 150 members of parliament, more than 100 government ministers, and a number of prominent politicians, journalists, lawyers, businessmen, academics and religious figures. Though some of those exposed have retreated from public life following their exposure, many continue to be active in politics, government, the media, academia and business.

69. By section 23, documents showing affiliation with the former security services may not be published or disclosed in any other way. Article 273 of the Criminal Code, added in 2006, makes such disclosure a criminal offence.

(v) Judicial review of the Commission's decisions

70. The Commission's decision to expose someone is amenable to review by the Sofia City Administrative Court, whose judgment is, in turn, amenable to an appeal on points of law before the Supreme Administrative Court (sections 8(4), 29(6) (formerly 29(5)), and 31(8)). Although the Act is silent as to whether a claim for judicial review has suspensive effect, in practice it has no such effect, as the lodging of such a claim does not delay publication of the Commission's decision, which is published on its website the day it is issued.

71. There are many cases in which those exposed have sought judicial review. The chief point of contention in most of them was whether the records on which the Commission had relied under section 25 of the Act (see paragraphs 60 and 62 above) to establish affiliation with the former security services were sufficiently probative. The usual argument of those exposed was that the available evidence did not show that they had really collaborated, but only that their names featured in the records. The Supreme Administrative Court has thus far decided more than a hundred such cases. With two isolated exceptions in January 2014 (реш. № 274 от 10.01.2014 г. по адм. д. № 14740/2012 г., ВАС, III о., and реш. № 725 от 21.01.2014 г. по адм. д. № 223/2013 г., ВАС, III о.), since 2008, when it started hearing applications for judicial review under the Act, it has consistently held that the Commission does not have to check whether the records show that someone has in fact collaborated, or whether the information in those records is rebutted by other evidence. Rather, the Commission must simply note the information, even if it features in only one record, and make it public, having no discretion in the matter. Its task is limited to documentary fact-finding and its decisions are purely declaratory. This is because the Act does not purport to sanction or lustrate staff members and collaborators of the former security services, but simply to reveal the available information about all publicly active people featuring in the records of those services as staff members or collaborators, with a view to restoring public confidence and preventing those people from being blackmailed (see, among many others, реш. № 13432 от 08.12.2008 г. по адм. д. № 9456/2008 г., ВАС, VII о.; реш. № 577 от 14.01.2009 г. по адм. д. № 13924/2008 г., ВАС, III о.; реш. № 460 от 13.01.2010 г. по адм. д. № 2155/2009 г., ВАС, III о.; реш. № 9838 от 01.07.2011 г. по адм. д. № 2878/2011 г., ВАС, III о.; реш. № 9426 от 29.06.2012 г. по адм. д. № 1131/2012 г., ВАС, III о.; реш. № 10489 от 10.07.2013 г. по адм. д. № 11654/2012 г., ВАС, III о.; реш. № 14636 от 07.11.2013 г. по адм. д. № 14799/2012 г., ВАС, III о.; реш. № 3656 от 17.03.2014 г. по адм. д. № 9785/2013 г., ВАС, III о.; реш. № 7537 от 23.06.2015 г. по адм. д. № 14875/2013 г., ВАС, III о.; реш. № 3071 от 17.03.2016 г. по адм. д. № 7208/2013 г., ВАС, III о.; and реш. № 6231 от 18.05.2017 г. по адм. д. № 3786/2016 г., ВАС, III о.). Even the second case in which the Supreme Administrative Court departed

from this case-law in January 2014 was ultimately decided in line with the prevailing approach (see реш. № 3424 от 18.05.2015 г. по адм. д. № 838/2014 г., АС-София-град).

72. Attempts to mount indirect challenges to the Commission's decisions by way of claims for declaratory judgment in the administrative and the civil courts have failed, on the basis that judicial review is the only possible remedy (see опр. № 13037 от 01.12.2008 г. по адм. д. № 7366/2008 г., ВАС, III о.; реш. № 9161 от 01.07.2010 г. по адм. д. № 16603/2009 г., ВАС, III о.; and опр. № 610 от 11.12.2013 г. по ч. гр. д. № 5127/2013 г., ВКС, I г. о.).

73. Nor is it possible to seek damages under section 1(1) of the State and Municipalities Liability for Damage Act 1988, which provides for State liability for damage suffered as a result of unlawful administrative action, unless the Commission's decision has been quashed (see опр. № 7760 от 02.06.2011 г. по адм. д. № 6323/2011 г., ВАС, III о.) or is void (see реш. № 9068 от 30.06.2010 г. по адм. д. № 7095/2009 г., ВАС, III о.). One case in which damages were awarded under that provision concerned an exposed person who had successfully challenged the Commission's decision by way of judicial review, chiefly on the basis that he did not fall within the categories of people who were subject to exposure under the 2006 Act (see реш. № 3787 от 28.07.2011 г. по адм. д. № 5962/2010 г., АС-София-град, and реш. № 2715 от 25.02.2014 г. по адм. д. № 9786/2013 г., ВАС, III о.). In a case in which the Commission had wrongly exposed someone as affiliated with the former security services and then retracted its decision but not published the retraction on its website swiftly enough, that person was likewise able to obtain damages under section 1(1) of the 1988 Act (see реш. № 15591 от 25.11.2011 г. по адм. д. № 9902/2011 г., ВАС, III о.).

(vi) Constitutional challenge to section 25(3) of the Act

74. In December 2011 a panel of the Supreme Administrative Court acceded to an application by a claimant to refer section 25(3) of the Act (see paragraph 62 above) to the Constitutional Court (see опр. № 16199 от 09.12.2011 г. по адм. д. № 8189/2011 г., ВАС, III о.).

75. In early 2012 the Constitutional Court admitted the referral for examination, and invited several State authorities and non-governmental organisations to comment on the case (see опр. от 02.02.2012 г. по к. д. № 14/2011 г., КС). The Council of Ministers, the Minister of Internal Affairs, the Commission, the Bulgarian Helsinki Committee, and the Access to Information Foundation availed themselves of this opportunity. All of them argued that section 25(3) was constitutional.

76. In a decision of 26 March 2012 (реш. № 4 от 26.03.2012 г. по к. д. № 14/2011 г., КС, обн., ДВ, бр. 28/2012 г.) the Constitutional Court unanimously found section 25(3) constitutional. It held:

"... The [2006 Act] is a manifestation of the common will of all political parties in ... Parliament to ensure, as far as possible, the disclosure of all documents [of the former security services] and the exposure of all persons affiliated [to those services] who held or now hold public office, or who carried out or now carry out public activities within the meaning of this Act (section 3(1) and (2)). The Act was passed in response to the recommendations set out in the Declaration of the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE) of 8 July 1997, in Resolution 1096 (1996) of the Parliamentary Assembly of the Council of Europe, on the measures to dismantle the heritage of former communist totalitarian systems, and in Recommendation No. R (2000) 13 of the Committee of Ministers to Member States on a European Policy on Access to Archives, adopted by the Committee of Ministers on 31 October 2000.

The Act seeks to regulate the manner in which the documents of the [former security services] from between 9 September 1944 and 16 July 1991 are to be accessed, disclosed, used and kept, and to expose the affiliation to [those services] of Bulgarian citizens holding public office or carrying out a public activity. By section 24 of the Act, such affiliation is to be exposed if the person concerned has acted as a regular staff member, a supernumerary staff member, or a secret collaborator of [those services]. Under section 24 of the Act, the fact is established on the basis of documents from the information sources, which are different for regular staff members, supernumerary staff members and secret collaborators, and have been set out respectively in subsections 1, 2 and 3 of section 25 of the Act. In accordance with the impugned section 25(3) of the Act, the fact under section 24 that someone has acted as a secret collaborator is to be established not only on the basis of documents which have been handwritten or signed by him or her, but also on the basis of the following documents contained in the information sources: 'documents drawn up by the regular or supernumerary staff member who was the handler of [the person concerned], as well as information about the person in the reference records (registration journals and card indexes [see paragraph 8 above]), records relating to the destruction of information, or other information carriers'.

According to a decision of the National Assembly [see paragraph 37 above], information about the organisation, methods and means used by State Security in its work, and information about its agents, as it relates to the period before 13 October 1991, is not a State secret ... Unlike the repealed [1997 Act, see paragraphs 38-40 above], the philosophy of the 2006 Act – which can be gleaned from its structure, the explanatory notes to the bills, and the parliamentary speeches made at the time of its enactment – was to lay open the documents of the [former security services], and expose all people under section 3 of the Act, except for those mentioned in sections 30(1) and 32(1). An important point that is not always fully appreciated is that the Act relates to public documents, access to which is free for [the people kept on file and researchers]. It follows that there are other ways to expose those affiliated to the [former security services] as collaborators, which means that it is fitting that their affiliation be ascertained by an independent State authority.

The Act only provides for the exposure of the affiliation to the [former security services] of those mentioned in section 3, not the exposure of their real and specific activities for the benefit of those services. This is clear from the Act's title, its subject matter (section 1(1) and (2)), the powers of the Commission (section 9(2)), the facts subject to proof (section 24), the mandatory establishment of affiliation to those services or the establishment in the framework of a preliminary investigation (sections 26(1) and 27(1)), and the contents of the Commission's decision (section 29(1)). The legislature has used the term 'affiliation', which denotes

someone's position as part of the composition of something. The legislature has not empowered the Commission to make a judgment on those found to have been so affiliated on the basis of the available documents. The Commission does not assess who has acted in favour of national security, against terrorism, and so on, and who has supplied other types of information.

The [referring court] does not challenge the Act's philosophy or main tenets, but simply part of section 25(3), arguing that it is contrary to Articles 56 and 57 of the Constitution, without pointing to the specific paragraphs alleged to be infringed.

Article 56 § 1 of the Constitution [see paragraph 31 above] enshrines the right to a remedy in cases in which someone's rights or legitimate interests have been infringed or threatened. This right ... is personal, fundamental and universal (see ...). It is an independent constitutional right which is by its nature chiefly procedural, because it serves as a guarantee of the substantive fundamental rights and legitimate interests set out in the preceding constitutional provisions. Although the right to a remedy is fundamental and belongs to everyone, Article 56 of the Constitution usually operates in tandem with other constitutional provisions. [It] is infringed when another fundamental constitutional right or legitimate interest has been infringed or threatened. The [referring court] does not point to another constitutional right alleged to be infringed by the impugned statutory provision. So, the Constitutional Court, which cannot stray ... beyond the terms of the referral, but at the same time is not bound by the alleged grounds of incompatibility with the Constitution, must identify that other constitutional right on the basis of the reasons adduced in support of the referral.

The referral does not spell out the part of Article 57 of the Constitution that the impugned statutory provision is alleged to offend against: paragraph 1, which proclaims the inalienability of fundamental rights; paragraph 2, which prohibits the abuse of rights, as well as their exercise to the detriment of the rights or legitimate interests of others; or paragraph 3, which governs the temporary restriction of rights. Based on the reasons for the referral, the Constitutional Court finds that the allegation is of an infringement of Article 57 §§ 1 and 2 of the Constitution, which set out rights supplementing certain other fundamental rights.

The specific rights which can be infringed or threatened by section 25(3) of the Act in its impugned part are those under Article 32 of the Constitution – the right of defence against attacks on one's dignity and good name, and the right to the inviolability of one's personal data [see paragraph 28 above].

The Constitutional Court finds that the exposure of the objective fact that someone was affiliated to a State authority does not infringe the right to be free from interferences with one's personal life or attacks against one's dignity and good name. The activities of those who have collaborated with the [former security services] do not harm their good name, honour or dignity, as [this] court has already had occasion to point out ...

The communication right to receive information under Article 41 § 1 of the Constitution [see paragraph 30 above] is a fundamental constitutional right. As [this] court has already held, the right to seek, receive and impart information under Article 41 § 1 of the Constitution belongs to all individuals and legal entities, and protects their interest in being informed. It applies to the press and all other media. On the other hand, Article 41 § 2 of the Constitution guarantees citizens access to information from State authorities or bodies on questions in which they have a legitimate interest (see ...). This right is not absolute, but nor is the right under Article 32 of the Constitution to the protection of one's personal data [see

paragraph 28 above]. Here, these two fundamental rights clash, but since they are not absolute, each of them can be limited in line with the principle of proportionality. To be constitutionally permissible, a statutory limitation of personality rights must not exceed what is required to ensure the exercise of the constitutional right under Article 41 § 1 to obtain information. The individual right to obtain information is extremely important to enable citizens to make an informed choice. At the same time, this right is not absolute either, and can be restricted in the circumstances set out in Article 41 §§ 1 and 2 of the Constitution: it cannot be directed against the rights or good name of other citizens, or against national security, public order, health or morals, and the information under paragraph 2 must not be a State secret or another secret protected by law, or infringe another's rights.

This court finds that the impugned part of section 25(3) of the Act is not unconstitutional, because it does not run against constitutional principles or specific constitutional provisions. It is not unconstitutional to establish someone's affiliation to a community, authority, State body, organisation, and so on, except in cases in which there is a threat to national security. Nor is it unconstitutional for such affiliation to be established by a specific authority, in a manner provided for by law, on the basis of various types of documents which contain information. The legislature has decided to provide for an investigation into whether those who hold certain offices or carry out certain activities were affiliated to the [former security services]. The need for such an investigation is a question of expedience, and is to be decided by the legislature (see ...). The legislature enjoys a discretion not only to grant access to the documents of the [former security services], but also to choose the permissible modes of proof. Within its discretion, and in view of the destruction of a large number of the personal and work files of secret collaborators, Parliament has determined that affiliation to those services can be established on the basis of all kinds of documents from [the services'] archives, and at the same time it has laid down guarantees for the rights of persons affected by that. By paragraph 1(1) of the Act's additional provisions, a 'document' is any written information, regardless of the medium used to record the information, including information in automated and complex information systems and databases.

The impugned provision governs in part the manner in which affiliation is to be established on the basis of documents in the information sources. It sets out, by way of example and alternatively, the documents which, within the meaning of the Act, may be used to establish that someone has acted as a secret collaborator, and, *in fine*, permits this to be done on the basis of unspecified documents within the meaning of the Act. As a result of this legislative solution, affiliation to the [former security services] can be established not only on the basis of documents which emanate from the collaborator himself or herself (handwritten or signed collaboration declarations, handwritten reports, remuneration receipts, documents handwritten or signed by the collaborator and contained in the operative target surveillance files), but also on the basis of documents which do not emanate from the collaborator and do not contain his or her signature. The legislature provided for resort to those latter documents when the personal and work files of the collaborator had been destroyed, because it is generally known that the files of some of the secret collaborators were destroyed. By including these documents among the modes of proof of affiliation, the legislature sought to treat those who had collaborated with the [former security services] in the same way, and not to place those who had, for various reasons, had their files destroyed in a privileged position. It must also be borne in mind that those recruited as collaborators were not always required to make a written pledge (declaration) of collaboration, or a declaration of non-disclosure of their links and work with [the former security services] at the time of their discharge. By paragraphs 18 and 34 of Order No. 3900 of

11 November 1974 of the Minister of Internal Affairs, adduced in the course of these proceedings, agents were only required to make such declarations when this was deemed necessary in specific cases.

The Act does not require the cumulative availability of a certain number or type of documents in order for someone to be established and exposed as affiliated to the [former security services]. On the contrary, the Act ascribes to all documents within the meaning of paragraph 1(1) of its additional provisions the quality of documents which can be used as proof of affiliation, and gives equal probative value to all of them.

The Constitutional Court finds that the boundary between the two fundamental rights in collision – the right under Article 32 and that under Article 41 § 1 of the Constitution [see paragraphs 28 and 30 above] – has been set in a proportionate manner, because the Act lays down enough guarantees to protect the right to honour and dignity and the right to protection of personal data of those affected.

Firstly, affiliation is established and exposed by a Commission, which is an independent State authority. It is independent, not only because section 4(1) of the Act proclaims it to be, but also owing to the way in which its members are elected under section 5(1) and (2) of the Act – by the National Assembly, at the proposal of the different parliamentary factions, and in a way ensuring that none of the parliamentary political parties has a majority.

The Commission establishes affiliation on the basis of a centralised archive of the documents set out in section 1 of the Act. To this end, under section 16 of the Act, the authorities must package and turn over to the Commission their archive files and card indexes (section 17 of the Act). This prevents the documents from being hidden from view or forged, and ensures that the Commission will be able to comprehensively study, compare and analyse the information.

The documents kept in the Commission's centralised archive and used to establish affiliation to the [former security services] are public.

The Act devotes considerable attention to the manner in which affiliation is established and exposed. The procedure before the Commission is set out in detail in the Act itself, not in statutory instruments.

Not all of those who have collaborated with the [former security services] are to be exposed. The Act only provides for this for those who hold or have held specified public office, or engage or have engaged in a specified public activity. Only those holding public office or carrying out a public activity within the meaning of section 3 of the Act are affected by the interference with the right to protection of personal data, because 'the State as a whole, as well as political figures and public officials, may be subjected to a higher level of public scrutiny than private persons' (see ...). As a rule, the level of protection of the personal data of the persons under section 3 of the Act is much lower than in the case of other citizens. This is illustrated by the annual publication, in a special register, of data about their income, assets, bank accounts, receivables, and the declaration of other protected data, with a view to preventing conflicts of interest.

The Act provides for a special guarantee for those whose affiliation is exposed [solely] because their names and pseudonyms feature in the card indexes or registration journals of the respective services. By section 29(3), although the Commission must expose them, it must also specifically mention that there is no data about them [in the other types of records] under section 25(3).

The Act does not provide for any legal consequences for those whose affiliation to the [former security services] is exposed.

Those whose affiliation is established are entitled to consult the documents contained in their personal and work files (section 31(8) of the Act).

Lastly, those whose affiliation is established are entitled to judicial protection, which is why the Constitutional Court rejects the arguments in the referral that there is no right to a remedy. Unlike the repealed [1997 Act, see paragraphs 38-40 above], which did not provide for any judicial review of the decisions of the Commission under its section 4(1), but only objections before the Commission itself (section 4(3)), the [2006 Act] now in force expressly states in three places that the Commission's decisions may be challenged by those affected, in accordance with the provisions of the Code of Administrative Procedure. The constitutional right to a remedy of those whose affiliation to the [former security services] is made public is governed by sections 8(4), 29(5) and 31(8) of the Act. They can challenge the Commission's decisions before the relevant administrative court and then appeal on points of law against that court's judgment to a three-member panel of the Supreme Administrative Court.

Under section 4 of the Act, the Commission is a collective administrative body, and its decisions bear the hallmarks of individual administrative decisions. These decisions are acts which authenticate pre-existing rights and obligations, which means that they are declaratory administrative decisions (Article 21 § 2 of the Code of Administrative Procedure). The administrative authorities issue declaratory and authenticating administrative decisions under many other statutes, and have no discretion in this, because there is only one lawful way for them to act. The manner in which an administrative authority takes a decision does not affect the right to a remedy of those concerned by that decision. [This] court does not agree with the ... argument that the Act is in effect being applied by the Commission, and that judicial review of the Commission's decisions has been trimmed down to verification of whether it has arrived at those decisions by following the correct procedure. Laws are not applied by the administrative authorities alone. By Article 119 § 1 of the Constitution, justice is administered by the Supreme Administrative Court, and by Article 120 § 1 of the Constitution the courts review the lawfulness of the administrative authorities' decisions and actions [see paragraph 32 above]. If, as argued [here], the courts only scrutinise the procedure whereby the Commission arrives at its decisions, then they are falling short of the paramount requirement of administrative procedure, set out in Article 146 of the Code of Administrative Procedure, that all ... aspects of the lawfulness of administrative decisions be examined by a court of its own motion, without any prompting by the parties (Article 168 § 1 of the Code of Administrative Procedure). In judicial review proceedings, claimants may support their allegations by all types of evidence available under the Code of Civil Procedure (Article 171 §§ 1 and 2 of the Code of Administrative Procedure).

The possibilities for abuse in the creation of documents of the [former security services] were limited by the rules governing [their] activities, as evident from Order No. 3900 of 11 November 1974 of the Minister of Internal Affairs, and Instruction No. I-20 of 20 January 1978 [see paragraph 7 above]. Under those instruments, secret collaborators had operative target surveillance files and personal and work files – recorded in a common register, where entries were regulated – and unique personal registration numbers. All secret collaborators were entered into a central database, consisting of card indexes nos. 4 and 5 and statistical card index no. 6, all of which were kept in line with the relevant rules [see paragraph 8 above]. In

many cases, when the information supplied had no operative value, or when the secret collaborator had not drawn up a written account, the results of a meeting were noted down by the [handling officer] in a report (paragraph 26 of the Order). The use of the records provided for by the Act in cases in which personal and work files have been destroyed does not affect the right to a remedy of those exposed as affiliated to the [former security services], or infringe the Constitution, as the matter boils down to conducting one's defence before the courts correctly.

As required under Article 7 of the Constitution, those wrongly exposed as affiliated to the [former security services] can also assert their rights by way of claims [for damages] under section 1(1) of the State and Municipalities Liability for Damage Act [1988]. They can also protect their rights under [the defamation provisions] of the Criminal Code.

This court therefore finds that the right to a remedy of those found to be affiliated to the [former security services] has not been breached, which means that the impugned part of section 25(3) of the Act does not run counter to Articles 56 or 57 of the Constitution.

The third argument in the referral is that claimants in cases in which the Supreme Administrative Court is asked to review decisions of the Commission keep relying on [the Constitutional Court's decision which struck down parts of the 1997 Act – see paragraph 39 above].

The Constitutional Court must note that the bodies which bring proceedings before it under Article 150 § 2 of the Constitution are not parties to the cases [before the ordinary courts], as stated in the referral, but the judicial formations of the Supreme Court of Cassation or the Supreme Administrative Court. In such circumstances, a referral to the Constitutional Court is only required when the judicial panel dealing with a case is itself satisfied that the applicable statute or part of it is unconstitutional. As is evident from two of the statements by third parties, the Supreme Administrative Court's case-law in all cases under the [2006 Act] is settled, with the court dismissing the claims of all those whose affiliation has been established.

In its decision [relating to the 1997 Act], the Constitutional Court found [the provision] which defined the notion of 'card-indexed collaborators' – Bulgarian citizens whose names and pseudonyms feature in the card indexes and registration journals of the [former security services] – unconstitutional. The decision has been complied with: the provision that it declared unconstitutional was not applied until the [1997] Act's repeal [in 2002].

In these proceedings, the [referring court] challenges some of the records which can be used to establish affiliation under section 25(3) of the [2006 Act]. These include the ... databases (registration journals and card indexes [see paragraph 8 above]) used to establish the affiliation of Bulgarian citizens who have covertly assisted the [former security services] as residents, agents, holders of secret meeting premises, holders of secret (conspirative) premises, informers, and trusted persons (paragraph 1(4) of the Act's additional provisions).

Having carried out a comparative analysis, the court finds that the subject matter of this case is the constitutionality of part of section 25(3) of the [2006 Act], now in force, which has fresh content and a new rationale, and is not identical to [the corresponding provision] of the [1997 Act]. The two are not identical, because they are two different provisions from two separate statutes (see ...).

Although [those provisions] of the [1997 Act] and section 25(3) of the [2006 Act] are not identical, the Constitutional Court accepts that their effect partly coincides, in

as much as the result of both of them is that affiliation to the [former security services] can be established on the basis of data from [the] registration journals and card indexes. This case does not call for the application of section 21(5) of the Constitutional Court Act 1991, which precludes a fresh referral on a point which the Constitutional Court has decided by means of a decision on the merits or an inadmissibility decision, because the Constitutional Court has not previously ruled or been asked to rule on the constitutionality of section 25(3) of the [2006 Act]. But there remains the question of whether the rulings in the [decision relating to the 1997 Act, see paragraph 39 above] bind the court in this case.

By section 14(6) of the Constitutional Court Act 1991, the Constitutional Court's decisions are binding on all State authorities, legal entities and individuals. But the legal force of a decision has temporal limits, and ends when the facts relevant to it change after it has been handed down. Having given its decision, the Constitutional Court cannot revoke it, or regard statutory provisions that it has declared unconstitutional as still in force. But the [court] is not forever bound by its legal views. The law's development is an objective fact, which permits construing legal provisions in a manner open to alternative views, and taking into account significant social developments which have occurred in the meantime. Arguments based on the need to keep the case-law stable and approach similar cases in the same way cannot outweigh those about the need to develop the law, as long as any straying from the settled case-law is well-founded and justified. When socially necessary, the Constitutional Court may thus change its views and lay down new legal categories, influenced by the doctrine of evolutive interpretation and the need to take into account changes in circumstances which give new arguments greater force. There are previous examples of such reasoned changes of view in [this court]'s case-law.

The Constitutional Court notes that this case concerns the application of a new statute, not the repealed one, which it has already examined. The application of this new statute has given rise to a considerable number of precedents, both at the level of the administrative authorities which apply it and at judicial level. All those who hold public office or engage in public activities within the meaning of section 3 of that Act and have been affiliated to the [former security services] must be treated equally. This means that the affiliation of those whose files are still available and those whose files have been destroyed must equally be exposed. All those whose affiliation has been established and those whose affiliation is to be exposed – both those whose affiliation has already been exposed and those whose affiliation is yet to be exposed – must [likewise] be treated without distinction. Another fresh development is that judicial review has been available for more than five years, and the Supreme Administrative Court has settled case-law [in such cases]."

(vii) Unsuccessful request for an interpretative decision

77. In February 2014, in the light of what he considered to be an emerging divergence in the Supreme Administrative Court's case-law (see paragraph 71 above), the Ombudsman of the Republic asked the plenary session of that court to give an interpretative decision on (a) whether, in carrying out an investigation, the Commission should attempt to assess the probative value of the records of the former security services, with a view to determining the actual activities of those featuring in them, and (b) whether the Commission was bound to expose everyone whose name it found in those records, or could refrain from doing so in some cases. On 3 February

2015 the court's plenary session turned down the request, because fewer than the requisite number of judges voted in favour of admitting it for examination (see тълк. реш. № 1 от 03.02.2015 г. по тълк. д. № 2/2014 г., ВАС, ОСС от I и II к.).

(f) Defamation or insult in relation to allegations of affiliation with the former security services

78. In two criminal defamation cases, the Sofia City Court held that since affiliation with State Security was not objectively damaging, allegations in that respect were not defamatory (see реш. от 24.11.2004 г. по в. н. ч. х. д. № 1562/2004 г., СГС, and реш. № 1111 от 25.09.2013 г. по в. н. ч. х. д. № 2832/2013 г., СГС). In a civil case, the Supreme Court of Cassation held that such an allegation, if false, made in the presence of the person concerned specifically with a view to affecting his or her dignity, and subjectively perceived by him or her as vilifying, was a tortious insult (see реш. № 809 от 26.04.2011 г. по гр. д. № 1573/2009 г., ВКС, IV г. о.).

COMPLAINTS

79. In both applications the applicant complained under Article 8 of the Convention about the Commission's decisions to expose him as having been affiliated with the former security services.

80. In both applications the applicant also complained under Article 13 of the Convention that he had not had an effective domestic remedy in respect of those decisions.

81. In the second application the applicant additionally complained under Article 6 § 1 of the Convention that the proceedings for judicial review of the Commission's second and third decisions had been unfair and had not provided him with effective access to a court.

THE LAW

A. Joinder of the applications

82. The two applications relate to the same factual background, and so do the complaints under Articles 8 and 13 of the Convention raised by the applicant in the first and the second applications. The applications should therefore be joined under Rule 42 § 1 of the Rules of Court.

B. Complaint under Article 8 of the Convention

83. In respect of his complaint that the Commission had exposed him as having been affiliated with the former security services, the applicant relied on Article 8 of the Convention, which, in so far as relevant, provides:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The parties' submissions

(a) The Government

84. The Government submitted that the interference with the applicant's rights under Article 8 had been expressly provided for by the 2006 Act, which was sufficiently foreseeable. The applicant had not required special knowledge to be able to realise that if he held public office he would be checked for affiliation with the former security services and possibly exposed. In his case, the Commission administering the Act had complied with all legal requirements, and its decisions had had a solid factual basis in the documents it had found. That was evident from the reasons given by the Sofia City Administrative Court for upholding the Commission's third decision with respect to the applicant. The Commission's decisions could therefore not be regarded as arbitrary or not "in accordance with the law".

85. The Government went on to submit that the applicant's exposure had been intended to keep Bulgarian society, which was undergoing a process of democratisation, informed, and to protect the new democracy. There was a weighty public interest in revealing the identities of those who had collaborated with the former security services.

86. The Government lastly submitted that the interference had been proportionate. The applicant's exposure had not resulted in serious negative consequences for him or affected his social standing. In any event, being a public figure, he had to accept heightened scrutiny. Society had the right to be informed of aspects of the public and private lives of those holding high-ranking posts. By taking up those posts, which enabled them to have a say in public affairs, the people concerned voluntarily opened themselves up to scrutiny. Moreover, States had a broad margin of appreciation in deciding how to tackle such issues. Unlike many States, such as Germany, the Czech Republic and Poland, which after the fall of the communist regime had placed restrictions on the employment opportunities of collaborators of the former security services, Bulgaria – where all such attempts had been declared unconstitutional – had ultimately refrained from implementing

such restrictions. The 2006 Act did not provide for lustration, but merely sought to shed light on which high-ranking officials and public figures had been affiliated with the former security services.

(b) The applicant

87. The applicant argued that, in the Bulgarian context, the declaration, in a widely publicised decision, that he had been a collaborator of State Security had stigmatised him and had deeply upset his private and social life. It had been formulated and perceived by the public as an official finding, based on evidence, especially since it had stated that he had been affiliated with the directorate which had operated as political police. That had seriously affected his emotional and psychological integrity, reputation, and ability to develop relations with others. Although by law such exposure did not result in employment restrictions, it had in fact affected the careers of the people concerned. Many exposed officials had felt morally obliged to resign. Also, since candidates for many law-related posts had to be checked for affiliation and at the same time needed to be of high moral character, in practice the 2006 Act had had a lustration effect. Some political parties also refused to field people who had been exposed as candidates in elections, or even accept them as members. Lastly, such people stood little chance of being decorated with a State order.

88. The applicant further submitted that the 2006 Act did not contain enough safeguards against arbitrariness. It did not distinguish between actual collaboration and mere assertions in that respect. It did not require the Commission to check the reliability of the records on the basis of which it exposed those concerned, or to assess the specific tasks that they had carried out or the level of their collaboration. It provided for no possibility to rectify erroneous records. It did not require the Commission to hear the people whom it decided to expose, and allowed its decisions to be made public before the end of the proceedings to judicially review them. It did not provide for a review that really enabled those exposed to refute the Commission's findings. It did not clearly distinguish between those who had collaborated with the political police and those who had worked on security-service tasks that could be seen as legitimate, as the indications in the Commission's decisions as to which directorate and department those exposed had been affiliated with meant little to the general public. Moreover, the Act's scope *ratione personae* had been periodically expanded. Also, the wording of its sections 24 and 25, even after their amendment in 2012, and that of section 29(2)(2), continued to imply that those exposed had in fact collaborated. Lastly, in effect the Act gave rise to an irrefutable presumption that anyone recruited by State Security as a collaborator had in fact become a collaborator. The applicant had not been able to predict that he would be affected by the Act when taking up the posts which had later triggered his investigation by the Commission.

89. The applicant went on to argue that none of the aims cited by the Government could be subsumed under those set out in Article 8 § 2 of the Convention, and that the Government had not explained how the specific measures provided for by the 2006 Act furthered those aims.

90. The applicant lastly took issue with the interference's necessity. He pointed out that, although not constituting lustration, it had caused him hardship, lowering his prestige and in fact preventing him from running for public office. The issue in his case was not whether it had been necessary in general to expose collaborators of the former security services, but whether it had been necessary to expose, based on false documents, someone who had held posts triggering the application of the 2006 Act years earlier, without any regard for that lapse of time. In view of the nature of his alleged involvement with State Security, it could hardly be thought that in 2008 and 2014 he still presented a threat to democracy. Moreover, the aim cited by the Government – informing society – had been attained with the first decision to expose him. The two subsequent decisions, which had simply repeated the first one, had thus been superfluous. Also, there had been no solid factual basis for his exposure, as he had not agreed to collaborate or knowingly collaborated with State Security. It was widely known that that organisation had operated without any transparency and that its officers had often falsely recorded the recruitment of collaborators in order to fulfil their annual quotas. Several discrepancies in the records relating to the applicant suggested that this had happened in his case. The authorities had, however, disregarded all of that, treating people who had signed collaboration declarations, written surveillance reports or signed remuneration documents in the same way as people like the applicant, who had in effect been made to bear the consequences of the destruction of some of the former security services' files.

91. For the applicant, the aims of the 2006 Act could have been attained through a procedure more respectful of the private lives of those concerned, for example one requiring the Commission to take statements from them and assess the reliability of the evidence in each case. The legislature's failure to do so had infringed the requirement that an interference be "necessary in a democratic society". A further argument in that respect was the absence of sufficient procedural safeguards, as he had already pointed out with respect to the interference's lawfulness.

2. The Court's assessment

(a) Existence of an interference with the applicant's right to respect for his private life

92. The release or publication of information systematically collected and stored by the authorities, regardless of whether it concerns someone's private or public activities, comes within the scope of Article 8 of the

Convention and constitutes an interference with the right of those concerned to "respect for [their] private ... life" (see, in general, *Leander v. Sweden*, 26 March 1987, § 48, Series A no. 116; *Cemalettin Canlı v. Turkey*, no. 22427/04, §§ 33-37, 18 November 2008; and *M.M. v. the United Kingdom*, no. 24029/07, §§ 187-90, 13 November 2012, and, specifically with respect to information about collaboration with the communist-era security services in some east European States, *Rotaru v. Romania* [GC], no. 28341/95, §§ 43, 44 and 46, ECHR 2000-V; *Turek v. Slovakia*, no. 57986/00, § 110, ECHR 2006-II (extracts); *Sõro v. Estonia*, no. 22588/08, § 56, 3 September 2015; and *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, §§ 176-77, 21 January 2016).

93. Such interference is only compatible with Article 8 if it was "in accordance with the law" and "necessary in a democratic society" to attain one or more of the aims set out in its second paragraph.

(b) Was the interference "in accordance with the law"?

94. The relevant principles are well settled. They have been set out, specifically with respect to information in the records of the communist-era security services, in *Rotaru* (cited above, §§ 52 and 55-56).

95. The applicant's exposure in the present case was based on the relevant provisions of the 2006 Act (see paragraphs 44-69 above), which were found constitutional by the Constitutional Court in 2012 (see paragraph 76 above).

96. It is not in doubt that, having been published in the State Gazette (see paragraph 45 above), the Act's provisions were adequately accessible. They were also sufficiently foreseeable. Instead of relying on vague definitions, the Act – which had specifically been put in place to regulate the exposure of staff members and collaborators of the former security services (see paragraph 44 above, and contrast *Rotaru*, cited above, § 53) – exhaustively enumerated all positions whose holders, former holders or potential holders would be checked for affiliation with those services (see paragraphs 47-51 above, and contrast, *mutatis mutandis*, *Cantoni v. France*, 15 November 1996, § 31, *Reports of Judgments and Decisions* 1996-V). It also laid down in detail the procedure to be followed by the Commission carrying out those checks (see paragraphs 57, 64-66 and 68 above, and contrast *Rotaru*, cited above, § 57), and set out the types of records which would trigger exposure (see paragraphs 58, 60 and 62 above). In view of that, and of the position which the Supreme Administrative Court has nearly always adopted, that the Commission does not have any discretion in the matter (see paragraph 71 above, and contrast *Leander*, cited above, § 54), it can hardly be maintained that the 2006 Act was not foreseeable in its application. On the contrary, it indicated clearly the conditions for and the circumstances in which the Commission would check someone for

affiliation with the former security services and expose him or her if it found records attesting to such affiliation. It is also telling that, apart from two isolated exceptions in early 2014, the Supreme Administrative Court has construed the Act in a consistent way ever since it started hearing cases under it in 2008 (see paragraph 71 above). Indeed, in February 2015 the majority of the judges of that court found it superfluous to give an interpretative decision on how the Act was to be applied (see paragraph 77 above).

97. The applicant's inability to predict that such legislation would be enacted when taking up the posts which later triggered his investigation by the Commission does not call into doubt the interference's lawfulness in Convention terms. Non-retrospectivity is only prohibited under Article 7 § 1 of the Convention with respect to criminal offences and penalties (see *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, § 59, ECHR 2009), whereas the measures provided for under the 2006 Act were clearly not of that nature.

98. The 2006 Act also contains a number of safeguards against arbitrariness. Firstly, it makes it clear that proceedings before the Commission are the only way in which staff members or collaborators of the former security services may be exposed. By section 23, documents showing affiliation with those services may not be published or disclosed in any other way; doing so is a criminal offence (see paragraph 69 above). This is a particularly important safeguard. Secondly, the process of exposure is entrusted to a special independent commission whose members are elected by the legislature and which cannot be dominated by any one political party (see paragraphs 53-55 above). This is also of considerable importance, as the post-communist countries' recent history shows that the records of the former security services can be misused for political or other ulterior purposes (see *Joanna Szulc v. Poland*, no. 43932/08, § 88 *in fine*, 13 November 2012, and *Ivanovski*, cited above, § 144). Thirdly, as already noted, the 2006 Act regulates in detail the ways in which the relevant records are to be turned over to the Commission and kept by it, and the manner in which proceedings before the Commission are to take place (see paragraphs 57, 64-66 and 68 above). In view of the nature of the Commission's task, which is limited to verifying the contents of the relevant records, the lack of a possibility for those concerned to be heard by it cannot be regarded as problematic, especially since anyone exposed by the Commission is entitled to have full access to the records serving as a basis for that exposure (see paragraph 66 above, and contrast *Turek*, cited above, § 115). Lastly, the Act provides for judicial review, at two levels of jurisdiction, of a decision by the Commission to expose someone (see paragraph 70 above) – an opportunity which the applicant made use of on two occasions (see paragraphs 18, 19, 21 and 22 above). The judicial review proceedings are entirely public, and claimants in them do not face any

restrictions in terms of the material which they can access to present their cases effectively (contrast *Turek*, cited above, §§ 115-16). Indeed, when it reviewed the constitutionality of the 2006 Act, the Constitutional Court examined all those points in detail (see paragraph 76 above).

99. It can therefore be concluded that the interference was "in accordance with the law". None of the criticisms that the applicant made against the 2006 Act (see paragraph 88 above) raise an issue in that regard; instead, all pertain to the question of whether the interference was "necessary in a democratic society" – a point which will be examined below.

(c) Did the interference pursue a legitimate aim?

100. It can also be accepted that the interference pursued a legitimate aim. Exposing staff members and secret collaborators of the repressive apparatus of the communist regime who have worked or continue to work in key parts of the public and private sectors since the fall of the regime seeks to improve the transparency of public life and promote trust in the new democratic institutions. It also enables Bulgarian society to acquaint itself with the details of its recent past (see *Rad v. Romania* (dec.), no. 9742/04, §§ 39, 41 and 43, 9 June 2009). These aims fall under the rubrics of the protection of national security and public safety, the prevention of disorder, and the protection of the rights and freedoms of others (see, *mutatis mutandis*, *Sõro*, cited above, § 58).

(d) Was the interference "necessary in a democratic society"?

101. The answer to the question of whether the interference was "necessary in a democratic society" does not turn on whether less intrusive rules could have been put in place, or whether the above aims could have been attained in other ways; rather, it depends on whether, in adopting the exposure scheme that they did, the Bulgarian authorities acted within their margin of appreciation (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 110, ECHR 2013 (extracts)).

102. The analysis must therefore start from the premise that Contracting States which have emerged from undemocratic regimes have a broad margin of appreciation in choosing how to deal with the legacy of those regimes (see, in general, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 113, ECHR 2005-VI; *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 166, ECHR 2006-VIII; and *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, §§ 179-80, 15 March 2007, and, specifically in relation to the records of the former security services, *Kamburov v. Bulgaria* (dec.), no. 14336/05, § 55, 6 November 2011). Their authorities, which have direct democratic legitimation and superior knowledge of their countries' historical and political experience, are better

placed than this Court to decide what transitional measures are required by the public interest (see *Cichopek and Others v. Poland* (dec.), nos. 15189/10 and 1,627 other applications, § 143, 14 May 2013).

103. Like the other ex-communist States in Eastern Europe, Bulgaria had to devise ways of dealing with the legacy of its communist regime, including its repressive apparatus. As already noted by the Court, those States did not approach that task in a uniform manner (see *Matyjek v. Poland* (dec.), no. 38184/03, § 36, ECHR 2006-VII; *Chodynicki v. Poland* (dec.), no. 17625/05, 2 September 2008; and *Sõro*, cited above, § 59). Some, such as the Czech Republic, Germany (after its reunification), Lithuania, Poland, Romania, Slovakia and the former Yugoslav Republic of Macedonia, decided to ban those people, or those among them who had attempted to conceal their past activities, from working in parts of the public sector, and in some cases even parts of the private sector (see *Knauth v. Germany* (dec.), no. 41111/98, ECHR 2001-XII; *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 24, ECHR 2004-VIII; *Turek*, cited above, §§ 67-69; *Matyjek v. Poland*, no. 38184/03, § 34, 24 April 2007; *Naidin v. Romania*, no. 38162/07, § 23, 21 October 2014; and *Ivanovski*, cited above, §§ 63-66). Poland also decided to reduce some individuals' pensions (see *Cichopek and Others*, cited above, § 71). Latvia opted for partial disenfranchisement (see *Ādamsons v. Latvia*, no. 3669/03, §§ 70-71, 24 June 2008). In Estonia, it was decided that such people should be registered, and that those who did not freely admit their affiliation should be exposed (see *Sõro*, cited above, §§ 35-39). In Bulgaria, apart from two limited exceptions between 1992 and 1995, and between 1998 and 2013, all attempts to put in place lustration laws were either blocked by the legislature or promptly struck down by the Constitutional Court (see paragraphs 33-35 above). After tortuous political and legal developments lasting sixteen years (see paragraphs 36-43 above), in 2006 the legislature decided to provide for a system exposing affiliation.

104. The statute providing for that exposure was the fruit of much debate, and was passed by the legislature with cross-party support, including the provision especially aggrieving the applicant – the one concerning the types of records on the basis of which someone could be exposed as a collaborator (see paragraph 44 above, and compare with *Animal Defenders International*, cited above, § 114). The Constitutional Court later examined the Act's constitutionality on the basis of arguments by various authorities and non-governmental organisations, all of which defended it (see paragraph 75 above). That court reviewed the Act carefully, in line with the principles flowing from this Court's case-law, and in full appreciation of the need to balance the conflicting interests at stake (see paragraph 76 above, and compare with *Animal Defenders International*, cited above, § 115). This is the second reason why the Bulgarian authorities' margin of appreciation in this case should be seen as broad (see

Von Hannover v. Germany (no. 2) [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012; *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 67, ECHR 2012; and *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 198 (v) and 199, ECHR 2015 (extracts)).

105. Furthermore, the chosen statutory scheme was not at the fringes of that margin.

106. To begin with, the only measure provided for was the exposure of those about whom a record of collaboration with the former security services was found; the Commission's decisions are purely declaratory (see paragraph 71 above). Exposure entails no sanctions or legal disabilities and, as noted by the Constitutional Court (see paragraph 76 above), in Bulgaria, it is not certain that it carries a universal social stigma either. Indeed, in contrast to, for instance, Lithuania and the former Yugoslav Republic of Macedonia (see *Sidabras and Džiautas*, § 49, and *Ivanovski*, § 177, both cited above), those concerned have not as a rule suffered ostracism. It appears that since 2007 a number of public figures have been exposed without experiencing serious social or economic consequences as a result, and that many of those exposed continue to be active in public life, including in politics, the government, business, academia and the media (see paragraph 68 above). Indeed, in defamation cases, the courts do not regard affiliation with the former security services as objectively damaging (see paragraph 78 above), and, despite a legislative proposal in 2010 to prevent people exposed as affiliated with those services from being decorated with orders or medals, the legislature decided that they should not be barred from having such distinctions conferred on them (see paragraph 52 above). For his part, the applicant has continued to be involved in business and public life since his exposure (see paragraphs 23-26 above). He can thus hardly claim to have become an outcast.

107. Moreover, unlike in Estonia, for example (see *Sõro*, cited above, § 61), the 2006 Act, even after its amendments in 2012 and 2017, does not affect all staff members or collaborators of the former security services, but only those who have, since the fall of the regime, taken up posts of some importance in the public sector, or in parts of the private sector deemed to have special importance for society at large (see paragraphs 47-51 above). In an ex-communist country, where many of those in charge of key parts of government, the media and the economy are still suspected of veiled links with the communist regime's repressive apparatus, there is a strong public interest in making all available information on that point public. That interest did not necessarily subside after a few years; it is well known that the ex-communist countries' transition to democracy and a market economy involved many complex and controversial reforms which had to be spread out over time (see *Cichopek and Others*, cited above, §§ 143 and 147).

108. In terms of guarantees against arbitrariness or abuse, the process of exposure was, as noted in paragraph 98 above, tightly circumscribed and surrounded by a number of safeguards.

109. The applicant's main criticism of the chosen statutory scheme was that it did not provide for an individual assessment of the reliability of the evidence available with respect to each person featuring as a collaborator in the surviving records of the former security services, or of his or her precise role, instead requiring the exposure of any such person.

110. However, that does not in itself make the scheme disproportionate. In this case, there were sound reasons to opt for an exposure scheme not requiring the assessment of individual situations. If all files of the former security services had survived, it might have been feasible to assess the exact role of each of the people mentioned in them. But many of these files were covertly destroyed shortly after the fall of the regime (see paragraphs 10 and 11 above). In those circumstances, the Bulgarian legislature chose to provide for the exposure of anyone found to feature in any of the surviving records, even if there were no other documents showing that he or she had in fact collaborated. When reviewing that solution, the Constitutional Court noted that, otherwise, collaborators whose files had survived would unjustifiably have been treated less favourably (see paragraph 76 above). In view of the circumstances in which a large number of the files of the former security services were destroyed, that must be seen as a weighty reason for the legislative scheme adopted by Bulgaria.

111. As a corollary to that, the chosen exposure scheme did not entail the moral censure attendant upon findings of collaboration under the lustration schemes put in place in some other States. Indeed, the Constitutional Court's judgment on the constitutionality of the 2006 Act, as well as the Supreme Administrative Court's settled case-law and the 2012 amendment to sections 24 and 25 of the Act (see paragraphs 59, 71 and 76 above), make it clear that exposure by the Commission on the basis of surviving records is not to be taken as official confirmation that those concerned have in fact collaborated with the former security services, or as an authoritative pronouncement on the nature or extent of their collaboration. The Commission's task is confined to going over the surviving records, verifying whether they contain information about the people whom it is checking, and on that basis declaring whether they were affiliated with those services; its decisions do not contain any factual statements or value judgments about their actual conduct (see paragraph 65 above, and contrast *Ivanovski*, cited above, § 38, and *Karajanov v. the former Yugoslav Republic of Macedonia*, no. 2229/15, §§ 6-8, 6 April 2017). The Commission's decisions are thus more a form of publication of the surviving records of the former security services rather than a way to express official opprobrium for the past conduct of the people exposed. In those circumstances, and given that the 2006 Act did not provide for any

form of lustration, the publication of the Commission's decisions relating to the applicant before they had been judicially reviewed was not disproportionate in itself. Though upsetting the applicant and affecting his "private life", those decisions could not be seen as having the irreversible and significantly detrimental impact which he sought to attribute to them (contrast *Karajanov*, cited above, § 75). Moreover, the Court has stated that an *ex post facto* remedy can make good an infringement of Article 8 arising from the publication of information relating to very intimate aspects of one's private life (see *Mosley v. the United Kingdom*, no. 48009/08, § 120, 10 May 2011). That holds even truer with respect to the information at issue in the present case.

112. In so far as the applicant contended that the damage to his reputation resulting from the decisions to expose him had been especially serious on account of the falsity of the State Security records relating to him, it should be noted that – as expressly provided for by the 2006 Act – he was able to access those records almost immediately (see paragraphs 14 and 66 *in fine* above, and contrast *Joanna Szulc*, cited above, §§ 87, 91 and 93), and then to publicly contest their reliability by reference to concrete elements (see paragraph 16 above).

113. Since exposure did not entail any sanctions or legal disabilities, the interference did not exceed the substantial margin of appreciation enjoyed by the Bulgarian authorities in this case. Had they resorted to measures such as occupational disqualification or partial disenfranchisement, which entail a greater degree of intrusion into the personal sphere of those concerned, the conclusion might have been different (see *Ādamsons*, cited above, § 125, and *Žičkus v. Lithuania*, no. 26652/02, § 33, 7 April 2009). The scope of the authorities' margin of appreciation in this domain depends not only on the nature of the legitimate aim pursued by the interference, but also on the nature of the interference itself (see *Leander*, cited above, § 59).

114. The interference did not become disproportionate because the Commission issued additional decisions in relation to the applicant in 2014. Firstly, the reason why he was checked for affiliation with the former security services on three separate occasions, once in 2008 and twice in 2014, was that he had both held "public office" and engaged in two types of "public activity", and that triggered such checks under the 2006 Act (see paragraphs 13, 17 and 20 above). In view of the considerable number of people and institutions that the Commission had to investigate (see paragraphs 47-51 and 68 above), its gradual manner of proceeding cannot be faulted as such. Secondly and more importantly, the two additional decisions were nearly identical to the first one, which in the meantime had remained available on the Commission's website (see paragraph 13 above). It therefore cannot be said that they somehow increased the interference's intensity.

115. In view of the above considerations, the interference with the applicant's right to respect for his private life can be seen as "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

(e) Conclusion

116. The complaint is therefore manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

C. Complaint under Article 13 of the Convention

117. In respect of his complaint that he had not had an effective domestic remedy with respect to his grievance under Article 8, the applicant relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. The parties' submissions

(a) The Government

118. The Government submitted that, since the applicant's complaint under Article 8 was manifestly ill-founded, he did not have an arguable claim for the purposes of Article 13. In any event, he had had effective remedies at his disposal which he had not tried. He could have brought a claim for damages or a private criminal prosecution for defamation.

(b) The applicant

119. The applicant submitted that, in view of the weighty arguments that underpinned it, his complaint under Article 8 was arguable. Yet, he had had no effective remedy in respect of it. The only conceivable remedy – judicial review of the Commission's decision – was not effective. It could not postpone publication of the decision, did not require the courts to examine whether those exposed had actually collaborated with the former security services, and did not entail an individualised proportionality analysis. In view of those defects, in 2008 he had abstained from seeking judicial review of the first decision relating to him. He had only done so in 2014 with respect to the Commission's second and third decisions relating to him, because in two judgments handed down that year the Supreme Administrative Court had departed from its usual approach and had held that someone could only be exposed if there was evidence that he or she had knowingly collaborated. His attempt had, however, turned out to be unfruitful.

120. As for the remedies mentioned by the Government, it was unclear how they would operate in the applicant's situation. The Government did not specify against whom he could direct a claim for damages or a private prosecution, or cite examples showing that these could provide redress to someone in his position. Both presupposed unlawful conduct, which was not the case, and under Bulgarian law a collective body such as the Commission could not be held criminally liable. Nor was it conceivable to prosecute the State Security officer who had allegedly recruited the applicant for defamation, not least because the relevant limitation period had long expired. Lastly, it was not feasible to claim damages under the State and Municipalities Liability for Damage Act 1988, as that presupposed that the Commission's decisions had been quashed in earlier proceedings.

2. The Court's assessment

121. It is not necessary to decide whether the applicant's complaint under Article 8 of the Convention was arguable, and whether Article 13 thus applied. Even assuming that this was the case, the Court has found that the exposure scheme set up under the 2006 Act, which did not require an analysis of whether it was justified in each case to expose the person mentioned in the records of the former security services, was not in breach of Article 8. In this situation, the requirements of Article 13 were met by the existence of a remedy enabling the applicant to secure compliance with the 2006 Act (see *Leander*, cited above, § 79, citing *James and Others v. the United Kingdom*, 21 February 1986, § 86, Series A no. 98). An effective remedy in this sense was available to him: he could, and twice did, seek judicial review of the Commission's decisions to expose him (see paragraphs 15, 18, 19, 21 and 22 above). The lack of suspensive effect did not in itself make those claims an ineffective remedy (see, *mutatis mutandis*, *De Souza Ribeiro v. France* [GC], no. 22689/07, § 83, ECHR 2012, recently reiterated in *Ramadan v. Malta*, no. 76136/12, § 55, 21 June 2016, and in *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 278, ECHR 2016 (extracts)). As noted in paragraph 111 above, an *ex post facto* remedy can make good an infringement of Article 8 relating to the publication of private information (see *Mosley*, cited above, § 120).

122. In view of this conclusion, it is not necessary to analyse the other remedies mentioned by the Government.

123. The complaint is therefore manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

D. Complaint under Article 6 § 1 of the Convention

124. In respect of his complaint that the proceedings for judicial review of the Commission's second and third decisions with respect to him had not afforded him effective access to a court and had been unfair, the applicant relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] tribunal ..."

1. The parties' submissions

(a) The Government

125. The Government submitted that the proceedings had taken place before two levels of court, which had decided the cases after analysing all relevant facts in line with their prevailing case-law and had clearly set out their reasons for upholding the Commission's decisions. Any of the types of documents mentioned in section 25(1)(3) of the 2006 Act constituted grounds to expose the person concerned. Those were typically documents emanating from the collaborators themselves, but sometimes documents not drawn up by them or featuring their signature. The discovery of any such document required the Commission to expose the people mentioned in it, without seeking to determine the nature of their collaboration. As pointed out by the Constitutional Court, such exposure did not infringe the constitutional rights to honour, dignity and a good name.

(b) The applicant

126. The applicant submitted that Article 6 § 1 of the Convention, under its civil head, had applied to the proceedings for judicial review of the Commission's decisions. Under Bulgarian law, he had the right to have his honour, dignity and good name protected against infringements. Moreover, since Article 8 of the Convention was directly applicable in Bulgarian law, the rights enshrined in it were also rights under that law. The right to have one's reputation and personal integrity protected was "civil", the outcome of the proceedings had been directly decisive for it, and there had been a genuine dispute as to whether the Commission's decisions were lawful.

127. The applicant further submitted that the way in which the courts had reviewed those decisions had deprived him of effective access to a court. Although by law the courts had been entitled to exercise full jurisdiction, they had declined to carry out a proper review of the Commission's findings. They had construed the 2006 Act as not requiring any assessment of the evidence, and had left the question of whether the applicant had in fact collaborated with State Security unanswered. Nor had they examined whether the decisions to expose him had been proportionate

in his particular case, being content to refer to the reasons given by the Constitutional Court for upholding the 2006 Act. Moreover, in the proceedings against the Commission's second decision, the Supreme Administrative Court had, instead of examining the matter independently, relied on the Commission's first decision and on the final judgment upholding its third decision.

128. For the applicant, the courts' refusal to review the reliability of the documents on the basis of which the Commission had exposed him had also rendered the proceedings unfair. The courts had been wrong to presume actual collaboration on his part just on the basis of documents emanating from officers of the former security services, many of whom were known to have acted overzealously. The courts had thus treated mere assertions as proof, upending the principle of equality of arms and deciding the case on the basis of doubtful evidence. For his part, the applicant had been faced with an insuperable burden of proof, and effectively had been unable to challenge the information in State Security's records. Moreover, the Supreme Administrative Court's ruling in the case relating to the Commission's second decision that it was bound by the Commission's first decision, and by the final judgment upholding its third decision, had been arbitrary, given the absence of reasons for it.

2. The Court's assessment

(a) Applicability of Article 6 § 1

129. Since proceedings before the Commission could not result in any form of lustration and, as noted in paragraph 111 above, are more a form of publication of the surviving records of the former security services rather than a way to express official opprobrium for the past conduct of the people exposed, there is no basis to find that Article 6 § 1 under its criminal limb applied to them, or to the proceedings for judicial review of the Commission's decisions (contrast *Matyjek* (dec.), cited above, §§ 52-58). Moreover, those proceedings had an administrative-law character, rather than any resemblance to criminal procedure (see *Ivanovski*, cited above, § 121).

130. The proceedings for judicial review of the Commission's decisions did, however, engage Article 6 § 1 under its civil limb. There was a dispute before the courts as to whether the two 2014 decisions of the Commission relating to the applicant were lawful, and those decisions directly affected his right to respect for his private life, which is protected under both Article 32 § 1 of the Bulgarian Constitution – a provision which has, albeit in different contexts, been given direct effect in civil litigation before the Bulgarian courts (see paragraphs 28 and 29 above) – and Article 8 of the Convention, which is directly applicable in Bulgarian law (see paragraph 27 above, and compare with *Ravon and Others v. France*, no. 18497/03, § 24

in fine, 21 February 2008, and *Pocius v. Lithuania*, no. 35601/04, § 42, 6 July 2010). In its reputational aspect, which was the one at issue in those proceedings, that right was "civil" within the meaning of Article 6 § 1 (see *Turek*, cited above, § 82, and, *mutatis mutandis*, *Kurzac v. Poland* (dec.), no. 31382/96, ECHR 2000-VI, and *Leela Förderkreis e.V. and Others v. Germany*, no. 58911/00, §§ 45-47, 6 November 2008). Lastly, the outcome of the proceedings, which could have resulted in the Commission's decisions being quashed, was, in the circumstances, directly decisive for the right at issue.

(b) Compliance with Article 6 § 1

131. One of the requirements flowing from Article 6 § 1 of the Convention is that a "tribunal" which determines "civil rights and obligations" must be able to examine all questions of fact and law which are relevant to the case before it (see *Fazliyski v. Bulgaria*, no. 40908/05, § 57, 16 April 2013, with further references). But the question of which points are relevant in a given case depends on the applicable substantive law. A court which does not go into facts or issues because they are immaterial under the substantive rules applicable to the case before it does not fall short of that requirement (for illustrations of this point, albeit in different contexts, see *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 94-101, ECHR 2001-V; *Nedyalkov and Others v. Bulgaria* (dec.), no. 663/11, § 111, 10 September 2013; and *Galina Kostova v. Bulgaria*, no. 36181/05, §§ 61 and 64, 12 November 2013). Holding otherwise would be tantamount to deriving particular content for substantive domestic legal rights from Article 6 § 1, which is not permissible (see, among other authorities, *James and Others*, cited above, § 81; *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B; and *Z and Others v. the United Kingdom*, cited above, §§ 87 and 98).

132. When judicially reviewing the Commission's third decision with respect to the applicant, the Sofia City Administrative Court and the Supreme Administrative Court found, in line with the latter's prevailing case-law and with the reasons given by the Constitutional Court, that under the exposure scheme laid down in the 2006 Act it was immaterial whether the applicant had in fact collaborated with the former security services (see paragraphs 21 and 22 above). There was therefore no need for the courts to examine whether there was sufficient and reliable evidence on that point. The lack of an individualised assessment of the necessity to expose the applicant was likewise irrelevant for the lawfulness of the Commission's decision. It therefore cannot be said that the courts declined to examine facts or issues which had a bearing on the determination of the case before them. Their not going into those points was not a limitation, self-imposed or otherwise, of their jurisdiction.

133. In so far as the applicant may be taken to have argued that the way in which the Bulgarian courts construed the 2006 Act was incorrect, it should be pointed out that, in accordance with its settled case-law, this Court is not a court of appeal from the national courts, and it is not its function to deal with errors of fact or law allegedly made by them (see *Galina Kostova*, cited above, § 54, with further references). That is also why it is not for the Court to say whether the Supreme Administrative Court was correct to hold that the determination of the applicant's claim for judicial review of the Commission's second decision had been predetermined by the fact that he had not challenged the Commission's first decision, and by the outcome of his claim for judicial review of the Commission's third decision, which had been dealt with by way of a final decision shortly before it (see paragraph 19 above). Given that the cases concerned nearly identical issues, that ruling does not appear arbitrary.

134. The applicant's arguments relating to the alleged unfairness of those two sets of proceedings amounted to a reformulation of his arguments with respect to the alleged lack of effective access to a court in those proceedings. For the same reasons as those stated above, the Court does not find that those proceedings were unfair.

135. The complaint is therefore manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 11 January 2018.

Claudia Westerdiek
Registrar

Angelika Nußberger
President