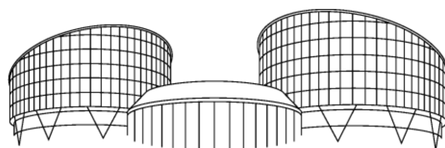

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NIKOLOVA AND VANDOVA v. BULGARIA

(Application no. 20688/04)

JUDGMENT

STRASBOURG

17 December 2013

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Nikolova and Vandova v. Bulgaria,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*
Pavlina Panova, ad hoc *judge,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 26 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 20688/04) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Bulgarian nationals, Ms Stela Yordanova Nikolova and Ms Yordanka Chankova Vandova (“the applicants”), on 8 June 2004.

2. The first applicant was represented by Ms Y. Vandova (the second applicant), a lawyer practising in Sofia. The second applicant was represented by Mr V. Vasilev, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The first applicant complained of the lack of a public hearing in the court proceedings concerning her dismissal and of the fact that the judgments in those proceedings had not been made public. She alleged that the proceedings had been unfair and that there had been a breach of her right to be presumed innocent. The second applicant contended that the authorisation procedure which she was obliged to undergo in order to represent the first applicant had breached her right to respect for her private life.

4. On 2 February 2009 the Government were given notice of the application. It was also decided that the Chamber would rule on the admissibility and merits of the applications at the same time (Article 29 § 1 of the Convention).

5. Ms Zdravka Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. Accordingly, on 3 April 2012, the President of the Chamber appointed Ms Pavlina Panova to sit as an *ad hoc*

judge in her place (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1962 and 1952 respectively and live in Sofia.

A. The criminal proceedings against the first applicant

7. The first applicant was an investigator with the national police, holding the rank of captain. At the time of the events she was working in the specialised department dealing with intellectual property offences within the Sofia Regional Directorate of the Interior Ministry.

8. Following the receipt of information from a shopkeeper alleging bribery and corruption by police officials, a preliminary investigation was carried out. The applicant and one of her colleagues were placed under investigation for the offences of taking bribes and obstructing the course of justice, committed in the performance of their duties. On 19 December 2001 the first applicant was arrested and remanded in custody. The accusations against the two officials were reported in the press.

9. The second applicant, a member of the Sofia Bar, agreed to represent the first applicant.

10. In a judgment of 4 March 2003 the Sofia Military Court found the first applicant guilty of several counts of corruption and obstructing the course of justice and sentenced her to five years' imprisonment and to payment of a fine of 3,000 Bulgarian levs (BGN). The court also barred her from further employment in the Interior Ministry. It acquitted the first applicant on one of the counts, relating to the acceptance of a bribe of BGN 320 on 28 February 2001.

11. The first applicant appealed. In a judgment of 19 June 2003 the Sofia Military Court of Appeal quashed, on the grounds of procedural irregularities, the part of the judgment in which the applicant had been found guilty, and referred the case back to the investigating authorities. As the prosecution did not appeal, the applicant's acquittal on one of the counts with which she had been charged became final.

12. On 28 January 2004 the public prosecutor again committed the accused for trial. On 5 February 2004, however, the reporting judge remitted the case for further investigation. Following a further decision to commit

the accused for trial dated 10 May 2004, the reporting judge once again sent the case file back to the public prosecutor.

13. The first applicant lodged an application under Article 239a of the 1978 Code of Criminal Procedure, complaining of the excessive length of the proceedings. Under that provision, the reporting judge returned the case file to the public prosecutor on 8 April 2005, informing him that he must either commit the accused for trial or discontinue the proceedings within two months.

14. The public prosecutor committed the accused for trial on 8 June 2005. However, on 16 June 2005 the reporting judge once again returned the case file to the prosecuting authorities, giving them one month to correct certain procedural irregularities in the indictment. In an order of 28 July 2005 the reporting judge noted that the accused had not been committed for trial within the prescribed time-limit and discontinued the criminal proceedings under Article 239a of the Code of Criminal Procedure.

B. The proceedings concerning the first applicant's dismissal

15. Following the first applicant's prosecution, disciplinary proceedings were started against her. In that connection she gave evidence in person, furnished written explanations and was informed of the contents of the file. Under an order issued by the Minister of the Interior on 26 February 2002, the first applicant was dismissed from her post on the ground that, on 28 March 2001, she had requested and received from a person under investigation the sum of BGN 300 in return for agreeing not to conduct an investigation, and had deliberately omitted to complete the investigation file as requested by the public prosecutor's office. The Minister considered her actions to be in breach of her professional duty, incompatible with good morals and, in view of the media coverage, damaging to the reputation of the service, thereby justifying her dismissal in accordance with section 239, paragraphs 1(5) and 2 of the 1999 Interior Ministry Act, in force at the relevant time.

16. On 11 March 2002 the first applicant lodged an application with the Supreme Administrative Court for judicial review of the order for her dismissal. She instructed the second applicant, a member of the Sofia Bar, to present her case.

17. On 2 April 2002 the Ministry of the Interior forwarded to the Supreme Administrative Court the documents relating to the applicant's dismissal and requested that the case be considered in camera on the grounds that some of the documents were classified. Following this request, the Supreme Administrative Court case file was classified as "secret". It appears from the material produced before the Court that two documents from the file were marked as "secret". These were an incident report (*съобщение за произшествие*) sent to the human resources department of

the Interior Ministry, reporting on the charging and remand in custody of the first applicant, and an internal audit report (*справка относно извършена проверка*) prepared in April 2001 in the department where the first applicant had been working, dealing with the organisation of the department, its staff members and working methods, the number and type of proceedings in progress and the problems and shortcomings that had been observed.

18. On an unspecified date the second applicant requested permission to consult the file but was not allowed to access it on the ground that it was classified as secret and that she had not obtained the authorisation required in order to consult classified information (*допуск, разрешение за достъп*).

19. At the hearing of 28 May 2002 the second applicant requested that the case be adjourned because she had not had access to the file. She argued that only documents containing State secrets could be marked as "secret" and that the nature of the case was such that the file did not contain information of that type. In her view, she should have had access to it in her capacity as a lawyer. The representative of the Interior Ministry stated that, although it was true that under the transitional provisions of the new Protection of Classified Information Act information that had hitherto been considered as "secret" was in future to be considered as "confidential" (see paragraph 40 below), the fact remained that authorisation was required in order to access such information, and that it was up to the second applicant to request it. The Supreme Administrative Court decided to adjourn the hearing.

20. The first applicant appeared alone at the hearing of 25 June 2002, as the second applicant had decided not to request authorisation, not wishing to be subjected to security screening (*процедура по проучване*) by the National Security Service of the Interior Ministry.

21. The first applicant asked the Supreme Administrative Court to suspend the proceedings and to apply to the Constitutional Court for a ruling as to whether the provisions requiring lawyers to undergo security screening in order to be allowed access to classified documents were contrary to the Constitution and to Article 6 § 3 (c) of the Convention. She added that in her case the body responsible for deciding on the authorisation request was the respondent party in the proceedings.

22. In an order issued the same day the Supreme Administrative Court rejected the request for the proceedings to be adjourned or suspended. It observed in that connection that the first applicant's representative had not taken any steps towards obtaining authorisation. It further noted that the classification of a case file as secret was carried out at the request of the administrative authorities who had produced the classified documents, and that such requests stemmed from the authorities' obligations under the rules and not from the court's wishes.

23. The first applicant submitted written pleadings in which she challenged the lawfulness of the decision to dismiss her, on formal and substantive grounds. She argued in particular that, since the decision had been based on acts that were the subject of criminal proceedings against her, no disciplinary sanctions could be imposed prior to a possible conviction.

24. In a judgment of 25 June 2003 the Supreme Administrative Court rejected the applicant's application and upheld the decision dismissing her.

25. The first applicant appealed on points of law. She submitted that the security screening which her lawyer would have had to undergo in order to obtain authorisation amounted to interference with her private life which could not be regarded as justified under Article 8 § 2 of the Convention. She also observed that the file did not contain any information that could be described as a State secret. In addition, she maintained that the decision to consider the case in camera had been in breach of the Constitution and the domestic legislation, and complained of the fact that she had not had the assistance of a lawyer.

26. Furthermore, the applicant submitted that the corruption incident referred to in the decision dismissing her was the subject of criminal proceedings and that the fact of not awaiting the outcome of those proceedings before dismissing her on disciplinary grounds was tantamount to circumventing the law. She also alleged several other procedural irregularities.

27. A hearing was held before the five-judge bench of the Supreme Administrative Court on 10 October 2003, at which the first applicant appeared alone. She produced a copy of the judgment of the Military Court of Appeal of 19 June 2003 quashing her criminal conviction and remitting the case for investigation (see paragraph 11 above).

28. In a judgment of 9 December 2003 the Supreme Administrative Court dismissed the appeal. It noted that the courts were not competent to make public documents which had been classified as "secret" by the administrative authority that had produced them. It considered that the requirement for lawyers seeking access to classified documents to undergo an authorisation procedure was justified from the standpoint of Article 8 of the Convention by the need to protect interests pertaining to national security and public order. The Supreme Administrative Court observed in that connection that the hearing had been adjourned so that the second applicant could apply for authorisation, but that she had not seen fit to do so. The consideration of the case in camera had also been justified by the confidential nature of the information contained in the file. In conclusion, the Supreme Administrative Court held that there had been no infringement of the first applicant's procedural rights.

29. On the merits, the court considered that the acts of which the applicant had been accused had been sufficiently established and that the Ministry had not been obliged to await the outcome of the criminal

proceedings before imposing disciplinary sanctions. It further noted that the judgement of the Sofia Military Court had been quashed on account of procedural irregularities and did not call into question the findings of the decision dismissing the applicant or the first-instance judgment.

30. As the file had been classified, the first applicant was unable at first to obtain a copy of the judgments, which were not published on the Supreme Administrative Court's website. She was given permission to consult the text of the judgments at the court's registry. The case was declassified on 6 July 2009 on expiry of the statutory five-year period.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1997 Interior Ministry Act

31. Sections 234 et seq. of the 1997 Interior Ministry Act, which was repealed in 2006, governed the disciplinary liability of Ministry officials. Under section 239 officials were subject to dismissal on disciplinary grounds if, among other things, they had been found guilty of a criminal offence following a public prosecution, their conduct was incompatible with good morals or their actions brought the service into disrepute (section 239, paragraph 1, sub-paragraphs 1 and 5). Serious breaches of official discipline making it impossible for an official to continue performing his or her duties also constituted grounds for disciplinary dismissal (paragraph 2).

32. It was possible to submit an application for judicial review of the dismissal decision (section 258 of the Act).

B. The 1952 Code of Civil Procedure

33. Article 105 § 1 of the 1952 Code of Civil Procedure, which has since been repealed, stipulated that cases were to be examined at a public hearing, except where the law provided for them to be considered in camera.

34. Under paragraph 3 of the same Article, where, in the circumstances of the case, examination in public was liable to damage the general interest or reveal facts falling within the intimate private sphere of one of the parties, the court could decide of its own motion or at the request of the parties that the examination of the case, or certain procedural steps, should be conducted in private. In that case only the parties, their representatives, the experts, the witnesses or other persons authorised by the court were allowed into the hearing room.

35. Under section 11 of the 1997 Supreme Administrative Court Act, in force at the time of the events, the provisions of the 1952 Code of Civil Procedure were applicable to proceedings before the Supreme Administrative Court.

C. The 2002 Protection of Classified Information Act (*Закон за защита на класифицираната информация*)

1. Classified information

36. Under the third paragraph of section 1 of the Act, which entered into force on 4 May 2002, classified information comprises any information which constitutes a State secret (*държавна тайна*), information which is internal to the service (*служебна тайна*) or classified information from another country.

37. Section 28 regulates the different levels of classification. Information which constitutes a State secret falls under the headings "top secret", "secret" or "confidential" ("*строго секретно*", "*секретно*" and "*поверително*"). The classification "for official use only" ("*за служебно ползване*") is used for information which is restricted to members of the service.

38. The classification "confidential" is applied where unregulated access to the information might pose a threat to the country's sovereignty, independence or territorial integrity, its foreign policy or international relations with implications for national security, or where it might give rise to a risk of damage, or cause damage, in the spheres of national security, defence, foreign policy or defence of the constitutional order.

39. Information is classified as "secret" where unregulated access to it might pose a significant threat to the country's sovereignty, independence or territorial integrity, its foreign policy or international relations with implications for national security, or where it might give rise to a risk of significant and potentially irreversible damage, or cause such damage, in the spheres of national security, defence, foreign policy or defence of the constitutional order.

40. Under paragraph 11 of the final and transitional provisions of the Act, the level of classification of information hitherto categorised as "absolutely top secret" was considered to correspond to the new "top secret" classification; the former "top secret" category corresponded to the new "secret" category, and the former "secret" classification corresponded to the new "confidential" classification.

41. The level of security is defined by the person authorised to sign the documents containing classified information or documents attesting to the existence of such information in another document (section 31, paragraph 1).

2. *Access to classified information*

42. No individual may have access to information belonging to one of the top three categories of classification unless this is necessary for the performance of his or her professional duties or tasks. Authorisation may be issued after security screening (*процедура по проучване*) of the person concerned, and after the appropriate training has been given (section 38).

43. Section 39 of the Act details the cases in which authorisation is not required. The Speaker of the National Assembly, the President of the Republic and the Prime Minister are automatically entitled to access any classified information (paragraph 1). Government ministers, the Secretary-General of the Interior Ministry and members of Parliament have automatic access to classified information coming within their sphere of responsibility, on a "need to know" basis (paragraph 3). The members of the Constitutional Court, judges, prosecutors and investigators are exempted from seeking authorisation in relation to cases they are dealing with, on a "need to know" basis (paragraph 3(3)). An amendment adopted in June 2004 extended this last category to include lawyers.

44. A new section 39a, adopted in October 2004, provides that any person is entitled to consult classified documents without prior authorisation in so far as this is necessary for the exercise of his or her defence rights and on a "need to know" basis.

45. Sections 40 et seq. of the Act govern the procedure for issuing authorisation. The type of screening carried out depends on the level of confidentiality of the information to which access is requested (section 46). "Standard" screening (as opposed to "extended" or "special" screening) applies to requests for access to information classified as "confidential". This was the classification applicable under the Act to the documents included in the first applicant's case file, notwithstanding the fact that they had been stamped "secret" before the entry into force of the Act in May 2002 (see paragraph 40 above).

46. "Standard" screening is carried out by the security officer of the entity concerned, an official specially appointed to manage classified information within the administrative entity and who is responsible for issuing or refusing authorisation. No reasons need to be given for the security officer's decision. If authorisation is refused, the person concerned may lodge an administrative appeal with the National Commission on Security of Information. The Commission is made up of five members appointed for a five-year term by the Council of Ministers, and is responsible for policy and monitoring in the sphere of classified information. The Commission's decision is final (sections 62 to 69).

47. Under sections 40 and 47 of the Act, authorisation to access information categorised as "confidential" may be issued to Bulgarian nationals of full age who have not been convicted of a criminal offence following a public prosecution and who are not the subject of pending

criminal proceedings, are not recognised as suffering from a mental disorder and can be considered to be reliable when it comes to preserving confidential information. Individuals will be considered reliable for this purpose in the absence of any elements disclosing (1) that they provided false information during security screening; (2) the existence of circumstances making them vulnerable to blackmail; (3) inconsistencies between their income and standard of living; (4) a mental disorder capable of adversely affecting their capacity to process classified information; or (5) dependency on alcohol or drugs (section 42).

48. Persons requesting authorisation must complete the questionnaire contained in Annex 2 to the Act. In order to obtain access to information classified as "confidential" under the "standard" screening procedure, they must indicate:

- their civil status, occupation and place of work, as well as those of their spouse, parents, brothers and sisters, and children over the age of fourteen;
- the persons living in their household;
- the addresses at which they have lived over the past ten years;
- their employment over the past ten years;
- their level of education;
- any organisations to which they belong;
- any debts which they or their spouse may have;
- any criminal convictions or criminal proceedings pending against them;
- whether they use or have used drugs, with details of what type and when;
- whether they consume or have consumed quantities of alcohol leading to loss of or diminished consciousness, the frequency of such incidents and the treatment undergone;
- whether they have already had access to classified information in Bulgaria, in another country or in an international organisation;
- whether they have spent more than ten days abroad since reaching full age; whether they have ever engaged in paid work abroad;
- whether they have been questioned by the authorities of another country on matters connected with State security or defence and whether, to their knowledge, their spouse or other members of the family have been questioned in this way.

49. In the case of "extended" or "special" screening, additional information is required, such as details of any previous mental illness, level of income and any immovable property owned or shares held.

50. Persons requesting authorisation agree to allow the personal data they have provided to be gathered, processed and kept for the purposes of the screening. The screening authority may also ask them to undergo medical and psychological tests and submit the results (section 42, second paragraph).

51. The screening is carried out with the written consent of the person concerned, who may withdraw his or her consent at any time, bringing the procedure to an end (section 43).

D. The Criminal Code

52. Articles 357, 358 and 359 of the Criminal Code make it an offence to disclose State secrets or lose secret documents.

E. Civil liability in tort of public bodies

53. Section 2 of the 1988 State and Municipalities Responsibility for Damage Act provides that the State is liable for damage caused by the investigating or prosecuting authorities and by the courts in connection, particularly, with criminal charges where the person concerned is subsequently acquitted or the proceedings are discontinued, or where the conviction is subsequently quashed.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

54. As a preliminary point, the Government submitted that the first applicant had not exhausted domestic remedies in so far as she had had the opportunity, following the discontinuance of the criminal proceedings against her, to claim compensation under the State and Municipalities Responsibility for Damage Act.

55. The first applicant replied that any compensation she might have claimed under that Act was unconnected to her complaints in the present application, which concerned the proceedings before the administrative courts.

56. The Court reiterates that the purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Nevertheless, the only remedies which Article 35 requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient (see, among many other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 141-42, ECHR 2006-V).

57. In the instant case the Court observes that the State Responsibility Act indeed provides for compensation to be awarded to individuals who, after being placed under investigation, are acquitted or have the proceedings

against them discontinued (see paragraph 53 above). However, this possibility appears to be unconnected to the complaints raised by the first applicant, which concern the administrative proceedings leading to her dismissal and not the criminal proceedings against her. In those circumstances, the remedy referred to by the Government does not appear to constitute an effective remedy which was required to be exhausted under Article 35 § 1, and the Government's preliminary objection should be dismissed.

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

58. Relying on Article 6 of the Convention, the first applicant submitted that several of the requirements of that provision had been breached in the judicial proceedings concerning her dismissal. Article 6 § 1, in its relevant parts, provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

A. Scope of the complaint before the Court

59. The applicability of Article 6 of the Convention was not disputed by the parties. In so far as the first applicant submitted that Article 6 was applicable in its criminal aspect, and relied in particular on Article 6 § 3 (c), the Court observes that the proceedings at issue concerned her dismissal on disciplinary grounds. In view of the nature of the acts she was alleged to have committed, namely breaches of discipline, their classification in domestic law and the sanction which she risked incurring and which was imposed, the Court considers that the proceedings in question did not relate to a "criminal charge" falling within the scope of Article 6 in its criminal aspect (see *Durand v. France* (dec.), no. 10212/07, 31 January 2012).

60. The Court reiterates further that Article 6 § 1 in its civil limb is applicable to proceedings concerning a genuine and serious dispute over civil rights which can be said, at least on arguable grounds, to be recognised under domestic law. The result of the proceedings must be directly decisive for the right in question (see, among many other authorities, *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012).

61. In the present case it is not disputed that the proceedings in question concerned a genuine and serious dispute over a right which the first applicant enjoyed under domestic law – the right not to be subjected to

wrongful dismissal – and that they were directly decisive for the right in question.

62. As to whether that right was a “civil” right within the meaning of Article 6 § 1 in view of the post occupied by the applicant, the Court reiterates that, according to its case-law, disputes between the State and its civil servants fall in principle within the scope of Article 6 except where two cumulative conditions are satisfied. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State’s interest (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-IV).

63. The first of these conditions is not met in the instant case, since domestic law makes express provision for judicial review of the decision to dismiss an Interior Ministry official (see paragraph 32 above) and the appeal lodged by the applicant was actually examined by the Supreme Administrative Court. It follows that Article 6 is applicable in its civil aspect (see *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, § 44, 2 July 2009, and *Cvetković v. Serbia*, no. 17271/04, § 38, 10 June 2008).

B. Lack of a public hearing

1. The parties’ submissions

64. The first applicant complained of the lack of a public hearing in the judicial proceedings concerning her appeal against the order for her dismissal. She submitted that the classification of the proceedings as secret had not been warranted in the instant case since the documents in the file had not contained any information concerning national security. She argued that the proceedings had been classified solely because the Ministry of the Interior – which, moreover, had been the respondent party in the proceedings – had decided to classify certain documents as “secret” and because the Supreme Administrative Court had not properly assessed the need to classify the file and to consider the case in camera. The examination of the case in camera had thus been contrary to the legislation in force and to Article 6 of the Convention. In the first applicant’s view, the public had thereby been deprived of the opportunity of being informed of and discussing important issues affecting society as a whole; that situation also had the effect of undermining public confidence in the justice system.

65. The Government submitted that the classification of the case file as confidential and the restriction of public access to the hearings had been decided on by the Supreme Administrative Court in the exercise of its unfettered discretion to assess whether reasons existed justifying the restriction of public access to the proceedings under Article 105 § 3 of the Code of Civil Procedure. In the instant case the restriction had been justified

by the fact that the file had included documents containing classified information. In the Government's view it had therefore been imposed in the interests of public order and national security and had not rendered the proceedings unfair.

2. *The Court's assessment*

(a) Admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

67. The Court reiterates that the public character of proceedings constitutes a fundamental principle enshrined in Article 6 § 1 of the Convention. It protects litigants against the administration of justice in secret with no public scrutiny and is thus one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, it contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society (see *Diennet v. France*, 26 September 1995, § 33, Series A no. 325-A; *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, § 36, ECHR 2001-III; *Olujić v. Croatia*, no. 22330/05, § 70, 5 February 2009; and *Martinie v. France* [GC], no. 58675/00, § 39, ECHR 2006-VI).

68. Article 6 § 1 does not, however, prohibit courts from deciding, in the light of the special features of the case submitted to them, to derogate from this principle: in accordance with the actual wording of this provision "... the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice"; holding proceedings, whether wholly or partly, in camera must be strictly required by the circumstances of the case (see *Diennet*, § 34; *Martinie*, § 40; and *Olujić*, § 71, all cited above).

69. Hence, the Court has held that "civil" proceedings which, both on appeal and at first instance, are conducted in private in accordance with a general and absolute principle, without the litigant being able to request a public hearing on the ground that his case presents special features, cannot in principle be regarded as compatible with Article 6 § 1 of the Convention (see *Martinie*, §§ 41-42, and *Diennet*, § 34, both cited above).

70. Nevertheless, the Court has held that exceptional circumstances relating to the nature of the issues to be decided by the court, notably in the case of highly technical matters in the context of, say, social-security proceedings, may justify dispensing with a public hearing, so long as the specific nature of the subject matter does not make public scrutiny necessary (see *Lorenzetti v. Italy*, no. 32075/09, § 32, 10 April 2012, and the references cited therein).

71. In the instant case the proceedings concerning the first applicant were conducted in camera in spite of her objections. The Court must therefore ascertain whether the exclusion of the public could be regarded as justified in the light of the circumstances of the case.

72. The Court observes at the outset that the lack of a public hearing did not stem in the present case from a general and absolute principle covering an entire class of cases but from a specific decision taken by the court at the request of one of the parties, the Ministry of the Interior, on the ground that some of the documents produced by the latter had been classified and were marked "secret" (see, *mutatis mutandis*, *B. and P. v. the United Kingdom*, cited above, § 40; see also, conversely, *Martinie*, cited above, § 42; *Diennet*, cited above, § 34; and *Bocellari and Rizza v. Italy*, no. 399/02, § 41, 13 November 2007, where the Court, in finding a violation of Article 6, took into consideration the applicants' complete inability to request a public hearing).

73. The first applicant disputed the assertion that the documents in question contained State secrets. In this connection the Court considers that, bearing in mind the nature of the information in question – which related in particular to the internal running of the service and the methods used by the police in tackling crime (see paragraph 17 above) – the authorities could be said in principle to have had a legitimate interest in preserving its confidentiality. It sees no evidence in the present case to suggest that the classification of the documents concerned was carried out in an arbitrary or improper manner or with any aim other than the legitimate interest pursued (see *Welke and Białek v. Poland*, no. 15924/05, § 63, 1 March 2011).

74. However, the Court has previously held that the mere presence of classified information in the case file does not automatically imply a need to close a trial to the public, without assessing the necessity of closure by weighing the principle that court hearings should be held in public against the need to protect public order and national security (see *Belashev v. Russia*, no. 28617/03, § 83, 4 December 2008, and *Welke and Białek*, cited above, § 77). Accordingly, before excluding the public from a particular set of proceedings, courts must consider whether such exclusion is necessary in the specific circumstances in order to protect a public interest, and must confine the measure to what is strictly necessary in order to attain the objective pursued (see *Belashev*, cited above, § 83).

75. In the instant case it is true, as the Court noted above, that the holding of hearings in camera did not result from a general principle but from a decision taken by the Supreme Administrative Court in the specific case of the applicant. Nevertheless, the Court cannot but observe that the Supreme Administrative Court based its decision on the mere fact that the case file contained classified documents. It did not consider whether the documents in question were linked to the subject matter of the proceedings and might therefore have been indispensable, nor did it contemplate taking measures to counterbalance the effects of the lack of a public hearing, for instance by restricting access to certain documents only or holding just some of the sessions in camera, to the extent necessary to preserve the confidentiality of the documents in question (see *Belashev*, cited above, § 84). This situation appears to have resulted from the automatic application of the rules on the classification of court proceedings where even one of the documents in the file is classified. Under domestic law, the court with jurisdiction is not required to give detailed and specific reasons for excluding the public in the case concerned (see, conversely and *mutatis mutandis*, *B. and P. v. the United Kingdom*, cited above, § 40). In these circumstances, the Court is not convinced that in the instant case it was strictly necessary to exclude the public in order to preserve the confidentiality of the documents in question.

76. Lastly, as regards the nature of the proceedings, a factor which – as stressed above (see paragraph 70) – may in certain cases justify the lack of any hearing or of a public hearing, the Court does not consider that the matters under discussion in the proceedings at issue, namely the disciplinary penalty imposed on a police official for acts connected to corruption charges, were of a highly technical nature and did not require a hearing open to public scrutiny (see *Lorenzetti*, § 33, and *Martinie*, § 43, both cited above).

77. In view of the foregoing considerations, the Court finds that there has been a violation of Article 6 § 1 on account of the lack of a public hearing in the proceedings at issue.

C. Lack of publicity of the judgments

78. The first applicant also complained of the fact that the judgments of the Supreme Administrative Court had not been delivered in public and had not been available to members of the public.

79. The Government reiterated the submissions made with regard to the public character of the proceedings, and considered that the restriction imposed had been justified in the interests of public order and national security.

1. Admissibility

80. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

81. The Court reiterated above, in the context of the holding of hearings in public, the importance of the public character of court proceedings for the achievement of the aim of Article 6, namely to ensure a fair trial (see paragraph 67 above).

82. Despite the fact that no limitations are expressly laid down by Article 6 § 1, the requirement for the judgment to be delivered in public has been interpreted with a certain degree of flexibility. Hence, the Court has considered that in each case the form of publicity to be given to the judgment under the domestic law of the State in question must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (see *Pretto and Others v. Italy*, 8 December 1983, § 26, Series A no. 71; *B. and P. v. the United Kingdom*, cited above, § 45; and *Ryakib Biryukov v. Russia*, no. 14810/02, § 32, ECHR 2008).

83. The Court held, for instance, that there had been no violation of Article 6 § 1 in a case in which the full text of the judgment had been deposited at the registry of the court and was available to everyone (see *Pretto and Others*, cited above, §§ 27-28), and in a case where anyone who could establish an interest could consult the full text of the judgments of the court concerned, whose most important judgments were published subsequently in an official collection (see *Sutter v. Switzerland*, 22 February 1984, § 34, Series A no. 74). On the other hand, it found a violation of that provision in a case where the courts – both at first instance and on appeal – had examined a compensation claim in respect of unlawful detention in camera and had not delivered their judgments in public, and where the public did not have access to those judgments by other means (see *Werner v. Austria*, 24 November 1997, §§ 56-60, *Reports of Judgments and Decisions* 1997-VII).

84. In the instant case the Court notes that, owing to the classification of the first applicant's case as secret, not only did the Supreme Administrative Court examine the case in camera (see above), but the judgments given were not delivered in public and were not available at the registry of the court or on its Internet site, nor could the first applicant herself obtain a copy. The file was not declassified until after the expiry of the statutory time-limit in July 2009, that is to say, more than five years after the final judgment of the Supreme Administrative Court had been delivered.

85. Accordingly, the judgments given by the Supreme Administrative Court in the applicant's case were not delivered publicly and were entirely unavailable to the public for a considerable period of time. The Court has previously had occasion to observe that where a court case involves the handling of classified information, techniques exist for allowing some degree of public access to the decisions given while maintaining the confidentiality of sensitive information. Some States Parties to the Convention have adopted such mechanisms, opting, for instance, to publish only the operative part of the judgment (see *Welke and Białek*, cited above, § 84) or to partially classify such judgments (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 93, ECHR 2009). The Court is not convinced that in the instant case the protection of the confidential information contained in the file made it necessary to restrict the publication of the judgments in their entirety, still less for such a considerable period of time. Furthermore, as the Court noted above on the subject of the holding of public hearings, the restrictions on publication of the judgment resulted from the automatic classification of the entire file as secret, without the domestic courts having conducted an assessment of the necessity and proportionality of such a measure in the specific case.

86. Accordingly, there has been a violation of Article 6 § 1 owing to the fact that the judgments given in the instant case were not made public.

D. Fairness of the proceedings

1. The parties' submissions

87. The first applicant further alleged that the Supreme Administrative Court had lacked independence and impartiality in deciding to classify the court proceedings as confidential at the request of the Ministry of the Interior. She submitted that the principle of equality of arms had also been breached. In that connection she noted that her lawyer had been unable to consult the file, whereas the representative of the respondent Ministry had had access to the documents in the file. The latter did not need to request authorisation to access confidential information; her lawyer, meanwhile, had been directed to undergo an assessment of her reliability carried out by the departments of the respondent Ministry. In the first applicant's view, the opposing party had thus had what amounted to a right of veto over her choice of lawyer. She further relied on Article 6 § 3 (c) of the Convention, complaining of her inability to be represented by the lawyer of her choosing.

88. The Government argued that when her representative had opted not to request authorisation the first applicant could have hired another lawyer to defend her interests in the proceedings.

2. *The Court's assessment*

89. The Court observes at the outset, in so far as the first applicant relies on Article 6 § 3 (c), that this provision, according to which "everyone charged with a criminal offence [has the right] ... to ... legal assistance of his own choosing" applies only to persons facing a "criminal charge". The Court has held above (see paragraph 59) that the criminal aspect of Article 6 is not applicable to the proceedings at issue, which concerned the first applicant's dismissal on disciplinary grounds rather than criminal charges. It follows that this aspect of the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected under Article 35 § 4. This finding does not exempt the Court from taking into consideration this aspect of the complaint in examining the fairness of the proceedings from the standpoint of Article 6 § 1.

90. As regards the alleged lack of independence and impartiality of the Supreme Administrative Court, the first applicant appears to base her complaint on the sole fact that the court granted the request of the other party to hold the hearings in camera. However, the mere fact that a court gives a decision which is unfavourable to the applicant cannot in itself cast doubt on that court's impartiality and independence; furthermore, the Court cannot discern any evidence to suggest that the Supreme Administrative Court lacked independence and impartiality in the present case. It follows that this aspect of the complaint is manifestly ill-founded and must be rejected pursuant to Articles 35 §§ 3 (a) and 4 of the Convention.

91. The Court reiterates that the principle of equality of arms, as one of the features of the wider concept of a fair trial, requires a "fair balance between the parties": each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, in particular, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274, and *Matyjek v. Poland*, no. 38184/03, § 55, 24 April 2007).

92. In the instant case the first applicant complained of the fact that the lawyer of her choosing – the second applicant – had not had access to the file, whereas the representative of the opposing party – the Ministry of the Interior – had access. The Court observes in this regard that the second applicant's inability to consult the case file resulted in the present case from her refusal to request authorisation to access classified information, as she was required to do in view of the presence of confidential documents in the file. As stated above, the Court recognises that the State may have legitimate grounds to limit access to certain documents, especially when they concern State security (see paragraph 73 above and the judgments in *Turek v. Slovakia*, no. 57986/00, § 115, ECHR 2006-II (extracts), and *Welke and Białek*, cited above, § 63). The necessity for a lawyer to undergo security screening before being given access to such information in the

context of court proceedings does not appear in itself to infringe the principle of equality of arms or, more generally, the fairness of the proceedings. More specifically, the first applicant's assertion that the representative of the Ministry of the Interior had access to the file without having to request authorisation does not appear to be borne out by the information available to the Court. The Protection of Classified Information Act stipulates that, with the exception of a few senior State officials, everyone must obtain authorisation in order to access confidential information, including officials whose work requires such access (see paragraphs 42 and 43 above). There is nothing to indicate that this procedure was not complied with in the present case or that the representative of the Ministry of the Interior in the court proceedings did not have such authorisation.

93. As to the first applicant's argument that the Ministry of the Interior, via the security screening procedure, was able to exercise a "right of veto" over her choice of lawyer, in so far as the first applicant's lawyer did not request authorisation there is nothing to suggest that it would have been refused, and the applicant's assertions therefore appear to be based on speculation. Furthermore, the domestic regulations state that any refusal by the Ministry's security officer to issue authorisation is open to appeal before the National Commission on Security of Information, a specialised independent authority of the Ministry of the Interior with no connection to the legal proceedings which were under way (see paragraph 46 above *in fine*).

94. The Court further observes that when her lawyer refused to undergo security screening the first applicant could have instructed another lawyer if she wished to be assisted by a member of the legal profession. There is nothing in the instant case to indicate any attempt to hinder the first applicant in that regard.

95. Lastly, the Court notes that the first applicant, who represented herself after her lawyer refused to undergo security screening, did not claim that she had not had sufficient access to the file, whether before or after the hearings, to enable her to prepare her defence, or that the other party had been placed at an advantage (see *Welke and Białek*, cited above, § 65, and compare *Matyjek*, cited above, § 63).

96. In view of the foregoing, the complaint concerning the alleged unfairness of the proceedings is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

97. Relying on Article 6 § 2, the first applicant submitted that the judgments of the domestic courts upholding the order for her dismissal

amounted to a declaration of guilt concerning the criminal offence of corruption described in the reasons for the dismissal decision, whereas her guilt had not been established according to law in the context of the criminal proceedings. Article 6 § 2 reads as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

98. The Court reiterates that the presumption of innocence is infringed if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty (see, among other authorities, *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62). While the principle of the presumption of innocence is one of the elements of a fair criminal trial required by Article 6 § 1, it is not merely a procedural safeguard in criminal proceedings. Its scope is more extensive and requires that no representative of the State or a public authority should declare a person guilty of an offence before his or her guilt has been established by a court (see *Çelik (Bozkurt) v. Turkey*, no. 34388/05, § 29, 12 April 2011, and *Moullet v. France* (dec.), no. 27521/04, 13 September 2007).

99. In previous cases similar to the present one, the Court has held that it is neither the purpose nor the effect of the provisions of Article 6 § 2 to prevent the authorities vested with disciplinary power from imposing sanctions on a civil servant for acts with which he has been charged in criminal proceedings, where the acts have been duly established (see *Moullet*, cited above). Nevertheless, if a domestic decision concerning the disciplinary sanctions contains a statement imputing criminal liability to the person concerned, this may raise an issue falling within the ambit of Article 6 § 2 of the Convention (see *Çelik (Bozkurt)*, cited above, § 32).

100. In the present case the Court notes that the first applicant was not dismissed on disciplinary grounds because she had committed a criminal offence but because of acts which, although they also contained all the ingredients of a criminal offence, amounted to professional misconduct. The facts were duly established before the administrative courts, which did not base their decisions on the findings made in the criminal proceedings, and the applicant had the opportunity to dispute the truth of the allegations. Furthermore, nothing in the findings or the language of the administrative courts' decisions would appear to call into question the first applicant's innocence or imply that she was guilty of the offences with which she was charged in the criminal proceedings. Moreover, the Supreme Administrative Court referred to those proceedings only in replying to the first applicant's submissions, when it stated that the administrative authority was not obliged to await the outcome of the criminal proceedings before imposing

disciplinary sanctions (see *Hrdalo v. Croatia*, no. 23272/07, § 55, 27 September 2011; *Moullet*, cited above; *Matos Dinis v. Portugal* (dec.), no. 61213/08, §§ 42-45, 2 October 2012; and, conversely, *Çelik (Bozkurt)*, cited above, § 35).

101. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

102. In the second applicant's view, the requirement to provide personal information in order to obtain authorisation and represent her client effectively in the proceedings concerning the latter's dismissal amounted to a breach of her right to respect for her private life as protected by Article 8 of the Convention. Article 8, in its relevant parts, 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."

A. The parties' submissions

103. The second applicant submitted that in order to obtain authorisation to access the classified information so as to consult the case file and take part in the hearings before the Supreme Administrative Court, she had been required to complete a very detailed questionnaire which entailed disclosing personal information concerning herself and those close to her. She maintained that the requirement to either disclose that information, considered as personal data for the purposes of the Personal Data Protection Act, or be forced to cease representing her client, constituted interference with her right to respect for her private life which was not justified under Article 8 § 2. She reiterated that the decision of the Supreme Administrative Court to classify the case as "secret" had not been warranted in the particular case. She further submitted that the fact that the disclosure of information which constituted a State secret rendered the person concerned criminally liable was a sufficient safeguard against possible abuse by lawyers, and that the obligation to complete the questionnaire in question therefore served no purpose.

104. The Government stressed that the second applicant had been free to choose whether or not to supply the information requested, and had decided not to complete the questionnaire. In their view, a fair balance had been struck in the instant case between respect for the individual's private life and the requirements of the protection of national security and public order.

B. The Court's assessment

105. The Court reiterates that the gathering, storing and release of information relating to an individual's "private life" come within the scope of Article 8 of the Convention (see *Leander v. Sweden*, 26 March 1987, § 48, Series A no. 116, and *Antunes Rocha v. Portugal*, no. 64330/01, § 62, 31 May 2005). As to whether there was interference in the present case with the second applicant's right to respect for her private life, bearing in mind the fact that, as stressed by the Government, she did not ultimately fill out the questionnaire concerned and thus did not provide the information requested regarding her private life, the Court considers that it is unnecessary to address this issue since the complaint is in any event inadmissible for the reasons set out below.

106. The Court reiterates that Article 35 § 1 of the Convention requires that the Court may only deal with a matter where it has been introduced within six months from the date of the final domestic decision. As a general rule, the six-month period runs from the final decision in the normal process of exhaustion of domestic remedies capable of providing an effective and sufficient means of redressing the grievances raised in the application. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect or prejudice on the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002, and *Nenkayev and Others v. Russia*, no. 13737/03, § 188, 28 May 2009). The Court adds that it may rule on compliance with the six-month rule even where a Government have not made a preliminary objection based on it (see *Nenkayev and Others*, cited above, ibid.).

107. In the instant case, in so far as the second applicant complained of the obligation to complete a questionnaire in order to obtain the authorisation required to consult her client's file, the Court notes that it is clear from the facts of the case that the Supreme Administrative Court adjourned the hearing of 28 May 2002 in the first applicant's case so that her lawyer, the second applicant, could apply for the requisite authorisation. When the second applicant refused to undergo the screening procedure, the Supreme Administrative Court decided on 25 June 2002 to proceed to consider the case without the participation of the second applicant (see paragraphs 19 to 22 above). The Court notes that the second applicant appeared to take the view that no remedy existed in domestic law in respect of her complaint concerning her right to respect for her private life, and in any case did not raise this complaint before the domestic courts. In any event, the civil proceedings concerning the first applicant's dismissal cannot be considered to form part of the normal process of exhaustion of domestic remedies in respect of the second applicant's complaint under Article 8.

108. In these circumstances, the Court considers that the issue of the requirement for the second applicant to complete the security questionnaire was finally determined by the order of the Supreme Administrative Court of 25 June 2002 and that, it being accepted that there were no domestic remedies that had to be exhausted, the six-month period began to run on that date. The application, which was lodged on 8 June 2004, is therefore out of time in respect of this complaint, which must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

110. The first applicant claimed 30,000 euros (EUR) in respect of the non-pecuniary damage sustained on account of the alleged violations of the Convention.

111. The Government deemed the amount claimed to be excessive.

112. The Court considers that the first applicant sustained non-pecuniary damage as a result of the violations of Article 6 of the Convention which it has found. In the light of the information in its possession and ruling on an equitable basis as required by Article 41, it awards the first applicant EUR 2,400 under this head.

B. Costs and expenses

113. The first applicant claimed EUR 3,150 in respect of the costs and expenses incurred before the Court, comprising EUR 3,000 in fees paid to her lawyer (the second applicant) and EUR 150 in miscellaneous costs (postage, photocopies, etc.). In support of her claim she produced a fee agreement with her lawyer.

114. The Government contested these claims, stressing that the applicants had not produced any invoices or a breakdown of the work actually performed. They submitted that the amount awarded by the Court should be reduced to a realistic level.

115. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its

possession and the fact that it has declared some of the complaints inadmissible, the Court considers it reasonable to award the first applicant the sum of EUR 1,000.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Article 6 § 1 concerning the lack of a public hearing and the fact that the judgments in question were not made public, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing before the Supreme Administrative Court;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the fact that the judgments in question were not made public;

4. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 17 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President