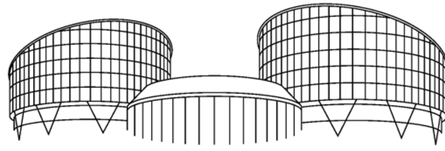

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF F.S. v. CROATIA

(Application no. 8857/16)

JUDGMENT

Art 1 P7 • Procedural safeguards relating to expulsion of aliens • Expulsion on national security grounds without reasons and on the basis of classified information not disclosed to the applicant • Significant limitation of applicant's procedural rights without sufficient counterbalancing safeguards

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 December 2023

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 F.S. v. Croatia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 8857/16) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a person who at the material time was stateless and who is now a national of Bosnia and Herzegovina, Mr F.S. ("the applicant"), on 15 February 2016;

the decision to give notice to the Croatian Government ("the Government") of the complaints concerning the lawfulness and conditions of the applicant's detention, restrictions on his movement, private and family life and procedural rights, and to declare inadmissible the remainder of the application;

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

the parties' observations;

Having deliberated in private on 14 November 2023,

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

INTRODUCTION

1. The case concerns the applicant's expulsion from Croatia on national security grounds, without reasons being given. The applicant complains of a violation of Article 1 of Protocol No. 7.

THE FACTS

2. The applicant was born in 1991 in Rome and his current residence is unknown. He was represented by Ms N. Owens, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

5. According to the applicant, he had lived in Croatia since 1998 and had been a citizen of Bosnia and Herzegovina. Since his parents had died when he was a child, he had lived with his sister, grandfather and two aunts, who

were all Croatian citizens. In 2005 he was granted temporary residence in Croatia, and in 2008 his residence became permanent.

6. In 2011 the applicant applied for Croatian citizenship for the first time.

7. On 19 December 2011 the Ministry of the Interior (*Ministarstvo unutarnjih poslova*) issued an assurance that the applicant would obtain Croatian citizenship if he had renounced his Bosnian-Herzegovinian citizenship or provided evidence of having renounced it within a period of two years. In setting out its reasons, the Ministry explained that the applicant met all the necessary conditions to be granted the assurance and thus Croatian citizenship. It also referred to section 8a of the Croatian Citizenship Act.

8. In March 2013 the applicant renounced his Bosnian-Herzegovinian citizenship and became stateless. Afterwards, he again applied for Croatian citizenship, in the context of which he was subject to security screening in accordance with the Security Screening Act (see paragraph 32 below).

9. According to the applicant, on 16 October 2014 he was summoned to the Zagreb police headquarters, where he was met by B., who said that he was an agent working for the national intelligence agency (hereinafter "the Agency"). B. asked him to cooperate with the Agency by providing information on people he knew from his Muslim community. He alleged that B. had threatened him that if he refused to cooperate, he would be given a negative opinion in relation to his citizenship application, his residence in Croatia would be terminated and he would ultimately be expelled from the country. The applicant initially agreed to the proposal and met with B. outside the police premises the following day. B. then allegedly started asking the applicant about his views on Islam, ISIS and certain individuals, and asked to have a copy of all the contacts from his mobile phone. The applicant then told B. that the cooperation which had been requested from him was contrary to his religious and moral convictions and that he refused to be part of it. B. got angry and left.

10. On 3 November 2014 the Agency informed the police that there were national security obstacles to the applicant acquiring Croatian citizenship, without providing further reasoning.

I. PROCEEDINGS FOR ADMISSION INTO CROATIAN CITIZENSHIP

11. On the basis of the above-mentioned opinion (see paragraph 10), on 6 November 2014, the Ministry of the Interior refused the applicant's application for citizenship under section 26(2) of the Croatian Citizenship Act, stating that he met all the requirements to acquire Croatian citizenship but that it would be contrary to the interests of the Republic of Croatia.

12. On 14 January 2015 the applicant challenged the Ministry's decision in the Zagreb Administrative Court (*Upravni sud u Zagrebu*), which held a hearing and consulted the Agency's classified file.

13. By a judgment of 13 May 2016, the Administrative Court dismissed the applicant's request for judicial review of the Ministry's decision, concluding that the Agency had been under no legal obligation to give reasons for its negative opinion concerning the applicant since the matter involved national security. The court further stressed that the authorities enjoyed discretion in deciding who was to be granted Croatian citizenship, which was why its judicial review had been limited to verifying whether the formal requirements had been met. In so far as the applicant had complained about the alleged pressure from an agent of the Agency (see paragraph 9 above), the court instructed him to use the avenue of redress provided for by the relevant legislation on the intelligence gathering system and make a complaint of unlawfulness on the part of the Agency to a special committee of seven members appointed by Parliament.

14. Following an appeal, and having also consulted the Agency's classified file, on 30 January 2017 the High Administrative Court (*Visoki upravni sud*) upheld the first-instance judgment. It reiterated that the applicant's security screening had been carried out in accordance with the law, as was required for all persons applying for Croatian citizenship, and that for any complaint he had concerning the functioning of the intelligence agency he was required to use the avenue of redress provided for by the relevant legislation on the intelligence gathering system.

15. On 20 October 2020 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's subsequent constitutional complaint. Having examined his case under Article 6 of the Convention, the Constitutional Court concluded that any limitations to the principles of adversarial proceedings or equality of arms had not been such as to violate the essence of his right to a fair hearing since the administrative courts, as courts of full jurisdiction, had had access to the classified documents on which the decision had been based and had had the authority to examine in detail the reasons for the non-disclosure of those documents and assess their validity.

16. Three out of twelve Constitutional Court judges dissented. Judge Ingrid Antičević-Marinović held that the applicant's basic procedural rights had been breached and criticised the Constitutional Court for not having followed the Court's case-law in *Muhammad and Muhammad v. Romania* ([GC], no. 80982/12, 15 October 2020). Judge Andrej Abramović considered the judicial review in the applicant's case to have been merely formalistic, since the administrative courts had not in any way examined the Agency's classified documents but had simply accepted them. Judge Goran Selanec stated that the administrative courts had refused to conduct any sort of substantive review of the established facts on the basis of which the Agency had found the applicant to be a threat to national security. In his view, the Constitutional Court had failed to follow its previous findings, in particular

its decision no. U-I-1007/12 of 24 June 2020 (see paragraph 37 below) as well as the Court's relevant case-law on the matter.

II. EXPULSION PROCEEDINGS

17. On 13 January 2015 the Agency submitted a classified document to the Ministry of the Interior indicating that all requirements for the applicant's expulsion from Croatia had been met because he represented a threat to national security within the meaning of section 106(1)(4) of the Aliens Act.

18. On the basis of that document, on 27 February 2015 the police ordered the applicant's expulsion and banned him from re-entering the country for a period of one year. His appeal against that decision was dismissed.

19. On 2 May 2016 the Zagreb Administrative Court dismissed the applicant's subsequent action for judicial review, finding that the administrative decision had been lawful and that he posed a threat to national security according to the Agency's classified document of 13 January 2015, which, pursuant to section 5(2) of the Aliens Act, had not needed to contain reasons.

20. On 30 January 2017 the High Administrative Court upheld the first-instance judgment, referring to the fact that the judges examining the applicant's request for judicial review in the citizenship proceedings had consulted the classified documents concerning him.

21. On 20 October 2020 the Constitutional Court dismissed the applicant's subsequent constitutional complaint, finding that the administrative courts had examined all his complaints and established that there were justifiable reasons for the order expelling him from the country and that there had been no arbitrariness in the decision-making process. The same three Constitutional Court judges dissented for the same reasons as in the citizenship proceedings (see paragraph 16 above).

III. PROCEEDINGS FOR THE TERMINATION OF PERMANENT RESIDENCE

22. On 10 March 2015 the police terminated the applicant's permanent residence in Croatia. That decision was based on the Agency's classified document of 13 January 2015 (see paragraph 17 above) as well as on the decision to expel him and ban his re-entry into the country (see paragraph 18 above). On the same date, the police also issued a decision on the applicant's return, ordering him to leave Croatia within thirty days. His subsequent appeals against both those decisions were dismissed.

23. The applicant's subsequent requests for judicial review of those decisions were dismissed by the Zagreb Administrative Court and his related appeals were dismissed by the High Administrative Court.

24. His constitutional complaint was dismissed by the Constitutional Court on 20 October 2020, with the same judges of that court dissenting for the same reasons as in the citizenship proceedings (see paragraph 16 above).

IV. THE APPLICANT'S ARREST AND STAY IN THE JEŽEVO IMMIGRATION CENTRE

25. On 24 October 2015 the applicant was arrested while attempting to cross the border from Croatia into Slovenia illegally. Since the decisions on his expulsion and return had already been issued but he had failed to comply with them, the police issued a fresh decision on his expulsion and ordered his detention in the Ježevo Immigration Centre for a period of six months. The applicant never challenged that decision in the administrative courts.

26. The applicant submitted that the Ježevo Immigration Centre had been overcrowded during his stay. The Government submitted that between 25 October and 28 December 2015 the applicant had been held in a room measuring 25 sq. m with five other people. Due to a large wave of migration, he had shared that room with eleven other people between 28 December 2015 and 22 February 2016, and with eight other people until 4 March 2016. After that date he was moved to another room measuring 12 sq. m, which he occupied alone.

27. During his stay in the Ježevo Immigration Centre the applicant was free to move around the entire premises between 8 a.m. and 10 p.m., including at least two hours outside. Temporary tents had been erected in the outside area due to the large wave of migration and access to it was therefore difficult during the first two months of 2016.

28. As regards his expulsion from Croatia, it would appear that for a certain period of time the applicant could not be returned to Bosnia and Herzegovina because he was no longer a national of that country. However, on an unspecified date his Bosnian-Herzegovinian citizenship was restored and he left Croatia voluntarily on 23 July 2016.

V. THE APPLICANT'S COMPLAINT ABOUT THE WORK OF THE INTELLIGENCE AGENCY

29. On 26 March 2015 the applicant sent a letter to the Civil Supervision of the Security Intelligence Agencies Committee of the Croatian Parliament stating that he had been a victim of misfeasance by the intelligence service.

30. Having conducted direct supervision of the Agency's work and interviewed the agents who had worked on the applicant's case, the Committee informed the applicant that it had established no misfeasance by the Agency in his case.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

31. The relevant provisions of the Croatian Citizenship Act (*Zakon o hrvatskom državljanstvu*, Official Gazette no. 53/91, with subsequent amendments) read as follows:

Section 8(1)

“An alien who submits an application may obtain Croatian citizenship by naturalisation if the following conditions are met:

1. he or she is over 18 years of age,

2. he or she has renounced foreign citizenship or submits proof of having renounced it if he or she acquires Croatian citizenship,

3. he or she has no less than five years of uninterrupted residence in the Republic of Croatia prior to filing the application and has been approved as an alien with permanent residence.

4. he or she knows the Croatian language and Latin script, Croatian culture and constitutional order.

5. he or she respects the legal order of the Republic of Croatia and has settled all public obligations, and there are no security obstacles to his or her acquisition of Croatian citizenship.”

Section 26(2)

“The Ministry of the Interior may reject an application for Croatian citizenship ... even if the requirements have been met, if it considers that there are reasons of interest for the Republic of Croatia for which the request for acquisition of ... citizenship should be rejected.”

32. The relevant provisions of the Security Screening Act (*Zakon o sigurnosnim provjerama*, Official Gazette no 85/08 and 86/12) read as follows:

Section 13

“1. A basic security screening shall be carried out on:

...

- foreigners being approved for residence in or acquiring citizenship of the Republic of Croatia.

...”

Section 35

“Having carried out a security screening, the relevant security and intelligence agency shall submit a report to the authority which requested the screening.”

Section 39

"1. The report on the results of the security screening shall contain an opinion on the existence of any security obstacles.

2. The content and format of the report referred to in subsection 1 ... shall be classified as 'confidential' or higher.

Section 41

"As an exception to sections 35 and 39 of this Act, when carrying out a security screening on ... persons acquiring Croatian citizenship, the relevant security and intelligence agency shall provide the authority which requested the screening with only an opinion on the possible existence or absence of national security obstacles."

33. Section 42 of the Republic of Croatia Security and Intelligence System Act (*Zakon o sigurnosno-obavještajnom sustavu Republike Hrvatske*, Official Gazette no. 79/06) provides as follows:

Section 42

"... A security screening shall also be carried out on persons acquiring Croatian citizenship and on aliens in the Republic of Croatia whose residence is important for national security."

34. The relevant provisions of the Aliens Act (*Zakon o strancima*, Official Gazette nos. 130/11 and 74/13), as in force at the material time, read as follows:

Section 5

"(1) The Security and Intelligence Agency shall carry out a security check of an alien for the purposes of determining reasons of national security.

(2) A decision refusing or terminating the residence of a foreigner or expelling a foreigner on grounds of national security shall specify the legal provision on which it is based, without indicating the reasons for which it has been taken."

Expulsion for reason of increased public danger
Section 106

"A decision on expulsion shall be made if:

1. an alien has been sentenced in a final judgment to an unconditional prison sentence exceeding one year for a criminal case committed with intent;

2. an alien has been sentenced in a final judgment more than once during a period of five years to imprisonment of at least three years for a criminal offence committed with intent;

3. an alien has been sentenced to an unconditional prison sentence for committing a criminal offence against the values protected by international law;

4. an alien poses a threat to national security."

35. The relevant provisions of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette no. 20/10, with subsequent amendments) read as follows:

Section 4

"(1) An administrative dispute may not be conducted in matters for which court protection is provided outside of an administrative dispute.

(2) An administrative dispute may not be conducted concerning the correctness of an individual decision made at the discretion of a public authority, but may be conducted concerning the lawfulness of such a decision, the limits of authority and the purposes for which the authority was granted.

..."

Section 58

"(1) If the court establishes that a particular decision of a public authority is unlawful, the court shall accept the claim, quash the disputed decision and resolve the matter itself, except where it may not do so in view of the nature of the matters concerned or where the respondent [authority] dealt with it at its discretion.

..."

36. The relevant provisions of the Data Secrecy Act (*Zakon o tajnosti podataka*, Official Gazette nos.79/2007 and 86/2012) read as follows:

Section 16

"1. If there is public interest in its disclosure, the owner of [classified] information shall assess the proportionality between the right of access to information and [the reasons for which the information was classified], and shall decide whether to maintain or amend the level of classification, or declassify the information ..."

Section 20

"1. Access to classified documents without a certificate shall be granted to State officials ... members of parliament, the Ombudsperson, judges, the State Attorney of the Republic of Croatia and his or her deputies [and] the director of the Office for the Suppression of Corruption and Organised Crime [and his or her deputies]."

37. In its decision no. U-I-1007/12 of 24 June 2020 the Constitutional Court undertook a review of the constitutionality of section 5(2) of the Aliens Act and section 41 of the Security Screening Act (see paragraphs 34 and 32 above) at the request of a judge of the Zagreb Administrative Court and the Ombudsman. It examined the entire legal framework in question and the relevant European Union legislation as well as the case-law of the Court of Justice of the European Union. It concluded that the provisions in question did not violate the right to effective legal protection as long as certain requirements of proportionality were respected by the administrative authorities and courts in dealing with the rights of the parties to effective legal protection. In particular, the administrative courts had the authority and

obligation to examine whether the relevant administrative authorities had respected the various procedural guarantees provided for by law, including their obligation to give precise and valid reasons for their decisions. They were entitled to ask the authority in question to submit information or evidence in that regard, whether or not it was classified. In a situation where informing a certain individual of information relevant to his or her case would run counter to national security, the courts had the task of using the available procedural mechanisms to reach a balance between the legitimate interest of confidentiality of classified information and respect for the procedural rights of the individual in question, such as the right to be heard and the right to adversarial proceedings. The Constitutional Court held that courts should also assess the validity of the reasons and legal elements provided by the competent authorities to justify their refusal to provide the individual with the information thereby limiting his or her interests. With a view to reaching the requisite balance, the courts were also allowed to summarise the content of the classified documents or evidence in question for the individual concerned.

THE LAW

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

38. The applicant complained that his expulsion had been ordered by a decision which had not contained reasons and that he had been unable to submit any reasons against his expulsion, in violation of his rights under Article 1 of Protocol No. 7 to the Convention, which reads as follows:

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

A. Admissibility

39. The Government submitted that the application was premature because the proceedings had still been pending at the domestic level when it had been lodged with the Court.

40. The applicant disagreed, submitting that the domestic courts had failed to decide his case speedily.

41. The Court notes that the applicant first lodged his application with the Court on 15 February 2016, requesting the application of Rule 39 of the Rules of Court against his expulsion. At that time, the domestic proceedings in his case were indeed still pending. His request under Rule 39 of the Rules of Court was rejected on 17 February 2016. However, the merits of his case, which were at that time still pending at the domestic level, have since been decided by both the High Administrative Court and the Constitutional Court.

42. The Court has previously accepted that the last stage of a particular remedy may be reached after the application has been lodged but before its admissibility has been determined, as is the situation in the present case (see *Karoussiotis v. Portugal*, no. 23205/08, § 57, 1 February 2011, and *Şahin Alpay v. Turkey*, no. 16538/17, § 86, 20 March 2018). It is moreover satisfied that the applicant raised his complaint under Article 1 of Protocol No. 7 to the Convention with the domestic authorities, thereby affording them the opportunity of putting right the alleged violation of the Convention. It follows that the Government's objection must be dismissed.

43. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' observations

(a) The applicant

44. The applicant complained that his expulsion had been ordered by a decision which had not contained reasons because his security screening had not been subject to any checks. The key reasons for the decision that he posed a national security threat had therefore not been known to him, leading to a situation in which he had been unable to submit any reasons against his expulsion. In fact, nobody except the person that had run the security screening had been aware of the circumstances or facts on which it had been established that he represented a threat to national security, no checks on security screenings being required under domestic law.

45. The applicant further argued that the security screening process had been abused in his case due to his ethnicity and religion. His refusal to cooperate with the national intelligence agency had been portrayed as if he himself presented a security risk and therefore did not meet the requirements for acquiring Croatian citizenship. He had been deprived of the status of an alien with permanent residence in Croatia and ultimately expelled from the country. The security screening carried out had not been subject to any checks, and the decisions on the basis of which he had lost his status rights had not contained reasons.

46. In the applicant's view, the purpose of non-disclosure of the intelligence agency's documents – such as protection of the Agency's investigative methods or the identity of its officers and their informants – would still have been achieved if he had at least been informed which of his activities were considered a threat to national security. In that regard, he maintained that he had known nothing about the threat he had allegedly posed, and even less than the applicants in *Muhammad and Muhammad v. Romania* ([GC], no. 80982/12, 15 October 2020).

(b) The Government

47. The Government maintained that the limitations to which the applicant had been subject had been counterbalanced in the domestic proceedings so as to preserve the very essence of his rights under Article 1 of Protocol 7.

48. The applicant had been informed of the allegations against him. On 23 February 2015 he had been summoned to the relevant police station, where he had been notified that proceedings for his expulsion from the Republic of Croatia had been instituted. Four days later, the police had ordered his expulsion from Croatia for a period of one year, basing their decision on a classified document provided to it by the national intelligence agency. The document in question had indicated that all requirements for the applicant's expulsion had been met because he represented a threat to national security within the meaning of section 106(1)(4) of the Aliens Act. There had been no need for further clarification of the Agency's document, since the applicant had not been charged with any criminal offence and, in any event, no clarification had been allowed under domestic law.

49. The Government further submitted that the applicant had been informed of the progress of the proceedings and represented by a lawyer. Moreover, the administrative court judges had examined the Agency's document in the proceedings concerning his acquisition of Croatian citizenship.

2. *The Court's assessment*

(a) General principles

50. The general principles on the procedural rights of lawfully resident aliens in expulsion proceedings were summarised in *Muhammad and Muhammad*, cited above, §§ 125-57; see also ibid., §§ 67-68 setting out the relevant parts of the Explanatory Report on Protocol No. 7).

51. In particular, the Court found that that Article 1 § 1 of Protocol No. 7 requires in principle that the aliens concerned be informed of the relevant factual elements which have led the competent domestic authorities to consider that they represent a threat to national security and that they be given

access to the content of the documents and the information in the case file on which those authorities relied when deciding on their expulsion (ibid., § 129).

52. Although these rights are not absolute, any limitations thereof must not negate the procedural protection guaranteed by Article 1 of Protocol No. 7 by impairing the very essence of the safeguards enshrined in that provision. Even in the event of limitations, the alien must be offered an effective opportunity to submit reasons against his expulsion and be protected against any arbitrariness. The Court will therefore first ascertain whether the limitations of the alien's procedural rights were found to be duly justified by the competent independent authority in light of the particular circumstances of the case, and secondly examine whether the difficulties resulting from those limitations for the alien concerned were sufficiently compensated for by counterbalancing factors (ibid., § 133). In this connection, the Court has stressed that the less stringent the examination by the national authorities of the need to place limitations on the alien's procedural rights, the stricter the Court's scrutiny of the counterbalancing factors will have to be (ibid., § 145).

53. The Court has set out certain factors capable of counterbalancing the limitations on an alien's procedural rights guaranteed by Article 1 of Protocol No. 7, such as the relevance of the information disclosed to the alien and his or her access to the documents on which the authorities based their decision, information as to the conduct of the proceedings and the domestic mechanisms in place to counterbalance the limitation of his or her rights, whether the alien was represented and whether an independent authority was involved in the proceedings (ibid., §§ 147-56; see also *Hassine v. Romania*, no. 36328/13, § 54, 9 March 2021). The Court has stressed that these factors do not have to be fulfilled cumulatively and that the assessment of the nature and extent of the counterbalancing factors to be implemented may vary depending on the circumstances of a given case (see *Muhammad and Muhammad*, cited above, § 157).

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

54. This being the first case against the respondent State to raise the issue of procedural rights of aliens under Article 1 of Protocol No. 7 to the Convention in a case of expulsion on national security grounds, the Court will examine the system and the procedural safeguards in place in Croatia, as well as the manner in which they were applied in the applicant's case.

55. In that connection, the Court notes that the applicant was a permanently resident alien in Croatia who had filed a request to obtain Croatian citizenship. Following a positive first assessment of his request, in 2011 he was issued with an assurance that he fulfilled all the requirements to obtain Croatian citizenship but that in order to acquire it, he needed to renounce his citizenship of Bosnia and Herzegovina, which he then did (see paragraphs 7 and 8 above).

56. Thereafter, following the security screening that has to be carried out on all persons seeking to acquire Croatian citizenship, in 2014 the national intelligence agency issued a negative opinion concerning the applicant, stating that he posed a risk to national security, without providing any further details and not being required to do so under domestic law (see paragraph 10 above).

57. On the basis of that opinion, the applicant's request for citizenship was refused. In the subsequent judicial review proceedings, judges of the Zagreb Administrative Court and the High Administrative Court consulted the Agency's classified file and explained that the decision on whether to grant Croatian citizenship to an individual fell primarily within the discretion of the respondent State and that judicial review in such matters was therefore limited (see paragraphs 13 and 14 above). The Court does not question that decision, nor did the applicant complain about the refusal of the authorities to grant him Croatian citizenship. In that connection, the Court reiterates that the Convention does not guarantee an individual the right to obtain citizenship of a particular country (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II (extracts)).

58. However, the applicant's security screening carried out in the framework of the refusal of citizenship seems to have triggered a number of further decisions by the domestic authorities, including a decision to terminate his residence and a decision to expel him from the country, that being the main focus of the applicant's complaint and therefore of the Court's analysis.

59. In that connection, the Court notes that the applicant was informed of the proceedings concerning his expulsion on national security grounds (see paragraph 48 above). However, apart from the general statement that it had been established that he posed a threat to national security, the authorities did not provide him with the slightest indication of the grounds on which they had based their assessment.

60. Under domestic law, the classified Agency opinion given in the citizenship proceedings did not have to contain reasons (see paragraph 32 above). The Agency's classified document subsequently provided to the police and serving as the basis for the termination of his residence and his expulsion from the country did not need to contain any reasons either (see paragraph 34 above). It is further not disputed that none of these documents or the material on which they were based was ever made available to the applicant for consultation under any circumstances or at any stage of the proceedings, as under domestic law they were considered classified materials.

61. In the Court's view, the process described above entailed a significant limitation of the applicant's right to be informed of the factual elements which served as a basis of the domestic authorities' decision to order his expulsion from Croatia. What remains to be examined is whether the limitations of the

applicant's procedural rights were duly justified and whether counterbalancing measures were put in place by the national authorities to mitigate those limitations (see paragraph 52 above).

62. In that connection, the Court notes that since it had been clear from the relevant legal provisions that the document on which the police based their decision did not have to contain reasons and that the applicant could not have access to the file because those documents were classified (see paragraphs 34 and 36 above), the domestic courts made no reassessment of how those provisions affected the applicant's rights in his individual case. Domestic law, moreover, did not allow the national courts to declassify the information in question since classified information could only be declassified by its owner (compare *Muhammad and Muhammad*, cited above, § 162, and contrast *Regner v. the Czech Republic* [GC], no. 35289/11, § 152, ECHR 2017 (extracts)).

63. Consequently, in the absence of any examination by the courts hearing the case of whether it was necessary to limit the applicant's procedural rights in the expulsion proceedings, the Court must exercise strict scrutiny in order to establish whether the counterbalancing factors put in place were capable of effectively mitigating the limitations of his procedural rights in the present case. In this context, the Court will take account of its finding that the limitations in question were significant (see paragraph 61 above, and compare *Muhammad and Muhammad*, cited above, § 165).

64. Turning to the counterbalancing factors available under domestic law at the material time, the Court notes that, as submitted by the Government, the applicant was notified by the authorities that proceedings for his expulsion on national security grounds had been initiated (see paragraph 48 above). However, as noted above, he was given none of the factual elements which led the authorities to conclude that he posed a risk to national security (contrast *Muhammad and Muhammad*, cited above, §§ 12 and 161, where the applicants had at least been made aware that the concerns about them involved terrorism; and *Poklikayew v. Poland*, no. 1103/16, §§ 6 and 66, 22 June 2023, where the decision notifying the applicant that his continued stay in Poland constituted a threat to national security also noted that he had collaborated with the Belarusian secret services). As he lacked even an outline of the facts which served as a basis for the conclusion that he posed a threat to national security, in the Court's view it cannot be said that he was able to present his case adequately in the subsequent judicial review proceedings (see *Ljatifi v. the former Yugoslav Republic of Macedonia*, no. 19017/16, § 39, 17 May 2018).

65. The Court further notes that, although the applicant was represented throughout the numerous administrative proceedings in question, it was not open to him to instruct a specialised lawyer with the appropriate authorisation to access classified documents, since there is no such procedure in domestic law (see paragraph 36 above). His representation was therefore not

sufficiently effective to be able to counterbalance, in a significant manner, the limitations affecting him in the exercise of his procedural rights in the present case (compare *Muhammad and Muhammad*, cited above, § 192).

66. The Court further notes that the decision to expel the applicant was reviewed by two court instances with the requisite independence, which in principle amounted to a significant safeguard capable of mitigating the effects of the limitations imposed on his procedural rights.

67. In this connection, the Court notes that in its decision no. U-I-1007/12 of 24 June 2020 the Constitutional Court found that the legal framework in Croatia provided the administrative courts with sufficient procedural mechanisms to effectively protect the rights of individuals in cases of expulsion on national security grounds. In situations where notifying a certain individual about information relevant for his or her case would run counter to national security, the competent courts had the task of using the available procedural mechanisms to reach a balance between the legitimate interest of confidentiality of classified information and the respect for the procedural rights of the individual in question, such as the right to be heard and the right to adversarial proceedings. This included, if necessary, by giving the person concerned a summary of the content of any classified documents in their case (see paragraph 37 above).

68. Turning to how the administrative courts used their powers in the present case, the Court notes that although the judges deciding the applicant's case had the right to seek access to the classified material in the judicial review proceedings concerning his expulsion, they do not appear to have taken that opportunity (see, *a contrario*, *Regner*, cited above, § 154). Instead, the High Administrative Court noted that classified documents concerning the applicant's security screening had already been consulted in the judicial review of the denial of his request for citizenship (see paragraph 20 above).

69. While the two sets of proceedings were unquestionably related to a certain extent (see paragraph 58 above), their aim was not the same, and the Court cannot accept that reliance on the outcome of the earlier decision to deny the applicant citizenship or on the procedural safeguards provided therein could have fully counterbalanced the limitation of his procedural rights in the subsequent expulsion proceedings. This is so firstly because the Administrative Court only decided to deny him citizenship after it had already rejected his action for judicial review of his expulsion (see paragraphs 13 and 19 above). Secondly, and more importantly, as explained by the Administrative Court, the decision to grant or deny citizenship to an individual depended on the discretion of the State authorities and was not subject to a full judicial review of legality (see paragraph 13 above). On the other hand, in the expulsion proceedings adequate procedural safeguards, including full judicial review, must be put in place.

70. Lastly, the Court notes that in their judicial review of the expulsion decision, the domestic courts did not duly explain either the importance of

preserving the confidentiality of the Agency's document in the particular circumstances of the applicant's case or the extent of the review they had carried out (see *Regner*, §§ 158-60, and *Ljatifi*, § 40, both cited above). In other words, in the applicant's case the domestic courts seem to have failed to make use of the procedural mechanisms available to them under domestic law (see paragraphs 37 and 67 above), which could have given him an effective opportunity to submit reasons against his expulsion. Instead, they confined themselves to a merely formalistic examination of the disputed decisions, thereby failing to subject the executive's assertion that the applicant posed a national security risk to any meaningful judicial scrutiny (see *Ljatifi*, cited above, § 40; *Lupsa v. Romania*, no. 10337/04, § 41, ECHR 2006-VII; and *Kaya v. Romania*, no. 33970/05, § 42, 12 October 2006).

71. The foregoing considerations are sufficient to enable the Court to conclude that, having regard to the proceedings as a whole and taking account of the margin of appreciation afforded to States in national security matters, the limitation of the applicant's procedural rights in the proceedings concerning his expulsion were not counterbalanced in the domestic proceedings so as to preserve the very essence of those rights and protect him against arbitrariness.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

73. The applicant also complained under Article 5 of the Convention about the lawfulness of his detention, under Article 3 about his conditions of detention in the Ježevo Immigration Centre, under Article 8 of interference with his private and family life, under Article 2 of Protocol No. 4 to the Convention of restrictions on his liberty of movement and under Article 13 of the Convention of the lack of an effective remedy.

74. As regards his complaints under Articles 3 and 5 of the Convention, the Court notes that, as the Government rightly pointed out, the applicant never lodged an action in judicial review against the decision of the Zaprešić police of 24 October 2015 to place him in the Ježevo Immigration Centre or about the conditions of his detention therein (see paragraph 25 above). Had he done so, the competent Administrative Court would have been able to examine the merits of his complaints, and it would have further been open to the applicant to appeal to the High Administrative Court, and eventually lodge a complaint with the Constitutional Court (compare *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, §§ 37-45, 18 November 2021, where that avenue of redress had been successful for some of the applicants). Accordingly, these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

75. As regards the remainder of the complaints, having regard to the facts of the case, the submissions of the parties and its above findings, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the remaining complaints.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 554,31 in respect of pecuniary damage for the court fees he had had to pay in the proceedings before the administrative courts.

78. The Government contested those claims.

79. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

80. The applicant also claimed EUR 14,962.58 for the costs and expenses incurred before the domestic courts and the Court.

81. The Government contested those claims.

82. 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 (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 1 of Protocol No. 7 to the Convention admissible and the complaints under Articles 3 and 5 of the Convention inadmissible;

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

3. *Holds* that there is no need to examine the admissibility or merits of the complaints under Articles 8 and 13 of the Convention or under Article 2 of Protocol No. 4 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
   (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (iii) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President