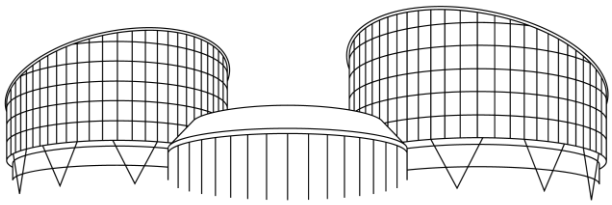

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JOANNA SZULC v. POLAND

(Application no. 43932/08)

JUDGMENT

STRASBOURG

13 November 2012

FINAL

13/02/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Joanna Szulc v. Poland,

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

Päivi Hirvelä, *President,*
Lech Garlicki,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 43932/08) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Ms Joanna Szulc ("the applicant"), on 29 August 2008.

2. The applicant was represented by Mr M. Pietrzak, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, first Mr J. Wołąsiewicz and, subsequently, Ms J. Chrzanowska, both of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a breach of Article 8 of the Convention as regards access to her file stored by the Institute of National Remembrance.

4. On 24 November 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Warsaw.

A. Background information

6. According to the applicant, in 1974 she received a job offer from the Japanese company Kanematsu-Gosho Ltd which she apparently refused. In 1974-1975 she worked for the Nigerian Embassy in Warsaw and in 1976 for the Indian Embassy.

7. On a few occasions the security services attempted to recruit her as a collaborator but the applicant never consented despite threats. In December 1974 the applicant was summoned to the Warsaw Civic Militia Headquarters. She had a conversation with an officer of the counter-intelligence service in connection with the job offer from the Japanese company. The officer tried to persuade her to collaborate with the service but the applicant refused and stated that she would rather decline the job offer.

8. Subsequent meetings with officers of the Security Service (*Służba Bezpieczeństwa*) took place in 1975. The applicant consistently refused to collaborate. One such meeting took place in connection with the applicant's request to obtain a passport for a holiday trip to Greece. The applicant was instructed to prepare a report from her trip which she submitted upon her return.

9. For a number of years the applicant lived in England. She was involved in the activities supporting the Solidarity ("Solidarność") Trade Union in Poland.

B. Access to the applicant's file held by the Institute of National Remembrance

10. The Law of 18 December 1998 on the Institute of National Remembrance ("the Institute Act"; *Ustawa o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu*) entered into force on 19 January 1999. The Institute's tasks included, *inter alia*, storing and researching documents of the communist security services. The right of access to those documents was guaranteed primarily to "injured parties" as defined in the Institute Act.

11. On 15 February 2001 the applicant applied to the Institute of National Remembrance ("the Institute") for leave to consult all documents collected on her by the security services.

12. On 2 March 2004 the applicant received a certificate informing her that she could not be considered an "injured party" (*pokrzywdzona*) within the meaning of section 6 of the Institute Act. In a letter of the same date she was informed that the Institute would continue to search the archives for documents regarding her. The certificate which the applicant received simply indicated that after two rounds of search the Institute had not found any documents created by the former security services about her.

13. On 26 October 2005 the Constitutional Court reviewed the constitutionality of the provisions of the Institute Act regarding access to documents held by the Institute (case no. K 31/04). It found, *inter alia*, that sections 30 § 1 and 31 §§ 1 and 2 of the Institute Act, in so far as they deprived interested persons – other than injured parties – of the right to be provided with information about documents concerning them, were unconstitutional (see Relevant domestic law below).

14. On 29 July 2006 the applicant again applied for access to all documents collected on her by the security services. She relied on the above Constitutional Court's judgment of 26 October 2005. According to the applicant, that judgment stipulated that every interested person had the right to have access to documents held by the Institute concerning him or her on the basis of Article 51 § 3 of the Constitution, regardless of whether he or she had been granted the status of the "injured party".

15. On 15 November 2006 the applicant was allowed to consult documents in her file which concerned her as a subject of interest of the former security services (*obiekt zainteresowania SB*). However, she did not receive access to all documents about her and she could not receive any copies or make notes.

16. On 25 November 2006 the applicant again applied to the President of the Institute for leave to consult all documents concerning her. She noted that the documents which she was allowed to consult so far confirmed that she had refused to collaborate with the security services. The applicant learnt for the first time from those documents that the security services had invented a plan to subject her to surveillance. She also discovered that she had been given a code name and expressed her indignation in this respect.

17. In reply, on 20 February 2007, the Deputy Head of the Archive Office of the Institute informed the applicant that her request to have access to all documents concerning her could not be granted. In his view, according to the Constitutional Court's judgment of 26 October 2005 the right of access to documents did not extend to all documents concerning the applicant but was applicable exclusively to those which treated her as a subject of interest of the former security services. Accordingly, she was informed that the consultation of documents by the applicant which had taken place on 15 November 2006 had been carried out in accordance with the procedure adopted by the Institute and that all documents which treated her as a subject had been disclosed.

18. The Institute Act was amended by the Law of 18 October 2006 on disclosing information about the documents of the State security services from the period between 1944 and 1990 and the content of these documents ("the 2006 Lustration Act"), which entered into force on 15 March 2007. Henceforth, the rules on access to documents deposited with the Institute were set out in amended sections 30 and 31 of the Institute Act (see Relevant domestic law below). The status of an "injured party" was

repealed. The amended Institute Act further stipulated that the Institute will create an Internet catalogue of persons who had collaborated or assisted the former State security services in their undercover activities.

19. The Institute Act and the 2006 Lustration Act were further amended by the Law of 14 February 2007 which entered into force on 28 February 2007.

20. The applicant, having been aware that her name appeared on the "Wildstein list" (see part C. below), was concerned that her name might be included in the official catalogue. This would have amounted to her official condemnation as an informant of the communist security services only on the basis of the entries made by the officers of those services without the applicant's having been aware of it.

21. On 11 May 2007 the Constitutional Court (case no. K 2/07) found the 2006 Lustration Act and the Institute Act as amended to a large extent unconstitutional and quashed many of its provisions with effect from 15 May 2007. It struck down, among others, section 30 § 2(2) of the Institute Act which excluded access of interested persons to documents indicating that they had collaborated or assisted the former State security services in their undercover activities (see Relevant domestic law below).

22. In the meantime, on 20 March 2007, the applicant had again requested access to all documents concerning her pursuant to the rules in force as from 15 March 2007.

23. On 19 November 2007 the Director of the Warsaw Branch of the Institute gave a decision in which it refused her access to two documents. He considered that the content of these two documents fulfilled the conditions specified in section 31 § 1(2a) of the Institute Act. This provision stipulated that the refusal to allow access to documents whose content indicated that the petitioner had been considered by the security services as a secret informant or an assistant in covert gathering of information should be given in the form of an administrative decision.

24. The applicant appealed against that decision, submitting that it had been given pursuant to the rules declared unconstitutional by the Constitutional Court.

25. On 19 February 2008 the President of the Institute quashed the decision on procedural grounds and referred the case back. He found that the Director of the Warsaw Branch of the Institute had not ruled on the application of the Helsinki Foundation for Human Rights, a human rights organisation, to join the proceedings as a third party.

26. On 4 June 2008 the Director of the Warsaw Branch of the Institute gave a decision in which it refused the applicant access to three documents. He again relied on section 31 § 1(2a) of the Institute Act. The applicant appealed.

27. On 12 August 2008 the President of the Institute upheld the impugned decision. He confirmed that the documents at issue indicated that

the applicant had been considered by the security services as a secret informant or an assistant in the covert gathering of information. Accordingly, the refusal of access was justified under section 31 § 1(2a) of the Institute Act.

With regard to the applicant's argument that the decision was based on the unconstitutional norm, the President of the Institute noted that section 30 § 2 of the Institute Act constituted a substantive legal basis for granting or refusing access to documents, while section 31 § 1 was a procedural provision. However, since the legislator decided to replicate in section 31 § 1 the same conditions justifying refusal as stipulated in section 30 § 2 then the former provision could not be interpreted without taking into account these conditions. The President of the Institute did not accept the applicant's argument that since section 30 § 2 had been declared unconstitutional and repealed, then it followed that a different provision (section 31 § 1) with the same content was also unconstitutional. He went on to say that only when the Constitutional Court expressly declared unconstitutional a given provision of the law was the authority under the obligation not to apply such provision.

28. The applicant lodged a complaint against the decision with the Warsaw Regional Administrative Court. On 27 May 2009 the Regional Administrative Court dismissed her complaint.

29. On 7 July 2009 the applicant filed a cassation appeal with the Supreme Administrative Court. She argued, *inter alia*, that the decisions of the Institute refusing her access to documents of the security services entailed a breach of a number of constitutional provisions and of Article 8 of the Convention. They were, furthermore contrary to the Constitutional Court's judgment of 11 May 2007 (case no. K 2/07).

30. On 21 October 2009 the Supreme Administrative Court stayed the proceedings on the ground that a legal question on the constitutionality of, *inter alia*, section 31 § 1(2) of the Institute Act had been put to the Constitutional Court by a different panel of the Supreme Administrative Court. This provision was relied on as the basis of the Institute's negative decisions in the applicant's case.

31. On 20 October 2010 the Constitutional Court (case no. P 37/09) ruled, among others, that section 31 § 1(2) of the Institute Act was incompatible with the Constitution, in particular the right to protection of private life (Article 47), the right of access to official documents concerning oneself (Article 51 § 3) and the right to request the correction or deletion of untrue or incomplete information (Article 51 § 4).

32. On 14 January 2011 the Supreme Administrative Court resumed the proceedings. On 4 May 2011 it gave judgment quashing the Warsaw Regional Administrative Court's judgment and the two preceding decisions of the Institute. It relied on the Constitutional Court's judgment of 20 October 2010, in particular that court's finding of unconstitutionality of

section 31 § 1(2) of the Institute Act which had served as the legal basis of the decisions in the applicant's case.

33. On 22 August 2011 at the Warsaw Branch of the Institute the applicant was granted access to copies of all documents concerning her which had been created by the communist security services.

C. The applicant's name on the Wildstein list and the "auto-lustration" proceedings

34. In October 2004 the Institute of National Remembrance decided to create a list of officers, collaborators, candidates for collaborators of the State security services and of other persons whose files had been collected by it. This list consisted of the first name, the surname and, in some cases, the case file number. The list was made available on computers in the Institute library, to which access was restricted to researchers and journalists.

35. In January 2005 the list, consisting of some 240,000 names, was published on the Internet and unofficially named "the Wildstein list" ("*Lista Wildsteina*") after a journalist who had allegedly removed it from the Institute and published it. The publication of the list received wide media coverage, particularly since the names of some important public figures appeared on it.

36. In response to these events, on 4 March 2005 Parliament passed an amendment to the Institute Act and added section 29a, which afforded persons concerned the right to obtain a certificate clarifying whether their name was on the list.

37. In February 2005 the applicant discovered that her name appeared on the "Wildstein list". On 9 February 2005 she applied to the Institute for clarification of whether her personal details corresponded to the data on the "Wildstein list".

38. On 27 January 2006 the Institute issued a certificate confirming that her personal details (names, surname, date and place of birth) corresponded to the data included in the Institute's catalogue of officers, collaborators, candidates for collaborators of the State security services and of other persons. At the same time she was informed that the certificate did not confer on her the status of an "injured party" and did not entitle her to access documents held by the Institute.

39. On 18 October 2007 the applicant requested the Warsaw Regional Court to institute the so-called "auto–lustration" proceedings under section 20(5) of the 2006 Lustration Act. This provision stipulated that lustration proceedings could also be instituted by a person who prior to the entry into force of the Lustration Act had held a public office and who was publicly accused of having been working or collaborating with the State security services between 1944 and 1990. The applicant relied on the Constitutional

Court's judgment of 11 May 2007 (case no. K 2/07), which extended the application of that provision to persons who had not held public office. She submitted her lustration declaration, in which she denied having been an intentional and secret collaborator with the secret services and requested the court to give a ruling that her declaration was true. The applicant maintained that the fact that her name had appeared on the "Wildstein list", which had been made public on the Internet, constituted public accusation since the list had been regarded by the general public as a list of agents and collaborators.

40. She submitted that the Institute had refused to grant her the status of an injured party and subsequently had denied her access to certain documents concerning her. These circumstances could have indicated that there had been some documents showing that she had collaborated with the security services. Additionally, she found her name on the "Wildstein list" and received a certificate that her personal data matched those on the said list. The applicant argued that such situation was grossly unfair and demanded to institute lustration proceedings with a view to terminating any speculation about her alleged collaboration with the security services. She also hoped that in the framework of these proceedings she would be provided with access to all documents about her stored by the Institute.

41. On 18 December 2007 the Warsaw Regional Court dismissed her application to institute lustration proceedings, considering that she had not been publicly accused of having been a secret collaborator within the meaning of Article 20(5) of the 2006 Lustration Act. Firstly, it was not certain that she was the person whose name had been on the list. Even assuming that her name had been on the list, such fact could not be tantamount to an accusation of having collaborated with the security services. The court noted that the media had reported that the list had been only a sort of a catalogue facilitating the use of the Institute's archives. It contained the names of persons who had been registered by the security services for various reasons; some had been actual secret collaborators but there were other persons who had been preselected for that role, without necessarily having been aware of that fact.

42. The applicant appealed against the decision.

43. On 29 February 2008 the Warsaw Court of Appeal upheld the impugned decision. The court found that there were no sufficient grounds to consider that the applicant had been publicly accused of having collaborated with the security services. The list of names produced by the applicant indicated that it contained not only the names of agents but also of victims. Furthermore, the court found that the applicant had not established that the inclusion of her name on the list had had any specific adverse consequences for her. It considered relevant that the Institute's decisions and certificates referred to by the applicant were not public documents. No further appeal lay against that judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant constitutional provisions

44. Article 47 of the Constitution of 1997 provides:

> "Everyone shall have the right to legal protection of his private and family life, of his honour and good reputation and to make decisions about his personal life."

45. Article 51 §§ 3 and 4 of the Constitution states:

> "3. Everyone shall have the right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute.
>
> 4. Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute."

B. The Law on the Institute of National Remembrance

46. The Law of 18 December 1998 on the Institute of National Remembrance ("the Institute Act"; *Ustawa o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu*) entered into force on 19 January 1999. The Institute's tasks included, *inter alia*, storing and researching documents of the communist security services. The right of access to those documents was guaranteed primarily to "injured parties" as defined in the Institute Act. Limited access was further provided to officers, employees and collaborators of the security services and separately to researchers and journalists.

47. Section 6 of the Institute Act provided that an "injured party" (*pokrzywdzony*) was a person on whom the State security services deliberately collected information, including secretly. However, a person who subsequently became an officer, employee or a collaborator of the security services could not be considered an "injured party" (section 6 § 3).

According to section 30 § 2 of the Institute Act everyone had the right to inquire whether he or she was an injured party within the meaning of the Act. Person certified as an "injured party" had the right to obtain information from the Institute about documents concerning him (section 30 § 1). The Institute had the obligation to inform the "injured party" about the manner of access to the documents concerning him and to provide him, on request, copies of those documents (section 31 §§ 1-2). Section 33 § 1 further provided that an "injured party" had the right to submit his or her corrections to and clarifications in respect of existing documents.

C. Amendment to the Institute Act following the publication of the "Wildstein list"

48. On 18 February 2005 a group of deputies to the Sejm introduced a bill amending the Institute Act. They noted that the Institute's catalogue of officers, secret collaborators and candidates for secret collaborators did not include any other details than a name and the surname of those persons. This situation led to a general uncertainty and created suspicions in respect of many persons who had not had in the past any contacts with the State security services. Their bill was intended to remedy the situation.

49. On 4 March 2005 Parliament passed the amendment to the Institute Act. On 20 April 2005 new section 29a (1) of the IPN Act came into force. It provided as follows:

> "The President of the Institute of National Remembrance shall within 14 days of an application issue a certificate stating whether or not the personal details of the applicant correspond to the personal details included in the list of officers, collaborators and proposed collaborators of the State security services ... or other persons that was made accessible at the Institute as of 26 November 2004."

D. Judgment of the Constitutional Court of 26 October 2005 (case no. K 31/04)

50. In 2004 the Ombudsman challenged the constitutionality of certain provisions of the Institute Act concerning access to documents held by the Institute.

On 26 October 2005 the Constitutional Court gave judgment in case no. K 31/04. It held, *inter alia*, that section 30 § 1 and section 31 §§ 1 and 2 taken in conjunction with section 6 §§ 2 and 3 of the Institute Act, in so far as they deprived interested persons – other than injured parties – of the right to be provided with information about documents concerning them, were incompatible with Article 47 (protection of private life) and Article 51 §§ 3 and 4 (the right of access to official documents concerning oneself and the right to demand the correction or deletion of untrue or incomplete information) of the Constitution. It further found that section 33 § 1 taken in conjunction with section 6 §§ 2 and 3 of the Institute Act, in so far as it deprived interested persons – other than injured parties – of the right to submit their corrections to and clarifications in respect of documents concerning them, was incompatible with the same constitutional provisions.

51. The Constitutional Court noted that the Institute Act justifiably afforded special status to the "injured party" and bestowed on this category of persons a number of rights. It identified under the Institute Act a distinct category of persons, namely those who applied for the status of the "injured party" and whose applications were refused. The refusal resulted either from the lack of documents concerning a person seeking the status or from the

fact that the security services had not collected information on them. The Constitutional Court disagreed with the Ombudsman that the Institute's refusal to classify a person as the "injured party" had been tantamount to an official declaration that such person had been an officer, employee or collaborator of the State security services. At the same time it pointed to the incoherent criteria used by the Institute in classifying persons as collaborators of the security services. It also noted that the Institute's archives contained information which had been, in principle, collected without any legal basis and often unlawfully. The Constitutional Court underlined that the constitutional right of access to official documents (Article 51 § 3) was related solely to the documents concerning a given person as a subject of interest of the security services. It did not extend to documents which were created by a given person in his capacity of an officer, employee or collaborator of the security services.

E. Amendments to the Law on the Institute of National Remembrance

52. The Institute Act was amended by the Law of 18 October 2006 on disclosing information about the documents of the State security services from the period between 1944 and 1990 and the content of these documents ("the 2006 Lustration Act"; *ustawa o ujawnianiu informacji o dokumentach organów bezpieczeństwa państwa z lat 1944-1990 oraz treści tych dokumentów*). The amendments entered into force on 15 March 2007.

53. The 2006 Lustration Act and the Institute Act were further amended by the Law of 14 February 2007. These amendments entered into force on 28 February 2007.

54. The amended sections 30 and 31 regarding access to documents held by the Institute stated in so far as relevant:

> "Section 30. 1. Everyone has the right to request the Institute for access to copies of documents concerning him.
>
> 2. The Institute grants access to copies of available documents concerning the applicant, which are referred to in § 1, with the exception of the following:
>
> 1) documents created by the applicant or with his participation ... in connection with his employment or service in the State security agencies or in connection with his activities carried out as a secret informant or an assistant in covert gathering of information;
>
> 2) documents whose content indicates that the applicant:
>
> a) was considered by the security services as a secret informant or an assistant in covert gathering of information,
>
> b) undertook to provide information to the State security service or to assist such service in whatever form in its covert activities,
>
> c) executed tasks given by the State security service, in particular provided information to the service. ...

Section 31. 1. A refusal to allow request, referred to in section 30, in so far as it concerned access to documents:

1) created by the applicant or with his participation ... in connection with his employment or service in the State security agencies or in connection with his activities carried out as a secret informant or an assistant in covert gathering of information;

2) whose content indicates that the applicant:

a) was considered by the security services as a secret informant or an assistant in covert gathering of information,

b) undertook to provide information to the State security service or to assist such service in whatever form in its covert activities,

c) executed tasks given by the State security service, in particular provided information to the service,

is effected in the form of an administrative decision. ..."

F. Judgment of the Constitutional Court of 11 May 2007 (case no. K 2/07)

55. In the case no. K 2/07 the Constitutional Court reviewed the constitutionality of the 2006 Lustration Act and the Institute Act as amended which had been challenged by a group of members of parliament. It gave its seminal judgment on the issues of lustration and access to documents held by the Institute on 11 May 2007.

56. With regard to the issue of access to documents, the Constitutional Court struck down as unconstitutional section 30 § 2(2) of the Institute Act. This provision excluded access of interested persons to documents indicating that that they had collaborated or assisted the former State security services in their undercover activities. The Constitutional Court noted that the Constitution guaranteed to everyone the right of access to official documents and data collections concerning oneself (Article 51 § 3) and the right to demand the correction or deletion of untrue or incomplete information, or information acquired by unlawful means (Article 51 § 4). This latter right, which was related to the right to privacy guaranteed in Article 47 of the Constitution, could not be statutorily restricted to a certain category of persons. The Constitutional Court underlined that no State interest could legitimise or justify preservation in official records of information which was untrue, incomplete or acquired in a manner contrary to statute.

57. It further declared unconstitutional section 52a(5) of the Institute Act. The latter provision stipulated that the Lustration Office of the Institute was charged with preparation and publication of catalogues of persons referred to in section 30 § 2(2). The wording used in this provision was identical to the formulation employed in section 30 § 2 of the Institute Act.

The Constitutional Court noted that such catalogues would rely on classification adopted by the totalitarian security services and their assessment of a person. In its view, the publication of such catalogues would have amounted to legitimisation of the activities of the security services and, at the same time, to stigmatisation of persons included in these catalogues. Such a situation would be incompatible with Articles 47 and 51 § 4 of the Constitution.

58. The judgment was promulgated on 15 May 2007 and on that day the unconstitutional provisions were abrogated.

G. Decision of the Constitutional Court of 28 May 2008 (case no. K 2/07)

59. On 17 July 2007 the Speaker of the Sejm requested the Constitutional Court for interpretation of the judgment of 11 May 2007. He submitted, *inter alia*, that the court had not given reasons for its finding of unconstitutionality in respect of section 30 § 2(2) of the Institute Act.

60. The Constitutional Court noted that there was no doubt that section 30 § 2(2) had been declared unconstitutional. It observed that the Speaker's request was aimed at supplementing the reasons for the judgment; however there was no such possibility under the Constitutional Court Act. Nonetheless, the Constitutional Court drew attention to the fact that the sections 30 § 2(2) and 52a(5) of the Institute Act, which both had been declared unconstitutional, had identical content and thus they had concerned the same legal norm although spelled out in two different provisions. Both provisions concerned the same group of persons, namely those considered by the State security services as a secret informants or assistants in covert gathering of information. The Constitutional Court noted that the reasons for the finding of unconstitutionality in respect of section 52a(5) were equally applicable to section 30 § 2(2) of the Institute Act. It noted that an unconstitutional legal norm could appear in part as well as in one or more legal provisions; however the finding of unconstitutionality of a legal norm and hence its disqualification was relevant for all situations in which such norm may be applied.

61. The Constitutional Court further held as follows:

> "It should be underlined that the same category of persons [as mentioned in section 30 § 2(2)] is referred to in section 31 § 1(2) of the Institute Act which was not challenged in the case no. K 2/07 and thus was not reviewed by the Constitutional Court. However, the lack of review in this part [in respect of this provision] cannot justify negative administrative decisions issued on the basis of section 31 of the Institute Act only for the reason that section 31 § 1(2) survived as a result of the lack of challenge to it. Section 31 of the Institute Act is functionally connected with the content of section 30 § 2(2) and may produce legal consequences only in so far as it is harmonised with the content of section 30 § 2(2) following the intervention of the Constitutional Court in respect of the latter, as well as in respect of section 52a(5)

of the Institute Act. What is decisive in such situations is the fact that a legal norm (included in section 52a(5) of the Institute Act, and used also in unchallenged section 31 § 1(2)) was declared unconstitutional in the judgment of the Constitutional Court. It is also relevant that section 31 of the Institute Act determines solely a form of the decision refusing request for access to copies of documents concerning [an applicant], while the immediately preceding it section 30 speaks of the individual right of access to documents, which is an implementation at the statutory level of the constitutional principle of access of every person to official documents and data collections specified in Article 51 § 3 of the Constitution. It is obvious that the provision regulating solely a form of a decision in respect of a given right, in this case an administrative decision, may not serve as the basis for determination of the substantive content of the right, its scope and the conditions for its realisation."

H. Judgment of the Constitutional Court of 20 October 2010 (case no. P 37/09)

62. In 2009 the Supreme Administrative Court and the Warsaw Regional Administrative Court put to the Constitutional Court legal questions on the constitutionality of various provisions of the Institute Act, including section 31 § 1(2).

63. On 20 October 2010 the Constitutional Court gave judgment. It held that section 31 § 1(2) of the Institute Act, in its version applicable up until 26 May 2010, was incompatible, among others, with Articles 47 and 51 §§ 3 and 4 of the Constitution in conjunction with Article 31 § 3 of the Constitution (the principle of proportionality).

64. The Constitutional Court widely referred to its decision of 28 May 2008 (see above) and confirmed that a finding of unconstitutionality in respect of a given legal norm was authoritative for all situations in which such norm may be applied, regardless of whether the norm was included in one or more legal provisions.

The Constitutional Court also relied on its findings in the judgment of 11 May 2007 (case no. K 2/07). It summarised its approach in that case as follows:

"... for institutional, functional and procedural reasons the Institute Act together with the 2006 Lustration Act constitute one instrument. In this connection, if the documents created and collected by the State security services, meant to indicate the collaboration within the meaning of section 3a § 2 of the 2006 Lustration Act, are constituting the basis for drawing adverse social, moral, political as well as legal consequences in respect of persons subjected to lustration and other persons whose data were registered and included in catalogues [of the Institute], [then] such persons, in a democratic State ruled by law, have to have the right to defend their dignity, reputation and good name. Accordingly, they have to be accorded the right of access to the full range of documents concerning them and used against them. ... This right has to encompass access to documents, deposited with the Institute, in which interested persons were attributed an involvement in the creation of these documents. This is relevant from the point of view of the content of those documents, conclusions formulated and drawn by the officers of the State security services on the basis of the transmitted information and, in particular, from the point of view of the supposed

intention of a person passing on the information to "violate the rights and freedoms of a man and a citizen""

65. The Constitutional Court observed that section 31 § 1(2) of the Institute Act was of procedural character, but it further specified the grounds for a decision refusing access to certain documents. These conditions matched the content of section 30 § 2(2) of the Institute Act which had been abrogated as a result of the finding of its unconstitutionality. Nonetheless, the administrative courts submitted to the Constitutional Court that in practice section 31 § 1(2) had been used by the Institute as a substantive basis for decisions refusing access to documents specified in this provision. It further noted that after the said judgment the parliament amended the Institute Act on five occasions; however it did not amend section 31 § 1(2).

66. The Constitutional Court found that a limitation on access to documents of persons, which were referred to in the unconstitutional section 30 § 2(2), which was imposed in a procedural rather than substantive form in section 31 § 1(2), amounted to unjustified interference with the informational autonomy of an individual and restricted the constitutional right to request the correction or deletion of untrue or incomplete information (Article 51 § 4). The Constitutional Court held that that limitations specified in section 31 § 1(2) of the Institute Act on access of interested persons to official documents concerning them were constitutionally disproportionate, and thus in breach of Articles 47 and 51 §§ 3 and 4 of the Constitution in conjunction with Article 31 § 3 of the Constitution. It further held that the impugned provision was incompatible with Article 2 of the Constitution (the rule of law principle) on account of the excessive degree of its imprecision and vagueness.

I. 2010 Amendments to the Law on the Institute of National Remembrance

67. On 18 March 2010 the parliament passed amendments to the Institute Act which entered into force on 27 May 2010. According to the new wording of section 30 of the Institute Act everyone had the right of access to documents concerning him which were deposited with the Institute. The limitations on access which were examined by the Constitutional Court in its judgment of 20 October 2010 were repealed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AS REGARDS ACCESS TO THE APPLICANT'S FILE

68. The applicant complained under Article 8 of the Convention about her unsuccessful attempts to obtain access to all documents collected on her by the communist-era secret services and deposited with the Institute. Article 8 of the Convention reads as follows:

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

A. Admissibility

1. The parties' submissions

69. In their initial observations of 6 May 2009, the Government argued that the complaint concerning access to the applicant's file had been premature. They referred to the fact that the applicant had lodged a complaint with the Warsaw Regional Administrative Court against the decision of the President of the Institute of 12 August 2008 on the denial of access and that those proceedings had been pending at the relevant time.

70. Subsequently, the Government submitted that on 22 August 2011 the applicant had been granted access to all documents concerning her deposited with the Institute in accordance with the amendments to the Institute Act which had entered into force on 27 May 2010. In this connection, they maintained that the applicant could no longer claim to be a victim of the alleged violation of Article 8 of the Convention.

71. The applicant argued that the proceedings concerning access to documents deposited with the Institute had been of an auxiliary nature. She commented on her victim status by saying that the decision to grant her access to all documents on 22 August 2011 could not change the assertion that her right to respect for her private life had been violated and this for a period of over 10 years.

2. The Court's assessment

(a) Domestic remedies

72. The Government initially argued that the complaint had been premature in view of the fact that the proceedings on access to the applicant's file had been pending. The Court notes that subsequently these proceedings were terminated and that on 22 August 2011 the applicant was granted access to her file. The Government did not refer to any other remedy which the applicant was required to exhaust. Accordingly, the Court rejects their objection.

b) The applicant's victim status

73. The Court recalls that the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010-...). A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, *inter alia*, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V; and *Mirosław Garlicki v. Poland*, no. 36921/07, § 130, 14 June 2011).

74. The Government argued that the applicant lost her victim status following the decision of 22 August 2011 granting her access to all relevant documents. That decision was issued on the basis of the amendments to the Institute Act which entered into force on 27 May 2010. However, the Court notes that the Government did not produce a copy of that decision, and, more importantly, did not specify whether the national authorities have acknowledged the breach of Article 8 in the applicant's case. Furthermore, the Government did not submit any comments with regard to the redress afforded to the applicant. This is sufficient, in the Court's view, to dismiss the Government's objection that the applicant could no longer claim to be a victim of the alleged violation of Article 8.

(c) Conclusion

75. Consequently, the Court notes that the complaint under Article 8 regarding access to the applicant's file 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

1. The applicant's submissions

76. The applicant submitted that after two rulings of the Constitutional Court, namely the judgment of 11 May 2007 (case no. K 2/07) and the judgment of 20 October 2010 (case no. P 37/09), and the amendment to the Institute Act which had entered into force on 27 May 2010, the proceedings concerning access to her file had been finally terminated. Before the entry into force of the said amendment to the Institute Act, the applicant had had no effective domestic remedy whereby she could obtain access to all relevant documents concerning her. She had no influence over the decisions of the parliament as to whether and when such amendments should have been introduced.

77. The applicant argued that the fact that she has been unsuccessfully requesting the Institute for full access to her file for more than 10 years was highly relevant. Her first request was made on 15 February 2001. The subsequent requests were submitted on 9 February 2005, 29 July and 25 November 2006 and 20 March 2007. The applicant could not obtain access to all documents concerning her which had been created by the communist State security services despite the Constitutional Court's judgment of 26 October 2005 (case no. K 31/04) and the subsequent amendments to the Institute Act, as well as despite the Constitutional Court's judgment of 11 May 2007 (case no. K 2/07). Most importantly, at the moment of the publication of the "Wildstein list" in 2005, the applicant had had no possibility of obtaining access to documents about her with a view to verifying what had been the reasons for placing her name on the said list. The applicant's many attempts, over the course of many years, to defend her good name had proved ineffective.

78. The applicant averred that the right to respect for private life encompassed the State's positive obligation to provide individuals with an effective and accessible procedure enabling them to access documents concerning them which had been created by the communist State security services.

2. The Government's submissions

79. In their initial observations, the Government, referring to the Court's case-law, acknowledged that Article 8 § 1 was applicable to the storing of information relating to an individual's private life in a secret register. With regard to the State's positive obligations, the Government referred to the Court's case-law indicating the necessity to ensure a statutory right of access to those records or clear indication by way of a binding circular or legislation of the grounds on which a person could request access or challenge a denial of access (cf. *M.G. v. the United Kingdom*, no. 39393/98,

§§ 29-31, 24 September 2002). However, having regard to the fact that the proceedings had been pending at the relevant time, they did not express their position on the merits of the case.

80. The Government later submitted that amendments to sections 30, 31 and 32 of the Institute Act had come into effect on 27 May 2010. In particular, section 31 § 1(2), which had been relied on as the basis of the negative decisions in the applicant's case, was no longer in force. According to the new wording of section 30 § 1 everyone had the right to request the Institute to grant him access to documents concerning him.

3. The Court's assessment

(a) Applicability of Article 8

81. The Government conceded that Article 8 of the Convention was applicable. The Court sees no reason to hold otherwise. It is well-established in its case-law that the storing of information relating to an individual's private life in a secret register and the release of such information comes within the scope of Article 8 § 1 (see, *Leander v. Sweden*, 26 March 1987, § 48, Series A no. 116; *Rotaru v. Romania* [GC], no. 28341/95, § 43, ECHR 2000-V).

82. In the instant case, the applicant was refused access to certain documents which, according to the Institute's assessment, indicated that she had been considered by the communist security services as a secret informant or assistant in the covert gathering of information (see paragraphs 23 and 27 above). At the same time, it transpired from the documents which were released to her that she had been the subject of interest of the security services. The applicant submitted that in 1974-75 she had been invited to collaborate with the security services but had consistently refused. Thus, the situation in the present case was that a person denied any collaboration with the security services of the former totalitarian regime, whereas the authority, holding all relevant documents, considered that there was some evidence of such collaboration. At the same time the incriminating documents were not accessible to the interested party with a view to contesting assertions made therein. In such circumstances, for the Court there could be no doubt that the applicant's right to respect for her private life was at stake (see, *mutatis mutandis*, *Rotaru*, cited above, § 44; *Haralambie v. Romania*, no. 21737/03, § 79, 27 October 2009).

Consequently, Article 8 § 1 of the Convention applies.

(b) Compliance with Article 8

83. The applicant alleged that for over 10 years she had unsuccessfully attempted to obtain access to a complete file compiled on her by the communist-era security services.

84. The Court recalls that, in addition to the primarily negative undertakings in Article 8 of the Convention, there may be positive obligations inherent in effective respect for private life. In determining whether or not such a positive obligation exists, it will have regard to the fair balance that has to be struck between the general interest of the community and the competing interests of the individual concerned, the aims in the second paragraph of Article 8 being of a certain relevance (see, among others, *Roche v. the United Kingdom* [GC], no. 32555/96, § 157, ECHR 2005-X).

85. With regard to access to personal files held by the public authorities, with the exception of information related to national security considerations (see, *Leander*, cited above, § 51; *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, § 90, ECHR 2006-VII), the Court has recognised a vital interest, protected by the Convention, of persons wishing to receive information necessary to know and to understand their childhood and early development (see, *Gaskin v. the United Kingdom*, 7 July 1989, § 49, Series A no. 160; *M.G. v. the United Kingdom*, no. 39393/98, § 27, 24 September 2002), or to trace their origins, in particular the identity of one's natural parents (see, *Odièvre v. France* [GC], no. 42326/98, § 41-47, ECHR 2003-III) or information concerning health risks to which interested persons were exposed (see, *Roche*, cited above, § 161; *Guerra and Others v. Italy*, 19 February 1998, § 60, *Reports of Judgments and Decisions* 1998-I).

86. In those contexts, the Court has considered that a positive obligation arose for the respondent State to provide an "effective and accessible procedure" enabling the applicant to have access to "all relevant and appropriate information" (see, *Roche*, cited above, § 162; *McGinley and Egan v. the United Kingdom*, 9 June 1998, § 101, *Reports* 1998-III).

87. In *Haralambie v. Romania*, the Court extended this obligation to information about a person's records created by the secret services during the period of a totalitarian regime (no. 21737/03, §§ 87-89, 27 October 2009; see also *Jarnea v. Romania*, no. 41838/05, § 60, 19 July 2011). The Court confirms this approach in the present case. In respect of a person, like the applicant, who sought full access to her file created by the communist secret services with a view to refuting any allegation of her supposed collaboration with those services, the State should secure an "effective and accessible procedure" before the authority currently holding those files. It is important to underline that the procedure referred to above should enable an interested party to have access to all relevant and appropriate information which would allow that party to effectively counter any allegations of his or her collaboration with the security services (see, *mutatis mutandis*, in the context of lustration proceedings, *Matyjek v. Poland*, no. 38184/03, §§ 57-63, 24 April 2007). The procedure should equally provide for a possibility to correct any erroneous entries in the relevant files.

88. The Court notes that there are obvious risks to the reputation of a person in a system where the files of the former security services are held by a State authority which has exclusive and unreviewable powers to classify a person as a collaborator of those services. In this context, the Constitutional Court pointed to the risk of arbitrariness as regards the Institute's classification of persons as collaborators of the security services which relied on the criteria and practice of the former security services (see paragraph 51 above). It should not be forgotten, as observed by the Constitutional Court, that the Institute's archives contained information which had been often collected without any legal basis or unlawfully. The recent history of the post-communist countries shows that the files created by the former security services could be used in an instrumental way for political or other ends.

89. In the instant case, the applicant made her first request for access to documents kept on her by the former security services on 15 February 2001. The Court notes that under the original Institute Act the right of access to documents of the communist security services was linked with the status of an "injured party". The applicant requested access under this regime but was informed that due to the lack of records she could not be considered an "injured party". In its judgment of 26 October 2005 (case no. K 31/04), the Constitutional Court held that interested persons, not formally certified as "injured parties", should, under certain conditions, have the right to consult their files stored by the Institute. Following her new request for full access, in November 2006 the applicant was allowed to consult documents from her file which concerned her as a subject of interest of the security services. On 20 February 2007 the Institute informed the applicant that there had been other documents concerning her which could not be released. This, in effect, implied that the remaining documents pointed, in the assessment of the Institute, to the applicant's collaboration (compare and contrast, *Kamburov v. Bulgaria* (dec.), no. 14336/05, § 55 *in fine*, 6 January 2011).

90. The amendments to the Institute Act, which entered into force on 15 March 2007, established a new regime of access to documents deposited with the Institute (see paragraphs 18 and 54 above). The Constitutional Court held in its judgment of 11 May 2007 (case no. K 2/07) that section 30 § 2(2) of the amended Institute Act, which excluded access of interested persons to documents indicating that they had been considered by the security services as secret informants or assistants in their undercover activities, was unconstitutional. The reason for this finding was later summarised by the Constitutional Court in its judgment of 20 October 2010 (case no. P 37/09). According to the court, when documents created by the security services which could indicate collaboration with those services, were used for drawing adverse consequences in respect of a given person, then such a person should have the right of access to all those documents with a view to effectively defending her reputation (see paragraph 64

above). The Constitutional Court also noted that the uncritical reliance on the documents and assessments made by the totalitarian security services would have legitimised their activities and led to stigmatisation of persons considered by the services as secret informants (see paragraph 57 above).

91. On 20 March 2007 the applicant requested access to all documents concerning her pursuant to the new regime established by the amended Institute Act. The Institute's authorities refused her access to three documents pursuant to section 31 § 1(2a) of the Institute Act on the ground that their content indicated that the applicant had been considered a secret informant or assistant in the covert gathering of information. The President of the Institute dismissed the applicant's argument that his negative decision was based on section 31 § 1(2a) whose content was identical to section 30 § 2(2) of the Institute Act and which was struck down by the Constitutional Court. The Court is struck by this approach of the President of the Institute. It notes in this respect the Constitutional Court's decision of 28 May 2008, given a few months before the impugned decision, clearly indicating that section 31 § 1(2) of the Institute Act, containing the same legal norm as the one set out in the unconstitutional section 30 § 2(2), and being only of a procedural character, could not justify refusal of access. It appears that those clear indications of the Constitutional Court were ignored in the practice of the Institute's authorities.

92. The applicant challenged the refusal of the President of the Institute before administrative courts. However, the examination of his complaint was adjourned pending the review of constitutionality of section 31 § 1(2) which had been instituted by certain panels of the administrative courts. This provision was struck down by the Constitutional Court in a judgment of 20 October 2010 (case no. P 37/09).

93. The Court notes that all in all the applicant had to endure more than 10 years of various proceedings and multiple attempts before she was finally granted full access to her file on 22 August 2011. This was at last possible following the above judgment of the Constitutional Court of 20 October 2010 and the amendment to the Institute Act which removed any obstacles to full access to documents held by the Institute (see paragraph 67 above). The period of time in issue cannot be considered reasonable. The Court observes that over that period of time the applicant faced various obstacles in her way to obtain full access to the file kept on her by the Institute. Certain obstacles were of a legislative character and those were gradually eliminated by three consecutive judgments of the Constitutional Court. However, the Parliament did not always properly implement the relevant judgments of the Constitutional Court. In addition, the applicant faced obstacles of an administrative nature created by the Institute which was unwilling to heed the calls of the Constitutional Court as regards the interpretation of the law. Certain practices of the Institute, such as the

reliance on the classifications adopted by the totalitarian security services, were disapproved by the Constitutional Court (see paragraph 57 above).

The Court also notes that had the applicant been swiftly granted access to all relevant documents, other issues related to unauthorised leaks from the Institute's archives would not have arisen or the applicant would have been in a position to challenge any allegations against her. It observes that the applicant acknowledged that access to her file was relevant in the context of the disclosure and publication of the "Wildstein list".

94. Having regard to all the foregoing considerations, the Court finds that the respondent State has not fulfilled its positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant information that would allow her to contest her classification by the security services as their secret informant (see, *Haralambie*, § 96; and *Jarnea v. Romania*, § 60, both cited above).

95. There has accordingly been a violation of Article 8 of the Convention.

II. REMAINING COMPLAINTS

96. The applicant complained under Article 8 that the authorities had allowed a list of names of persons whose files had been collected by the Institute to be leaked and made public (the "Wildstein list"). Moreover, she argued that the State had failed to take adequate steps to inform the public about the actual character of the list, in particular the fact that the persons appearing on it had not necessarily been secret and intentional collaborators. In consequence, she maintained that, despite the fact that she had never held a public office, her right to respect for her private life had been violated.

97. The applicant further complained that the State had failed in its obligation to secure her an effective remedy for the above-mentioned breach of her right to respect for her private life. She relied on Article 13 taken together with Article 8 of the Convention.

A. The parties' submissions

98. The Government submitted that a number of persons whose names had appeared on the so-called "Wildstein list" had filed actions for protection of their personal rights under Articles 23 and 24 of the Civil Code against the Institute or against Mr B. Wildstein. Those actions had been generally dismissed.

99. The Government referred to a case filed by a certain A.K. against B. Wildstein in which the Warsaw Regional Court had dismissed the action for protection of personal rights (judgment of 23 August 2006, case no. II C 236/06). The court firstly noted that the actions of the

defendant had not been unlawful. Secondly, the publication of the list had not infringed the Data Protection Act since it had consisted only of names without any further details. Thirdly, the claimant had not proved that his personal rights had been infringed. The court stressed that the claimant's assertion that the "Wildstein list" had been generally perceived as a list of collaborators had amounted to his subjective opinion.

100. They further referred to the Warsaw Regional Court's judgment of 28 June 2007 (case no. XXV C 16/07) which dismissed the action for protection of personal rights of a certain A.Z. against the Institute. The claimant had received a certificate that her personal data had not corresponded to those on the Institute's list. Nevertheless, she alleged the publication of her name on the "Wildstein list" infringed her personal rights. The court found that the claimant had not established that the Institute had infringed her personal rights.

101. The Government argued that the reasons given in the above two judgments were similar to the reasons put forward in the decisions refusing the applicant's request to institute the so-called "auto-lustration" proceedings. They recalled that it was the national authorities that were charged with interpreting the internal law of a Contracting Party. The application to institute the "auto-lustration" proceedings was examined by two courts with full jurisdiction to assess the relevant facts and law. The applicant did not produce any evidence indicating that the relevant courts' decisions had been arbitrary. In consequence, the Government maintained that the applicant's complaint was manifestly ill-founded and that the applicant had failed to substantiate her complaint of a breach of Article 8 § 1.

102. The applicant maintained that the civil cases referred to by the Government had been indicative of the lack of an effective remedy in such cases. The civil courts tended to view the publication of a person's name on the "Wildstein list" as not constituting a violation of one's personal rights. This was often supported by an argument that the list had included not only persons considered by the Institute to be collaborators but also others who had been considered by the communist security services as potential candidates for collaboration or even victims. However, in the applicant's view, this argument was unconvincing when considered against the enormous pressure of public opinion regarding the nature of the "Wildstein list" and the interpretation of it in the media.

103. The applicant argued that the "auto-lustration" proceedings had not constituted an effective remedy with regard to those persons whose integrity and reputation had been publicly questioned by publication of their names on the "Wildstein list". She averred that it had been a standard approach for the courts to refuse to institute "auto-lustration" proceedings as a result of the "mere" publication of one's name on the said list. In addition, the individuals concerned who had sought protection of their personal rights by

pursuing their claims before civil courts had found their actions generally dismissed. This was true and symptomatic of the lack of a suitable remedy to address this very particular violation of the right to privacy. Both civil actions based on general civil law principles of protection of personal rights and lustration law cases had proved grossly ineffective in repairing the damage caused to so many persons as a result of the failure on the part of the Institute to protect the personal data and catalogues which had been at its possession.

104. In the applicant's view, mere access to documents stored by the Institute would not constitute an effective remedy for the violation of her privacy which had resulted from the publication of the "Wildstein list". The "auto-lustration proceedings" might have – to some degree – been an effective remedy since they could end with a ruling confirming the veracity of a declaration in which a person assert not to have collaborated with the security services. However, the applicant, who had been defamed by having her name placed on the "Wildstein list" and the subsequent unauthorised publication thereof, had been refused the right to clear her name by means of the "auto-lustration" proceedings. She submitted that it the context of the refusal to institute those proceedings that the denial of access to documents held by the Institute had been of auxiliary relevance.

B. The Court's assessment

105. The applicant alleged that the authorities had allowed the so-called "Wildstein list", containing names of persons whose files had been collected by the Institute, to be leaked and made public. In addition, she averred that the State had failed to take adequate steps to inform the public about the actual character of the impugned list. These facts, in her view, amounted to a breach of her right to respect for her private life under Article 8 of the Convention.

106. However, the Court notes that the applicant had not instituted any domestic proceedings in which the issue of the State's responsibility for the alleged leak of the "Wildstein list" could have been tested. It follows that this complaint under Article 8 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

107. The applicant further alleged that the State had failed in its obligation to secure her an effective remedy in respect of the breach of her right to respect for her private life occasioned by the unauthorised disclosure and publication of the "Wildstein list".

108. In view of its finding above that the applicant did not exhaust domestic remedies in respect of her complaint under Article 8 concerning the alleged leak of the "Wildstein list", and bearing in mind the close affinity between Article 13 and Article 35 § 1, the Court concludes that the complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. 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 applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage for suffering and distress occasioned by damage to her reputation, in particular the inability to clear her name for a period of many years and the lack of sufficient and effective remedies.

111. The Government invited the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction.

112. The Court, having regard to its finding of a violation of Article 8 in the present case and making its assessment on an equitable basis, awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

113. The applicant did not submit a claim for costs and expenses.

C. Default interest

114. 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* the complaint under Article 8 of the Convention regarding access to the applicant's file admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *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, EUR 5,000 (five thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Päivi Hirvelä President