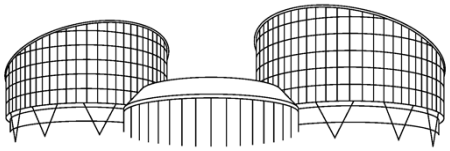

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF YAKYMCHUK v. UKRAINE

(Application no. 26519/16)

JUDGMENT

Art 8 • Private life • Covert video-recording by security service officers of a former judge in her office used as evidence in criminal proceedings to convict her of bribery • Court of Appeal's failure to consider, after the termination of the secret surveillance measures, whether there were any compelling reasons to keep the relevant court decisions and documents classified denying the applicant access thereto • Failure to examine the lawfulness and proportionality of the impugned interference in a manner providing sufficient safeguards against the unjustified encroachment on the applicant's Art 8 rights
Art 8 • Private life • No prior court authorisation for the covert audio-recording of a conversation between the applicant and a complainant in criminal proceedings by the latter on an audio recorder provided by a security service officer • Impugned interference not in accordance with applicable domestic law
Art 6 § 1 (criminal) • Assignment of a Court of Appeal judge in the applicant's case to replace a judge who did not hold security clearance to access secret information • Relevant domestic regulation providing for the obligatory use of the system for the automated (random) allocation of cases in assigning a replacement judge ignored • Unclear which criteria followed in the selection of the replacement judge from the list of judges with security clearance • Irregularities of such gravity that they undermined very essence of the right to be tried by a tribunal established in accordance with the law
Art 6 § 1 (criminal) • Art 13 (+ Art 6 § 1) • Reasonable time • Excessive length of proceedings • Lack of effective remedy

Prepared by the Registry. Does not bind the Court.

STRASBOURG

11 September 2025

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

In the case of Yakymchuk v. Ukraine,

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

Kateřina Šimáčková*, President*,
María Elósegui,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 26519/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms Olga Mykolayivna Yakymchuk ("the applicant"), on 22 April 2016;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Article 8 and Article 13 of the Convention regarding secret video surveillance and under Article 6 §§ 1 and 3 concerning the criminal proceedings against the applicant and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 8 July 2025,

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

INTRODUCTION

1. The case mainly concerns the allegedly unlawful covert video-recording of the applicant, a former judge, in her office and the lawfulness of subsequent criminal proceedings against her. The applicant relied on Article 6, Articles 8 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1962 and lives in Korets. She was represented by Mr A. Yarovyy, a lawyer practising in Kyiv.

3. The Government were represented by their Agent, Ms Marharyta Sokorenko.

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

5. On 11 May 2004 the President of Ukraine appointed the applicant to the position of judge in the Korets District Court of the Rivne Region ("the Korets Court") for a period of five years. On 23 December 2004 she took the oath of a judge.

I. THE RELEVANT INCIDENTS OF COVERT VIDEO SURVEILLANCE

A. The first incident

6. According to the findings of the domestic courts, on 21 November 2008 the applicant was assigned to deal with the case of P.D., accused of the administrative offence of public swearing.

7. On 24 November 2008 the Rivne Regional Department of the Security Service (*Управління служби безпеки України в Рівненській області*, hereinafter "the local security service") covertly video-recorded a conversation held between the applicant and P.D. in the applicant's office. The applicant demanded a bribe of 51 Ukrainian hryvnias (UAH – around 6.56 euros (EUR) at the material time) from P.D. in exchange for his release from fifteen days' administrative arrest. Subsequently, she drew up a court decision, limiting the punishment to a verbal warning and releasing P.D. from administrative responsibility, which she dated back to 21 November 2008.

8. On 6 May 2009 P.D. lodged a criminal complaint, accusing the applicant of bribe-taking. On the same day the security service drafted a report of the results of the covert surveillance measure of 24 November 2008, authorised by a decision of the Zhytomyr Regional Court of Appeal of 7 November 2008. According to the transcript of the conversation, the applicant had received a bribe of UAH 51.

9. On 10 June 2009 the local prosecutor's office opened a criminal case against the applicant under Article 368 § 2 of the Criminal Code on suspicion of bribe-taking.

B. The second incident

10. According to the findings of the domestic courts, on 28 January 2009 the applicant was assigned to deal with the case of A.D., accused of the administrative offence of driving a motorcycle under the influence of alcohol.

11. On 5 February 2009 the local security service covertly video-recorded a conversation held between the applicant and I.P., a sister of A.D., who informed the applicant that A.D. had temporarily left Ukraine. The applicant proposed to examine the case in his absence and to sentence him to public works in exchange for UAH 1,000 (around EUR 101 at the material time). On the same day I.P. handed the money to the applicant.

12. On 16 February 2009 I.P. lodged a criminal complaint, accusing the applicant of bribe-taking.

13. On 17 February 2009 the local security service drafted a report of the results of the covert surveillance measure of 5 February 2009, authorised by a decision of the Zhytomyr Regional Court of Appeal of 7 November 2008.

According to the transcript of the conversation, I.P. had handed UAH 1,000 to the applicant.

14. On 18 February 2009 the local prosecutor's office opened a criminal case against the applicant under Article 368 § 2 of the Criminal Code on suspicion of bribe-taking. On the same day, the applicant was notified of the criminal case against her.

15. On 6 May 2009 I.P. handed back to the security service officers a voice recorder containing a recording of her conversation with the applicant held in March 2009. According to the transcript of the recording of 14 May 2009, the applicant had attempted to convince I.P. to change her testimony and to say that she had never been solicited to give or had given a bribe. That recording was added to the criminal case as evidence.

16. On 14 August 2009 the head of the investigative department at the local prosecutor's office drew up a decision charging the applicant with bribe-taking.

17. On 30 April 2010 the applicant received a copy of the above-mentioned decision.

18. On 8 June 2010 the applicant was informed of the completion of the pre-trial investigation.

19. On 1 June 2011 an indictment was drafted and the criminal case was sent for trial.

20. According to the Government, between 24 February 2009 and 1 June 2011 an investigator from the local prosecutor's office had stayed the pre-trial investigation twenty-five times on grounds of the illness of the applicant.

C. Information about the authorisation decisions for the covert surveillance

21. On 11 May 2012 the local security service informed the local prosecutor's office that the court decisions of 8 August and 7 November 2008 on the applicant's secret surveillance had temporarily restricted her rights until 10 November 2008 and 20 February 2009 respectively. At the same time, the decisions had been classified as secret, along with other information on the matter, and therefore had not been available for review by individuals who did not have special clearance.

22. On 7 July 2012 the Supreme Court informed the first deputy head of the security service that on 6 March 2008 the security service officials, acting within the framework of the operative search case no. 1208 of 20 February 2008 ("case no. 1208"), had asked the Supreme Court to determine a court for the examination of their application for covert surveillance measures in respect of the applicant. The Zhytomyr Regional Court of Appeal had been selected for that purpose.

23. On 9 July 2012 the Zhytomyr Regional Court of Appeal informed the local security service that the court decisions authorising covert surveillance measures in respect of the applicant had been destroyed.

II. THE APPLICANT'S TRIAL AND CONVICTION

24. On 7 June 2012 the Netishyn City Court of the Khmelnytskyi Region ("the Netishyn Court") remitted the case for additional investigation on the grounds of the absence in the case file of a court decision authorising covert video-surveillance of the applicant and of other irregularities in the collected evidence.

25. The applicant complained before the Netishyn Court that the covert surveillance measures carried out against her and the decisions of the investigator to stay the pre-trial investigation (see paragraph 20 above) had been unlawful.

26. On appeal, the applicant reiterated her arguments concerning the alleged unlawfulness of her video-recording, including her complaint of the excessive length of the pre-trial investigation.

27. On 1 August 2012 the Khmelnytskyi Regional Court of Appeal ("the Cour of Appeal") quashed the decision of 7 June 2012 and remitted the case to the first-instance court for re-examination. The appellate court noted that the Netishyn Court had not used all the instruments available to it in order to resolve the discrepancies in the evidence. Furthermore, it instructed the Netishyn Court to obtain the court decision authorising covert surveillance measures in respect of the applicant from the local security service and to ensure its examination by a judge holding a special security clearance.

28. On 28 May 2013 the Netishyn Court found the applicant guilty of two counts of bribery and sentenced her to five years' imprisonment, suspended on a one-year probation and a one-year ban on performing judicial and official state functions. That court based its findings, *inter alia*, on the following evidence: (i) testimony given by P.D. confirming that the money had been transferred to the applicant in respect of the first incident; (ii) testimony given by I.P., A.D. and N.Y. confirming that the money had been transferred to the applicant in respect of the second incident; (iii) the criminal complaints of P.D and I.P.; (iv) reports concerning the results of the respective covert video-recordings; (v) the expert conclusion of a handwriting examination confirming that the applicant's signature on the decision of 21 November 2008 was authentic; (vi) covert video-recordings and the recordings of the applicant's questioning; (vii) the testimony of T.S., an officer from the security service, who stated that in order to ensure her safety, he had given I.P. a voice recorder to record her conversation with the applicant; (viii) documents related to the applicant's position as a judge; and (ix) documents concerning the allocation to her of the respective administrative-offence cases.

III. REPEATED APPEAL AND CASSATION PROCEEDINGS AND OTHER DEVELOPMENTS

29. The applicant appealed. She argued, among other things, that the use of the covert surveillance measures in her office had been unlawful.

30. On 11 October 2013, following a request from the Court of Appeal, the local prosecutor's office examined the file of surveillance case no. 1208 and drew up a report stating that it had found no violation of the applicable law.

31. On 4 November 2013 the applicant submitted a written request to the Court of Appeal in which she asked that the material of case no. 1208 be examined together with the court decisions authorising covert surveillance of her.

32. On 4 November 2013 the Court of Appeal upheld the applicant's conviction in connection with the second incident (see paragraphs 10 and 11 above) and the related sentence. With regard to the first incident, the appellate court reclassified the applicant's actions from Article 368 § 2 (bribe-taking by an official) to Article 364 § 1 of the Criminal Code (abuse of power or office). The appellate court took into account the applicant's oral submissions, acknowledging the fact that she had taken UAH 51, however, her understanding had been that the money had been paid as a fine and that she had drafted a decision releasing P.D. from responsibility by mistake. The Court of Appeal did not examine the file of case no. 1208 (see paragraph 22 above).

33. On 18 April 2014 the applicant was dismissed from her post of judge by the acting President of Ukraine in connection with her criminal conviction.

34. On 10 June 2014 the cassation court, the Higher Specialised Court for Civil and Criminal Matters ("the HSC"), quashed the Court of Appeal's judgment of 4 November 2013 (see paragraph 32 above) and remitted the case to the appellate court for re-examination, instructing it to verify the lawfulness of the use of the covert surveillance measures in respect of the applicant.

35. On 2 October 2014 the Court of Appeal allowed the prosecutor's request that the file on case no. 1208 be brought from the security service to the premises of the Court of Appeal for its examination and adjourned the hearing until 28 October 2014.

36. On 11 November 2014 the presiding judge of the panel of the Court of Appeal informed the participants of the proceedings that the appellate court had asked the local security service twice to bring the file on case no. 1208 to the court, but to no avail. The panel decided to write a letter to the Prosecutor General about the situation, stating that the failure of the security service to bring case no. 1208 to the premises of the Court of Appeal had resulted in the adjournment of two hearings.

37. On 27 November 2014 the local security service brought the file on case no. 1208 to the Court of Appeal. The hearing was adjourned in order to replace Judge Z., who did not hold a security clearance to access secret information, with a judge who held such security clearance.

38. According to the Government, on 9 December 2014, on the basis of provision 3.1.12 of the Regulation on the System for the Automated Allocation of Cases (see paragraph 55 below), the Deputy Head of the Court of Appeal ordered that Judge Z. be replaced by Judge K. That decision did not provide further information in relation to the selection criteria resulting in the assignment of Judge K. to hear the case.

39. On 9 December 2014 the judges examined the file on case no. 1208 in the security division of the court. At the hearing, the applicant initially expressed her wish to have access to the material in the file on case no. 1208, including the court decisions authorising covert surveillance of her. However, following a consultation with her lawyer, she stated that she agreed to the panel of the appellate court's examination of case no. 1208 in its security division.

40. On 26 December 2014 the Khmelnytskyi Regional Court of Appeal upheld the verdict of 28 May 2013 (see paragraph 28 above). In relation to the alleged unlawfulness of the covert surveillance measures, it stated:

> "[the court has] reviewed the material related to the operative search case no. 1208, which was instituted on lawful grounds in accordance with the Operational Search Activities Act ... an authorisation for operative surveillance measures was given in accordance with the applicable law. The court has not found any breach of the applicable law and the relevant arguments should be dismissed."

41. The applicant and her lawyer appealed on points of law, arguing that the panel of the Court of Appeal had been composed unlawfully and that after the appointment of the new judge, the examination of the case had not restarted from the beginning. The applicant further argued that the covert surveillance measures carried out against her had been unlawful and that she had had no access to the court decisions authorising those measures. Furthermore, she argued that the Court of Appeal had not verified whether the audio-recording performed by I.P. had been lawful.

42. On 27 October 2015 the HSC upheld the decision of the appellate court, stating that the panel of the Court of Appeal had examined the decisions authorising covert surveillance measures in respect of the applicant together with other material in the file on case no. 1208 and found no breach of the applicable law. The HSC court dismissed the applicant's argument that Judge K. had been appointed unlawfully on the grounds that Judge Z. had held no security clearance and that he should have been replaced by another judge.

43. On 15 November 2016 the applicant obtained a copy of the above-mentioned decision.

44. On 20 November 2023, in the context of the preparation of the Government's observations before the Court, the security service wrote to the

Ministry of Justice, stating that the material in the file on case no. 1208 had been destroyed in accordance with the applicable rules.

RELEVANT LEGAL FRAMEWORK AND DOMESTIC PRACTICE

I. THE CONSTITUTION OF UKRAINE (1996)

45. The relevant provision of the Constitution of Ukraine, as in force at the material time, read as follows:

Article 32

"No one shall be subject to interference in his or her private and family life, except in cases provided for in the Constitution of Ukraine ... "

II. CODE OF CRIMINAL PROCEDURE (1960)

46. In accordance with Article 16 § 2 of the Code of Criminal Procedure, as in force at the material time, the courts had to use an automated case-allocation system which provided for an objective and unbiased assignment of cases among judges.

47. Article 370 contained a list of substantial violations of criminal procedural law, which included the adoption of a sentence by an unlawful composition of a court.

48. In accordance with Article 398, the court of cassation was empowered to reverse a judgment, ruling or resolution when a substantial violation of criminal procedural law had occurred.

49. Other relevant provisions of the Code can be found in *Berlizev v. Ukraine* (no. 43571/12, §§ 21-26, 8 July 2021).

III. STATUS OF JUDGES ACT (1993)

50. The relevant provision of the Status of Judges Act, as in force at the material time, read as follows:

Article 13. Inviolability of judges

"...

4. The entry into the home of a judge or his or her office in a court ... its inspection, the search or seizure [of items], the interception of his or her telephone conversations, the personal search of a judge, and the inspection or seizure of his or her correspondence, belongings or documents shall be carried out only under a reasoned court decision ... "

IV. SECURITY SERVICE ACT (1992)

51. The relevant provision of the Security Service Act, as in force at the material time, read as follows:

"...

(8) to carry out overt or covert operational measures in accordance with the procedure set out in the Operational Search Activities Act ..."

V. OPERATIONAL SEARCH ACTIVITIES ACT (1992)

52. The relevant provisions of the Operational Search Activities Act, as in force at the material time, read as follows:

Article 5. Departments that carry out operational search activities

"Operational search activities shall be performed by the operative departments [of]:

...

the Security service of Ukraine ... special departments on fighting corruption and organised crime ...

Article 8. The rights of the departments that conduct search and seizure activities

"Operational departments, when executing their tasks in connection with operational searches ... have the following rights:

...

(9) ... to use other technical means to obtain information ...

The covert entry into the home or other possession of an individual ... the collection of data from technical channels of communication ... [and] the use of other technical means of obtaining information shall be carried out under a court decision, given following an application [lodged] by a head of an operative division or his or her deputy. ... The use of these measures shall exclusively be for the aim of preventing a crime or to ascertain the truth during an investigation of a criminal case, if no other methods to obtain information exist. Following the performance of the above-mentioned operational search measures, a record with relevant attachments shall be drafted, which shall be used as evidence in criminal proceedings."

VI. STATE SECRET ACT (1994)

53. The relevant provision of the State Secret Act, as in force at the material time, read as follows:

> **" Article 8. Information that can be classified as a state secret**
>
> ...
>
> 3. ... It is forbidden to classify any information as a state secret if such classification diminishes the content and scope of the constitutional rights and freedoms of an individual or a citizen ...
>
> **Article 22. Access of citizens to State secrets**
>
> ...
>
> Security clearance allowing access to State secrets shall be given to citizens of Ukraine who have legal capacity and are over 18 years old ... by the bodies of the Security Service of Ukraine, following a verification process. A procedure for granting a security clearance to access State secrets shall be determined by the Cabinet of Ministers of Ukraine ..."

VII. RESOLUTION No. 2 OF 28 MARCH 2008 OF THE SUPREME COURT

54. Resolution No. 2 of 28 March 2008 of the plenum of the Supreme Court, as in force at the material time, examined "certain issues of application by the courts of Ukraine of legislation when authorising temporal restriction of certain constitutional rights and freedoms of an individual and a citizen during the performance of operative search activities, investigation and pre-trial investigation". The relevant provision of the Resolution read as follows:

> "3.
>
> ... other technical means of obtaining information shall be understood [to include] means which make it possible to covertly record, apart from the channels of communication, discussions, actions [and] location ... "

VIII. REGULATION ON THE SYSTEM FOR THE AUTOMATED (RANDOM) ALLOCATION OF CASES, APPROVED BY DECISION No. 30 OF THE COUNCIL OF JUDGES OF UKRAINE OF 26 NOVEMBER 2010

55. The relevant provisions of the Regulation, as in force at the material time, read as follows:

> "...
>
> 3.1.12. In the event that a judge who is a member of the panel of judges is unable to perform his or her duties ([on account of absence related to] temporary disability,

business trips or vacations) and is not the presiding judge (reporting judge) in the case, the automatic reallocation of cases shall not be carried out. The absent judge who is a member of the panel of judges shall be replaced in accordance with the established principles for formation of the composition of the panel of judges.

3.1.13. The repeated automated allocation of a case in the instances set out in law ([including] recusal, self-recusal, the impossibility of deciding a case twice and the absence of security clearance to work with confidential documents) shall be performed on a written instruction of a court registrar (or a person who performs his or her duties) in accordance with Addendum no.1 to this Regulation."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicant complained that the covert audio- and video- recording of her conversations held in her office had been unlawful and disproportionate and that they had interfered with her right to respect for private life. She relied on Article 8 of the Convention, which 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

57. The Government argued that the applicant had not exhausted effective domestic remedies. In particular, she had not lodged a separate claim seeking to declare a covert investigation measure unlawful in order to obtain compensation for damage under the Compensation Act. Moreover, it had been open to the applicant to lodge a claim for compensation even when there had been no acquittal or decision discontinuing criminal proceedings. Lastly, the Government submitted that the applicant had waived her right to raise the issue of lawfulness of interference with her right to respect for private life before the Court, given that she had agreed that the appellate court would examine the file on case no. 1208 in its secret division. Therefore, the applicant had agreed to any further conclusions reached by that court on the matter.

58. The applicant did not provide her comments on this account.

59. The Court observes that it has already considered a similar admissibility objection in *Lysyuk v. Ukraine* (no. 72531/13, §§ 35 and 45-47, 14 October 2021) and dismissed it, finding that the applicant in that case, having raised the issue of the alleged unlawful surveillance in her appeals,

had recourse to a domestic remedy which had been effective. That remedy was the first step in a two-step acknowledgment and compensation mechanism. It was not open to that applicant to claim compensation before the civil courts, as the criminal courts had neither delivered a separate ruling acknowledging that the surveillance measures had been unlawful nor acknowledged it in any of their decisions on the merits of the criminal case.

60. In the present case, the Court observes that the applicant raised her objections in relation to the lawfulness of covert video- and audio- recordings of her before the criminal courts. The Court finds that the applicant was not required to bring compensation proceedings, as she did not receive a ruling or a court decision declaring that the covert surveillance measures had been unlawful. As to the alleged waiver, while the facts regarding it may be relevant in respect of the merits of the applicant's Article 8 complaint, it does not concern the question of exhaustion of domestic remedies or other aspects of the admissibility of that complaint.

61. Accordingly, the Court dismisses the Government's objections in respect of non-exhaustion of domestic remedies.

62. The Court notes that the complaint under Article 8 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. Video-recording by the security service officers

(a) The parties' submissions

63. The applicant maintained that the secret surveillance measures carried out in her office against her had been unlawful, as she had not been given access to the court decisions authorising the secret video-recording of her, and that the national courts had failed to verify effectively whether the abovementioned court decisions had been given in respect of her or whether the measures to be carried out and the period of their implementation had been justified.

64. The Government accepted that there had been an interference with the applicant's rights under Article 8 of the Convention. They further submitted that the covert operation had been conducted in accordance with the Operational Search Activities Act and in the interest of society with the aim of preventing or stopping an offence and that it had been proportionate to the legitimate aim pursued.

(b) The Court's assessment

65. The relevant principles of the Court's case-law concerning secret surveillance measures can be found in *Roman Zakharov v. Russia* ([GC],

no. 47143/06, §§ 227-34, ECHR 2015) and, more recently, in *Denysyuk and Others v. Ukraine* (nos. 22790/19 and 3 others, § 88, 13 February 2025).

66. The Court observes that the parties agreed that the secret surveillance of the applicant amounted to an interference with her rights under Article 8 of the Convention and the Court sees no grounds to hold otherwise.

67. The Court further observes that, if it is not to contravene Article 8, such interference must be in accordance with the law, pursue a legitimate aim under paragraph 2, and be necessary in a democratic society (see *Dragojević v. Croatia*, no. 68955/11, § 79, 15 January 2015).

68. The applicant did not suggest that the legal framework regulating the procedure for giving a court authorisation to secretly record her on video had been inadequate. The gist of her complaint was that the national courts had allegedly failed to verify the lawfulness of the requested covert measures and that she had not been given access to the court decisions on surveillance.

69. The Court observes that, in accordance with the Operational Search Activities Act, as in force at the material time, covert measures, including the "use of other technical means to obtain information" (*застосування інших технічних засобів отримання інформації*), had to be authorised by a court decision (see paragraph 52 above).

70. In the present case, on 8 August and 7 November 2008 the Zhytomyr Regional Court of Appeal authorised the covert video-recording of the applicant (see paragraph 21 above). However, only the recordings performed under the decision of 7 November 2008 were used as incriminating evidence against her. The Court will thus examine the issues of the lawfulness of the interference with the applicant's right to respect for her private life and its necessity and proportionality only in relation to the decision of 7 November 2008.

71. The Court observes that the applicant and her lawyer asked the Court of Appeal to give them access to the file on case no. 1208, including the decision of 7 November 2008. However, given that the relevant materials were classified and neither the applicant nor her representative held special clearance, the applicant had to agree to the appellate court's examination of the file on case no. 1208 in its security division (see paragraph 39 above).

72. In this regard, the Court dismisses the Government's argument that the applicant had waived her right to raise an issue as to the lawfulness of the decisions authorising covert surveillance of her because she had agreed to the panel of the Court of Appeal's examination of the file on case no. 1208 in its security division, and that she had thus agreed to the appellate court's conclusions about the lawfulness of those decisions (see paragraph 57 above). The Court finds that if the applicant had not agreed to the Court of Appeal's examination of those documents in its security division, it would not have affected the ban on her accessing those documents, given that according to the State Secrets Acts, it is the security service that had powers to grant a

citizen with a security clearance to access state secrets and only following a verification process (see paragraph 53 above).

73. Furthermore, the Court observes that the Court of Appeal did not consider the issue of whether there were any compelling reasons to keep the relevant court decisions on surveillance classified after the secret surveillance measures had been terminated. Nor did it comment on whether the relevant documents could be declassified, at least in part.

74. The Court reiterates that when dealing with a request for the disclosure of covert surveillance authorisation, the domestic courts are required to ensure a proper balance of the interests of the surveillance subject and the public interests (see, for instance, *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, § 129, 7 November 2017). Furthermore, the surveillance subjects should be granted access to the documents in question, unless there are compelling reasons for denying this (ibid.).

75. In the present case, in the absence of any consideration having been given to whether there were compelling reasons to keep the documents in question classified in full and to deny the applicant access thereto, the authorities failed to secure an important safeguard regarding the lawfulness surveillance measures.

76. The Court further observes that the Court of Appeal limited its legal analysis of the issues of lawfulness and proportionality of the interference to general terms only (see paragraph 40 above). It is unclear whether the Court of Appeal verified the existence of relevant and sufficient reasons justifying the covert surveillance of the applicant. It is also unclear whether the nature, scope and duration of the interference was justified, especially taking into account the fact that surveillance case no. 1208 was opened on 20 February 2008 (see paragraph 22 above) and, therefore, the applicant had been under the covert surveillance for about a year.

77. The above questions remained unanswered in the proceedings before the Court partly as a result of the fact that by 2023, when the parties' observations were exchanged, the file on surveillance case no. 1208 had already been destroyed in accordance with the relevant domestic rules (see paragraph 44 above). While there is no reason to doubt that the decision of 7 November 2008 to authorise the secret surveillance of the applicant's office had factual and legal basis, the Court is of the view that the considerations in paragraphs 73-76 above suffice to find it established that in 2014-2015 the domestic courts failed to examine the lawfulness and proportionality of the interference at issue in a manner providing sufficient safeguards against unjustified encroachment on the rights protected by Article 8 of the Convention.

78. Accordingly, there has been a violation of Article 8 of the Convention.

2. Audio-recording by I.P.

(a) The parties' submissions

79. The applicant maintained that the audio-recording of her conversation with I.P. had been unlawful.

80. The Government submitted no comments on this account.

(b) The Court's assessment

81. The relevant principles of the Court's case-law can be found in *Berlizev v. Ukraine* (no. 43571/12, §§ 39-40, 8 July 2021).

82. The Court observes that during the hearing before the first-instance court, an officer from the security service, T.S., testified that he had provided I.P. with the audio recorder "to ensure her safety" (see paragraph 28 above). It also notes that the Government have accepted that there has been a State interference with the applicant's Article 8 rights.

83. The applicant raised her complaint before the national courts that the audio-recording of her conversation with I.P had been unlawful. However, they did not comment on it. The Court notes that the case file does not contain any reference to a court decision authorising the audio-recording of the applicant by I.P., and that the Government in their observations did not allege that such a court decision existed. The Court, therefore, has no choice but to conclude that no prior court authorisation to secretly audio-record the conversation between the applicant and I.P. in March 2009 was given by the national courts.

84. The Court has previously found a violation of Article 8 of the Convention on the grounds that the relevant secret surveillance measures had been carried out without their prior authorisation by the national courts or that the national courts had failed to comment on the applicant's allegation concerning the unlawfulness of such measures (see *Berlizev*, cited above, §§ 40 and 42; *Šantare and Labazņikovs v. Latvia*, no. 34148/07, §§ 60-62, 31 March 2016; and *Lysyuk*, cited above, §§ 53 and 55). There is no reason to depart from that conclusion in the present case. The Court finds, therefore, that the interference with the applicant's right to respect for her private life was not in accordance with applicable law.

85. Accordingly, there has been a violation of Article 8 of the Convention in that connection as well.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

86. The applicant complained of various violations of Article 6 § 1, Article 6 § 3 (b) and Article 6 § 3 (d) of the Convention, the relevant parts of which read as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... within a reasonable time by [a] ... tribunal established by law...

(b) to have adequate time and facilities for the preparation of his defence...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

87. The Government submitted that the applicant had failed to raise the issue with the Court of Appeal that Judge K. had allegedly been appointed in breach of procedure. Given that the above-mentioned course of action had been the only available domestic remedy and that the applicant had applied to the Court after the end of proceedings, she had missed the six-month time-limit and, therefore, her complaint should be rejected as out of time.

88. The applicant replied that she had raised that issue before the HSC in her appeal on points of law and that that court had had jurisdiction to deal with her complaint.

89. The Court reiterates that in accordance with Article 35 § 1 of the Convention, the Court may only deal with an issue after all domestic remedies have been exhausted. The rule of exhaustion of domestic remedies requires an applicant to have normal recourse to remedies within the national legal system which are available and sufficient to afford redress in respect of the breaches alleged (see *Micallef v. Malta* [GC], no. 17056/06, § 55, ECHR 2009).

90. The Court observes that the applicant raised her complaint of the allegedly unlawful assignment of Judge K. before the HSC. In accordance with the applicable law, the court of cassation could reverse a judgment if it had been adopted by an unlawful composition of judges regardless of whether the issue had been raised before the lower court or not (see paragraphs 47 and 48 above). Therefore, the applicant raised the complaint before the competent court and therefore the authorities had the opportunity to deal with it (see, for instance, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). The Government have not shown that the remedy used by the applicant was ineffective or inadequate. Accordingly, the Government's objection must be dismissed.

91. 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. Alleged violation of the right to a fair hearing by an independent and impartial tribunal established by law

92. The applicant complained that the assignment of Judge K. by the Deputy Head of the Court of Appeal to her case had been unlawful. In

accordance with provision 3.1.13 of the applicable Regulation, a new judge in the applicant's case had to be assigned via the system for automated (random) allocation of cases, which had not been done.

93. The Government submitted that the changes in the composition of the appellate court's tribunal had been correctly performed in accordance with provision 3.1.12 of the Regulation. Furthermore, the HSC had examined the applicant's complaint in that regard and had dismissed it as unsubstantiated.

94. The relevant principles concerning the requirement of an "independent and impartial tribunal established by law" can be found in *Guðmundur Andri Ástráðsson v. Iceland* ([GC], no. 26374/18, §§ 211-16, 233-34 and 242, 1 December 2020).

95. In the present case, the complaint relating to the requirements of the "tribunal established by law" and "independence and impartiality" stem from the same underlying issue, namely the procedure for the assignment of Judge K. to replace Judge Z. in the examination of the applicant's case.

96. The Court reiterates that it is the role of the domestic courts to manage their proceedings with a view to ensuring the proper administration of justice. The assignment of a case to a particular judge or court falls within the margin of appreciation enjoyed by the domestic authorities in such matters. Although it is not the role of the Court to assess whether there were valid grounds for the domestic authorities to reassign a case to a particular judge or court, the Court must be satisfied that such reassignment was compatible with Article 6 § 1 of the Convention (see *Bochan v. Ukraine*, no. 7577/02, § 71, 3 May 2007).

97. The Court observes that the Regulation approved by decision no. 30 of the Council of Judges of Ukraine provided that in cases where a judge did not hold a security clearance, the selection of his or her replacement had to be performed with the aid of the system for the automated (random) allocation of cases (see paragraph 55 above). Instead, the Court of Appeal followed the rules regulating the replacement of a judge in cases where his or her presence could not be assured for reasons such as taking vacation or going on mission. It is unclear why the rule providing for the obligatory use of the system for the automated (random) allocation of cases was ignored. It is also unclear which criteria were followed in selecting Judge K. from the list of judges who held special clearance to access secret documents. The relevant decision on his appointment contains no such information (see paragraph 38 above).

98. The foregoing considerations and the lack of clarification from the HSC and the Government are sufficient to enable the Court to conclude that the irregularities in question were of such gravity that they undermined the very essence of the right to be tried by a tribunal established in accordance with the law.

99. The Court finds that the remaining question as to whether the same irregularities also compromised the independence and impartiality of the

same tribunal does not require further examination (see *X and Others v. Slovenia*, no. 27746/22, § 128, 19 December 2024).

100. There has accordingly been a violation of Article 6 § 1 of the Convention in this regard.

2. Alleged violation of the right to have a case heard within a reasonable time

101. The applicant complained that the length of the criminal proceedings brought against her had been excessive.

102. The Government objected to that argument, stating that the pre-trial proceedings had been conducted without any undue delay attributable to the authorities, that the national courts had promptly examined the applicant's case and that it had only been owing to the failure of the parties to the proceedings, including the applicant and her representative, to appear at the hearings that they had repeatedly been adjourned.

103. The relevant principles of the Court's case-law can be found in *Pélissier and Sassi v. France* ([GC], no. 25444/94, § 67, ECHR 1999-II) and *Frydlender v. France* ([GC], no. 30979/96, § 43, ECHR 2000-VII).

104. The Court notes that the proceedings started on 18 February 2009 (see paragraph 14 above), when the applicant was informed of the criminal case brought against her, and ended on 27 October 2015 (see paragraph 42 above), when the HSC delivered its final decision in the criminal case. The proceedings thus lasted six years, eight months and nine days and involved three levels of jurisdiction.

105. The Court observes that the applicant repeatedly raised her complaints before the national courts of the lawfulness of the stays of proceedings and the excessive length of the pre-trial investigation (see paragraphs 25 and 26 above). However, the national courts did not comment on those complaints. The Court further observes that the first-instance court did not verify the content of the file on case no. 1208, as was requested by the appellate court (see paragraph 27 above), nor did the appellate court examine it (see paragraph 32 above). That failure led to the quashing of the appellate court's decision and further delay in the examination of the case (see paragraph 34 above). Furthermore, the security service did not provide the material on case no. 1208 without undue delay, so that the Court of Appel was obliged to write a letter to the Prosecutor General and inform him of the adjournment of two hearings as a result of that failure (see paragraph 36 above).

106. At the same time, the Court notes that the proceedings in the present case were not complex, as they involved only two incidents and did not require the conduct of numerous procedural actions. Therefore, the Court is not convinced that the investigating authorities and the national courts acted with due diligence.

107. Having examined all the material submitted to it and in the light of its case-law on the subject, the Court must conclude that the length of the criminal proceedings against the applicant was excessive.

108. There has accordingly been a violation of Article 6 § 1 of the Convention in that connection.

3. Other alleged violations of Article 6 § 1, Article 6 § 3 (b) and Article 6 § 3 (d) of the Convention

109. The applicant also complained that the national courts' decisions had lacked adequate reasoning; that Judge Kh., who had examined her case in the Netishyn Court in 2013 and had delivered the first instance verdict against her, had allegedly been appointed without the use of the automated random case-allocation system; and that the first-instance court had lacked independence and impartiality. She further complained that the material obtained by the law-enforcement authorities as a result of the covert surveillance measures had been unfairly used to prosecute and convict her; that the prosecutor's office had unlawfully obtained her speaking samples; that she had not been given access to the court decisions authorising covert surveillance of her and therefore she had not been able to prepare her defence; that she had not been given an opportunity to put questions to key witnesses in court; and that the national courts had unfairly used an audio-recording of her conversation with I.P. as evidence against her and they had failed to address her arguments in that connection in their judgments.

110. The Court notes that these complaints are linked to the one examined above and therefore must be declared admissible.

111. Having regard to its findings above that the Court of Appeal which delivered the judgment of 26 December 2014 convicting the applicant was not a tribunal established by law, the Court considers that it is not necessary to examine whether the same conviction or the proceedings at first instance breached Article 6 on additional grounds.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

112. The applicant complained that she had had no effective remedies in respect of her complaint of the excessive length of criminal proceedings and in respect of her complaint of unlawful interference with her right to respect for private life. She referred to Article 13 of the Convention, which reads as follows:

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

113. The Government submitted that this complaint was manifestly ill-founded.

114. The applicant maintained her complaint.

115. The Court notes that the applicant had arguable claims of breaches of her rights under Article 6 § 1 (length of proceedings) and Article 8 (unlawfulness of secret surveillance). It follows that Article 13 applies. The Court further considers 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.

1. Remedies regarding the length of the proceedings

116. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). The Court further refers to its finding in other Ukrainian cases about the lack of an effective and accessible remedy under domestic law in relation to complaints of the length of criminal proceedings (see *Nechay v. Ukraine*, no. 15360/10, §§ 77-79, 1 July 2021, and the references cited therein).

117. The Court does not find any reason to reach a different conclusion in the present case.

118. There has therefore been a violation of Article 13 of the Convention in conjunction with its Article 6.

2. Remedies regarding the interference with the applicant's right to respect for her private life

119. Having regard to its findings under Article 8 of the Convention in paragraphs 78 and 85 above, the Court considers that it is not necessary to examine this complaint separately (see *Denysyuk and Others*, cited above, § 153)

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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

121. The applicant claimed 6,325,429 Ukrainian hryvnias (UAH) in respect of pecuniary damage for unpaid salary from the moment of her dismissal and 5,000 euros (EUR) in respect of non-pecuniary damage.

122. The Government contested those amounts as exorbitant and unsubstantiated.

123. 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 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

124. The applicant also claimed UAH 40,000 (EUR 3,555 at the relevant time) for the costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court. The applicant provided copies of two legal service contracts signed with her respective lawyers.

125. The Government argued that those amounts were unjustifiably high.

126. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention in respect of the lack of sufficient safeguards regarding the lawfulness of the secret video surveillance in the applicant's office;

3. *Holds* that there has been a violation of Article 8 of the Convention in respect of the recording of the applicant's conversation by I.P.;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's right to be tried by a tribunal established by law;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the excessive length of the proceedings;

6. *Holds* that it is not necessary to examine the remainder of complaints raised under Article 6 § 1 and Article 6 § 3 (b) of the Convention;

7. *Holds* that there has been a violation of Article 13 of the Convention in respect of the lack of effective remedies concerning the excessive length of proceedings;

8. *Holds* that there is no need to examine the remainder of the complaints under Article 13 of the Convention;

9. *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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Kateřina Šimáčková President