



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

FOURTH SECTION

CASE OF GORANOVA-KARAENEVA v. BULGARIA

(Application no. 12739/05)

JUDGMENT

STRASBOURG

8 March 2011

FINAL

08/06/2011

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

In the case of Goranova-Karaeneva v. Bulgaria,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Sverre Erik Jebens,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 12739/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Ms Koprinka Petkova Goranova-Karaeneva (“the applicant”), on 22 March 2005.

2. The applicant was represented by Mr M. Ekimdzhev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged, in particular, that she had been subjected to covert surveillance in breach of the requirements of Article 8 of the Convention and that she had not had effective remedies in that respect.

4. On 10 September 2009 the President of the Fifth Section decided to give the Government notice of the complaints concerning the covert surveillance and the alleged lack of effective remedies in that respect. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

5. The application was later transferred to the Fourth Section of the Court, following the re-composition of Court's sections on 1 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Montana. At the material time she was employed as a neurologist at Montana Regional Hospital and was on occasion called upon to act as a court-appointed expert.

7. On 9 January 2001 the Montana police were tipped off that the applicant, while acting as an expert appointed by the Montana Regional Court to draw up a report in connection with a civil claim brought by a Ms A.G. against her employer, had asked Ms A.G. to pay her money in exchange for her drawing up a report corroborating her claim. The next day, 10 January 2001, the police requested the Montana Regional Court (*Окръжен съд Монтана*) to issue a warrant allowing them to install covert listening devices in the applicant's office in the hospital and in her private practice, and secretly to mark banknotes which Ms A.G. would hand to the applicant. On 10 January 2001 the court's president, exercising his powers under section 15 of the 1997 Special Surveillance Means Act (see paragraph 22 below), issued a warrant, specifying that the covert surveillance was not to exceed thirty days. The warrant did not mention the applicant's name or the registration number of the request; however, both the request and the warrant bore the number under which the request had been registered at the court. On 11 January 2001 the Montana police informed the chief secretary of the Ministry of Internal Affairs about the warrant by telephone and at 6.30 p.m. the same day received instructions from him to start the covert operation. The next day, 12 January 2001, the Minister of Internal Affairs also gave his written approval.

8. The technical department of the Ministry of Internal Affairs then installed the listening devices. At about 3 p.m. on 15 January 2001 Ms A.G. met with the applicant in front of and then inside her private practice. Their conversation was surreptitiously recorded. Ms A.G. handed the applicant two banknotes which had previously been marked by the police with a special material which glowed under ultraviolet light. Immediately after that the police searched the premises and found the two banknotes in the applicant's purse and seized them. They were later tested by a police expert.

9. The same day, 15 January 2001, the Montana District Prosecutor's Office charged the applicant with bribe-taking.

10. On 7 February 2001 the three officers of the Ministry's technical department who had carried out the surveillance drew up a transcript of the audio recording which they had made on 15 January 2001. The transcript said that the recording had started at 2.30 p.m., but did not mention when it had ended. They also made a copy of the audio recording, from the original cassette onto a second one. One of the copies of the transcript was sent,

along with the first cassette, to the Montana Regional Court. The second copy of the transcript and the other cassette were sent to the Montana police.

11. On 21 May 2002 the prosecuting authorities submitted an indictment against the applicant to the Montana District Court (*Районен съд Монтана*). On 17 June 2002 the judge-rapporteur at the Montana District Court set the case down for trial. However, at the first hearing, held on 17 October 2002, the court, noting that the indictment had not been drawn up properly, referred the case back to the prosecuting authorities.

12. On 27 December 2002 the Montana District Prosecutor's Office re-submitted the indictment.

13. On 9 February 2003 the judge-rapporteur at the Montana District Court set the case down for trial. Hearings were held on 27 March and 5 June 2003. On the latter date the court, noting that as a result of an intervening amendment to the 1974 Code of Criminal Procedure cases concerning bribe-taking became triable by regional courts, discontinued the proceedings and sent the case to the Montana Regional Prosecutor's Office.

14. However, following a further amendment to the Code of Criminal Procedure providing that pending cases were to be completed under the old jurisdictional rules, on 25 June 2003 the Montana Regional Prosecutor's Office sent the case back to the Montana District Court, and on 21 July 2003 the court decided to resume the trial. It held hearings on 16 October and 10 November 2003. The applicant was able to acquaint herself with the material obtained through the covert listening devices and listen to the audio recording, which was played in the courtroom. At both hearings counsel for the applicant objected to the admission in evidence of, *inter alia*, the material obtained through the covert listening devices. The court rejected the objections and decided to admit that material in evidence. In her closing speech counsel for the applicant reiterated the objections, pointing out that the surveillance warrant did not contain a reference to the number of the request, and that the transcript of the audio recording did not mention the time when the surveillance had come to an end, which had made it possible to manipulate the transcript and present the words spoken by the applicant out of context.

15. In a judgment of 10 November 2003 the Montana District Court found the applicant guilty of aggravated bribe-taking, contrary to Article 305, read in conjunction with Articles 301 § 1 and 302 of the Criminal Code (see paragraph 33 below). It sentenced her to three years' imprisonment, suspended, and barred her from being a court-appointed expert for three years. It found that instead of examining Ms A.G. in the hospital, she had invited her to her private practice and had asked her to pay her money in exchange for a favourable expert report.

16. The court based its findings of fact on, among other evidence, the testimony of Ms A.G. and her husband, the search conducted by the police on 15 January 2001, the evidence gathered through the covert listening

device in the applicant's private practice, and two expert reports drawn up by a police expert and showing that the applicant had touched the marked banknotes that she received from Ms A.G.

17. The court went on to analyse in detail the applicant's objections against the admission of various items in evidence. It held, *inter alia*, that the failure of the judge who had issued the surveillance warrant to mention the number of the request was not a problem, because neither the 1997 Special Surveillance Means Act nor the 1974 Code of Criminal Procedure required that. The failure to refer, in the transcript of the audio recording, to the request for the use of special surveillance means, the surveillance warrant or the Minister's decision authorising their use, or to specify in the transcript the time when the recording had ended, were not in breach of the statutory requirements either, and the procedure followed by the authorities to obtain permission for the covert recording and to carry it out had been proper. The transcript fully complied with the applicable rules, and there was no indication that phrases spoken by the applicant or Ms A.G. had been taken out of context. Both of them had heard the recording during the trial, and had stated that the voices in the recording had been theirs and that the recorded phrases had been spoken by them. The expert reports had been prepared in line with the relevant statutory and regulatory requirements, and there were no grounds to disqualify the expert who had drawn them up. Her conclusions had been based on the presence of a special material produced by the technical services of the Ministry of Internal Affairs on the applicant's hands and on the two banknotes. The composition of that material, which was not being used in any other domain, was secret.

18. On 24 November 2003 the applicant appealed against her conviction and sentence. She reiterated her objections against the admission of the evidence obtained through the covert listening devices, and argued that the reasons given by the district court for rejecting her objections in that respect were erroneous. She also impugned the expert's refusal to disclose the exact composition of the material used to mark the banknotes, and argued that the expert was not impartial because she worked for the regional directorate of the Ministry of Internal Affairs – the very body which had sought permission to use special surveillance means against the applicant and whose officers had marked the banknotes.

19. The Montana Regional Court heard the appeal on 26 January 2004, and on 2 February 2004 upheld the applicant's conviction, but reduced her sentence to one and a half years, suspended. In the reasons for its judgment it stated, among other things, that it fully agreed with the detailed and comprehensive reasons given by the district court to reject the applicant's objections against the admission of certain items in evidence. It went on to say that the failure of the judge who had issued the surveillance warrant to mention the number of the request was not sufficient to taint the evidence obtained through the covert listening devices.

20. On 2 March 2004 the applicant appealed on points of law. She reiterated her arguments in relation to the evidence obtained through the covert listening devices and the expert evidence, and argued that the regional court had failed to give sufficient reasons for its judgment and to address key arguments relating to the wrongful admission of evidence.

21. The Supreme Court of Cassation (*Върховен касационен съд*) heard the appeal on 13 October 2004 and dismissed it on 28 December 2004 (реш. № 644 от 28 декември 2004 по н. д. № 229/2004 г., ВКС, II н. о.). It noted that the applicant's arguments were the same as those that she had raised before the lower courts. The fact that the regional court's reasons were not detailed was not a problem, because it had stated that it fully agreed with the reasons given by the district court. It also held that the evidence against the applicant had been properly admitted. There had been no serious breaches of the 1997 Special Surveillance Means Act or the 1974 Code of Criminal Procedure in relation to the use of covert listening devices. The applicant had been fully acquainted with the material obtained through the use of those devices and had recognised her own voice. The failure to mention the number of the request for use of special surveillance means and to include in the transcript the exact time at which the surveillance had ended were mere technical errors which could not affect the validity of the evidence obtained through the use of such means. The court went on to say that the expert's reports were comprehensive and complete, that they had not been the only evidence proving the applicant's guilt, and that there had been no grounds to disqualify the expert.

II. RELEVANT DOMESTIC LAW

A. Covert surveillance

22. A description of the relevant provisions of the 1991 Constitution, the 1974 and 2005 Codes of Criminal Procedure, the 1997 Special Surveillance Means Act (*Закон за специалните разузнавателни средства*), the 2002 Classified Information Act (*Закон за защита на класифицираната информация*), the case-law of the domestic courts and other relevant material can be found in paragraphs 7-50 of the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (no. 62540/00, 28 June 2007).

23. It should in particular be mentioned that under Article 111c of the 1974 Code, if material obtained through covert surveillance was to be used as evidence in criminal proceedings, it had to be reproduced in two copies, one of which was to be handed in a sealed package to the judge who had issued the surveillance warrant within twenty-four hours of being prepared. Article 113a provided that audio recordings and similar material made in

connection with criminal proceedings, with the exception of material under Article 111c, was initially to be kept by the Ministry of Internal Affairs and then handed to the investigating and prosecuting authorities and the courts.

24. Article 111 § 5 of the 1974 Code provided that, in the event of criminal proceedings, the material obtained through covert surveillance was to be included in the case file. Section 31(2) of the 1997 Special Surveillance Means Act provides that after the opening of criminal proceedings, that material is to be kept by the judicial authorities.

25. Following the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above), on 14 October 2008 the Government laid before Parliament a bill for the amendment of the 1997 Special Surveillance Means Act. The explanatory notes to the bill referred to the above-mentioned judgment and to the need to bring the Act in line with the requirements of the Convention. The bill was enacted on 15 December 2008 and came into force on 27 December 2008. Along with a host of other changes, the amendment created a National Bureau for Control over Special Surveillance Means (*Национално бюро за контрол на специалните разузнавателни средства*), an independent body whose task was to oversee the services authorised to use such means.

26. On 22 October 2009 Parliament adopted further amendments to the Act, abolishing the Bureau and replacing it with a special parliamentary commission. Those amendments came into force on 10 November 2009.

B. Regulations governing the storage of evidence in the courts

27. At the relevant time and until November 2004 the storage of evidence in the courts was governed by Regulation no. 28 of 1995 on the functions of the employees in the registries and the auxiliary services of the district, regional and military courts and courts of appeal (*Наредба № 28 от 20 март 1995 г. за функциите на служителите в помощните звена и канцелариите на районните, окръжните, военните и апелативните съдилища*). Under regulation 79(2), it was to be handed to an officer of the court designated by the court's president, who had to certify that he or she had received it. Under regulation 79(4), documents were sealed in envelopes and other items attached to a piece of cardboard. Regulation 80(2) provided that when items were taken in connection with the examination of cases, they had to be returned to the storage officer immediately after use. Evidence was to be sent to a higher court only if requested (regulation 80(3)) and could not be used for any non-evidentiary purposes (regulation 81(3)). Its proper storage was to be checked annually by a commission consisting of a judge, the court's registrar and a court officer (regulation 81(1) and (2)). Files of completed cases were to be sent to the court's archives not later than the end of June of the year following the one during which they had been completed (regulation 85(1)). District court

cases were to be kept for five years and regional court cases for ten years (regulation 91(1)). Files in criminal cases where the sentence had not been enforced were to be kept until the expiry of the limitation period for the enforcement of the sentence (regulation 91(4)). The regulations did not contain special rules on the storage of classified information.

28. Between November 2004 and February 2008 the storage of evidence in the courts was governed by the Rules on the administration of the district, regional, administrative and military courts and courts of appeal (*Правилник за администрацията в районните, окръжните, административните, военните и апелативните съдилища*), issued by the Minister of Justice. Between February 2008 and August 2009 the matter was governed by similar rules issued by the Supreme Judicial Council in consultation with the Minister of Justice, and since August 2009 by similar rules issued by the Supreme Judicial Council. The 2008 and the 2009 rules contain detailed provisions on the manner in which courts must handle classified information.

C. State liability for damages

29. Section 2(1) of the Act originally called the 1988 State Responsibility for Damage Caused to Citizens Act, renamed on 12 July 2006 the State and Municipalities Responsibility for Damage Act (“the 1988 Act”) provides for liability of the investigating and prosecuting authorities or the courts in six situations: unlawful detention; bringing of charges or conviction and sentencing, if the proceedings have later been abandoned or the conviction has been set aside; coercive medical treatment or coercive measures imposed by a court, if its decision has later been quashed as being unlawful; and serving of a sentence over and above its prescribed duration.

30. On 10 March 2009 a new point 7 was added to section 2(1). It provides that the State is liable for the damage which the investigating and prosecuting authorities or the courts have caused to individuals through the unlawful use of special surveillance means. There is no reported case-law under that provision.

31. In their case-law the Supreme Court of Cassation and the Supreme Administrative Court have held that the liability provisions of the 1988 Act – including those added after the Act was originally enacted – confer on the persons concerned a substantive right to claim damages, and have no retroactive effect (реш. № 63 от 21 февруари 1997 г. по гр. д. № 2180/1996 г., ВС; реш. № 529 от 17 юли 2001 г. по гр. д. № 24/2001 г., ВКС; опр. № 9134 от 3 октомври 2007 г. по адм. д. № 8175/2007 г., ВАС, III о.; опр. № 1046 от 6 август 2009 г. по гр. д. № 635/2009 г., ВКС, III г. о.; опр. № 1047 от 7 август 2009 г. по гр. д. № 738/2009 г., ВКС, III г. о.; реш. № 335 от 31 май 2010 г. по гр. д. № 840/2009 г., ВКС,

III г. о.; реш. № 329 от 4 юни 2010 г. по гр. д. № 883/2009 г., ВКС, IV г. о.).

32. Paragraph 1 of the transitional and concluding provisions of the 1988 Act provides that all matters which have not been addressed in the Act are to be resolved in line with the general provisions of civil and labour law. Section 110 of the 1951 Obligations and Contracts Act, which is also applicable to proceedings under the 1988 Act (тълк. реш. № 3 от 22 април 2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС; реш. № 7768 от 10 юни 2010 г. по адм. д. № 14132/2009 г., ВАС, III о.), provides that the limitation period for tort claims is five years.

D. Relevant provisions of the Criminal Code

1. The offence of which the applicant was convicted

33. Article 305, read in conjunction with Article 301 § 1 of the 1968 Criminal Code, as in force at the material time, makes it an offence, punishable with a term of imprisonment ranging from one to six years, for a court-appointed expert to accept an undue advantage with a view to carrying out or refraining from carrying out his or her duties. If the recipient of the bribe, in order to secure its payment, threatens the payer with abuse of office in the event of non-payment, the offence is punishable with three to ten years' imprisonment (Article 302 § 2 and point (a)).

2. Offences in relation to covert surveillance

34. Article 145a § 1 of the Code, added in 1997, makes it an offence to use information obtained through covert surveillance for purposes other than protection of national security or the investigation and prosecution of crime. Article 145a § 2 provides for a more severe punishment if the offence has been committed by an official who has acquired the information in connection with his or her duties.

35. Article 284c of the Code, added in 2009, makes it an offence for an official to unlawfully use, or allow or order the use of, special surveillance means, or unlawfully keep information obtained through such means.

36. Article 287a of the Code, added in 1997, makes it an offence to (a) make false technical recordings; (b) forge such recordings; (c) rearrange them and thus create a false impression; (d) use forged recordings; or (e) use unlawfully information acquired through special means of surveillance, provided those acts have been perpetrated with a view to deceiving a judicial authority.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37. The applicant complained that the tapping of her conversations in connection with the criminal proceedings against her had been in breach of Article 8 of the Convention, which provides, in so far as relevant:

“1. Everyone has the right to respect for his private ... 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. The parties' submissions

38. The Government submitted that the present case was to be distinguished from *Association for European Integration and Human Rights and Ekimdzhev* (cited above). Its distinguishing feature was that the covert surveillance of the applicant had not been tainted by irregularities and that on its basis she had later been convicted of bribery. The recording of her conversation had been lawful and carried out pursuant to a warrant issued by the president of a regional court. She had learned about the surveillance when acquainting herself with the material in the criminal case against her, and had been able to challenge the authenticity of the recording and point out any irregularities that might have tainted the covert operation. While there was no indication as to whether the officers who had carried out the operation notified the regional court's president when the surveillance came to an end, it was clear from the transcript that they had later noted that the recording had started at 9 a.m. on 7 February 2001 and come to an end at 2 p.m. the same day, because it had fulfilled its purpose. That situation was comparable to the one in *Lüdi v. Switzerland* (15 June 1992, Series A no. 238). Moreover, one could not lose sight of the latest amendments to the 1997 Special Surveillance Means Act and the 1988 Act. In particular, the new point 7 of section 2(1) of the 1988 Act made it possible to seek damages in respect of unlawful interception of communications.

39. The applicant submitted that the legal provisions which had served as a basis for the covert surveillance against her were not sufficiently foreseeable. The 1997 Special Surveillance Means Act did not spell out in sufficient detail in what situations the authorities could resort to such measures, entrusted control over the information received through such

means solely to the Minister of Internal Affairs, did not envisage any *ex post facto* review by the judge who issued the surveillance warrant, and did not make it possible for those concerned to learn whether the surveillance had in fact been discontinued. Moreover, when implementing surveillance measures against the applicant the authorities had failed to observe certain formalities prescribed by that Act and the 1974 Code of Criminal Procedure: the surveillance warrant did not mention the number of the request or the applicant's name, and the transcript of the audio recording did not refer to the request, the warrant or the Minister's permission to proceed with the surveillance operation.

40. The applicant further pointed out that she had been subjected to covert surveillance in 2001, long before the 2008 and 2009 legislative amendments, on the basis of provisions which the Court had found deficient in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above). The lack of adequate safeguards noted in that judgment was evinced by the fact that it was unclear who, and when and in how much detail, had informed the chief secretary of the Ministry of Internal Affairs about the covert operation by telephone. That lack of safeguards had not been remedied with the adoption in 2008 and 2009 of legislative amendments. They did not address situations in which resorting to covert surveillance was formally lawful but unwarranted. The setting up of a special parliamentary commission to oversee the implementation of such measures had not been enough, because the law did not lay down in detail the manner in which that commission was to carry out its task and did not enjoin it to do so. It was unrealistic to believe that the commission's five members would be able to review all instances – about ten thousand a year – in which such surveillance measures were being applied. In fact, the amendments had, paradoxically, lessened the amount of control over the implementation of covert surveillance measures. The 2008 amendments had envisaged the creation of a special body, the National Bureau for Control over Special Surveillance Means. However, before it could become operational, the 2009 amendments had abolished it and replaced it by the special parliamentary commission. The commission's members had already been elected, but it had not started work. Thus, even the minimal degree of supervision exercised by the Minister of Internal Affairs before the 2008 amendments no longer existed and had not been replaced by a working mechanism. The Bulgarian State, in breach of its duty under Article 46 § 1 of the Convention to abide by the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above), had not taken adequate measures to put in place sufficient safeguards against the improper use of covert surveillance. The continued overuse of such surveillance and the existence of various irregularities had been reported on in a number of publications in the press.

B. The Court's assessment

1. Admissibility

41. In so far as the Government's reference to the new point 7 of section 2(1) of the 1988 Act (see paragraphs 29 and 30 above) may be construed as a plea of non-exhaustion, the Court observes that the question whether the applicant has exhausted domestic remedies in respect of her complaint under Article 8 is closely connected to the merits of the complaint under Article 13 about the lack of such remedies (see paragraph 54 below). It should therefore be joined to the merits (see *Calogero Diana v. Italy*, 15 November 1996, § 25, *Reports of Judgments and Decisions* 1996-V, and *Kirov v. Bulgaria*, no. 5182/02, § 34, 22 May 2008).

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

2. Merits

(a) Scope of the case

43. The Court starts by observing that, unlike the applicants in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above), the applicant in the instant case did not complain in general about the existence of legislation allowing measures of covert surveillance. The basis of her complaint, which was raised on 22 March 2005, was a specific instance of such surveillance which took place in January 2001 in connection with criminal proceedings which came to an end in 2004 (see paragraphs 8 and 21 above and compare with *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 49, 22 May 2008). In those circumstances, and noting that its task is normally not to review domestic law *in abstracto* but to determine whether the manner in which it affected the applicant gave rise to a breach of the Convention (see *Kennedy v. the United Kingdom*, no. 26839/05, § 119, ECHR 2010-..., with further references), the Court does not consider it necessary or appropriate to examine in the present case whether the subsequent changes in the law, such as the legislative amendments in 2008 and 2009 that came as a result of its above-mentioned judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (see paragraphs 25 and 26 above), meet the requirements of Article 8 (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 63, ECHR 2001-IX).

(b) Was there an interference?

44. The Government did not dispute that the installation of covert listening devices in the applicant's office in the hospital and in her private

practice and the surreptitious recording of her conversation with Ms A.G. amounted to an interference with her rights under Article 8. The Court sees no reason to hold otherwise (see *Khan v. the United Kingdom*, no. 35394/97, §§ 9, 10 and 25, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, cited above, §§ 12 and 37; and *Vetter v. France*, no. 59842/00, §§ 10 and 20, 31 May 2005).

(c) Was the interference justified?

45. Such interference will give rise to a breach of Article 8 unless it can be shown that it was “in accordance with the law”, pursued one or more legitimate aim or aims as defined in its second paragraph and was “necessary in a democratic society” to achieve those aims.

46. The interference was based on the 1997 Special Surveillance Means Act and the 1974 Code of Criminal Procedure (see paragraphs 7 and 22 above). The Court is not persuaded that the irregularities to which the applicant referred – the failure to mention the number of the request in the surveillance warrant and the failure to refer, in the transcript of the audio recording, to the request, the warrant and the Minister's permission – made the interference in breach of the Act's and the Code's requirements. The district court dealing with the criminal case against the applicant specifically considered that question and found that the covert operation against the applicant had not been unlawful (see paragraph 17 above, and contrast *Perry v. the United Kingdom*, no. 63737/00, § 47, ECHR 2003-IX (extracts)). Its ruling on that point was upheld by the appellate court and the Supreme Court of Cassation (see paragraphs 19 and 21 above). It is primarily for the national courts to interpret and apply domestic law (see *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A, and *Huvig v. France*, 24 April 1990, § 28, Series A no. 176-B). While the Court should exercise a certain power of review in this matter, since failure to comply with domestic law entails a breach of Article 8, the scope of its task is subject to limits inherent in the subsidiary nature of the Convention, and it cannot question the way in which the domestic courts have interpreted and applied national law, except in cases of flagrant non-observance or arbitrariness (see *Weber and Saravia v. Germany* (dec.), no. 54934/00, § 90, ECHR 2006-XI). It does not consider that their rulings in the instant case were arbitrary, and accordingly concludes that the applicant's surveillance was lawful in terms of Bulgarian law.

47. The question remains, then, whether the interference met the other requirements flowing from the phrase “in accordance with the law”. In *Association for European Integration and Human Rights and Ekimdzhiev* the Court found that Bulgarian law governing secret surveillance partly met and partly failed to meet those requirements. It found that the statutory procedure for authorising covert surveillance, if strictly adhered to, offered sufficient protection against arbitrary or indiscriminate surveillance (see

Association for European Integration and Human Rights and Ekimdzhiev, cited above, §§ 79-84). However, it went on to find problems with (a) the lack of review by an independent body of the implementation of surveillance measures or of whether the material obtained through such measures would be destroyed within the statutory time-limit if the surveillance had proved fruitless; (b) the lack of sufficient safeguards in respect of surveillance carried out on national security grounds and not in the context of criminal proceedings; (c) the lack of regulations specifying with an appropriate degree of precision the manner of screening of such material, or the procedures for preserving its integrity and confidentiality and the procedures for its destruction; (d) the lack of an independent body to oversee and report on the functioning of the system of secret surveillance; (e) the lack of independent control over the use of material falling outside the scope of the original application for the use of covert surveillance measures; and (f) the lack of notification of the persons concerned, even where such notification could be made without jeopardising the purpose of the surveillance (*ibid.*, §§ 85-91).

48. Even in the present case, where the applicant's complaint was based on a specific and undisputed instance of covert surveillance, the Court's assessment of whether the law which served as a basis for the surveillance met the requirements of Article 8 necessarily entails some degree of abstraction (see *Kruslin*, § 32, and *Huvig*, § 31, both cited above). However, that assessment cannot be of the same level of generality as in cases, such as *Association for European Integration and Human Rights and Ekimdzhiev* and *Kennedy* (both cited above), which concern general complaints about the law permitting secret surveillance and in which the Court must, of necessity and by way of exception to its normal approach (see *Kennedy*, cited above, § 124), carry out a completely abstract assessment of such law. In cases arising from individual applications, the Court must as a rule focus its attention not on the law as such but on the manner in which it was applied to the applicant in the particular circumstances (see, among other authorities, *Sommerfeld v. Germany* [GC], no. 31871/96, § 86, ECHR 2003-VIII, and *Taxquet v. Belgium* [GC], no. 926/05, § 83 *in fine*, 16 November 2010).

49. In the instant case, the surveillance against the applicant took place in the context of criminal proceedings against her, opened pursuant to a tip-off that she had tried to secure the payment of a bribe by threats of abuse of office, a serious offence carrying a term of imprisonment of up to ten years (see paragraph 33 above). There is no indication that the authorities sought to abuse their powers in that domain or act in breach of the law, or that the surveillance was intended for purposes other than the criminal prosecution of the applicant. The covert operation targeted the applicant and not another person, and was carried out under a judicial warrant issued pursuant to a written application describing in detail the intended covert

operation and limiting it to thirty days. The material obtained was later used to prosecute the applicant (see paragraphs 7 and 14 above). She was fully acquainted with it – the recording of her conversation with Ms A.G. having been played in the courtroom during her trial – and was able to challenge it during her trial and on appeal (see paragraphs 14, 18 and 20 above, and contrast *Kirov*, cited above, §§ 12-16 and 44). Therefore, the concerns that the Court has expressed in relation to surveillance on national-security grounds, unauthorised surveillance, the lack of notification of the persons concerned, the lack of independent review of whether material is destroyed within the statutory time-limit if the surveillance has proved fruitless, the lack of safeguards in respect of material which falls outside the scope of the original request, and the lack of an effective mechanism of oversight of the system of secret surveillance (see *Association for European Integration and Human Rights and Ekimdzhiev*, cited above, §§ 84, 85 and 87-91) are of no relevance to the present case. Similarly, no problem arises in relation to the lack of an independent body empowered to verify whether the services carrying out surveillance comply with the warrants which have authorised it, or whether they faithfully reproduce the original data in the written record (*ibid.*, § 85). The courts dealing with the criminal case against the applicant reviewed whether the surveillance had been carried out lawfully (see paragraphs 17, 19 and 21 above, and contrast *Kirov*, cited above, §§ 12-16 and 44). The trial court had at its disposal the material obtained as a result of the surveillance, and was able to check whether it had been correctly reproduced in the ensuing transcript (see paragraphs 14 and 17 above, and contrast *Dumitru Popescu v. Romania (no. 2)*, no. 71525/01, §§ 78, 80 and 81, 26 April 2007, and *Kirov*, cited above, §§ 12-16 and 44).

50. Thus, the only remaining issue is the existence of regulations specifying with an appropriate degree of precision the procedures for preserving the integrity and confidentiality of material obtained through covert surveillance and the procedures for its destruction (see *Association for European Integration and Human Rights and Ekimdzhiev*, § 86, and *Kirov*, § 45, both cited above). However, unlike the archetypal situation envisaged in the first of those cases and the situation actually obtaining in the second, in the present case the material obtained as a result of the covert operation against the applicant was later used as evidence in her trial and thus stored as part of the criminal case against her.

51. The Court observes that there existed a number of rules governing the storage of such material by the courts in the context of criminal proceedings. Under Article 111c of the 1974 Code of Criminal Procedure, material obtained through covert surveillance which would be used as evidence had to be reproduced in two copies, one of which was to be handed in a sealed package to the judge who had issued the surveillance warrant. Article 113a of the Code provided that audio recordings and similar material made in connection with criminal proceedings was initially to be

kept by the Ministry of Internal Affairs and then handed to the investigating and prosecuting authorities and the courts (see paragraph 23 above). Article 111 § 5 of the Code and section 31(2) of the 1997 Special Surveillance Means Act provided that after the opening of criminal proceedings, the material obtained through covert surveillance was to be included in the case file and kept by the judicial authorities (see paragraph 24 above). The regulations governing the storage of evidence in the courts at that time, while not containing specific provisions on how to handle classified information, laid down a number of rules concerning duration, storage, usage and destruction of material in court case files and access of third parties to them. They also put in place a number of safeguards designed to ensure the integrity and the confidentiality of such material (see paragraphs 27 and 28 above). The applicant has not argued that those rules and safeguards were deficient or were not followed in her case.

52. In those circumstances, the Court is satisfied that the interference was “in accordance with the law” (see, *mutatis mutandis*, *P.G. and J.H. v. the United Kingdom*, cited above, §§ 47 and 48). It further notes that the applicant has not sought to argue that it was not in fact justified as necessary for the prevention of crime. The information was obtained and used in the context of an investigation into, and trial of, suspected bribe-taking. No issues of proportionality have been identified. The measure was accordingly justified under Article 8 § 2 as “necessary in a democratic society” for the purpose identified above.

53. There has therefore been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. The applicant complained that she had not had effective remedies in respect of her complaint under Article 8. She relied on Article 13 of the Convention, which provides 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.”

55. The parties' submissions are summarised in paragraphs 38-40 above.

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

57. Article 13 guarantees the availability of a remedy at national level to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Thus, its effect is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *Khan*, cited above, § 44). It

does not go so far as to require a particular form of remedy, Contracting States being afforded a margin of appreciation in conforming with their obligations in that respect (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 135, ECHR 1999-VI). In the covert surveillance context, an “effective remedy” means a remedy that is as effective as can be, having regard to the restricted scope for recourse (see *Klass and Others v. Germany*, 6 September 1978, § 69, Series A no. 28). Moreover, such a remedy is required only in respect of grievances which can be regarded as arguable (see, among other authorities, *Iliya Stefanov*, cited above, § 56).

58. In the present case, the national courts dealing with the criminal case against the applicant examined her allegations that the covert surveillance had been unlawful (see paragraphs 17, 19 and 21 above). The Court also reviewed in detail whether it met the requirements of Article 8 before deciding that it did. It is therefore satisfied that the applicant's complaint in that respect was arguable, and that she was entitled to an effective remedy.

59. The criminal courts were not capable of providing such a remedy. Although they were competent to and indeed considered whether the surveillance had been carried out lawfully, they were concerned with its lawfulness only in so far as it could affect the fairness of the criminal proceedings against the applicant and the question whether the material obtained could be admitted in evidence. Moreover, even if this review could lead to a finding that the surveillance had been unlawful, such a finding could not in itself lead to any redress for the applicant (see *Khan*, § 44 *in fine*, and *P.G. and J.H. v. the United Kingdom*, § 86, both cited above).

60. The Court has already found that until 2007 there were no avenues allowing persons subjected or suspecting of being subjected to covert surveillance to vindicate their rights (see *Association for European Integration and Human Rights and Ekimdzhev*, cited above, § 102).

61. In the present case, the only avenue suggested by the Government was a claim for damages under the new point 7 of section 2(1) of the 1988 Act, added in March 2009 (see paragraphs 29 and 30 above). However, the Court observes that that provision came into force long after the applicant had lodged her application, whereas the assessment of whether effective domestic remedies exist is normally carried out with reference to the date on which the application was lodged with the Court (see, as a recent authority, *Demopoulos and Others v. Turkey* (dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 87, ECHR 2010-...).

62. Even if the Court were to make an exception from that rule on the basis that this is justified by the particular circumstances of the case (*ibid.*), it is not persuaded that the new point 7 can provide an effective remedy to the applicant, for two reasons. First, the Bulgarian courts seem to have consistently construed amendments to the liability provisions of the 1988

Act as conferring substantive rights and not having retroactive effect (see paragraph 31 above). It is therefore highly unlikely that they would allow a claim in respect of events which predate the coming into force of point 7 by more than eight years. The Government have not cited any examples to show otherwise. Secondly, even assuming that the domestic courts were to construe point 7 not as a provision conferring a new substantive right but as a merely procedural one, and thus make claims in respect of surveillance which occurred before its enactment possible, it cannot be overlooked that the operation against the applicant took place in January 2001, whereas the limitation period for bringing claims under the 1988 Act is five years (see paragraph 32 above and contrast *Latak v. Poland* (dec.), no. 52070/08, § 81, 12 October 2010, and *Łomiński v. Poland* (dec.), no. 33502/09, § 72, 12 October 2010).

63. The Court therefore concludes that in the particular circumstances of the present case the possibility of bringing a claim under the new point 7 of section 2(1) of the 1988 Act is not an effective remedy.

64. In view of that conclusion, it sees no reason to determine in the abstract whether that avenue is effective in principle, and in particular in respect of covert surveillance which has taken place after it became available (see, *mutatis mutandis*, *Djangozov v. Bulgaria*, no. 45950/99, § 52, 8 July 2004). The Government did not refer to another remedy, and the Court is not aware of any.

65. In view of the above considerations, the Court dismisses the Government's objection of non-exhaustion of domestic remedies and holds that there has been a violation of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Fairness of the criminal proceedings against the applicant

66. The applicant complained that her arguments relating to the use of special means of surveillance against her and the lack of independence of the expert had not been properly addressed by the courts dealing with her case. In her view, those arguments had been crucial because, if they had been accepted, they would have led to the exclusion of the main incriminating evidence against her. She further complained that the evidence obtained through special surveillance means had been tainted by irregularities. She relied on Article 6 § 1 of the Convention.

67. The Court reiterates that Article 6 § 1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty applies may vary according to the nature of the decision. It is moreover necessary to take into account, among other things, the diversity of the submissions that a litigant

may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 § 1, can only be determined in the light of the circumstances of the case (see, as a recent authority, *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 37, ECHR 2009-..., with further references).

68. In the instant case, the Montana District Court complied with the requirement to give reasons. It addressed in detail the applicant's objections against the admission in evidence of the material obtained through the covert surveillance and the expert reports relating to the banknotes which she had received from Ms A.G. (see paragraph 17 above). The fact that on appeal the Montana Regional Court did not deal with the same points in as much detail and endorsed the reasons given by the district court does not pose a problem (see paragraph 19 above). According to the Court's case-law, in dismissing an appeal an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26 *in fine*, ECHR 1999-I; and *Papon v. France (no. 2)* (dec.), no. 54210/00, ECHR 2001-XII (extracts)). Moreover, after that the Supreme Court of Cassation specifically dealt with the main grounds of objection raised by the applicant (see paragraph 21 above).

69. Concerning the second limb of the complaint, the Court observes that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence. The salient question is therefore not whether evidence that was obtained unlawfully or in breach of the Convention should or should not have been admitted, but whether the proceedings as a whole, including the way in which evidence was taken, were fair. This involves an examination of the unlawfulness in question and, where a violation of another Convention right is concerned, the nature of the violation found. Matters to be taken into account are whether the applicant was able to challenge the authenticity of the evidence and to oppose its use, whether the evidence was of sufficient quality – which entails an inquiry as to whether the circumstances in which it was obtained could cast doubt on its reliability or accuracy –, and whether it was supported by other material (see *Schenk v. Switzerland*, 12 July 1988, §§ 46-48, Series A no. 140; *Khan*, cited above, §§ 34 and 35; *P.G. and J.H. v. the United Kingdom*, cited above, §§ 76 and 77; *Allan v. the United Kingdom*, no. 48539/99, §§ 42 and 43, ECHR 2002-IX; *Dumitru Popescu*, cited above, § 106; and, most recently, *Bykov v. Russia* [GC], no. 4378/02, §§ 88-90, ECHR 2009-...).

70. In the instant case, the domestic courts found that the installing and use of covert listening devices were not contrary to Bulgarian law. The applicant had ample opportunity to challenge both the authenticity and the use of the material obtained through those devices in the adversarial procedure during the trial and in her grounds of appeal. The domestic courts

of all levels dealt with her objections in that regard, concluding, on the basis of reasoning which the Court has already found sufficient, that the irregularities to which she referred had been of a technical nature only and could not cast doubt on the validity of the evidence against her (see paragraphs 16, 17, 19 and 21 above). Moreover, the impugned recording was not the only evidence on which the courts relied to convict the applicant.

71. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Length of the criminal proceedings against the applicant

72. The applicant also complained under Article 6 § 1 of the Convention that the criminal proceedings against her had been unreasonably lengthy.

73. The Court notes that the applicant was charged on 15 January 2001 (see paragraph 9 above). The charges against her were finally determined by the Supreme Court of Cassation on 28 December 2004 (see paragraph 21 above). The duration of the period to be taken into consideration was therefore slightly less than four years for a preliminary investigation and three levels of jurisdiction. The fact that that period of time was longer than permissible under Bulgarian law did not automatically render the length of the proceedings excessive. Failure to abide by time-limits prescribed by domestic law does not in itself contravene the “reasonable time” requirement of Article 6 § 1 of the Convention (see *Pretto and Others v. Italy*, 8 December 1983, § 37, Series A no. 71; *Wiesinger v. Austria*, 30 October 1991, § 60, Series A no. 213; and *Estrikh v. Latvia*, no. 73819/01, § 138, 18 January 2007). It is true that there was an unexplained gap during the preliminary investigation and that the trial suffered from certain setbacks (see paragraphs 9-14 above). However, in spite of that the trial was completed in less than a year (see paragraphs 13 and 14 above). After that, the Montana Regional Court and the Supreme Court of Cassation also examined the case quite fast (see paragraphs 18-21 above), managing to bring the overall duration of the proceedings to less than four years. In the Court's view, that amount of time cannot be regarded as unreasonable (see, *mutatis mutandis*, *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 64, 6 November 2008).

74. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Remedies in respect of the length

75. The applicant complained under Article 13 of the Convention that she had not had effective remedies in respect of the length of the criminal proceedings against her.

76. According to the Court's case-law, Article 13 requires the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief. Having regard to its findings in paragraph 73 above, the Court considers that the applicant had no arguable complaint in respect of the length of the criminal proceedings against her (see *Gavril Yosifov*, cited above, § 67).

77. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 10,000 euros (EUR) in respect of the non-pecuniary damage suffered from the failure of the Bulgarian State to change the law governing covert surveillance after it was found deficient in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above). She made reference to a number of public scandals relating to irregularities in the use of surveillance measures; in her view, they showed that the legislative amendments of 2008 and 2009 had not brought about any improvement.

80. The Government submitted that the claim was exorbitant. In their view, a finding of a violation would constitute sufficient just satisfaction. In case that submission was not accepted, they invited the Court to make an award consistent with those in similar cases.

81. The Court observes that the legislative developments postdating its judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above) were found to be outside the scope of the case (see paragraph 43 above). It is of the view that the finding of a violation constitutes in itself sufficient just satisfaction for any damage which the applicant may have suffered as a result of the breach of Article 13 (see *Kruslin*, § 39, and *Khan*, § 49, both cited above, as well as *Taylor-Sabori v. the United Kingdom*, no. 47114/99, § 28, 22 October 2002; *Chalkley v. the United Kingdom*, no. 63831/00, § 32, 12 June 2003; and *Wood v. the United Kingdom*, no. 23414/02, § 37, 16 November 2004).

B. Costs and expenses

82. The applicant sought reimbursement of EUR 1,866.80 incurred in lawyers' fees for the proceedings before the Court. She also claimed EUR 111.25 for other expenses, such as postage, office supplies, photocopying and translation of documents. She requested that any amount awarded be made payable directly to her legal representatives. She submitted a fee agreement, a time-sheet, receipts and a contract for translation services.

83. The Government submitted that the claim was exorbitant. They suggested that in assessing the quantum of the award the Court should have regard to the rules governing the amounts payable to counsel for their appearance before the national courts and to the effects of the global economic crisis.

84. According to the Court's case-law, costs and expenses will be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see, as a recent authority, *Šilih v. Slovenia* [GC], no. 71463/01, § 226, 9 April 2009). In assessing those matters the Court is not bound by domestic scales or standards (see, as a recent authority, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 175, ECHR 2004-XII). Having regard to the materials in its possession and the above considerations, and noting that part of the application was declared inadmissible, the Court finds it reasonable to award the applicant the sum of EUR 1,100, plus any tax that may be chargeable to her, to be paid to her legal representatives, Mr M. Ekimdzhev and Ms K. Boncheva.

C. Default interest

85. The Court considers it appropriate that the default interest 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

1. *Joins* unanimously the Government's objection of non-exhaustion of domestic remedies to the merits;
2. *Declares* unanimously the complaints concerning the covert operation against the applicant and the alleged lack of remedies in that respect admissible and the remainder of the application inadmissible;

3. *Holds* unanimously that there has been no violation of Article 8 of the Convention;
4. *Dismisses* by five votes to two the Government's objection of non-exhaustion of domestic remedies and *holds* by five votes to two that there has been a violation of Article 13 of the Convention;
5. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
6. *Holds* unanimously
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,100 (one thousand one hundred euros) plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Bulgarian levs at the rate applicable on the date of settlement, and paid directly to the applicant's legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva;
 - (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;
7. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Garlicki and Mijović is annexed to this judgment.

N.B.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGES GARLICKI AND MIJOVIĆ

1. We are in full agreement with the finding that there has been no violation of Article 8. However, we are not prepared to accept that there has been a violation of Article 13.

It need not be recalled that Article 13 is of a very particular, mostly accessory nature. It is true that our case-law accepts that a violation of another Article of the Convention does not constitute a prerequisite for the application of Article 13. Nevertheless, there must always be some connection between the “main Article” and the claim concerning an alleged violation of Article 13.

2. This case, unlike the “classic” precedents on secret surveillance, does not deal with a hypothetical possibility that the applicant may have been or will be subjected to such a measure. In *Klass and Others v. Germany* (6 September 1978, Series A no. 28), as well as in *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria* (no. 62540/00, 28 June 2007) and several other cases, the alleged secret surveillance did not result in any criminal trial against the applicants. It was not clear whether any surveillance measures had been applied to them and – where that had been the case – the applicants were not informed either about the reasons for and duration of the operation or about the use and storage of the gathered material. Therefore, the existence of procedural safeguards was of particular importance.

In the instant case, however, the covert listening device was installed within the framework of a criminal investigation and the material was presented as evidence to the trial court. The trial court (as well as the appellate court) examined that material and, rejecting the applicant's objections as to the lawfulness of the operation, confirmed its admissibility. As noted in paragraph 49 of the judgment: “[t]he courts dealing with the criminal case against the applicant reviewed whether the surveillance had been carried out lawfully”. Furthermore, unlike in *Association for European Integration*, “the material obtained as a result of the covert operation against the applicant was later used as evidence in her trial and thus stored as part of the criminal case against her” (see paragraph 50 of the judgment).

There are no grounds for assuming that the criminal procedure did not offer sufficient guarantees to the applicant in this matter.

3. The majority took the view, however, that – since the criminal courts were concerned with the lawfulness of the surveillance only in so far as it could affect the fairness of the criminal proceedings – the criminal procedure was not capable of providing the remedy required under Article 13 (see paragraph 59 of the judgment). We are unable to concur.

It is true that if the criminal courts had arrived at the conclusion that the surveillance had been unlawful, such a finding would not have led to any

direct redress for the applicant. But the fact is that in this case the courts did not adopt any such conclusion and, in consequence, such a situation remains purely hypothetical.

We can also agree that surveillance measures may have side-effects concerning private or family life and that the assessment of those effects cannot be made within the framework of a criminal trial. In consequence, it may not be excluded that another (additional) remedy should be offered to the persons subjected to surveillance. But, as the Court noted in paragraph 37, in this case the applicant complained about “the tapping of her conversations in connection with the criminal proceedings against her”. No side-effects of the surveillance were mentioned as an “accompanying violation” of Article 8. Therefore, any assessment of the side-effects remains outside the scope of this case.

4. We agree that the applicant had an arguable complaint and was entitled to an effective remedy (see paragraph 58 of the judgment). However, in the circumstances of her case, that remedy was provided within the general framework of the criminal trial and appeal. Those proceedings offered sufficient guarantees to assess all aspects of the applicant's claim. The effective remedy in respect of the surveillance was simply absorbed by the safeguards inherent in a criminal trial.