



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

FIFTH SECTION

CASE OF BERLIZEV v. UKRAINE

(Application no. 43571/12)

JUDGMENT

Art 8 • Private life • Unlawful covert video-recording of applicant in absence of judicial authorisation required under domestic law
Art 6 (criminal) • Applicant's denial of involvement in criminal endeavour precluded him from raising *agent provocateur* claim • Manifestly ill-founded

STRASBOURG

8 July 2021

FINAL

08/10/2021

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

In the case of Berlizev v. Ukraine,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Jovan Ilievski,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 43571/12) 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, Mr Vadym Yaroslavovych Berlizev (“the applicant”), on 1 July 2012;

the decision to give notice to the Ukrainian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 15 June 2021,

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

INTRODUCTION

1. The case principally concerns the applicant’s allegations under Article 8 of the Convention that the police had unlawfully recorded him and under Article 6 § 1 of the Convention that his conviction of the offence of taking a bribe had been based on unlawfully obtained evidence.

THE FACTS

2. The applicant was born in 1978 and lives in Zboriv, Ternopil region. He was initially represented by Mr V. Kasko, and later by Mr N. Kulchytsky, both lawyers practising in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. At the material time the applicant held the position of Deputy Chief Labour Inspector, Ternopil Region.

6. Between 30 March and 7 April 2010 the applicant communicated several times with G., a director of a private company, concerning the latter’s non-compliance with labour law regulations. According to the applicant, G. repeatedly offered to settle the matter informally with him, hinting to him about a monetary reward. The applicant rejected these offers.

7. On 7 April 2010 G., who was a former police officer, submitted a written complaint to the police, alleging that the applicant had demanded 3,000 Ukrainian hryvnias from him in exchange for not disclosing violations of labour law committed by G. at his company.

8. On the same day the investigator of Ternopil city prosecutor's office initiated criminal proceedings against the applicant for bribery. The police gave G. several banknotes marked with a luminescent substance only visible in special lighting, to be given to the applicant as a bribe.

9. Later that day G. went to the applicant's office and when he came out he informed the police that he had delivered the money. A video-camera was used to record the operation.

10. The police entered the applicant's office with two attesting witnesses. One of the witnesses was a student at the Ternopil Department of the Police Academy. The marked banknotes were found in the applicant's desk drawer. The luminescent substance was allegedly discovered on one of the applicant's fingers. The officers then swabbed the applicant's hands with a gauze swab to collect the luminescent residue.

11. In May 2010 the police provided the investigator in charge of the criminal case with the video-recording of the covert operation of 7 April 2010 and informed the investigator that that video-recording had been carried out within the police operational-technical activities. They also provided a report which specified that the technical means of obtaining this information had been used based on section 8 of the Operational-Search Activities Act.

12. The applicant was charged with accepting a bribe.

13. During the trial the applicant denied the charge. He submitted that he had never demanded a bribe and that he had rejected G.'s repeated proposals to that effect; he submitted that, during the meeting, G. had put the cash in the applicant's desk drawer, when he had been in another room for a short time, using a photocopier. The applicant insisted therefore that the banknotes had been planted in his office.

14. On 27 December 2010 the Ternopil City Court found the applicant guilty of accepting a bribe from G. and sentenced him to five years' imprisonment, suspended, with probation.

15. The court referred in particular to the evidence given by G. during the trial and the fact that he had set out the details of his communications with the applicant and described the sequence of events which took place on 7 April 2010 in a consistent manner. The court further had regard to the statements of the police officers and the attesting witnesses who had stated that one of the applicant's fingers had had the luminescent substance on it. The other two witnesses, who worked with the applicant and were present during the operation, stated that they had not seen any luminescent substance on the applicant's hands.

16. The court then referred to the expert opinion, concluding that the gauze swab used to swab the applicant's hands contained the luminescent residue. The court further stated that, according to the video-recording of the operation, G. had had a conversation with the applicant during which G. had put his hand down and told the applicant "there are three here", subsequent to which there was the sound of the drawer opening and closing. The court additionally referred to the other pieces of evidence, including the report on the examination of the applicant's office which suggested that it was not possible to reach the drawer of the applicant's desk without rising from the chair near his desk (on which G. sat).

17. On a subsequent appeal, on 9 March 2011 the Ternopil Regional Court of Appeal upheld the applicant's conviction. It considered that the applicant's guilt had been confirmed by the available evidence duly examined and assessed by the trial court. It referred to the video-recording of the conversation between G. and the applicant, concluding that the applicant had accepted the bribe.

18. The applicant appealed on points of law, arguing that G. had repeatedly but unsuccessfully incited him to accept a bribe and that he had eventually planted the money in the applicant's office. The applicant contended that G. was a former police officer and that he knew the police officer in charge of the covert operation. The applicant then argued that the evidence in the file had been obtained unlawfully, in particular, the video-recording of the covert operation had been unlawful as it had not been authorised by the court, in breach of section 8 of the Operational-Search Activities Act. He argued that there were other procedural violations which required the reversal of the conviction and the termination of the criminal proceedings for lack of constituent elements of a crime.

19. On 24 January 2012 the Higher Specialised Civil and Criminal Court, acting as a court of cassation, upheld the applicant's conviction. It considered that the facts established by the courts were based on the totality of the evidence which had been duly examined and assessed during the court proceedings. It dismissed the applicant's complaint under the Convention concerning the lack of prior authorisation of the covert operation. The court of cassation considered that the alleged violations of the procedural law had been insignificant and could not affect the findings of the lower courts. In that regard the court of cassation ruled as follows:

"No violations of the European Convention of Human Rights, as alleged in the supplement to the cassation appeal, have been established.

The panel of judges [of the court of cassation] has found no substantial breaches of criminal procedure law which could influence the correctness of the conclusions made by the trial and appeal courts."

RELEVANT LEGAL FRAMEWORK

A. Constitution of Ukraine, 1996

20. Article 62 of the Constitution of Ukraine of 1996 provides that an accusation must not be based on illegally obtained evidence or on assumptions. All doubts with regard to the proof of a person's guilt are to be interpreted in his or her favour.

B. The Code of Criminal Procedure, 1960 (in force at the material time)

21. According to the Code of Criminal Procedure, the court, if there are grounds for that, shall issue a *separate ruling* (*окрема ухвала*), which draws the attention of state bodies, public organisations or officials to the facts of violation of the law established in the case, the reasons and conditions that contributed to the commission of the crime and request appropriate measures (Article 23-2).

22. At the opening of the substantive part of the trial the bill of indictment should be first read out (Article 297); afterwards, the defendant should be asked whether he understands the charges and whether he wishes to plead guilty or not guilty and whether he wishes to testify (Article 298). Upon accomplishing the acts set out in Article 298, the presiding judge must solicit the parties' views on what evidence has to be examined at the trial and in what order and then define, by the judge's ruling, the scope and order of such examination (Article 299 §§ 1 and 2). The court, with agreement from the parties, can rule that it is not justified to examine some evidence concerning the factual circumstances or the amount of civil claim which are uncontested. In doing so, the court is required to verify whether the defendants and other parties correctly understand such circumstances and whether there is any doubt as to the voluntary and genuine nature of their position. The presiding judge must explain to the parties that in such a case they would waive their right to challenge the relevant factual circumstances or the amount of the civil claim on appeal (Article 299 § 3). If the determination of the scope of the evidence to be examined requires prior examination of the defendant, the court has to examine him or her. The defendant has to be examined in every case, unless he refuses to testify (Article 299 §§ 4 and 5).

23. Physical evidence has to be examined by the court and shown to the parties and, if necessary, to the witnesses and experts. The persons to whom the physical evidence is shown can draw the court's attention to their particularities which are of relevance for the case. This must be noted in the trial record. The examination of physical evidence which cannot be brought

to the trial hearing can, if necessary, be conducted at the place where the evidence is found (Article 313).

24. The judgment convicting a person should be lawful and substantiated (Article 323 § 1). The court should evaluate the evidence, relying on its internal persuasion that is based on a comprehensive, complete and objective consideration of all the circumstances of the case in their entirety, and it should be governed by law (Article 323 § 3).

25. The grounds for quashing the judgement by a court of appeal include a substantial breach of criminal procedure legislation (Article 367). Those are such breaches of the provisions of the Code which prevented or were capable of preventing the court from fully examining all aspects of the case and delivering a lawful, well-founded and just judgment (Article 370 § 1). In any case, the judgment must be quashed if the following violations are found: (1) the proceedings have not been discontinued even though there have been grounds for such a decision; (2) the judgment was delivered by an unlawfully constituted court composition; (3) the right of defence was breached; (4) the right of the defendant to use his mother tongue and to have assistance of an interpreter was breached; (5) the investigation was conducted by an official who could not perform that function since there had been grounds for challenging him or her; (6) the case had been examined *in absentia*; (7) the case had been examined in breach of the jurisdiction rules; (8) a breach of the secrecy of deliberations; (9) the judgment or ruling was not signed by one of the judges; (10) there was no trial record in the file or no recordings of the trial proceedings where such recordings were required; (11) the case file had not been duly presented for examination by the defence at the end of the investigation; (12) the bill of indictment was not approved by the prosecutor or not served on the defendant; (13) a breach of the Code's requirements on non-alterability of the court's composition and the right of the defendant to make a closing statement (Article 370 § 2).

26. The court of cassation is empowered to verify the lawfulness of a court decision in the light of the materials available in the case and those additionally adduced concerning the matters appealed against (Article 395). The grounds for reversing or amending a judgment, ruling or resolution included: (a) a substantial violation of criminal procedure law; (b) an incorrect application of the criminal law; and (c) the punishment imposed on the convicted person being disproportionate to the seriousness of the crime (Article 398). The court of cassation shall be empowered to issue *separate rulings*, if appropriate (Article 400-2).

C. Operational-Search Activities Act, 1992

27. Section 8 of the Operational-Search Activities Act (as worded at the relevant time) provided that the use of technical means of obtaining

information during operational-search activities had to be authorised by a court decision.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

28. The applicant complained that the covert video-recording of his conversation with G. had violated his right to respect for his private life. He 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

29. The Government submitted that the applicant had not exhausted domestic remedies in respect of the present complaint because he had not raised that issue before the trial court or the court of appeal. The matter had been properly raised only before the court of cassation, which had had limited powers in reviewing the case.

30. The applicant disagreed and maintained that he had complied with the rule of exhaustion of domestic remedies because he had sufficiently raised the matter in his appeal on points of law.

31. The Court reiterates that 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).

32. The Court observes that the Government have not contested the applicant’s position that by raising the present complaint before the court of cassation he had made use of a remedy which was relevant and should have been exhausted. They did not suggest that, apart from raising the complaint in the criminal proceedings against him, the applicant had at his disposal any other relevant remedy. In these circumstances, it is not necessary to examine whether the courts determining the criminal charge against the applicant were capable of providing an effective remedy in respect of complaints under Article 8 of the Convention and, in particular, whether, when dealing with questions relating to the admissibility of evidence, it was open to them to deal with the substance of the Convention complaint that

the interference with the applicant's right to respect for his private life and correspondence was not "in accordance with the law" or not "necessary in a democratic society" or to grant appropriate relief (compare and contrast *Hambardzumyan v. Armenia*, no. 43478/11, §§ 43-44, 5 December 2019, with further references).

33. In the present case, however, the applicant raised the issue of unlawfulness of the video-recording in his appeal on points of law, relying on the fact that the court of cassation had been competent to review the observance of the procedural law in the criminal case (see paragraph 26 above) and could have ruled on the lawfulness of the video-recording in the context of examining its admissibility in evidence (compare *Svetina v. Slovenia*, no. 38059/13, § 60, 22 May 2018). The Court further observes that to obtain such a finding, it was not essential for the applicant to raise that point during the trial or appeal hearing, as suggested by the Government. Moreover, the Court notes that at the material time the criminal courts, including the court of cassation, could react to such allegations by way of separate rulings in the event it had been established that there had been a breach of law in the course of criminal proceedings (see paragraphs 21 and 26 above; for examples, see *Orlovskiy v. Ukraine*, no. 12222/09, §§ 14 and 58-61, 2 April 2015 and *Tikhonov v. Ukraine*, no. 17969/09, § 22 and 39, 10 December 2015 as regards the violation of right to liberty).

34. The Court finds therefore that it was not unreasonable for the applicant to raise the present complaint before the court of cassation within the criminal proceedings against him in order to give the domestic authorities an opportunity to put matters right through the national legal system. Moreover, this attempt should not be held against him in determining whether he complied with the six-month rule for lodging a complaint with the Court (see, for a similar approach, *Hambardzumyan*, cited above, §§ 53-54, and *Kaverzin v. Ukraine*, no. 23893/03, § 99, 15 May 2012).

35. The Court therefore dismisses the Government's objection. The Court further 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

36. The applicant maintained that there had been a violation of Article 8 of the Convention in that the covert video-recording of his conversation had been unlawful.

37. The Government admitted that the video-recording in issue had constituted an interference with the applicant's right to respect for his private life. They contended, however, that the police had had to pursue

their investigation and secure the relevant evidence. In their opinion, there had been no violation of Article 8 of the Convention.

38. It is common ground between the parties that the video-recording of the applicant's conversation with G. constituted an interference with his right to respect for his private life under Article 8 of the Convention. The Court sees no reason to hold otherwise (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 59, ECHR 2001-IX, and *Hambardzumyan*, cited above, § 58, with further references). Any interference can only be justified under Article 8 § 2 if it is in accordance with the law, pursues one or more of the legitimate aims to which paragraph 2 of Article 8 refers and is necessary in a democratic society in order to achieve any such aim (see *Hambardzumyan*, cited above, 59).

39. The expression "in accordance with the law" in Article 8 § 2 of the Convention, in essence, refers back to national law and states the obligation to conform to the substantive and procedural rules thereof (see *Akopyan v. Ukraine*, no. 12317/06, § 109, 5 June 2014). Where it has been shown that the interference was not in accordance with the law, a violation of Article 8 of the Convention will normally be found without investigating whether the interference pursued a 'legitimate aim' or was 'necessary in a democratic society'" (see *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 129, 13 January 2009).

40. The Court observes that by virtue of section 8 of the Operational-Search Activities Act of 1992, the video-recording of the covert operation in respect of the applicant had to be authorised by a court decision (see paragraph 27 above). This requirement of domestic law constituted an important procedural safeguard against arbitrary interference with private life. The Court has endorsed the importance of this safeguard, emphasising that once it is put in place, the judicial authorities should provide relevant and sufficient reasons for their authorisations of covert operations (see, in that regard, *Hambardzumyan*, cited above, § 65 *in fine*). However, there is no indication that in the present case any such prior judicial approval was ever obtained by the police.

41. It follows that the interference in the present case cannot be considered as having been "in accordance with the law", as required by Article 8 § 2 of the Convention. Having reached this conclusion, the Court is not required to determine whether the interference was "necessary in a democratic society" for one of the aims enumerated in paragraph 2 of Article 8.

42. There has accordingly been a violation of Article 8.

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

43. The applicant complained under Articles 6 and 13 of the Convention (a) that he had been convicted as a result of police entrapment; and (b) that his conviction had been based on evidence obtained unlawfully in the covert police operation and that his important and pertinent argument regarding the inadmissibility of such evidence had not been adequately addressed at the domestic level.

44. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine these complaints from the standpoint of Article 6 § 1 of the Convention alone, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Admissibility

1. Allegation of police entrapment

45. In so far as the applicant claimed that he had been incited into taking a bribe, the Court is not persuaded that the situation under examination falls within the category of “entrapment cases” (compare *Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 62-74, ECHR 2008). Although the applicant expressed his complaint using the term “incitement”, it appears that in essence he complained of “being framed”. Indeed, the applicant never actually admitted to soliciting or accepting the bribe. On the contrary, both at the domestic level and before the Court he consistently maintained that G. had planted the money in his office in order to have him convicted of a crime.

46. The Court finds it factually inconsistent for the applicant to deny that he committed a crime and to simultaneously complain that he was entrapped into doing so. The defence of entrapment necessarily presupposes that the accused admits that the act he or she is charged with was committed but claims that it happened due to unlawful incitement by the police. However, as can be seen from the applicant’s submissions, he denied entirely his involvement in the criminal endeavour, which, in the Court’s opinion, precluded him from being able to raise a valid *agent provocateur* claim. Accordingly, the present case differs significantly from cases examined by the Court previously with respect to the alleged entrapment of applicants by authorities who had coerced them into committing offences that would not otherwise have been committed (see *Lyubchenko v. Ukraine* (dec.), no. 34640/05, § 33, 31 May 2016).

47. The Court therefore rejects the applicant's *agent provocateur* complaint as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Complaint concerning the use of unlawful evidence

48. The Government submitted that the applicant had not exhausted domestic remedies in respect of his allegations about the unlawfulness of the video-recording. They submitted that he should have raised that complaint not only in his appeal on points of law, but also before the first-instance court and the appellate court.

49. The applicant disagreed and maintained that he had complied with the rule of exhaustion of domestic remedies because he had sufficiently raised the matter in his appeal on points of law.

50. The Court does not need to determine whether the applicant has complied with the rule of exhaustion of domestic remedies for the purpose of this complaint under Article 6 § 1 of the Convention, given that the specific circumstances of this case suggest that his complaint is manifestly ill-founded.

51. The Court reiterates that it is not its role to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, 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 (see *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009; *Lee Davies v. Belgium*, no. 18704/05, § 41, 28 July 2009; and *Prade v. Germany*, no. 7215/10, § 33, 3 March 2016).

52. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be established, in particular, whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Szilagyi v. Romania* (dec.), no. 30164/04, § 27, 17 December 2013). In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see, among other authorities, *Bykov*, cited above, § 90, and *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010). While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *Lee Davies*, cited above, § 42; *Bykov*, cited above, § 90; and *Bašić v. Croatia*, no. 22251/13, § 48, 25 October 2016).

53. In the present case the applicant's conversation with G. was secretly recorded without a prior judicial authorisation. This constituted a breach of domestic law and of the Convention, as discussed above under Article 8 of the Convention. As regards Article 6, it follows from the file that the contested evidence was not the only evidence and the courts relied on the other material, including witness statements, expert opinion and physical evidence. Even assuming that the impugned evidence had decisive relevance for the applicant's conviction – which the applicant does not complain about, pointing instead merely to its importance – this element is not a determining factor in the Court's assessment of the fairness of the proceedings taken as a whole (see *Khan v. the United Kingdom*, no. 35394/97, § 37, ECHR 2000-V). In this regard the Court notes that the applicant was never prevented from challenging the authenticity and reliability of the impugned evidence and opposing its use in the criminal proceedings against him. However, despite the fact that the applicant enjoyed procedural safeguards throughout the criminal proceedings, he failed to make use of them before the trial court and the court of appeal (compare *Basic*, cited above, §§ 44 and 45).

54. It was only at the stage of cassation review that the applicant raised the plea of inadmissibility of the video-recording at issue in a succinct manner. In particular, in doing so, he did not question the reliability and accuracy of that evidence even though these are the relevant factors under the Court's case-law (see *Bykov*, cited above, § 90). Presented with such a belated and limited argument, the court of cassation still addressed it in its decision within the scope of its competence under the relevant legislative framework, and dismissed it as insignificant. The Court, on its part, does not consider that the reasoning by the court of cassation was arbitrary or manifestly insufficient given the circumstances of the present case and the applicant's procedural conduct.

55. Having regard to the above considerations, in particular to the available procedural safeguards which the applicant failed to use in a consistent manner, the Court is unable to conclude that the global fairness of the criminal proceedings against him was compromised. The present complaint is therefore manifestly ill-founded and should be dismissed as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 6,500 euros (EUR) in respect of pecuniary damage on account of lost profit, and EUR 5,000 in respect of non-pecuniary damage.

58. The Government considered the applicant's claims unsubstantiated.

59. The Court notes that the causal link between the violation found and the pecuniary damage alleged has not been proven by the applicant. It therefore rejects the claim in respect of pecuniary damage. On the other hand, the Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

60. The applicant claimed EUR 16,716 in respect of the costs and expenses incurred before the Court.

61. The Government considered the applicant's claim unsubstantiated.

62. 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 have been 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, plus any tax that may be chargeable to the applicant, to cover the costs of the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance

with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 4,500 (four thousand five 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;

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

Done in English, and notified in writing on 8 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Martina Keller
Deputy Registrar

Síofra O'Leary
President