



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

FIFTH SECTION

CASE OF KORNIYETS AND OTHERS v. UKRAINE

*(Applications nos. 2599/16 and 2 others –
see appended list)*

JUDGMENT

Art 8 • Private life • Home • Applicants' homes searched by investigators in urgent circumstances in the context of criminal proceedings • No prior judicial warrant • Assessment as to the existence of urgent circumstances made by investigators • Impossibility for applicants to seek a judicial examination of the lawfulness of and justification for the search • Retrospective judicial review triggered *ex officio* by the investigator and conducted *ex parte* without any possibility for the applicant to participate • Impossibility to appeal against a court's retrospective validation of a search • Absence of thorough assessment of the circumstances of each case • No adequate and effective safeguards against arbitrariness • Interference not "in accordance with the law"

Art 13 (+ Art 8) • Lack of an effective remedy

Art 3 (substantive) • Inhuman and degrading treatment • Injury sustained by the second applicant while under the control of the police during the search in her home

Art 3 (procedural) • Ineffective investigation • Serious deficiencies and overall length of more than seven years

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 July 2025

FINAL

10/10/2025

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

In the case of Korniyets and Others v. Ukraine,

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

Kateřina Šimáčková, *President*,
Stéphanie Mourou-Vikström,
Georgios A. Serghides,
Gilberto Felici,
Andreas Zünd,
Mykola Gnatovskyy,
Vahe Grigoryan, *judges*,
and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the applications (nos. 2599/16, 6904/16 and 12704/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Ukrainian nationals, Mr Oleksandr Pavlovych Korniyets (“the first applicant”), Ms Tetyana Maksymivna Zhabo (“the second applicant”), Mr Oleksandr Viktorovych Yashchyshen (“the third applicant”) and Ms Olena Fedorivna Yashchyshena (“the fourth applicant”) (hereinafter “the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Ukrainian Government (“the Government”) of some of the complaints under Articles 3 and 6 § 1 and of the complaints under Articles 8, 13 and Article 1 of Protocol no. 1 and to declare the remainder of the applications inadmissible;

the parties’ observations;

Having deliberated in private on 17 June 2025,

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

INTRODUCTION

1. The case principally concerns the applicants’ complaints under Article 8 of the Convention that police searches of their homes were unlawful and unjustified as they were made without a prior court order, and their complaints that they did not have an effective domestic remedy for their complaints under Article 8, as required by Article 13. The case furthermore concerns the complaint of Ms Zhabo (application no. 6904/16) under Article 3 of the Convention that she was ill-treated by the police and that there was no effective investigation into that event.

THE FACTS

2. A list of the applicants and their details is set out in the Appendix.

3. The Government were represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice.

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

I. THE FIRST APPLICANT (*KORNIYETS V. UKRAINE*, APPLICATION NO. 2599/16)

5. At the time of events in question, the first applicant was an officer of the Kyiv Regional Prosecutor's Office. On 26 June 2015 a criminal investigation into a corruption related offence was instituted against him. The investigation was of a suspected conspiracy involving the recent receipt of a 150,000 United States dollars (USD) bribe. On 26 June 2015 the Kyiv City Court of Appeal authorised covert surveillance of the first applicant, which was conducted between 27 June and 5 July 2015.

6. On 5 July 2015 the investigator from the General Prosecutor's Office made an "urgent" search of the first applicant's house in the presence of witnesses. In the course of the search over 120 items, in particular files and documents related to the applicant's professional activities; property certificates; mobile telephones; other IT devices; paper documents and electronic information carriers; cash in various currencies; jewellery; sixty-five diamonds; firearms; knives; and ammunition were seized.

7. On 6 July 2015 the investigator applied to the court seeking retrospective authorisation of the search. In support of his application, the investigator submitted that an urgent search had been necessary to ensure recovery of the bribe money and to secure evidence, given the first applicant's expertise in investigative methods.

8. On the same day the Pecherskyi District Court of Kyiv, relying principally on the investigator's arguments and the results of the search, and referring to Articles 223 and 234 of the Code of Criminal Procedure ("the CCP"), retrospectively authorised the search, holding that it had been justified given the need to identify and register as much information as possible about the offence and that there had been a need to identify, seize and preserve the proceeds of a crime. The proceedings at the Pecherskyi District Court of Kyiv were conducted in the absence of the first applicant and his defence lawyer. No appeal lay against that decision.

9. On 5 and 12 November 2015 some of the items seized were returned to the first applicant. The first applicant was dissatisfied with the retention of the other items and challenged the investigator's failure to return them. On 1 December 2015 the Pecherskyi District Court of Kyiv rejected that claim as unsubstantiated. No appeal lay against that decision.

10. On 4 January 2016, after the investigation had been completed, the indictment and case file were transferred to the trial court for examination. According to the information available to the Court, the criminal proceedings against the first applicant are still pending at the trial court.

II. THE SECOND APPLICANT (*ZHABO V. UKRAINE*, APPLICATION NO. 6904/16)

A. The search

11. At the time of events the second applicant was the head of the Poltava regional centre of medical and social examination (*Полтавський обласний центр медико-соціальної експертизи*).

12. On 18 April 2015 the authorities instituted a criminal investigation into a corruption related offence involving the second applicant. In the course of the investigation the police discovered, apparently via covert surveillance, that on 29 July 2015 a bribe of USD 300 had been paid to her.

13. On the evening of 29 July 2015, Poltava regional police officers searched the second applicant's car and house. Cash in various currencies (equivalent to over 30,000 euros (EUR)); several IT devices and electronic information carriers; documents related to the applicant's professional activities; firearms and ammunition were seized.

14. The next day the investigator applied to the court seeking retrospective authorisation of the search. On 31 July 2015 the Oktyabrskyi District Court of Poltava granted the investigator's application under Articles 233 and 234 of the CCP. The court held that the search had been required for the hot pursuit of a suspect and to preserve property. No further reasons for the court's decision were provided. The proceedings at the Oktyabrskyi District Court of Poltava were conducted in the absence of the second applicant or her defence lawyer. No appeal lay against that decision.

15. On 21 September and 15 October 2015 some of the items were returned to the second applicant.

16. On 19 March 2018 the criminal investigation into the corruption related offence was terminated because the constituent elements of an offence were absent.

B. Alleged ill-treatment of the second applicant during the search on 29 July 2015 and the ensuing investigation

17. According to the second applicant, at 10.30 p.m. on 29 July 2015 about twenty men in balaclavas forcefully entered her garden and started searching her house. They refused to identify themselves and refused her request to be allowed to call a lawyer. During the search she was not allowed to leave the room when she needed to drink water or take the medication she had been prescribed following recent heart surgery. One of the men punched her in the face and pushed her in the chest demanding that she sit still and make no phone calls. At 1.45 a.m. on 30 July 2015 an ambulance was called, and the second applicant was hospitalised and subsequently diagnosed as

suffering from a transitory ischaemic attack, a closed cerebral injury, and a contusion to her right ear. An additional forensic examination performed on 5 December 2016 confirmed that the applicant had sustained a contusion to her right ear.

18. On 31 July 2015 the second applicant submitted a formal application to the police complaining that the search of her house and car had been unlawful and that she had been ill-treated in the course of the search. In a letter of 1 September 2015 the investigating authorities informed the applicant that her complaint had not contained circumstances constituting a crime. On 25 September 2015 the Oktyabrskyi District Court of Poltava obliged the authorities to open an investigation into the second applicant's complaints of ill-treatment.

19. Thereafter, the investigation was discontinued, reopened by court decisions on appeal by the applicant and discontinued again many times on the basis of standard phrasing, without any indication that the deficiencies identified by the courts had been addressed in the resumed investigation. In particular, the domestic courts found it established that a contusion to the applicant's right ear had been duly noted following the police search of 29 July 2015 but the origin of that injury had not been investigated. They also found that the testimonies given by the police officers participating in the search had not been thoroughly analysed and compared with the second applicant's testimony.

20. On 5 September 2022 the investigator again discontinued the investigation because the constituent elements of a crime were absent. The investigator's reasoning did not differ from the reasoning of the previous decisions which had been quashed by the domestic courts. According to the information available to the Court, the second applicant did not challenge the decision of 5 September 2022.

III. THE THIRD AND THE FOURTH APPLICANTS (*YASHCHYSHEN AND YASHCHYSHENA V. UKRAINE*, APPLICATION NO. 12704/16)

21. At the relevant time the third applicant was a law enforcement officer. The available material does not contain information about the occupation of the fourth applicant, the wife of the third applicant.

22. On 25 August 2015 at around 7 p.m. the police were informed that someone was shooting with a firearm from the window of apartment building no. 12 on Peremohy Avenue in Kyiv.

23. Police patrol officers arrived on site at 8.07 p.m. They found the third applicant on the stairs of the building, arrested him and handcuffed him. Then they escorted him to his flat ("the first flat"), took his keys out of his pocket, entered the first flat and conducted an "inspection", in the course of

which firearms and ammunition were found. There were no witnesses or other persons present. No report was made.

24. The “inspection” finished at approximately 8.20 p.m. An investigator and officers of the Kyiv Shevchenkivskyi district police arrived later the same evening and carried out a formal search of the first flat in accordance with the provisions of the Code of Criminal Procedure. Ammunition, an assault rifle, a pistol, a firearm licence, SIM (telephone subscriber identity module) cards, a hand-grenade, and items found by the police in the course of the earlier “inspection” were seized. During that search operation it was established that the third applicant had an alternative residence. The investigator ordered it to be searched immediately as various items relevant to the case could potentially be there. The third applicant was then escorted to the police station and a report on his arrest was drawn up. The report indicated that the search had lasted from 8.30 p.m. to 11.40 p.m.

25. On the same day, 25 August 2015, from 22.28 to 23.25, a search of another flat at Zolotoustivska street in Kyiv (“the second flat”), which was occupied by both applicants, was carried out by another district police investigator. In the course of the search, which was carried out in the presence of the fourth applicant, payment and discount cards, documents related to the third applicant’s professional activity as a security agent and documents related to his other activities were seized.

26. On 25 August 2015 at 11.49 p.m. information about the shooting was officially registered in the Unified Register of Pre-Trial Investigations. A criminal investigation into a murder was launched against the third applicant. Subsequently the charges against him were reclassified into a breach of public order with use of firearms.

27. On 26 August 2015 an investigator applied to the court seeking retrospective authorisation of the search of the first flat. In support of the urgent search, the investigator submitted that it had been necessary to identify the person who was suspected of having carried out the shooting and to obtain his ID documents, firearms, and ammunition. The investigator also said that after the police entered the first flat, the applicant was identified and arrested there, and the firearms and ammunition were discovered and seized.

28. On 26 August 2015 an investigator applied to the court seeking authorisation of the search of the second flat. In support of the urgent search, the investigator submitted that it had been necessary to obtain access to the first applicant’s ID documents, firearms, and ammunition.

29. On 26 August 2015 the searches of both flats that had been carried out on 25 August 2015 were retrospectively authorised by two separate decisions of Judges V.T. and O.R. of the Shevchenkivskyi District Court of Kyiv. The decision relating to the search of the first flat stated that the search had been justified by the hot pursuit of the third applicant and because the items found in the first flat could be relevant to the pre-trial investigation.

The Government did not provide the Court with a copy of the court decision authorising the search of the second flat.

30. The applicants challenged the court decision authorising the search of the first flat. Their appeals were rejected by the Kyiv City Court of Appeal and the Supreme Court on 12 May 2017 and 19 April 2018 respectively because, under the domestic legislation, court decisions validating a search in urgent circumstances were not subject to appeal.

31. The applicants filed criminal, constitutional and disciplinary complaints arguing that the two searches authorised by the courts had been unlawful and disproportionate and that the “inspection” of the first flat by the police patrol officers (see paragraph 19 above) had amounted to a search within the meaning of the legislation, but which had remained unrecorded and unauthorised.

32. The investigation into the applicants’ criminal complaints about the unlawful police patrol officers’ “inspection” of the first flat was terminated several times by the investigator because of the lack of the constituent elements of an offence and then resumed following a court finding that the investigation had been incomplete. In the course of the investigation the police patrol officers were questioned. They said that after they had arrested the third applicant on 25 August 2015 (see paragraph 19 above) they had then entered the first flat in order to search it. According to the Government, that criminal investigation is still ongoing.

33. On 8 June 2018 the Higher Council of Justice (HCJ) examined the applicants’ disciplinary complaint against Judge O.R., who had authorised the search of the second flat (see paragraph 29 above). The HCJ found that Judge O.R. had failed to make a thorough assessment of the investigator’s application for authorisation of the search, in particular whether there had been legal grounds for entering the applicants’ second flat without authorisation. The HCJ took disciplinary proceedings against Judge O.R., resulting in a reprimand. According to the Government, that decision was not appealed against.

34. The applicant lodged a complaint with the Constitutional Court seeking to declare unconstitutional Article 309 of the CCP as it did not include, in the exhaustive list of court decisions that are subject to appeal, court orders authorising a search. On 10 September 2018 the Constitutional Court rejected the applicants’ constitutional complaint holding the following:

“... In substantiating [his complaint the applicant] argues that the appellate review of court orders authorising a search is the only mechanism for the protection of the right to inviolability of home. In addition, [the applicant] considers that the court order [authorising a search of his home] was the result of the judge’s mistake which could not be corrected under the [impugned] legal provision [Article 309 of the CCP].

Therefore, the substance of the applicant’s arguments about the unconstitutionality of Article 309 of the CCP is the applicant’s suggestions and interpretation of the relevant provision of the CCP, but these elements cannot be accepted as a substantiation of its unconstitutionality.

In addition, [the applicant] sets out considerations regarding deficiencies in the rules regarding the holding of a preliminary hearing [by the trial court] and argues that the CCP does not provide for a remedy against an unlawful search. As the Constitutional Court noted on many occasions, resolving issues of legislative lacunae is outside its jurisdiction. ...”

35. According to the Government, the criminal proceedings against the third applicant are pending before the trial court. There is no indication that any criminal investigation has been instituted against the fourth applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

36. The relevant provisions of the Constitution of Ukraine read as follows:

Article 30

“Everyone shall be guaranteed the inviolability of his or her home.

Any entry into, examination of or search of a person’s home or other possessions shall not be permitted other than pursuant to a court decision for which reasons are given.

In urgent cases connected with saving human life or the preservation of property or in hot pursuit of criminal suspects, the law may provide for a different procedure for entering, examining or searching a person’s home or other possessions.”

37. The relevant provisions of the Code of Criminal Procedure (“the CCP”) read as follows:

Article 13. Inviolability of a Person’s Home or Other Property

“1. Entering into a person’s home or interference with other property to inspect it or to conduct a search is prohibited without authorisation from a court, giving reasons, except where provided for by this Code.”

Article 233. Entering into a Person’s Home or Interference with Other Property

1. No one shall have the right to enter a person’s home or to interfere with property for any purpose, except with the voluntary consent of the owner or pursuant to a decision of an investigating judge, except as set out in part three of this Article.

2. A person’s home means any premises that is in a person’s permanent or temporary possession, regardless of its purpose and legal status, and is adapted for the permanent or temporary residence of individuals, and includes all fixtures and fittings of such premises. Premises specially designed for the detention of persons whose rights are restricted by law are not considered to be homes. Other property means a vehicle, a parcel of land, a garage, other buildings or premises for household, service, economic, industrial and other purposes, and so on.

3. An investigator or prosecutor has the right to enter a person’s home or deal with other property without prior court authorisation only in urgent circumstances related to the saving of life or protection of property or when in hot pursuit of persons suspected of committing a crime. In this case, the prosecutor or investigator, in agreement with

the prosecutor, must file an application for a search warrant with the investigating judge immediately after the event. The investigating judge shall consider such an application in accordance with the requirements of Article 234 of this Code, checking, among other things, whether there were grounds for entering the person's home or dealing with her or his other property without the authorisation of an investigating judge. If the prosecutor refuses to approve a search warrant for the investigator or the investigating judge refuses to grant the search warrant, the evidence found as a result of such a search is inadmissible, and the information obtained shall be destroyed in accordance with the procedure provided for in Article 255 of this Code.

Article 234. Search of a house

“1. A search shall be conducted to identify and record information about the circumstances of a criminal offence, to find the instrument of the criminal offence or property obtained through the commission of the offence, and to locate wanted persons.

2. The search shall be conducted as authorised by the decision of the investigating judge.

3. If it is necessary to conduct a search, the investigator in agreement with the prosecutor or the prosecutor shall file a respective motion with the investigating judge, which shall contain information on:

- 1) the name of the criminal proceedings and the case number;
- 2) a brief summary of the circumstances of the criminal offence in connection with the investigation of which the application has been filed;
- 3) the legal classification of the criminal offence and a reference to the article (or part of the article) of the law of Ukraine creating criminal liability for the offence;
- 4) the grounds for the search;
- 5) the dwelling or other property of the person or the part of the dwelling or other property of the person in which it is planned to carry out the search;
- 6) the name of the person who owns the dwelling or other property and the name of the person in actual possession of it;
- 7) the objects, documents or persons to be searched for.

The application must also be accompanied by originals or copies of documents and other materials with which the prosecutor or investigator substantiates the arguments in the application, as well as an extract from the Unified Register of Pre-Trial Investigations in respect of the criminal proceedings within which the application is filed.

4. The search warrant application shall be dealt with by the court on the day it is received and the court will hear the investigator or prosecutor.

5. The investigating judge shall dismiss the application for a search warrant unless the prosecutor or investigator proves that there are sufficient grounds to believe that:

- 1) a criminal offence has been committed;
- 2) the objects and documents to be searched for are relevant to the pre-trial investigation;
- 3) the information contained in the objects and documents may be admissible as evidence during the trial;

4) the objects, documents or persons sought are located in the dwelling or other possession of the person specified in the application.”

THE LAW

I. JOINDER OF THE APPLICATIONS

38. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicants complained that the search and seizure operations carried out at their homes without a warrant had been unlawful, arbitrary and not necessary in a democratic society. They 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

40. The Government argued that the applicants had failed to exhaust domestic remedies as they had not brought civil proceedings claiming compensation for the alleged irregularities. Alternatively, the Government submitted that the applicants’ complaints were premature given the continuing criminal proceedings against them in the domestic courts. They furthermore argued that the complaints of the third and the fourth applicants about the unlawful entry of the first flat by the police (*Yashchyshen and Yashchyshena v. Ukraine*, application no. 12704/16) were premature given that the criminal investigation into the alleged abuse of power by the patrol officers while conducting the search had not yet concluded (see paragraph 32 above).

41. The applicants contested those arguments. In particular, the first applicant argued that the domestic legislation did not allow him to challenge or seek review of the lawfulness of a search without warrant. He furthermore submitted that he had complained to the trial court at a preliminary hearing about the unlawfulness of the search without warrant, but his complaints had been ignored. He added that the Compensation Act referred to by the Government could not be an effective tool in his case as the criminal proceedings against him were still pending at the domestic level.

The third and the fourth applicants said that the domestic remedy referred to by the Government could not be effective in their case as compensation under the Compensation Act could be awarded only where a court had found that a search was unlawful. They added that the domestic legislation had given them no opportunity to participate in the proceedings for the retrospective authorisation of the search.

42. The Court notes that the searches in question have not been found unlawful at the domestic level and it was therefore not open to the applicants to challenge their lawfulness as the domestic legislation gives persons whose homes have been searched no opportunity to challenge the lawfulness of a court order retrospectively authorising a search (see paragraph 30 above). The applicants could not therefore have had a reasonable expectation that their civil claims would have any prospect of success. The Government referred to the provisions of the Compensation Act as a basis on which the applicants could have obtained compensation, but did not explain how application of that Act could have been effective in practice given that compensation could be awarded under that Act only where a court had found that the authorities had been in breach of domestic law. The Government's first objection is therefore dismissed.

43. The Court furthermore notes that the criminal investigation in the second applicant's case (*Zhabo v. Ukraine*, application no. 6904/16) was terminated on 19 March 2018 because the constituent elements of an offence were not present. It remains unclear whether the applicant was entitled to institute compensation proceedings under the Compensation Act (see *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, § 48, 21 January 2021) and, if so, whether the question regarding specifically the impugned search could have been raised in such proceedings. It is therefore far from certain that their outcome could affect the applicant's victim status (see *Vadym Melnyk v. Ukraine*, nos. 62209/17 and 50933/18, § 91, 16 September 2022 and further references therein). In any event, the Court observes that the scope of its review of the applicant's compliance with the rule on exhaustion of domestic remedies is limited by the Government's objections (see *Yordanov v. Bulgaria*, no. 56856/00, § 76, 10 August 2006, with further references). Since the Government did not claim that after the termination of the criminal investigation the second applicant was entitled to redress that would mean she had lost her victim status, the second applicant's complaint cannot be rejected by the Court on the ground that domestic remedies have not been exhausted.

44. The Court further notes that the Government have not explained in what regard the fact that the criminal proceedings against the first and the third applicants are still pending is relevant to their complaints, which concern specific searches. In any event, the Court notes that those proceedings have been pending at the preliminary investigation and the trial

stages for over nine years and the Government have not pointed to any relevant developments.

45. The remaining objections of the Government are therefore dismissed.

46. The Court further notes that it is not in dispute between the parties that all flats at issue qualify as the respective applicants' homes and finds that Article 8 of the Convention was applicable. The applicants' complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

47. The applicants submitted that the interference with their Article 8 rights had been unlawful, unnecessary in a democratic society and unjustified. The first applicant furthermore added that the domestic legislation regarding searches without a warrant had been insufficiently clear and precise in defining the "urgent circumstances" which could justify a search without warrant and the scope and limits of the powers of an investigator or a prosecutor to conduct the search. The court's decision retrospectively validating the search did not provide a sufficient safeguard against abuse as no sufficient reasons for the decision were given and it did not contain specific reasons explaining the "urgent circumstances" surrounding that search. The third and the fourth applicant also argued that they had had no opportunity to challenge the lawfulness of the searches in the domestic courts as no provision had been made for such a challenge.

48. The Government submitted that the intervention in the applicants' homes had been made under Article 233 of the CCP. They argued that the domestic legislation was clear and foreseeable as regards the scope of and grounds for the retrospective validation of searches.

49. The Government further submitted that the applicants had been afforded relevant procedural guarantees against arbitrariness. They referred in this connection to the case-law of the Supreme Court saying that it showed that it acted as a Court of Cassation in reviewing the reasonableness and proportionality of searches in the context of admissibility of evidence obtained thereunder and whether they had been justified and it analysed whether there had been the appropriate judicial scrutiny when searches were being retrospectively authorised.

50. In particular, on 5 April 2023 in case no. 683/1200/18, the Supreme Court held that the only urgent circumstances justifying a search without warrant were those specified in Article 233 of the CCP, where they existed at the moment a dwelling was entered and where the urgency of the situation made it impossible for the relevant authority to obtain a court order in accordance with the procedure prescribed under the CCP.

51. The Government also referred to a judgment of the Supreme Court of 8 April 2021 in case no. 573/2028/19, in which it considered whether the reasons given for a search without a warrant sufficed to establish the existence of “urgent circumstances” within the meaning of Article 233 § 3 of the CCP. The investigators had said that they needed to find stolen items and the clothes worn by the perpetrator of a crime. The Supreme Court examined those reasons and found that they did not fall into the category of urgent circumstances. It held that the search should have been made under a prior court order.

52. The Government furthermore stated that the case-law of the Supreme Court had clearly defined the scope of the urgent circumstances in which a search could be undertaken without prior court authorisation. Lastly, they submitted that the Supreme Court review of the lawfulness of the searches in the proceedings on points of law had been a sufficient guarantee against arbitrariness.

2. *The Court’s assessment*

53. The relevant general principles concerning searches and resulting interference with private life have been summarised in *Tortladze v. Georgia*, no. 42371/08, §§ 55-58, 18 March 2021.

In particular, for an interference with an applicant’s “home” or his or her “private life” to be in compliance with Article 8 it must be “in accordance with the law”, undertaken in pursuit of a “legitimate aim”, and “necessary in a democratic society” (see, for example, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 167, 24 January 2017; *Roman Zakharov v. Russia* [GC], no. 47143/06, § 227, ECHR 2015; *Saint-Paul Luxembourg S.A. v. Luxembourg*, no. 26419/10, § 40, 18 April 2013; and *Kennedy v. the United Kingdom*, no. 26839/05, § 130, 18 May 2010).

The wording “in accordance with the law” requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (see *Roman Zakharov*, cited above, §§ 228-230, with further references).

Application of the above principles to the circumstances of the present case

(i) Whether there was an interference

54. The parties agree that the searches of the first and the second applicants’ homes which were conducted on 5 and 29 July 2015 respectively in the context of criminal investigations constituted an interference with their private life. As regards the third and the fourth applicants’ cases, while

acknowledging that the searches in the first and the second flats (see paragraphs 24 and 25 above) also constituted interferences within the meaning of Article 8, the Government do not distinguish between the "inspection" and the formal search (see paragraph 19 above).

55. The Court observes with reference to the available material that shortly after the police officers had arrested the third applicant, they entered the first flat and performed "an inspection" in the course of which they found weapons. The Court notes that after the police officers had finished the "inspection" of the first flat, an investigating group arrived and started performing a search. It may be that the "inspection" of the first flat mutated into a search so that there was a single search aimed at identifying the weapons allegedly used during the shooting. There is no doubt, in any event, that there was an interference with the third and fourth applicant's right to respect for their home which started with the initial inspection and continued after the arrival of the investigation team.

(ii) Whether the interference was in accordance with the law

56. Such an interference will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of Article 8 as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein, and being "necessary in a democratic society" in order to achieve the aim or aims concerned.

57. The wording "in accordance with the law" requires not only that the disputed measure has some basis in domestic law, but also that the law is accessible to the person concerned and foreseeable as to its effects (see *Azer Ahmadov v. Azerbaijan*, no. 3409/10, § 63, 22 July 2021).

58. Where the authorities conduct a search of someone's home, the domestic law must provide some protection for the individual against arbitrary interference with that person's Article 8 rights. The domestic law must therefore be sufficiently clear in its terms and should include adequate information as to the circumstances and conditions in which public authorities are empowered to conduct searches (see *Särgava v. Estonia*, no. 698/19, § 87, 16 November 2021). Moreover, a search constitutes a serious interference with private life, home and correspondence and must accordingly be based on a "law" that is particularly precise. It is essential to have clear, detailed rules on the subject (see *Saber v. Norway*, no. 459/18, § 50, 17 December 2020).

59. Furthermore, the Court must ensure that the relevant legislation and practice afford individuals adequate and effective safeguards against abuse; notwithstanding the margin of appreciation which the Court recognises the Contracting States have in this sphere, it must be particularly vigilant where the authorities are empowered under national law to order and effect searches without a judicial warrant (see *Gutsanovi v. Bulgaria*, no. 34529/10, § 220, ECHR 2013 (extracts)).

60. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Connors v. the United Kingdom*, no. 66746/01, § 83, 27 May 2004). What is required by way of safeguard will depend, to some extent at least, on the nature and extent of the interference in question (see *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 170, ECHR 2013).

61. Turning to the facts of the present case, the Court observes that “search in urgent circumstances” was governed by Article 233§ 3 of the CCP and, therefore, had a basis in the domestic law.

62. The Court observes that under Article 30 of the Constitution of Ukraine and Article 13 of the CCP, entering a person’s home or other property to conduct an inspection or search is permitted only with a court decision which gives reasons, except in urgent cases, on decision of an investigator or a prosecutor (Article 233 § 3 of the CCP). In such urgent cases, a search may be carried out without a warrant and must be validated after that by a judge (*ibid*). The above legal regime, which obviously aims at ensuring the effectiveness of criminal investigations in situations where timing is crucial, does not appear, as such, problematic under Article 8 of the Convention.

63. The applicants considered that the law was not sufficiently precise in defining the concept of “urgent circumstances” and criticised the superficial manner in which the courts had validated the searches after they had been made. The Government pointed to Supreme Court judgments clarifying the concept of “urgent circumstances” but provided examples that postdate the events at issue. They also considered that the applicants had been afforded relevant procedural guarantees.

64. The Court, having regard to the facts of the three cases before it and the parties’ submissions, considers that the main issue under Article 8 in the present case does not concern the level of precision in the relevant domestic provisions but the question whether, under the relevant legal regime and in practice in the applicants’ cases, the procedure and substantive approach of the domestic courts secured the requisite protection against arbitrariness.

65. In particular, having regard to the fact that under the relevant legal regime, because of its very nature and purpose, the assessment as to the existence of urgent circumstances must be made by investigators and prosecutors, often under time pressure, the existence of sufficient procedural safeguards in the *ex post facto* control is particularly important. The Court has held that the absence of a judicial control of searches *ex ante* can be counterbalanced by a possibility for the person concerned to have access to an effective *ex post facto* control on the factual and legal issues regarding the

impugned search and the manner in which it was conducted (see *Brazzi v. Italy*, no. 57278/11, § 44, 27 September 2018 and *Smirnov v. Russia*, no. 71362/01, § 45, ECHR 2007-VII).

66. Within various contexts involving Article 8 of the Convention, the Court has emphasised that measures affecting human rights must be subject to some form of adversarial proceedings before an independent body competent to review the evidence and the reasons for the decision, and that the review must be undertaken promptly (see *Ivashchenko v. Russia*, no. 61064/10, § 74, 13 February 2018). Notwithstanding the margin of appreciation that it recognises the Contracting States have in this sphere, the Court must be particularly vigilant where public authorities are empowered under domestic law to order and effect searches without a judicial warrant. If individuals are to be protected from arbitrary interference by the authorities by the rights guaranteed under Article 8, a legal framework and very strict limits on such powers are called for (see *Brazzi*, cited above, § 41).

67. Under Ukrainian legislation there is no possibility to appeal against a search warrant, whether issued by a judge prior to the search or approved *ex post facto*. On account of this, the Court has found a violation of Article 13 in conjunction with Article 8 of the Convention in the case of *Panteleyenko v. Ukraine* (no. 11901/02, §§ 78-81, 29 June 2006). In the present case, the Court also takes note of the decision of the Constitutional Court of 10 September 2018 (see paragraph 34 above) qualifying as a legislative lacunae the absence of a remedy against an unlawful search.

68. It follows that under the relevant legal regime, as applied in the present case, the only possibility for an independent authority to review the lawfulness of a search conducted in urgent circumstances was the *ex post facto* review procedure under Article 233 § 3 of the CCP, triggered by an investigator. However, the relevant domestic law did not allow the applicants' participation in the review proceedings. Under the CCP, the procedure for a retrospective judicial review is similar to the *ex parte* procedure for granting a warrant before a search: it is conducted without the participation of the person whose home was searched or his or her lawyer, and no appeal lies against a court's retrospective validation of a search.

69. While there are obvious valid reasons for excluding the person whose home is to be searched from participation when there is a prior application for a warrant for the search (see *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII, and *Avanesyan v. Russia*, no. 41152/06, § 29, 18 September 2014), there appears to be no justification why the same strict limitations should be applied in the course of a retrospective judicial review. The Government have not explained the reason for this restrictive regime.

70. In this connection the Court refers to *Tortladze* (cited above, § 66), in which it found, albeit in the context of the examination of the fairness of

criminal proceedings under Article 6 of the Convention, that post-search judicial reviews were not adequate and sufficient for the purposes of establishing the circumstances of a search as the mentioned forum as such was not accessible to the applicant, because the review proceedings were not adversarial and no appeal lay, at the material time, against the court decision validating the results of the search (see *Kobiashvili v. Georgia*, no. 36416/06, §§ 67-69, 14 March 2019). The Court considered that a similar conclusion was warranted under Article 8 of the Convention in *Tortladze* case (*ibid*, § 66). In view of similarity of Georgian and Ukrainian legal regimes governing the procedure of the *ex post facto* authorisation of searches, the Court considers that a similar approach has to be applied in the present case. It therefore considers that in the circumstances of the present case, given the absence of prior judicial control and in view of the impossibility for the applicant to seek a judicial examination of the lawfulness of and justification for the search, the review procedure under the relevant domestic law, triggered *ex officio* and conducted *ex parte*, without any possibility for the applicant to participate, cannot be seen as offering sufficient safeguards against unlawful and arbitrary State interference.

71. Turning to the manner in which the domestic courts examined the investigators' applications for the *ex post facto* authorisation of the searches made in the applicants' flats, the Court observes that the relevant decisions, being couched in general phrases essentially reproducing the investigators' applications, do not seem to convincingly demonstrate that a thorough assessment of the circumstances of each case was made, in particular on the question whether there had been legal grounds for the searches without prior court authorisation and whether there had indeed existed urgent circumstances justifying the searches in question. The fact that the applicants had no means of making submissions or otherwise participating in the *ex officio* review, in view of the lack of relevant legal framework, appears to have contributed to this low level of scrutiny.

72. In the light of the foregoing, the Court concludes that the applicants were deprived of adequate and effective safeguards against arbitrariness contrary to requirements of Article 8 of the Convention (see *Varga v. Romania*, no. 73957/01, § 73, 1 April 2008; and *Işıldak v. Turkey*, no. 12863/02, § 52, 30 September 2008).

73. The Court finds that in these circumstances it cannot be said that the interference in question was "in accordance with the law" as required by Article 8 § 2 of the Convention (see for example *Heino v. Finland*, no. 56720/09, § 47, 15 February 2011). 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 set out in paragraph 2 of Article 8.

74. There has accordingly been a violation of Article 8 of the Convention in respect of the searches without warrant of the applicants' homes.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

75. The applicants complained under Article 13 of the Convention about the lack of an effective domestic remedy for their complaints. Article 13 of the Convention reads as follows:

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

76. The Government contested that argument.

A. Admissibility

77. The Court observes that this complaint is linked to that examined above and must therefore likewise be declared admissible.

B. Merits

1. The parties' submissions

78. The applicants submitted that the domestic legislation had not provided any opportunity for a person whose home had been searched to challenge the lawfulness of a search made without a warrant.

79. The Government contested that claim without providing specific arguments.

2. The Court's assessment

80. Article 13 requires a remedy in domestic law in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, pp. 23-24, § 54). In the present case the Court found a violation of Article 8 in that the searches of the applicants' flats could not be seen as having been “in accordance with the law”. It follows that Article 13 applies. It must accordingly be determined whether the Ukrainian legal system afforded the applicants an “effective” remedy, allowing the competent “national authority” both to deal with the complaint and to grant appropriate relief (see *Camenzind*, cited above, pp. 2896-97, § 53).

81. The Court already noted above that under Ukrainian law no appeal lay against a search order, whether issued by a judge prior to a search or approved *ex post facto* following a warrantless search. It has already found a violation of Article 13 by Ukraine in this regard (see paragraph 74 above and *Panteleyenko*, cited above, §§ 78-81).

82. As regards the *ex post facto* review proceedings, it is sufficient to note that those were instituted *ex officio* by the investigator the applicants had no means to participate (see paragraphs 68-74 above).

83. As regards the remedy invoked by the Government, notably the possibility to claim compensation for alleged irregularities, the Court has addressed this issue when examining the Government's non-exhaustion objections (see paragraphs 40-43 above) finding that this was ineffective in the applicants' cases. A similar argument by the Government was examined and rejected in the above cited *Panteleyenko* judgment, §§ 78-81.

84. In so far as the HCJ noted in its decision of 8 June 2018 reprimanding the judge who authorised the search in one of the flats belonging to the third and the fourth applicants (see paragraph 33 above) could be seen as possible acknowledgment of breach of the applicants' Convention rights, the above decision of the HCJ did not result in overturning the relevant court decision validating the search, which remained in force, and did not constitute a remedy accessible to the applicants to obtain an effective review of the lawfulness of the impugned measure.

85. In such circumstances, the Court considers that the applicants had no effective domestic remedy available for them at the material time.

86. This consideration is sufficient for the Court to find a violation of Article 13 of the Convention, read in conjunction with Article 8.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT (*ZHABO V. UKRAINE*, APPLICATION NO. 6904/16)

87. The applicant complained that she had been ill-treated by the police officers in the course of the search in her home, and that there had been no effective investigation into the above event. She relied on Article 3 of the Convention which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

88. The Government submitted that the applicant had failed to challenge the investigator's resolution of 5 September 2022 discontinuing the investigation into her ill-treatment.

89. The applicant contested that objection arguing that she had challenged previous decisions of the investigator to discontinue the investigation many times, but the investigation had not improved after it had been resumed following the courts' decisions.

90. The Court notes that similar objections of the Government have been rejected in the cases against Ukraine given in particular the investigating

authorities' frequent practice of disregarding instructions issued by prosecutors and the courts (see *Adnaralov v. Ukraine*, no. 10493/12, § 39, 27 November 2014; and *Karter v. Ukraine*, no. 18179/17, §§ 62-63, 11 April 2024). The Court sees no reason to hold otherwise in the present case and therefore dismisses the Government's non-exhaustion objection.

91. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

92. The applicant maintained her submissions outlined in paragraphs 17-19 above that she had been ill-treated by police officers during the search in her home on 29 July 2015 and that the resulting injuries had been confirmed by forensic medical examinations. She furthermore submitted that there had been no effective investigation upon her complaints and that the authorities had failed to improve the deficiencies of investigation which the courts had identified following her appeals.

93. The Government contested the applicant's complaints stating that they had been unsubstantiated.

1. Alleged ill-treatment by the police

94. The general principles in this area have been summarised in *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90, ECHR 2015. In particular, in assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

95. Turning to the circumstances of the present case, the Court observes that during the search in her home on 29 July 2015 the applicant was under the control of the police officers performing a search. The Court furthermore observes that the applicant had sustained an injury, a contusion to her right ear, which was registered by the ambulance team after the event in question and was subsequently confirmed by a forensic expert on 5 December 2016. The Court furthermore notes that the domestic courts which examined the applicant's complaints against the termination of the investigation into the alleged ill-treatment specifically referred to that injury. There is therefore no doubt that there existed an obligation on the part of the national authorities to carry out an effective and thorough investigation with a view to establishing the origin of the applicant's alleged and documented injury and

to identifying and punishing those responsible, should the allegations of ill-treatment prove to be true.

96. In those circumstances, given the onus on the State to provide a satisfactory and convincing explanation for injuries sustained by a person under the control of the police and their failure to do so, and having regard to its conclusions below regarding the effectiveness of the investigation (see paragraphs 99-100 below), the Court concludes that the Government have not satisfactorily established that the applicant's injuries were wholly caused otherwise than by ill-treatment while under police control, as alleged by the applicant. Accordingly, there has been a violation of Article 3 of the Convention in that the applicant was subjected to inhuman and degrading treatment.

2. *Alleged failure to carry out an effective investigation*

97. It is a well-established principle of the Court's case-law that, where an individual raises an arguable claim that he or she has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible, as well as comply with the requirements of promptness, thoroughness, independence and public scrutiny (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 182-85, ECHR 2012).

98. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of those responsible will risk falling foul of this standard.

99. In the circumstances of the present case, the Court notes that the investigation into the applicant's allegations of ill-treatment has lasted for more than seven years and discontinued on the basis of standard phrases. The deficiency of the investigation was acknowledged by the domestic courts on many occasions and led to remittals of the case for further investigation. From the latest available decision (of 5 September 2022), it appears that no comprehensive investigation into the applicant's allegations was conducted.

100. In the light of those serious deficiencies and the overall length of the investigation, the Court considers that the domestic authorities did not fulfil their obligation to investigate the applicant's complaints of ill-treatment effectively. Accordingly, there has also been a violation of Article 3 of the Convention under this head.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

101. The applicants also raised various complaints under Article 6 of the Convention and Article 1 of Protocol No. 1. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the applicants and that there is no need to examine the admissibility and merits of the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The first applicant claimed 14,000 euros (EUR) in respect of non-pecuniary damage.

104. The second applicant did not submit a claim in respect of non-pecuniary damage, but she claimed 36,374 Ukrainian hryvnias (UAH) (equivalent of EUR 1,560) for medical treatment carried out in August 2015.

105. The third and the fourth applicants claimed EUR 5,000 each in respect of non-pecuniary damage.

106. The Government contested those claims, saying they were unsubstantiated.

107. As regards the second applicant's claim for medical expenses which can be interpreted as a request for pecuniary damage, the Court notes that although the documents submitted by the second applicant in support of her claim demonstrate that the above amount had been charged for the provision of medical services related to her heart condition, it is obvious for the Court that provision of urgent medical care and further medical treatment of the second applicant was the result of the police officers' search operation in the second applicant's home and her ill-treatment examined by the Court above. The Court therefore considers, regarding the applicant's claim for

medical treatment, that there is a causal link between the violation found and the damage alleged; it therefore awards the second applicant EUR 500 under this head, plus any tax that may be chargeable.

108. The Court furthermore awards the first, the third and the fourth applicants EUR 5,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

109. The first applicant also claimed EUR 3,085 for the costs and expenses incurred in the domestic courts and EUR 2,800 for those incurred before the Court. In support of this claim, he submitted a copy of a contract signed by himself and A.V. Fedosin dated 10 September 2018 for his representation in the domestic proceedings. Under the terms of that contract, the applicant was to pay Mr Fedosin UAH 6,000 (EUR 144) for each successful hearing in the trial court and UAH 2,000 (EUR 48) for each hearing which was adjourned for reasons outside the control of the applicant or his defence lawyer. The applicant submitted time sheets in respect of work done showing that the applicant was to pay his defence lawyer for participation in fifteen successful hearings and for nineteen adjournments. The applicant also submitted a copy of an addendum dated 5 March 2020 to the contract covering his representation in the proceedings before the Court and time sheets for the work done. These showed charges of EUR 1,000 for preparing an application form submitted in 2020 and EUR 1,800 for preparing comments on the Government's observations.

110. The Government submitted that the first applicant's claims for costs and expenses were formulated in general way and therefore could not be regarded as being necessary.

111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court observes that some work done by the first applicant's representative, notably preparation of comments on the Government's observations on the admissibility and merits, was necessary and relevant. In the light of the above considerations and the scope of the examination in the present case, the Court awards the first applicant EUR 1,000 covering costs under all heads, plus any tax that may be chargeable to him.

112. The second to four applicants did not submit any claim for costs and expenses. The Court will therefore make no award under this head.

FOR THESE REASONS, THE COURT,

1. *Decides*, unanimously, to join the applications;
2. *Declares*, unanimously, the complaints under Article 8 of the Convention concerning the unlawfulness of the warrantless searches conducted in the applicants' homes and the complaints under Article 13 of the Convention concerning the lack of an effective domestic remedy in connection with their Article 8 complaints admissible;
3. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention in respect of all the applicants;
4. *Holds*, unanimously, that there has been a violation of Article 13 in conjunction with Article 8 in respect of all the applicants;
5. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention in respect of the second applicant, Ms Tetyana Maksymivna Zhabo, on account of her alleged ill-treatment by the police during the search in her home;
6. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention in respect of the second applicant, Ms Tetyana Maksymivna Zhabo, on account of the lack of an effective domestic investigation into her allegation of police ill-treatment;
7. *Holds*, by six votes to one, that there is no need to examine the admissibility and merits of the remaining complaints;
8. *Holds*, unanimously,
 - (a) that the respondent State is to pay the applicants, 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 500 (five hundred euros) to the second applicant, in respect of pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 5,000 (five thousand euros) to the first applicant, in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (iii) EUR 5,000 (five thousand euros) to the third applicant, in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (iv) EUR 5,000 (five thousand euros) to the fourth applicant, in respect of non-pecuniary damage, plus any tax that may be chargeable;

- (v) EUR 1,000 (one thousand euros) to the first applicant, in respect of costs and expenses, plus any tax that may be chargeable to that applicant;
 - (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;
9. *Dismisses*, by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Kateřina Šimáčková
President

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

KORNIYETS AND OTHERS v. UKRAINE JUDGMENT

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence	Represented by
1.	2599/16	Korniyets v. Ukraine	24/12/2015	Oleksandr Pavlovych KORNIYETS 1972 Kyiv	Artem Viktorovych FEDOSIN
2.	6904/16	Zhabo v. Ukraine	29/01/2016	Tetyana Maksymivna ZHABO 1958 Rozsoshentsi	Svitlana Volodymyrivna STOROZHENKO
3.	12704/16	Yashchyshen and Yashchyshena v. Ukraine	22/02/2016	Oleksandr Viktorovych YASHCHYSHEN 1976 Kyiv Olena Fedorivna YASHCHYSHENA 1979 Kyiv	Volodymyr Viktorovych YEFYMENKO

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. In introductory paragraph 1, the present judgment indicates that the case “principally” concerns the applicants’ complaint under Article 8 of the Convention that police searches of their homes were unlawful and unjustified as they were made without a prior court order, and their complaint that they did not have an effective domestic remedy for their Article 8 complaints, as required by Article 13. In the same paragraph, it is stated that the case “furthermore concerns” the complaint of Ms Zhabo (application no. 6904/16) under Article 3 of the Convention that she was ill-treated by the police and that there was no effective investigation into that event. In paragraph 101 of the judgment, however, it is admitted that the applicants also raised various complaints under Article 6 of the Convention and Article 1 of Protocol No. 1. The judgment proceeds by stating that having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the “main” legal questions raised by the applicants and that there is no need to examine the admissibility and merits of the remaining complaints.

2. My disagreement with the judgment lies in the decision set out in paragraph 101, which is reflected in point 7 of the operative provisions of the judgment, namely that there is no need to examine the admissibility and merits of the remaining complaints, i.e., the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. In consequence, I disagree with point 9 of the operative provisions dismissing the remainder of the applicants’ claim for just satisfaction to the extent that such a dismissal may concern the just satisfaction relating to the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

3. I have already explained, in several of my separate opinions, my disagreement with the finding that since the Court has addressed the “main” issues in the case, there is no need to examine any “secondary” issues raised by applicants. I will refer only to what I argued in my partly dissenting opinion (paragraphs 4-8) in *Adamčo v. Slovakia (no. 2)* (nos. 55792/20, 35253/21 and 41955/22, 12 December 2024).

4. Regarding the Court’s decision in the present case that there is no need to examine the remaining complaints, I would argue once again that since these other complaints were raised by the applicants, the Court had a duty to examine them. Failure to do so means that an applicant’s rights would not be afforded any protection whatsoever by the Court in the event of a violation. As is the case for any other Convention right that has allegedly been infringed, the rights in question must be examined and given practical and effective protection by the Court, as required by the principle of effectiveness (both as a norm of international law and as a method or means of

interpretation), the principle of indivisibility of rights, and the right of individual application, which is the cornerstone of the Convention.

5. Ultimately, the Court cannot afford an applicant effective protection if it decides, as in the present case, not to examine the relevant complaints. I respectfully disagree with the Court's holding in paragraph 101 that since it has considered the "main" legal questions, there is no need to examine the remainder of the complaints. I would argue that the other complaints also have the potential to raise main legal questions. Furthermore, I am against the very idea of distinguishing between "main" and "secondary" complaints, a distinction that is unfortunately made at the very start of the judgment in the introduction to the case. In my humble submission, a refusal to examine an alleged violation because it is "secondary" may amount to a denial of justice. It may run counter to the jurisdiction, task, and role of the Court to interpret and apply the pertinent provisions of the Convention and the Protocols thereto, as provided by Article 32 of the Convention; it may show disregard for, and an absolute lack of protection of, the Convention rights which are not examined; it may be considered arbitrary and against the rule of law; and it may undermine the legitimacy of the Court and the trust of the public that should be placed in it. Consequently, it is not compatible with the duty of the Court, as the guardian of human rights in Europe, to first select certain complaints as worthy of consideration, and after reaching a decision based on these complaints alone, to determine that it has sufficiently performed its duty and therefore to opt out of considering the remainder.

6. As I also argued in *Adamčo v. Slovakia (no. 2)*, cited above, human dignity is enshrined in every Convention provision safeguarding human rights and is part of the core or essence of each human right. While the concept of human dignity remains the same across all provisions of the Convention, its scope varies from Article to Article. This variation arises because different rights pertain to different contexts, requiring distinct protections and, consequently, interpretations. Each right has its own complexity and specificity as well as its own purpose to serve. Thus, the form that human dignity takes under Article 3, Article 8, or Article 13 is not the same as its form under Article 1 of Protocol No. 1, nor is it the same as the form it takes in relation to the purely procedural right guaranteed by Article 6. It would therefore be incorrect to argue that human dignity levels out all human rights without the need to examine them separately. While to the best of my knowledge, this argument is not raised in the judgment or elsewhere, I felt the need to respond to it in my opinion as a counterargument. In doing so, I hope to reinforce my position that all the complaints should have been examined and decided upon by the Court in the present case.

7. In paragraph 101 of the present judgment, in its decision not to address the remainder of the complaints, the Court refers, in a parenthesis, to paragraph 156 of the Grand Chamber judgment in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08,

ECHR 2014), without making any further comment. It is my humble view that the decision of the Grand Chamber in *Valentin Câmpeanu* not to give a separate ruling on certain complaints – a decision made based on the facts of that case, the submissions of the parties and its own findings – was not meant to establish a recommended practice for the Court in future cases. It neither intended to establish or enunciate a legal principle nor to make an authoritative interpretation and application of a Convention provision. Consequently, the Court in the present case should not simply parenthetically refer to *Valentin Câmpeanu* to justify its lack of consideration of the complaints it deems to fall outside the “main” legal questions of the case. Even if it could be argued that ultimately there is now an established practice of the Court, which consists in picking and choosing the complaints which it considers as “main” and leaving the other complaints without any consideration at all, such practice is, in my submission, erroneous for the above reasons and should be abandoned.

8. Lastly, a finding that there have been further violations with respect to one or more of the remaining complaints would also be pertinent because it could be reflected in an increase in the amount awarded for non-pecuniary damage. It is for this reason that I also voted against point 9 of the operative provisions, dismissing the remainder of the applicants’ claim for just satisfaction.

9. It has not escaped my attention that in two separate cases against the same member State, decided on the same day in the same Section, the Court – using two different approaches – decided not to examine certain complaints separately. In one case (the present judgment), the Court decided not to examine separately some of those complaints which it considered to be “secondary”, after having categorised each complaint as either “main” or “secondary” (here, it referred to *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above). In the other case, namely *Tomenko v. Ukraine* (no. 79340/16, 10 July 2025), the Court decided not to examine some of the complaints separately, but instead to absorb them into another complaint (there, the Court made use of the principle that it is the master of characterisation to be given in law to the facts of the case). Regrettably, both approaches appear to result in the failure to examine certain complaints, a failure which raises significant concerns in my view. This omission not only risks undermining the integrity of the overall process but also has the potential to leave valid issues unaddressed, thus eroding trust in the system and diminishing accountability.