



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

THIRD SECTION

CASE OF SEPPERN v. ESTONIA

(Application no. 31722/22)

JUDGMENT

Art 6 (criminal) • Fair hearing • Exclusion of applicant's trial statements as unreliable due to use of evidence obtained unlawfully by means of secret surveillance to test, in cross-examination, the credibility of those statements • Domestic courts provided thorough reasons, why the use of excerpts of intercepted telephone calls was in accordance with domestic law • Reasons neither arbitrary nor manifestly unreasonable • Limited access of the domestic courts to the full transcripts of the intercepted telephone calls a significant procedural safeguard • Applicant able to challenge the use and content of intercepted telephone calls and his arguments were addressed in a thorough and non-arbitrary manner • Use of secret surveillance reports not decisive for the outcome of proceedings • Applicant not deprived of a fair trial

Prepared by the Registry. Does not bind the Court.

STRASBOURG

16 September 2025

FINAL

09/02/2026

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

In the case of Seppern v. Estonia,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Darian Pavli,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Canòlic Mingorance Cairat, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 31722/22) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Estonian national, Mr Alar Seppern (“the applicant”), on 21 June 2022;

the decision to give notice to the Estonian Government (“the Government”) of the complaint concerning the use of secret surveillance reports in criminal proceedings against the applicant in order to test the credibility of his statements, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 1 July 2025,

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

INTRODUCTION

1. The complaint concerns the use of evidence obtained unlawfully by means of secret surveillance in order to test, in the context of cross-examination, the credibility of the applicant’s statements, with the result that his statements were subsequently excluded on the grounds that they were unreliable.

THE FACTS

2. The applicant was born in 1986 and lives in Jõhvi. He was represented by Mr A. Valk, a lawyer practising in Jõhvi.

3. The Government were represented by their Agent, Mr T. Kolk, Representative of Estonia to the European Court of Human Rights.

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

5. The applicant was suspected of several criminal offences. During the criminal investigation his telephone was wiretapped and his conversations with other persons were recorded (hereinafter also referred to as “secret surveillance”).

6. During a trial hearing on 21 September 2020, the Viru County Court declared inadmissible the material obtained by means of the above-mentioned secret surveillance. The court indicated that the *ultima ratio* nature of the need to conduct secret surveillance had not been sufficiently reasoned in the case at hand. The court noted that it would provide further reasons in its judgment (see paragraph 9 below).

7. During the applicant's cross-examination at the trial on 19 October 2020 the Viru County Court – at the request of the prosecutor – agreed to disclose several excerpts of the transcripts from the above-mentioned wiretapped telephone calls in order to assess the credibility of the applicant's statements. The applicant was offered and accepted the opportunity to explain the inconsistencies between his trial statements and the recorded telephone calls.

8. By a judgment of 19 April 2021 the Viru County Court convicted the applicant of a number of offences (tax evasion, the counterfeiting of documents and the use of those documents, the fraudulent use of important identity documents and fraud) and acquitted him of several others.

9. In that judgment, in the context of reviewing the lawfulness of secret surveillance (*jälitustoimingute seaduslikkuse kontroll*), the court concluded that the decisions by which the preliminary investigation judge had authorised the wiretapping had not included sufficient reasons as to the *ultima ratio* nature of that measure. The secret surveillance had thus been in violation of the Code of Criminal Procedure (*kriminaalmenetluse seadustik*). Consequently, the court declared the evidence obtained by wiretapping inadmissible as evidence (see paragraph 19 below).

10. As regards disclosing excerpts from the transcripts of the intercepted telephone calls in order to assess the credibility of the applicant's statements (see paragraph 6 above), the Viru County Court reasoned that under Article 289 § 3 of the Code of Criminal Procedure (see paragraph 20 below) such a procedural measure had been lawful despite the fact that the evidence in question – the transcripts of the intercepted telephone calls – had been declared inadmissible. The court noted that according to the explanatory memorandum accompanying the draft law on Article 289 § 3 of the Code of Criminal Procedure, documents or data recordings could be used in order to assess the credibility of witness statements regardless of their admissibility as evidence. The court concluded that the legislature had not intended to limit the range of documents or data recordings used for that purpose only to those that were admissible as evidence. The court also stressed that, in assessing the credibility of witness statements in such a manner, it was not the content of the intercepted telephone calls that was examined, but only whether the witness had given consistent and coherent statements about the relevant circumstances.

11. The Viru County Court stated that the applicant had not been able to credibly explain the inconsistencies between his statements during

cross-examination and the intercepted conversations. His trial statements were therefore excluded as unreliable.

12. Both the applicant and the prosecutor appealed against the Viru County Court's judgment.

13. On 12 January 2022 the Tartu Court of Appeal partially quashed and partially upheld the first-instance judgment. It overturned the applicant's acquittal in respect of two counts of incitement to counterfeit documents and convicted him of those offences.

14. In response to the applicant's argument that the use of the intercepted phone calls in order to assess the credibility of his statements had been unlawful, the appellate court held that the use of those transcripts had been in accordance with law. The court acknowledged that, from a psychological point of view, the applicant had not been entirely wrong in asserting that judges could be subconsciously influenced by the information brought to their attention by such a juxtaposition of trial statements with earlier recordings. Indeed, the human brain was not capable of "erasing" knowledge with a simple command. However, that did not mean that the measure described in Article 289 § 3 was impermissible. Were it otherwise, the procedural measure provided for in Article 289 § 3, and in Article 289 § 1 concerning disclosing a witness's pre-trial statements in order to assess the credibility of his or her trial statement, could never be resorted to, as in either of those situations the judge would become aware of the fact that the person had previously claimed something else compared to what he or she said during a trial hearing. The appellate court further asserted that Article 289 § 3 did not have to explicitly state that the documents or data recordings could be used in that context irrespective of their admissibility as evidence.

15. On 18 April 2022 the Supreme Court refused to examine the applicant's appeal on points of law.

16. As regards the offences of which the applicant was convicted, the transcripts of the intercepted telephone calls were used to assess the credibility of his trial statements with respect to three charges (tax evasion, counterfeiting documents and two counts of incitement to counterfeit documents), and his trial testimony was excluded in the above-mentioned manner.

17. As regards the first count of incitement to counterfeit documents, the domestic courts relied on information from a bank, witness statements and an excerpt from the commercial register. As regards the second count of incitement to counterfeit documents, the domestic courts relied on an expert report on handwriting, witness statements and the applicant's own statements (in so far as they had not been excluded as unreliable). In respect of tax evasion, the courts relied on several witness statements, a number of evidence inspection reports (*asitõendi vaatlusprotokoll*) and a report on the employment registry inquiry. With respect to the above offences the courts assessed the facts of the case against their overall context, including from the

perspective of real-life plausibility (*eluline usutavus*) and took into account the respective roles which the applicant and certain other persons had played in relation to the involved companies.

18. Regarding offence of counterfeiting documents, the courts relied on information about entries in relevant registers, declarations related to a certain company linked to the applicant, information obtained through cross-border legal cooperation, search reports, information obtained from a telecommunication service provider, and the fact that a certain V.S. had been dead by the time the relevant entries had been made using his ID card and that certain of his belongings had been found in the applicant's possession. The courts also took into account the amount of information that must have been known to the person using V.S.'s ID card after his death and the ownership and management structure of the companies involved. It was also noted that the modified entries in the tax declarations had exclusively served the interests of the applicant and his partner. On the basis of the evidence as a whole, the appellate court added that it had not been shown that V.S. had actually held any real managerial role in the company in question and that he had rather been the applicant's "front man" (*variisik*).

RELEVANT LEGAL FRAMEWORK

THE CODE OF CRIMINAL PROCEDURE

19. Article 126¹ §§ 2 and 4 provide as follows:

Article 126¹. General conditions for conducting surveillance activities

"...

(2) Surveillance activities are permitted on the grounds laid down in this Code provided it is not possible to gather the data by means of other operations or to collect evidence by means of other procedural operations, or provided such gathering or collection is not possible at the time, or is materially complicated, or may prejudice the interests of the relevant criminal proceedings.

...

(4) Information obtained by means of surveillance activities constitutes evidence, provided that the requirements of the law have been observed when applying for authorisation for the surveillance activity, when granting authorisation and when conducting the operation.

..."

20. Article 289 §§ 1 and 3 provide as follows:

Article 289. Assessing the credibility of witnesses

"(1) In order to assess the credibility of witness testimony, the court may, at the request of a party to judicial proceedings, during adversarial examination, order that

any statements made by the witness during pre-trial proceedings be disclosed if those statements contradict the testimony given during cross-examination.

...

(3) To assess witness credibility, any other document or record of information containing a previous statement by the witness that contradicts the testimony given during cross-examination may also be disclosed during the examination.

...”

21. Article 293 § 1 provides that the accused is examined in court in accordance with § 286² and §§ 288–289¹ of the Code of Criminal Procedure.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant complained that his right to a fair trial, as provided for in Article 6 § 1 of the Convention, had been violated owing to the fact that the domestic courts had relied on unlawfully intercepted telephone calls in order to declare his statements at trial unreliable as evidence. The relevant parts of Article 6 § 1 of the Convention read as follows:

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

A. Admissibility

23. The Government, referring to the arguments they raised on the merits (see paragraphs 28-33 below), contended that the complaint was manifestly ill-founded.

24. The applicant disagreed.

25. The Court finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

26. The applicant argued that in the present case the secret surveillance reports had been obtained in violation of domestic law. In accordance with Article 126¹ § 4 of the Code of Criminal Procedure those reports had been declared inadmissible as evidence. That domestic rule for the exclusion of unlawfully obtained evidence was to be seen as absolute. That is to say, the evidence in question should have been excluded from the criminal proceedings as a whole and should not have been used in any manner. In the

present case the domestic courts had violated that exclusionary rule in their application of Article 289 § 3 of the Code of Criminal Procedure. The interpretation of the provision in question should not lead to a conclusion that unlawfully obtained evidence – while generally inadmissible – was nonetheless admissible in some respect. There was no previous case-law of the domestic courts, notably the Supreme Court, where Article 289 § 3 of the Code of Criminal Procedure had been interpreted in the same manner as in the present case.

27. The applicant further argued that the use of unlawfully obtained secret surveillance reports against him had rendered the criminal proceedings as a whole unfair. He asserted that the evidence in question had had a direct impact on his conviction and sentencing. The courts had used this unlawfully obtained evidence either to exclude other evidence which would have weighed in his favour (his own statements) or had based their findings directly on the unlawful evidence. He also pointed to a specific example where in the context of one charge concerning the counterfeiting of documents the appellate court had, in his opinion, established facts directly on the basis of the secret surveillance report (notably in finding that he had used V.S. as a “front man” (*variisik*) and had had V.S.’s ID card in his possession).

(b) The Government

28. The Government, in response to the applicant’s argument (see paragraph 26 above), maintained that making use of the secret surveillance reports in the context of Article 289 § 3 of the Code of Criminal Procedure, despite those reports being inadmissible as evidence, had been in accordance with domestic law. The Government admitted that it had been the first time that the question about the correct interpretation of that Article in such a specific situation had arisen in practice. However, the Government referred to the domestic courts’ comprehensive reasoning, which could not be considered arbitrary. According to the Government the applicant was merely attempting to reopen the dispute concerning the correct interpretation and application of domestic law.

29. Moreover, the Government stressed that under Article 289 § 3 of the Code of Criminal Procedure the objective of disclosing documents and data recordings was not to create new evidence, but rather to exclude unreliable (including false) evidence. The disclosed documents and records of information in the present case had not been evidence in their own right and had not been assessed as such.

30. The applicant had not been convicted on the basis of the unlawfully obtained secret surveillance reports. The courts had not relied on them directly in order to prove any aspect of the case. The reports had merely been used to exclude as unreliable some of the statements the applicant had made at the trial. However, given the otherwise sufficient, substantial and

consistent body of evidence and the fact that the applicant's own statements had not been corroborated by other evidence, the applicant would have been convicted even if his statements had not been excluded.

31. In the case at hand, the full transcripts of the applicant's telephone calls (as contained in the secret surveillance reports) had never reached the domestic courts, since the Viru County Court had declared them inadmissible as evidence. The Viru County Court had reached that decision on the basis of the prosecutor's authorisation requests and the preliminary investigation judge's decision to authorise secret surveillance, that is to say without seeing the content of the secret surveillance reports. The prosecutor had later used the reports at a hearing in order to read out certain limited phrases from them in response to some of the applicant's trial statements. Those phrases were entered into the court record and remained accessible to the courts only via that record. The prosecutor had not submitted the reports to the courts after that.

32. The applicant had been able to challenge the admissibility of the evidence obtained by means of secret surveillance. He had done so successfully. In that connection, the Government pointed out that the secret surveillance reports had been found to be inadmissible as evidence owing to the insufficient reasoning of the underlying authorisation requests and decisions rather than, for example, the fact of being obtained through any form of ill-treatment.

33. The applicant had also been able to contest the use of the secret surveillance reports in the context of Article 289 § 3 of the Code of Criminal Procedure. He had availed himself of that opportunity and the domestic courts had given due consideration to his arguments. The domestic courts' approach to the evidence and the conclusions drawn from that evidence had not been flagrantly or manifestly arbitrary. No doubts arose in respect of the authenticity, accuracy or reliability of those reports.

2. *The Court's assessment*

(a) **General principles**

34. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 83, 11 July 2017, and *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 302, 26 September 2023).

35. There is a distinction to be made between the admissibility of evidence (that is to say the question of which elements of proof may be submitted to the relevant court for its consideration) and the rights of the defence in respect of evidence which has actually been submitted to the court (see *Yüksel Yalçınkaya*, cited above, § 310). There is also a distinction between the latter

aspect (that is to say, whether the defence rights have been properly guaranteed in respect of the evidence taken) and the subsequent assessment of that evidence by the court (see *SA-Capital Oy v. Finland*, no. 5556/10, § 74, 14 February 2019, and the references therein, and *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, § 125, 27 October 2020).

36. It is not the role of the Court 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 (see *Yüksel Yalçınkaya*, cited above, § 303). Its task under Article 6 § 1 is rather to assess the fairness of the proceedings as a whole, taking into account the specific nature and circumstances of the case, including the way in which the evidence was taken and used, and the manner in which any objections concerning the evidence were dealt with (see *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009, and *Yüksel Yalçınkaya*, cited above, § 310). 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*, cited above, § 89).

37. 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 examined, in particular, whether the applicant was given the opportunity to challenge the evidence and to oppose its use (see *Yüksel Yalçınkaya*, cited above, § 303).

38. From the perspective of the rights of the defence, issues under Article 6 may arise in terms of whether the evidence produced for or against the defendant was presented in such a way as to ensure a fair trial, because a fair trial presupposes adversarial proceedings and equality of arms; thus, possible flaws in the process of administration of evidence may be examined under Article 6 § 1 (*ibid.*, and *Mirilashvili v. Russia*, no. 6293/04, § 157, 11 December 2008).

39. Accordingly, a review of the overall fairness of the proceedings must also incorporate an assessment as to whether the applicant was given the opportunity of challenging the evidence and of opposing its use in circumstances where the principles of adversarial proceedings and equality of arms between the prosecution and the defence were respected. The question whether the applicant’s challenges to the evidence were properly examined by the domestic courts, that is, whether the applicant was truly “heard”, and whether the courts supported their decisions with relevant and adequate reasoning, are also factors to be taken into account in conducting this assessment. In this regard, it should be reiterated that while courts are not obliged to give a detailed answer to every argument raised, it must be clear from the decision that the essential issues of the case have been addressed (see *Yüksel Yalçınkaya*, cited above, § 324, with further references).

40. 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 *Bykov*, cited above, § 90, and *Yüksel Yalçınkaya*, cited above, § 303; see also, among other authorities, *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010, and *Ayetullah Ay*, cited above, § 126). While no problem of fairness necessarily arises where the evidence obtained is 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 *Bykov*, cited above, § 90, and *Yüksel Yalçınkaya*, cited above, § 303; see also *Lee Davies v. Belgium*, no. 18704/05, § 42, 28 July 2009, and *Bašić v. Croatia*, no. 22251/13, § 48, 25 October 2016). In undertaking this examination, the Court also has regard to the state of the other evidence in the case file and attaches weight to whether the evidence in question was or was not decisive for the outcome of the proceedings (see *Gäfgen v. Germany* [GC], no. 22978/05, § 164, ECHR 2010, and *Yüksel Yalçınkaya*, cited above, § 303). In this connection, it may also be reiterated that the burden of proof is on the prosecution, and any doubt should benefit the accused (see *Ayetullah Ay*, cited above, § 126).

41. When determining whether the proceedings as a whole have been fair, the weight of the public interest in investigating the particular offence and in punishing its perpetrator may be taken into consideration and be weighed against the individual interest in ensuring that evidence for the prosecution is gathered lawfully (see *Jalloh v. Germany* [GC], no. 54810/00, § 97, ECHR 2006-IX, and *Prade v. Germany*, no. 7215/10, § 35, 3 March 2016).

(b) Application of those principles to the present case

42. The Court has, in several cases, found the use of covert listening devices to have been in breach of Article 8 of the Convention. Nonetheless, it also found in those cases that the admission in evidence of information obtained thereby did not, in the given circumstances, conflict with the requirements of fairness guaranteed by Article 6 § 1 (see *Lysyuk v. Ukraine*, no. 72531/13, §§ 66-76, 14 October 2021; *Hambardzumyan v. Armenia*, no. 43478/11, §§ 78-81, 5 December 2019; *Dragoş Ioan Rusu v. Romania*, no. 22767/08, §§ 51-57, 31 October 2017; *Dragojević v. Croatia*, no. 68955/11, §§ 131-135, 15 January 2015; and *Khan v. the United Kingdom*, no. 35394/97, §§ 35-40, ECHR 2000-V).

43. In contrast to a number of other cases that have come before the Court (see the cases referred to in paragraph 42 above), in the present case the Viru County Court held that the secret surveillance measures had been unlawful as a matter of domestic law on account of their not being sufficiently reasoned (see paragraph 9 above; compare *Schenk v. Switzerland*, 12 July 1988, §§ 43-46, Series A no. 140, where the domestic courts recognised that evidence had been obtained unlawfully). Moreover, relying on Article 126¹

§ 4 of the Code of Criminal Procedure, the Viru County Court declared the evidence obtained by means of wiretapping inadmissible. In that connection, the Court reiterates that it has previously found in *Liblik and Others v. Estonia* (nos. 173/15 and 5 others, 28 May 2019) that secret surveillance carried out on the basis of insufficiently reasoned judicial authorisations (which were at odds with the domestic law requirement of having to provide such reasons) was in violation of Article 8 of the Convention (*ibid.*, §§ 134-143).

44. Furthermore, despite declaring the reports of intercepted telephone calls inadmissible as evidence, the domestic courts allowed excerpts from the transcripts of those calls to be used in the context of the applicant's cross-examination in order to assess the credibility of his statements. According to the courts, such use of the intercepted telephone calls was in accordance with domestic law (see paragraphs 10 and 14 above).

45. The Court considers that, regardless of the rather unique factual setting of the present case, the above-mentioned general principles concerning Article 6 remain pertinent and applicable. Although the case at hand does not concern, in the strict sense, the admissibility of evidence, its focus is nonetheless on the use of material obtained, in substance, in violation of the guarantees of Article 8 of the Convention.

46. In the applicant's opinion the use of excerpts of transcripts from the intercepted telephone calls in order to assess the credibility of his statements should be seen as unlawful under domestic law. In that connection, the Court reiterates that it is not for it to act as a fourth-instance body and question the interpretation given to domestic law by the domestic courts (see, among other authorities, *Moreira Ferreira*, cited above, § 83). In the present case, both the Viru County Court and the Tartu Court of Appeal responded to the applicant's relevant argument of unlawfulness and provided thorough reasons why using the intercepted telephone calls in the context of Article 289 § 3 of the Code of Criminal Procedure was in accordance with domestic law. Those reasons cannot be considered arbitrary or manifestly unreasonable. The fact that it might have been the first time the domestic courts were called on to interpret and apply Article 289 § 3 of the Code of Criminal Procedure in the context of having previously declared intercepted phone calls inadmissible as evidence does not call into question the validity of their interpretation, nor does it give the Court grounds to reassess it.

47. Turning, next, to the question whether the criminal proceedings as a whole were fair, the Court notes that the applicant used the opportunity to challenge the admissibility of the evidence obtained by means of secret surveillance. In response to his request to assess the lawfulness of the secret surveillance, the Viru County Court found that domestic procedural safeguards had not been followed and declared the evidence obtained through wiretapping the applicant's telephone inadmissible.

48. Admittedly, extracts from the transcripts of those intercepted telephone calls were later used in the same criminal proceedings to assess the

credibility of the applicant's trial statements and to exclude those statements as unreliable. Hence, they still played a role in the criminal proceedings by weakening the applicant's defence position.

49. The Court has no reason to doubt the Government's assertion that the domestic courts never had access to the full transcripts of the intercepted telephone calls (see paragraph 31 above). They became aware of the content of those calls only in so far as the prosecutor at a hearing drew attention to certain phrases uttered by the applicant during those telephone calls which – as the prosecutor suggested – contradicted the applicant's trial statements. The Court considers this limited access to be a significant procedural safeguard.

50. The applicant was offered the opportunity at the trial to provide explanations about the apparent contradictions between his trial statements and the intercepted telephone calls and he made use of that opportunity (see paragraph 7 above). The Court also notes that the applicant raised no doubts as to the authenticity, reliability or accuracy of those reports either before the domestic courts or in the proceedings before it.

51. The Court observes that the applicant was able to and did challenge, at all three levels of jurisdiction, the use of the reports of his intercepted telephone calls in the context of assessing the credibility of his statements. In that connection, while the courts did not agree with his assertions, the first and second instance courts addressed his arguments (notably about the lawfulness of the use of the secret surveillance reports despite their being declared inadmissible as evidence, and about the judges being subconsciously prejudiced when learning about the content of those reports) in a manner that was thorough and which could not be considered arbitrary.

52. The Court notes that the applicant complained about the use made of the excerpts of the unlawfully intercepted phone calls to exclude his own trial statements and, in addition, raised a specific complaint about the Tartu Court of Appeal allegedly having relied directly on the unlawfully intercepted telephone calls when establishing facts relating to the charge concerning the counterfeiting of documents (see paragraph 27 above). The Court, having closely examined the trial court's and appellate court's reasoning, is unable to agree with the applicant about such direct reliance. In any event, the Court finds it relevant that after the exclusion from the evidence of both the secret surveillance reports and the applicant's trial statements the applicant's conviction relied on a number of items of evidence with respect to each charge where use had been made of the reports (see paragraphs 17-18 above). Accordingly, the Court finds that the use made of the secret surveillance reports in question was not decisive for the outcome of the proceedings.

53. In conclusion, taking into account the above-mentioned procedural safeguards available to the applicant in order to contest the use of the secret surveillance reports and challenge their content, and noting that those reports

were not decisive for the outcome of the case, the Court finds that the applicant was not deprived of a fair trial.

54. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 16 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Pavli;
- (b) concurring opinion of Judge Ní Raifeartaigh.

CONCURRING OPINION OF JUDGE PAVLI

1. I have voted in support of the Chamber’s unanimous finding that there has been no violation of the overall fairness of the proceedings in the present case. I also share Judge Ní Raifeartaigh’s views, expressed in her concurring opinion, about the dubious distinction between “direct” and “indirect” use of unlawfully obtained evidence in circumstances such as those of the present case.

2. I am writing separately as I am unable to share the majority’s reasoning as regards one particular aspect of the case, namely the interpretation of Article 289 § 3 of the Code of Criminal Procedure by the national courts (see paragraph 46 of the judgment).

3. I find the Chamber’s reasoning on this point to be rather generous. Firstly, we have seen no indications that the national legislature intended the relevant provision to include evidence of the kind the national courts have allowed, even if indirectly, in the present case; the plain meaning of the text of that provision has been significantly stretched. Secondly, national law should be sufficiently precise and foreseeable to the defendants in the sensitive context of the use of evidence that has been obtained in breach of the fundamental right to privacy (see paragraph 43 of the judgment). Thirdly, when such evidence is generally deemed inadmissible under national law, domestic courts should refrain from casually creating “back doors” for the reintroduction of such evidence, at least without some compelling justification. No such justification has been provided in the present case as, by the respondent Government’s own admission, the evidence at stake was only of secondary importance (compare *Khan v. the United Kingdom*, no. 35394/97, §§ 37-40, ECHR 2000-V).

4. In my view, the above considerations follow from the principle of legality (as a matter of foreseeable application of national criminal procedure) as well as the need to ensure the harmonious interpretation of the various Convention guarantees, in a context where the right to a fair trial and the right to private life are closely intertwined. While Article 6 of the Convention has so far been interpreted by the Court not to include a general exclusionary principle – a policy choice that remains debatable despite being part of established case-law – it seems reasonable for the Court to apply stricter scrutiny, under Article 6 of the Convention, in cases involving those legal systems that do operate on the basis of such a principle. For these reasons, I respectfully disagree with the Chamber’s position in paragraph 46 of the judgment.

CONCURRING OPINION OF JUDGE NÍ RAIFEARTAIGH

1. I wish to draw attention to one aspect of the domestic courts’ reasoning on which the Court has, wisely in my view, refrained from expressing an opinion because it is not necessary to do so in order to reach its conclusion in this particular case. This concerns the distinction drawn by the domestic courts between the ‘direct’ and ‘indirect’ use of unlawfully obtained evidence.

2. The domestic trial court found that interception of the applicant’s conversations was carried out in an irregular and therefore unlawful manner, having regard to the requirements of domestic law. This evidence had therefore been unlawfully *obtained*. It then went on to interpret domestic law in such a way as to distinguish between what it considered to be ‘direct’ and ‘indirect’ *use* of this unlawfully obtained evidence in the subsequent trial. It considered that ‘direct’ use by the prosecution of the transcripts of the intercepts to prove the applicant’s guilt was prohibited, but that the ‘indirect use’ of selected parts of the material was not. It considered that the use by the prosecution of selected portions of the transcript in the cross-examination of the applicant during the trial amounted to ‘indirect use’. The distinction between ‘direct’ and ‘indirect’ use of the evidence flowed from the domestic courts’ interpretation of the relevant domestic statutory provision. (This interpretation is itself at first sight somewhat surprising but that is another matter; for the purpose of the point that I wish to make here, I will take as a given the conclusion of the domestic court that domestic law makes the distinction between ‘direct use’ and ‘indirect use’ of unlawfully obtained evidence). Having excluded the applicant’s testimony from the body of evidence to be assessed when deciding whether he was guilty of the charges, the trial court went on to convict the applicant on the basis of the remaining evidence (as described at §§ 16-18 of the Court’s judgment). The appellate courts upheld this conclusion, finding no error in the manner in which the trial court had dealt with the evidence nor any procedural unfairness on its part.

3. The Court concludes that there was no violation of Article 6 in the present case and I agree with that conclusion on the basis of the caselaw cited at paragraph 41 of the Court’s judgment. The Court’s conclusion is based on a number of factors, as follows:

- (i) that the decision-maker did not have access to the full transcript of the intercept but was limited to knowledge of the selected excerpts relied upon by the prosecutor in cross-examination (§ 49);
- (ii) that the use of the material was not “decisive” to the outcome of the proceedings because there was much other evidence in support of each of the charges in question (§§ 17-18 and 52);

- (iii) that the applicant had an opportunity to challenge the evidence procedurally, and received adequate judicial explanations/reasons when his attempts to do so were unsuccessful (§ 51); and
- (v) that he never challenged the accuracy of the contents of the transcripts which were used to undermine his testimony (§ 50).

4. The Court's judgment neither endorses nor condemns the distinction drawn by the domestic courts with regard to the 'direct' or 'indirect' use of evidence. Of course, it is not its role to concern itself with specific rules of evidence at the domestic level but rather to examine the fairness of the proceedings as a whole in light of the requirements of Article 6 of the Convention. However, the relevance (or otherwise) of a distinction between 'direct' or 'indirect' use of evidence in a criminal trial may fall for closer analysis in the future; for example, in a case where the 'indirect' use of unlawfully obtained evidence is deemed to have played a decisive role in the conviction, in which situation it may become necessary to consider the validity of the distinction in further detail because it will have moved into a central role in the overall Article 6 'fairness' analysis. For the present, I merely wish to note that while the distinction was drawn by the domestic courts, it has not been endorsed by this Court in the present case.

5. It might be thought that this Court has previously dealt with the point in other cases, but I am not convinced that this is so. The supposed distinction between 'direct' and 'indirect' use of evidence is not the same as that presenting in the so-called 'derivative evidence' cases which may, at first sight, appear similar. The latter type of case generally involves the finding of real items of evidence such as a body, a weapon, or forensic evidence, details of which were disclosed by a person during an unlawfully obtained confession. For example, in *Gäfgen v. Germany* ([GC], no. 22978/05, ECHR 2010), the applicant made several confessions, the first of which was deemed to have been obtained in violation of Article 3 and during which he disclosed the location of the murdered child's body. In such cases, there is a causal link between the confession and the items of real evidence thereby obtained, but they are two different items of evidence. In the present case, the direct/indirect distinction drawn by the domestic courts concerned a single piece of evidence, namely the intercepted conversations. In 'derivative evidence' cases, the strength of the causal link between the unlawful confession and the item of real evidence becomes one of the *foci* of attention. The distinction between 'direct' and 'indirect' use of confession appears to me to raise different issues which may fall to be explored in the future. I have some doubts about the validity of the distinction, particularly if 'indirect use' may consist of using the evidence to destroy the applicant's narrative at trial by using the evidence in cross-examination against him. This can be a powerful form of 'use' of the evidence, even if is 'indirect' in the sense that it is not used as part of the prosecution's case but rather to undermine the defence case. The distinction may be a rather technical one which loses sight

of the original rationale for having deemed the evidence to have been unlawfully obtained in the first place. A simple, binary distinction between ‘direct use’ and ‘indirect use’ may not be entirely helpful and may even obscure more important considerations in the overall analysis of ‘fairness’ under Article 6.

6. I accept that in *Gäfgen v. Germany* the Court appeared at paragraph 179 of its judgment to endorse a distinction between using evidence to prove guilt and using evidence to test the veracity of a confession. However, this brief reference must be read in the context of the arguments presented by the parties and the overall reasoning of the Court. It seems to me that the Court’s conclusion ultimately rested on the fact that the conviction was based on corroborative evidence secured independently of the confession (the items listed at the end of § 179) together with the second and *lawfully* obtained confession (§ 180). Therefore, the impact of the ‘real’ evidence which had been obtained as a result of the (first) unlawfully obtained confession (the ‘derivative’ evidence) appears ultimately to have been considered by the Court to be minimal in terms of the outcome. It may also be worth noting that the ‘real’ evidence was used to corroborate the applicant’s (second) confession and not to undermine an exculpatory account (as in the present case). In my view, that particular passage in the *Gäfgen* judgment does not provide final answers to some of the questions which arise in connection with a distinction between ‘direct’ and ‘indirect’ use of evidence.

7. In the Court’s case-law, the relationship between evidence of violations of Articles 3 and 8, on the one hand, and the overall ‘fairness’ assessment under Article 6, is already somewhat complex and nuanced. I have some doubts whether a ‘hard’ and binary distinction between ‘direct’ and ‘indirect’ use of evidence will assist in such an analysis, but the question remains open, in my view, to be examined in further detail in a future suitable case.