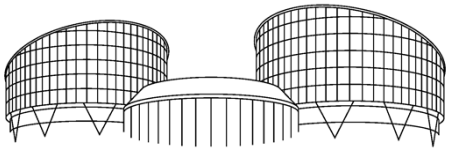

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF REZNIK v. UKRAINE

(Application no. 31175/14)

JUDGMENT

Art 8 • Respect for private life, home and correspondence • Search of a lawyer's home in the context of criminal proceedings against a client and seizure of documents and data-storage devices not accompanied, in practice, by sufficient procedural safeguards • Despite important amendments to the relevant domestic legal framework after *Golovan v. Ukraine*, serious doubts persisted as to the quality of procedural safeguards for the protection of legal professional privilege • Broad search warrant devoid of sufficient reasoning • Seizure, removal and access by officials of a lawyer's electronic devices, potentially containing privileged material, without required safeguards amounting to a disproportionate interference • Devices kept for a considerable period of time without justification • Interference not "necessary in a democratic society"
Art 13 (+Art 8) • Lack of an effective remedy

Prepared by the Registry. Does not bind the Court.

This version was rectified on 10 March 2025
under Rule 81 of the Rules of Court.

STRASBOURG

23 January 2025

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

In the case of Reznik v. Ukraine,

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

Mattias Guyomar*, President*,
María Elósegui,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Andreas Zünd,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 31175/14) 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, whose details are set out in the appended table ("the applicants"), on 10 April 2014;

the decision to give notice of the application to the Ukrainian Government represented by their Agent, Ms M. Sokorenko ("the Government");

the parties' observations;

Having deliberated in private on 17 December 2024,

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

INTRODUCTION

1. The application concerns an alleged violation of Article 8 of the Convention by a police search in the applicants' home. This search was carried out within the framework of criminal proceedings against the client of the first applicant, a lawyer. The applicants also complained under Article 13 of the Convention that the domestic legal framework provided no effective remedies for their Convention complaints.

THE FACTS

2. The first applicant, Mr Mykhaylo Reznik, a practicing lawyer, is the son of the second and third applicants, Mrs Tamara Reznik and Mr Oleksiy Reznik, and the brother of the fourth applicant, Mr Mykola Reznik.

3. The applicants reside in Brovary. They were represented before the Court by Mr M.O. Tarakhkalo and Ms O.R Chilutyan, lawyers practising in Kyiv.

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

5. On 3 July 2013 the first applicant concluded a legal services agreement with the Information Centre, a State-owned information technology

company. On the same date the parties formally agreed to transfer documents. It appears from the signed agreement that the first applicant was provided with originals of 107 commercial contracts made by the Information Centre with various companies between 2002 and 2013 for study and analysis within a framework set out in that agreement. It does not appear from the available material that the first applicant obtained any other documents from the Information Centre at any time.

6. On 19 September 2013 the Ministry of Interior initiated a criminal investigation into various crimes allegedly committed by the management of the Information Centre, including, in particular, abuse of authority and misappropriation of funds.

7. On 25 September 2013 the Information Centre asked the first applicant to return the documents given him earlier within the framework of their agreement.

8. On 27 and 30 September 2013 the parties made further formal agreements, from which it appears that on those dates the first applicant returned the 107 commercial contracts listed in the agreement of 3 July 2013.

9. On 20 November 2013 R.A., the Deputy Prosecutor General, applied to the Pecherskyi District Court in Kyiv seeking a search warrant for the first applicant's flat.

10. On the same date an investigating judge of that court, having held an *ex parte* hearing in the presence of a law-enforcement officer, granted that application, indicating, in particular, as follows:

> "It appears from the [prosecutor's] application and accompanying documents that ...
>
> ... while some documents relevant to the financial and commercial activity [of the Information Centre] have been returned by the lawyer Reznik M.O. to the Information Centre ... [,] documents concerning software installed on the server of the Information centre State company ... are missing. ...
>
> Having studied the materials accompanying the application and having heard the explanations ..., the investigating judge considers that the application ... should be allowed, because the investigator has demonstrated sufficient grounds for us to consider that the items and documents sought are in the possession of the lawyer Reznik M.O., at the address where he is registered and where he lives. In particular, as appears from the agreement of 3 July 2013, ... the lawyer Reznik M.O. had indeed been given documents by the Information Centre State company in order to carry out a legal analysis of them."

11. The investigating judge then authorised the "Deputy General Prosecutor of Ukraine, [R.A.], to carry out a search at [the first applicant]'s registered address and place of residence" for "documents concerning the financial and commercial activity" of the Information Centre, some thirteen other companies (apparently its business partners), nine individuals (apparently managerial officers affiliated with either the Information Centre or its business partners), and

> "the system block with Information Centre State company inventory numbers, other computer devices, mobile communication devices, data storage devices (hard discs, flash drives) that were used during the production of the documents on the basis of which the appropriation of State company funds had taken place."

12. The judge indicated that her decision was final and not subject to appeal.

13. At 8.03 a.m. on 21 November 2013 K.P., a police investigator, accompanied by two operatives and a computer specialist, started carrying out the search in the first applicant's presence. The search was also attended by three representatives of the Bar Association and two attesting lay witnesses.

14. The formal report drafted at the end of the search (*протокол обшуку*) mentioned Mr Oleksiy and Mrs Tamara Reznik, the second and the third applicants, as the residents of the flat and stated that, together with the first applicant, they had been present during the search. According to the applicants, the fourth applicant, Mr Mykola Reznik, who also resided in the same flat and had been there when the police officers arrived, had then been authorised to leave the flat in order to go to work.

15. In the course of the search operation V.S., one of the Bar Association's representatives, telephoned the Brovary police and complained that the search operation was unlawful because the officers who were carrying it out had no documents on them showing their authority to act on behalf of R.A., in whose name the warrant had been issued. Subsequently (on 29 November 2013) M.S., a Brovary police operative, concluded that the officers had acted on the basis of a power of attorney from R.A.

16. The search operation ended at about 1 p.m., with the seizure of ten blank sheets of paper with the stamp of LLC "F.U." affixed to them; four blank sheets of paper with the stamp of LLC "L." affixed to them; a computer hard disc; and a flash drive. Neither "F.U.", nor "L." were listed in the search warrant as associates of the Information Centre who were under investigation.

17. The first applicant annexed his objections to the search report, saying that the search operation had been unlawful for the following reasons:

(a) the police officers had not shown any document authorising them to carry out the search instead of R.A., in whose name the warrant had been issued;

(b) the items seized had not been covered by the warrant and had no relevance to the investigation; and

(c) K.P. had refused to allow the first applicant to act as advocate for the second and the third applicants and one of the attesting witnesses, who he said had sought his legal assistance in the course of the search operation.

18. D.K., one of the Bar Association's representatives, filed similar objections. It is not apparent from the file that any other parties present during the search operation filed any objections on their own behalf.

19. On 2 and 19 December 2013 respectively the hard disk and the flash drive seized from the first applicant's flat were forwarded to the Kyiv State forensic bureau for them to carry out keyword search for "Information Centre", the names of some twenty-five other companies (with which the Information Centre had apparently had business dealings) and some thirty names of individuals, apparently officials associated with those companies. The experts were also asked to find any possible evidence of information having been erased and to explore whether it could be restored. In respect of the hard disk, the experts were additionally asked to verify whether it contained "internet of skype correspondence", including deleted items; and, if so, to verify whether they could be restored.

20. On 17 January 2014 the first applicant asked the investigative authorities to return the seized items.

21. On 24 January 2014 V.S, an investigator with the Ministry of Interior, refused that request. He observed that the first applicant had not been a party to the criminal proceedings with formal capacity to file procedural applications and that the items requested had in any event been added to the criminal file as having been seized under the search warrant.

22. On 8 February 2014 the first applicant challenged that refusal in the Pecherskyi District Court in Kyiv. He referred, in particular, to Articles 169 and 303 Part 1 of the Code of Criminal Procedure ("the CCP") and claimed that the seized items had neither been covered by the search warrant nor had any relevance to the criminal proceedings.

23. On 27 February 2014 the first applicant amended his challenge. Referring, in particular, to the Convention and the national Constitution, he argued that the search warrant had been drawn too broadly and that it did not contain sufficient reasons justifying the search operation, in particular given that he had returned all the documents that the Information Centre had passed to him by 30 September 2013 and there had been no reason to suspect that he had kept any other relevant documents or items in his flat. He further argued that the police authorities had committed a number of procedural errors in the course of the search operation, in particular, by executing the warrant without the requisite documents authorising the search; not allowing his family members the benefit of their right to contact a lawyer; and exceeding the scope of the warrant by venturing into other rooms in the flat which were not used by the applicant as his home office, including the kitchen and the sanitary facilities; and by seizing his personal data-storage devices and documents covered by lawyer-client privilege, which were completely irrelevant to the criminal investigation being conducted. The first applicant also argued that the search did not comply with Convention requirements because no independent authority was present to ensure that those carrying out the search acted lawfully, since the role of the representatives of the Bar Association was restricted to the opportunity, in common with anyone

involved in the search, of filing comments and objections, which had no useful effect.

24. On 5 March 2014 an investigating judge ordered the return of the sheets of paper bearing "F.U.'s" and "L.'s" stamps and dismissed the application for the return of the data-storage devices. The judge did not comment on any of the other issues raised. The judge stated that the decision was final and not subject to appeal.

25. On 23 September 2014 the Kyiv regional prosecutor's office discontinued the criminal proceedings which had been started after the first applicant's complaint that the search warrant for his premises had been issued and executed unlawfully because there was no evidence of any breach of the CCP having been committed.

26. The first applicant confirmed that the disputed data-storage devices were eventually returned to him in 2016.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure (2012)

27. The relevant provisions of the Code of Criminal Procedure (no. 4651-VI of 13 April 2012, "CCP") as in force at the material time read as follows:

Article 169. Termination of temporary seizure of objects

"1. Temporarily seized objects shall be returned to the person from whom they were seized

1) by the decision of the prosecutor, if he/she considers there were no grounds for the seizure;

2) by the decision of the investigating judge or court, if the prosecutor's request to retain the objects is dismissed; ..."

Article 234. Search

1. A search shall be conducted in order to detect and record information about the circumstances of a criminal offence, to find objects used for the commission of a criminal offence or obtained as a result of its commission, or to establish the location of wanted persons.

2. The search shall be conducted on the basis of the warrant granted by the investigating judge.

...

4. An application for a search warrant shall be examined in court on the day of its receipt with the participation of the investigator or prosecutor.

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

1) a criminal offence has been committed;

2) the items and documents searched for are relevant to the pre-trial investigation;

3) information from the items and documents sought may be used as evidence at trial;

4) the items, documents or persons sought may be found in the dwelling or other possession of the person specified in the request."[1]

Article 235. Warrant to authorise a search of a person's residential or other premises

"...

2. An investigating judge's warrant authorising a search of a person's residential or other premises shall comply with the general requirements for court decisions provided for by this Code, and shall contain information on:

...

6) the items, documents or persons to be searched for."

Article 236. Execution of a search warrant for a person's residential or other premises

"1. The search warrant in respect of a person's residential or other premises may be carried out by the investigator or the prosecutor. ... The investigator or prosecutor shall take appropriate measures to ensure the presence during the search of any persons whose rights and legitimate interests may be restricted or violated.

...

3. Prior to the execution ... , the person in possession of the residential or other premises, and in his/her absence another person present, shall be shown the warrant and provided with a copy of it. ...

...

5. A search on the basis of a warrant issued by the investigating judge shall be conducted to the extent necessary to achieve the purpose of the search. ...

...

8. Persons in whose presence the search is carried out, ... shall have the right to file objections, which shall be recorded in the search report."

Article 303. Decisions, actions or omissions of the investigator or prosecutor that may be challenged during the pre-trial investigation and the right to complain

"1. The following decisions, actions or omissions of the investigator or prosecutor may be challenged during the pre-trial proceedings:

[1] On 3 October 2017 an amendment to this provision was adopted requiring a judge, in addition to the above requirements, to verify that "a search is the most appropriate and effective way to find and seize items and documents relevant to the pre-trial investigation, …, and is proportionate to the interference with private and family life."

1) ... failure to return temporarily seized objects in accordance with the requirements of Article 169 of this Code, ...by ... the owner of [those] temporarily seized objects; ...”

2. Complaints against other decisions, actions or omissions of the investigator or prosecutor may not be examined during the pre-trial investigation but may be subject to examination during the preparatory court hearing in accordance with the rules of Articles 314-316 of this Code.”

Article 309. Decisions of the investigating judge that may be challenged during the pre-trial investigation

“3. Complaints concerning other rulings of the investigating judge are not amenable to appeal and objections to them may be filed during the preparatory court hearing.”

B. Bar and Advocacy Act (2012)

28. The relevant provisions of the Bar and Advocacy Act (Law of Ukraine “On the Bar and the Activity of Advocates” no. 5076-VI of 5 July 2012) as in force at the material time read as follows:

Section 22. Legal privilege

“1. Legal privilege shall cover any information that has become known to the advocate, ... about the client, as well as the issues on which the client ... sought the advocate’s advice, ... the content of the advocate’s advice, consultations or explanations, documents drawn up by the advocate, information stored on electronic media, and other documents and information received by the advocate in the course of his or her legal practice.”

Section 23. Safeguards for the activity of advocates

“1. The professional rights, honour and status of the advocate shall be guaranteed and protected by the Constitution of Ukraine, this Act and other laws, in particular:

1) any interference with or hindrance of the performance of the advocate’s activity shall be prohibited;

2) it shall be prohibited to require an advocate ... to disclose information covered by legal privilege. ...;

3) detective and investigative operations or investigative actions targeting the advocate, which may be carried out only with the permission of a judge, shall be carried out on the basis of a court decision made at the request of the Prosecutor General of Ukraine, his or her deputies, the prosecutor of the Autonomous Republic of Crimea, region, city of Kyiv and city of Sevastopol;

4) it is prohibited to inspect, disclose, demand or seize documents related to the advocate’s practice; ...

9) interference with the advocate’s private communications with a client shall be prohibited;

...”.

2. In the event of a search or inspection of the advocate's home or other property or premises where he or she exercises the practice of law, giving temporary access to the advocate's belongings and documents, the investigating judge or court shall specify in the warrant the list of items and documents to be searched for, discovered or seized during the investigative action ... and shall also take into account the requirements of paragraphs 2-4 of part one of this section.

During the search or inspection of the advocate's home or other property or premises where he or she performs the practice of law, giving temporary access to the advocate's belongings and documents, a representative of the regional Bar Association shall be present ...

In order to ensure compliance with the legal privilege requirements of this Act during the search procedure, the representative of the regional Bar Association shall be entitled to ask questions and to submit comments and objections regarding the conduct of the search procedure, which should be reflected in the report (протокол) [concerning the conduct of the search procedure]. ..."

C. Other relevant legal instruments

29. The provisions of the Code of Administrative Justice (2005) concerning the substantive jurisdiction of the administrative courts have been described in the Court's judgment in the case of *Kuzmenko v. Ukraine*, (no. 49526/07, § 16, 9 March 2017).

30. References to the relevant provisions (Article 1176) of the Civil Code and the Compensation Act (Law of Ukraine "On the procedure for compensation for damage caused to citizens by the unlawful acts of bodies of inquiry, pre-trial investigation authorities, prosecutor's offices and courts" no. 266/94-BP of 1 December 1994) can be found, *inter alia*, in the Court's judgment in *Nechay v. Ukraine* (no. 15360/10, §§ 36-37, 1 July 2021).

II. RELEVANT JUDICIAL PRACTICE

A. Judgment of the Supreme Court (Third Civil Panel) of 9 October 2019 in case no. 646/1591/18

31. In its decision of 9 October 2019 in case no. 646/1591/18, the Supreme Court upheld the lower courts' awards under the Compensation Act for distress and inconvenience to an advocate following a search operation carried out in his office in breach of the procedure set out in section 23 of the Bar and Advocacy Act.

32. The advocate in that case had his office in a room on premises occupied by his corporate client, in respect of whose alleged tax offences criminal proceedings had been initiated. A judicial warrant to search that client's office was obtained. In the course of the search operation, the advocate's workplace was searched, and documents and data carriers were seized without any special procedures to take account of the workplace being a lawyer's office. The advocate subsequently applied to a court for the return

of the items seized from his office under the procedure set out in Article 303-1 of the CCP. On 10 April 2017 the Kharkiv Regional Court of Appeal found that the disputed search had been carried out in breach of the procedure established by the Bar and Advocacy Act. It further ordered the investigating authority to return the items seized from the advocate's office.

33. Relying on that judgment, in March 2018 the advocate filed a separate civil action seeking damages under the Civil Code and the Compensation Act, which were awarded, in part, by the civil courts.

34. In upholding the lower courts' findings, the Supreme Court stated, in particular, as follows:

> "In filing this claim, [the plaintiff] referred to the fact that during the search of his office ... the search procedure provided for in Article 23 of the [Bar and Advocacy Act] had been breached.
>
> In such circumstances, taking into account the conclusions set out in the decision of the Kharkiv Regional Court of Appeal of 10 April 2017 ... and given that ... the office (room No. 607) ... where the search and seizure of items was carried out was the advocate's workplace ... , the conclusions of the local court that the [plaintiff's] rights ... had been breached and that there existed grounds for compensation for non-pecuniary damage ... are justified."[2]

B. Judgment of the Supreme Court (Cassation Administrative Court Panel) of 29 April 2020 in case no. 817/1323/17

35. In its decision of 29 April 2020 in case no. 817/1323/17, the Supreme Court (Cassation Administrative Panel) upheld the decisions taken by lower administrative courts allowing an advocate's claim that a search of her house had been carried out unlawfully and awarding her compensation for damage caused to her property. It noted, in particular, as follows:

> "60. ... taking into account the fact that on the day the plaintiff filed this claim, the criminal case against [X.] had already been terminated (... his conviction had become final), in order to effectively restore the plaintiff's violated rights, the case should be dealt with in administrative proceedings.[3]

C. Other decisions

36. In its judgment of 30 March 2021 in case no. 804/5946/17 the Supreme Court (Cassation Administrative Court Panel) upheld the lower administrative courts' decisions to decline jurisdiction over the complaint about the alleged unlawfulness of a search of a lawyer's office, having found that the criminal proceedings within the framework of which the search warrant had been issued were still ongoing and that the claims should therefore be filed under the CCP.

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[2] Full text can be found at: https://reyestr.court.gov.ua/Review/84941549

[3] Full text can be found at: https://reyestr.court.gov.ua/Review/88986933

37. Similar conclusions have been reached by the Supreme Court (Grand Chamber), in particular, in its judgments in cases no. 802/1335/17-a (judgment of 23 January 2019)[4]; no. 420/516/19 (judgment of 13 November 2019)[5] and no. 520/1820/19 (judgment of 26 February 2020).[6]

III. INTERNATIONAL LEGAL MATERIAL

38. See the Court's judgment in *Kruglov and Others v. Russia*, nos. 11264/04 and 15 others, §§ 102-05, 4 February 2020 for a compilation of relevant International material.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

39. The first applicant (for the sake of simplicity also referred to from this paragraph to paragraph 91 below as "the applicant") complained that the search of his home and the seizure of material there had been unlawful and unjustified, and that there had been no effective remedies for him to have his grievances addressed at the domestic level. He referred to Articles 8 and 13 of the Convention, which read as follows:

Article 8

"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."

Article 13

"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."

A. Admissibility

40. The Government argued that the applicant had not exhausted the available domestic remedies. Referring to the Supreme Court's judgments in cases nos. 646/1591/18, 817/1323/17 and 804/5946/17 as summarised in

[4] Full text can be found at: https://reyestr.court.gov.ua/Review/79988780
[5] Full text can be found at: https://reyestr.court.gov.ua/Review/86036734
[6] Full text can be found at: https://reyestr.court.gov.ua/Review/88138169

paragraphs 31 - 37 above, they claimed that domestic law offered effective avenues for redressing complaints about search and seizure operations. In particular, these complaints could be raised within the framework of criminal proceedings which led to the disputed search and seizure operation, as well as through separate civil and administrative actions.

41. The applicant contested that view. He argued that there had been no effective domestic remedies enabling him to air the substance of his Convention complaints. Nevertheless, he had attempted to use the remedy set out in Article 303 Part 1 of the CCP, which had allowed him to recover the stamped sheets of paper which had been unjustifiably seized. However, recourse to this procedure had not resolved his more important complaints, which concerned the lawfulness of the search operation itself and the seizure of the data-storage devices. He had also made an attempt to seek recourse by instituting criminal proceedings against the judge who had issued the search warrant and the officers who had executed it. However, that attempt had also been unsuccessful. The applicant further argued that the domestic cases to which the Government had referred to illustrate the supposed effectiveness of the domestic remedies were confined to their facts, which were markedly different from those in his case.

42. Insofar as the applicant referred to his criminal complaint against the judge and the police officers, the Court does not consider that the circumstances of the present case required the application of criminal law sanctions to protect the first applicant's Article 8 rights (compare *Golovan v. Ukraine*, no. 41716/06, § 72, 5 July 2012). In any event, there is no indication that his criminal complaint received any meaningful follow-up (compare also *Voykin and Others v. Ukraine*, no. 47889/08, § 170, 27 March 2018).

43. In so far as the other remedies mentioned by the Government are concerned, the Court considers that the applicant's claims that they were ineffective are closely interrelated with the substance of his complaint under Article 13. The Court will therefore join the Government's objection to the merits of that complaint (compare *Avanesyan v. Russia*, no. 41152/06, § 23, 18 September 2014).

44. The Court further finds that the applicant's complaints under Articles 8 and 13 of the Convention are neither manifestly ill-founded nor otherwise inadmissible on any other grounds listed in Article 35 § 3(a) of the Convention. They must therefore be declared admissible.

B. Merits

1. Article 8 of the Convention

(a) The parties

(i) The applicant

45. The applicant argued that the disputed search and seizure operation amounted to an interference with his Article 8 rights which was neither lawful nor justified under paragraph 2 of that provision.

46. He asserted, firstly, that the legal procedure for obtaining authorisation for a search was deficient and incompatible with the rule of law. The law allowed warrants to be issued *ex parte*, without giving the parties whose premises were to be searched an opportunity to be heard or represented. In the applicant's case, in particular, this resulted in the issuing of an excessively broad warrant which contained no explanation of why it was believed that the applicant, who had returned all the documents passed to him by the management of the company under investigation, might still be in possession of any pertinent material. It also empowered the law-enforcement authorities to inspect and seize a variety of electronic devices and data storage carriers without identifying them properly, and also to seize privileged documents which were irrelevant to the proceedings at issue.

47. Secondly, the domestic legal framework was deficient and incompatible with the rule of law as it lacked the necessary safeguards to ensure the protection of legal privilege in the course of the execution of a search warrant. In particular, the law contained no ban on the indiscriminate seizure of electronic devices which could contain privileged material and no requirement to sift through their content in a manner which would ensure that no privileged material could be disclosed to the authorities. Furthermore, the law did not provide for the presence of independent supervisors with power to intervene to prevent arbitrary actions by the authorities when lawyers' premises were being searched. Although three representatives of the Bar Association were present during the search of the applicant's home, their powers duplicated those of any other search participants and were limited, essentially, to the opportunity to ask questions and make objections which did not oblige any authority to provide any follow-up. In the applicant's case, the Bar Association representatives were unable to prevent officers who were not covered by the warrant from conducting the search, entering the private space of other members of the applicant's household, or intervene when items not listed in the warrant were seized. Although all the seized items were eventually returned to the applicant as irrelevant to the criminal case, he had to take a separate legal action to reclaim them and the process leading to return of the data carriers had been very slow.

48. Thirdly, the domestic legal order was incompatible with the rule of law, as it had no procedural safeguards enabling the applicant to raise his Article 8 concerns promptly. The issuing of the search warrant itself was not subject to appeal either before or after its execution. The actions of the law-enforcement officers in the course of the search could be directly and immediately appealed against only in so far as the seizure of irrelevant items was concerned (Article 303 Part 1 CCP). That procedure, in practice, did not enable the applicant to obtain the return of his data-storage devices or to raise his key arguments that the search operation itself was incompatible with the Convention.

49. Finally, the applicant complained that the search operation in his case had in any event been not necessary. He had been targeted as a lawyer, not as a suspect, and there had been no good reason to suspect that he was hiding any material relevant to the criminal investigation which would justify such a serious and intimidating measure of interference as a search and seizure operation.

(ii) The Government

50. The Government acknowledged that the disputed search and seizure operation amounted to an interference with the applicant's rights protected by Article 8 of the Convention.

51. They then submitted that that interference had been justified within the meaning of paragraph 2 of Article 8.

52. They firstly asserted that the disputed search and seizure operation had been carried out in accordance with Articles 234-36 of the CCP and with section 23 of the Bar and Advocacy Act, which contained the necessary procedural safeguards to ensure compliance with the rule of law.

53. In the applicant's case all the safeguards had been applied. The warrant was issued by a judge on the application of a Deputy Prosecutor General. Three members of the Bar Association actively participated in the legal aspects of the search operation, including by filing objections, which were added to the search operation report (*протокол*). In so far as the applicant claimed that the police officers had gone beyond the warrant by seizing material that was irrelevant to the criminal investigation, he was able to obtain a judicial review of the officers' actions swiftly and succeeded in recovering the documents, which the judge held not to have been pertinent to the criminal proceedings.

54. The Government further argued that the disputed interference with the applicant's rights pursued a number of the legitimate aims set out in paragraph 2 of Article 8 of the Convention, including the protection of national security and the economic well-being of the country, the prevention of crime, and the protection of the rights and freedoms of others.

55. Lastly, the Government argued that the disputed interference was also necessary in a democratic society, as the investigating judge had given

sufficient reasons for justifying a belief that the applicant could be in possession of documents and material of importance to the investigation of a serious crime and included a specific and exhaustive list of items to be searched for. In so far as the applicant had complained about the removal of his data carriers, there was no evidence that any material from them had been copied and retained by the law-enforcement authorities, or, for that matter, that any of the carriers contained any privileged material at all.

(b) The Court's assessment

(i) General principles

56. The Court reiterates, at the outset, that the search of a lawyer's premises may require it to consider the matter from the standpoint of interference with "private life", "home" and "correspondence" (see, among others, *Niemietz v. Germany*, 16 December 1992, §§ 29-33, Series A no. 251-B; *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, §§ 43-45, ECHR 2007-IV; and *Golovan*, cited above, § 51). The term "correspondence" has been found to cover, *inter alia*, e-mail and electronic files and data storage devices belonging to law firms and lawyers (see, in particular, *Kırdök and Others v. Turkey*, no. 14704/12, § 34, 3 December 2019 and the authorities cited therein).

57. As with any interference with rights protected by Article 8 of the Convention, for a search and seizure operation to be justified within the meaning of paragraph 2 of that Article, it must be carried out "in accordance with the law" and in pursuance of at least one of the "legitimate aims" listed in that paragraph. It must also be necessary in a democratic society, that is, it must correspond to a pressing social need and avoid placing a disproportionate individual burden on the person subject to interference (see, among many others, *Smirnov v. Russia*, no. 71362/01, §§ 37 and 43, 7 June 2007).

58. In determining whether a search and seizure operation has met the criterion of being "in accordance with the law", the Court has established that not only must it have some basis in domestic law, but that that law must, in addition to being accessible and foreseeable, also reflect the principle of the rule of law. That is, it must provide specific procedural safeguards for adequate protection of the individual from arbitrary interference by State authorities (see, among others, *Robathin v. Austria*, no. 30457/06, § 40, 3 July 2012; *Wolland v. Norway*, no. 39731/12, § 62, 17 May 2018; and *Särgava v. Estonia*, no. 698/19, § 86, 16 November 2021).

59. As regards the specific safeguards where search and seizure operations target legal professionals, the Court has repeatedly emphasised that legal privilege is the basis of the relationship of trust between clients and lawyers, who, by virtue of being intermediaries between litigants and the courts occupy an important role in the administration of justice (see, in

particular, *André and Another v. France*, no. 18603/03, § 42, 24 July 2008; and *Saber v. Norway*, no. 459/18, §§ 51, 17 December 2020). The authorities must have a compelling reason for interfering with lawyers' communications or working papers (see, among others, *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 632, 25 July 2013; and *Kadura and Smaliy v. Ukraine*, nos. 42753/14 and 43860/14, § 142, 21 January 2021). The rules and conditions for carrying out searches of lawyers' premises should therefore be subject to especially strict scrutiny with a view to protecting legal privilege (see, among many others, *Leotsakos v. Greece*, no. 30958/13, § 42, 4 October 2018; and *Kruglov and Others*, cited above, § 125).

60. National law should therefore set out specific provisions defining the scope of legal professional privilege (see, in particular, *Iliya Stefanov v. Bulgaria*, no. 65755/01, §36 , 22 May 2008 ; and *Golovan*, cited above, § 60) and develop adequate rules and procedures identifying and protecting the material covered by it in the course of any search and seizure operation (see, in particular, *Petri Sallinen and Others v. Finland*, no. 50882/99, §§ 87 - 92, 27 September 2005; and *Kruglov and Others*, cited above, §§ 128 and 132). Furthermore, the presence at the search of an appropriate independent observer who can ensure that material subject to legal professional privilege remains protected has been found by the Court to be of vital importance (see, among many others, *André and Other*, cited above, §§ 43 and 44, 24 July 2008, *Aleksanyan v. Russia*, no. 46468/06, § 214, 22 December 2008; and *Golovan*, cited above, § 62). In addition to that, the national law must also provide a specific procedure, whereby a judge would be obliged to carry out a "specific proportionality check", when presented with substantiated allegations that precisely identified material subject to legal privilege had been seized. This procedure should empower the judge to order, if necessary, for the relevant material to be returned or destroyed (see *Vinci Construction and GTM Génie Civil et Services v. France*, nos. 63629/10 and 60567/10, § 79, 2 April 2015; and *Kırdök and Others*, cited above, § 51).

61. The Court has also found that the question of the lawfulness of an interference is closely interrelated with the question of its necessity (see, *in fine, Iliya Stefanov*, § 36; *Avanesyan*, § 40; and *Kırdök and Others*, § 47, all cited above; and *Breyer v. Germany*, no. 50001/12, § 85, 30 January 2020). If the rules and procedures for search operations are not sufficiently rigorous, the Court may be led to find a breach of Article 8 of the Convention on the grounds that the interference was not "in accordance with the law" (see, in particular, *Sallinen and Others*, §§ 92 - 94; *Golovan*, § 65; *Saber*, §§ 54-57; and *Särgava*, §§ 108-10, all cited above). The Court may also decide, however, to focus on the interplay between the letter of the law and the existing practice and to address any gaps or omissions in the application of the law from the perspective of "necessity" of an interference in a particular case (see, in particular, *Avanesyan,* § 40; *Wieser and Bicos Beteiligungen GmbH*, §§ 64 and 66; and *Kruglov and Others*, §§ 128-36, all cited above).

In any event, for a search operation to be compatible with the "necessity" requirement of Article 8 of the Convention, the Court must be satisfied that the procedural safeguards against abuse or arbitrariness were effectively implemented so as to strike a "fair balance" between the individual's Article 8 rights and the needs of the criminal investigation (see *Kruglov and Others,* cited above, § 128).

(ii) Application to the present case

(α) Whether there has been an interference

62. Regard being had to the facts of the present case and the Court's case-law, the Court finds that the search of the first applicant's home, the seizure of his documents and data-storage devices and their submission to an expert examination to determine, in particular, whether they contained any Skype or internet correspondence constituted an interference with the applicant's rights to respect for his private life, home and correspondence, as protected by Article 8 of the Convention.

(β) Whether the interference was justified

– *Whether the interference was in accordance with the law*

63. The Court notes that the disputed search operation had a basis in domestic law, namely Articles 234-36 of the CCP.

64. In assessing the applicant's arguments that domestic law was incompatible with the rule of law as it lacked procedural safeguards, the Court notes, firstly, that relevant legal instruments have provided that - save in urgent situations - search and seizure operations have to be subject to judicial scrutiny (Article 234 CCP). They also set out that where a lawyer's premises are to be searched, only a limited number of high-ranking officers of the prosecutor's office are eligible to apply for a search warrant (Article 23 Bar and Advocacy Act). These officers have to give reasons and to satisfy the judge that there is a reasonable belief that significant evidence will be found in the possession of the person whose premises are to be searched (Articles 234-5 CCP). Judges are required, in turn, to draw up a list specifying items and documents to be looked for, while paying special regard to the legal privilege considerations (Article 23 Bar and Advocacy Act; compare and contrast *Golovan*, cited above, § 61).

65. The Court also notes that the Bar and Advocacy Act of 2012 has provided special safeguards to protect the lawyers in the course of implementation of the search warrants. Section 23 has set out a requirement that the Bar Association be notified in advance about an envisaged search operation in its member's premises, with a view to commissioning its representative for supervising the actions of the authorities (compare and contrast *Golovan*, §§ 62-63; and *Kruglov and Others*, § 132, both cited above).

66. Overall, the Court considers that the CCP of 2012 and the Bar and Advocacy Act of the same year have addressed a number of the concerns it has previously expressed in *Golovan* (cited above) and in other Ukrainian cases concerning search and seizure operations which pre-dated the enactment of these instruments.

67. While the Court acknowledges the importance of the effort invested by the respondent Government in the harmonisation of the applicable legal framework with the Article 8 requirements, it also notes that the concept of legal privilege is still defined in rather broad and general terms. The legislation does not specifically deal with the legitimate exceptions authorising interference with the professional secrecy of a lawyer by investigative bodies (see Section 22 of the Bar and Advocacy Act cited in paragraph 28 above and compare *Golovan*, cited above, § 60). The Government have also not presented any examples of case-law clarifying the exact purview of the aforementioned section 22 of the Bar and Advocacy Act and. It is not therefore clear, in particular, whether it prohibits the removal of material covered by legal privilege under all circumstances (compare *Iliya Stefanov*, cited above, § 36).

68. The Court also acknowledges the strength of the applicant's argument that the rights of the Bar Association's representatives attending the search operation appear to be no more than the rights of any other search participants, being limited essentially to the asking of questions and filing of comments or objections which do not require a particular follow-up from the executive (compare *André and Another*, § 43; and *Golovan*, §§ 60 and 63, both cited above). There is also no procedure in place for any disputes between Bar Association representatives and officers conducting a search to be expeditiously reviewed by a judicial or other authority, independent from the investigation, in order to decide whether a particular document may be removed and disclosed to the investigation (compare and contrast *Wieser and Bicos Beteiligungen GmbH*, § 60; *Robathin*, § 48; *Wolland*, §§ 38-39; all cited above; and see *Sérvulo & Associados - Sociedade de Advogados, RL and Others v. Portugal*, no. 27013/10, § 110, 3 September 2015).

69. The Court next observes that the domestic law does not seem to contain any specific procedure or safeguards concerning the examination of electronic data carriers which could prevent electronic communication covered by legal privilege from being disclosed to the investigation (compare *Kruglov and Others*, § 132; Saber, §§ 55-56; and *Särgava v. Estonia*, §§ 105-08, all cited above). The Court would reiterate in that respect that while the question of sifting and separating privileged and non-privileged material is undoubtedly important in the context of hard copy documents, it becomes even more important where the privileged content is part of a larger batch of digitally stored data. Even if the lawyer concerned or his or her representative were present at the search, it might prove difficult to distinguish swiftly during the search exactly which electronic files are

covered by legal professional privilege and which are not (see *Särgava,* cited above, § 99). The question of procedural guarantees which could ensure sufficiently targeted sifting is equally pertinent in circumstances where the sifting is not carried out at the site of the search but instead data carriers are seized and/or their content is copied (see ibid, § 100).

70. Lastly, in so far as the applicant's submissions on the deficiencies of the domestic law concerned a lack of any procedure for bringing his Article 8 arguments before a judge (including a right to be present or represented at the hearing of the application for the search warrant; a right of appeal against that warrant; and a right to raise a complaint about the actions of the law-enforcement officers in the course of the search operation itself) the Court reiterates, referring to its case-law, that the issuing of search warrants *ex parte* and the absence of a right to appeal against a warrant prior to its execution are not as such incompatible with Article 8 of the Convention (see, among others, *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII and *Avanesyan*, cited above, § 29). At the same time, in deciding whether a State has complied with Article 8 of the Convention, the Court taken into account whether or not there were procedural avenues for contesting, at least retrospectively, the lawfulness of the search or its execution (see, in particular, *Iliya Stefanov*, §§ 44-45, *Wolland*, §§ 77-78, both cited above; *Zosymov v. Ukraine*, no. 4322/06, §§ 60-63, 7 July 2016; and *Kruglov and Others*, cited above, §§ 134-36). This issue being closely interrelated with the right to an effective remedy under Article 13 of the Convention (see, *in fine, Iliya Stefanov,* §§ 59; *Zosymov,* §§ 94-96; and *Kruglov and Others*, § 138, all cited above), the Court considers it appropriate to return to the applicant's arguments in more detail when examining his Article 13 complaint in the next section below.

71. In the light of the considerations expressed in paragraphs 67-70 above, the Court considers that, notwithstanding the important amendments introduced into the applicable domestic framework by the CCP of 2012 and the Bar and Advocacy Act, serious doubts still persist as to the quality of procedural safeguards for the protection of legal professional privilege in the context of search operations in general and, in particular, in the context of such operations affecting the electronic data carriers. However, in the present case, the Court finds it useful to consider how these new rules operated in practice in the applicant's specific situation. It therefore leaves open the question of lawfulness of the interference (see *Kırdök and Others*, cited above, § 47; compare also *Avanesyan,* § 40; *Wieser and Bicos Beteiligungen GmbH*, §§ 64 and 66; and *Kruglov and Others*, §§ 128-36, all cited above).

– *Whether the interference pursued a legitimate aim*

72. The applicant did not contest the Government's submissions that the disputed interference pursued legitimate aims specified in paragraph 2 of

Article 8 of the Convention, such as the prevention of crime. The Court also finds no reason to hold otherwise and accepts the Government's explanation.

– *Whether the interference was necessary*

73. In assessing the necessity of the search operation carried out in the applicant's case, the Court reiterates that the applicant was targeted only as a suspect's lawyer, and nothing in the file indicates that he himself was implicated in the alleged criminal acts. In the Court's view, this factor required of the authorities to be particularly vigilant in determining whether there were any alternatives to a search by which they could obtain the necessary evidence and, if there were none, to be especially precise and rigorous in defining the scope of the operation and the items to be seized (compare, in particular, *Ernst and Others v. Belgium*, no. 33400/96, § 16, 15 July 2003; *André and Another*, cited above, §§ 46-47; *Buck v. Germany*, no. 41604/98, § 50, ECHR 2005-IV; and *Yuditskaya and Others v. Russia*, no. 5678/06, § 29, 12 February 2015). The Court takes note of the applicant's submissions that he had returned each and every document that he had received from the company implicated in the related criminal proceedings some two months before the search warrant was issued and that this fact was duly reflected in written records, which were kept by the company and available to the police. In this context, the Court considers that the warrant (see paragraph 10 above) was devoid of sufficient reasoning to justify the conclusion that the missing "documents concerning software" or any other material relevant to the investigation might, nevertheless, have been retained by the applicant. The Court further observes that the warrant gave the law-enforcement authorities very wide powers to search for any documents concerning the "financial and commercial activity" of a large number of companies and individuals, and to seize a variety of loosely identified electronic data carriers without giving any particular instructions as to how any privileged material which might be found on these carriers or otherwise in the applicant's premises should be protected in the context of that seizure (compare *Kolesnichenko v. Russia*, no. 19856/04, § 33, 9 April 2009 ; and *Iliya Stefanov*, § 41; *Kruglov and Others,* §§ 128-29, 4 February 2020; and *Särgava*, § 104, all cited above).

74. Given the broad scope of the warrant, the Court will examine whether that breadth was offset by the implementation, in practice, of sufficient procedural safeguards to protect the applicant against abuse or arbitrariness during the implementation of the search operation (compare *Robathin*, cited above, § 47).

75. In this respect, the Court notes, on the one hand, that the police officers carried out the disputed search operation in the presence of the applicant himself, two attesting lay witnesses, and three representatives of the Bar Association, who took an active role and filed comments and objections (compare and contrast *Leotsakos*, cited above, § 51). Notwithstanding the

above, given that those objections were of no practical effect, the Bar Association's representatives had no power to prevent the police officers from seizing any items they considered necessary. Neither it is apparent that either a Bar Association's representative or any other independent observer had any control over the subsequent sifting of the material on the electronic carriers which were removed from the applicant's home without their content being checked (compare *Wieser and Bicos Beteiligungen GmbH*, § 63; *Kolesnichenko*, § 34; and *Kırdök and Others*, § 54, all cited above).

76. The Court notes that having been removed from the applicant's home, these electronic carriers were sent for an examination by external technical experts, who were requested to identify and extract, in addition to any documents mentioned in the search warrant, any documents dealing with a wider circle of companies and individuals, as well as any correspondence and any deleted items (see paragraph 19 above). While it has not been argued by the applicant that any privileged material had in fact been extracted from the aforementioned data carriers, the Court finds that the very fact that a lawyer's electronic devices which could potentially contain such material were seized, removed and accessed by officials without any external supervision or other safeguards being required, amounted, in the Court's view, to a disproportionate interference with the applicant's Convention rights (see *Robathin*, § 39; and *Kırdök and Others*, § 36 ; both cited above ; compare also, for illustrative purposes, *Močuļskis v. Latvia*, [Committee], no. 71064/12, §§ 41-42, 17 December 2020). The Court also observes that those devices were then kept by the authorities for a considerable period of time (see paragraph 26 above), for which no justification is discernible either from the file or from the Government's submissions (compare *Smirnov*, cited above, § 58).

77. The Court finds that the elements identified by it in paragraphs 73-76 above are sufficient for it to establish that the disputed search operation was not accompanied, in practice, by sufficient procedural safeguards and could not be justified as "necessary in a democratic society". This finding obviates the need to examine the remaining arguments filed by the parties.

78. There has therefore been a violation of Article 8 of the Convention.

2. Article 13 of the Convention

79. The applicant complained under Article 13 of the Convention that he had not had an effective domestic remedy for airing his complaints under Article 8 of the Convention.

80. The Government contested that view. They referred to their arguments raised in the non-exhaustion objection (see paragraph 40 above) and asserted that the applicant could obtain redress by filing an action under the Code of Administrative Justice (see paragraph 29 above); by using the remedies set out in the CCP (Articles 303 and 309; see paragraph 27 above); or by pursuing civil proceedings under the Civil Code and/or the Compensation Act

(see paragraph 30 above). In support of their position, the Government referred to the domestic judgments summarised in paragraphs 31-37 above.

81. The Court reiterates that the rule requiring the exhaustion of domestic remedies referred to in Article 35 of the Convention is based on the requirement – also reflected in Article 13 of the Convention – that an individual who has an arguable claim to be the victim of a violation of the rights set out in the Convention should be able to seek an "effective" remedy from a national authority capable of addressing the substance of his or her Convention grievances and, if appropriate, to obtain redress (see, among many others, *Avanesyan*, § 27; *Zosymov*, § 93; and *Golovan*, § 67, all cited above). The Court further notes that once the search has been carried out or the person concerned has become otherwise aware of the existence of the warrant, there must exist a procedure whereby he or she can impeach the legal and factual grounds of the warrant and obtain redress in the event that the search was unlawfully ordered or executed (see, in particular, *Iliya Stefanov*, § 59; and *Avanesyan*, § 29, both cited above).

82. Turning to the facts of the case, the Court reiterates that the current CCP, which was introduced in 2012, - similarly to the Code of Criminal Procedure of 1960 - provides no possibility to appeal against a search warrant (compare *Golovan*, cited above, § 32).

83. In assessing the potential effectiveness of other domestic remedies cited by the Government, the Court notes, firstly, that at the time of the lodging of the present application the criminal case within the framework of which the disputed search warrant had been issued was at the pre-trial investigation stage. The Government have not informed the Court of any further developments, final outcome, or present status of that case. The Court has therefore no basis on which to conclude that the remedies set out in the Code of Administrative Justice were available to the applicant, because it is apparent from the domestic case-law that they could not be used while the related criminal proceedings were ongoing (see paragraphs 35-37 above). The Court therefore finds it unwarranted, in the context of the present case, to examine the potential effectiveness of that remedy.

84. For the same reason, it finds it unwarranted to examine the remedies set out in Article 303 Part 2 and Article 309 Part 3 of the CCP (see paragraph 27 above), as their availability was conditioned on the sending of the aforementioned criminal case for trial.

85. In so far as the Government have invoked the procedure set out in Article 303 Part 1 of the CCP (see paragraph 27 above), its scope was limited to a possibility for an owner of seized items to reclaim them, if he or she could show that they had been seized in breach of the law or without proper justification. As appears from case no. 646/1591/18 cited by the Government (see paragraphs 31-34 above), an acknowledgment of a breach of the owner's rights by way of this procedure could then also give basis to him for obtaining compensatory redress by way of filing separate civil proceedings.

86. The Court considers that the introduction of this procedure, which did not feature in the Code of Criminal Procedure of 1960, has provided an important safeguard to the owners of seized items in the search and seizure operations (compare *Vinci Construction and GTM Génie Civil et Services,* § 79; and *Kırdök and Others*, §§ 51 and 57, both cited above; and *Lysyuk v. Ukraine*, no. 72531/13, §§ 40-47, 14 October 2021; contrast *Zosymov,* §§ 61, 77, and 94-96 and *Kuzmenko* §§ 27-31, both cited above).

87. The Court next notes that the applicant in the present case had recourse to this procedure and was able to recover some of the seized items. However, his broader and more important grievances, which were at the heart of the present application, notably the justification for the issuing of the search warrant and legality of the actions of the police officers (including with regard to the lawyer-client privilege), other than those connected to the seizure of his belongings, were left outside the scope of the review (see paragraphs 23-24 above).

88. Finally, in so far as the Government referred to the option of filing separate civil compensation proceedings, in a number of earlier cases against Ukraine lodged by individuals who had no procedural status in the related criminal proceedings, the Court has held that that process was ineffective because it was insufficiently certain in practice (see, in particular, *Vladimir Polishchuk and Svetlana Polishchuk v. Ukraine*, no. 12451/04, §§ 54-57, 30 September 2010 ; *Ratushna v. Ukraine*, no. 17318/06, §§ 59 and 87-88, 2 December 2010; *Golovan*, cited above, §§ 69-70; and *Bagiyeva v. Ukraine*, no. 41085/05, §§ 59-60, 28 April 2016). While those cases were decided during the period when the Code of Criminal Procedure of 1960 was in force, it is not evident from the material available in the present case that the new Code of 2012 has changed that situation. In particular, the Government have not given any examples from case-law or any other evidence suggesting that the applicant could obtain relief for his grievances by way of filing separate civil-law proceedings (other than in the context of seeking compensation for the breach already established in the course of the procedure set out in Article 303 Part 1 as mentioned above). It is not apparent that in the applicant's case a civil court judge would be able to review the reasons underlying a valid search warrant, or assess lawfulness or justification of the police officers' conduct in the course of a search operation carried out in the context of ongoing criminal proceedings (compare *Avanesyan*, cited above, § 33).

89. Regard being had to all the above, it is not apparent from the available material that any of the remedies cited by the Government could provide the applicant in the present case with an appropriate forum for challenging the reasons set out in the disputed search warrant, even retrospectively, after the relevant search operation has been completed (compare *Avanesyan*, cited above, § 29; and contrast *Buck*, § 46 ; *Wolland,* §§ 37 and 46; and *Kruglov and Others*, §§ 113-14, all cited above). Neither it is apparent that any of

those remedies enabled him to challenge the alleged misconduct of the police officers, including alleged breaches of the lawyer-client privilege, other than that, which was directly connected to the seizure of his belongings, and which could be addressed under Article 303 Part 1 of the CCP.

90. The Court concludes, therefore, that the Government's non-exhaustion objection must be dismissed.

91. The Court also finds that there has been a breach of Article 13 of the Convention in the present case.

II. ALLEGED VIOLATIONS OF ARTICLES 8 AND 13 OF THE CONVENTION IN RESPECT OF THE SECOND, THIRD AND FOURTH APPLICANTS

92. The second, third and fourth applicants (jointly referred to as "the applicants" from here to paragraph 97 below) submitted that, as co-owners and co-residents of the flat occupied by the first applicant, they were the victims of an unlawful and unjustified search in their home, in breach of Article 8 of the Convention.

93. They noted that rather than confining themselves to searching the premises occupied by the first applicant, the police officers had searched the entire flat and inspected the applicants' personal belongings. The third applicant, a medical doctor, additionally complained that the police officers had purportedly ordered him to disclose his patients' files, in breach of his legal obligation to keep them confidential. Together with the second applicant, he also complained that the officers had refused to recognise their appointment of the first applicant as their lawyer during the search operation. The fourth applicant, in his turn, complained that his bedroom had been unjustifiably searched in his absence. He noted that he had been at home when the police officers had arrived, but that he had then left to go to work, with the police's permission. The applicants further argued that there were no effective domestic remedies for them to exhaust and that they should therefore be excused for the non-compliance with the duty to air their complaints before the domestic authorities.

94. The Government argued that the applicants' complaints were vague, general, and insufficient to show that their Convention rights had been breached. They further submitted that the available domestic remedies had not been exhausted.

95. The Court notes at the outset that unlike the first applicant, the second, third, and fourth applicants were not targeted by the search warrant and none of their belongings were seized. Regard being had to the scope, nature, and level of detail in these applicants' complaints, it appears that they were distressed in the first place by the very fact that the police had carried out a search in their private premises. In this connection, the Court reiterates that the Convention does not prohibit as such searches on third parties' premises

(see, for example, *Buck,* § 48; and *Ratushna*, § 74, both cited above). The Court further observes that the applicants did not file any objections to the search report (see paragraph 18 above) and did not seek an official reaction of the domestic authorities to any alleged act of police misconduct arguably causing them unusual hardship (see *Svitlana Atamanyuk and Others v. Ukraine*, nos. 36314/06 and 3 others, § 162, *in fine*, 1 September 2016). They also did not provide to the Court a detailed description of any such act or other evidence of any such hardship. Having examined the applicants' submissions in the light of the available material, the Court considers that they do not disclose a *prima facie* appearance that the applicants suffered distress or inconvenience of a dimension and character distinct from that ordinarily sustained, in the course of a search operation, by household members of a person targeted by a search warrant.

96. In the light of the above, the Court considers that the complaints raised under Article 8 of the Convention by the second, third, and fourth applicants are manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3(a) and 4 of the Convention. This finding obviates the need to examine any other inadmissibility arguments raised by the Government.

97. The applicants' complaints under Article 13 of the Convention must therefore also be dismissed under the same provision given that no arguable claim under Article 8 of the Convention has been raised (see, among others, *Tamosius,* cited above; and *Golovan*, cited above, § 44).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. The first applicant also complained under Article 1 of Protocol No. 1 that his documents and data storage devices had been unlawfully and unjustifiably seized in the course of the disputed search and that they had been retained by the investigating authorities for an unjustified period of time.

99. Lastly, he complained under Article 13 of the Convention that he had no effective remedies for his complaint under Article 1 of Protocol No. 1.

100. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 8 of the Convention, the Court considers that it has examined the main legal questions raised in the present application, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014 ; and *Namazli v. Azerbaijan*, no. 8826/20, § 56, 20 June 2024).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The first applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

103. The Government asserted that this claim was wholly unsubstantiated and exorbitant.

104. The Court, ruling on an equitable basis, awards the first applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

105. The first applicant also claimed EUR 3,450 for legal fees incurred before the Court to be transferred to his lawyer's account directly[7]. He provided a copy of a contract for legal representation concluded with his lawyer, Mr M.O. Tarakhkalo, and a time-sheet, from which it appears that the lawyer spent twenty-three hours on preparing observations in his case, at EUR 150 per hour.

106. The Government invited the Court to dismiss this claim.

107. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 3,450 in legal fees claimed by the first applicant, plus any tax that may be chargeable to him. This amount is to be transferred directly into the account of the applicant's lawyer, Mr Tarakhkalo[8].

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the complaints lodged by the first applicant under Articles 8 and 13 of the Convention and declares inadmissible the complaints by the other three applicants;

2. *Holds* that there is no need to give a separate ruling on the admissibility and merits of the complaints lodged by the first applicant under Article 1 of Protocol No. 1 and Article 13 of the Convention in conjunction with it;

[7] Rectified on 10 March 2025: "(…) to be transferred to his lawyer's account directly" has been added

[8] Rectified on 10 March 2025: "This amount is to be transferred directly into the account of the applicant's lawyer, Mr Tarakhkalo" has been added.

3. *Holds* that there has been a violation of Article 8 of the Convention in respect of the complaint lodged by the first applicant;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 8 in respect of the complaint lodged by the first applicant;

5. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,450 (three thousand four hundred and fifty euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses, to be transferred directly to the account of the applicant's lawyer, Mr Tarakhkalo[9];
   (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;

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

Done in English, and notified in writing on 23 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President

[9] Rectified on 10 March 2025: "(…), to be transferred directly to the account of the applicant's lawyer, Mr Tarakhkalo" has been added.

APPENDIX

List of applicants

Application no. 31175/14

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Mr Mykhaylo Oleksiyovych REZNIK	1984	Ukrainian	Brovary
2.	Mrs Tamara Omelyanivna REZNIK	1951	Ukrainian	Brovary
3.	Mr Oleksiy Mykolayovych REZNIK	1954	Ukrainian	Brovary
4.	Mr Mykola Oleksiyovych REZNIK	1987	Ukrainian	Brovary