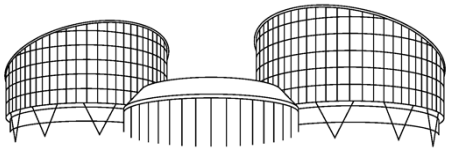

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ANTOVIĆ AND MIRKOVIĆ v. MONTENEGRO

(Application no. 70838/13)

JUDGMENT

STRASBOURG

28 November 2017

FINAL

28/02/2018

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

In the case of Antović and Mirković v. Montenegro,

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

Robert Spano, *President,*
Julia Laffranque,
Ledi Bianku,
Nebojša Vučinić,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 31 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 70838/13) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Montenegrin nationals, Ms Nevenka Antović and Mr Jovan Mirković ("the applicants"), on 25 October 2013.

2. The applicants were represented by Mr V. Radulović, a lawyer practising in Podgorica. The Montenegrin Government ("the Government") were initially represented by Mr Z. Pažin, their Agent at the time, and later by Mrs V. Pavličić, the newly appointed Agent.

3. The applicants alleged that the unlawful installation and use of video surveillance equipment in the university auditoriums where they held classes had violated their right to respect for their private life.

4. On 3 December 2014 the complaint concerning the video surveillance was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1969 and 1961 respectively and live in Podgorica.

A. Video surveillance

6. On 1 February 2011 the Dean of the School of Mathematics of the University of Montenegro (*Prirodno-matematički fakultet*), at a session of the School's council, informed the professors teaching there, including the applicants, that "video surveillance has been introduced" (*da je uveden video nadzor*) and that it was in the auditoriums where classes were held.

7. On 24 February 2011 the Dean issued a decision introducing video surveillance in seven amphitheatres and in front of the Dean's Office (*ispred dekanata*). The decision specified that the aim of the measure was to ensure the safety of property and people, including students, and the surveillance of teaching (*praćenje izvršavanja nastavnih aktivnosti*). The decision stated that access to the data that was collected was protected by codes which were known only to the Dean. The data were to be stored for a year.

8. On 14 March 2011 the applicants complained to the Personal Data Protection Agency (*Agencija za zaštitu ličnih podataka,* "the Agency") about the video surveillance and the collection of data on them without their consent. They relied on the Personal Data Protection Act (see paragraphs 24-27 below).The applicants submitted, in particular, that the amphitheatre where they taught was locked both before and after the classes, that the only property there was fixed desks and chairs and a blackboard, that they knew of no reason to fear for anybody's safety and that, in any event, there were other methods for protecting people and property and monitoring classes. They requested that the cameras be removed and the data erased.

9. On 21 March 2011 two Agency inspectors issued a report (*zapisnik*) after visiting the School of Mathematics, stating that the video surveillance was in accordance with the Personal Data Protection Act. According to them, there had been cases of destruction of university property, the bringing in of animals, drink and tobacco, and the presence of people who were not students. They also noted that the cameras provided "a picture from a distance without clear resolution, that is people's features [could not] be easily recognised", that they could not zoom in and out and did not record any audio (*ne reprodukuju audio zapis*). While the decision on introducing video surveillance had provided that data would be stored for a year, the servers' capacity was such that the data was stored for thirty days and then automatically erased by new recordings. The inspectors also noted that information on a "plan to introduce video surveillance" (*planiranje uvođenja video nadzora*) had been given at a session of the School Council on 1 February 2011.

10. On 22 March 2011 the applicants filed an objection to the report, submitting, *inter alia*, that they were not aware of any of the alleged incidents and that, in any event, it was unclear how such cameras could

ensure the safety of people and property. They agreed that cameras over the entrances and exits from the university building might perhaps be an adequate form of ensuring such security. They also submitted that employees had not been "notified in writing on the introduction of video surveillance before it started" (*nijesu bili obavješteni o uvođenju video nadzora u pisanom obliku prije početka vršenja istog*). Notably, the decision had been issued on 24 February 2011 whereas surveillance had commenced a few weeks before. They did not specify when exactly but referred to the minutes of the session of 1 February 2011 (see paragraph 6 above).

11. On 28 April 2011, after the applicants' objection to the report, the Agency's Council (*Savjet Agencije za zaštitu ličnih podataka*) issued a decision (*rješenje*) ordering the School of Mathematics to remove the cameras from the auditoriums within fifteen days as the video surveillance was not in accordance with the Personal Data Protection Act, notably sections 10, 35 and 36 (see paragraphs 24, and 26-27 below). In particular, the Council held that the reasons for the introduction of video surveillance provided for by section 36 had not been met, given that there was no evidence that there was any danger to the safety of people and property in the auditoriums, still less to confidential data, and that the surveillance of teaching was not among the legitimate grounds for video surveillance. None of the parties initiated an administrative dispute in court against that decision.

12. On 25 January 2012 the School of Mathematics was served with the Agency Council's decision of 28 April 2011. The cameras were removed by 27 January 2012 at the latest. It appears that the data that had been collected was also erased on an unspecified date.

B. Civil proceedings

13. On 19 January 2012 the applicants brought a compensation claim against the University of Montenegro, the Personal Data Protection Agency and the State of Montenegro, for a violation of their right to a private life, notably by the unauthorised collection and processing of data on them. They submitted in particular that such an interference with their private lives, without any possibility to control that process, was not provided for by any piece of legislation and that therefore it had not been in accordance with the law, within the meaning of Article 8 § 2 of the Convention. They also maintained that it had not pursued any legitimate aim and had not been necessary in a democratic society. They relied on the relevant provisions of the Personal Data Protection Act, Article 8 of the Convention and the relevant case-law of the Court.

14. On 27 December 2012 the Court of First Instance (*Osnovni sud*) in Podgorica ruled against the applicants. The court found that the notion of

private life certainly included activities in the business and professional spheres. It also held, however, that the university was a public institution performing activities of public interest, teaching being one of them (*poziv redovnog profesora [je] takođe javan*), and that it was thus not possible for video surveillance of the auditoriums as public places to violate the applicants' right to respect for their private life. It was a working area, just like a courtroom or parliament, where professors were never alone, and therefore they could not invoke any right to privacy that could be violated. The data that had been collected could thereby also not be considered as personal data. The university's failure to remove the cameras immediately had been unauthorised, but it could not be classed as an interference with the applicants' private life and was therefore irrelevant. The court further held that such a conclusion was in accordance with the Court's case-law given that the monitoring of actions taking place in public was not an interference with a person's private life when those means just recorded (*bilježi*) what others could see if they happened to be in the same place at the same time. The court also held that the monitoring of the actions of an individual in a public place by the use of photographic equipment which just instantaneously recorded visual data did not give rise to an interference with that individual's private life, which could arise once any footage of such material became publicly available. It concluded that the installation and use of video surveillance and the collection of data thereby had not violated the applicants' right to privacy (*pravo na privatnost*) and had therefore not caused them any mental anguish. During the proceedings one of the witnesses stated that there had been cases of theft and of damage to the interior of the building and that on one occasion five laptops had disappeared from a laboratory. Those events had led to the hiring of a private security agency two or three years earlier. According to the witness, the police had suggested installing video surveillance equipment on the School's premises. The court, for its part, did not deal with those issues.

15. On 31 December 2012 the applicants appealed. They relied, *inter alia*, on Article 8 of the Convention. They maintained, in particular, that the interference with their right to respect for their private lives had not been in accordance with any law and had therefore been contrary to Article 8 § 2 of the Convention. It had also not been necessary in a democratic society. Furthermore, the Court of First Instance had not relied on any legal provision in ruling against them and had failed to assess their arguments.

16. On 17 July 2013 the High Court (*Viši sud*) in Podgorica upheld the first-instance judgment, endorsing its reasons in substance. The High Court held in particular that the applicants had not proved that their right to privacy had been violated and found that the first-instance court had "sufficiently related the Court's case-law to the case at issue (*dao jasan osvrt na odnos prakse Evropskog suda za ljudska prava i konkretnog*

slučaja) ... The court considered the [applicants'] other arguments and found that they did not justify ruling otherwise in the present case...".

17. The applicants did not file a constitutional appeal.

II. RELEVANT DOMESTIC LAW

A. Constitution of Montenegro 2007 (*Ustav Crne Gore*; published in the Official Gazette of Montenegro - OGM - no. 01/07)

18. Article 40 provides that everyone has the right to respect for their private and family life.

19. Article 43 provides that everyone has the right to be informed about the gathering of personal data about them and the right to judicial protection in case of misuse.

20. Article 28 § 2 guarantees, *inter alia*, privacy and personal rights.

21. Article 24 § 1 provides that guaranteed human rights and freedoms can be restricted only by law, to the extent allowed by the Constitution and as far as is necessary in an open and democratic society to serve the purpose for which the restriction was allowed.

22. Article 149 provides that the Constitutional Court rules on a constitutional appeal lodged in respect of an alleged violation of a human right or freedom guaranteed by the Constitution after all other effective legal remedies have been exhausted.

23. The Constitution entered into force on 22 October 2007.

B. The Personal Data Protection Act (*Zakon o zaštiti podataka o ličnosti*; published in the OGM nos. 79/08, 70/09 and 44/12)

24. Section 10 provides that personal data can be processed only after consent has been obtained from the person whose data are to be processed and the consent can be withdrawn at any time.

25. Section 21 provides that the person responsible for handling the data that has been gathered must inform the person involved about, *inter alia*, the legal grounds and purpose of the gathering of the data and about the right of access to the information.

26. Section 35(1) provides that public institutions (*javni sektor*) can carry out video surveillance of an area of access (*pristup*) to official premises.

27. Section 36 provides that video surveillance can be carried out in official or business premises to ensure the safety of people or property or for the protection of confidential data if that cannot be achieved in any other way.

28. Section 48 provides that the person responsible for handling any data that has been collected is also responsible for any damage caused by a violation of the rights provided for by the Act, in accordance with the general rules on compensation for damage.

29. Sections 49-73a provide details about the Agency and its supervisory activities (*nadzor*).

30. Section 49, 51 and 52 define the Agency as an independent supervisory body (*nadzorni organ*), composed of the Agency Council and the director. The Agency Council has a president and two members, who are all appointed by Parliament and who answer to Parliament.

31. Section 50 provides that the Agency oversees (*vrši nadzor*) the implementation of personal data protection in accordance with the Act; decides on requests for data protection; gives opinions on the implementation of the Act; gives consent related to creating collections (*uspostavljanje zbirki*) of personal data; gives its opinion on whether a certain amount of personal data can be considered as "collection" within the meaning of the Act; monitors the implementation of organisational and technical measures for personal data protection; makes proposals and recommendations for the improvement of personal data protection; gives its opinion on whether a certain way of processing personal data (*obrada*) endangers rights and freedoms; cooperates with bodies from other countries in charge of personal data protection; cooperates with competent State bodies in preparing regulations relating to personal data protection; gives assessments of the constitutionality and legality of Acts and other regulations relating to personal data processing; as well as other functions in accordance with the Act and the Free Access to Information Act.

32. Sections 56-72 provide that the Agency performs its supervisory function through inspectors (*kontrolori*), who make reports (*zapisnik*) on their work. Parties can file an objection (*prigovor*) against the inspectors' reports and the Agency Council must rule thereon. By means of its decisions the Agency can, *inter alia*, order that irregularities in personal data processing be removed within a certain time; temporarily prohibit personal data processing when it is contrary to the Act; and order that personal data which have been collected without legal grounds be erased. An administrative dispute can be initiated against the Agency's decisions.

C. The Obligations Act 2008 (*Zakon o obligacionim odnosima*; published in the OGM nos. 47/08 and 04/11)

33. Sections 151, 206 and 207 of the Obligations Act, taken together, provide, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish as a consequence of damage to his or her reputation or a breach of personal integrity, liberty or other personal rights (*prava ličnosti*) is entitled to seek injunctive relief, sue for financial compensation and

request other forms of redress "which might be capable" of affording adequate non-pecuniary relief.

34. Section 166 provides, *inter alia*, that a legal entity (*pravno lice*), which includes the State, is liable for any damage caused by one of its bodies to a "third person" in the course of performing its functions or acts related thereto.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The applicants complained under Article 8 of the Convention that the alleged unlawful installation and use of video surveillance equipment in the university auditoriums where they held classes had violated their right to respect for their private life. The relevant Article reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

36. The Government contested that argument.

A. Admissibility

1. The parties' submissions

37. The Government submitted that not all professional and business activities fell within the ambit of private life. The university was a public institution and teaching was an activity of public interest (*djelatnost od javnog interesa*). The area that had been under surveillance was a working area outside the scope of personal autonomy, unlike professors' offices, where a certain amount of personal autonomy could exist.

38. They further maintained that the applicants had failed to exhaust all the effective domestic remedies, notably a constitutional appeal.

39. The applicants contested the Government's submissions. In particular, they averred that a constitutional appeal was not an effective remedy at the relevant time.

2. The Court's assessment

(a) Applicability of Article 8

40. The relevant principles in this regard are set out, for example, in *Niemietz v. Germany* (16 December 1992, §§ 29-31, Series A no. 251-B); *Peck v. the United Kingdom* (no. 44647/98, §§ 57-58, ECHR 2003-I); *Halford v. the United Kingdom* (25 June 1997, §§ 44-46, *Reports of Judgments and Decisions* 1997-III); *Fernández Martínez v. Spain* [GC] (no. 56030/07, §§ 109-110, ECHR 2014 (extracts)); and *Bărbulescu v. Romania* [GC] (no. 61496/08, §§ 70-73, 5 September 2017).

41. In particular, the Court reiterates that "private life" is a broad term not susceptible to exhaustive definition and that it would be too restrictive to limit the notion of "private life" to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle (see *Niemietz*, cited above, § 29). Article 8 thus guarantees a right to "private life" in the broad sense, including the right to lead a "private social life", that is, the possibility for the individual to develop his or her social identity. In that respect, the right in question enshrines the possibility of approaching others in order to establish and develop relationships with them (see *Bărbulescu*, cited above, § 70, and the authorities cited therein).

42. The Court has already held that the notion of "private life" may include professional activities or activities taking place in a public context (see *Bărbulescu*, cited above, § 71, and the authorities cited therein). It is, after all, in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity to develop relationships with the outside world, and it is not always possible to distinguish clearly which of an individual's activities form part of his professional or business life and which do not (see *Niemietz,* cited above, § 29). There is therefore a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life" (see *Peck*, cited above, § 57), professional life being part of it (see *Fernández Martínez*, cited above, § 110 *in fine*).

43. In order to ascertain whether the notion of "private life" is applicable, the Court has on several occasions examined whether individuals had a reasonable expectation that their privacy would be respected and protected. In that context, it has stated that a reasonable expectation of privacy is a significant though not necessarily conclusive factor (see *Bărbulescu*, cited above, § 73, and the authorities cited therein).

44. Turning to the present case, the Court notes that university amphitheatres are the workplaces of teachers. It is where they not only teach students, but also interact with them, thus developing mutual relations and constructing their social identity. It has already been held that covert video surveillance of an employee at his or her workplace must be considered, as such, as a considerable intrusion into the employee's private life. It entails

the recorded and reproducible documentation of a person's conduct at his or her workplace, which the employee, being obliged under the employment contract to perform the work in that place, cannot evade (see *Köpke v. Germany* (dec.), no. 420/07, 5 October 2010). There is no reason for the Court to depart from that finding even where it concerns cases of non-covert video surveillance of an employee at his or her workplace. Furthermore, the Court has also held that even where the employer's regulations in respect of the employees' private social life in the workplace are restrictive they cannot reduce it to zero. Respect for private life continues to exist, even if it might be restricted in so far as necessary (see *Bărbulescu*, cited above, § 80).

45. In view of the above, the Court considers that the data collected by the impugned video surveillance related to the applicants' "private life", thus making Article 8 applicable to their complaint.

(b) Exhaustion of domestic remedies

46. The relevant principles in this regard are set out in *Vučković and Others v. Serbia* (preliminary objection) ([GC], nos. 17153/11 and 29 others, §§ 69-75, 25 March 2014).

47. Turning to the present case, the Court has already held that as of 20 March 2015 a constitutional appeal in Montenegro can in principle be considered an effective domestic remedy (see *Siništaj and Others v. Montenegro*, nos. 1451/10 and 2 others, § 123, 24 November 2015). The Court reiterates in this regard that, while it can be subject to exceptions which might be justified by the specific circumstances of each case, the issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). Given that the applicants lodged their application in October 2013, which was long before the constitutional appeal became an effective domestic remedy in the respondent State, the Court considers that they were not required to avail themselves of that particular remedy (see *Siništaj and Others*, cited above, §§ 124-125). The Government's objection must therefore be dismissed.

(c) The Court's conclusion

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

B. Merits

1. The parties' submissions

(a) The applicants

49. The applicants submitted that the impugned video surveillance had been unlawful, had not pursued any legitimate aim and had not been necessary in a democratic society. The Dean of the School had collected and processed the data obtained thereby without any restriction and the applicants had had no effective control over that information. The Agency had also failed to live up to its legal obligations, thus in addition making the interference arbitrary.

(b) The Government

50. The Government submitted that surveillance over activities that took place in public or with photographic equipment was not considered to be an interference with a person's private life unless it was disclosed or published, which was not the case here.

51. They further submitted that the impugned interference, in spite of certain administrative failures (*i pored određenih administrativnih propusta*), had been lawful, had pursued a legitimate aim, and had been necessary in a democratic society.

52. The aim that had been pursued, which could not have been achieved in a less invasive manner, had been the prevention and investigation of safety-related incidents, such as thefts and burglaries, in which property belonging to both the university and its employees, including professors, had been stolen. It had also aimed at preventing the bringing in of firearms, "the unauthorised bringing in of animals", begging, as well as incidents in the amphitheatres in which professors had been threatened with physical violence. Even the police had recommended the installation of video surveillance equipment.

53. They further maintained that all the people involved, including the applicants, had been duly informed of the measure, that the data collected had not been misused in any way and that only the Dean of the School had had access to it. The data had therefore been used exclusively for the purposes provided for by the law and within a limited period, given that the data had been automatically deleted after thirty days. The Government further submitted that the cameras had taken low-resolution pictures, had had no zoom capacity, and that their location and angles of recording had been set up "in accordance with a methodological risk analysis, but also with personal data protection".

54. The Government averred that States had a wide margin of appreciation when it came to video surveillance in the public interest, and the respondent State had acted in accordance with both national and

European legal standards. In any event, it was not the Court's task to assess the interpretation and application of national law by the domestic courts, nor their findings and conclusions, and the domestic courts had found no violation of the applicants' right to respect for their private life.

2. The Court's assessment

55. The Court has already held in the present case that video surveillance of an employee in the workplace, be it covert or not, must be considered as a considerable intrusion into the employee's private life (see paragraph 44 above), and hence it considers that it constitutes an interference within the meaning of Article 8. Any interference can only be justified under Article 8 § 2 if it is in accordance with the law, pursues one of more of the legitimate aims to which that provision refers and is necessary in a democratic society in order to achieve any such aim (see *Vukota-Bojić v. Switzerland*, no. 61838/10, § 60, 18 October 2016).

56. The Court notes that the domestic courts did not examine the question of the acts being in accordance with the law given that they did not consider the impugned video surveillance to be an interference with the applicants' private life in the first place.

57. However, the Personal Data Protection Agency did and in doing so explicitly held that it was not in accordance with the law, notably sections 10, 35 and 36 of the Personal Data Protection Act (see paragraph 11 above).

58. The Court observes in that respect that section 35 provides that public institutions – the university, according to the Government's own submission, being one of them – can carry out video surveillance of areas of access to official premises. However, in the present case the video surveillance was carried out in the amphitheatres.

59. Moreover, section 36 provides that video surveillance equipment can also be installed in official or business premises, but only if the aims provided for by that section, notably the safety of people or property or the protection of confidential data, cannot be achieved in any other way. The Court observes that video surveillance was introduced in the present case to ensure the safety of property and people, including students, and for the surveillance of teaching. It is noted that one of those aims, notably the surveillance of teaching, is not provided for by the law at all as a ground for video surveillance. Furthermore, the Agency explicitly held that there was no evidence that either property or people had been in jeopardy, one of the reasons to justify the introduction of video surveillance (see paragraph 11 above), and the domestic courts did not deal with that issue at all (see paragraph 14 *in fine* above). The Government, for their part, neither provided any evidence to the contrary in that regard (see paragraph 52 above) nor showed that they had even considered any other measure as an alternative beforehand.

60. Given that the relevant legislation explicitly provides for certain conditions to be met before camera surveillance is resorted to, and that in the present case those conditions have not been met, and taking into account the decision of the Agency in this regard (in the absence of any examination of the question by the domestic courts), the Court cannot but conclude that the interference in question was not in accordance with the law, a fact that suffices to constitute a violation of Article 8. Having regard to the foregoing conclusion, the Court does not consider it necessary to examine whether the other requirements of paragraph 2 of Article 8 were complied with (see *Amann v. Switzerland* [GC], no. 27798/95, § 81, ECHR 2000-II, and *Vukota-Bojić*, cited above, § 78).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicants claimed 1,000 euros (EUR) each in respect of non-pecuniary damage.

63. The Government contested the applicants' claim.

64. The Court awards the applicants EUR 1,000 each in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicants also claimed EUR 1,312.50 for the costs and expenses incurred before the domestic courts and EUR 357 for those incurred before the Court.

66. The Government contested the applicants' claim.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the entire sum of EUR 1,669.5 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;

2. *Holds*, by four votes to three, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by four votes to three,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,000 (one thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,669.50 (one thousand six hundred and sixty-nine euros and fifty cents) jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 28 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Robert Spano
Registrar	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) Joint concurring opinion of Judges Vučinić and Lemmens;

(b) Joint dissenting opinion of Judge Spano, Bianku and Kjølbro.

R.S.
S.H.N.

JOINT CONCURRING OPINION OF JUDGES VUČINIĆ AND LEMMENS

1. We fully agree with the finding of a violation of Article 8 of the Convention. We would, however, have preferred a slightly different reasoning.

2. This case is about video surveillance in university auditoria where the applicants, two professors, have been teaching to their students. The main issue before the Court is whether Article 8 is applicable to the facts of the case.

While the majority consider that university auditoria are the teachers' "workplaces" and approach the case as one relating to an interference in an employee's private life by his employer (see paragraph 44 of the judgment), we would attach more importance to the nature of the activity that was placed under surveillance.

3. An important aspect of the right to respect for private life is the "right to live privately, away from unwanted attention" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 95, ECHR 2003-IX (extracts); *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 43, ECHR 2004-VIII; *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 83, ECHR 2015 (extracts); *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 130, ECHR 2017 (extracts); and *Bărbulescu v. Romania* [GC], no. 61496/08, § 70, ECHR 2017 (extracts)).

However, Article 8 of the Convention also guarantees the development, without outside interference, of the personality of each individual in his or her relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 56, ECHR 2001-IX; *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I; *Perry v. the United Kingdom*, no. 63737/00, § 36, ECHR 2003-IX (extracts); *Uzun v. Germany*, no. 35623/05, § 43, ECHR 2010 (extracts); *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 95, ECHR 2012; *Couderc and Hachette Filipacchi Associés*, cited above, § 83; *Vukota-Bojić v. Switzerland*, no. 61838/10, § 52, 18 October 2016; *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 191, ECHR 2016; and *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 131).

There are a number of elements relevant to consideration of whether a person's private life is concerned by measures implemented outside that person's home or private premises. Since there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor (see *P.G. and J.H. v. the United Kingdom*, cited above, § 57; *Perry*, cited above, § 37; *Uzun*, cited above, § 44; *Vukota-Bojić*, cited above, § 54; and *Magyar Helsinki Bizottság*, cited above, § 193).

4. The present case does not concern security cameras placed, for instance, at the entrances and exits of university buildings. It relates to the video surveillance of auditoria. While ensuring the safety of people and property was invoked as one of the aims of the measure (see paragraph 7 of the judgment), this justification was not considered credible by the Council of the Personal Data Protection Agency (see paragraph 11 of the judgment). The other aim invoked was monitoring of the teaching activities (see paragraph 7 of the judgment). The fact that it was the dean who had access to the tapes seems to confirm that this was indeed an aim pursued.

University auditoria are neither private nor public places. They are places where teachers meet *their* students and interact with them (see paragraph 44 of the judgment).

These interactions are of course not of a purely social nature. The setting is a very specific one. The teacher teaches students who are enrolled in his or her class. The relationship between teacher and students takes shape during the whole period of teaching (a year or a semester). In the auditorium the teacher can allow him- or herself to act ("perform") in a way he or she would perhaps never do outside the classroom.

It seems to us that in such an interaction the teacher may have an expectation of privacy, in the sense that he or she may normally expect that what is going on in the classroom can be followed only by those who are entitled to attend the class and who actually attend it. No "unwanted attention" from others, who have nothing to do with the class. There may be exceptions, for instance when a lecture is taped for educational purposes, including for use by students who were unable to physically attend the class. However, in the applicants' case there was no such purpose.

It seems to us that at least in an academic environment, where both the teaching and the learning activities are covered by academic freedom, the said expectation of privacy can be considered a "reasonable" one.

Surveillance as a measure of control by the dean is, in our opinion, not something a teacher should normally expect.

Having regard to the specific features of the teacher-student relationship, we have no difficulty concluding that Article 8 of the Convention is applicable.

5. The foregoing does not mean that video surveillance in an auditorium is not possible.

There may be good reasons for putting an auditorium under video surveillance. But, since Article 8 is applicable, such a measure will then have to comply with the conditions set out in Article 8 § 2 (see paragraph 55 of the judgment). This means, among other things, that there must be a proper legal basis, that the scope of the surveillance must be limited, and that there are guarantees against abuse.

6. In the present case, we concur with the judgment insofar as it concludes that the interference in question was not in accordance with the law and therefore constituted a violation of Article 8 (see paragraphs 56-60 of the judgment).

JOINT DISSENTING OPINION OF JUDGE SPANO, BIANKU AND KJØLBRO

1. In the majority's view, the contested video monitoring of the university auditoriums where the applicants were teaching as professors, related to and interfered with the applicants' private life as protected by Article 8 of the Convention (see paragraphs 44-45 and 56 of the judgment). As we respectfully disagree, we voted against declaring the application admissible and finding a violation of Article 8 of the Convention.

2. In our view, and as explained below, the judgment expands the scope of Article 8 § 1 of the Convention and may have significant implications.

3. The Court has decided a number of cases concerning *monitoring in public places, including video surveillance*, and it transpires from case-law that such monitoring does not automatically raise an issue under Article 8 § 1 of the Convention.

4. In this context, the Court has stated that "private life" is inapplicable to places which are freely accessible to the public and which are used for activities which do not relate to the private sphere of the participants (see *Steel and Morris v. the United Kingdom* (dec.), no. 68416/01, 22 October 2002). Furthermore, the normal use of security cameras, whether in public streets or on premises, such as shopping centres or police stations, do not as such raise issues under Article 8 § 1 of the Convention (see *Peck v. the United Kingdom*, no. 44647/98, § 59, ECHR 2003-I, and *Perry v. the United Kingdom*, no. 63737/00, §§ 38 and 40, ECHR 2003-IX (extracts)). That having been said, recording and systematic or permanent storing of such data may interfere with private life, even if the monitoring has taken place at a public place (see *Peck*, cited above, § 59, and *Perry*, cited above, § 38). Likewise, covert and systematic surveillance of a person in public places, including by means of video, and storing and subsequent use of the data obtained may interfere with private life (see *Perry*, cited above, §§ 39-43, and *Vukota-Bojić v. Switzerland*, no. 61838/10, § 52-59, 18 October 2016). Likewise, disclosure of recordings from surveillance cameras in public places may interfere with private life (see *Peck*, cited above, §§ 60-63). Likewise, permanent video surveillance of a person may interfere with private life (see *Van der Graaf v. the Netherlands* (dec.), no. 8704/03, 1 June 2004).

5. The Court has also decided a number of cases concerning *monitoring at workplaces, including video surveillance*, and it transpires from this case-law that an employer's surveillance of employees at the workplace does not automatically raise an issue under Article 8 § 1 of the Convention.

6. In this context, the Court has found that an employer's interception of an employee's phone calls from the workplace fell within the scope of the notion of "private life" in situations where the employee had a reasonable

expectation of privacy for such calls (see *Halford v. the United Kingdom*, 25 June 1997, §§ 44-46, *Reports of Judgments and Decisions* 1997-III). This applies not only to an employee's phone calls but also to e-mails and internet usage (see *Copland v. the United Kingdom*, no. 62617/00, §§ 41-42, ECHR 2007-I). The Court has stated that an employee's reasonable expectations as to privacy is a significant though not necessarily conclusive factor (see *Köpke v. Germany* (dec.), no. 420/07, 5 October 2010, *Bărbulescu v. Romania [GC],* no. 61496/08, § 74, ECHR 2017). The Court has found that the video recording of an employee's conduct at her workplace without prior notice, the processing and examination by several persons of the material obtained, and the subsequent use in public court proceedings of such material raised an issue under the employee's "private life" (see *Köpke*, cited above). Likewise, the Court has found that an employer's monitoring of an employee's use of internet and access to private messages sent by means of an instant messaging service (Yahoo Messenger) raised an issue under the applicant's "private life" (see *Barbulescu*, cited above, §§ 74-81).

7. Under the Court's case-law concerning monitoring, it is, in principle, necessary to make a distinction between video monitoring as such and the *recording, processing and use of the data obtained* on the other side, both situations being able to give rise to private-life considerations (see *Köpke*, cited above, *Peck*, cited above, §§ 58-59, *Perry*, cited above, §§ 38 and 40-41).

8. From the Court's existing case-law we deduce the following: video monitoring or surveillance does not in itself amount to an interference with the private lives of the persons monitored. Whether that is the case depends on an assessment of the specific circumstances of the case, including where the monitoring takes place, the nature of the activities monitored, whether the monitoring is targeted and systematic, whether the persons monitored had a reasonable expectation of privacy, whether notice had been given or whether the person irrespective of such notice had a reasonable expectation of privacy having regard to the nature of the activities, whether the information is stored, processed and made use of, including whether it is disseminated. In other words, it depends on an assessment of the video monitoring as such as well as the storing, processing and use of the data or information gathered.

9. In assessing the applicability of the "private life" aspect of Article 8 § 1 of the Convention, the majority focuses on the video surveillance as such (see paragraph 44-45 and 56 of the judgment), and not on any recording or subsequent use of the information gathered. For the majority, it suffices to evoke Article 8, on the basis that the video surveillance or monitoring took place in the workplace of the applicants, the auditorium where they as professors were teaching and interacting with students. In our

view, this is a very extensive and broad understanding of the "private life" notion.

10. In our view, having regard to the specific circumstances of the present case, the university's video monitoring in the auditorium where the applicants were teaching as professors did not raise an issue as regards the applicants' private life, and in this context we agree with the assessment of the domestic courts. We find it conclusive that the video monitoring took place at the university auditoriums, that the applicants had been notified of the video surveillance, that what was monitored was the applicants' professional activity, that the surveillance was remote, that there was no audio recording and thus no recording of the teaching or discussions, that the pictures were blurred and the persons could not easily be recognised, that the video recordings were only accessible to the dean and were automatically deleted after 30 days, and that the data or information was not subsequently used.

11. As mentioned above, the majority only relies on the video monitoring as such, and not on the recording, processing or possible use of the data gathered. Be that as it may, we would like to add that in our view the storing of the video surveillance did not in itself raise an issue under "private life". Even though it may be argued that a video filmed concerns data about identified or identifiable persons (see *Amann v. Switzerland* [GC], no. 27798/95, § 65, ECHR 2000-II, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 133, ECHR 2017 (extracts)), the applicants have not argued in this case that the quality of the video was such that it would lead to their identification, thus raising an issue under the applicants' private life as protected by Article 8 § 1 of the Convention, nor that any data was or could be used in such a way that the "private life" aspect of Article 8 § 1 of the Convention came into play (see *a contrario S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, §§ 60-61 and 67, ECHR 2008).

12. In sum, we respectfully dissent from the majority's findings that the video monitoring, as such, brought the applicant's complaint within the scope of Article 8 § 1 of the Convention and constituted an interference with their privacy rights. We emphasise that the applicants are university teachers who were giving lectures in a university amphitheater, thus fully engaged in a professional activity in a quasi-public setting, and not, for example, in their offices. Having been notified of the video surveillance in the amphitheatres, their reasonable expectation of privacy in that particular context, if any, was very limited. In conclusion, the mere fact of the amphitheaters being monitored cannot in our view engage Article 8 § 1 of the Convention without further elements being demonstrated, as we have explained above. By expanding the scope of Article 8 § 1 to include the facts of the present case, the majority have overly broadened the notion of "private life" under that provision, to an extent which lacks a basis in the

Court's case-law and is not sufficiently supported by cogent legal arguments.