

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

FIFTH SECTION

CASE OF MISHCHENKO v. UKRAINE

(Application no. 10415/16)

JUDGMENT

STRASBOURG

9 October 2025

This judgment is final but it may be subject to editorial revision.



In the case of Mishchenko v. Ukraine,

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

Andreas Zünd*, President*,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 10415/16) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 February 2016 by a Ukrainian national, Mr Mykhaylo Petrovych Mishchenko ("the applicant"), who was born in 1965, lives in Haren (the Netherlands) and was represented by Mr S. Nimyy, a lawyer practising in Khmelnytskyy;

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

the parties' observations;

Having deliberated in private on 11 September 2025,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints under Article 6 § 1 and Article 8 of the Convention that covert recordings of his telephone conversations had been made unlawfully and that their use as evidence against him had undermined the fairness of his trial.

2. Prior to the events of the present case, the applicant had been convicted on several occasions for illegal possession of drugs and theft. Most recently, on 17 February 2014, he had been found guilty of theft and had been given a suspended sentence of two years' restriction of liberty – that is, detention in a semi-open prison near his place of residence – with a probation period of one year and six months.

3. By a judgment of the Polonne Town Court of 20 November 2014, which was upheld by the Khmelnytskyy Regional Court of Appeal on 25 February 2015 and by the Higher Specialised Court for Civil and Criminal Matters on 20 August 2015, the applicant was found guilty of the theft of approximately 150 kg of potatoes from a private cellar, the burglary and theft of 1,020 United States dollars from a private house, as well as an attempt to smuggle drugs into a prison. He was acquitted in respect of the charges relating to five other episodes of theft. The applicant was sentenced to three years' imprisonment for the theft of the potatoes, four years for the burglary and the theft of the money, and seven years for the drug-related offence. The final sentence, determined by the absorption of the less severe punishments

by the most severe, was seven years' imprisonment. It was further increased to eight years' imprisonment, taking into account the unserved part of the sentence from the previous conviction of 17 February 2014.

4. In finding the applicant guilty of the theft of the potatoes, the courts relied on various material evidence and witness testimony. As regards his conviction for the drug-related offence, the courts referred to the statements of the person who had been supposed to smuggle the drugs into prison. She had voluntarily handed to the police the package of pasta with drugs hidden inside and had informed them that she had been acting at the applicant's request. Furthermore, there were covert recordings of the applicant's telephone conversations with an unidentified person in which they discussed which drugs could be smuggled into prison, in what quantity, how they could be hidden, and so on. Lastly, concerning the applicant's conviction for burglary and the theft of the money, the courts mainly relied on the covert recordings of his telephone conversations on the eve and during the night of the burglary.

5. The applicant was represented by a lawyer of his choosing starting from the appellate stage of the proceedings.

6. In his appeal, the applicant questioned the authenticity of the covert recordings of his telephone conversations, arguing that he did not remember having those conversations. He also challenged the admissibility of that evidence alleging that it had been obtained without prior judicial authorisation. The appellate court made enquiries in that regard and was informed that on 13 May and 5 June 2014 an investigating judge had authorised covert investigative measures in respect of the applicant for a thirty-day period. Although no further details were provided in view of the "classified" nature of those rulings, the appellate court considered the received information to be sufficient to reject the applicant's claim that the contested measures had been unlawful. It also dismissed his general allegation that the recordings might not be authentic.

7. The Government submitted that they were unable to provide the Court with copies of the rulings of 13 May and 5 June 2014, as they had been destroyed on the expiry of the statutory storage period.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

8. The applicant questioned the existence of the judicial rulings of 13 May and 5 June 2014 authorising the covert interception of his telephone conversations. He submitted that neither himself nor the courts dealing with his case had been able to examine those rulings. Accordingly, the applicant argued that the interference with his right to respect for his private life had been unlawful.

9. The Government submitted that there had been proper judicial authorisation of the contested interference.

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

11. The general principles on the compatibility of secret surveillance operations with the requirements of Article 8 of the Convention have been set out, in particular, in *Big Brother Watch and Others v. the United Kingdom* ([GC], nos. 58170/13 and 2 others, 25 May 2021).

12. The Court accepts, and it is not disputed by the parties, that the measures to intercept the applicant's telephone communications amounted to an interference with the exercise of his rights set out in Article 8 of the Convention. The Court will proceed on the assumption that the disputed measures had a legal basis in domestic law (compare *Denysyuk and Others v. Ukraine*, nos. 22790/19 and 3 others, § 96, 13 February 2025).

13. It is apparent from the available material in the present case that the courts dealing with the criminal proceedings against the applicant were denied access to the relevant surveillance authorisations on the sole ground that they were "classified". The Court also finds plausible the applicant's allegation that he never saw those rulings either. Furthermore, owing to the Government's failure to provide copies of the relevant rulings to the Court, it is unable to establish their content.

14. Under such circumstances, the Court considers that the Government have not demonstrated that the secret surveillance measures in the applicant's respect were authorised as a result of proper and detailed judicial scrutiny, which reflected, in particular, a balanced approach to the competing interests at stake, as required by the Convention and by the applicable domestic law (compare *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, §§ 130-33, 7 November 2017, and *Denysyuk and Others*, cited above, §§ 98-100).

15. This is sufficient for the Court to find a violation of Article 8 of the Convention.

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

16. The applicant complained that, by failing to examine the judicial authorisations for the covert recordings of his telephone conversations and by relying on those recordings when convicting him, the domestic courts had undermined the fairness of his trial. Although the applicant relied on Article 6 §§ 1 and 2, the Court considers that this complaint falls to be examined only under Article 6 § 1 of the Convention.

17. The Government argued that the applicant had had a fair trial.

18. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. The Court therefore declares it admissible.

19. The Court refers its relevant case-law principles set out, for example, in *Macharik v. the Czech Republic* (no. 51409/19, §§ 51-53, 13 February 2025).

20. The Court observes that while the evidence at issue was not obtained in compliance with Article 8 of the Convention (see paragraph 15 above), its use by the domestic courts does not automatically entail a violation of Article 6 of the Convention (see *Macharik*, cited above, § 54). The Court would point out in this connection that, even though the contents of the relevant judicial rulings authorising the tapping of the applicant's mobile telephone had not been disclosed, there is nothing to suggest that the investigating authorities had failed to obtain such authorisation as alleged by the applicant or that they had otherwise acted in bad faith.

21. The Court further notes that the applicant had an effective opportunity to oppose the use of the evidence in question, that he used that opportunity and that his relevant arguments were duly addressed. Indeed, following the applicant's appeal, the appellate court made enquiries with the competent authorities and established that judicial authorisation had been obtained for the contested covert investigative measures (see paragraph 6 above).

22. As regards the quality of the relevant evidence, the Court notes that the applicant did not put forward any arguments disputing the authenticity of the audio recordings other than stating that he could not remember having those conversations (ibid.).

23. As regards the importance of the disputed evidence, the Court observes that the applicant's conviction concerned several charges and that the evidence against him had not been limited to the recordings in question (see paragraph 4 above). In particular, in finding the applicant guilty of an attempt to organise the smuggling of drugs into a prison, which entailed the heaviest penalty, the courts also relied on witness testimony, in respect of which the applicant did not raise any complaints under Article 6 of the Convention.

24. Lastly, the Court notes that the applicant did not allege any violation of his defence rights.

25. In sum, the Court considers that the overall fairness of the trial was not irretrievably prejudiced by the admission of the contested evidence (compare *Lysyuk v. Ukraine*, no. 72531/13, §§ 68-76, 14 October 2021, and *Macharik*, cited above, §§ 55-59).

26. There has therefore been no violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government contested that claim as exorbitant and unfounded.

29. In the light of the evidence before it and ruling on an equitable basis, as required by Article 41 of the Convention, the Court considers that the applicant should be awarded EUR 1,200 under this head.

30. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President