

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

FIFTH SECTION

CASE OF OPALENKO v. UKRAINE

(Application no. 46673/18)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Defence through legal assistance • Overall fairness of proceedings not irreversibly undermined in case-circumstances despite applicant's initial confession to the police in the absence of a lawyer without compelling reasons • Restriction closely followed by the applicant's being advised of his right to a lawyer and to remain silent • Confession maintained after questioning in the presence of a lawyer • Considerable other evidence against the applicant • Domestic courts' retrial decisions not relying on the applicant's initial confession and subjecting to considerable scrutiny his allegations as to the circumstances of his confession • Defect sufficiently remedied by domestic courts
Art 6 § 1 (criminal) • Reasonable time • Excessive length of proceedings

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 July 2025

FINAL

08/12/2025

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 Opalenko v. Ukraine,

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

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

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 46673/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Sergiy Vasylyovych Opalenko ("the applicant"), on 9 January 2019;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints set out in paragraph 1 below and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 24 June 2025,

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

INTRODUCTION

1. The case concerns criminal proceedings against the applicant on charges of murder and his following complaints: (i) under Article 6 §§ 1 and 3 (c) of the Convention that his right to a lawyer was breached at the beginning of the proceedings; (ii) under Article 6 §§ 1 and 3 (d) that a previously examined witness was not examined again in court in the course of the final retrial; and (iii) under Article 6 § 1 that the proceedings were excessively lengthy.

THE FACTS

2. The applicant was born in 1978 and is detained in Kaminne Prison. The applicant was represented by Ms G.O. Tarasenko, a lawyer practising in Kharkiv.

3. The Government were represented by their Agent, Ms M. Sokorenko.

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

5. On the morning of 14 November 2010 the applicant and his friend Mr R. found the dead bodies of the applicant's mother V. and 14-year-old niece A. in V.'s flat. They had been stabbed to death.

6. According to the applicant, he was *de facto* arrested at 8 a.m. on the same day.

7. At an unspecified time the applicant wrote a "statement of surrender" (see paragraph 21 below) addressed to the head of the local police department, confessing to the murder and adding that he was writing the statement of his own free will[1]. The statement was countersigned by police detective B., who later testified that (i) the statement had been written by the applicant after he had been "brought" (in Russian – *доставлен*) to the police station and (ii) in his statement the applicant had said that he had used a kitchen knife as a weapon and, as a result, the knife had been found in the victim's flat. The applicant alleged that he had written that statement under duress from the police.

8. At 5 p.m. on the same day, a report on the applicant's arrest was drawn up. The report stated that the applicant's right to choose and consult a lawyer before being questioned for the first time had been explained to him. The applicant also stated that he had agreed to be represented by K.

9. From 6.45 p.m. to 7.45 p.m. the applicant was questioned as a suspect in the presence of K. The interview was video-recorded. The applicant confessed to the murder and stated that, on the night of the murder, he had gone to V.'s flat late at night. V. had reproached him for his dissolute lifestyle and drinking, whereupon he had taken a knife from the kitchen and stabbed her. In order to eliminate A. as a witness, he had stabbed her too. He had then gone to R.'s flat and told him that somebody had murdered V. and A.

10. During the examination of the victim's flat carried out between 7 p.m. and 8.25 p.m., the investigator found a kitchen knife with a damaged handle, which was later established by the courts as being the murder weapon.

11. The applicant repeated his confession during an on-site reconstruction of the events on 15 November 2010 and during an interview on 17 November 2010, both in the presence of K. On the latter occasion he added that the knife's handle had broken as he was stabbing A.

12. On 24 December 2010, in the presence of a different lawyer, the applicant retracted his confessions, arguing that they had been obtained under duress. He stated that on the night of the events he had gone to V.'s home, spoken with her and had then left to buy some alcohol. He had met an unknown man and some girls and drunk beer with them. He had then returned to V.'s flat, found the door unlocked and discovered the dead bodies. He had been unable to call the police because the landline was broken. He had knocked on neighbours' doors but there was no response. He had then gone to see R. to inform him of what had happened.

13. The investigation was completed in February 2011. On 10 April 2012 a district court in Kharkiv convicted the applicant of murder. The conviction was quashed on appeal and the case was remitted for retrial. On 16 September

[1] "*Без применения в отношении меня мер какого либо воздействия*" (Russian).

2013 the same district court convicted the applicant for a second time. In March 2014 the conviction was again quashed on appeal and the case was transferred to the Kharkiv Frunzenskyy District Court ("the retrial court"), which, in December 2014, returned it to the prosecutor for additional investigation.

14. Following a new investigation and retrial, the retrial court convicted the applicant on 28 December 2016, sentencing him to fifteen years' imprisonment.

15. Following an appeal, the Kharkiv Regional Court of Appeal upheld the conviction on 21 September 2017, but changed the sentence to life imprisonment.

16. In convicting the applicant, the retrial court and the Court of Appeal had regard mainly to the following evidence and arguments.

(a) The applicant's statements made in the presence of his lawyer, on 14 November 2010 (including the video-recording) and 17 November 2010, and during the on-site reconstruction on 15 November 2010. The courts also referred to statements made by the expert who had participated in the reconstruction and who confirmed the contents of the report and the credibility and voluntary nature of the applicant's confession. They also referred to the video-recording of the reconstruction and its analysis by a psychology expert which, they noted, confirmed the voluntary nature of the confession.

(b) The evidence given in court by R., who stated that, on the night of the murder, he and the applicant had been drinking together but had gone their separate ways between 2 a.m. and 2.30 a.m. At 7 a.m. the applicant had arrived at R.'s home and had said, calmly, that V. and A. had been murdered by someone. The applicant had been drunk, had been wearing clean clothes and had a fresh wound on his hand between his thumb and index finger, which R. had not noticed before. They had gone to V.'s flat, which R. had unlocked with the applicant's key. R. had discovered the bodies and had called the police from the landline in the flat.

(c) The discovery of what was later identified as fragments of the handle of the knife on A.'s body.

(d) The medical evidence of recent cuts on the applicant's right hand, between the thumb and index finger, dating from the twenty-four hours preceding the examination which was conducted on the day of his arrest. The cuts were consistent with the applicant cutting himself while stabbing the victims with a broken knife. The courts noted contradictions in the explanations for the injuries provided by the applicant at various points in the proceedings.

(e) The applicant's fingerprint on the murder weapon.

(f) Clothes found at the applicant's flat containing traces of blood that could have belonged to V. and A.

(g) Expert evidence that blood found under A.'s fingernails could have belonged to the applicant. The applicant refused to provide samples for DNA testing but expert evidence indicated that it could not be ruled out that the blood discovered under A.'s fingernails was his.

(h) The absence of evidence of a break-in or of the victims having voluntarily let strangers into the flat. The applicant's alleged alibi was unsubstantiated.

(i) The presence of the applicant's fingerprints on certain documents and banknotes found in the victims' flat was consistent with the applicant throwing things around to imitate a robbery by strangers rather than with his affirmation that he did not touch anything in the flat.

(j) Statements of investigators, police officers, experts who corroborated the correctness and coherence of the other evidence.

(k) Pre-trial statement of witness Ms M. who stated that on the night of the murder she had been woken up by A.'s loud screaming "please, don't" (*пожалуйста, не надо*, a Russian impersonal construction which could be addressed to one or more people). She had also heard V.'s voice and a male voice she did not recognise. They were calm. This had lasted for five minutes. She then went back to sleep and had learned about the murder from the police the next morning. The court stated that all possible steps to examine this witness in court had been taken and on 30 December 2015 the trial court ordered the police to bring the witness to court and, if not possible due to the state of her health, to examine her at her home. In enforcing this ruling the police examined the witness at home. The witness stated that she was born in 1935 and was undergoing outpatient cardiology treatment. She repeated her statement to the effect that she had been woken up by a child's scream in A.'s voice who was screaming "please don't".

17. The courts examined in a very detailed manner the applicant's allegation that his confession had been obtained under duress and while in unrecorded detention.

They in particular examined the evidence of investigator Zh., who stated that the applicant had been given an opportunity to talk to a lawyer prior to his being questioned for the first time and that he had been informed of his rights. He had spoken freely and, in response to questions from his lawyer and the investigator, had said that he had not been under any pressure to speak.

Expert evidence showed that at the time of his confessions the applicant had had no injuries which could have been caused after his arrest. His allegations of ill-treatment had been investigated by the prosecutor's office and the relevant police officers had been interviewed at the trial. The applicant's allegations in that regard were unsubstantiated. The court's examination of the video-recording of the confession and its examination by an expert psychologist confirmed that it presented signs of being voluntary. The police officers involved had also been questioned by the trial court and

denied that there had been any ill-treatment or signs of ill-treatment in respect of the applicant, or that he had made any complaints to that effect at the time. Other witnesses who saw the applicant had seen no sign of any ill-treatment either.

The retrial court also found that the applicant's complaint that he had confessed after having been held in unrecorded detention since 8 a.m. on 14 November 2010 was unsubstantiated. The court observed that V.'s flat had been examined at 8.50 a.m. and that the applicant's flat had been examined between 11.05 a.m. and 1.31 p.m. in his presence. It noted that, according to the arrest report drawn up at 5 p.m., the applicant's rights had been explained to him.

18. The applicant subsequently lodged a cassation appeal, arguing that: (i) he was innocent and the evidence had been manipulated and misinterpreted in order to convict him; (ii) on 14 November 2010 he had falsely confessed under duress from the police; and (iii) in the course of the pre-trial investigation and trial, a witness, M., had stated that on the night of the murder she had heard A. scream "Don't do this!" ("*не делайте этого*", a Russian construction used to address a single person respectfully or multiple people) and had then heard the calm voices of the applicant's mother and an unknown male. The applicant argued that this contradicted the findings of the lower courts that V. had been murdered first, and could also indicate that there had been two perpetrators – a man and a woman. M. had testified in court on several occasions and her statements varied but the Court of Appeal had nevertheless taken into account other statements that she had made out of court (see paragraph 16 (k) above).

19. On 10 July 2018 the Supreme Court upheld the conviction and the sentence, finding that the lower courts had not erred in their decisions.

RELEVANT LEGAL FRAMEWORK

20. Article 47 § 3 of the Code of Criminal Procedure of 1960 (repealed with effect from 19 November 2012) authorised the investigator to appoint a defence counsel, according to the procedure provided by law, through a bar association, the investigator's demand being obligatory for the head of the bar association.

21. Article 96 of the 1960 Code defined a statement of surrender to the authorities (in Ukrainian – *явка з повинною*) as a personal voluntary written or verbal statement made by a person, before the institution of criminal proceedings against him or her, to an inquiry authority, a police officer, an investigator, a prosecutor, a judge or a court, concerning a crime committed or planned by him or her. Where a criminal investigation had already been initiated, such a statement had to be made before formal charges were brought against the person.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

22. The applicant complained of various violations of Article 6 of the Convention, the relevant parts of which provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

A. Alleged violation of Article 6 §§ 1 and 3 (c)

1. The parties' submissions

23. The applicant complained of a violation of his rights under Article 6 §§ 1 and 3 (c) of the Convention. He submitted that, following his *de facto* arrest at 8 a.m. on 14 November 2010, he had not been allowed to choose or to consult a lawyer prior to being questioned for the first time. He alleged that K. had not been appointed as his lawyer through a bar association, in breach of the procedure for appointment established by domestic law, and that K. had not had a confidential interview with him prior to his being questioned by the police.

24. The Government submitted that, by his complaint, the applicant was essentially seeking to contest the domestic courts' assessment of the evidence. The applicant had been informed of his rights and had signed the relevant report confirming that fact. A lawyer had been appointed for him and he had given his statements in the presence of that lawyer. In any event, the absence of a lawyer at the very beginning of the investigation had had no impact on the overall fairness of the proceedings since the courts had examined a wide range of incriminating evidence.

2. The Court's assessment

(a) Admissibility

25. 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.

(b) Merits

(i) Relevant principles

26. The right of everyone "charged with a criminal offence" to be effectively defended by a lawyer, guaranteed by Article 6 § 3 (c), is one of the fundamental features of a fair trial (see *Salduz v. Turkey* [GC], no. 36391/02, § 51, ECHR 2008; *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 255, 13 September 2016; and *Beuze v. Belgium* [GC], no. 71409/10, § 123, 9 November 2018).

27. Where a person has been taken into custody, the starting-point for the right of access to a lawyer is not in doubt. The right becomes applicable as soon as there is a "criminal charge" within the meaning given to that concept by the Court's case-law and, in particular, from the time of the suspect's arrest, whether or not that person is interviewed or participates in any other investigative measure during the relevant period (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 110-11, 12 May 2017, and *Beuze*, cited above, § 124).

28. Access to a lawyer at the pre-trial stage of the proceedings also contributes to the prevention of miscarriages of justice and, above all, to the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused (see *Salduz*, cited above, §§ 53-54; *Blokhin v. Russia* [GC], no. 47152/06, § 198, 23 March 2016; *Ibrahim and Others*, cited above, § 255; and *Simeonovi*, cited above, § 112).

29. The Court has acknowledged on numerous occasions since the *Salduz* judgment that prompt access to a lawyer constitutes an important counterweight to the vulnerability of suspects in police custody. Such access is also preventive, as it provides a fundamental safeguard against coercion and ill-treatment of suspects by the police (see *Salduz*, § 54; *Ibrahim and Others*, § 255; and *Simeonovi*, § 112, all cited above).

30. The Court has also recognised that the vulnerability of suspects may be amplified by increasingly complex legislation on criminal procedure, particularly with regard to the rules governing the gathering and use of evidence (see *Salduz*, § 54, and *Ibrahim and Others*, § 253, both cited above).

31. The Court reiterates that access to a lawyer during the investigation phase may be temporarily restricted where there are "compelling reasons" for doing so. However, restrictions on access to legal advice can be permitted only in exceptional circumstances, must be of a temporary nature and must be based on an individual assessment of the particular circumstances of the

case. Where a respondent Government have convincingly demonstrated the existence of an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case, this can amount to compelling reasons to restrict access to legal advice for the purposes of Article 6 of the Convention. In such circumstances, there is a pressing duty on the authorities to protect the rights of potential or actual victims under Articles 2 and 3 and Article 5 § 1 of the Convention in particular. When assessing whether compelling reasons have been demonstrated, it is important to ascertain whether the decision to restrict legal advice had a basis in domestic law and whether the scope and content of any restrictions on legal advice were sufficiently circumscribed by law so as to guide operational decision-making by those responsible for applying them (see *Ibrahim and Others*, §§ 258-59, and *Simeonovi*, §§ 116-17, both cited above).

32. Moreover, a finding of compelling reasons cannot stem from the mere existence of legislation precluding the presence of a lawyer. The fact that there is a general and mandatory restriction on the right of access to a lawyer, having a statutory basis, does not remove the need for the national authorities to ascertain, through an individual and case-specific assessment, whether there are any compelling reasons (see *Beuze*, cited above, § 142).

33. According to the Court's case-law, the absence of "compelling reasons" for restricting access to a lawyer does not lead in itself to a finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention. In the absence of "compelling reasons", the Court must apply a very strict scrutiny to its fairness assessment: the Government's failure to point to any compelling reasons weighs heavily in the balance when assessing the overall fairness of the trial and may tip the balance in favour of finding a breach of Article 6 §§ 1 and 3 (c). The onus will then be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice. Where, on the contrary, compelling reasons for restricting access to a lawyer have been established, a holistic assessment of the entirety of the proceedings must be conducted to determine whether they were "fair" for the purposes of Article 6 § 1 (see *Ibrahim and Others*, §§ 262-65, and *Simeonovi*, § 118, both cited above).

34. The Court further emphasises that where access to a lawyer was delayed, and where the suspect was not notified of the right to legal assistance, the privilege against self-incrimination or the right to remain silent, it will be even more difficult for the Government to show that the proceedings as a whole were fair (see *Beuze*, cited above, § 146). Indeed, it is inherent in the privilege against self-incrimination, the right to silence and the right to legal assistance that a person "charged with a criminal offence" for the purposes of Article 6 had the right to be notified of these rights. Consequently, Article 6 § 3 (c) of the Convention must be interpreted as also safeguarding the right of persons charged with an offence to be informed

immediately of their right to legal assistance, irrespective of their age or specific situation and regardless of whether they are represented by an officially assigned lawyer or a lawyer of their own choosing. Moreover, respect for that right may well influence the validity of any waiver of the right to legal assistance (see *Ibrahim and Others*, §§ 272-73, and *Simeonovi*, § 119, both cited above).

(ii) Application of the above principles to the present case

35. It is unclear under what circumstances the applicant's "statement of surrender" was made and whether it was the result of questioning by the police. The police officer who had taken that statement indicated that it had been made after the applicant had been "brought" to the police station, implying a certain degree of compulsion (see paragraph 7 above).

36. In this context the Court reiterates that any conversation between a detained criminal suspect and the police must be treated as formal contact and cannot be characterised as an informal interview or questioning (see *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, § 137, 27 October 2020, with further references).

37. At the material time, the police already had reason to suspect the applicant. Notably, the applicant's flat had been examined and clothes with bloodstains had been seized, which were later used as evidence against him (see paragraphs 16 (f) and 17 above). Accordingly, a "criminal charge" within the autonomous Convention meaning existed, calling for the application of Article 6 safeguards concerning access to legal assistance.

38. Furthermore, once the applicant had informed the police that he was going to make a "statement of surrender and confession", the authorities must have been aware of the possible context of such a statement and of the consequences that would arise. However, there is no indication that the police had informed him of his right to have a lawyer (compare, for example, *Alakhverdyan v. Ukraine* [Committee], no. 12224/09, § 55, 16 April 2019).

39. The Court perceives no compelling reason justifying the restriction on access to a lawyer in the present case. Accordingly, the Court must apply a very strict scrutiny in assessing whether the absence of a lawyer undermined the fairness of the proceedings, with the burden being on the Government to demonstrate convincingly that this was not the case (see *Beuze*, cited above, § 145).

40. Turning to that question and examining it in the light of the factors set out in *Ibrahim and Others* (cited above, § 274) and *Beuze* (cited above, § 150), the Court observes that there are a number of factors which tend to argue in favour of considering the proceedings fair: (i) there is no indication that the applicant was particularly vulnerable; (ii) there is no indication in the material before the Court that the applicant's right to challenge the authenticity of the evidence and oppose its use was in any way restricted; (iii) the evidence in the case was assessed by professional judges; (iv) the

public interest in the prosecution of the offence imputed to the applicant – a double murder – was very strong; and (v) there is no indication that another Convention right has been violated.

41. As to the nature of the statement, it was clearly incriminating. The applicant repeated the confession made in his initial "statement of surrender" on three separate occasions in the space of three days but retracted it one month later (see paragraph 9 above and compare, for example, *Bandaletov v. Ukraine*, no. 23180/06, § 67, 31 October 2013, and *Zherdev v. Ukraine*, no. 34015/07, § 167, 27 April 2017, where the applicants did not retract their statements in the course of the investigation or trial and the Court found no violation of Article 6 §§ 1 and 3 (c) of the Convention).

42. Turning to the next *Ibrahim* factor, the use to which the applicant's evidence was put, and in particular whether the evidence formed an integral or significant part of the evidence upon which the conviction was based, and the strength of the other evidence in the case, the Court observes that the courts which eventually convicted the applicant did not refer to his "statement of surrender" (contrast, for example, *Dvorski v. Croatia* [GC], no. 25703/11, § 111, ECHR 2015; *Yuriy Volkov v. Ukraine*, no. 45872/06, § 68; 19 December 2013; *Sobko v. Ukraine*, no. 15102/10, §§ 59-62, 17 December 2015; and *Mehmet Duman v. Turkey*, no. 38740/09, § 41, 23 October 2018) but rather to his confessions made in the presence of his lawyer between 14 and 17 November 2010.

43. The "statement of surrender" was only briefly mentioned in the list of incriminating evidence set out in the judgment of 16 September 2013 convicting the applicant, which was subsequently quashed (see paragraph 13 above).

44. The Court has held that the prejudice caused to the overall fairness of the proceedings by the restriction of the right to a lawyer cannot be undone merely by an applicant's confirmation of his or her earlier statements given in the absence of a lawyer at a later stage and in the presence of a lawyer, unless that flaw is sufficiently addressed and remedied by the national courts, by the exclusion of statements taken without a lawyer present (see *Titarenko v. Ukraine*, no. 31720/02, § 87, 20 September 2012, and *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 66, 28 January 2020).

45. In the present case, the courts neither explicitly excluded the "statement of surrender" from the case file, nor relied on it.

46. The Court observes that there is no evidence that the applicant's initial confession resulted from ill-treatment or had been obtained unlawfully in terms of domestic law. The applicant's complaint under Article 3 of the Convention was declared inadmissible as manifestly ill-founded by the President of the Fifth Section, acting as a single judge, at the time the notice of the application was given to the Government.

47. The applicant's initial confession made in the absence of a lawyer was closely followed by his being advised of his right to a lawyer and to remain

silent, and being questioned in the presence of a lawyer, K., in the course of which he maintained his confession (see paragraph 9 above). The Court finds no corroboration for the applicant's allegation that lawyer K. had been appointed in an irregular fashion and had not had a confidential interview with the applicant prior to his first formal questioning as a suspect. The domestic courts examined and rejected that allegation (see paragraph 17 above), and the Court finds no basis in the case file to criticise their assessment. Accordingly, there is no reason to call into doubt the applicant's statements made while in the presence of K.

48. Given this sequence of events, as well as the other circumstances under which the offence was committed and discovered, including the fact that the authorities already had certain evidence pointing at the applicant at the time of the impugned interview with the police (see paragraph 37 above), it cannot be said, in the particular circumstances of the present case, that the applicant's initial confession framed the entire process of evidence-gathering in the criminal proceedings against the applicant so as to irreversibly undermine the fairness of those proceedings (see *Artur Parkhomenko v. Ukraine*, no. 40464/05, § 87, 16 February 2017, and *Kohen and Others v. Turkey*, nos. 66616/10 and 3 others, § 60, 7 June 2022).

49. There was considerable other evidence against the applicant, most notably the injuries to his hand consistent with the broken murder weapon, the possible presence of the victims' blood on his clothes and his fingerprint on the murder weapon (see paragraph 16 above).

50. The Court reiterates that compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Beuze*, cited above, § 121).

51. In the present case, the domestic courts sufficiently remedied the defect caused by the failure to respect the applicant's right to a lawyer when he made his "statement of surrender". In their decisions reached at the retrial the courts did not rely on that statement and subjected the applicant's allegations as to the circumstances under which he had made his confession to considerable scrutiny before rejecting them (see paragraphs 16 (i) and 17 above and compare *Kohen and Others*, cited above, § 59).

52. To the extent that the applicant alleged that the domestic courts had erred in their assessment of the evidence and the domestic law, and that they had wrongly convicted him, the Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by a domestic court unless and in so far as they may have infringed rights and freedoms protected by the Convention. In the determination of whether the proceedings were fair, the Court does not act as a court of fourth instance deciding on whether the

evidence has been obtained unlawfully in terms of domestic law, on its admissibility or on the guilt of an applicant (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 149, 18 December 2018).

53. There has therefore been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

B. Alleged violation of Article 6 §§ 1 and 3 (d) of the Convention

54. The applicant complained of a violation of his rights under Article 6 §§ 1 and 3 (d) of the Convention on account of the admission of the evidence of witness M., who had not been examined in the course of the final retrial. He submitted that an examination of that witness would have been crucial for refuting the version of the events presented by the prosecution.

55. The Government contested that argument.

56. The relevant general principles are set out in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 110-31, ECHR 2015).

57. According to the applicant's submissions, M. was questioned on several occasions during the pre-trial investigation and at the trial and her various statements differed in respect of some of the details (see paragraph 18 above); furthermore, the retrial court ultimately had regard to the version of her statements that was given outside the framework of the retrial hearing (at home to the police) and which was less favourable to the applicant (see paragraph 16 above). However, the applicant has not explained precisely when and at which trial M. was examined and specifically how her statements differed. Different versions of her statements have not been provided to the Court. He has also failed to explain why he alleged that the retrial court's efforts to ensure her presence at the retrial were deficient.

58. Given the marginal role played by M.'s statement in the case, the Court considers that there is no indication that her evidence was the sole or decisive basis for the applicant's conviction or that it carried such significant weight that its admission might have handicapped the defence (see, for example, *Cabral v. the Netherlands* (dec.), no. 37617/10, §§ 21-26, 28 June 2016).

59. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 6 § 1 of the Convention on account of length of proceedings

60. The applicant also complained that the length of the proceedings had been excessive, in breach of Article 6 § 1 of the Convention.

61. The Government contested that argument.

62. This part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

63. The Court observes that the proceedings lasted for more than seven years and seven months, at three levels of jurisdiction. Having regard to the relevant principles set out in *Pélissier and Sassi v. France* ([GC], no. 25444/94, § 67, ECHR 1999-II), the Court notes, in particular, the relative simplicity of the applicant's case and the repeated re-examination of the case (see paragraph 13 above) – an aspect which, as the Court has held on many occasions, might disclose a serious deficiency in the domestic judicial system (see, for example, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Gavula v. Ukraine*, no. 52652/07, § 98, 16 May 2013; and *Krivoshey v. Ukraine*, no. 7433/05, § 97, 23 June 2016). It is also relevant that the applicant remained in detention throughout the proceedings (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A).

64. Having examined all the material before it, and in the light of the considerations set out above and its findings in the leading case of *Merit v. Ukraine* (no. 66561/01, §§ 70-76, 30 March 2004), the Court finds that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 69,660 euros (EUR) in respect of pecuniary damage, calculated as the amount of inheritance from his mother and niece that he was no longer entitled to as a result of his conviction. He also claimed EUR 26,520 in respect of non-pecuniary damage.

67. The Government contested the claims, considering them unfounded.

68. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

69. The Court awards the applicant EUR 900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

70. The applicant also claimed EUR 1,530 in respect of costs and expenses (legal fees) incurred before the Court.

71. The Government contested the claims, submitting that they were unsubstantiated.

72. The applicant did not produce any documents showing that he had paid or was under a legal obligation to pay the fees charged by his representatives (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017). Accordingly, the Court dismisses the claim for costs and expenses.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Article 6 §§ 1 and 3 (c) of the Convention concerning the right to legal assistance and Article 6 § 1 of the Convention concerning the length of proceedings admissible;

2. *Declares*, by a majority, the remainder of the application inadmissible;

3. *Holds*, by six votes to one, that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention with regard to the applicant's right to legal assistance;

4. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;

5. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 900 (nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

6. *Dismisses*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Kateřina Šimáčková President

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

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicant was convicted and sentenced to life imprisonment for the murder of his mother, V., and his 14-year-old niece A,, in V.'s flat. He put forward various complaints regarding the criminal proceedings that ultimately led to his conviction and sentencing. The complaints that were not declared inadmissible at the time of communication by the President of the Court (the Section) and are therefore the subject of the present judgment, are the following: (i) under Article 6 §§ 1 and 3 (c) of the Convention, that his right to a lawyer was breached at the beginning of the proceedings; (ii) under Article 6 §§ 1 and 3 (d), that a previously examined witness, M., was not examined again in court in the course of the final retrial; and (iii) under Article 6 § 1, that the proceedings were excessively lengthy.

2. The Court found no violation regarding the first complaint. It found the second complaint to be manifestly ill-founded. Lastly, as regards the third and final complaint, the Court held that there had been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings. For my part, I found that there had been a violation regarding all three complaints. I therefore voted against all points of the operative provisions of the judgment except point 1, concerning the admissibility of the first complaint, and point 4, concerning the violation in respect of the third complaint.

3. At the outset, I wish to make it absolutely clear that the purpose of the present opinion is to express my position on the compatibility of the domestic procedures with the provisions of the Convention—particularly those of Article 6 and its underlying principle of procedural fairness—and not on whether the applicant was rightly or wrongly convicted of murder by the domestic courts. My focus will be on procedural fairness rather than on distributive fairness.

4. I have had the opportunity to address in some depth the minimum right to a lawyer (under Article 6 § 3 (c) of the Convention) and the minimum right to examine or have examined witnesses against one (under Article 6 § 3 (d) of the Convention) in the following two cases, respectively: *Snijders v. the Netherlands* (no. 56440/15, 6 February 2024) and *W.R. v. the Netherlands* (no. 989/18, 27 August 2024). In consequence, this opinion will be rather brief, so as to avoid unnecessary repetition of the argumentation developed in those opinions.

5. As I pointed out in the above-mentioned opinions, as well as in various other opinions, there are two approaches to the meaning of procedural fairness or the "overall fairness" of a trial under Article 6 of the Convention: on the one hand, what I would call the "qualified procedural fairness view", which is followed in the Court's current case-law and permits a balancing exercise, and, on the other, what I would describe as the "principled view of procedural fairness" (the "normative view"), which is to be found in some of the Court's previous case-law and is supported by substantial academic

literature, to which I refer in my other separate opinions. My preference is for the latter view, and I follow it in this opinion. My preferred approach does not permit an Article 6 guarantee to be balanced against other interests or considerations, since it regards each guarantee under Article 6 § 3 as independent and as having an autonomous process value that must be respected with full normative force.[1]

In my humble opinion, there is a significant difference between the balancing test applied to a qualified right—such as the rights under Articles 8-11 of the Convention, where the test involves explicit, lawful, and legitimate interference—and the balancing test under Article 6, as applied by the approach currently taken in the case-law (including in the present judgment), where a failing or shortcoming relative to a minimum right is weighed against implied interests, factors or alleged counterbalancing safeguards. Regrettably, the current case-law approach overlooks the difference between these two types of balancing tests. Under this approach, the right itself is being balanced, while under the principled view, it is not the right itself, but a failing or shortcoming relative to a minimum right that is being weighed. In contrast, the principled view on procedural fairness acknowledges this difference. Accordingly, it does not permit any deviation from a minimum right under Article 6 § 3 of the Convention, nor does it subject such rights to a balancing exercise.

The adjective "minimum," which refers to the rights laid out in Article 6 § 3, when read together with its mandatory wording ("has"), leaves no doubt that these rights constitute indispensable guarantees for a fair trial and therefore allow for no restriction whatsoever. This interpretation is in line with the general rule of interpretation of Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT) of 1969, which provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

6. With regard to the complaint under Article 6 §§ 1 and 3 (c), I am in favour of finding a violation, by following either the current case-law view or – my preference – the principled (normative) view on the overall fairness of a trial, which I explained in detail in *W.R. v. the Netherlands*, cited above.

7. Following the approach used in *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008), since there were no compelling reasons to restrict the applicant's right of access to a lawyer (see paragraph 39 of the judgment),

[1] See, *inter alia*, in addition to my opinions in the two cases against the Netherlands, cited above: paragraph 7 of my dissenting opinion in *Souroullas Kay and Zannettos v. Cyprus,* no. 1618/18, 26 November 2024, and Eva Brems, "The 'logics' of procedural-type review by the European Court of Human Rights", in Janneke Gerards and Eva Brems (eds), *Procedural Review in European Fundamental Rights Cases* (Cambridge University Press, 2017), 17, at pp. 27-28.

there could be no stage two under the *Salduz* test for the examination of the overall fairness of the trial in the present case and, accordingly, a violation of Article 6 §§ 1 and 3 (c) must inevitably be found.

8. If following the alternative non-*Salduz* line of Grand Chamber cases, namely that of *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08 and 3 others, 13 September 2016), *Simeonovi v. Bulgaria* ([GC], no. 21980/04, ECHR 2017) and *Beuze v. Belgium* ([GC], no. 71409/10, 9 November 2018), according to which an evaluation of the overall fairness of the trial is always required even if there are no compelling reasons justifying the restriction of the applicant's access to a lawyer, my conclusion would again be that there has been a violation of Article 6 §§ 1 and 3 (c). I will provide a brief explanation for this.

Given that there were no compelling reasons to justify the restriction on access to a lawyer, the domestic courts did not apply the very strict scrutiny required in such a case and, in my view, the criminal proceedings brought against the applicant, when considered as a whole, did not cure the procedural defects occurring at the pre-trial stage (see *Beuze,* cited above, §§ 193-194).

In paragraph 38 of the judgment it is stated that once the applicant had informed the police that he was going to make a "statement of surrender and confession", the authorities must have been aware of the possible context of such a statement and of the consequences that would arise. However, there is no indication that the police had informed him of his right to have access to a lawyer.

The domestic courts, in rejecting the applicant's retraction of his initial confessions, referred, among other things, to the statement by police officer B., who had stated that the murder weapon had been found as a result of the applicant's "statement of surrender" (see paragraph 7 of the judgment). It appears that in their view, this indicated that the applicant's confession had not been dictated to him by the police but had been genuine, in so far as the applicant had revealed information that was not already known to the police, thus enabling them to identify and locate the murder weapon. This demonstrates that the "statement of surrender" made by the applicant on 14 November 2010, prior to being granted access to a lawyer, provided the investigating authorities with the framework around which they subsequently built their case and guided them in their search for other corroborating evidence. In consequence, regardless of whether the applicant chose to retract or maintain his original confession, the initial breach of his right to a lawyer could not be remedied by the fact that he was subsequently provided with legal assistance, in so far as his initial confession had substantially affected his position (see *Ibrahim and Others v. the United Kingdom*, cited above, § 309, and *Bogdan v. Ukraine*, no. 3016/16, §§ 76 and 77, 8 February 2024). Furthermore, having made the initial "statement of surrender", the applicant might have found it prejudicial to change his confession

immediately after he was informed of his right to legal assistance (compare *Bogdan*, cited above, § 77).

The applicant alleged that he made the "statement of surrender" under duress from the police. Paragraph 35 of the judgment states that it is unclear under what circumstances the applicant made his "statement of surrender" and whether it was the result of questioning by the police. The judgment also states that the police officer who took that statement indicated that it had been made after the applicant had been "brought" to the police station, implying a certain degree of compulsion (see paragraph 7 above). Based on those statements from the judgment, it would appear that even the Court has some hesitation about the allegation of duress.

Although the domestic courts dismissed this allegation, they primarily based their position on expert evidence indicating that the applicant had no injuries which could have been caused after his arrest. However, physical torture does not necessarily leave visible signs of injury. In addition, one of the complaints was submitted under Article 3 of the Convention, stating that the applicant was tortured not only physically but also psychologically by the police on the day of his arrest, and that he was kept handcuffed and given nothing to eat or drink. This complaint, however, as well as other complaints under Article 5 and Article 6 of the Convention, was declared inadmissible by the President of the Court (the Section) acting as a single judge at the time of communication. Clearly, the decision taken by the President of the Court to dismiss those complaints is not subject to re-examination and should be treated as final. If, however, the complaints that were dismissed had been declared admissible, and left to be determined by the Chamber, the latter would have had a more comprehensive view of the alleged duress and other pertinent complaints. There is no need to refer here to the other complaints under Article 6 that were dismissed at the time of communication, as the point I wish to make below is of a more general nature. Since Article 6 must be regarded as a coherent and comprehensive whole—encompassing both the general right to a fair trial and all guarantees related to this right—I am of the view that all complaints based on, or related to, Article 6 should be examined by the formation of the Court that eventually decides the application, namely, the Chamber.

The domestic courts did not examine the status of the applicant's "statement of surrender" and its impact on the proceedings. While they refrained from relying on this statement in the second retrial, I remain unconvinced that the applicant's subsequent confirmation of statements made in the absence of a lawyer is sufficient to release the national courts from their duty under Article 6 of the Convention to scrutinise the status of the "statement of surrender" and its impact on the proceedings as a whole (see *Mehmet Zeki Çelebi v. Turkey,* no. 27582/02, § 72, 28 January 2020).

Re-emphasising the very strict scrutiny that must be applied when there are no compelling reasons to justify a restriction on the right of access to a

lawyer, I am of the view that the Government have failed to demonstrate convincingly in what manner, exceptionally and in the specific circumstances of the case, the fairness of the criminal proceedings against the applicant was not irretrievably prejudiced by the restriction on his access to a lawyer on 14 November 2010, when he made his "statement of surrender".

As a result, the overall fairness of the proceedings against the applicant was undermined by the procedural defect resulting from the restriction of the applicant's right to a lawyer during the pre-trial stage and the national courts' failure to sufficiently remedy that shortcoming. There has therefore been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the breach of the applicant's right to legal assistance.

9. Lastly, if we adopt the principled or normative view of overall fairness (my preferred approach), the restriction on the applicant's right to legal assistance from the moment of his arrest, constitutes, in itself, an automatic violation of Article 6 § 3 (c), which in turn leads to an automatic violation of the general right to a fair trial under Article 6 § 1.

10. I now turn to the complaint under Article 6 §§ 1 and 3 (d) of the Convention. In particular, the applicant complained of a violation of his rights under Article 6 §§ 1 and 3 (d) on account of the admission of the evidence given by witness M., who had not been examined in the course of the final retrial. He submitted that an examination of that witness would have been crucial for refuting the version of the events presented by the prosecution. The judgment states (in paragraph 58) that, given the marginal role played by M.'s statement in the case, the Court considers that there is no indication that her evidence was the sole or decisive basis for the applicant's conviction or that it carried such significant weight that its admission might have handicapped the defence, referring, for example, to *Cabral v. the Netherlands* (dec.), no. 37617/10, §§ 21-26, 28 June 2016). In paragraph 59, the judgment concludes that the complaint under Article 6 §§ 1 and 3 (d) is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

11. I respectfully disagree that the complaint is manifestly ill-founded. Since the right guaranteed under Article 6 § 3 (d) is a minimum right that draws no distinction between the different witnesses a defendant may examine or have examined against him—regardless of the evidential weight of their testimony or any other factor—and since the applicant was completely prevented from exercising this right, the least one can say is that his complaint is admissible and not manifestly ill-founded, as stated in the judgment.

12. As I also argued in my opinion in *Snijders*, cited above, whichever interpretation of Article 6 §§ 1 and 3 (d) is used and whichever approach to the meaning of overall fairness is followed in the present case—that used in the current case-law or the proposed normative approach—a finding of a violation of Article 6 § 3 (d) as well as of Article 6 § 1 is unavoidable.

13. If I were to follow the current case-law approach, I would conclude that there had been a violation of the above provisions for three main reasons. First, no adequate reason was given for the non-attendance of witness M. at the retrial stage. Second, though the evidence of M. was not the sole or decisive basis for the defendant's conviction, it could nevertheless be considered as "carrying significant weight" (see *Süleyman v. Turkey,* no. 59453/10, §§ 63-66, 17 November 2020). Lastly, the counterbalancing factors, including procedural safeguards, were not sufficient to compensate for the handicaps caused to the applicant as a result of his inability to examine or have cross-examined M. and to ensure that the trial as a whole was fair.

14. Equally, if following the principled view, it is apparent that preventing the applicant from exercising his right under this provision is, in and of itself, an automatic and *per se* violation of 6 § 3 (d) as well as an automatic violation of the general right to a fair trial under Article 6 § 1.

15. I wish to conclude by briefly addressing an issue not only of general interest, but also of particular relevance to this case. Although the examination and critique of the two approaches to the overall fairness of a trial has been the subject of many of my separate opinions — in which I refer to relevant case-law and various academic works — there is one issue I have never addressed, and which supports the principled view (my preferred approach).

The concept of procedural justice or fairness, as developed in American social psychology research (based on interviews with individuals who had had experience with the police and local courts), is related to both the process-efficacy view and the "autonomous process value" view—corresponding, respectively, to the current case-law view and the principled view applied in the context of Article 6.

Tyler emphasises four distinct procedural justice principles that judges should consider when interacting with individuals, as these principles enhance the legitimacy of legal institutions: participation (voice), neutrality, respect, and trust.[2] There is no doubt that all four of these principles are recognised by both the process-efficacy view and the autonomous process value view, as they correspond to specific guarantees under Article 6.

However, the two views relate to Tyler's principles in fundamentally different ways. While the process-efficacy view values these principles primarily for their instrumental role in enhancing compliance, trust, and

[2] See Tom R. Tyler, "Procedural justice and the courts", *Court Review*, 44 (1/2) (2008), 26 at p. 30; Kevin Burke and Steve Leben, "Procedural fairness: A key ingredient in public satisfaction" (a White paper of the American Judges Association – The voice of the judiciary") (2007), 4 at p. 6). Tyler distinguishes between "compliance" and "acceptance", the latter having a voluntary basis, and concludes that legitimacy makes an independent contribution to the prediction of compliance (see Tom R. Tyler, *Why People Obey the Law* (Princeton University Press, 2006), at pp. 57-68; Tom R. Tyler and Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russel Stage Foundation, 2002) at p. 82; Eva Brems and Laurens Lavrysen, cited above, at p. 178).

acceptance of outcomes, the autonomous process value view holds that they have intrinsic value as indispensable elements of justice itself. One can thus rightly argue that this social psychological theory of procedural justice is more closely aligned with—and provides stronger support for—the principled view. This is because the principled view emphasises the intrinsic value of fair procedures, not merely as a means to an end, but as essential components of justice itself. The core elements identified by Tyler—participation, neutrality, respect, and trust—are not merely instrumental in achieving compliance or efficient outcomes; rather, they reflect a normative commitment to treating individuals with dignity and equality before the law. These values resonate deeply with the principled view, which sees procedural fairness as foundational to the legitimacy of legal institutions, regardless of the outcome of the case. In contrast, the process-efficacy view tends to value these principles chiefly for their contribution to perceived effectiveness or public acceptance—an inherently instrumental rationale.

This synergy between the social psychological theory of procedural justice and the principled view serves to enhance the practical effectiveness of the guarantees enshrined in Article 6. By grounding these guarantees not only in legal doctrine but also in empirical insights about human behaviour and perceptions of justice, the principled view gains both normative depth and empirical validation. This alignment strengthens the implementation of fair-trial rights, making them more resonant with those subject to legal proceedings and, ultimately, more capable of fostering genuine trust in the judicial process.

This discussion also finds relevance in the Court's evolving case-law, particularly its growing reliance on procedural review of substantive rights safeguarded in the Convention—a development often referred to as the proceduralisation of substantive rights under the Convention. Brems refers to four normative "rationales" or "logics" in explaining this procedural turn: a process-efficacy rationale, an institutional or subsidiarity rationale, an autonomous process rationale, and a social psychology rationale.[3] It is to be noted that two of these rationales, namely, the process-efficacy rationale and the autonomous rationale, correspond to the qualified procedural view

[3] See Eva Brems, "The 'logics' of procedural-type review", cited above, 17 *et seq*. On this procedural turn, see also, among many other academic works: Oddný Mjöll Arnardóttir, "The 'Procedural Turn' under the European Convention on Human Rights and Presumptions of Convention Compliance", in *Oxford University Press and New York University School of Law,* (2017), vol. 15, no. 1, 9 *et seq.*; Eva Brems, "Procedural protection: An examination of procedural safeguards read into substantive Convention rights", in Eva Brems and Janneke Gerards (eds), *Shaping rights in the ECHR; The role of the European Court of Human Rights in Determining the Scope of Human Rights* (Cambridge University Press, 2013), 137 *et seq.*; Eva Brems and Laurens Lavrysen, "Procedural justice in human rights adjudication: The European Court of Human Rights", in *Human Rights Quarterly*, 35 (2013), 176 *et seq.*

adopted by the current case-law and the principled or normative view which previously applied in the context of Article 6.

In areas such as Articles 2, 3, or 8 of the Convention, the Court has increasingly focused on whether national procedures have been fair, inclusive, and diligent, even when assessing compliance with substantive Convention norms. This turn toward procedural review has found its most appropriate methodological grounding in the process-efficacy logic, which aligns naturally with the principle of subsidiarity: if domestic procedures are thorough, impartial, and inclusive, then the Court can justifiably defer to national decisions.

However, while this process-based reasoning is suitable for reviewing compliance with substantive rights—where procedure acts as a proxy for the quality of outcomes—it should not be conflated with the rationale that governs Article 6, which is inherently and exclusively procedural in nature. This difference is critical. In the context of Article 6, the concern is not whether fair procedures lead to substantively just results, but whether the procedures themselves meet the standards of fairness, irrespective of outcome. Here, the principled view, grounded in both legal theory and social psychological research, offers a more robust and coherent foundation.

Thus, the selection of appropriate rationales must be context-sensitive. While the process-efficacy logic serves well in the proceduralisation of substantive rights—reinforcing subsidiarity and enhancing the Court's role as a secondary reviewer—it cannot fully capture the normative weight of Article 6 guarantees. A shift towards the principled view is not only more faithful to the Article's purpose, but also essential for safeguarding its role in upholding the intrinsic value of justice through fair process.

In my view, procedural fairness can be understood as the manifestation of the principle of effectiveness in the context of the right to a fair trial under Article 6; in other words, it is the manner in which the principle of effectiveness takes shape in the Convention right to a fair trial. Consequently, if procedural fairness is not viewed through a principled, normative lens, as proposed in this opinion, the trial will fail to satisfy the requirement of effectiveness and thus cannot be truly fair.

This theoretical distinction between the instrumental and non-instrumental perspectives becomes of fundamental relevance in the present case, in which, regrettably, the Court did not apply the principled view of procedural fairness and ultimately found no violations of the pertinent provisions of Article 6, despite the fact that there has been a departure from two minimum rights of Article 6 § 3. Failure to adopt a principled approach in such contexts not only weakens the normative force of Article 6, but also undermines both the deeper legitimacy that procedural justice is meant to uphold and the legitimacy of the Court itself.