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

THIRD SECTION

DECISION

Application no. 36387/22
Janez SCHULLER
against Slovenia

The European Court of Human Rights (Third Section), sitting on 16 December 2025 as a Committee composed of:

Lətif Hüseynov*, President*,
Canòlic Mingorance Cairat,
Vasilka Sancin*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 36387/22) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 July 2022 by a Slovenian national, Mr Janez Schuller ("the applicant"), who was born in 1972 and lives in Šentrupert, and was represented by Ms M. Kincl Mlakar, a lawyer practising in Šmarje pri Jelšah;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns criminal proceedings in which the applicant was convicted of attempted murder and was sentenced to ten years' imprisonment.

2. In 2005 the Ljubljana District Court issued an order (hereinafter "the 2005 order") on the basis of sections 143 and 149(b) of the Criminal Procedure Act ("the CPA"), ordering the relevant telecommunications service providers to transmit to it information concerning outgoing and incoming calls of several telephone numbers as well as subscriber information, including that of the applicant, for the period from 1 April to 30 June 2005. In its reasoning, the court stated that the order was being issued in connection with the criminal offences of murder and endangering public safety, which were being investigated by the police at the time. It further

explained how and why the information obtained would contribute to identifying the perpetrators.

3. At the time the 2005 order was issued, the retention of data had been governed by the 2004 Electronic Communications Act (hereinafter "the 2004 Act"), which remained in force from 1 May 2004 until 14 January 2013. In so far as relevant, the part concerning the retention of data was amended in 2006 with a view to transposing Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 and amending Directive 2002/58/EC (hereinafter "the Data Retention Directive"); it was further amended in 2009 (see *Škoberne v. Slovenia*, no. 19920/20, §§ 64-65, 15 February 2024). This amended Act was replaced in 2012 by a new Act ("the 2012 Act"). Subsequently, in a decision of 3 July 2014, the Constitutional Court reviewed the constitutionality of the 2012 Act concerning data retention and, referring to the judgment of the Court of Justice of the European Union (hereinafter "the CJEU") in *Digital Rights Ireland and Others* (C-293/12 and C-594/12), struck down the relevant provisions for violating the right to protection of personal data (see *Škoberne*, cited above, §§ 66-68 and 74-76).

4. After several remittals, the Ljubljana District Court acquitted the applicant. However, following an appeal, the Ljubljana Higher Court delivered its judgment on 31 May 2013, finding the applicant guilty of attempted murder, two counts of murder and the criminal offence of illicit trafficking of weapons or explosives. He received an aggregate sentence of 30 years' imprisonment. In its judgment, the court relied on the telecommunications data obtained on the basis of the 2005 order, other material evidence and witness statements.

5. The applicant appealed, alleging that his right to examine witnesses had been violated because he had not had the opportunity to question B.Ž.S. (his co-accused), M.Ž. or M.F. He also challenged the Ljubljana Higher Court's refusal to appoint a telecommunications expert and claimed that the retention and use of telecommunications data had been unlawful. In this respect, he relied on the Constitutional Court's decision of 3 July 2014 and the CJEU's judgment in *Digital Rights Ireland and Others* (see paragraph 3 above) and argued that the 2005 order had been based on unlawful provisions from the 2004 Act, which were identical to those in the 2012 Act. Additionally, he maintained that the 2005 order was unlawful.

6. By a judgment of 17 December 2014, the Supreme Court partly upheld his appeal with regard to the criminal offences of murder and illicit trafficking of weapons or explosives and remitted the case back to the Ljubljana Higher Court. It also changed the part of the applicant's sentence related to the criminal offence of attempted murder to ten years' imprisonment. It dismissed the remainder of his appeal as unfounded.

7. As regards the examination of B.Ž.S., the Supreme Court noted that he had been examined by the applicant's lawyer and the applicant had been

given an opportunity to challenge and question the witness. Witness M.Ž. had been questioned during the investigation on 11 November 2005 and all parties, including the applicant, had been informed in advance. However, neither the applicant nor his lawyer had attended the hearing and had thereby accepted the risk that she might subsequently refuse to testify on account of her status as a privileged witness. Additionally, the testimony of M.Ž. had not played a significant role in establishing the applicant's guilt.

8. Concerning the proposal to examine witness M.F., the Supreme Court observed that it had been made only at the appellate stage and had been rejected as not being capable of casting doubt on the conviction. The applicant's proposal to appoint an expert witness on telecommunications had been considered unsubstantiated.

9. As regards the gathering of data, the Supreme Court evaluated the legality of the 2005 order and the evidence obtained through it in the light of the Constitutional Court's and the CJEU's respective 2014 decisions. It noted that the 2005 order had been issued on the basis of the 2004 Act, which had not contained the provisions later declared unconstitutional. The latter had been introduced only in 2006 for the purpose of implementing the Data Retention Directive. Accordingly, the above-mentioned rulings had had no legal impact on the 2004 Act or on the 2005 order. The 2004 Act had contained more limited rules on data retention. Operators had only been allowed to store telecommunications data under specific conditions, such as for billing or upon receiving an order from the competent authority specifying the method, scope, and duration of the measure. The 2004 Act had also defined which subscriber data could be collected, its permitted uses and the retention period. Unlike the 2012 Act, it had not permitted indiscriminate or blanket retention of all user data for extended periods. Lastly, the Supreme Court noted that the 2005 order had been necessary and proportionate, given the seriousness of the offence and its focus on specific phone numbers over a limited period.

10. As regards the allegedly insufficient reasoning of the 2005 order, the Supreme Court found that there were grounds for suspicion that the applicant had committed the crime in question based on the incriminating facts and information which the authorities had gathered beforehand. Consequently, the level of suspicion required by section 149(b) of the CPA had been established.

11. The applicant subsequently lodged an application for the protection of legality. On 25 January 2017 the Supreme Court dismissed the applicant's application for the protection of legality, reiterating the findings of the Supreme Court in its decision of 17 December 2014.

12. On 26 April 2022 the Constitutional Court rejected as inadmissible a constitutional complaint lodged by the applicant.

13. The applicant complained under Article 8 of the Convention about the storage of the data relating to his telecommunication activities and its use in

the proceedings against him. Relying on Article 6, he complained that the 2005 order had been insufficiently reasoned and that the evidence obtained on its basis should have not been used in his trial. The applicant further complained that he had not had the opportunity to examine certain witnesses.

THE COURT'S ASSESSMENT

A. Complaints under Article 8 of the Convention

14. As regards the complaint under Article 8, the Court notes that the applicant argued that the 2005 order had been based on the 2004 Act, which had allegedly contained provisions identical to those in the 2012 Act, which had later been found unconstitutional (see paragraph 3 above). However, the provisions similar to those contained in 2012 Act – and also considered by the Court not to comply with Article 8 (see *Škoberne,* cited above, §§ 130 and 147) – were not contained in the 2004 Act as in force at the time of the adoption of the 2005 order (see the Supreme Court's finding cited in paragraph 9 above). They were introduced with the 2006 amendment, which transposed the Data Retention Directive, adding certain provisions which broadened the reasons for the retention to several public-interest purposes and required the retention, for a period of 14 months, of all communications data generated or processed during the provision of related public communications services (see *Škoberne*, cited above, § 64). The applicant, who appears to have misconceived the legal basis of the 2005 order, provided no arguments regarding any possible deficiencies in the regulatory framework governing retention of data for commercial purposes as set out in the 2004 Act.

15. The applicant further argued that the 2005 order had lacked sufficient reasoning regarding the required grounds for suspicion and had been issued in relation to an offence not listed among those for which surveillance measures had been permitted by law. In that respect the Court observes that the 2005 order was issued with regard to suspicion that the applicant had been involved in the murder of two persons, which was one of the prescribed offences for which the measure was allowed by law (see paragraphs 2 and 10 above). The Supreme Court convincingly explained that the order had been issued in accordance with the relevant procedural requirements and the Court finds no reason to depart from that conclusion. In this connection the Court also concurs with the Supreme Court's findings that given the gravity of the offence the measure was deemed proportionate and it served the legitimate aim of prosecuting criminal acts (see paragraphs 9-10 above), which the applicant also did not contest.

16. In view of the above, the Court concludes that the complaints above are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaints under Article 6 of the Convention

17. The Court observes that the applicant complained about his inability to examine certain witnesses and about the domestic courts' refusal to appoint an expert witness on telecommunications.

18. As regards the applicant's alleged inability to question the applicant's co-defendant, witness B.Ž.S., the Court observes that the applicant had the possibility of examining him and testing his incriminating statement (see paragraph 7 above; compare *Škoberne*, cited above, § 104) and concurs with the findings of the domestic courts that the applicant's right to a defence was not hindered in this respect.

19. As for the applicant's inability to question witness M.Ž. the Court will take into account the relevant principles applicable in cases where a prosecution witness did not attend the trial and statements previously made by him or her were admitted as evidence (see *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 110-31, ECHR 2015, and *Cabral v. the Netherlands*, no. 37617/10, §§ 31-32, 28 August 2018). In this respect the Court takes note that M.Ž. was questioned during the investigation but declined to testify at the main hearing on account of her status as a privileged witness. The applicant and his lawyer had the opportunity to question her during the investigation but did not do so. Additionally, M.Ž.'s testimony was compared with other evidence, which the applicant could challenge, and was not decisive in his conviction (see paragraphs 4 and 7 above).

20. As to the refusal to examine witness M.F. and to appoint an expert witness on telecommunications, the Court notes that the domestic courts dismissed the applicant's evidentiary proposals, finding that they were unsubstantiated and also in part irrelevant (see paragraph 8 above). The domestic courts' decisions concerning this issue were based on convincing reasons and the applicant did not put forward anything that would require calling their findings into question.

21. The Court would further stress that the applicant, assisted by a professional lawyer, was able to conduct his defence effectively and to challenge his conviction before the Supreme Court, through an appeal and an application for the protection of legality, as well as before the Constitutional Court.

22. Having due regard to the facts above and to the reasons adduced by the domestic courts, the Court finds no reason to doubt that the proceedings as a whole (including the way in which evidence was taken) were fair.

23. Lastly, as regards the applicant's complaint related to the use of the allegedly unlawfully obtained evidence in his conviction (see paragraph 13 above), the Court, bearing in mind the findings regarding the applicant's complaint under Article 8 (see paragraphs 14-16 above), finds that it raises no issue under Article 6 of the Convention (see, *mutatis mutandis*, *Bykov v. Russia* [GC], no. 4378/02, § 91, 10 March 2009).

24. It follows that the above complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 January 2026.

Olga Chernishova Deputy Registrar	Lətif Hüseynov President