# KEY THEME[1]
# Relationship between Article 8 (targeted secret surveillance[2]) and Article 6 (administration of evidence) with regard mainly to certain admissibility requirements (exhaustion/four-month time-limit[3])

**(Last updated: 31/08/2026)**

## Introduction

Complaints related to secret surveillance and other investigative measures taken generally in the framework of criminal proceedings may be examined either under Article 6 or Article 8, or both. The Court has distinguished between the question of whether Article 8 has been violated in respect of the secret surveillance and the question of possible ramifications of a finding to that effect on the rights guaranteed under Article 6 (see, for example, *Bykov v. Russia* [GC], 2009, § 89, and *Dragoş Ioan Rusu v. Romania*, 2017, § 52).

When dealing with such cases, the Court, as a general rule, examines the Article 8 complaints first (*Khan v. the United Kingdom*, 2000, §§ 22-28; *Bykov v. Russia* [GC], 2009, §§ 69-83). According to the circumstances of the case, the Court may then examine the Article 6 complaints (*Khan v. the United Kingdom*, 2000, §§ 29-40; *Bykov v. Russia* [GC], 2009, §§ 94-105; and *López Ribalda and Others v. Spain* [GC], 2019, §§ 153-61) or it may consider that the matter has been sufficiently examined under Article 8 and does not warrant further examination under Article 6 (*Azer Ahmadov v. Azerbaijan*, 2021, § 79; see also *UAB Kesko Senukai Lithuania v. Lithuania*, 2023, § 129). Indeed, the procedural aspect of Article 8 is closely linked to the rights and interests protected by Article 6 of the Convention.

The subject of the present key-theme is to consider which remedies can be or should be exhausted in cases of secret surveillance where the product of the surveillance has been used as evidence in proceedings against the applicant. The crux of the exhaustion matter is whether the complaints under Article 8 related to the surveillance can be raised within the framework of the proceedings against the applicant, generally criminal ones, or whether separate proceedings against the State, generally aimed at obtaining a financial compensation, are required. The Court has examined the matter either under Article 13 of the Convention or as an admissibility issue, according to the objections raised by the Government (mainly non-exhaustion of domestic remedies, but also time-limit or victim status) or, indeed, sometimes on the merits of Article 8, when examining whether the system put in place by the authorities complies with the requirements of the Convention (*López Ribalda and Others v. Spain* [GC], 2019, §§ 135-37).

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[1] Prepared by the Registry. It does not bind the Court.

[2] The present Key Theme deals with targeted surveillance where the results of the surveillance are used in proceedings involving the applicant. For mass surveillance see Surveillance measures (Terrorism).

[3] Before the entry into force of Protocol no. 15 to the Convention on 1 August 2021, Article 35 of the Convention referred to a "period of six months".

## Principles drawn from the current case-law

A remedy in respect of a complaint under Article 8 will be deemed effective if the domestic courts can deal with the substance of the Convention complaint namely, that the interference with the applicants' right to respect for their private life and correspondence was not "in accordance with the law" or was not "necessary in a democratic society", and it is open to the courts to grant appropriate relief in connection with this complaint (*Zubkov and Others v. Russia*, 2017, § 88; *Hambardzumyan v. Armenia*, 2019, § 44, and *Sigurður Einarsson and Others v. Iceland*, 2019, § 123).

The Court has generally considered that criminal proceedings are not fit to examine the issue of secret surveillance and the interference with "private life and correspondence" if such proceedings can only deal with the admissibility of evidence (procedural fairness) and are not able to examine the merits of the privacy aspect of the Article 8 complaint (*Khan v. the United Kingdom*, 2000, § 44; *Goranova-Karaeneva v. Bulgaria*, 2011, § 59, and *İrfan Güzel v. Turkey*, 2017, §§ 106-07). However, for the purposes of the exhaustion of domestic remedies or compliance with the four months rule, the Court has held that, when the applicants raised complaints regarding the surveillance within the framework of the criminal proceedings against them, it was not unreasonable for them to have waited for the final decision from the domestic courts before lodging a complaint with the Court, even if they were mistaken in considering that remedy as an effective one (*Akhlyustin v. Russia*, 2017, § 28; see also *Zubkov and Others v. Russia*, 2017, § 109, and *Hambardzumyan v. Armenia*, 2019, §§ 52-53).

In some cases, the Court accepted that the criminal proceedings could be an effective remedy if it was open to the domestic courts to examine the lawfulness and the necessity of the alleged interference (*Blaj v. Romania*, 2014, §§ 117-18; *Dragojević v. Croatia*, 2015, § 72; and *Šantare and Labazņikovs v. Latvia*, 2016, § 43).

As for a civil remedy, the Court found it to be effective when such proceedings were able to provide the applicants with compensation. Such compensation, to be claimed generally within the framework of proceedings related to the responsibility of State authorities for illegal surveillance, can be of a pecuniary nature (see, for instance, *Svetina v. Slovenia*, 2018, § 60, and *Sigurður Einarsson and others v. Iceland*, 2019, § 124). But the destruction of the material resulting from the surveillance (*Zoltán Varga v. Slovakia*, 2021, § 117; see, also, *Vasil Vasilev v. Bulgaria*, 2021, § 67) or the removal from the file of the evidence obtained through surveillance (*Ben Faiza v. France*, 2018, § 47) can also amount to a form of remedy and have consequences on the applicant's victim status.

In some recent cases, the Court has accepted that the applicants could be expected to make use of separate but successive proceedings that can, in the first place, establish whether the surveillance had been lawful, and, secondly, provide appropriate compensation. Such a two-step mechanism generally has a basis in the specific provisions of domestic law (for the provisions of Ukrainian law, see *Lysyuk v. Ukraine*, 2021, §§ 42-46), but has also been accepted by the Court as a result of the interplay between the general provisions of domestic law (see, for example, *Mateuț v. Romania* (dec.), 2022, §§ 35-38).

For a recent summary of the various types of remedies examined by the Court, see *Gernelle et SA Société d'exploitation de l'hebdomadaire Le Point v. France* (dec.), 2024, §§ 43-45.

## Noteworthy examples

The main question is whether the criminal proceedings and, more generally, the proceedings in which the results of the secret surveillance are used as evidence, are fit to examine the issue of secret surveillance and the interference with "private life and correspondence" or whether separate proceedings, commonly of civil nature, are more apt to do so.

### *Cases in which the criminal remedy was found to be ineffective:*

- *Khan v. the United Kingdom*, 2000, § 44: this case concerns the unlawful recording of the applicant's conversations and the use of the recordings as evidence in criminal proceedings. The Court also examined the applicant's argument, under Article 13, that the domestic courts should have considered that the evidence had been obtained in breach of the Convention. The Court held that the criminal proceedings against the applicant were not capable of providing a remedy because it was not open to them to deal with the substance of the applicant's complaint, and they could not grant appropriate relief.
- The Court followed the same reasoning in other cases such as *P.G. and J.H. v. the United Kingdom*, 2001, § 86, and *İrfan Güzel v. Turkey*, 2017, §§ 106-07.

### *Cases in which the criminal remedy was found ineffective but necessary for the calculation of the four (respectively six) months limit:*

- *Zubkov and Others v. Russia*, 2017, §§ 88-98 and 109: the applicants had learnt during the criminal proceedings against them about the interception of their communications. The Government had argued that contesting the admissibility of evidence in the framework of criminal proceedings, as the applicants had done, could not be regarded as an effective remedy in respect of an Article 8 complaint and that the applicants had other remedies at their disposal which they had not used. The Court agreed with the Government's first argument and held that raising the issue of covert surveillance in the criminal proceedings cannot be regarded as an effective remedy in respect of a complaint under Article 8. It further found that no other effective remedies were available to the applicants under Russian law. However, for the purposes of examining compliance with the six-months rule, it held that it was reasonable for the applicants to try to bring their grievances to the attention of the domestic courts through the remedies provided by the criminal procedural law since at the material time it could not have been presumed that raising the issue of covert surveillance in the criminal proceedings was a clearly ineffective remedy. It concluded that it was not unreasonable for the applicants to have waited until they had received the domestic decisions before lodging their applications with the Court.
- Similar conclusions are to be found in *Akhlyustin v. Russia*, 2017, § 28, or *Hambardzumyan v. Armenia*, 2019, §§ 52-53.

### *Cases in which the criminal remedy was found to be effective:*

- *Bălteanu v. Romania*, 2013, §§ 32-35: the applicant had alleged that the recording of his communications had been unlawful and had lacked proper authorisation. The Government claimed that he should have complained to the Court within six months of the date on which he had first learned of the interception. The Court found that domestic law allowed the courts to declare an interception unlawful and that if other remedies were also available to the applicant, such as civil proceedings, they were equally available to the person who contests the lawfulness of the interception. The applicant had raised these arguments throughout the criminal proceedings against him and had thus made use of an effective remedy. The Court then dismissed the Government's objection.
- *Dragojević v. Croatia*, 2016, §§ 72-73: the case concerned the secret surveillance of the applicant during criminal proceedings against him. The Government argued that the six-month time-limit had started running from the day when the applicant found out about the surveillance and that there had been no reason for him to wait for the outcome of the criminal proceedings. The Court dismissed this objection, having found that the only avenue

available to the applicant was to raise his complaints about the alleged unlawful use of secret surveillance in the proceedings against him.

- Similar reasoning was adopted in *Šantare and Labazņikovs v. Latvia*, 2016, §§ 40-44 and *Radzhab Magomedov v. Russia*, 2016, §§ 77-79 for criminal proceedings, and in *Erduran and Em Export Dış Tic A.Ş. v. Turkey*, 2018, § 201 as regards administrative tax proceedings.

### *Cases in which the civil remedy was found to be effective:*

- *Sigurður Einarsson and Others v. Iceland*, 2019, § 124: the Court found no reason to doubt that, in the framework of civil proceedings against the State, the domestic courts could examine the lawfulness and the necessity of the interception of the applicants' telephone conversations with their lawyers and, if appropriate, award compensation. It therefore held that this civil remedy had to be exhausted.
- *Vasil Vasilev v. Bulgaria*, 2021, §§ 64-67: the applicant, a lawyer, had complained that the covert recording and transcription of the telephone conversation between him and his client had been unlawful and unnecessary. He had brought civil proceedings against the State based on a special law, but the domestic courts examined his claim under general tort law. The Court was satisfied that this remedy was effective, and that the applicant had properly exhausted domestic remedies. In particular, it held that, since the applicant's complaint was directed not so much against the retention of the recording or the transcript resulting from the interception of his conversations but rather against their very creation, a remedy capable of leading to compensation rather than to the destruction of that material was more apt to redress his grievance. It further rejected the Government's objections that other specific remedies would have been effective in the applicant's case.
- *Lysyuk v. Ukraine*, 2021, §§ 40-47: the applicant had alleged a breach of his rights on account of the recording of his conversations with a third party: those conversations had been used in criminal proceedings against him. The Government had raised a non-exhaustion plea on account of the failure of the applicant to ask for damages in separate proceedings. The Court found that the domestic law provided for a two-step system of remedies. In the first place, the applicant had to raise in criminal proceedings the issue of the alleged unlawful surveillance, which he had done. Secondly, he had to claim civil damages in separate proceedings, which was not opened to him because the criminal courts neither issued a separate ruling acknowledging that the surveillance measures had been unlawful nor acknowledged that in any of their decisions on the merits of the criminal case. The Court therefore dismissed the Government's objection. A similar reasoning was adopted in *Yakymchuk v. Ukraine*, 2025, § 60.
- *Mateuţ v. Romania* (dec.), 2022, §§ 34-39: the applicant, a lawyer, had alleged that the interception of his telephone conversations with his client, the use of these conversations in the proceedings against his client and the summons to appear as a witness in the trial of his client had been in breach of Article 8 of the Convention. The Government had argued that the applicant had lost victim status because the domestic courts had found that the conversations he had had with his client had been protected by professional secrecy and had ordered that the evidence obtained by the interception of such conversations be excluded from the file. The Court agreed that such findings by the domestic courts could have enabled the applicant to bring proceedings based on the general tort law against the State and claim compensation for the breach of his Article 8 rights. It concluded that the applicant should have attempted to bring a civil claim before the domestic courts.

### *Specific situations:*

- *López Ribalda and Others v. Spain* [GC], 2019, §§ 135-37: the case concerned the surveillance of the applicants at the workplace and the use of the result of the surveillance in proceedings based on labour law. The Court found that the domestic labour courts properly examined the applicants' arguments related to the interference with their Article 8 rights. It further analysed, as suggested by the Government albeit not in a separate non-exhaustion objection, whether other remedies were available to the applicants. It thus found that the applicants could have lodged a complaint to the Data Protection Agency based on the provisions of the Personal Data Protection Act or could have brought proceedings before the regular courts in order to obtain redress for the alleged breach of their rights under said act. The Court's conclusion that there had been no violation of the applicant's rights is partly based on the argument that the Spanish legal framework provided for remedies that they had not used.
- *Ben Faiza v. France*, 2018, § 47: the applicant complained about the installation, on two occasions, of a geolocation device on his vehicle. In response to a claim made by the applicant, the French courts found that the first installation of the device had not been duly authorised, and excluded the evidence thus obtained. The Court concluded that the domestic courts had provided the applicant with sufficient redress, even more so since he had not necessarily sought to demonstrate a violation of his Article 8 rights, but rather to exclude possible evidence of his guilt, and thus he had not maintained victim status in respect of that instance of geolocation.

## Further references

### *Case-law guides:*

- Guide on Article 34/35 (Admissibility)

### *Other key themes:*

- Administration of (unlawfully obtained) evidence
- Presumption of innocence
- Surveillance measures (Terrorism)

# KEY CASE-LAW REFERENCES

## Leading cases:

- *Khan v. the United Kingdom*, no. 35394/97, 12 May 2000 (violation of Article 8; no violation of Article 6; violation of Article 13);
- *Bykov v. Russia* [GC], no. 4378/02, 10 March 2009 (violation of Article 8; no violation of Article 6);
- *Akhlyustin v. Russia*, no. 21200/05, 7 November 2017 (violation of Article 8);
- *Zubkov and Others v. Russia*, nos. 29431/05 and 2 other, 7 November 2017 (violation of Article 8);
- *Lysyuk v. Ukraine*, no. 72531/13, 14 October 2021 (violation/no violation of Article 6; violation of Article 8).

## Other cases:

- *P.G. and J.H. v. the United Kingdom*, no. 44787/98, 25 September 2001 (violation of Article 8; no violation of Article 6; violation of Article 13);
- *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, 8 March 2011, (no violation of Article 8; violation of Article 13);
- *Bălteanu v. Romania*, no. 142/04, 16 July 2013 (violation of Article 8);
- *Blaj v. Romania*, no. 36259/04, 8 April 2014 (no violation of Article 6; no violation of Article 8; no violation of Article 13 taken together with Article 8);
- *Dragojević v. Croatia*, no. 68955/11, 15 January 2015 (no violation of Article 6; violation of Article 8);
- *Kibermanis v. Latvia* (dec.), no. 42065/06, 3 November 2015 (Article 8 complaint inadmissible — non-exhaustion);
- *Šantare and Labazņikovs v. Latvia*, no. 34148/07, 31 March 2016 (violation of Article 8);
- *Radzhab Magomedov v. Russia*, no. 20933/08, 20 December 2016 (violation of Article 8);
- *İrfan Güzel v. Turkey*, no. 35285/08, 7 February 2017 (no violation of Article 8; violation of Article 13 combined with Article 8);
- *Dragoş Ioan Rusu v. Romania*, no. 22767/08, 31 October 2017 (violation of Article 8; no violation of Article 6);
- *Harizanov v. Bulgaria* (dec.), no. 53626/14, 5 December 2017 (Article 8 complaint inadmissible — non-exhaustion);
- *Ben Faiza v. France*, no. 31446/12, 8 February 2018 (one Article 8 complaint inadmissible — loss of victim status; violation of Article 8; no violation of Article 8);
- *Svetina v. Slovenia*, no. 38059/13, 22 May 2018 (no violation of Article 6; Article 8 complaint inadmissible — non-exhaustion);
- *Erduran and Em Export Dış Tic A.Ş. v. Turkey*, nos. 25707/05 and 28614/06, 20 November 2018 (no violation of Article 8);
- *Sigurður Einarsson and Others v. Iceland*, no. 39757/15, 4 June 2019 (violation/no violation of Article 6; Article 8 complaint inadmissible — non-exhaustion);
- *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, 17 October 2019 (no violation of Article 8; no violation of Article 6);

- *Hambardzumyan v. Armenia*, no. 43478/11, 5 December 2019 (no violation of Article 6; violation of Article 8);
- *Zoltán Varga v. Slovakia*, nos. 58361/12 and 2 other, 20 July 2021 (violation of Article 8);
- *Azer Ahmadov v. Azerbaijan*, no. 3409/10, 22 July 2021 (violation of Article 8; no need to examine Articles 6 and 13);
- *Vasil Vasilev v. Bulgaria*, no. 7610/15, 16 November 2021 (violation of Article 6; violation of Article 8);
- *Mateuţ v. Romania* (dec.), no. 35959/15, 1 March 2022 (inadmissible — loss of victim status);
- *Potocká and Adamčo v. Slovakia*, no. 7286/16, 12 January 2023 (violation of Article 8; violation of Article 13 taken together with Article 8);
- *UAB Kesko Senukai Lithuania v. Lithuania*, no. 19162/19, 4 April 2023 (violation of Article 8; no need to examine Articles 6 and 13);
- *Gernelle et SA Société d'exploitation de l'hebdomadaire Le Point v. France* (dec.), no. 18536/18, 9 April 2024 (Article 8 complaint inadmissible — non-exhaustion);
- *Yakymchuk v. Ukraine*, no. 26519/16, 11 September 2025 (violation of Article 8, the relevant Article 6 complaint – no need to examine).