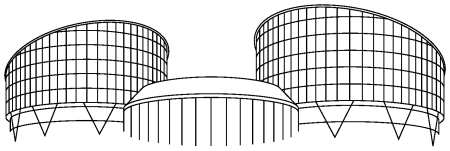

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ZUBKOV AND OTHERS v. RUSSIA

(Applications nos. 29431/05 and 2 others – see appended list)

JUDGMENT

STRASBOURG

7 November 2017

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 Zubkov and Others v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in three applications (nos. 29431/05, 7070/06 and 5402/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Russian nationals. Their names and dates of birth, as well as the dates on which they lodged their applications, are listed in the appendix.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin. Two of the applicants were represented by lawyers whose names are listed in the appendix.

3. The applicants alleged, in particular, that they had been subjected to covert surveillance in breach of Article 8 of the Convention. One of the applicants also complained of the excessive length of the criminal proceedings. Another complained of the inhuman conditions of detention and transport. He also alleged that his pre-trial detention had not been attended by sufficient procedural guarantees.

4. Between 26 August 2009 and 21 December 2012 the above complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Application no. 29431/05 *Zubkov v. Russia*

5. On 12 April 2002 the local police sent to the local investigations committee audio recordings of telephone conversations between the applicant and several persons, and video recordings of their meetings in a flat in Novgorod. The accompanying letter, which the Government presented to the Court, stated that the audio and video recordings had been obtained in the course of covert "operational-search" measures ("*оперативно-розыскные мероприятия*") authorised by the President of the Novgorod Regional Court on 19 July and 31 August 2000 and 17 and 27 February 2001.

6. On 16 April 2002 the applicant was arrested and charged with several counts of drug trafficking committed by an organised criminal group. Four more persons were arrested on the same charge.

7. On 18 April 2002 the Novgorod Regional Prosecutor's Office ordered the applicant's placement in custody pending trial. He remained in custody throughout the criminal proceedings.

8. The applicant learned about the audio and video recordings on an unspecified date while studying the criminal case file.

9. On 26 June 2002 the investigation was completed and the case was sent for trial to the Novgorod Town Court.

10. On 18 July 2002 counsel of one of the defendants asked that the trial be adjourned until September 2002 because he would be on annual leave until 6 September.

11. On 20 August 2002 the Novgorod Town Court scheduled the first hearing for 16 September 2002. The hearing of 16 September 2002 was adjourned until 23 September 2002 because the applicant's counsel was in hospital and because the prosecution witnesses did not appear. The trial eventually started on 20 November 2002.

12. At the trial the applicant pleaded not guilty. He claimed, in particular, that the audio and video recordings were inadmissible as evidence as they had been obtained without prior judicial authorisation.

13. His co-defendants pleaded guilty. They testified that the applicant was the leader of an organised group dealing in drugs. The applicant and another defendant, Mr K., had rented a flat where the members of the group had met to receive instructions from the applicant and to distribute the profits. They had also packaged and stored drugs in the flat. The owner of the flat testified that he had rented his flat to Mr K. and that on several occasions the rent had been paid by the applicant.

14. On 24 November 2004 the Novgorod Town Court found the applicant and his co-defendants guilty of drug trafficking. It found it established that the applicant was the leader of an organised criminal group dealing in drugs. It relied on witness testimony, expert reports, audio recordings of telephone conversations between the defendants and video recordings of their meetings in the rented flat. It found that the recordings were admissible as evidence because they "had been obtained in the course of authorised covert operational-search measures aiming at uncovering criminal acts committed by Zubkov and the criminal group organised by him". The applicant was sentenced to nine years and six months' imprisonment.

15. In his appeal submissions the applicant complained, in particular, that the audio and video recordings had been obtained without prior judicial authorisation.

16. On 8 February 2005 the Novgorod Regional Court upheld the judgment on appeal. It repeated verbatim the Town Court's finding that the audio and video recordings were admissible as evidence because they "had been obtained in the course of authorised covert operational-search measures aiming at uncovering criminal acts committed by Zubkov and the criminal group organised by him".

B. Application no. 7070/06 *Ippolitov v. Russia*

17. The applicant worked as an investigator at the Prosecutor General's Office.

18. On 6 April 2004 he was arrested and charged with aiding and abetting bribery.

19. On 29 October 2004, while studying the criminal case file, the applicant discovered that it contained audio recordings of his telephone conversations during the period from November 2003 to March 2004.

20. The criminal case file also contained a letter of 21 October 2004 from the Federal Security Service to the local prosecutor stating that the audio recordings had been obtained in the course of covert operational-search measures authorised by the Tver Regional Court in its decisions nos. 55-21, 55-30, 55-76, 55-93 and 55-103. Given that they were classified documents, the decisions could not be shown to the prosecutor and would be shown to the trial court only at its request.

21. During the trial the applicant pleaded not guilty. He argued, in particular, that the audio and video recordings were inadmissible as evidence because the case file did not contain a copy of the judicial authorisation. The prosecutor stated in reply that the interception of his telephone communications had been authorised by the Tver Regional Court. A copy of the authorisation had not been included in the case file because it was confidential.

22. On 14 May 2005 the Regional Court convicted the applicant of aiding and abetting bribery and sentenced him to three years' imprisonment. The court relied, among other things, on the audio recordings of his telephone conversations. The court rejected the applicant's argument that the audio recordings were inadmissible as evidence, finding that "the examination of the material in the case file [had] permitted [the court] to establish that the evidence [had been] obtained in accordance with the Code of Criminal Procedure and the Operational-Search Activities Act".

23. The applicant appealed. He submitted that the Regional Court had not given reasons for its finding that the audio recordings were admissible as evidence. In particular, it had not examined whether the interception of his telephone conversations had been duly authorised by a court and carried out in accordance with the procedure prescribed by law.

24. On 7 December 2005 the Supreme Court of Russia upheld the judgment on appeal. The court did not specifically address the applicant's argument that the audio recordings were inadmissible as evidence. It held that the finding of guilt had been based on evidence which had been properly analysed and assessed by the Regional Court. The applicant received the decision on 7 March 2006.

C. Application no. 5402/07 *Gorbunov v. Russia*

1. The applicant's detention

25. On 5 July 2006 the Frunzenskiy District Court of Vladimir ordered the applicant's detention on charges of fraud. The applicant was absent from the hearing but his counsel attended. On 14 July 2006 the Vladimir Regional Court upheld the detention order on appeal. The applicant was absent also from the appeal hearing, which was again attended by his counsel.

26. On 3 November 2006 the Frunzenskiy District Court extended the applicant's detention until 5 January 2007. On 7 November 2006 the applicant appealed. On 5 December 2006 the Vladimir Regional Court found that there were no reasons to vary the preventive measure and upheld the decision of 3 November 2006.

27. The applicant's detention was further extended on several more occasions.

2. Conditions of detention in remand prisons

28. In the period from 14 September 2006 to 12 January 2007 the applicant was detained in four remand prisons. According to the applicant, all four remand prisons were overcrowded.

29. From 14 to 22 September 2006 the applicant was held in remand prison IZ-67/1 in Smolensk. Cell 196 measuring 15 sq. m was equipped with eight sleeping places and accommodated up to sixteen inmates.

30. From 25 to 28 September 2006 the applicant was held in remand prison 76/1 in Yaroslavl. Cell 133 measuring 9 sq. m was equipped with seven sleeping places and accommodated up to eight inmates.

31. From 29 September to 1 October 2006 the applicant was held in remand prison 43/1 in Kirov. His cell measuring 50 sq. m was equipped with forty sleeping places and accommodated up to twenty inmates. The cell was equipped with wooden boards instead of individual beds.

32. From 2 October 2006 to 12 January 2007 the applicant was held in remand prison 33/1 in Vladimir. Cell 63 measuring 14 sq. m was equipped with four sleeping places and accommodated up to five inmates.

3. Conditions of transport

33. On 28 and 29 September 2006 the applicant was transported by rail between remand prison IZ-76/1 and remand prison IZ-43/1 from Yaroslavl to Kirov. The train compartment was equipped with seven sleeping places and accommodated up to ten inmates.

34. On 1 and 2 October 2006 the applicant was transported by rail between remand prison IZ-43/1 and remand prison IZ-33/1 from Kirov to Vladimir. The train compartment was equipped with seven sleeping places and accommodated up to twelve inmates.

4. Interception of the applicant's telephone communications

35. On 25 December 2006 the applicant started to study the criminal case file and discovered that it contained audio recordings of his telephone conversations between 22 and 25 July 2004.

36. On 2 February 2007 the applicant asked the investigator for a copy of the judicial decision authorising the interception. On the same day the investigator refused his request. Relying on the Interior Ministry's Order no. 336 of 13 May 1998 (see paragraph 54 below), he replied that the police were not required to send the interception authorisation to the investigator; it was to be kept in the operational search file. The Vladimir Regional Court's decisions of 28 May and 2 June 2004 authorising interception of the applicant's telephone communications were stored by the local police. They were classified documents and neither the applicant nor his counsel, who had no security clearance, could be granted access to them.

37. On 6 February 2007 the applicant complained to the Frunzenskiy District Court of Vladimir that the interception of his telephone communications had been unlawful, in particular because the case file did not contain a judicial authorisation. He submitted that the refusal to give him a copy of the interception authorisation had frustrated him in the

exercise of his defence rights and deprived him of an effective remedy against an interference with his rights guaranteed by Articles 23 and 24 of the Constitution and Article 8 of the Convention. In particular, he had been unable to ascertain whether the interception authorisation had been issued by a competent court in accordance with the procedure prescribed by law, whether it had been based on relevant and sufficient reasons or whether the requirements for judicial authorisation, such as the authorised duration of interception, had been complied with at the implementation stage.

38. On 19 February 2007 the Frunzenskiy District Court examined the complaint under Article 125 of the Code of Criminal Procedure (see paragraph 63 below) and rejected it. Relying on section 12 of the Operational-Search Activities Act (see paragraph 49 below), the court held that the judicial decision authorising operational-search measures and the material that served as a basis for that decision were to be held in the exclusive possession of the State agency performing such measures. It had therefore not been included in the criminal case file and the defendant was not entitled to have access to it. The court further referred to the Constitutional Court's ruling of 14 July 1998, holding that the person whose communications were to be intercepted was not entitled to participate in the authorisation proceedings or to be informed about the decision taken (see paragraph 50 below). The refusal to give the applicant a copy of the judicial authorisation had therefore been lawful. The court also rejected the applicant's complaint about the unlawfulness of the interception, without giving any reasons.

39. On 3 April 2007 the Vladimir Regional Court upheld the decision of 19 February 2007 on appeal, finding it lawful, well reasoned and justified.

II. RELEVANT DOMESTIC LAW

A. Right to respect for private life, home and correspondence

40. The Constitution guarantees to everyone the right to respect for his private life, personal and family secrets and the right to defend his honour and reputation (Article 23 § 1). It further guarantees the right to respect for correspondence, telephone, postal, telegraph and other communications. That right may be restricted only on the basis of a court order (Article 23 § 2).

41. The Constitution also stipulates that it is not permissible to collect, store, use or disseminate information about a person's private life without his or her consent. State and municipal authorities must ensure that any person has access to documents and material affecting his rights and freedoms, except where the law provides otherwise (Article 24).

42. The Constitution also guarantees to everyone the right to respect for his or her home. Nobody may enter a home without the consent of those

living in it, except in cases established by federal law, or on the basis of a court order (Article 25).

B. Provisions on interception of communications and inspection of the home, and use of the data thereby collected in criminal proceedings

1. Authorisation of interception of communications or inspection of the home

43. The Operational-Search Activities Act of 12 August 1995 (Law no. 144-FZ – hereafter "the OSAA") provides that "operational-search" measures ("*оперативно-розыскные мероприятия*") may include, among other things, the interception of postal, telegraphic, telephone and other forms of communication; the collection of data from technical channels of communication; the inspection of premises, buildings, other installations, vehicles and areas; "surveillance" ("*наблюдение*"); and "operative experiments" ("*оперативный эксперимент*"). Audio and video recording, photography, filming and other technical means may be used during operational-search activities, provided that they are not harmful to anyone's life or health or to the environment (section 6).

44. The aims of operational-search activities are: (1) to detect, prevent, suppress and investigate criminal offences and the identification of persons conspiring to commit, committing, or having committed a criminal offence; (2) to trace fugitives from justice and missing persons; and (3) to obtain information about events or activities endangering the national, military, economic or ecological security of the Russian Federation (section 2 of the OSAA, as in force at the material time).

45. Operational-search activities involving interference with the constitutional right to the privacy of postal, telegraphic and other communications transmitted by means of a telecommunications network or mail services ("interception of communications"), or within the privacy of the home ("inspection of the home"), may be conducted following the receipt of information (1) that a criminal offence has been committed or is ongoing, or is being plotted; (2) about persons conspiring to commit, or committing, or having committed a criminal offence; or (3) about events or activities endangering the national, military, economic or ecological security of the Russian Federation (section 8(2) of the OSAA).

46. At the material time the interception of communications or inspection of the home could be authorised only in cases where a person was suspected of, or charged with, a serious offence or an especially serious criminal offence, or might have information about such an offence (section 8(4) of the OSAA, as in force until 24 July 2007). Since 24 July 2007 the interception of communications or inspection of the home may be

authorised also in cases where a person is suspected of, or charged with, a criminal offence of medium severity.

47. Operational-search measures involving interception of communications or inspection of the home require prior judicial authorisation (section 8(2) of the OSAA). The judge must specify the period of time for which the authorisation is granted, which must not normally exceed six months. If necessary, the judge may extend the authorised period after a fresh examination of all the relevant material (section 9(4) and (5) of the Act). The judge takes a decision on the basis of a reasoned request by the head of one of the agencies competent to perform operational-search activities. Relevant supporting material, except material containing information about undercover agents or police informers or about the organisation and tactics of operational-search measures, must also be produced at the judge's request (section 9(2) and (3) of the Act).

48. In urgent cases where there is an immediate danger that a serious or especially serious offence might be committed or where there is information about events or activities endangering national, military, economic or ecological security, the operational-search measures specified in section 8(2) may be conducted without prior judicial authorisation. In such cases a judge must be informed within twenty-four hours of the commencement of the operational-search activities. If judicial authorisation has not been obtained within forty-eight hours of the commencement of the operational-search activities, those activities must be stopped immediately (section 8(3) of the Act).

49. The judicial decision authorising operational-search activities and the material that served as a basis for that decision must be held in the exclusive possession of the State agency performing such activities (section 12(3) of the Act).

50. On 14 July 1998 the Constitutional Court, in its decision no. 86-O, dismissed as inadmissible a request for a review of the constitutionality of certain provisions of the OSAA. Relying on the need to keep surveillance measures secret, the Constitutional Court held that the principles of a public hearing and adversarial proceedings were not applicable to the authorisation proceedings. The fact that the person concerned was not entitled to participate in the authorisation proceedings, to be informed about the decision taken or to appeal to a higher court did not, therefore, violate his or her constitutional rights.

51. On 15 July 2008 the Constitutional Court, in its decision no. 460-O-O, held that a person whose communications had been intercepted was entitled to apply for a supervisory review of the judicial decision authorising the interception. The fact that he had no copy of that decision did not prevent him from applying for a supervisory review, because the relevant court could request it from the competent authorities.

2. Use in criminal proceedings of data collected as a result of operational-search activities

52. Information about the facilities used in covert operational-search activities, the methods employed, the officials involved and the data thereby collected constitutes a State secret. It may be declassified only pursuant to a special decision of the head of the State agency performing the operational-search activities (section 12(1) of the OSAA and section 5(4) of the State Secrets Act (Law no. 5485-I of 21 July 1993)).

53. Data collected as a result of operational-search activities may be used for the preparation and conduct of the investigation and court proceedings, and used as evidence in criminal proceedings in accordance with the legal provisions governing the collection, evaluation and assessment of evidence. The decision to transfer the collected data to other law-enforcement agencies or to a court is taken by the head of the State agency performing the operational-search activities (section 11 of the OSAA).

54. Interior Ministry Order no. 336 of 13 May 1998, in force until 17 April 2007, provided that if the data collected in the course of operational-search activities contained information that could serve as a basis for opening a criminal case or could be used as evidence in criminal proceedings, that information was to be sent to the competent investigating authorities or to a court (§ 2). The transmitted data should be capable of meeting the procedural requirements of admissibility of evidence. The data transmitted should permit (a) the establishment of the circumstances relevant to the criminal case; (b) the establishment of the source of the transmitted data; and (c) the verification of its admissibility at the trial (§ 7). The data were to be transmitted in accordance with the special procedure for handling classified information, unless the State agency performing operational-search activities had decided to declassify them (§ 9).

55. On 17 April 2007 Order no. 336 was replaced by Order no. 9407, which remained in force until 27 September 2013 and contained in substance the same provisions. However, by contrast to Order no. 336, Order no. 9407 explicitly provided that if the transmitted data had been obtained as a result of operational-search measures involving interception of communications or inspection of the home, they had be sent to the investigating or prosecuting authorities together with the judicial decision authorising those measures (§ 13). On 27 September 2013 Order no. 9407 was replaced by Order no. 30544, which reiterates the same requirements for transmitted data as those in Order no. 9407.

56. The Code of Criminal Procedure (hereafter "the CCrP") prohibits the use in evidence of data obtained as a result of operational-search activities that do not comply with the admissibility-of-evidence requirements of the CCrP (Article 89 of the CCrP). Evidence obtained in breach of the CCrP is inadmissible. Inadmissible evidence has no legal force and cannot be relied

on as grounds for criminal charges or for proving any of the circumstances for which evidence is required in criminal proceedings. If a court decides to exclude evidence, that evidence has no legal force and cannot be relied on in a judgment or other judicial decision, or be examined or used during the trial (Articles 75 and 235 of the CCrP).

57. In its decision of 15 July 2008 (cited in paragraph 51 above), the Constitutional Court held that the statutory requirement contained in section 12(3) of the OSAA – that the judicial decision authorising operational-search activities had to be held in the exclusive possession of the State agency performing the operational-search activities – did not prevent the inclusion of such judicial authorisation in the criminal case file. If a copy of the judicial authorisation was not included in the case file, the data obtained as a result of operational-search measures involving interception of communications or inspection of the home could not be used as evidence in criminal proceedings.

C. Judicial review

1. General provisions on judicial review of interception of communications, as established by the OSAA

58. A person claiming that his or her rights have been or are being violated by actions of a State official performing operational-search activities may complain about such actions to the official's superior, a prosecutor or a court. If the person's rights were violated in the course of operational-search activities by a State official, the official's superior, a prosecutor or a court must take measures to remedy the violation and compensate for any damage caused (section 5(3) and (9) of the OSAA).

59. If a person was refused access to information about the data collected about him or her in the course of operational-search activities, he or she is entitled to know the reasons for the refusal of access and may appeal against the refusal to a court. The burden of proof is on the law-enforcement authorities to show that the refusal of access is justified. To ensure a full and thorough judicial examination, the law-enforcement agency responsible for the operational-search activities must produce, at the judge's request, operational-search material containing information about the data to which access was refused, with the exception of material containing information about undercover agents or police informers. If the court finds that the refusal to grant access was unjustified, it may compel the law-enforcement agency to disclose the material to the person concerned (section 5(4 to 6) of the OSAA).

60. In its decision of 14 July 1998 (cited in paragraph 50 above) the Constitutional Court noted that a person who had learned that he or she had been subjected to operational-search activities and believed that the actions

of State officials had violated his or her rights was entitled, under section 5 of the OSAA, to challenge before a court the actions of the authorities performing the operational-search activities and the measures applied to them, including in those cases where they had been authorised by a court.

61. At the material time a person wishing to complain of the interception of his or her communications could lodge a judicial review complaint under either Article 125 of the CCrP or Chapter 25 of the Code of Civil Procedure (hereafter "the CCP") and the Judicial Review Act (replaced, as from 15 September 2015, by the Code of Administrative Procedure).

2. Judicial review complaint under Article 125 of the CCrP

62. In its Ruling no. 1 of 10 February 2009, the Plenary Supreme Court held that decisions or actions of officials or State agencies conducting operational-search activities at the request of an investigator could be challenged in accordance with the procedure prescribed by Article 125 of the CCrP (paragraph 4 of Ruling no. 1). Complaints lodged under that Article may be examined only while the criminal investigation is pending. If the case has already been transmitted to a court for trial, the judge declares the complaint inadmissible and explains to the complainant that he or she may raise the complaints before the relevant trial court (paragraph 9 of Ruling no. 1).

63. Article 125 of the CCrP provides for the judicial review of decisions and acts or failures to act by an investigator or a prosecutor which are capable of adversely affecting the constitutional rights or freedoms of the participants to criminal proceedings. The lodging of a complaint does not suspend the challenged decision or act, unless the investigator, the prosecutor, or the court decides otherwise. The court must examine the complaint within five days. The complainant, his counsel, the investigator and the prosecutor are entitled to attend the hearing. The complainant must substantiate his complaint (Article 125 §§ 1-4 of the CCrP).

64. Participants in the hearing are entitled to study all the material submitted to the court and to submit additional material relevant to the complaint. The disclosure of criminal-case material is permissible only if it is not contrary to the interests of the investigation and does not breach the rights of the participants in the criminal proceedings. The judge may request the parties to produce the material which served as a basis for the contested decision or any other relevant material (paragraph 12 of Plenary Supreme Court Ruling no. 1 of 10 February 2009).

65. Following the examination of the complaint, the court either declares the challenged decision, act or failure to act unlawful or insufficiently well reasoned ("*необоснованный*") and instructs the responsible official to rectify the indicated shortcoming, or dismisses the complaint (Article 125 § 5 of the CCrP). When instructing the official to rectify the indicated shortcoming, the court may not indicate any specific measures to be taken

by the official or annul or order that the official annul the decision found to be unlawful or insufficiently well founded (paragraph 21 of Ruling no. 1 of 10 February 2009 of the Plenary Supreme Court of the Russian Federation).

3. Judicial review complaint under Chapter 25 of the CCP and the Judicial Review Act

66. Plenary Supreme Court Ruling no. 2 of 10 February 2009 provides that complaints about decisions and acts of officials or agencies performing operational-search activities that may not be challenged in criminal proceedings, as well as complaints about refusal of access to information about the data collected in the course of operational-search activities, may be examined in accordance with the procedure established by Chapter 25 of the CCP (paragraph 7 of Ruling no. 2).

67. Chapter 25 of the CCP, in force until 15 September 2015, set out the procedure for examining complaints against decisions and acts of officials violating citizens' rights and freedoms, which was further detailed in the Judicial Review Act (Law no. 4866-1 of 27 April 1993 on the judicial review of decisions and acts violating citizens' rights and freedoms).

68. Chapter 25 of the CCP and the Judicial Review Act both provided that a citizen could lodge a complaint before a court about an act or decision by any State or municipal authority or official if he considered that the act or decision had violated his rights and freedoms (Article 254 of the CCP and section 1 of the Judicial Review Act). The complaint might concern any decision, act or omission which had violated the citizen's rights or freedoms, had impeded the exercise of rights or freedoms, or had imposed a duty or liability on him (Article 255 of the CCP and section 2 of the Judicial Review Act).

69. The complaint had to be lodged with a court of general jurisdiction within three months of the date on which the complainant had learnt of the breach of his rights. The time-limit might be extended for valid reasons (Article 254 of the CCP and sections 4 and 5 of the Judicial Review Act). The complaint had to be examined within ten days (Article 257 of the CCP).

70. When examining the case the court had to ascertain: whether the complainant had complied with the time-limit for lodging a complaint and whether the contested decision, act or omission had been lawful and justified (paragraph 22 of Plenary Supreme Court Ruling no. 2). In particular, the court had to examine: (a) whether the State or municipal authority or official had had the competence to make the contested decision or to perform the contested act or omission – if the law conferred discretionary powers on the State or municipal authority or official, the court had no competence to examine the reasonableness ("*целесообразность*") of their decisions, acts or omissions; (b) whether the procedure prescribed by law had been complied with – only serious breaches of procedure could render the contested decision, act or omission

unlawful; and (c) whether the contents of the contested decision, act or omission met the requirements of law. The contested decision, act or omission was to be declared unlawful if one of the above conditions had not been complied with (paragraph 25 of Ruling no. 2).

71. The burden of proof as to the lawfulness of the contested decision, act or omission lay with the authority or official concerned. The complainant, however, had to prove that his rights and freedoms had been breached by the contested decision, act or omission (section 6 of the Judicial Review Act and paragraph 20 of Plenary Supreme Court Ruling no. 2).

72. The court allowed the complaint if it had been established that the contested decision, act or omission had breached the complainant's rights or freedoms and had been unlawful (paragraph 28 of Plenary Supreme Court Ruling no. 2). In that case it overturned the contested decision or act and required the authority or official to remedy in full the breach of the citizen's rights. (Article 258 § 1 of the CCP and section 7 of the Judicial Review Act). The court could determine a time-limit for remedying the violation and/or the specific steps which needed to be taken to remedy the violation in full (paragraph 28 of Plenary Supreme Court Ruling no. 2). The claimant could then claim compensation in respect of pecuniary and non-pecuniary damage in separate civil proceedings (section 7 of the Judicial Review Act).

73. The court rejected the complaint if it found that the challenged act or decision had been taken by a competent authority or official, had been lawful, and had not breached the complainant's rights (Article 258 § 4 of the CCP).

74. A party to the proceedings could lodge an appeal with a higher court (Article 336 of the CCP as in force until 1 January 2012; Article 320 of the CCP as in force after 1 January 2012). The appeal decision entered into force on the day it was delivered (Article 367 of the CCP as in force until 1 January 2012; Article 329 § 5 as in force after 1 January 2012).

75. The CCP provided that a judicial decision allowing a complaint and requiring the relevant authority or official to remedy the breach of the citizen's rights had to be dispatched to the head of the authority concerned, to the official concerned or to his or her superiors, within three days of its entry into force (Article 258 § 2 of the CCP). The Judicial Review Act required that the judicial decision be dispatched within ten days of its entry into force (section 8). The court and the complainant had to be notified of the enforcement of the decision no later than one month after its receipt (Article 258 § 3 of the CCP and section 8 of the Judicial Review Act).

76. On 15 September 2015 Chapter 25 of the CCP and the Judicial Review Act were repealed and replaced by the Code of Administrative Procedure (Law no. 21-FZ of 8 March 2015, hereafter "the CAP"), which entered into force on that date. The CAP confirmed in substance and expounded the provisions of Chapter 25 of the CCP and the Judicial Review Act.

THE LAW

I. JOINDER OF THE APPLICATIONS

77. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their factual and legal similarities.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

78. The applicants complained that the interception of their telephone communications and, for one of the applicants, the covert filming of his meetings with acquaintances in a rented flat, had violated their right to respect for their private life, correspondence and home. They relied on Article 8 of the Convention, which reads as follows:

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

A. Admissibility

1. Submissions by the parties

(a) The Government

79. The Government submitted that the applicants had not exhausted domestic remedies. Relying on the Constitutional Court's Ruling of 14 July 1998 (see paragraph 60 above), they submitted that a person who learned that he or she had been subjected to operational-search activities and believed that the actions of State officials – including their refusal to grant access to information about the data collected – had violated his or her rights was entitled to complain to a court under section 5 of the OSAA (see paragraphs 58 and 59 above). As explained by the Plenary Supreme Court (see paragraph 66 above), such complaints were to be examined in accordance with the procedure set out in Chapter 25 of the CCP and the Judicial Review Act.

80. The Government further submitted that the fact that the person concerned did not possess a copy of the interception authorisation did not prevent him or her from lodging such a complaint, because the relevant court could request a copy of the interception authorisation from the competent authorities (they referred to the Constitutional Court's ruling of 15 July 2008 concerning the possibility of applying for a supervisory review

of the judicial decision authorising interception of communications, cited in paragraph 51 above). In any event, the proper procedure was to lodge a complaint under section 5 of the OSAA about the actions of State officials who had carried out the interception, rather than to appeal against the interception authorisation itself.

81. The Government further submitted that instead of using the above effective remedy, Mr Zubkov and Mr Ippolitov (applications nos. 29431/05 and 7070/06) had chosen to raise the issue of covert surveillance in the criminal proceedings against them by contesting the admissibility of the audio and video recordings as evidence. The Government considered that contesting the admissibility of evidence in the framework of criminal proceedings could not be regarded as an effective remedy in respect of a complaint under Article 8. The aim of such a remedy was to exclude unlawfully obtained evidence from the list of evidence examined during the trial. It could therefore provide appropriate redress for a complaint under Article 6, but not for a complaint under Article 8. Indeed, the purpose of the criminal proceedings was to establish whether the defendant was innocent or guilty of the criminal charges levelled against him or her, rather than to attribute responsibility for the alleged violations of his or her right to respect for private life, home or correspondence. The remedy used by Mr Gorbunov (application no. 5402/07) had also been ineffective because he had appealed against the refusal to give him a copy of the judicial authorisation, rather than against the actions of the State officials who had intercepted his communications.

82. The Government submitted in their further observations that Mr Gorbunov had moreover not complied with the six-month rule. The application form in which he had raised the complaint under Article 8 for the first time had been signed on 3 October 2007, the last day of the six-month time-limit. There was, however, no evidence that it had been dispatched on that date. The postal receipt of 3 October 2007 produced by the applicant's representative did not prove that it concerned precisely that application form. It could have concerned a letter sent by the representative to the Court in connection with another pending case. The Government therefore considered that the date on which the Court had received the application form should be taken as the date of introduction, with the consequence that the applicant had missed the six-month time-limit.

(b) The applicants

83. The applicants submitted that the remedy suggested by the Government had been ineffective. Mr Zubkov and Mr Ippolitov argued that they had raised their complaints about unlawful covert surveillance in the criminal proceedings against them, both before the trial court and on appeal. They therefore considered that they had exhausted the domestic remedies.

84. Mr Gorbunov submitted that he had complained to a court that both the refusal to give him a copy of the judicial authorisation and the interception itself had been unlawful. He conceded that his complaint about the unlawfulness of the interception had been sparsely reasoned. He had been unable, however, to advance more detailed arguments without knowing the contents of the judicial authorisation, that is without having any possibility of ascertaining whether the interception authorisation had been issued by a competent court in accordance with the procedure prescribed by law, whether it had been based on relevant and sufficient reasons or whether the requirements of the judicial authorisation, for example the authorised duration of the interception, had been complied with at the implementation stage. The applicant further argued that he had preferred the procedure under Article 125 of the CCrP to the procedure under Chapter 25 of the CCP and that the Plenary Supreme Court had explained that it was the correct avenue in cases where criminal proceedings were pending (see paragraph 62 above). Given that his complaint under Article 125 of the CCrP had been rejected, a similar complaint under Chapter 25 of the CCP had no prospects of success.

2. The Court's assessment

(a) Exhaustion of domestic remedies

85. The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention - with which it has close affinity – that there is an effective remedy available in the domestic system in respect of the alleged breach, whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

86. Under Article 35 an applicant should normally have recourse to remedies which are available and sufficient to afford redress in respect of the breaches alleged. There is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others*, cited above, §§ 66 and 67).

87. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an

effective one, available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others*, cited above, § 68).

88. Turning to the circumstances of the present case, the Court notes at the outset that two of the applicants (Mr Zubkov and Mr Ippolitov) raised the issue of covert surveillance in the criminal proceedings against them. The Court has occasionally accepted that that remedy was apparently effective and sufficient and therefore the applicants who had pursued it complied with the exhaustion requirement (see *Dragojević v. Croatia,* no. 68955/11, §§ 35, 42, 47 and 72, 15 January 2015; *Šantare and Labazņikovs v. Latvia*, no. 34148/07, §§ 25 and 40-46, 31 March 2016; and *Radzhab Magomedov v. Russia,* no. 20933/08, §§ 20 and 77-79, 20 December 2016, where the applicants had challenged the admissibility of the evidence obtained as a result of the allegedly unlawful covert surveillance measures in the criminal proceedings against them). On a closer examination, however, the Court has found that the courts in criminal proceedings were not capable of providing an effective remedy in the following situations: although they could consider questions of the fairness of admitting the evidence in the criminal proceedings, it was not open to them to deal with the substance of the Convention complaint that the interference with the applicants' right to respect for their private life and correspondence was not "in accordance with the law" or not "necessary in a democratic society"; still less was it open to them to grant appropriate relief in connection with the complaint (see *Khan v. the United Kingdom*, no. 35394/97, § 44, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 86, ECHR 2001-IX; *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, § 59, 8 March 2011; and *İrfan Güzel v. Turkey*, no. 35285/08, §§ 106-07, 7 February 2017). This also applies to Russia. The Court therefore agrees with the Government 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.

89. The Court will next assess whether the applicants had at their disposal an effective remedy which they were required to exhaust before applying to the Court. It has already found that Russian law did not provide for an effective remedy against covert surveillance measures in cases where no criminal proceedings had been brought against the subject of the surveillance, in particular because the remedies invoked by the Government were available (a) only to persons who had at least minimum information

about the judicial decision authorising interception of their communications, such as its date and the court which issued it (in the case of a supervisory review application); (b) only to participants to criminal proceedings while a pre-trial investigation was pending (a complaint under Article 125 of the CCrP); or (c) due to the distribution of the burden of proof, only to persons who were in possession of information about the interception of their communications (a judicial review complaint under the Judicial Review Act, Chapter 25 of the CCP and the new Code of Administrative Procedure). It has, however, left open the question whether those remedies would be available and effective in cases where an individual learned about the interception of his or her communications in the course of criminal proceedings against him or her (see *Roman Zakharov v. Russia* [GC], no. 47143/06, §§ 294-98, ECHR 2015).

90. By contrast to the applicant in the *Roman Zakharov* case, the applicants in the present case learned about the interception of their communications in the course of criminal proceedings against them. The Court's findings concerning the effectiveness of the remedies in the *Roman Zakharov* case are therefore not directly applicable to the present case. Indeed, the applicants were provided with some information about the surveillance measures taken against them, such as the period during which the surveillance had been carried out; or the dates and registration numbers of the relevant judicial authorisations and the courts that had issued them; or copies of the data collected. Arguably, that information could permit them to discharge the burden of proof to show that the surveillance had taken place and that their rights had thereby been breached, and to transfer the burden of proof to the authorities to show that it had been lawful (see paragraph 71 above).

91. That being said, it is significant that despite their requests, the applicants were not given copies of the judicial decisions authorising the covert surveillance measures and did not therefore know their contents. The Court considers that the non-communication of the factual and legal reasons for ordering covert surveillance measures must have undermined the applicants' ability to exercise their right to bring legal proceedings in an effective manner. The Court will bear that in mind when assessing the effectiveness of remedies available under Russian law.

92. The Government did not claim that the applicants should have appealed to a higher court against the judicial decisions authorising covert surveillance measures. Indeed, the OSAA does not provide for the possibility of lodging an appeal against such a decision, even after the individual concerned has come to know of its existence (see *Avanesyan v. Russia*, no. 41152/06, § 30, 18 September 2014). The Constitutional Court stated clearly that a surveillance subject had no right to participate in the authorisation proceedings, and therefore no right to appeal against the judicial decision authorising interception of his communications (see

paragraph 50 above). At the same time, the Constitutional Court explained in 2008 – that is, after the facts of the present case – that a person who had been subjected to surveillance was entitled to apply for a supervisory review (see paragraph 51 above). The Court notes in this connection that, according to its constant practice, an application for a supervisory review in the context of criminal proceedings has so far not been considered as a remedy to be exhausted under Article 35 § 1 (see, among many others, *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II (extracts); *Maayevy v. Russia*, no. 7964/07, § 81, 24 May 2011; and *Chumakov v. Russia*, no. 41794/04, § 125, 24 April 2012).

93. The Court further observes that section 5 of the OSAA provides that a surveillance subject may complain to a court about actions of State officials performing surveillance activities (see paragraphs 58 and 59 above). That provision, however, does not specify the procedure for the examination of such complaints. The Plenary Supreme Court later clarified that such complaints were to be examined under either Article 125 of the CCrP or the Judicial Review Act and Chapter 25 of the CCP. The procedure under Article 125 of the CCrP was to be used only while the criminal investigation was pending, that is until the criminal case was transmitted to a court for trial, whereas the procedure under the Judicial Review Act and Chapter 25 of the CCP was to be used in all other cases where a complaint under Article 125 of the CCrP was not possible (see paragraphs 62 and 66 above).

94. The Court notes that the judicial review procedure under Article 125 of the CCrP was used by one of the applicants (Mr Gorbunov), but the Government claimed that it was ineffective and that all the applicants should have used the judicial review procedure under the Judicial Review Act and Chapter 25 of the CCP. Given the substitutability of the two procedures explained by the Plenary Supreme Court and their many common features, the Court will assess their effectiveness together.

95. The Court notes that the scope of a judicial review complaint under section 5 of the OSAA – irrespective of whether it was lodged in proceedings under Article 125 of the CCrP or under the Judicial Review Act and Chapter 25 of the CCP – was limited to reviewing the actions of State officials performing surveillance activities, that is whether or not they had carried out the surveillance in a manner compatible with the applicable legal requirements and whether they had abided by the terms of the judicial authorisation. The review did not touch upon the legal and factual grounds for the underlying judicial authorisation, that is, whether there were relevant and sufficient reasons for authorising covert surveillance (see *Avanesyan*, cited above, §§ 31-33, concerning an "inspection" of the applicant's flat under the OSAA).

96. Indeed, in accordance with Chapter 25 of the CCP and the Judicial Review Act, in force at the material time, the sole relevant issue before the

domestic courts was whether the actions of the State officials performing covert surveillance were lawful (see paragraphs 72 to 73 above). It is clear from the Supreme Court's interpretation of the relevant provisions that "lawfulness" was understood as compliance with the rules of competence, procedure and contents (see paragraph 70 above). It follows that the courts were not required by law to examine the issues of "necessity in a democratic society", in particular whether the contested actions answered a pressing social need and were proportionate to any legitimate aims pursued, principles which lie at the heart of the Court's analysis of complaints under Article 8 of the Convention (see paragraph 124 below).

97. As regards the judicial review procedure under Article 125 of the CCrP, in addition to the issue of lawfulness, the domestic courts are also required to examine whether the State officials' actions were "well reasoned" ("*обоснованный*") (see paragraph 65 above). However, the domestic law does not provide for any substantive criteria for determining whether the actions were "well reasoned". The term "well reasoned" commonly means no more than based on "valid" or "sound" reasons (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 419, 7 February 2017). There is no requirement that the actions be considered "necessary in a democratic society", and therefore no requirement of any assessment of the proportionality of the measure. In any event, the Court is not convinced that a judge would have competence to review the "necessity" of the actions based on a valid judicial authorisation that had become *res judicata*.

98. The Court has already found on a number of occasions, in the context of Article 8, that a judicial review remedy incapable of examining whether the contested interference answered a pressing social need and was proportionate to the aims pursued could not be considered an effective remedy (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, §§ 135-39, ECHR 1999-VI; *Peck v. the United Kingdom*, no. 44647/98, §§ 105-07, ECHR 2003-I; and *Keegan v. the United Kingdom*, no. 28867/03, §§ 40-43, ECHR 2006-X).

99. In view of the above considerations, the Court finds that a judicial review complaint under section 5 of the OSAA – lodged in proceedings either under Article 125 of the CCrP or under the Judicial Review Act and Chapter 25 of the CCP – was not an effective remedy to be exhausted. It therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

(b) Compliance with the six-month time-limit

100. The Court reiterates that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought to protect the authorities and other persons concerned from being under any

uncertainty for a prolonged period of time. It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised. Lastly, the rule should ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-41, 29 June 2012).

101. The requirements contained in Article 35 § 1 concerning the exhaustion of domestic remedies and the six-month period are closely interrelated. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or after the date of knowledge of that act or its effect on or prejudice toward the applicant. At the same time, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate, for the purposes of Article 35 § 1, to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 136, ECHR 2012; and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 260, ECHR 2014 (extracts)). Also, if an extraordinary remedy is the only judicial remedy available to the applicant, the six-month time-limit may be calculated from the date of the decision given regarding that remedy (see *Ahtinen v. Finland* (dec.), no. 48907/99, 31 May 2005).

102. In reply to the Government's objection concerning Mr Gorbunov, the Court notes that it transpires from the documents in the case file that his application was dispatched on 3 October 2007, that is within six months of the final decision in the judicial review proceedings.

103. The Court further observes that Mr Zubkov and Mr Ippolitov introduced their applications within six months of the final judgments in the criminal proceedings against them, while Mr Gorbunov lodged his application within six months of the final decision in the judicial review proceedings under section 5 of the OSAA together with Article 125 of the CCrP. Given that the Court has found that neither of those sets of proceedings constituted effective remedies within the meaning of Article 35

§ 1 of the Convention, they cannot as a rule be taken into account for the purpose of the six-month rule.

104. The Court has also found that a judicial review complaint under section 5 of the OSAA together with the Judicial Review Act and Chapter 25 of the CCP, as invoked by the Government, was not an effective remedy either. The Government did not claim that the applicants had any other effective remedies at their disposal. It follows that, in the absence of an effective remedy, the six-month period should as a rule have started to run when the applicants first learned about the covert surveillance being carried out against them.

105. However, the Court will examine whether, in the circumstances of the present case, there was a possibility that the applicants, unaware of circumstances which rendered the remedies used by them ineffective, still complied with the six-month rule by availing themselves of those remedies (see *Skorobogatykh v. Russia*, no. 4871/03, §§ 30-34, 22 December 2009; *Artyomov v. Russia*, no. 14146/02, §§ 109-18, 27 May 2010; *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013; *Shishkov v. Russia*, no. 26746/05, §§ 84-86, 20 February 2014; and *Myalichev v. Russia*, no. 9237/14, § 13, 8 November 2016).

106. The Court notes that this is the first time that it has undertaken an examination of remedies existing in the Russian legal system for complaints about covert surveillance of which the subject of that surveillance has learned in the course of the criminal proceedings against him or her. Given the uncertainty as to the effectiveness of those remedies – and in particular given that 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 (see paragraph 88 above) – it was not unreasonable for the applicants to attempt to use an available remedy in order to give the domestic courts an opportunity to put matters right through the national legal system, thereby respecting the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, for a similar reasoning, *El-Masri*, cited above, § 141).

107. Indeed, the applicants only learned about the covert surveillance during the criminal proceedings, when the prosecution used the intercepted material as evidence to substantiate the cases against them. The Court considers that it was reasonable, in such circumstances, 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: by lodging a judicial review complaint under Article 125 of the CCrP or by raising the issue at the trial. The Court discerns nothing in the parties' submissions to suggest that the applicants were aware, or should have become aware, of the futility of such a course of action. Indeed, the domestic courts could, and did, examine whether the surveillance measures had been lawful and therefore

addressed, in substance, part of the applicants' Convention complaints. In those circumstances, the Court considers that the applicants cannot be reproached for their attempt to bring their grievances to the attention of the domestic courts through the remedies which they mistakenly considered effective (see, for a similar reasoning, *Šantare and Labazņikovs*, cited above, §§ 40-46, and *Radzhab Magomedov*, cited above, §§ 77-79).

108. Moreover, given the secret nature of surveillance, the Court takes note of the difficulties defendants may have in obtaining access to documents relating to it. This may prevent them from having a detailed understanding of the circumstances in which the surveillance had been carried out – such as the duration and dates of the surveillance, or the specific measures applied – and, most importantly, the grounds on which it had been ordered. It cannot therefore be regarded as unreasonable for an applicant to wait until he or she has received documents establishing the facts essential for an application to the Court before introducing such an application (see, *mutatis mutandis*, *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I).

109. The applicants in the present case were never given access to the judicial decisions authorising covert surveillance measures against them. It was not until the issue was examined by the courts in the criminal proceedings that the surveillance-related facts upon which the applicants based their complaints to the Court were established for the first time. It cannot therefore be regarded as unreasonable for them to have waited until they had received the conviction and appeal judgments before lodging their applications with the Court.

110. The Court accordingly finds that the applicants complied with the six-month rule.

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

B. Merits

1. Submissions by the parties

(a) The Government

112. The Government submitted at the outset that the flat rented by Mr Zubkov (application no. 29431/05) could not be considered his "home" within the meaning of the Russian Constitution (see paragraph 42 above). Under Russian law only residential premises were considered to be a "home", which enjoyed special protection. Other premises, such as business premises, were not regarded as "home" and did not therefore enjoy any special protection. The applicant had not been living in the flat in question;

he had been living at another address. He had rented the flat with the sole purpose of using it for his criminal activities, in particular for storing and packaging drugs, meeting his accomplices, discussing their criminal plans and distributing the profits obtained through drug-dealing. Accordingly, Article 8 did not apply to the video surveillance of the flat in question. There had therefore been no interference with his right to respect for his home.

113. The Government further submitted that the interception of the telephone communications of all three applicants and the video surveillance of the flat rented by Mr Zubkov had been carried out on the basis of proper judicial authorisations, in accordance with the procedure prescribed by domestic law.

114. The judicial authorisations had not been included in the criminal case files because, pursuant to the OSAA, they were confidential documents. Relying on the Constitutional Court's ruling of 14 July 1998 (see paragraph 50 above), the Government submitted that, because of the need to keep the surveillance measures secret, the person whose communications were to be intercepted was not entitled to participate in the authorisation proceedings, to be informed about the decision taken or to receive a copy of the interception authorisation. The Government also submitted that Mr Ippolitov had never asked for copies of the judicial authorisations in his case. He could not therefore claim that he had been refused access to them.

115. The Government further argued that Russian law met the Convention "quality of law" requirements. All legal provisions governing covert surveillance had been officially published and were accessible to the public. Russian law clearly set out the nature of offences which might give rise to a covert surveillance order; a definition of the categories of people liable to have their telephones tapped; a limit on the duration of such surveillance; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or destroyed.

116. Lastly, the Government submitted that covert surveillance could only be carried out for the purposes specified in the OSAA (see section 44 above) and only on the basis of a court order. Those legal provisions guaranteed that covert surveillance, including that in the applicants' cases, was ordered only when necessary in a democratic society.

(b) The applicants

117. Mr Zubkov expressed a doubt as to the existence of the judicial authorisation in his case, given that he had never been given a copy of it.

118. Mr Ippolitov submitted that he had claimed on many occasions that the audio recordings had been inadmissible as evidence because the case file

did not contain copies of the judicial authorisations. Despite that, the trial court had not examined whether such judicial authorisations existed. He further argued that at that stage of the proceedings, there had no longer been any need to maintain the confidentiality of the judicial authorisations, as the surveillance measures had been terminated. Moreover, they were no longer secret as the data collected had been disclosed at the trial. In support of his position he referred to Order no. 9407 of 17 April 2007, which explicitly stated that judicial decisions authorising the interception of communications had to be sent to the investigating or prosecuting authorities together with the data collected (see paragraph 55 above). The failure to produce a copy of the interception authorisation either to the applicant or to the Court had made it impossible to verify whether the interception of the applicant's telephone communications had been carried out in accordance with the procedure prescribed by domestic law.

119. Mr Gorbunov maintained his claims.

2. The Court's assessment

(a) Was there an interference?

120. The Court accepts, and it is not disputed by the parties, that the measures aimed at the interception of the applicants' telephone communications amounted to an interference with the exercise of their rights set out in Article 8 of the Convention. The Court reiterates in this connection that telephone conversations are covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1 (see, among many other authorities, *Dumitru Popescu v. Romania (no. 2)*, no. 71525/01, § 61, 26 April 2007, with further references).

121. The Government disputed that the flat rented by Mr Zubkov (application no. 29431/05) could be considered his "home" and argued that the video surveillance of that flat did not amount to an interference with the applicant's rights guaranteed by Article 8 § 1. The Court does not need to determine whether the flat in question was the applicant's "home" within the meaning of that Article. It has already found on many occasions that a person's private life may be concerned by measures effected outside his or her home. In that connection, the person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor. Private-life considerations may arise once any systematic or permanent record comes into existence, even if an audio or video recording is made while the person is in a public place (see *Uzun v. Germany*, no. 35623/05, § 44, ECHR 2010 (extracts), with further references). The Court finds that the covert video surveillance of the applicant while on private premises where his expectations of privacy were high, the recording of personal data, the examination of the tapes by third parties without the applicant's knowledge or consent, and the use of the videotapes as evidence in the

criminal proceedings amounted to an interference with the applicant's "private life" within the meaning of Article 8 § 1 (compare *Khan*, cited above, § 25, and *Vetter v. France*, no. 59842/00, § 20, 31 May 2005, which both concerned recording, by means of a hidden listening device, of the applicant's conversations with a third person on that person's premises).

(b) Was the interference justified?

122. The Court reiterates that such interference will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with law", pursued one or more legitimate aim or aims as defined in the second paragraph and was "necessary in a democratic society" to achieve those aims (see, among other authorities, *Goranova-Karaeneva*, cited above, § 45).

123. The wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (see *Roman Zakharov*, cited above, § 228).

124. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient". While it is for the national authorities to make the initial assessment in all these respects, the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 101, ECHR 2008*)*. In the context of covert surveillance, the assessment depends on all the circumstances of the case, such as the nature, scope and duration of the surveillance measures, the grounds for ordering them, the authorities competent to authorise, carry out and supervise them, and the kind of remedy provided by the national law. The Court has to determine whether the procedures for supervising the ordering and implementation of the restrictive measures are such as to keep the "interference" to what is "necessary in a democratic society" (see *Roman Zakharov*, cited above, § 232).

125. As regards the question of lawfulness, it has not been disputed by the parties that the covert surveillance of the applicants had a basis in domestic law, namely in the relevant provisions of the OSAA.

126. Although the applicants have not complained that the quality of the domestic law fell short of the Convention standards, the Court must, when examining whether the interference complained of was "in accordance with

the law", inevitably assess the quality of the relevant domestic law in relation to the requirements of the fundamental principle of the rule of law (see *Dragojević,* cited above,, § 86). The Court notes in this connection that in the case of *Roman Zakharov v. Russia* it has already found that Russian law does not meet the "quality of law" requirement because the legal provisions governing the interception of communications do not provide for adequate and effective guarantees against arbitrariness and the risk of abuse. They are therefore incapable of keeping the "interference" to what is "necessary in a democratic society" (see *Roman Zakharov*, cited above, §§ 302-04). In the present case, however, where the applicants' complaints were based on specific and undisputed instances of covert surveillance, the Court's assessment of the "quality of law", although it necessarily entails some degree of abstraction, cannot be of the same level of generality as in cases such as *Roman Zakharov*, which concern general complaints about the law permitting covert surveillance and in which the Court must, of necessity and by way of exception to its normal approach, carry out a completely abstract assessment of such law. In cases arising from individual applications, the Court must as a rule focus its attention not on the law as such but on the manner in which it was applied to the applicant in the particular circumstances (see *Goranova-Karaeneva*, cited above, § 48).

127. In the *Roman Zakharov* case the Court has found, in particular, that the judicial authorisation procedures provided for by Russian law are not capable of ensuring that covert surveillance measures are not ordered haphazardly, irregularly or without due and proper consideration. In particular, the OSAA does not instruct judges ordering covert surveillance measures to verify the existence of a "reasonable suspicion" against the person concerned or to apply the "necessity" and "proportionality" tests. The Court has moreover found it established, on the basis of evidence submitted by the parties, that in their everyday practice the Russian courts do not verify whether there is a "reasonable suspicion" against the person concerned and do not apply the "necessity" and "proportionality" tests (see *Roman Zakharov*, cited above, §§ 260-67).

128. The Government did not produce any evidence to demonstrate that the Russian courts acted differently in the present case. In particular, they failed to submit copies of the surveillance authorisations in respect of the applicants and thereby made it impossible for the Court to verify whether the authorisations were based on a reasonable suspicion that the applicants had committed criminal offences. Nor could the Court verify whether the reasons adduced to justify the surveillance measures were "relevant" and "sufficient", that is to say that the interception of the applicants' communications was necessary in a democratic society and, in particular, proportionate to any legitimate aim pursued.

129. It is also significant that the applicants' ability to challenge the legal and factual grounds for ordering surveillance measures against them

was undermined by the refusal of access to the surveillance authorisations. The Court notes in this connection that there may be good reasons to keep a covert surveillance authorisation, or some parts of it, secret from its subject even after he or she has become aware of its existence. Indeed, a full disclosure of the authorisation may in some cases reveal the working methods and fields of operation of the police or intelligence services and even possibly to identify their agents (see, *mutatis mutandis*, *Roman Zakharov*, cited above, § 287). At the same time, the information contained in decisions authorising covert surveillance might be critical for the person's ability to bring legal proceedings to challenge the legal and factual grounds for authorising covert surveillance (see *Avanesyan*, cited above, § 29). Accordingly, in the Court's opinion, when dealing with a request for the disclosure of a covert surveillance authorisation, the domestic courts are required to ensure a proper balance of the interests of the surveillance subject and the public interests. The surveillance subject should be granted access to the documents in question, unless there are compelling concerns to prevent such a decision (see *Radzhab Magomedov*, cited above, § 82).

130. In the present case, in response to the applicants' requests for access to the judicial decisions authorising covert surveillance measures against them, the domestic authorities referred to the documents' confidentiality as the sole reason for refusal of access. They did not carry out any balancing exercise between the applicants' interests and those of the public, and did not specify why disclosure of the surveillance authorisations, after the surveillance had stopped and the audio and video recordings had already been disclosed to the applicants, would have jeopardised the effective administration of justice or any other legitimate public interests.

131. The Court notes that the State agency performing the surveillance activities was to have exclusive possession of the judicial authorisations, which were to be held in respective operational-search files (see paragraph 49 above). There is no evidence that the domestic courts that examined the applicants' complaints about the covert surveillance had access to the classified material in the applicants' operational-search files and verified that the judicial authorisations to which the investigating authorities referred indeed existed and were part of the files, whether there had been relevant and sufficient reasons for authorising covert surveillance or whether the investigating authorities, while carrying out the surveillance, had complied with the terms of the judicial authorisations. The domestic courts did not, therefore, carry out an effective judicial review of the lawfulness and "necessity in a democratic society" of the contested surveillance measures and failed to furnish sufficient safeguards against arbitrariness within the meaning of Article 8 § 2 of the Convention (see, for a similar reasoning, *Šantare and Labazņikovs v. Latvia*, no. 34148/07, §§ 60-62, 31 March 2016).

132. To sum up, the Government have not demonstrated to the Court's satisfaction that the domestic courts which authorised the covert surveillance against the applicants verified whether there was a "reasonable suspicion" against them and applied the "necessity in a democratic society" and "proportionality" tests. Moreover, the refusal to disclose the surveillance authorisations to the applicants without any valid reason deprived them of any possibility to have the lawfulness of the measure, and its "necessity in a democratic society", reviewed by an independent tribunal in the light of the relevant principles of Article 8 of the Convention.

133. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION AND TRANSPORT, AND OF ARTICLE 5 § 4 OF THE CONVENTION ON ACCOUNT OF ABSENCE FROM A REMAND HEARING (APPLICATION No. 5402/07)

134. The applicant in application no. 5402/07 (Mr Gorbunov) complained that the conditions of his detention and transport in the period from 14 September 2006 to 12 January 2007 had been inhuman and degrading in breach of Article 3 of the Convention, and that he had been absent from the remand hearing of 5 July 2006 in breach of Article 5 § 4.

135. On 23 May 2013 the Government submitted a unilateral declaration, inviting the Court to strike the case out of its list. They acknowledged that from 14 September 2006 to 12 January 2007 the applicant had been detained and transported in conditions which did not comply with the requirements of Article 3 of the Convention, and that his absence from the hearing of 5 July 2006 had breached his rights under Article 5 § 4. They offered to pay the applicant 5,460 euros. The remainder of the declaration read:

> "The sum referred to above, which is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points."

136. The applicant did not accept the Government's offer.

137. The Court reiterates that Article 37 of the Convention provides that it may, at any stage of the proceedings, decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. In particular,

Article 37 § 1 (c) enables the Court to strike an application out of its list of cases if "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

138. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the declaration in the light of the principles established in its case-law, in particular, the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

139. Since its first judgment concerning the inhuman and degrading conditions of detention in Russian penal facilities (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), the Court has found similar violations in many cases against Russia which concerned the conditions of detention in remand prisons (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012). The complaint relating to the absence from a remand hearing is also based on well-established case-law of the Court (see *G.O. v. Russia*, no. 39249/03, §§ 93-97, 18 October 2011).

140. Turning next to the nature of the admissions contained in the Government's declarations, the Court is satisfied that the Government did not dispute the allegations made by the applicant and acknowledged violations of Articles 3 and 5 § 4 of the Convention.

141. As to the intended redress to be provided to the applicant, the Court notes that the proposed sum is not unreasonable either in absolute terms or in relation to awards in similar cases. The Government have committed themselves to effecting the payment of the sum within three months of the Court's decision, with default interest to be payable in the event of any delay in settlement.

142. The Court therefore considers that it is no longer justified to continue the examination of the part of the case concerning the above-mentioned complaints. As the Committee of Ministers remains competent to supervise, in accordance with Article 46 § 2 of the Convention, the implementation of judgments concerning the same issues, the Court is also satisfied that respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) does not require it to continue the examination of this part of the case. In any event, the Court's decision is without prejudice to any decision it might take to restore the application to its list of cases, pursuant to Article 37 § 2 of the Convention, should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 and 28 others, 23 March 2006).

143. In view of the above, it is appropriate to strike out of the list of cases the part of the application concerning the above-mentioned complaints.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION ON ACCOUNT OF LACK OF SPEED IN THE REVIEW PROCESS (APPLICATION No. 5402/07)

144. The applicant in application no. 5402/07 (Mr Gorbunov) further complained that his appeal against the detention order of 3 November 2006 had not been examined speedily. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

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

B. Merits

146. The Government did not make any submissions on that complaint.

147. The Court reiterates that where an individual's personal liberty is at stake, it has very strict standards concerning the State's compliance with the requirement for a speedy review of the lawfulness of detention (see, for example, *Kadem v. Malta*, no. 55263/00, §§ 44-45, 9 January 2003, where the Court considered that seventeen days to decide on the lawfulness of the applicant's detention was excessive). It has already found a violation of Article 5 § 4 of the Convention in a number of cases against Russia, where, for instance, the proceedings by which the lawfulness of applicants' detention was decided lasted twenty-six (see *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006), twenty (see *Butusov v. Russia*, no. 7923/04, §§ 32-35, 22 December 2009) or twenty-seven days (see *Pichugin v. Russia*, no. 38623/03, §§ 154-56, 23 October 2012), stressing that their entire duration was attributable to the authorities.

148. In the present case it took the Russian courts twenty-eight days to examine the appeal lodged by the applicant against the detention order of 3 November 2006 (see paragraph 26 above). The Government did not provide any justification for the time it had taken the domestic courts to examine the appeal. There is nothing in the material before the Court to

suggest that either the applicant or his counsel contributed to the length of the appeal proceedings. Accordingly, the entire length of the appeal proceedings in the present case was attributable to the authorities.

149. Having regard to the above, the Court considers that the appeal proceedings for the review of the lawfulness of the applicant's detention pending trial cannot be considered compatible with the "speediness" requirement of Article 5 § 4 of the Convention. There has therefore been a violation of that provision.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE CRIMINAL PROCEEDINGS (APPLICATION No. 29431/05)

150. The applicant in application no. 29431/05 (Mr Zubkov) also complained that the criminal proceedings against him had been excessively long. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal."

151. The applicant complained, in particular, of the delay between the arrival of the case file at the trial court on 18 July 2002 and the commencement of the trial on 20 November 2002.

152. The Government submitted that the commencement of the trial had been delayed at the request of counsel of one of the co-defendants to adjourn the trial, and again because of the illness of the applicant's counsel. Without submitting any supporting documents, the Government further submitted that several hearings scheduled in September, October and November 2002 had been adjourned because the defendants' counsel had failed to attend for various reasons. The delay in the commencement of the trial had not therefore been attributable to the authorities. After the commencement of the trial, several more hearings had been adjourned because counsel had been ill or had failed to attend for other reasons, because defendants had requested additional time to study the case file and prepare their defence, and once because a prosecution witness had not attended. The trial had also been adjourned for a year and three months in order that expert examinations could be carried out. The length of the proceedings had not, therefore, been excessive.

153. Having examined all the material before it, the Court considers that for the reasons stated below, the respondent Government cannot be held liable for the allegedly excessive length of the criminal proceedings against the applicant.

154. In particular, the Court notes that having regard to the overall length of the proceeding (less than three years), the relevant complexity of

the case, the conduct of the applicant and his co-defendants and that of the authorities, including the diligence they displayed while dealing with the case, and the levels of jurisdiction involved, the length of the proceedings was not excessive and met the "reasonable time" requirement (see, among other authorities, *Khanov and Others v. Russia* (dec.), nos. 15327/05 and 15 others, 30 June 2016, with further references).

155. In view of the above, the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

156. Lastly, the Court has examined the other complaints submitted by the applicants and, having regard to all the material in its possession and in so far as the complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the applications must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

157. 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

158. The applicants claimed the following amounts in respect of non-pecuniary damage: Mr Zubkov claimed 72,450 euros (EUR), Mr Ippolitov claimed EUR 105,000 and Mr Gorbunov claimed EUR 20,000. Mr Ippolitov also claimed EUR 6,000 in respect of pecuniary damage, representing loss of salary. He alleged that the unlawful criminal prosecution had resulted in his dismissal from the prosecutor's office.

159. The Government submitted that the claims for non-pecuniary damage were excessive. As regards the claim for pecuniary damage, they submitted that there was no causal link between the applicant's complaints and the damage alleged.

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

161. As regards non-pecuniary damage, having regard to the nature of the violations found in respect of each applicant and to the sum payable to Mr Gorbunov under the unilateral declaration (see paragraph 135 above, and *Urazov v. Russia*, no. 42147/05, § 106, 14 June 2016), the Court awards the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable: EUR 7,500 each to Mr Zubkov and Mr Ippolitov, and EUR 4,300 to Mr Gorbunov.

B. Costs and expenses

162. Mr Gorbunov also claimed EUR 7,000 for legal fees incurred before the Court. He presented the relevant legal-fee agreement.

163. The Government submitted that the amount claimed was excessive. Moreover, there was no proof that the applicant had already paid the legal fees.

164. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides*, having regard to the terms of the Government's declaration, and the arrangements for ensuring compliance with the undertakings referred to therein, to strike Mr Gorbunov's application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerns the complaints under Articles 3 of the Convention of the allegedly inhuman conditions of detention and transport and the complaint under 5 § 4 of the Convention about his absence from the remand hearing;

3. *Declares* the complaints under Article 8 of the Convention of a breach of each applicant's right to respect for his private life and correspondence and under Article 5 § 4 of the Convention of the insufficient speediness of review of Mr Gorbunov's detention admissible and the remainder of the applications inadmissible;

4. *Holds* that there has been a violation of Article 8 of the Convention in respect of each applicant;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of Mr Gorbunov;

6. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- Mr Zubkov: EUR 7,500 (seven thousand five hundred euros);
- Mr Ippolitov: EUR 7,500 (seven thousand five hundred euros);
- Mr Gorbunov: EUR 4,300 (four thousand three hundred euros); in respect of non-pecuniary damage;
- EUR 2,000 (two thousand euros) to Mr Gorbunov, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President

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

H.J.
F.A.

CONCURRING OPINION OF JUDGE DEDOV

I ought to point out that in the *Bykov* judgment (*Bykov v. Russia* [GC], no. 4378/02, § 111, 10 March 2009) the Grand Chamber considered that the applicant had suffered non-pecuniary damage which was not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and having made its assessment on an equitable basis, the Court has awarded the applicant EUR 1,000 under the head.

I believe that the above approach (involving a symbolic amount of compensation) is applicable to all other "surveillance" cases with similar circumstances, namely when the Court has found a violation of Article 8, but the surveillance measures were in fact necessary, and the domestic proceedings in the applicant's case were not contrary to the requirements of a fair trial (see *Bykov*, § 104).

APPENDIX

No.	Application no.	Date of introduction	Applicant's name Year of birth Place of residence	Representative
1.	29431/05	28 June 2005	Mr Maksim Sergeyevich ZUBKOV 1979 Novgorod	
2.	7070/06	9 January 2006	Mr Andrey Sergeyevich IPPOLITOV 1975 Tver	Mr N. Kulik, a lawyer practising in Tver
3.	5402/07	12 January 2007	Mr Andrey Vyacheslavovich GORBUNOV 1964 Vladimir	Mr M. Ovchinnikov and Mr A. Mikhaylov, lawyers practising in Vladimir