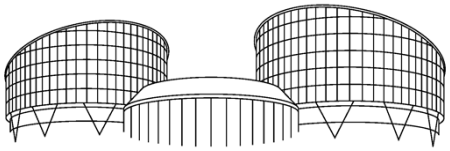

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ČERNÝ AND OTHERS v. THE CZECH REPUBLIC

(Applications nos. 37514/20 and 4 others –
see appended list)

JUDGMENT

Art 8 • Private life • Correspondence • Privileged communications between the applicant criminal defence lawyers and their client seized from the latter's electronic devices and put in the criminal case file • Relevant domestic framework lacking foreseeability, clarity and procedural safeguards for the protection of privileged data on seized electronic devices • Interference not "in accordance with the law"
Art 13 (+ Art 8) • Lack of an effective remedy enabling the applicants to seek removal of the privileged data from their client's case file

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 December 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Černý and Others v. the Czech Republic,

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

María Elósegui*, President*,
Georgios A. Serghides,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu,
Mykola Gnatovskyy*, judges*,
Pavel Simon*,* ad hoc *judge*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 37514/20, 37525/20, 37533/20, 37546/20 and 37555/20) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Czech nationals listed in the appendix ("the applicants") on 18 August 2018;

the decision to give notice to the Czech Government ("the Government") of the complaints concerning Articles 6 § 1, 8 and 13 of the Convention, and to declare the remainder of the applications inadmissible;

the parties' observations;

the decision of the President of the Section to appoint Mr P. Simon to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Ms K. Šimáčková, the judge elected in respect of the Czech Republic, having withdrawn from sitting in the case (Rule 28 § 3);

Having deliberated in private on 18 November 2025,

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

INTRODUCTION

1. The applications concern mainly various communications between the applicants, who were criminal defence lawyers, and their client. Those communications were extracted from the client's electronic devices and put on his criminal case file. The applicants relied on Articles 6, 8 and 13 of the Convention.

THE FACTS

2. The names and personal details of the applicants are set out in the Annex to the judgment. The applicants were represented by Mr Z. Koudelka, a lawyer practising in Brno.

3. The Government were represented by their Agent, Mr P. Konůpka, of the Ministry of Justice.

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

I. THE PLACEMENT OF DATA IN THE CASE FILE

5. The five applicants were lawyers representing Z. in two sets of criminal proceedings, one on charges of membership of a criminal group, making false accusations, bribery, and aiding and abetting those and other crimes and the other, proceeding in parallel, on charges of tax evasion.

6. On 2 December 2016, during a search of Z.'s home which had been ordered in the first set of criminal proceedings, the police seized Z.'s smartphone and electronic tablet. Both electronic devices contained, among other things, correspondence between Z. and his defence lawyers, including the applicants; various draft court submissions; notes on legal strategy in both of Z.'s criminal cases; preparatory notes for the questioning of witnesses; and other material protected by legal professional privilege.

7. On 23 November 2017 the Brno Municipal Court invited the Prague Criminal Institute to carry out an expert examination of the content of the electronic devices. They were asked to extract all the data, including data that had been deleted, and any electronic communications transmitted from and to various applications on those devices.

8. On 1 December 2017 Z. filed formal objections in the Municipal Court to the expert and to the terms of reference of the expert report set by the Municipal Court. He emphasised that the electronic devices contained privileged material. He objected to an expert examination in the terms set out by the court because that would make his defence strategy and confidential material prepared by his defence lawyers accessible to all his co-defendants, including those in the second set of criminal proceedings, and to the prosecutor. There was no response from the court. Z. repeated his objections during an oral hearing on 10 January 2018. The Municipal Court dismissed his objections without giving reasons.

9. By 18 February 2018 the content of the electronic devices, including the communications between Z. and the applicants, had been extracted. It comprised over 20,000 pages of material, which was put on the Municipal Court case file. During an oral hearing on 28 February 2018 the presiding judge, K., transmitted the contents of the electronic devices together with the expert report on Blu-ray discs to the prosecutor and all Z.'s co-defendants and their lawyers.

10. On 27 March 2018, during the oral hearing, K. said that none of the data extracted from the devices had so far been found to be relevant as evidence in the proceedings. He also rejected a further request by Z. to remove the material from the case file.

11. On 1 June 2018, responding to a question from a journalist, K. stated the following:

> "The content of the devices constitutes evidence, and therefore all parties to the proceedings have the right to see it. And if there are any communications there, whether

private or with defence lawyers, that does not matter at all — there has not been any kind of electronic interception."

II. THE ATTEMPTS TO HAVE THE MATERIAL REMOVED FROM THE CASE FILE

12. On 31 August 2018 Z.'s defence lawyer D.Z., whose correspondence with Z. was also in the case file, asked the Municipal Court on behalf of himself and Z. to remove any privileged material from the case file. He put his request in writing on 3 and 17 September 2018.

13. In reaction to the Municipal Court's continued retention of the data in the case file, Z. asked the Ministry of Justice ("the Ministry") to initiate disciplinary proceedings against the presiding judge, K. The Czech Bar Association ("the CBA") made the same request, expressing concern that K.'s decision to keep the data in the case file seriously undermined Z.'s defence and meant he could not have a fair trial.

14. On 4 September 2018 the Ministry responded that it would not initiate disciplinary proceedings against K. It did not consider that the judge had

i) violated a clearly formulated statutory provision;

ii) failed to follow a binding opinion of a superior court; or

iii) unjustifiably refused to follow the established case-law of the Supreme Court,

which were the only legal grounds for initiating disciplinary proceedings against a judge.

The Ministry also said that there was a lacuna in the law since it did not regulate the treatment of lawyer-client communications found on seized electronic devices. Articles 88(1) and 158d(1) of the Code of Criminal Procedure ("CCP") prohibited putting on file records of intercepted communications or surveillance material that included communications between a defence lawyer and his or her client and producing them at trial, but those provisions could not be used by analogy. The Ministry further observed that although in the present case the content of the electronic devices had been made accessible to the other parties in the proceedings, it would not be used at trial as the Municipal Court had not identified any of it as relevant evidence.

15. On 18 April 2018 Z. lodged a criminal complaint against K. On 11 September 2018 the Vyškov District Prosecutor responded that criminal proceedings would not be initiated but expressed agreement with the Czech Bar Association's opinion that the actions complained about might constitute a disciplinary offence by K.

16. On 20 September 2018 Z.'s lawyer, D.Z., lodged an application under Section 174a of the Courts and Judges Act (Law no. 6/2002) on his own behalf with the Brno Regional Court asking it to set a time-limit by which the Municipal Court would have to have removed the privileged material from

the case file. On 30 October 2018 Z. lodged the same request on his own behalf.

17. On 24 October 2018 and 9 November 2018, respectively, the Brno Regional Court denied the applications. It reiterated that it could only set a time-limit under the provision referred to for a lower court to complete procedures it had already decided to carry out, or where it was self-evident from the law and the case file that those procedures would have to be carried out. However, D.Z.'s and Z.'s applications were for orders setting time-limits for procedures which the Municipal Court had refused to carry out. Furthermore, it was not clear from the law and the case file that they had to be carried out. The Municipal Court's refusal was therefore a decision that it was open to that court to make.

III. THE CONSTITUTIONAL APPEAL

18. On 31 December 2018 the applicants together with Z. and his other defence lawyers who were affected by the material being put in the case file lodged a constitutional appeal against "another interference" by a public authority pursuant to Section 72(1)(a) of the Constitutional Court Act (Law no. 182/1993) (see paragraph 31 below). They argued that putting the privileged data on the case file violated various of their fundamental rights, including their right to respect for their private life and correspondence.

19. On 22 March 2019 K., on behalf of the Municipal Court, submitted his observations on the constitutional appeal. He considered that it was not possible to remove the data by applying Article 88(1) of the CCP by analogy, since the seized devices belonged to Z., who was not a defence lawyer, and their content was therefore not privileged. Furthermore, in K.'s view, the Municipal Court did not have the right to sift through the data and select what could be used as evidence or to make orders for material to be deleted.

20. On 29 May 2019 the CBA lodged an application for a leave to intervene in the proceedings. It claimed a right to intervene under section 76(3) of the Constitutional Court Act *(vedlejší účastenství*) because the case had implications beyond the applicants' own interests and affected the status of criminal defence rights in general. It asserted that intercepting privileged communications between a client and his or her defence lawyer was unlawful, in breach of fundamental rights, and in violation of the principles of a fair trial. In its view, the applicants had clearly exhausted all remedies available to them.

21. On 21 June 2019 the applicants' legal representative logged into the Constitutional Court's web-based application, which allows electronic access to Constitutional Court case files.

22. On 20 November 2019 the Constitutional Court dismissed the applicants' constitutional appeal as manifestly ill-founded in its decision no. IV. ÚS 4342/18, which was served on the applicants

on 23 November 2019. It held that the applicants' fundamental rights had not been affected because privilege was the right of the client, not the lawyer. It stated the following:

> "23. The right to confidentiality of communications between accused persons and their lawyers is not a right that generally belongs to the lawyer, but rather a projection of the accused's right (...) It is therefore not the right of the defence lawyer – counsel in the proceedings – and even less so a fundamental right guaranteed or protected by the Czech Charter of Fundamental Rights or the Convention, which the Constitutional Court is primarily called upon to protect. Therefore, the other interference by a public authority described above cannot constitute a violation of the prohibition on the abuse of legal rights or exceed permissible limitations on those rights (Articles 17 and 18 of the Convention), nor can it impinge upon the claimed fundamental human rights and freedoms (Articles 7 and 10 of the Charter, Article 8 of the Convention), or the right to freely choose a profession (Article 26 of the Charter) (...)."

The Constitutional Court also granted the CBA the leave to intervene in the proceedings and briefly summarised its argument in its judgment.

IV. THE COMPENSATION PROCEEDINGS

23. On 21 August 2018 the applicants lodged a claim with the Ministry under the State Liability Act (Law no. 82/1998) seeking an apology and compensation for non-pecuniary damage caused by the official misconduct of the Municipal Court. They complained that the court had made the contents of their privileged communications with their client accessible to the prosecutors and co-defendants. There was no response from the Ministry.

24. On 22 February 2019 the applicants and the other affected defence lawyers lodged a civil action in the Prague 2 District Court seeking an apology and 100,000 Czech crowns (CZK) (approximately 4,000 euros) in compensation.

25. On 3 December 2020 the District Court decided that the acts complained of constituted official misconduct by the Municipal Court and ordered the Ministry to pay each of the applicants 25,000 CZK (approximately 1,000 euros) in compensation for non-pecuniary damage. The remainder of the action was dismissed. The District Court held that by allowing other persons to access the privileged correspondence between Z. and his defence lawyers, the Municipal Court had violated the Convention, the Czech Charter of Fundamental Rights and Article 2 of the CCP. The District Court also found that the statements made by the applicants at the oral hearings in the compensation proceedings were proof of the non-pecuniary damage caused by that misconduct. The Ministry appealed against the judgment.

26. On 13 August 2021 the Prague Municipal Court reversed the District Court's judgment by dismissing the applicants' claim for compensation and requiring the Ministry to apologise to the first, second and third applicants in writing.

The Prague Municipal Court endorsed the District Court's finding that the Brno Municipal Court had acted unlawfully by making the contents of lawyer-client communications accessible to prosecutors and co-defendants. It referred to the Charter of Fundamental Rights and Freedoms, the Constitutional Court's case law, and Section 88 of the CCP, all of which it held established the specific protection of communications between a lawyer and his or her client.

However, it held that the first applicant, who had not participated in the oral hearings in the District Court, had failed to demonstrate the non-pecuniary damage suffered and was thus not entitled to any form of remedy. It also held that the fifth applicant was not entitled to any remedy because as a trainee lawyer substituting the second applicant, she had not had an independent relationship with the client that would give rise to legal professional privilege. The Municipal Court further considered that a written apology was the most appropriate remedy for the rest of the applicants.

Neither the applicants nor the Ministry lodged an appeal on points of law.

27. On 25 October 2021 the Ministry sent written apologies to the second, third and fourth applicants.

28. On 16 April 2025 the Supreme Court delivered its judgment no. 30 Cdo 1849/2024 in proceedings brought by the applicants' client Z. for compensation for the same wrongful action of putting privileged material in the Brno Municipal Court case file as had been complained about by the applicants. The Supreme Court upheld Z.'s appeal on points of law and remitted the case to the first-instance court to decide the quantum of compensation.

The Supreme Court held that that it had been unlawful to put the material in the case file. Prior to examining the material and considering whether it would be relevant evidence at trial, the Municipal Court should have stored the privileged material on separate data carriers and not included them in the criminal case file. The Supreme Court also held that the expert engaged in the case to examine the content of the electronic devices should have been instructed accordingly. The Supreme Court concluded:

> "(...) in the case of the seizure of data carriers and their contents, including, *inter alia*, communications between the accused and their defence lawyers and material which is clearly unnecessary for the criminal proceedings and where there is an unlawful breach of the injured parties' rights to privacy and control over their own information, the court's official misconduct consists in its failure to ensure that such information never entered the case file."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The Code of Criminal Procedure (Law no. 141/1961)

29. Article 65(1) of the Code of Criminal Procedure provides that an accused person, a victim, an interested party, and the defence lawyers and other representatives have the right to examine the court case file and make notes and copies at their own expense. Other persons may do so with the consent of the president of the chamber, which may be given only where that is necessary for the exercise of their rights.

Under Article 88(1), the interception and recording of telecommunications between a defence lawyer and an accused person is not permissible. Where a police authority discovers that it is intercepting and recording telecommunications between an accused person and his or her defence lawyer, it must destroy the recordings without undue delay and must not use the information obtained in any way.

Under Article 158d(1), if the police discover that they are carrying out surveillance on an accused person while that person is communicating with his or her defense lawyer, they must destroy any information recorded and not use it in any way.

B. Act on Courts and Judges (Law no. 6/2002)

30. Under section 174a(1) of the Act on Court and Judges, if a party to proceedings considers that there are undue delays in carrying out a specific procedural step, he or she can ask the court to set a deadline.

C. Constitutional Court Act (Law no. 182/1993)

31. Section 28 of the Constitutional Court Act provides that secondary parties and interveners (*vedlejší účastníci*) have equal rights and duties with the parties to the proceedings.

Under section 32, parties, secondary parties and interveners are entitled to respond to an application for the commencement of proceedings, to make submissions to the Constitutional Court, to examine the case file (except for the voting record), to make notes and copies, to attend any oral hearing of the case, to file evidence, and to be present when evidence is taken outside an oral hearing.

Under section 72(1) (a), a natural or legal person may bring a constitutional appeal where a breach of fundamental rights and basic freedoms guaranteed by the constitution is alleged to have arisen as a result of a final decision in proceedings to which the person was a party or as the

result of a measure or of other interference by a public authority ("other interference").

Section 72(5) provides that, if no other procedural remedy is available to protect an appellant's rights, a constitutional appeal may be lodged within two months of the date on which the appellant learnt of a public authority's other interference with constitutionally guaranteed fundamental rights or freedoms, but no later than one year from the date on which the interference occurred.

Section 76(1), (2) and (3) provides that the parties to the constitutional appeal are the appellant and the State authority or other public authority against whose intervention the constitutional appeal is directed. The parties to the previous proceedings giving rise to the decision challenged in the appeal are secondary parties. The Constitutional Court may also grant intervener status to other persons who demonstrate a legal interest in the outcome of the proceedings.

D. State Liability Act (Law no. 82/1998)

32. Section 13(1) of the State Liability Act provides that the State is liable for damage caused by official misconduct.

Under Section 31a(1) and (2), irrespective of whether damage has been caused by an unlawful decision or official misconduct, redress may also be given for non-pecuniary damage. If it is not possible to provide redress in any other way, and the mere finding of a violation is not sufficient, the compensation will be in monetary form.

II. DOMESTIC COURT PRACTICE

33. On 30 November 1995 in judgment no. III. ÚS 62/95 the Constitutional Court ordered the president of a criminal court to destroy all records of communications between the appellant and her defence lawyer. It observed that putting privileged material on the case file amounted to other interference by a public authority which breached the fundamental human rights not only of the appellant but also of her defence lawyer.

The Constitutional Court further reiterated that a constitutional appeal is available against other interference of a public authority only if it does not arise from a decision and if no other effective remedies are available.

34. On 27 September 2007 in judgment no. II. ÚS 789/06 the Constitutional Court decided that where material has been unlawfully placed or retained on a case file the authorities must remove it, whether or not that removal is sought by a party to the proceedings.

35. On 17 May 2000 in decision no. II. ÚS 113/99 the Constitutional Court accepted a third-party intervention made at the invitation of the

appellant and simultaneously declared the appeal inadmissible. The court did not send any of the parties' observations to the other parties for comment.

On 23 May 2013 in decision no. II. ÚS 825/11 the Constitutional Court communicated the observations of a would-be intervener to the appellant for comment before allowing the intervention, and then declared the application inadmissible in the same decision.

On 15 June 2021 in a decision no. II. ÚS 2954/20 declaring a constitutional appeal inadmissible, the Constitutional Court permitted a third-party intervention and briefly summarised the intervener's observations, which had earlier been provided to the appellant together with the other parties' observations for comment.

In separate procedural decisions (no. II. ÚS 1991/20 of 8 July 2021, no. IV. ÚS 2430/22 of 10 January 2023; no. IV. ÚS 662/23 of 30 May 2023; no. II. ÚS 2430/23 of 10 September 2024; no. Pl. ÚS 17/24 of 25 September 2024; and others) the Constitutional Court accepted third party interveners under Section 76 (3) of the Constitutional Court Act prior to deciding on the merits of the cases.

36. On 21 August 2021 in decision no. 30 Cdo 756/2021 the Supreme Court held that civil courts deciding compensation claims do not have jurisdiction to order the removal of unlawfully retained material from a criminal case file, even as a form of redress for non-pecuniary damage.

37. On 19 October 2023 in judgment no. 12 C 174/2019 the Prague 2 District Court awarded CZK 50,000 (approximately 2,000 euros) in compensation for non-pecuniary damage to a defence lawyer whose communications with his client had been intercepted by the police and put in the criminal file. The Prague Municipal Court in its appeal judgment no. 11 Co 27/2024-228 of 20 March 2024 partially reversed that judgment, reducing the amount awarded to the lawyer to CZK 10,000 (approximately 400 euros).

THE LAW

I. JOINDER OF THE APPLICATIONS

38. Having regard to the similar subject matter of the applications and the fact that the applicants were joint parties in the domestic proceedings, the Court finds it appropriate to examine the applications jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicants complained that putting their privileged correspondence with their client in the court's criminal case file violated their

right to respect for their private life and correspondence as protected by Article 8 of the Convention. That provision reads as follows:

> "1. Everyone has the right to respect for his private ... life ... 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. The parties' submissions

(a) The Government

(i) Exhaustion of domestic remedies

40. The Government submitted that the applicants had not exhausted the available and effective domestic remedies. Firstly, an adequate compensatory remedy had been available under the State Liability Act and the applicants had pursued it. The District Court judgment effectively acknowledged the violation of their rights, even if it did not award them the amount of compensation they had asked for. The applicants had failed to lodge an appeal against that judgment and had failed to seek any further domestic remedy against the subsequent appellate court judgment awarding only three of them an apology, thereby depriving themselves of the opportunity to seek appropriate compensation for the alleged pecuniary and non-pecuniary damage.

41. Secondly, the Government argued that the applicants could have sought to have the privileged communications with their client removed from the Brno Municipal Court criminal case file once the final judgment of the Prague Municipal Court had confirmed in the compensation proceedings that the Brno Municipal court's conduct had been unlawful (see paragraph 26 above).

In the Government's view, the applicants should have relied, by analogy, on Article 88(1) of the CCP, which requires a police authority to destroy an intercepted communication on discovering that it was a communication between an accused person and his or her defence lawyer. They added that the Constitutional Court had held that the requirement to remove such material from a case file had also applied to a criminal court whether or not an application for it had been made (see paragraph 33 above).

(ii) Victim status and existence of significant disadvantage

42. The Government further argued that the second, third and fourth applicants had lost their victim status within the meaning of Article 34 of the Convention because the domestic courts had acknowledged the violation of

their rights. Those applicants had also received an appropriate form of redress by means of a written apology (see paragraph 27 above). In the Government's view, their failure to appeal against the decision awarding some of them an apology indicated that they had considered it to be a sufficient remedy.

43. Furthermore, the Government submitted that neither of the applicants had suffered significant disadvantage. The domestic courts had acknowledged in the compensation proceedings that the material had been put on the criminal case file in error. The material had not been relied on in the criminal proceedings and had not appeared in the public domain. Only a small group of persons had had access to the criminal case file and all of those persons had been bound by a statutory duty of confidentiality. The Government maintained that the case had been heard by the domestic courts and there was nothing to suggest that respect for human rights required an assessment of the case by the Court.

(b) The applicants

(i) Exhaustion of domestic remedies

44. The applicants disagreed that they had had at their disposal an adequate and effective remedy that would have resulted in the removal of the privileged material from the criminal case file. They argued that the Constitutional Court's decision in their case (see paragraph 22 above) implied that they did not have standing to seek the removal of confidential communications from the case file even if Article 88(1) of the CCP could be applied by analogy, which was disputable. They reiterated that the Government had not shown that that remedy was effective in practice.

45. The applicants further maintained that an action for compensation under the State Liability Act was not an effective remedy because it could not lead to the removal of the privileged material from the case file, where it still was.

(ii) Victim status and existence of significant disadvantage

46. The applicants submitted that for the purposes of Article 8 and for the assessment of the disadvantage suffered it was irrelevant whether the criminal court had relied on the privileged material in the criminal proceedings. They reiterated that the case file had been distributed to all the co-accused and had remained accessible to many persons at the Brno Municipal Court. The applicants maintained that they did have the status of victims and that they had suffered significant disadvantage.

2. The Court's assessment

(a) Exhaustion of domestic remedies

47. The Court notes that the interference complained about consisted of applicants' communications with their client and various notes and documents protected by legal professional privilege being put in the criminal court case file, which made the content of those communications accessible to the other parties to the proceedings. The Court has previously held that an effective remedy against an interference of that nature must be capable of reviewing the legality of the conduct and leading to the removal of the privileged material from the case file or its destruction, should the conduct be found unlawful (see *Pruteanu v. Romania*, no. 30181/05, §§ 55-56, 3 February 2015, and, *mutatis mutandis*, *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, § 121, ECHR 2006-VII, with further references).

48. The Court observes that it is not in dispute between the parties that the domestic law did not allow civil courts dealing with compensation proceedings to order the removal or destruction of material from criminal case files (see paragraph 36 above). It follows that an action seeking compensation would not have been an adequate remedy in the present case, even though the applicants did not fully exhaust it (see paragraph 26 above).

49. The Government further argued that the applicants should have applied to the Brno Municipal Court relying on Article 88(1) of the CCP by analogy for an order for the privileged material to be removed from the case file after they had obtained the civil court's judgment finding that it had been unlawful to put it there (see paragraphs 25-26 above).

50. However, the Court observes that the Municipal Court clearly disagreed that Article 88(1) of the CCP could be applied by analogy in the present case. That is apparent from its multiple rejections of requests by the applicants' client Z. and his defence lawyers for the removal of the privileged material from the court case file (see paragraphs 10, 12-13 above), from the presiding judge's public statement (see paragraph 11 above) and from that court's observations in the Constitutional Court proceedings (see paragraph 19 above). The Court further notes that the Brno Regional Court (see paragraph 17 above) and the Ministry of Justice (see paragraph 14 above) agreed with the conclusion that the provision could not be applied by analogy. That legal position can also be inferred from the Constitutional Court's decision in the applicants' case.

51. The Court is therefore not convinced that the applicants could have reasonably expected that an application based on a judgment of a civil court, which was not a superior court, would be capable of changing the Municipal Court's consistent position and persuading it remove the privileged material from the case file. Furthermore, the Court observes that if the Municipal Court had accepted the civil court's position that the material had been placed in the file unlawfully, it could and should have removed it from the criminal

file of its own motion, irrespective of the applicants' request (see paragraphs 33-34 above).

52. Lastly, the Court notes that the Constitutional Court's review of the applicants' complaint as "other interference" pursuant to Section 72(1)(a) implies that the Constitutional Court accepted that there was no other effective domestic remedy available against that interference (see paragraph 33 above). The Court considers that it would be unduly formalistic to require the applicants to exercise a remedy which even the highest court of the country concerned had not required them to use (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 118, ECHR 2007-IV).

53. The Court therefore rejects the Government's preliminary objection of the applicants' failure to exhaust domestic remedies.

(b) Victim status and existence of significant disadvantage

54. In response to the Government's objection that the second, third and fourth applicants had lost their victim status by virtue of the acknowledgement by the domestic court that the interference with their rights had been unlawful, the Court observes that the civil court's judgment did not lead to the removal of the applicants' privileged material from the case file. The Court finds that the mere acknowledgment of the violation by the civil court did not deprive the applicants of their victim status within the meaning of Article 34 of the Convention.

55. Lastly, the Court cannot accept the Government's argument that the applicants had not suffered a significant disadvantage. By putting privileged material in the court case file, the Municipal Court had effectively made the applicants' communication with their client, including their defence strategy and various documents and draft submissions, available to the prosecutor and a number of co-defendants whose interests in the proceedings were potentially adverse to their client's. Even if those documents were not used as evidence in the trial, making them accessible to the other parties compromised the relationship of trust and confidentiality of communications between the applicants, as defence lawyers, and their client.

56. The Court observes that lawyers are assigned a fundamental role in a democratic society which they cannot carry out if they are unable to guarantee to those they are defending that their exchanges will remain confidential (see *Michaud v. France*, no. 12323/11, § 118, ECHR 2012). The Court finds that the mere action of putting the privileged material on the court file may have considerably prejudiced the applicants. It therefore rejects the Government's preliminary objection of a lack of a significant disadvantage.

(c) Conclusion on admissibility

57. The Court considers that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

58. The applicants complained that putting the various privileged communications with their client, taken from that client's seized electronic devices, on the court case file violated their right to respect for their private life and correspondence. They further complained that the Czech legal framework did not contain sufficient guarantees of respect for the privacy of communications protected by legal professional privilege in cases concerning the examination of data from seized electronic devices.

59. The Government conceded that the domestic courts had acknowledged the violation of the applicants' rights at the domestic level and did not submit further arguments.

2. The Court's assessment

(a) Existence of an interference

60. The Court observes that it was not in dispute between the parties that the data extracted from the applicants' client's devices and placed on the court case file contained privileged communications between the applicants and their client. The Court reiterates that such exchanges enjoy specific protection under Article 8 of the Convention (see, among others, *Michaud v. France*, no. 12323/11, § 118, ECHR 2012; *Saber v. Norway*, no. 459/18, § 51, 17 December 2020; and *Vasil Vasilev v. Bulgaria*, no. 7610/15, § 89, 16 November 2021).

61. The Court has previously held, in a case where the client's own line was tapped, that monitoring and recording of a conversation between a lawyer and his or her client constitutes a serious interference with the rights to respect for "privacy" and "correspondence" protected under Article 8 (see *Vasil Vasilev*, cited above, §§ 84 and 89, and *Kopp v. Switzerland*, 25 March 1998, §§ 50 and 72, *Reports of Judgments and Decisions* 1998-II). Examination of communications between a client and his or her lawyer found on that lawyer's electronic device has equally been considered to be an interference with the right to respect for "correspondence" (see *Särgava v. Estonia,* no. 698/19, § 85, 16 November 2021; *Bersheda and Rybolovlev v. Monaco*, nos. 36559/19 and 36570/19, § 84, 6 June 2024; and *Saber,* cited above, § 48).

62. The Court observes that in the present case, it was the client's electronic devices from which the privileged data including his

communications with the applicants had been extracted. Nevertheless, the Court considers that the applicants did not waive their rights to privacy and protection of correspondence simply because there was a hypothetical possibility that the data they sent to their client's device could be forwarded to others or obtained by the authorities. Rather, they had a reasonable expectation that the privacy of their communications would still be respected and protected (see, *mutatis mutandis*, *Macharik v. the Czech Republic*, no. 51409/19, § 34, 13 February 2025; *Bărbulescu v. Romania* [GC], no. 61496/08, § 73, ECHR 2017; and *Benedik v. Slovenia*, no. 62357/14, § 101, 24 April 2018). Indeed, the specific protection guaranteed to lawyer-client communications would be devoid of meaning if it did not extend to electronic communications stored on either the lawyer's or the client's devices.

63. The Court further observes that the Government did not object to the present case as an interference with the applicants' rights. The Court is therefore satisfied that putting in the court case file the applicants' privileged communications with their client, which had been seized from that client's electronic devices, had interfered with the applicants' rights to respect for their private life and correspondence, as protected by the first paragraph of Article 8 of the Convention.

(b) Justification for the interference

64. An interference contravenes Article 8 of the Convention unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in its second paragraph and is "necessary in a democratic society" to achieve those aims.

65. The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. In this context, the Court observes that in the compensation proceedings brought by the applicants the domestic courts acknowledged the unlawfulness of the interference. They reached that conclusion despite their inability to identify a clear statutory provision prohibiting the inspection of privileged data stored on seized electronic devices. Instead, they relied on general principles protecting legal professional privilege and, by analogy, on Article 88(1) and Article 158d of the CCP, which prohibit monitoring and recording of such data in other contexts (see paragraphs 25-26 above).

66. Nevertheless, the Court notes that in other proceedings the domestic courts reached the opposite conclusion. In the proceedings concerning the requests for removal of the material from the case file, the Brno Municipal Court and Brno Regional Court found the extraction of the privileged electronic data and their placement in the case file to have been lawful (see paragraphs 12-17 above). The Constitutional Court did not see any reason to challenge their conclusion, holding that the applicants as lawyers did not have any right to a specific protection of their communications with their client in

the context of the criminal proceedings against the client (see paragraph 22 above).

67. The Court reiterates that the requirement of lawfulness implies that a measure must have some basis in domestic law, the term "law" being understood in its substantive rather than its formal sense. The law must be compatible with the rule of law and foreseeable in its effects (see *Kopp*, cited above, § 55; *Vasil Vasilev*, cited above, §§ 88-89; and *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 332, 25 May 2021). It must be sufficiently clear in its terms to give citizens an adequate indication as to the circumstances and conditions under which public authorities are empowered to resort to any measures (see *Golovan v. Ukraine*, no. 41716/06, § 57, 5 July 2012).

68. In the context of the monitoring and recording of private communications the Court has emphasised the importance of having sufficient safeguards against arbitrariness and abuse, including specific procedural guarantees when it comes to protecting the confidentiality of communications between lawyers and their clients (see *Michaud*, cited above, § 130, and *Sommer v. Germany*, no. 73607/13, § 56, 27 April 2017).

69. The Court has previously found a lack of such safeguards when the domestic law contained no specific and foreseeable procedure for the inspection of electronic data carriers in order to sift the evidence and separate out the privileged material (see *Särgava v. Estonia*, no. 698/19, §§ 99-103, 16 November 2021; *Saber*, cited above, § 55; and *Kopp*, cited above, § 73); when the law failed to regulate potential disputes between the authorities and the lawyer concerned stemming from that procedure; and when there was no procedure to ensure that privileged material was not made available to the investigative authorities before the courts had had a chance to conduct a specific and detailed analysis of the case (see *Särgava*, cited above, § 107).

70. Turning to the circumstances of the present case, the Court finds that the law regulating the extraction of data from seized electronic devices was manifestly neither sufficiently clear and foreseeable to those to whom it was addressed, and nor did it contain sufficient safeguards and procedural guarantees to protect the confidentiality of lawyer-client communications.

71. Firstly, the various domestic authorities dealing with the applicants' case and the Government and the applicants in the proceedings before the Court agreed that no legal provision clearly and specifically set out a prohibition of inspecting and relying on privileged data contained on seized electronic devices in a criminal trial. The Ministry of Justice also acknowledged that there was a lacuna in the law and the situation was not clearly regulated (see paragraph 14 above). The courts in the compensation proceedings held the material was protected, based on the general protection of legal privilege under the fair trial provisions of the Charter of Fundamental Rights, and the analogy with Article 88(1) of the CCP. However, as the Court has already observed (see paragraphs 65-66 above), that analogy was rather

tenuous and several other domestic courts and authorities, including the Constitutional Court, did not find a prohibition. The Court therefore finds that it was not sufficiently clear that there was a rule of domestic law prohibiting the inspection of privileged data extracted from a lawyer's client's electronic devices and, if there was such a rule, how it was applied. There was therefore no domestic law regulating the treatment of privileged electronic data that was foreseeable in its effects for those to whom it was addressed.

72. Secondly, the Court observes that the lack of clear legal regulation meant that the law did not contain any specific and foreseeable procedure for sifting the data and separating privileged material held on electronic data carriers that would comply with the principles established in the Court's case law (see paragraph 69 above). The Court acknowledges that some guidance has been given by the Supreme Court's judgment of 16 April 2025 concerning the data on the same devices belonging to the applicants' client (see paragraph 28 above). However, that judgment was issued after the applicants made their present application to the Court and could have no bearing on the fact that their data had already been placed in the case file and made available to all parties to the criminal proceedings against their client. In any event, the Court is not convinced that the Supreme Court judgment on its own can be considered to have established a clear and foreseeable procedure satisfying the requirements of its case-law and accessible to the applicants, who were not parties to the criminal proceedings within which the order was made for their data to be put on the court case file.

73. In the Court's view, the law in the present case was not foreseeable because its framework was unclear and there were insufficient procedural guarantees for the protection of privileged data on seized electronic devices. The law therefore fell short of the requirements it would have had to fulfil in order to satisfy the criterion that an interference must be in accordance with the law within the meaning of Article 8 § 2 of the Convention.

74. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicants' rights did not have a sufficient basis in domestic law. Having drawn that conclusion, it is not necessary for the Court to review the interference for compliance with the rest of that Article.

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

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

76. The applicants also complained that they did not have access to an effective remedy for their complaints under Article 8. They relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

77. The Court finds that the applicants' complaints under Article 8 of the Convention were "arguable". It follows that Article 13 of the Convention is applicable in the present case.

78. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

79. The applicants maintained that they did not have access to a remedy that would enable them to seek removal of the privileged data from their client's case file (see also paragraphs 44-45 above).

80. The Government reiterated that the applicants had been able to seek compensation and had obtained appropriate redress (see paragraph 40 above). They further pointed out a remedy which the applicants had not used, and which could have, in their view, resulted in the removal of the protected data from the case file (see paragraph 41 above).

81. The Court has already noted above that the notion of an effective remedy for an alleged violation of Article 8 by putting privileged material into a court case file would mean having the opportunity to obtain a review of the lawfulness of that action and an order for the removal or destruction of the protected material if the action was found unlawful (see paragraph 47 above).

82. The Court has already found that the applicants did not have such a remedy at their disposal (see paragraphs 50-51 above). An application to the Brno Municipal Court did not meet the criteria of an effective remedy mainly because there was no clear and foreseeable legal procedure requiring data to be sifted and protected material to be removed (see paragraph 72 above). The Government did not point to any other potentially effective domestic remedy.

83. In such circumstances, the Court considers that the applicants had no effective domestic remedy available to them at the material time.

84. This consideration is sufficient for the Court to find a violation of Article 13 of the Convention, read in conjunction with Article 8.

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

85. The applicants complained that the CBA's application for leave to intervene in their Constitutional Court case had not been communicated to

them for comment. They relied on Article 6 § 1 of the Convention, which reads, so far as relevant, as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ..."

A. Admissibility

1. The parties' submissions

86. The Government submitted that the complaint should be declared inadmissible because the applicants had not suffered a "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention and there was no interest in examining the complaint from the standpoint of respect for human rights. They reiterated that the CBA's submission was an application for leave to intervene in the Constitutional Court proceedings. It set out the CBA's legal position merely with the aim of persuading the Constitutional Court that it indeed had the right to intervene because it had an interest in the outcome of the proceedings (see paragraph 31 *in fine* above). In the Government's view, there was no reason to serve the other parties with the application before intervener status had been granted under Section 76(3) of the Constitutional Court Act.

87. Furthermore, the Government pointed out that the applicants had not specified how the CBA's application, had it been communicated to them, would have affected the arguments they made in the Constitutional Court proceedings. In the Government's view, the CBA's application was favourable to the applicants. It was lodged after the CBA had been informed about the proceedings by the applicants' counsel, and it emphasised the key importance of protecting the confidentiality of communications between defence lawyers and their clients. Furthermore, the applicants' counsel had consulted the Constitutional Court electronic case file, which included the CBA's application, on 21 June 2019, several months before the Constitutional Court's decision, and could easily have read the document then.

88. The Government also argued that the CBA's application had not set out any new issues of fact. Its argument was briefly summarised in the decision and the Constitutional Court had demonstrably not relied on it. The Government acknowledged that the Constitutional Court had not explained the reason for not having served the CBA's application on the applicants. Nevertheless, they pointed out that a requirement to give reasons had been brought in by *Janáček v. the Czech Republic* (no. 9634/17, 2 February 2023), published only after the Constitutional Court's decision in the present case.

89. The applicants submitted that the circumstances of their case were the same as in *Janáček* (cited above), arguing that the Constitutional Court's standard practice did not comply with the Court's case-law. They maintained that they had clearly had an interest in commenting on whether or not the CBA should be joined as a party to the proceedings, as that would give it the

same rights and duties as the main parties. Furthermore, while their representative had indeed logged into the Constitutional Court web-based application to consult the electronic case file (see paragraph 21 above), he had not had access to all the documents in that file.

2. The Court's assessment

90. The Court notes that the Government's preliminary objection of lack of a significant disadvantage is closely linked to the merits of the present complaint and should therefore be joined to the merits (see, *mutatis mutandis*, *Janáček v. the Czech Republic*, cited above).

91. The Court further notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

92. The applicants and the Government reiterated their arguments about the admissibility of the complaint as described in paragraphs 86-89 above.

93. The Court observes that the right to adversarial proceedings entails the parties' right to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision. This requirement applies equally to non-binding advisory opinions intended to assist the court. The Court does not need to determine whether the omission to communicate the document caused the applicants prejudice, as the existence of a violation is conceivable even in the absence of prejudice (see *Vorotnikova v. Latvia*, no. 68188/13, §§ 21-22, 4 February 2021, with further references).

94. The Court further observes that the right to adversarial proceedings is not absolute, and its scope may vary depending on the specific features of the proceedings in question. In certain cases with specific circumstances the Court has held that the non-communication of a document filed in the proceedings and the consequent lack of opportunity for the applicant to comment on it did not undermine the fairness of the proceedings, in so far as the Court found that even if the applicant had taken the opportunity, that would not have had any impact on the outcome of the case, in which the findings had never been in doubt (see *Stepinska v. France*, no. 1814/02, 15 June 2004, and *Verdú Verdú v. Spain*, no. 43432/02, 15 February 2007).

95. The Court observes that in some cases it has rejected complaints concerning the failure by the Czech Constitutional Court to communicate observations to one of the parties to the proceedings on the grounds that the applicants had suffered no significant disadvantage within the meaning of Article 35 § 3(b), as in force prior to the entry into force of Protocol no. 15 to the Convention (see *Holub v. the Czech Republic* (dec.), no. 24880/05, 14 December 2010; *Čavajda v. the Czech Republic* (dec.), no. 17696/07,

29 March 2011; and *Matoušek v. the Czech Republic* (dec.), no. 9965/08, 29 March 2011). The Court took into account two factors: that the observations in question were limited to a reference to the domestic court's own decisions taken in the case and that the Constitutional Court did not base its decision on those observations that had not been communicated. In those specific circumstances, the Court expressed its understanding for the need to conduct proceedings economically.

96. Nevertheless, the Court emphasised that that very weighty reasons must be given for omitting to communicate observations that have been accepted and included in the file for consideration of the deciding court (see *Janáček*, cited above, § 53).

97. Turning to the circumstances of the present case, the Court observes that the disputed submission was an application by the CBA for leave to intervene in the Constitutional Court proceedings (see paragraph 20 above). The application set out the CBA's legal position on the issue, which was briefly summarised in the Constitutional Court's decision together with its decision to grant permission to intervene. By that decision, the CBA therefore became a party to the Constitutional Court proceedings and had their arguments considered by the Constitutional Court, without the applicants having had any opportunity to comment either on the application or on the substance of the intervention. That distinguishes the present case from the cases cited in paragraph 95 above which concerned observations of the domestic courts that had taken decisions in the cases before they reached the Constitutional Court, and whose position therefore could have reasonably been known to the applicants. The CBA's application for permission to intervene set out arguments that had not been raised and discussed previously in the proceedings, and the Constitutional Court was the first court to deal with the substance of those arguments. Still, it gave no reasons why it decided not to communicate the CBA submission to the other parties to the proceedings.

98. The Court notes the Government's contention, which was not disputed by the applicants, that it was the applicants' counsel who had informed the CBA of the Constitutional Court proceedings. It also notes the argument that the CBA clearly intervened in support of the applicants' case and that the Constitutional Court did not rely on its arguments when it took its final decision.

99. However, the Court reiterates that it does not need to determine whether the failure to communicate the CBA's application for permission to intervene prejudiced the applicant (see *Janáček*, cited above, § 54, and *Milatová and Others v. the Czech Republic*, no. 61811/00, § 65, ECHR 2005-V). The extent to which the CBA's arguments influenced the Constitutional Court's assessment is not decisive from the point of view of the applicant's right to a fair hearing (see *Kuopila v. Finland*, no. 27752/95, § 35, 27 April 2000). Nor does the applicant's opportunity to pro-actively

consult the case file (see paragraph 87 above) mean that court had no obligation to communicate the CBA's application to the applicant for comments.

100. In view of the foregoing considerations, the Court dismisses the Government's preliminary objection and finds that, in the present case, respect for the right to a fair hearing, guaranteed by Article 6 § 1, required the applicants to be given the opportunity to read and comment on the CBA's application in the proceedings before the Constitutional Court.

101. There has accordingly been a violation of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

102. 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."

103. The relevant parts of Article 46 of the Convention read as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution ..."

A. Article 41 of the Convention

1. Damage

104. The applicants claimed 4,500 euros (EUR) each in respect of non-pecuniary damage.

105. The Government contested the claim, arguing that the mere finding of a violation would constitute sufficient just satisfaction for any non-pecuniary damage.

106. In view of the violations found and ruling on equitable basis, the Court decides to award each applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

2. Costs and expenses

107. The applicants did not claim any reimbursement for the costs and expenses incurred before the Court. Accordingly, the Court considers that there is no call to award the applicant any sum on that account.

B. Article 46 of the Convention

108. Under Article 46 of the Convention, the respondent State has the obligation to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be taken in its domestic legal order to end the violation and make all feasible reparation for its consequences in a way to restore as far as possible the situation which would have obtained if it had not taken place (see *Ekimdzhiev and Others v. Bulgaria*, no. 70078/12, § 427, 11 January 2022).

109. The Court reiterates that it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used under its domestic legal order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 295, 27 August 2019). Nevertheless, under certain circumstances the Court has found it useful to indicate to a respondent State the type of individual or general measures that might be taken to put an end to the situation that has given rise to the finding of a violation.

110. The Court observes that in the present case, it has found that putting and retaining the applicants' privileged material on the court file of their client's case constituted a violation of the Convention. The Court identified insufficiencies in the legal framework at the time of the interference, namely lack of any specific and foreseeable procedure for inspecting seized electronic devices in order to sift data and to separate out any privileged material. The Court notes that the Supreme Court attempted to fill that lacuna in a judgment concerning the applicants' client (see paragraph 28 above). It is nevertheless not convinced that the Supreme Court judgment on its own can be considered as having established a clear and foreseeable procedure satisfying the requirements of its case-law and accessible to the applicants, who were not parties to the criminal proceedings in question (see paragraph 72 above). The Court therefore finds it appropriate to indicate that individual measures in the present case must include the removal of privileged material from the applicants' client's criminal case file. Furthermore, general measures should bring the legal framework into compliance with the principles set out in the present judgment.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

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

4. *Holds* that there has been a violation of Article 13 of the Convention read in conjunction with Article 8;

5. *Holds* that there has been a violation of Article 6 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
   (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' claims for just satisfaction.

Done in English, and notified in writing on 18 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	María Elósegui
Registrar	President

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

CONCURRING OPINION OF JUDGE SERGHIDES

1. As set out in the introduction to the judgment, the present joined applications mainly concern various communications between the applicants, who were criminal defence lawyers, and their client (Z.). Those communications were extracted from the client's electronic devices and put on his criminal case file.

2. The applicants relied on Articles 6, 8 and 13 of the Convention and the Court, including myself, found that there had been a violation regarding all these Convention provisions.

3. This partly concurring opinion relates only to the applicants' complaint under Article 6 § 1 of the Convention, namely that the Czech Bar Association's (CBA) application for leave to intervene in their Constitutional Court case had not been communicated to them for comment. It is to be clarified that the applicants were heard neither before the granting of leave for the CBA to intervene nor after this intervention. The actual observations of the CBA were contained in the application to intervene, and the Constitutional Court decided the case, summarising the CBA observations in its judgment, without the applicants having had the opportunity to comment on the CBA's observations before the delivery of the judgment. In fact, the decision of the Constitutional Court was taken on 20 November 2019 and was served on the applicants three days later, on 23 November 2019. The decision found the applicants' constitutional appeal to be manifestly ill-founded, holding that their fundamental rights had not been affected because privilege was the right of the client, not the lawyer (see paragraph 22 of the judgment).

4. The judgment finds a violation of Article 6 § 1 because the Constitutional Court gave the CBA leave to intervene without its application for leave being communicated to the applicants, for them to have the opportunity to read and comment, and without giving any reasons at all for omitting to communicate the document in question (see paragraphs 96-101 of the judgment). It is clear from the judgment that the Court, following its case-law, may sometimes permit such a third-party intervention without communication of the application for leave to the parties if there are "very weighty reasons" to do so (see paragraph 96 of the judgment). In my view – and this is where my difference with the majority lies – is that the guarantees of equality of arms and adversarial proceedings implicitly enshrined in Article 6 § 1 are indispensable components of a fair hearing, and no exceptions may be made to them, regardless of any purportedly "weighty reasons" a court may invoke to dispense with them (the judgment considers that the right to adversarial proceedings is not absolute – see paragraph 94).

5. Consequently, in my humble view, the present case was correctly decided in its outcome in finding a violation of Article 6 § 1, but its reasoning failed to provide firm protection for the structural guarantees of Article 6 § 1. By leaving open the possibility that non-communication might be acceptable

if accompanied by very weighty reasons, the judgment, with all due respect, undermines the normative foundations of adversarial proceedings and equality of arms. The normative, or principled, approach – which I follow – treats non-communication as a violation *per se*: a defect that cannot be counterbalanced, justified, or absorbed into an "overall fairness" assessment. Only this approach, and not the current case-law approach of the Court – what I refer to as the "qualified overall fairness" approach – preserves the indispensable structural features of a fair trial under the Convention. I have explained the principled or normative view in a number of separate opinions[1], to which I refer, contrasting it with the qualified view of procedural fairness that permits a balancing exercise, and I am thus spared from elaborating further on the differences between these two views. Despite the fact that the judgment does not endorse the normative approach in stating that "very weighty reasons" can exonerate a failure to communicate pleadings of third parties, it does, however, endorse the normative view in paragraph 99 of the judgment regarding some other issues, namely, (a) that it does not need to determine whether the failure to communicate the CBA's application for permission to intervene prejudiced the applicants; (b) that the extent to which the CBA's arguments influenced the Constitutional Court's assessment is not decisive from the point of view of the applicants' right to a fair hearing; and (c) that the applicants' opportunity to pro-actively consult the case file, does not mean that the court had no obligation to communicate the CBA's application to the applicants for comments.

6. A few further points concerning the principled or normative approach require clarification. According to this approach, as I understand it and adhere to it, the overall fairness of a trial encompasses the fulfilment of all Article 6 guarantees, and this applies not only to each stage of the proceedings but also to every participant or stakeholder in the trial, including any interveners. Fairness must be preserved at every moment and among all actors or stakeholders. For example, if an intervener participates in the trial without proper communication, fairness is compromised, even if all other aspects of the procedure were formally in order. In the present case, not only did the Constitutional Court fail to require the CBA to communicate its application for leave to intervene to the applicants, but it also did not give the applicants an opportunity to see or comment on the CBA's observations, which were included in that very application for leave to intervene.

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[1] See *Xenofontos and Others*, nos. 68725/16 and 2 others, 25 October 2022 (paragraphs 28-50 of the opinion); *Souroullas Kay and Zannettos,* no. 1618/18, 26 November 2024 (paragraphs 5-36 of the opinion); *Yüksel Yalçınkaya v. Türkiye* [GC] no. 15669/20, 26 September 2023 (paragraphs 7-9 of the opinion); *Snijders v. the Netherlands*, no. 56440/15, 6 February 2024 (paragraphs 24-86 of the opinion); *W.R. v. the Netherlands*, no. 989/18, 27 August 2024 (paragraphs 4-39 of the opinion); *Sakkou v. Cyprus,* no. 4429/23, 10 July 2025 (paragraphs 8-13 of the opinion); *Opalenko v. Ukraine*, no. 46673/18, 17 July 2025 (paragraphs 4-15 of the opinion); *Fajstavr v. the Czech Repubic,* no. 48303/21, 16 October 2025 (paragraphs 5-40 of the opinion).

7. I respectfully disagree with the judgment when it states that the failure to communicate observations that have been accepted and included in the file for consideration of the deciding court can be justified in certain circumstances, in particular, when there are very weighty reasons (see paragraph 96 of the judgment). The judgment relativises what should be, under the principled procedural fairness view, a categorical fairness requirement. The right of an individual to be informed of and to respond to submissions pertinent to their case constitutes a foundational principle underpinning both the adversarial process and the doctrine of equality of arms and the right to effective participation in a trial. This procedural right should not be construed as a mere formal or secondary requirement that that can be traded away or can be subject to derogation at the discretion of domestic authorities.

8. To conceive of the communication of submissions as just a facet of procedure that is susceptible to omission – provided there exists weighty justification – amounts to a recharacterisation of a fundamental procedural guarantee as an optional aspect of domestic procedure. Such an approach is antithetical to the very essence of fairness embedded in the principles of equality of arms and adversarial proceedings, "according to which the parties must have the opportunity not only to be made aware of any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision" (see *Hudáková and Others v. Slovakia*, no. 23083/05, § 26, 27 April 2010). The fair-trial guarantees implicated in this context – specifically, the right to knowledge of supporting submissions and the opportunity to respond – do not constitute interests to be weighed in the balance against other factors or considerations. Rather, they are necessary preconditions for any process to be considered fair within the meaning of Article 6 § 1 of the Convention. Their absence negates the minimum threshold of fairness to which parties are entitled; procedural fairness in this sense is not amenable to a balancing exercise but instead demands the categorical presence of all guarantees.

9. Consequently, the principled and doctrinally sound position is that the failure to communicate an application for leave to intervene as a third party, in the present case that of the CBA, is intrinsically and categorically incompatible with Article 6 § 1. Equally incompatible with Article 6 § 1 is the failure of the Constitutional Court to allow the applicants to read and comment on the CBA's observations. The absence of knowledge of submissions by a third party, irrespective of the domestic court's rationale or securing of the rest of the Article 6 guarantees, is in itself a violation of the procedural rights protected by the Convention. To reiterate, the failure to disclose submissions integral to the case undermines the structural principles of adversarial proceedings and equality of arms.

10. A normative or principled view of procedural fairness therefore compels the adoption of a clear and categorical rule: non-communication with respect to relevant submissions constitutes a violation *per se* of the principles of adversarial proceedings and equality of arms as well as of the principle of effective participation in a trial, regardless of any extenuating circumstances proffered by the domestic court. This approach not only preserves the normative and structural integrity of Article 6 § 1, but also places essential limits upon the doctrine of overall fairness, precluding the reduction of inviolable procedural guarantees to tradeable variables. By recognising non-communication as inherently violative, this position ensures the continued protection of the adversarial process and the principle of equality of arms as indispensable elements of the right to a fair trial.

11. If one rightly considers the principles of equality of arms and adversarial proceedings, as well as the principle of effective participation in a hearing, as categorical and absolute procedural guarantees indispensable for a fair trial, then there can be no legitimate issue of balancing these guarantees against other considerations, such as an alleged need to "conduct proceedings economically [meaning here expediently]" (see paragraph 95 of the judgment). The existence of these guarantees is not contingent upon the presence of countervailing reasons or the overall fairness of the proceedings; rather, their presence is a prerequisite for any process to qualify as a fair trial. In this light, the invocation of reasons such as "conducting proceedings economically" (ibid) cannot be hierarchically elevated above the existence of these guarantees. The principle of equality of arms, as interpreted by the Court, requires that each party be afforded a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage *vis-à-vis* their opponent. Closely connected to this is the principle of effective participation, which demands that individuals not only be present in the proceedings but also be able to understand, engage with, and influence the process in a meaningful way. Effective participation thus presupposes equality of arms: without genuine parity between the parties, participation becomes formal rather than substantive. Similarly, adversarial proceedings demand that parties have knowledge of and the ability to respond to all submissions relevant to their case. This too is a core component of effective participation, for one cannot effectively participate in a process whose essential elements remain undisclosed. These requirements are not subject to exceptions or qualifications based on administrative convenience or efficiency. To permit the omission of communication of pleadings on grounds such as economic efficiency would undermine the very structure of fair trial protections. The categorical nature of these guarantees means that they cannot be traded away or diluted by reference to other procedural objectives.

12. In the present case, there has been a violation not merely of one Article 6 § 1 guarantee, but of four: the principle of equality of arms, the

principle of adversarial proceedings, the principle of effective participation in the trial, and the guarantee of a reasoned judgment. The first three guarantees were breached not only because the Constitutional Court failed to give the applicants an opportunity to be informed of, and heard before, the admission of the CBA's application, but also because it did not allow them to be informed of the CBA's observations after deciding to accept them, nor to comment on those observations before delivering its final judgment.

13. Fairness is not merely a technical attribute of legal procedure; it represents a moral commitment to equality, transparency, participation, and respect for human dignity. The principled view of fairness, which I adopt, regards fairness as a foundational value rather than a functional instrument, safeguarding both human dignity and the integrity of the rule of law. This perspective underscores that justice turns not only on the substance of the decision reached, but equally on the manner in which that decision is achieved. Procedural fairness, therefore, reflects the deeper truth that the administration of justice must itself be conducted in a just and morally defensible way.

14. In conclusion, the absence of communication and the failure to give the applicants an opportunity to be heard on the third-party intervention constituted, in themselves, a violation of the principles of equality of arms, adversarial proceedings and effective participation in the trial, irrespective of the domestic court's reasoning, if any (in the present case no reasoning was provided for that omission), or of the broader fairness guarantee. In my humble submission, this normative approach ensures that the integrity of Article 6 § 1 is preserved and that the foundational values of adversarial justice remain non-derogable and structurally safeguarded within the framework of the Convention. It reaffirms that procedural rights are not mere ancillary guarantees, but the very mechanisms through which the rule of law is animated and through which judicial authority acquires its democratic legitimacy. More profoundly, it underscores the doctrinal truth that fairness in procedure is not simply instrumental to a just outcome; it is constitutive of justice itself. When the Court gives full effect to the indispensable guarantees of Article 6, it affirms that legality endures only through fidelity to transparency and parity – without which adjudication loses its claim to do justice.

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
1.	37514/20	Černý v. the Czech Republic	18/08/2020	**Adam ČERNÝ** 1979 Prague Czech
2.	37525/20	Čapčuch v. the Czech Republic	18/08/2020	**Pavel ČAPČUCH** 1961 Brno Czech
3.	37533/20	Kočí v. the Czech Republic	18/08/2020	**Petr KOČÍ** 1979 Prague Czech
4.	37546/20	Lichnovský v. the Czech Republic	18/08/2020	**Ondřej LICHNOVSKÝ** 1980 Prostejov Czech
5.	37555/20	Medňanská v. the Czech Republic	18/08/2020	**Ilona MEDŇANSKÁ** 1987 Brno Czech