CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF PANTELEYENKO v. UKRAINE

(Application no. 11901/02)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

12/02/2007

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 Panteleyenko v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 6 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 11901/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Oleksandr Sergiyovych Panteleyenko ("the applicant"), on 30 November 2001.

2. The Ukrainian Government ("the Government") were represented by their Agents, Ms Valeria Lutkovska and Mr Yuriy Zaytsev.

3. On 15 March 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in the city of Chernigiv.

1. The applicant's criminal case and derivative proceedings

a. Criminal charge against the applicant

5. On 3 May 1999 the Chernigiv City Prosecutor' Office (hereinafter the Prosecutor' Office) instituted criminal proceedings against the applicant for

abuse of power and forgery of official documents. The prosecution's case was that the applicant, while acting in his capacity as a private notary, had fraudulently certified a title and real-estate transactions using invalid registration forms.

6. On 21 May 1999 the Chernygiv City Prosecutor issued a search warrant in respect of the applicant's office. The search was carried out the same day. According to the record drawn up on this occasion, the authorities seized at the office notary stamps and documents, a number of accounting records and a metal strong-box. The latter was opened on 2 July 1999 at the premises of the Prosecutor's Office. The relevant record stated that there had been found, *inter alia*, personal items belonging to the applicant.

7. On 28 July 1999 an investigator from the Prosecutor's Office closed the applicant's case given the lack of any *corpus delicti*.

8. On 20 September 2000 the acting Chernigiv City Prosecutor overruled the investigator's decision, as it had been proved that the applicant had committed the imputed offence, but ordered the discontinuation of proceedings due to the insignificance of the offence. The applicant challenged this finding, claiming that he had not committed any offence. On 21 December 2000 the Desniansky District Court of Chernigiv (hereafter "the Desniansky Court") rejected the applicant's complaint.

9. On 26 February 2001 the Presidium of the Chernigiv Regional Court, in the course of supervisory proceedings, quashed the decision of the Desniansky Court and remitted the case.

10. On 4 April 2001 the Desniansky Court quashed the City Prosecutor's ruling of 20 September 2000 and ordered a further pre-trial investigation.

11. On 26 May 2001 an investigator terminated the criminal proceedings on substantially the same grounds as in the September 2000 ruling. On 4 July 2001 the Chernigiv City Prosecutor quashed this decision and ordered further inquiries in the case.

12. On 4 August 2001 the criminal case was closed due to the insignificance of the offence which had been committed. The applicant's complaint against this ruling was rejected on 6 November 2001 by the Desniansky Court as being unsubstantiated. In particular, the court indicated that the applicant's guilt had been proved by the evidence collected in the course of the investigation.

13. On 24 January 2002 the Chernigiv Regional Court of Appeal (hereafter "the Court of Appeal") quashed the decision of 6 November 2001 as the local court had failed to specify the evidence in support of its opinion as to the applicant's guilt. The case was remitted for a fresh consideration.

14. On 26 June 2002 the Desniansky Court rejected the applicant's complaint against the ruling of 4 August 2001. The court indicated that the investigation case file contained sufficient evidence to establish that the applicant had forged a certain notary document and wittingly carried out an invalid notarial action. However, having regard to the insignificance of the

offence, further criminal prosecution was impractical. As regards the applicant's submissions concerning the inadmissibility of the evidence obtained by the search of his office, the court found that such complaints could be raised during the trial on the merits and considered itself incompetent to examine them in the course of the proceedings before it.

On 9 September 2002 the Court of Appeal upheld this decision. On 13 December 2002 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

b. Compensation proceedings

15. In January 2000 the applicant instituted proceedings against the Prosecutor's Office, seeking monetary compensation for the material and moral damage suffered as a result of the allegedly unlawful search of his office (i.e. loss of or damage to personal items and the seizure of documents essential for his professional activity).

16. On 28 August 2000 the Novozavodsky District Court of Chernigiv (hereafter "the Novozavodsky Court") granted this claim. The court declared the search of the applicant's office "to have been conducted unlawfully" (*визнати проведення обшуку незаконним*). In particular, it established that in breach of Article 183 of the Code of Criminal Procedure (hereafter "the CCP") the investigator, being well aware of the applicant's whereabouts (at that time he was undergoing hospital treatment), had failed to serve the search warrant on him. Moreover, contrary to Article 186 of the CCP, the authorities, instead of collecting the evidence relating to the criminal case, had seized all the official documents and certain personal items in the applicant's office. This had effectively denied the applicant the possibility of performing his professional duties until 6 August 1999, when the relevant documents and items were returned to him. The court awarded the applicant UAH 14,140[1] in material and UAH 1,000[2] in moral damages.

17. On 16 January 2001 the Chernygiv Regional Court, on an appeal by the Prosecutor's Office, quashed the decision of 28 August 2000 and remitted the case for fresh consideration because the legal basis for the decision (namely the termination of the criminal proceedings on "exonerative" grounds) had ceased to exist.

18. On 26 December 2001 the Novozavodsky Court examined the applicant's claim and rejected it as being unsubstantiated. The court, referring to the Prosecutor's Office's ruling of 4 August 2001, found that the applicant's case had been closed on non-exonerative grounds, within the meaning of Article 2 of the Law of Ukraine "on the procedure for compensation of damage caused to the citizen by unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts" 1994, and

[1] 2,315 euros (EUR)
[2] EUR 165

therefore the applicant had no standing to claim compensation for any acts or omissions allegedly committed by the authorities in the course of the investigation.

19. On 23 May 2002 the Court of Appeal stayed the appeal proceedings until the determination of the applicant's complaint against the ruling of the Prosecutor's Office of 4 August 2001 (i.e. the grounds for the termination of his criminal case). On 3 January 2003 the appeal proceedings were renewed and the applicant's appeal against the judgment of 26 December 2001 was rejected.

2. Defamation proceedings

20. In December 2001 the applicant instituted proceedings in the Novozavodsky Court against the Chernigiv Law College and its Principal for defamation. The applicant alleged that, during the Attestation Commission's hearing on 14 May 2001, the Principal had made three statements about him which were libellous and abusive, including one rudely questioning his mental health. The applicant demanded apologies and compensation for moral damage.

21. During the trial, one of the applicant's main arguments was that he had never suffered any mental health problems. He adduced to this effect a certificate supposedly issued by a psychiatric hospital, attesting that the applicant had never been treated there.

22. The case of the defence was that the Principal had never uttered the obscenities attributed to him by the applicant. However, they challenged the authenticity of the above certificate and asked the court to verify the applicant's assertions. On 21 March 2002 this application was granted and the Chernigiv Regional Psycho-Neurological Hospital was requested to provide information as to whether the applicant had undergone any psychiatric treatment. On 3 April 2002 the hospital submitted to the court a certificate to the effect that for several years the applicant had been registered as suffering from a certain mental illness and underwent in-patient treatment in different psychiatric establishments. However, several years earlier his psychiatric registration had been cancelled due to long-term remission (a temporary lessening of the severity) of the disease. This information was read out by a judge at one of the subsequent hearings; however, no reference to this evidence was made in the final judgment.

23. On 3 June 2002 the Novozavodsky Court rejected the applicant's claim as unsubstantiated. The court found, *inter alia*, that the applicant had failed to prove that the defendant had made any remarks about his sanity.

24. The applicant appealed, challenging, *inter alia*, the lawfulness of the court's request for information about his mental state.

25. On 1 October 2002 the Court of Appeal upheld the judgment in substance. On the same day the court issued a separate ruling to the effect that the first instance court's request for information concerning the

applicant's mental health from the public hospital was contrary to Article 32 of the Constitution, Articles 23 and 31 of the Data Act 1992 and Article 6 of the Psychiatric Medical Assistance Act 2000. In particular, it was indicated that information about a person's mental health was confidential, and its collection, retention, use and dissemination fell under a special regime. Moreover, the court held that the requested evidence had no relevance to the case.

Summing up the above considerations, the Court of Appeal found that the judges of the lower courts lacked training in the field of confidential data protection and notified the Regional Centre for Judicial Studies about the need to remedy this *lacuna* in their training programme.

26. On 24 June 2003 the Supreme Court rejected the applicant's request for leave to appeal under the cassation procedure.

II. RELEVANT DOMESTIC LAW

1. Constitution of Ukraine, 1996

27. The relevant provisions of the Constitution read as follows:

Article 30

"Everyone is guaranteed the inviolability of his or her home.

Entry into a home or other possessions of a person, and the examination or search thereof, shall not be permitted, other than pursuant to a reasoned court decision.

In urgent cases related to the preservation of human life and property or to the direct pursuit of persons suspected of committing a crime, another procedure established by law is possible for entry into a home or other possessions of a person, and for the examination and search thereof.

Article 32

No one shall be subject to interference in his or her personal and family life, except in cases envisaged by the Constitution of Ukraine.

The collection, retention, use and dissemination of confidential information about a person without his or her consent shall not be permitted, except in cases determined by law, and only in the interests of national security, economic welfare and human rights..."

2. Code of Criminal Procedure, 1960

28. Article 6 of the Code enumerates the reasons for the termination of criminal proceedings, including the absence of any *corpus delicti*. Article 7 of the Code provides that the case can be closed on the ground of the insignificance of an offence which had been committed.

Article 327 § 4 of the Code provides that the trial court acquits the defendant in the following cases:

- if the event of the crime has not been established;
- if the defendant's actions do not constitute any *corpus delicti*;
- if there is a lack of evidence that the defendant was involved in the offence.

The same grounds, called the "exonerating circumstances" (*реабілітуючи обставини*) constitute a basis for compensation for unlawful prosecution (see paragraph 35 below). The remainder of the grounds for the termination of criminal proceedings, set out in Articles 6, 7 and 7-1 of the Code (including the insignificance of an offence) are called "non-exonerating circumstances" (*нереабілітуючи обставини*) and do not give rise to a right for compensation for any alleged wrongs committed by the authorities during the investigation.

29. Article 212 of the Code provides that, on completion of the investigation, the investigator either draws up an indictment or terminates the case.

According to Article 213 of the Code the case can be closed by the investigator on both exonerating and non-exonerating grounds.

30. Article 227 § 2 of the Code empowers the prosecutor to quash any investigator's decision and to give binding instructions to the investigating authorities if he/she finds that the proceedings were conducted contrary to the procedural or sustentative law. However, the prosecutor does not have power to award any damages to a defendant for the established wrongdoing on the part of the investigating authorities.

31. The relevant provisions of the Code provide as follows:

Article 177

"The search shall be carried out if there are sufficient grounds to believe that the means of committing an offence ... and other items and documents important for the case are kept in certain premises.

Article 183

At the beginning of a search the investigator shall provide the [search] warrant to persons who occupy the premises ...and shall propose to them to produce the items or documents specified in the warrant ... If they refuse to do so, the investigator shall carry out the compulsory search.

...When conducting the search the investigator shall have the right to open locked premises if the occupier refuses to open them. The investigator, however, shall avoid inflicting unnecessary damage to doors, locks and other property...

Article 186

During the search ... there shall be seized only those documents and items which are important for the case, as well as property of the accused or defendant in order to

secure civil claim or possible confiscation. Items and documents, removed by law from circulation, shall be seized irrespective of their relation to the case.

Article 236-6

The complaint in respect of the decision [ruling] of the body of inquiry, investigator or the prosecutor to terminate the criminal case is examined by the judge within 5 ...days.

The judge requests the case file, studies it and, if necessary, hears the person who lodged the complaint.

... Having examined the complaint, the judge, depending on whether Articles 213 and 214[1] of this Code have been complied with, takes one of the following decisions:

1) dismisses the complaint;

2) quashes the ruling ... and remits the case for further investigation ."

3. Code of Civil Procedure, 1963

32. Article 10 of the Code provides:

Hearings in all courts shall be public except when this conflicts with interests of the protection of the State or another secret protected by law.

The *in camera* consideration of the case can also be ordered by the reasoned decision of the court with a view to preventing the dissemination of data relating to the intimate details of the life of the persons who participate in the hearing.

In the *in camera* hearing participate the parties and their representatives ...and, if necessary, witnesses, experts and translators.

The *in camera* hearing is conducted in accordance with all procedural rules. The judgments in all cases are pronounced publicly.

4. Data Act, 1992

33. The relevant provisions of the Act provide:

Article 23

"Personal information is a complex of documented or publicly acclaimed data about a person.

The main personal data are ...state of health

[1] Articles of the CCP governing the procedure for termination of the case on the pre-trial stage.

The sources of the documented personal information are the documents issued on the person's request, signed by him or her, as well as data about a person collected by the State and municipal authorities, acting within their competence.

The collection of data about a person without his or her permission is prohibited except in accordance with law.

Article 31

The State authorities and organisations, municipal and local authorities whose information system, retain data about citizens are obliged to ensure that they have an unrestricted access to this information, except in accordance with law, as well as to undertake to secure it from the unauthorised access.

The access of unauthorised persons to information about another person, collected in accordance with law by the State authorities, organisations and officials is prohibited.

... The necessary amount of data about citizens that can be lawfully received should be strictly limited and can be used only for lawful ends.

Article 37

The following official documents are exempt from the general rule of obligatory provision on the information requests:

... confidential information;

... information that concerns private life of citizens."

5. Psychiatric Medical Assistance Act, 2000

34. Article 6 of the Act insofar as relevant provides as follows:

"Members of medical staff ... who in connection with their work or studies became aware about a person's mental disorder, his or her request for psychiatric aid or treatment in psychiatric establishments ... as well as other information concerning the mental state of a person, his or her private life, cannot disclose this information except in accordance with ... this Article.

...Disclosure of information concerning the state of a person's mental health and provision to him or her of psychiatric aid can take place without the person's consent if:

...2) it is important for an inquiry, pre-trial investigation or trial, on a written request from ... a judge.

The documents that comprise information concerning the state of a person's mental health and provision to him or her of psychiatric aid must be stored in compliance with requirements which secure the confidentiality of this information. The provision of the originals of these documents and the making of copies can be carried out only in accordance with law."

6. *The Law of Ukraine "on the procedure for compensation of damage caused to the citizen by unlawful actions of bodies of inquiry, pre-trial investigation, prosecutors and courts", 1994*

35. The relevant extract of the Law provides:

Article 2

"The right to compensation for damages in the amount and in accordance with the procedure established by this Law shall arise in the cases of:

- acquittal by a court;

- termination of a criminal case on grounds of an absence of event of a crime, absence of *corpus delicti*, or lack of evidence of the accused's participation in the commission of the crime."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

1. *Criminal case*

36. The Government pleaded non-compliance with the six-month rule and non-exhaustion of domestic remedies. They stated that the final decision in the criminal case against the applicant was given by the Desniansky Court on 21 December 2000 (i.e. more than six months before the application was lodged with the Court), which decision the applicant had failed to challenge in ordinary appeal proceedings. The Government maintained that the subsequent reversal of this decision could not be taken into account as it was effected in the course of the supervisory review. The applicant disagreed.

37. The Court notes that on 26 February 2001, following the applicant's request, the Presidium of the Chernigiv Regional Court overruled the above-mentioned decision of the Desniansky Court and recommenced the proceedings in the applicant's criminal case. Subsequently, on 26 June 2002, the Desniansky Court delivered a new judgment in the case, which apparently replaced the one referred to by the Government and was upheld on appeal and by the cassation instance on 9 September 2002 and 13 December 2002 respectively. The Government have failed to advance any argument as to why the Court should disregard these proceedings (cf. *Pavlyulynets v. Ukraine*, no. 70767/01, §§ 41 and 42, 6 September 2005).

38. The Court, therefore, dismisses this objection.

2. Civil case

39. The Government submitted that the applicant had failed to exhaust domestic remedies, in that he had never requested the trial or appellate courts to consider his case in private, which he was free to do under the domestic procedural law. The applicant considered this remedy ineffective.

40. The Court notes that this objection is closely linked to the relevant complaints of the applicant under Articles 8 and 13 of the Convention. In these circumstances, it joins the preliminary objection to the merits of the applicant's complaints.

3. Conclusion

41. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant complained that the unlawful search of his office and the disclosure at a court hearing of confidential information regarding his mental state and psychiatric treatment violated his rights guaranteed by Article 8 the Convention, which, insofar as relevant provides as follows:

> 1. Everyone has the right to respect for his private ... 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 ... for the prevention of disorder or crime, ..."

A. Search of the applicant's office

1. The parties' submissions

43. The Government, while accepting that the impugned search interfered with the applicant's right to respect for his home, maintained however that, since the premises in issue were used by the applicant exclusively for business purposes, the State's margin of appreciation was wider than in the case of a search of a dwelling. They further maintained that the interference was in accordance with law, namely Chapter 16 of the CCP.

44. Although at the material time the search was authorised by a prosecutor, not a judge, the applicant nevertheless enjoyed a wide range of

safeguards afforded by the CCP. In particular, the search had to be carried out in the presence of two witnesses and a person who occupied the premises or, in his/her absence, in the presence of an official from the relevant House Maintenance Authority.

45. The Government submitted that the search pursued the legitimate aim of the prevention of crime and was necessary in a democratic society.

46. The applicant countered these submissions, stating that the search of his office was neither lawful nor did it pursue any legitimate aim, as he had never committed the crimes imputed to him by the authorities.

2. The Court's assessment

47. In so far as the Government maintained that the State had a wider margin of appreciation *vis-à-vis* searches of business premises compared to those of dwellings, the Court finds it unnecessary to embark on a discussion of this issue, the outcome of which would be of no relevance in the present case. It suffices for the Court to find that in any event (and this was common ground) the search of the applicant's office amounted to an interference, within the meaning of Article 8 of the Convention, with his right to respect for his home (cf. *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, § 30; *Roemen and Schmit v. Luxembourg*, no. 51772/99, § 64, ECHR 2003-IV; and *Ernst and Others v. Belgium*, no. 33400/96, § 109, 15 July 2003).

48. The question remains whether this interference was justified under paragraph 2 of Article 8 and, more particularly, whether the measure was "in accordance with the law" for the purposes of that paragraph.

49. The Court reiterates that the expression "in accordance with the law" in Article 8 § 2 of the Convention essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof (*mutatis mutandis*, *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, § 697, 13 November 2003).

50. In the instant case the Court notes, firstly, that the applicant was charged with abuse of power and forgery of official documents, i.e. offences punishable under the 1960 Criminal Code. To enable criminal offences to be detected, Chapter 16 of the CCP provides that searches may be carried out "if there are sufficient grounds to believe that the means of committing an offence ... and other items and documents important for the case are kept in certain premises". The CCP contains safeguards against arbitrary interference by the authorities with the right to respect for home, including, *inter alia*, the obligation to serve the search warrant in advance on a person occupying the relevant premises and the prohibition on seizing any documents and items which do not directly relate to the case under investigation (paragraph 28 above).

51. The Court observes, however, that on 28 August 2000 the Novozavodsky Court found that the impugned search "was conducted

unlawfully" on account of the authorities' failure to comply with the above-mentioned statutory safeguards (paragraph 16 above). Thus, the prosecution officials, although aware of the applicant's whereabouts, did not attempt to serve the search warrant on him. Furthermore, instead of selecting the evidence necessary for the investigation, they seized all documents from the office and certain personal items belonging to the applicant which were clearly unrelated to the criminal case.

52. It is to be noted that the substance of this conclusion has never been overruled by higher courts, although this decision was subsequently quashed on other grounds (paragraph 17 above). Moreover, the Government in their observations did not question these findings or produce any evidence proving otherwise.

53. In these circumstances, the Court concludes that the interference in question has not been shown to be "in accordance with the law" and that there has accordingly been a violation of Article 8 on this ground. In view of this conclusion, the Court does not find it necessary to examine the issue of justification arising under this provision.

B. Disclosure of confidential psychiatric information

1. The parties' submissions

54. The Government maintained that, although any request for confidential information regarding mental state or psychiatric treatment of a person normally constitutes an interference with one's private life, in the present case there had been no such interference. They referred in this respect to the fact that the request in issue was made by the court, not by, for example, the media, and it was not aimed at the dissemination of the information obtained. The Government further maintained that the applicant himself had incited the court to undertake this measure in order to verify a document, adduced by him, the authenticity of which was regarded as doubtful.

55. The applicant submitted that the requested information was irrelevant to the outcome of the trial before the Novozavodsky Court. He further stated that the measure in issue was in breach of the Constitution, which rendered it "unlawful" within the meaning of Article 8 of the Convention.

2. The Court's assessment

a. Whether there was an interference

56. The Court points out that both the storing by a public authority of information relating to an individual's private life and the use of it amount

to interference with the right to respect for private life secured in Article 8 § 1 of the Convention (cf. *Rotaru v. Romania* [GC], no. 28341/95, § 46, ECHR 2000-V).

57. In the instant case, the domestic court requested and obtained from a psychiatric hospital confidential information regarding the applicant's mental state and relevant medical treatment. This information was subsequently disclosed by the judge to the parties and other persons present in the courtroom at a public hearing.

58. The Court finds that those details undeniably amounted to data relating to the applicant's "private life" and that the impugned measure led to the widening of the range of persons acquainted with the details in issue. The measures taken by the court therefore constituted an interference with the applicant's rights guaranteed under Article 8 of the Convention (*Z v. Finland*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, § 71).

b. Whether the interference was "in accordance with the law"

59. The principal issue is whether this interference was justified under Article 8 § 2, notably whether it was "in accordance with the law" and "necessary in a democratic society", for one of the purposes enumerated in that paragraph.

60. The Court recalls that the phrase "in accordance with the law" requires that the measure complained of must have some basis in domestic law (cf. *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 99, ECHR 2003-IX (extracts)).

61. It is to be noted that the Court of Appeal, having reviewed the case, came to the conclusion that the first instance judge's treatment of the applicant's personal information had not complied with the special regime concerning collection, retention, use and dissemination afforded to psychiatric data by Article 32 of the Constitution and Articles 23 and 31 of the Data Act 1992, which finding was not contested by the Government (paragraph 25 above). Moreover, the Court notes that the details in issue being incapable of affecting the outcome of the litigation (i.e. the establishment of whether the alleged statement was made and the assessment whether it was libellous; compare and contrast, *Z v. Finland*, cited above, §§ 102 and 109), the Novozavodsky Court's request for information was redundant, as the information was not "important for an inquiry, pre-trial investigation or trial", and was thus unlawful for the purposes of Article 6 of the Psychiatric Medical Assistance Act 2000.

62. The Court finds for the reasons given above that there has been a breach of Article 8 of the Convention in this respect. It does not consider it necessary to examine with respect to this measure whether the other conditions of paragraph 2 of that Article were complied with.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

63. The applicant complained that the authorities' refusal to pay him damages under the "compensation for unlawful criminal prosecution" scheme contravened the presumption of innocence. He relied on Article 6 § 2 of the Convention, which provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

64. The Government maintained that there was no violation of Article 6 § 2, as the prosecution's decision to close the case on non-exonerating grounds was tested and ultimately upheld by the courts. The applicant disagreed.

65. The Court reiterates that the Convention must be interpreted in such a way as to guarantee rights that are practical and effective as opposed to theoretical and illusory (e.g., *Multiplex v. Croatia*, no. 58112/00, § 44, 10 July 2003); that also applies to the right enshrined in Article 6 § 2 (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 35).

66. The Court recalls that, according to its settled case-law, neither Article 6 § 2 nor any other provision of the Convention gives a person "charged with a criminal offence" a right to reimbursement of his costs or a right to compensation for lawful detention on remand where proceedings against him have been discontinued (*Narciso Dinares Peñalver v. Spain* (dec.), no. 44301/98, 23 March 2000; also *Englert v. Germany*, judgment of 25 August 1987, Series A no. 123-B, § 36, and *Sekanina v. Austria*, judgment of 25 August 1993, Series A no. 266-A, § 25). Merely refusing compensation does not therefore in itself infringe the presumption of innocence (*mutatis mutandis*, the previously cited *Nölkenbockhoff* and *Minelli* judgments, § 36 and §§ 34/35 respectively).

67. However, the Court's case-law also establishes that the presumption of innocence is infringed if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty without his having been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty. The scope of Article 6 § 2 is moreover not limited to pending criminal proceedings but extends to judicial decisions taken after a prosecution has been discontinued (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62; the previously cited *Englert* judgment; *Nölkenbockhoff v. Germany*, judgment of 25 August 1987, Series A no. 123-C; and *Capeau v. Belgium*, no. 42914/98, § 25, ECHR 2005-I) or after an acquittal (see, in particular, the previously cited *Sekanina* judgment; *Rushiti v. Austria*, no. 28389/95, 21 March 2000; *Lamanna v. Austria*, no. 28923/95, 10 July 2001; *O. v. Norway*,

no. 29327/98, ECHR 2003-II; and *Hammern v. Norway*, no. 30287/96, 11 February 2003).

68. The Court is, therefore, required to determine whether in the present case the outcome of the criminal proceedings against the applicant and the subsequent rejection of his claim for compensation for unlawful prosecution allowed doubt to be cast on the applicant's innocence, although he had not been proved guilty.

69. The Court notes that the applicant's case was terminated at the pre-trial stage by the investigative authorities, on the ground that the minor character of the offence committed by the applicant made its prosecution impractical. The domestic courts, having reviewed this decision, agreed that the (unnamed) evidence in the case file was sufficient to conclude that the applicant had committed an offence as well as the minor character of that offence.

70. It is true that the voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation (*Sekanina*, cited above, § 30). However, in its decision of 26 December 2001, the Novozavodsky Court rejected the applicant's compensation claim with reference to the fact that the criminal proceedings against him had been discontinued on non-exonerating grounds (see paragraph 28 above). This decision was confirmed by the Court of Appeal after the applicant's complaint against the decision to discontinue the criminal proceedings on non-exonerative grounds had finally been rejected (see § 19 above). The Court does not consider it necessary to determine in the present case whether in principle the refusal to award compensation on the basis that the criminal proceedings were terminated on "non-exonerative" grounds in itself violates the presumption of innocence. It notes that in the present case the court decisions terminating the criminal proceedings against the applicant were couched in terms which left no doubt as to their view that the applicant had committed the offence with which he was charged. In particular, the Desniansky Court indicated that the investigation case file contained sufficient evidence to establish that the applicant had forged a notarial document and had wittingly carried out an invalid notarial action, its only reason for discontinuing the proceedings being the impracticality of prosecuting an insignificant offence. This decision was upheld by the Court of Appeal and the Supreme Court rejected the applicant's request for leave to appeal in cassation. In the Court's view, the language employed by the Desniansky Court was in itself sufficient to constitute a breach of the presumption of innocence. The fact that the applicant's compensation claim was rejected on the basis of the findings reached in the criminal proceedings merely exacerbated this situation. Although the Desniansky Court reached its conclusion after a hearing held in the presence of the applicant, the proceedings before it were not criminal in nature and they lacked a number

of key elements normally pertaining to a criminal trial. In that respect, it cannot be concluded that the proceedings before that court resulted, or were intended to result in the applicant being "proved guilty according to law". In these circumstances, the Court considers that the reasons given by the Desniansky Court, as upheld on appeal, combined with the rejection of the applicant's compensation claim on the basis of those same reasons, constituted an infringement of the presumption of innocence.

71. In conclusion, there has been a violation of Article 6 § 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

72. The applicant complained under Article 13 of the Convention of the alleged lack of effective remedies in respect of the violations of Article 8.

73. Article 13 of the Convention provides:

> "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."

1. The parties' submissions

74. The Government maintained that the applicant could have challenged the lawfulness of the search before the higher prosecutor or the court at the trial. If he were acquitted of the charges, he would have had a possibility to receive compensation for unlawful prosecution. As regards the court's request for information concerning his psychiatric history, the applicant, according to the Government, could have raised this issue in his appeal against the judgment.

75. The applicant considered these remedies ineffective.

2. The Court's assessment

a. General principles

76. The Court recalls that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision *Kaya v. Turkey*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 329-30, § 106).

77. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (cf. *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). The existence of such a remedy must be sufficiently certain not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness (see, *inter alia*, *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

b. The search

78. Insofar as the Government invoked the possibility to seek reimbursement through the compensation for unlawful prosecution scheme, the Court does not consider that this procedure is pertinent to the instant case (*Afanasyev v. Ukraine*, no. 38722/02, § 77, 5 April 2005). It notes, in particular, that the applicant's claim lodged to this effect was rejected precisely on the ground that his criminal case had been terminated on non-exonerating grounds.

79. As regards the possibility of challenging the lawfulness of the search during the trial, it should be noted that, as was indicated above as regards Article 6 § 2 of the Convention, the applicant's case has never been considered on the merits. It was terminated at the pre-trial stage and the subsequent judicial review concerned purely procedural matters related to the investigator's closing of the criminal case on the given grounds. Therefore, these proceedings did not and could not include the assessment of the lawfulness of the particular investigative actions.

80. The Court further notes that the applicant could have applied to a higher prosecutor in order to have the search of his office declared unlawful. The Court recalls that the "authority" referred to in Article 13 does not necessarily have to be a judicial authority, but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective (*Kudła*, cited above, § 157). In the present case, however, the Court notes that, even assuming that the prosecutor possessed the required independence, this remedy could not possibly have afforded any relief to the applicant (paragraph 30 above).

81. Accordingly, the Court holds that in the present case there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to respect for his home as guaranteed by Article 8 of the Convention.

c. The disclosure of the psychiatric information

82. The Government in their preliminary objections referred to the applicant's right to request the court to examine his case in private. The Court observes that the domestic law does not provide that there should necessarily be a party's request for an *in camera* hearing of the case; the

trial court can order it of its own motion (paragraph 32 above). The law does, however, oblige the authorities to take all possible measures to protect the private life of the individuals from unnecessary interference (paragraph 29 above).

Moreover, the presence of the public in the courtroom during the judge's reading out of the information received from the psychiatric hospital was only one of the elements affecting the applicant's private life. In particular, such a request, even if granted, could neither have secured the confidentiality of the information disclosed to the parties and their representatives at the hearings nor limited access to the case file.

83. As to the possibility of raising the relevant complaint before the appellate instance, the Court notes that the applicant has successfully availed himself of this remedy, which, however, proved ineffective in so far as the finding of unlawfulness did not result in the discontinuation of the disclosure of confidential psychiatric data in the court case file or any award to the applicant of compensation for damages suffered as the result of the unlawful interference with his private life.

84. In view of these considerations, the Court dismisses the Government's preliminary objection and finds that there has been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 232,400 euros (EUR) in respect of pecuniary and non-pecuniary damage.

87. The Government considered this amount exorbitant and unsubstantiated.

88. The Court's case-law establishes that there must be a clear causal link between the damage claimed by the applicant and the violation of the Convention (amongst other authorities, *Barberà, Messegué and Jabardo v. Spain* (former Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20; *Cakıcı v. Turkey*, judgment of 8 July 1999, ECHR 1999-IV, § 127). The Court notes that the damage resulting from the unlawful search of the applicant's apartment was established on 28 August 2000 by the Novozavodsky Court. On that basis the Court finds it equitable

to award the applicant EUR 2,315 for pecuniary damage. The Court further finds it appropriate to make an award of EUR 3,000 for non-pecuniary damage.

B. Costs and expenses

89. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

90. The Court considers it appropriate that the default interest 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention as regards both the search of the applicant's office and the disclosure of the confidential psychiatric information about him;

3. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, plus any tax that may be chargeable, the following amounts to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,315 (two thousand three hundred and fifteen euros) in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK Registrar	Peer LORENZEN President