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14th Edition of the
**HELGA PEDERSEN
MOOT COURT COMPETITION**

Orwell

VS

Valdora

Submission of the Respondent



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1. Primary Sources

1.1 Conventions

- European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ETS No. 5.
- General Framework on Artificial Intelligence and Human Rights, Democracy and the Rule of Law 2024.

1.2 Case law of the ECtHR

1. A and Others v. the United Kingdom, [GC], app. no. 3455/05.
2. Bykov v. Russia, [GC], app. no. 4378/02.
3. Borgers v. Belgium, app. no. 12005/86, Dissenting Opinion of Judge Martens, § 4.4.
4. Brandstetter v. Austria, app. nos. 11170/84, 12876/87 and 13468/87.
5. Chahal v. the United Kingdom, [GC], app. No. 22414/93.
6. De Tommaso v. Italy, [GC], app. no. 43395/09.
7. Doorson v. the Netherlands, app. no. 20524/96.
8. Edwards v. the United Kingdom, app. no. 13071/87.
9. Fitt v. the United Kingdom, app. no. 29777/96.
10. Gäfgen v. Germany, app. no. 22978/05.
11. Garcia Ruiz v. Spain, [GC], app. no. 30544/96.
12. Huseyn and Others v. Azerbaijan, app. nos. 35485/05, 45553/05 and 36085/05.
13. Ibrahim and Others v. the United Kingdom, [GC], 50541/08, 50571/0, 50573/08 and 40351/09.
14. Kennedy v. the United Kingdom, app. no. 26839/05.
15. Khodorkovskiy and Lebedev v. Russia, app. nos. 11082/06 and 13772/05.
16. Leander v. Sweden, app. no. 9248/81.
17. Leas v. Estonia, app. no. 59577/08.
18. Moiseyev v. Russia, no. 62936/00.

19. Moreira Ferreira v. Portugal (no. 2), app. no. 19867/12.
20. Öcalan v. Turkey, [GC], app. no. 46221/99.
21. Poletan and Azirovik v. “the Former Yugoslav Republic of Macedonia”, app. nos. 26711/07, 32786/10 and 34278/10.
22. Regner v. the Czech Republic, app. no. 35289/11.
23. Rowe and Davis v. the UK, app. no. 28901/95.
24. Ruiz-Mateos v. Spain, app. no. 30544/96.
25. Shulepova v. Russia, app. no. 34449/03.
26. Sigurður Eirnasson and Others v. Iceland, app. no. 39757/15.
27. Stoll v. Switzerland, [GC], app. no. 69698/01.
28. Van Mechelen and Others v. the Netherlands, app. nos. 21363/93, 21364/93, 21427/93 and 22056/93.
29. Van Wesenbeeck v. Belgium, app. nos. 67496/10 and 52936/12.
30. Yüksel Yalçinkaya v. Türkiye Judgment, [GC], app. no. 15669/20.

2. Secondary Sources

2.1 Council of Europe sources

- European Ethical Charter on the use of Artificial Intelligence in Judicial Systems and their Environments, 2018.
- European Court of Human Rights, Practical Guidance on Admissibility Criteria (Updated on 31 August 2024)
- European Court of Human Rights, Guide on Article 6 of the European Convention on Human Rights (Updated on 28 February 2025)

3. Other Sources

3.1. Scientific literature

- Bigo, Didier, et al., National Security and Secret Evidence in Legislation and before the Courts: Exploring the Challenges, European Parliament, 2014
- Heri, Corina, Evidence: European Court of Human Rights (ECtHR), Max Planck Encyclopedia of International Procedural Law [MPEiPro]; July 2018.
- Lasagni, Giulia/ Contissa, Giuseppe, When it is (also) algorithms and AI that decide on criminal matters: in search of an effective remedy, European Journal of Crime, Criminal Law and Criminal Justice, vol. 28, nr. 3, 2020.
- Palmiotto, Francesca, Regulating Algorithmic Opacity in Criminal Proceedings: an opportunity for the EU Legislator?, Maastricht Law. Faculty of law working papers series, 2020/2021.
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List of Abbreviations

HPMCC	Helga Pedersen Moot Court Competition
Case	Helga Pedersen Moot Court Competition Case 14 th Edition: Orwell v. Valdora
Clarification Questions	Helga Pedersen Moot Court Competition Answers to Clarification Questions 14 th Edition
ECHR/the Convention	European Convention of Human Rights
ECtHR/the Court	European Court of Human Rights
CEPEJ	European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environments
GF	General Framework on Artificial Intelligence and Human rights, Democracy and the Rule of Law
CCP	Code of Criminal Procedure of Valdora
App. no(s).	Application number(s)
Ms. Orwell/the Applicant	The Applicant
The State/the Respondent	The Respondent
AI	Artificial Intelligence

Summary of Submissions

- The Respondent submits that the Application claiming the infringement of Article 6 ECHR is manifestly ill-founded under Article 35 ECHR due to its “fourth instance” nature and due to the clear absence of a violation.
- However, if the Court shall find the application admissible, the Respondent submits that no violation of Article 6 ECHR has occurred. There has been no violation of the principle of equality of arms.
- The right to a fair trial was not violated as the Applicant wasn’t in any way prevented to prepare her defence, adduce evidence and challenge the reliability of the evidence produced by Orion. The Respondent acknowledges that the lack of widespread legislation and common thought on Artificial Intelligence may spread doubts about its use in criminal proceedings. However, it is to be assessed that Orion has been developed in observance of the directive of the CEPEJ Ethical Charter on the use of Artificial Intelligence and throughout the development of the Framework Convention on AI.
- The Respondent submits that the denial to access Orion’s source code did not diminish the principle of equality of arms and it was lawful under national security legislation. Recalling that the rights protected by Article 6 ECHR may be limited for the protection of national security, the Respondent submits that the limitation in the present case was neither unproportional nor arbitrary.
- In respect to Article 6 § 3 lett. b), the Applicant was not denied access to any of the remedies made available by the law of Valdora, nor the impossibility to access the data set and audio report of Orion was emitted without any motivation. Nonetheless, she couldn’t demonstrate the system’s lack of reliability.
- Considering these observations, the Respondent invites the Court to declare that the application is inadmissible, or if the Court declares that it is admissible that there has not been any violation of Article 6 ECHR.

Submissions

1. ADMISSIBILITY.

1.1. The application is inadmissible under Article 35 for being ill-founded.

[1] The Respondent declares inadmissible the application under Article 35 of the Convention. The claims advanced by the Applicant on the violation of Article 6, with particular attention to § 1 and § 3, are manifestly ill-founded for the subsequent reasons.

1.1.1. The application is of “fourth instance” nature.

[2] The application represents a request for a “fourth instance” judgment. In previous cases, this Court has established that its role is that of assessing the violation of the rights guaranteed by the articles of the Convention; it does not pertain to this Court to address the actions implemented by the national courts¹. Moreover, in relation to Article 6, the Court may only intervene when procedural safeguards have been breached or when the proceeding wasn’t fair as a whole².

[3] The Respondent submits that the Applicant is not satisfied with the decisions stemming from the procedures in which she took part at the national level. For this sole reason she has requested further judicial intervention, denouncing the breach of Article 6. As Orion’s results were used as primary evidence in the *a quo* case, the Applicant lamented the AI system incapability to produce hard evidence that could prove her direct involvement with the scam³, and the impossibility to prepare an effective defence due to the inaccessibility of Orion’s source code, training data and audit report⁴. On these grounds, the Respondent signals Ms. Orwell’s precedent highly critical opinion on the use of AI tools in criminal proceedings, considering them *unreliable and dangerous*⁵.

¹ De Tommaso v. Italy, [GC], app. no. 43395/09, §170.

² Ibid., §171.

³ Helga Pedersen Moot Court, ‘The case of the Helga Pedersen Moot Court Competition 14th Edition’ (2025) (henceforth “Case facts”), §8.

⁴ Ibid., §13.

⁵ Ibid., §3.

[4] Nonetheless, in *De Tommaso v. Italy*⁶, as well as in *García Ruiz v. Spain*⁷, this Court has established that Article 6 only guarantees the right to a fair hearing, without prescribing any rules on evidence admissibility or the way that judges should evaluate the same, being this a matter that should be solely regulated by national law and courts. Accordingly, the Respondent submits that the application is manifestly ill-founded on the basis of its “fourth instance” nature and the lack of procedural unfairness.

1.1.2. The application is manifestly ill-founded for a clear absence of a violation.

[5] The Respondent submits that the Applicant’s complaint should be declared manifestly ill-founded since it does not disclose any appearance of a violation of the right of fair trial enshrined in Article 6 ECHR.

[6] First, in accordance with the Court’s established case law⁸, the State contends that the Court’s primary concern with respect to Article 6 pertains to the assessment of the overall fairness of the proceedings “viewed as a whole”, having regard to whether the rights of the defence were properly respected. To this end, the State argues that, regardless of the unfavourable result for the Applicant, the domestic courts provided duly reasoned judgments, without any manifest error or arbitrariness, thereby affording effective procedural safeguards to Ms. Orwell.

[7] In this regard, the Respondent recalls that the Applicant was granted the possibility to adduce evidence, propose expert witnesses, and challenge the evidence of the opposing party. Accordingly, Ms. Orwell was granted the possibility to challenge the reports made by the expert appointed under request of the prosecutor and the independent expert called by the Meganissi District Court⁹.

[8] Second, the Respondent upholds that the national courts properly relied on Orion’s results in accordance with national law and that the denial to access Orion’s source code was sufficiently counterbalanced. Indeed, the Respondent submits that, pursuant to the refusal to the Applicant’s request to the Meganissi District Court to obtain access to Orion’s source code,

⁶ See footnote no. 1.

⁷ *García Ruiz v. Spain*, [GC], app. no. 30544/96, §28.

⁸ *Gäffen v. Germany*, 1 June 2010, § 163-164; *Bykov v. Russia*, [GC], no. 4378/02, 10 March 2009, § 90; *Ibrahim and Others v. the United Kingdom*, [GC], 2016, § 250.

⁹ Case Facts, § 13-14.

she was afforded the opportunity to formulate written questions to the Valdoran Ministry, which confirmed Orion's compliance with official methodologies¹⁰.

[9] Furthermore, the State recalls that both the court of first and the court of second instance granted the Applicant the right to hear an expert of her own choosing to assess Orion's results, as prescribed by Article 279 of the Valdoran CCP. Nevertheless, given that the defence failed to cast serious doubts about Orion's reliability and demonstrate its specific flaws¹¹, the Respondent argues that the Applicant's unsubstantiated concerns cannot override the findings of an AI system, which has already been used in other complex investigations¹².

2. MERITS.

[10] If, however, this Court shall find the application to be admissible, the Respondent submits that there has been no violation of Article 6 of the Convention.

2.1. The State of Valdora has not violated the Applicant's right to a fair trial under Article 6 ECHR.

[11] The Respondent contests the Applicant's claim that her right to a fair trial has been violated since her conviction was based on inaccessible and unchallengeable evidence generated by a non-transparent AI system, Orion. The State has acted in compliance with national law provisions, which permit the use of a duly certified AI system, and the Applicant failed to raise serious concerns about Orion's reliability.

2.1.1. The State has not violated the principle of equality of arms and the right to an adversarial trial.

[12] The Respondent emphasizes that, in accordance with the meaning of Article 6 ECHR, the Court's primary concern pertains to the evaluation of the overall fairness of the criminal proceedings considered as a whole, rather than focusing on a particular aspect of the case¹³.

¹⁰ Case Facts, § 11.

¹¹ Case Facts, § 18.

¹² Orion, § 5.

¹³ Ibid, § 251; Gäfgen v. Germany, app. no. 22978/05, § 163; Edwards v. the United Kingdom, app. no. 13071/87, § 34.



Indeed, the Court has clarified the necessity of relying on the circumstances of the case at stake in order to assess the compliance with the principle of fair trial, rejecting the imposition of an all-encompassing rule¹⁴. In this respect, the Respondent submits that the evaluation of the fairness of the proceedings against Ms. Orwell cannot be measured merely on the basis of the use of Orion, an AI-based system that provided the main proof for the conviction of the Applicant; however, the State emphasizes that it must be assessed whether the rights of the defence, as protected by Article 6 ECHR, were respected and guaranteed adequate protection throughout the criminal proceedings.

[13] Considering the bulk of cases decided by the Court on the meaning of the right to a fair trial, the State submits that the overall assessment of the fairness of proceedings requires the respect of the rights of the defence as encapsulated within the meaning of the principle of equality of arms, namely the opportunity to adduce evidence, to challenge hostile evidence and to present arguments on the matter. To this end, the Respondent acknowledges the practice of the Court of ruling *in concreto*, thereby developing the specific features of the notion of fair trial through its case-law, considering its vagueness and “open-ended” nature¹⁵. Notably, when examining complaints pertaining to Article 6 § 1, the Court has upheld that the principle of equality of arms represents one of the features of the broader concept of fair trial, which also embraces the respect of the right to an adversarial trial¹⁶.

[14] Firstly, whilst recognizing that the principle of equality of arms requires that each party must be given a reasonable opportunity to present their case under the same conditions of the opponent¹⁷, the State argues that in the present case Ms. Orwell was afforded an adequate opportunity to challenge the evidence against her, which was mainly constructed through the employment of the AI-system Orion. Accordingly, the Applicant was given the opportunity to appoint an expert, namely Ms. S, an AI ethicist from the Valdoran Technical University, who, however, abstained from delivering a full opinion due to the denied access to the Orion’s source code¹⁸.

¹⁴ Ibrahim and Others v. the United Kingdom, [GC], 50541/08, 50571/08, 50573/08 and 40351/09, § 250.

¹⁵ Borgers v. Belgium, app. no. 12005/86, Dissenting Opinion Judge Martens, § 4.4.

¹⁶ Ruiz-Mateos v. Spain, app. no. 30544/96, § 63.

¹⁷ Öcalan v. Turkey, [GC], app. no. 46221/99, § 140.

¹⁸ Ibid., § 14.

[15] Secondly, the Respondent accepts that, in accordance with the established case-law, within criminal proceedings the right to an adversarial trial implies the opportunity given to both the prosecution and to the defence to have knowledge and to comment on the observations and evidence brought by the opposing party¹⁹. Consequently, in the assessment of the fairness of proceedings, particular attention must be drawn to whether the applicant was given the opportunity to challenge the authenticity of the evidence and to oppose to its use²⁰.

[16] In this respect, as regards the opinion of the expert appointed by the prosecution - precisely the private company Altair, which confirmed the reliability of Orion's findings - Ms. Orwell was provided with the reports containing the results of the analysis conducted and given the possibility of cross-examining him²¹.

2.1.1.1. The denied access to Orion's source code has not placed the Applicant at substantial disadvantage vis-à-vis the Respondent.

[17] The Respondent contested Ms. Orwell's claim that she had been at a substantial disadvantage vis-à-vis the prosecution given that she was denied access to Orion's source code, training data and audit report, to which the experts appointed by the prosecution and all the courts of all instances had access to²². In this regard, the State accepts that Article 6 § 1 requires that prosecution authorities disclose to the defence all the evidence in their possession against the accused²³. Nonetheless, it emphasizes that the entitlement to access information is not an absolute right, as there might be several reasons requiring the withholding of evidence such as national security or preservation of fundamental rights of others²⁴. Indeed, according to the Valdoran national legislation, the defence has access to all evidence, unless such access is restricted for national security reasons²⁵. More precisely, Orion is not open source and its source code and training data fall within the protection of national security legislation²⁶.

¹⁹ Brandstetter v Austria, app. nos. 11170/84, 12876/87 and 13468/87, § 66-67.

²⁰ Bykov v. Russia, [GC], no. 4378/02, § 90; Gäfgen v Germany, app. no. 22978/05, § 164.

²¹ Case Facts, § 13.

²² Clarification Question no. 18.

²³ Rowe and Davis v. the United Kingdom, app. no. 28901/95, § 55; Edwards v. the United Kingdom, app. no. 13071/87, § 36.

²⁴ Yüksel Yalçinkaya v. Türkiye Judgment, [GC], app. no. 15669/20, § 329; Fitt v. the United Kingdom, 29777/96, § 45; Doorson v. the Netherlands, 20524/96, Reports of Judgments and Decisions 1996-II, p. 470, § 70.

²⁵ Clarification Question, no. 11.

²⁶ Case Facts, Orion, § 4; Article 278 § 3 of Valdoran Criminal Code.

[18] Furthermore, the Respondent recognizes that, according to the established case law of the Court, the only measures restricting the rights of the defence that are allowed amount to those that are deemed to be strictly necessary²⁷. Therefore, with a view to ensuring the respect of the right of fair trial of the accused, the limitations on their rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities²⁸.

[19] In particular, in the instant case, the Respondent argues that the domestic courts of Valdora ensured effective counterbalancing measures to Ms. Orwell, thereby respecting the principle of fair trial. More precisely, in light of the disparities coming from the possibility for the court's expert and courts of all instances to access Orion's source code and training data, the Applicant was permitted to formulate written questions to the Ministry concerning Orion's training data and technical functioning, and, subsequently, she was given the opportunity to review these answers and including them in her defence²⁹.

2.1.2. The appointment of experts complied with the principle of equality of arms.

[20] Throughout the *a quo* proceedings, many experts were called to state their personal and professional opinion on the quality of the photographs and voice messages that Ms. Orwell allegedly sent to the three victims and on the reliability and objectivity of the AI tool Orion. It is, then, dutiful for the Respondent to address these expert witnesses' position, especially of those called by the prosecution, in the circumstances of the criminal proceedings.

[21] The Respondent acknowledges, in compliance with this Court case law³⁰, that the modalities of appointment of experts are essential in assessing whether the principle of equality of arms has been complied with or not. At the same time, the same jurisprudence states that no court is obliged to "*order an expert opinion or any other investigative measure merely because a party has requested it*"³¹. Besides, Article 6 of the Convention does not prescribe any rule on

²⁷ Ibid.

²⁸ Doorson v. the Netherlands, 20524/96, §72; Van Mechelen and Others v. the Netherlands, 21363/93, 21364/93, 21427/93 and 22056/93, §54.

²⁹ Case Facts, §§ 11, 18; Clarification Question no. 4.

³⁰ Poletan and Azirovik v. "the Former Yugoslav Republic of Macedonia", app. no. 26711/07, 32786/10 and 34278/10, §94.

³¹ Ibid., §95.

the admissibility of evidence³², within which the expert's intervention also falls. National courts can independently and discretionally decide to appoint an expert, either of their own choosing or because it was requested by one of the parties, but only if they reckon the expert's intervention to be necessary for the outcome of the proceeding³³.

[22] In the present case, the Meganissi District Court, rightfully comprehending the complexity of the case, not only appointed a first expert witness, called by the prosecution to assess the nature of the additional evidence provided by the three witnesses³⁴, but also a subsequent expert from Altair, a private company specialized in the development of custom AI tools³⁵.

[23] Having understood its own limited knowledge on Artificial Intelligence systems and thus its possible repercussion on the Applicant's right to a fair trial, the first instance national court, accordingly to both Article 6 of the Convention and Articles 278 and 279 of the Valdoran CCP, heard the expert requested by the Applicant, Ms. S, an ethicist from the Valdoran Technical University³⁶, and an independent expert from the Valdoran Academy of Sciences³⁷.

[24] In conclusion, the Respondent attests that the appointment of experts was carried out in full observance of the principle of equality of arms and, in general, of the right to a fair trial.

2.1.2.1. Regarding the independence and impartiality of the Altair expert.

[25] During the first instance proceedings the defence argued that it was in Altair's interest to guarantee the reliability of AI tools, since the company, as mentioned before, specialized in their production for both private and public actors³⁸. The defence then submitted that the alleged conflict of interest made the reliance on the expert's opinion incompatible with the Applicant's right to a fair trial. Such an alleged violation cannot be supported and it is completely unmotivated.

³² See Footnote no. 7.

³³ Khodorkovskiy and Lebedev v. Russia, app. nos. 11082/06 and 13772/05, §718 and §721; the same principle is applied for the calling and examination of general witnesses in Huseyn and Others v. Azerbaijan, app. nos. 35485/05, 45553/05 and 36085/05, §196.

³⁴ Case facts, §12.

³⁵ Ibid., §13.

³⁶ Ibid., §14.

³⁷ Ibid., §15.

³⁸ See Footnote no. 17.

[26] Firstly, as recalled above, the Meganissi District Court didn't only rely on the intervention and opinion of the expert called by the prosecution, but duly heard and took into consideration the reports of other two experts, one called by the Applicant and the other appointed *ex officio* by the court itself.

[27] Secondly, in *Shulepova v. Russia*³⁹ this Court has already stated that experts, differently from judges, do not necessarily need to be fully independent and impartial in the circumstances of a criminal proceeding, what is relevant is their position throughout the whole process⁴⁰. Similar circumstances can be traced in *Poletan and Azirovik v. "the Former Yugoslav Republic of Macedonia"*, where the experts appointed by the court were *a priori* biased, since they were the same professionals that cooperated with the Ministry of the Intern, the body that initiated the first proceedings against the applicants⁴¹. In this case, the Court stated that the experts' relation to the prosecution "*does not justify the apprehension*" of their lack of neutrality⁴². Likewise, the Respondent asserts that the presumed Altair's interest towards Orion's good impression cannot produce such doubts. Indeed, given that Orion had been developed by the Valdoran Ministry of Public Administration and Artificial Intelligence⁴³, not only Altair wasn't involved in this process, but also didn't take the opportunity to promote a different AI tool designed with its assistance, as any company would have done in a competition-based economy.

[28] On these grounds, the Respondent submits that the Altair expert called by the prosecution is independent and impartial and the national court's reliance on his report didn't diminish the Applicant's right to a fair trial.

2.1.3. The use of Orion did not violate Article 6 of the ECHR.

[29] The Respondent submits that the use of Orion in the proceedings against the Applicant was lawful under Valdoran national law. Secondly, the Respondent states that Ms. Orwell's right to a fair trial, as safeguarded by the Convention, and her right to confrontation weren't

³⁹ *Shulepova v. Russia*, app. no. 34449, §62.

⁴⁰ See Footnote no. 7, §30.

⁴¹ See Footnote no. 30, §93.

⁴² *Ibid.*, §99.

⁴³ Case Facts, Orion §4.



compromised. Finally, the Respondent further argues that Orion has been developed by the appointed authorities in full compliance with the principles enshrined in the ECHR.

2.1.3.1. The use of Orion was lawful and fair.

[30] The Respondent states that Orion was used accordingly to national law. The Valdora's Cybercrime Authority, in fact, availed itself of the AI tool accordingly to Article 278.II of the CCP, namely receiving the authorization by the Meganissi District Court. As already discussed thoroughly in this submission⁴⁴, the District Court has guaranteed the fairness and transparency of the criminal proceedings ensuring the lawfulness of the digital evidence admission and its reconsideration.

[31] Moreover, the Respondent highlights that more than once this Court has recognized the admissibility of evidence as a matter that falls within the competence of national law⁴⁵. Consequently, in *Bykov v. Russia*⁴⁶, for instance, the Court affirms that it is not within her power to judge upon the assumption of certain types of evidence and their nature, as it is for the national court only to evaluate their relevance for the resolution of the case, as also pointed out in *Edwards v. the United Kingdom*⁴⁷. In these circumstances the ECtHR's "*task is to ascertain the proceedings in their entirety, including the way in which evidence was taken, were fair*"⁴⁸.

[32] The Respondent further states that digital evidence produced by Orion wasn't the only probative element adduced in the criminal proceedings against the Applicant, and neither the only one reconsidered by Valdoran national courts. Indeed, the criminal charges were also corroborated by the victims' interviews, together with photographs and voice messages exchanged between them and Ms. Orwell⁴⁹.

[33] Such supplementary evidence is both required by the State of Valdora national law, when Orion's results are used in proceedings⁵⁰, but also by this Court case law. The "sole or decisive rule", a rule specifically developed by the Court itself, prescribes that, in relation to Article 6 § 3 lett. d) of the ECHR, statements made by absent witnesses cannot constitute the only and

⁴⁴ Respondent Submission, §20 and §24.

⁴⁵ *Khodorkovskiy and Lebedev v. Russia*, app. no. 11082/06 and 13772/05, §700.

⁴⁶ *Bykov v. Russia*, [GC], no. 4378/02, §89.

⁴⁷ *Edwards v. the United Kingdom*, app. no. 13071/87, §34.

⁴⁸ *Ibid.*

⁴⁹ Case facts, §12.

⁵⁰ Case facts, Orion, §4.



determining elements for a person's conviction⁵¹. However, in recent rulings the strictness of such *criteria* has been tempered. The unfairness of a criminal proceeding must not be regarded limitedly to the sole and decisive reconsideration of hearsay evidence, but in correlation to the quality and strength of corroborative probative elements, together with the overall capability of the legal system to offer counterbalances to the limitation on the right to confrontation⁵².

[34] Now, as some scholars have discussed⁵³, algorithms in judicial proceedings tend to be valued as witnesses and being Orion a non-open-source AI system, its report perfectly falls within the definition of a statement made by an absent witness. Although the experts' analysis of the photographs and voice messages were inconclusive⁵⁴, the conviction of the Applicant was based on the recalled victims' interviews⁵⁵, which, on the other hand, weren't opposed by her. Manifestly, the whole proceeding respected the new "sole and decisive rule" test and ensured the respect of the fairness of the ruling.

2.1.3.2. There was no violation of the right to confrontation.

[35] The Respondent acknowledges that the use of AI tools in criminal proceedings may raise some clues on their reliability, them being especially new among evidence assessment instruments. At the same time, their use has become more fundamental as crimes have become even more complex for the judges to comprehend; without them this Court has recognized the difficulty national judges would face in establishing the "authenticity, accuracy and integrity"⁵⁶ of the produced evidence. AI systems, due to their probative strength, have then become indispensable for the ascertaining of facts⁵⁷. In the case at hand, the experts of the police unit on cybercrime and digital forensics weren't autonomously able to find evidence related to the scam⁵⁸. In order to guarantee the admissibility of the charges advanced by the three victims, A, B, and C, and therefore attribute the three Opengram scam profiles to the Applicant, the

⁵¹ Al-Khawaja and Tahery v. the United Kingdom, [GC], app. no. 26766/05 and 22228/06, §128.

⁵² Ibid., §130 and §131; Quattracolo, Serena, Artificial Intelligence, Computational Modelling and Criminal Proceedings. A Framework for a European Legal Discussion, 1st edition, Springer, 2020.

⁵³ Palmiotto, Francesca, Regulating Algorithmic Opacity in Criminal Proceedings: an opportunity for the EU Legislator?, Maastricht Law. Faculty of law working papers series, 2020/2021.

⁵⁴ Case facts, §§12 and 15.

⁵⁵ Case facts, §16.

⁵⁶ Yüksel Yalçinkaya v. Türkiye, app. no. 15669/20, §312.

⁵⁷ Palmiotto, Francesca, Regulating Algorithmic Opacity in Criminal Proceedings: an opportunity for the EU Legislator?, Maastricht Law. Faculty of law working papers series, 2020/2021.

⁵⁸ Case facts, §6.



Cybercrime Authority availed itself of Orion. Orion, as well known, found a compatibility of 96.4% between the scam profiles and Ms. Orwell's personal account, not only analysing elements like the writing style, but also the time-of-day activity⁵⁹.

[36] Furthermore, having the Applicant lamented the violation of Article 6 § 3 lett. b) in regard to Orion's inaccessibility and lack of transparency, the Respondent duly contests the relevance that the ascertaining of the methodologies and data used by the algorithm might have for the preparation of her defence. Not always, in fact, access to the source code of an AI system implies its transparency, as the algorithms may be very complicated for non-experts⁶⁰. Additionally, experts may too come across difficulties assessing the reliability of these tools, especially machine learning systems⁶¹.

[37] This being said, the Respondent submits the Applicant didn't suffer a violation of the right to confrontation, namely the right to be given the opportunity to assess the evidence produced against her and to challenge it, with due time and facilities⁶². Although, a direct access to Orion's source code, training data and audit report was denied for reasons that will be addressed further on in this Submission, the Applicant was not in any way impeded in the definition of her defence, she was granted every other evidentiary tool and aid she requested, within national law limits, and finally she didn't suffer any pressure to do so under tight deadlines. In temporal order, the Applicant was enabled to challenge Orion's reliability and truthfulness by presenting questions to the Ministry of Public Administration and Artificial Intelligence regarding the AI tool and directly assessing its answers, by reviewing the Altair expert report and cross-examining him and, finally, by appointing an expert of her own choosing. Her right to a second instance judgment was respected, as well as her right to appeal to the Supreme Court.

[38] Additionally, the Respondent recalls that neither the Applicant nor the prosecution had direct access to Orion's internal information and both were equally able to review and cross-examine the report of the independent expert appointed by the first instance court. The expert from the Valdoran Academy of Science, not representing either of the parties' instances, was

⁵⁹ Case Facts, §7.

⁶⁰ Lasagni, Giulia/ Contissa, Giuseppe, When it is (also) algorithms and AI that decide on criminal matters: in search of an effective remedy, *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 28, nr. 3, 2020.

⁶¹ Quattracolo, Serena, *Artificial Intelligence, Computational Modelling and Criminal Proceedings. A Framework for a European Legal Discussion*, 1st edition, Springer, 2020.

⁶² Al-Khawaja and Tahery v. the United Kingdom, [GC], app. no. 26766/05 and 22228/06, §118.



enabled to scrutinize the AI tool algorithmic data⁶³, providing the judge with additional and professional insight. His intervention undoubtedly represented a supplementary element provided by the Valdoran procedural system to remedy and counterbalance the limitation to the disclosure of evidence, a substantial precondition for the realization of an individual defence⁶⁴, in full adherence to the principles enshrined in Articles 6 § 1 and § 3 lett. b) of the ECHR, observed conjunctly.

[39] Consequently, the Respondent submits that, although Orion's access was limited and might have not produced the aimed results, the Applicant right to confrontation and to a fair and equal adversarial proceeding was still safeguarded.

2.1.3.3. The development of Orion was completed in observance of the ECHR principles.

[40] The Respondent submits that Orion was developed in full compliance with the principles and rights protected by the ECHR and by all its Protocols that the State of Valdora has signed. The State has also signed the "General Framework on Artificial Intelligence and Human rights, Democracy and the Rule of Law" in 2024⁶⁵, the same year that the additional convention was opened for signature to the Council States and other interested State entities, more precisely on the 5th of September⁶⁶.

[41] The Respondent further states that, although Orion was completed priorly to the General Framework signature, nonetheless its development was carried out in observance of the Convention principles. The judicial AI tool, which was approved on the 3rd of January⁶⁷, was developed after the publication of the CEPEJ's "Ethical Charter on the use of artificial intelligence in judicial systems and their environments", adopted in December 2018⁶⁸, and, as a result, in accordance with the standards set out therein. In fact, the Charter enlists five cardinal principles that the Convention members shall respect in regard to the use of AI in their judiciary.

⁶³ Clarification questions nos. 12 and 18.

⁶⁴ Van Wesenbeeck v. Belgium, app. nos. 67496/10 and 52936/12, §§ 67-68.

⁶⁵ Case facts, Law, §21.

⁶⁶ General Framework on Artificial Intelligence and Human rights, Democracy and the Rule of Law, art. 36 § 3, 2024.

⁶⁷ Clarification question, §31.

⁶⁸ European Ethical Charter on the use of artificial intelligence in judicial systems and their environments, p. 1, 2018.



The Respondent duly recalls the principle of respect for human rights, comprehending the right to a fair trial, and consequently the right to equality of arms and to adversarial proceeding⁶⁹; the principle of equality and security, prescribing systems' integrity and inviolability⁷⁰; and finally, the principle of transparency, impartiality and fairness, also requiring experts' intervention in the AI tools creation together with regular reviews by public authorities⁷¹. In accordance with this last principle, the Respondent highlights that an impact assessment and ethical oversight of Orion's application is currently ongoing and will be available in 2027, as prescribed by Valdoran national law⁷². Moreover, before its implementation Orion went through meticulous internal testing and certification process⁷³.

[42] Furthermore, the Respondent argues that the Ministry of Public Administration and Artificial Intelligence developed Orion throughout the Council's redaction of the General Framework. The latter contains different fundamental rules, among which stand out Article 4 on the protection of human rights, Article 8 on Transparency and Oversight, Article 12 on Reliability and both Chapter IV and V of the GF, respectively on the ensuring of remedies and risk assessment instruments⁷⁴. The Respondent conclusively states that it would have been not only contradictory, but as well pernicious to continue in the realization, and later adoption, of an AI system that breaches the core principles and rights of the ECHR and their specific declaration in both the Ethical Charter and the General Framework, as it was being drafted.

2.1.4. The denial to access Orion's source code was legitimate under national security legislation.

[43] The Respondent submits that the limitation to access Orion's source code and training data was legitimate under national security legislation. Accordingly, the State argues that such limitation did not infringe upon the Applicant's right to a fair trial, given that the domestic courts provided sufficient counterbalancing measures.

⁶⁹ Ibid., Principle §1.

⁷⁰ Ibid., Principle §3.

⁷¹ Ibid., Principle §4.

⁷² Case facts, Orion, §4.

⁷³ Ibid. and Clarification question, §36.

⁷⁴ General Framework on Artificial Intelligence and Human rights, Democracy and the Rule of Law, art. 14, 15 and 16, 2024.



2.1.4.1. The right to disclosure is not absolute.

[44] The Respondent opposes the Applicant's complaint concerning the violation of Article 6 ECHR on the basis of unchallengeable and inaccessible evidence generated by the AI-system Orion. More precisely, the Applicant argued that the direct access to Orion's source code was necessary for the assessment of its reliability and that the answers given by the Ministry could not compensate for the denial of the full access to the code protected under national security legislation⁷⁵.

[45] In this regard, the Respondent argues that, in accordance with the Court's established case law, the right to access evidence does not amount to an absolute right, as it may require the imposition of certain limitations where they are deemed to be necessary for the protection of conflicting interests such as national security. Hence, in several judgements, the Court has upheld that national security may raise some difficulties concerning the disclosure of certain information. For instance, in *Kennedy v. the United Kingdom*, as well as in *A and Others v. the United Kingdom* the Court affirmed that, with a view to safeguarding competing interests, the right to an adversarial trial may be subjected to certain restrictions⁷⁶.

[46] Nonetheless, in *Rowe and Davis v. the United Kingdom*⁷⁷ the Court stated that this limitation may not result in hindering the essence of fair trial and they require to be sufficiently counterbalanced. Similarly, following the same reasoning in *Bykov v. Russia* the Court stated that public-interest measures cannot be accepted where they hinder the core of an applicant's defence rights⁷⁸.

2.1.4.2. The limitation was legitimate and proportional to the aim pursued.

[47] Whilst recognizing that the Applicant is not entitled to the disclosure of evidence in its entirety⁷⁹, the Respondent emphasizes that the Court has clarified that restrictions on Article 6 ECHR may be accepted insofar as they pursue a legitimate aim and they are proportionate.

⁷⁵ Case Facts, § 13.

⁷⁶ *Kennedy v. the United Kingdom*, § 184; *A and Others v. The United Kingdom*, § 205

⁷⁷ *Rowe and Davis v. the United Kingdom*, [GC], no. 28901/95.

⁷⁸ *Bykov v. Russia*, § 93

⁷⁹ *Fitt v. the United Kingdom*, § 45



[48] First, the Respondent submits that the restriction on the rights of the accused was lawful. Notably, in *Moiseyev v. Russia*⁸⁰ the Court has accepted the possibility of procedural restrictions. Nevertheless, the Respondent recalls the necessity to reconcile these competing interests with the objective of granting effective procedural justice to individuals⁸¹. To this end, in accordance with the Court's approach, the Respondent acknowledges that measures affecting the fundamental human rights demand lawfulness, precisely a lawful basis, and they should be adequate for the achievement of the presupposed goal.

[49] In the instant case, the Respondent argues that the denial to access Orion's source code was justified by national security reasons, given that the contested AI system is not open source, and its source code and training data are protected under national security legislation⁸². Consequently, the denial to disclosure such information concerning Orion presents a lawful basis in national law.

[50] Second, the Court has established the "strict necessity" criterion for the assessment of the compatibility of the information withholding with the requirements prescribed in Article 6 ECHR⁸³. Accordingly, in *Kennedy v. the United Kingdom* the Court acknowledged the possibility of imposing restrictions on the right to a fully adversarial procedure where they are strictly necessary on the ground of competing interests such as national security, or where it is crucial to protect the secrecy of certain police methods or the safeguard of fundamental rights of other persons⁸⁴.

[51] Similarly, the Respondent argues that, in the instant case, the non-disclosure of Orion's source code and training data is justified by the necessity to protect state investigative methods and the privacy of other individuals whose data is in the training sets.

⁸⁰ *Moiseyev v. Russia*, no. 62936/00, §§ 220, 216.

⁸¹ Heri, Corina, Evidence: European Court of Human Rights (ECtHR), Max Planck Encyclopedia of International Procedural Law [MPEiPro]; July 2018; *Chahal v. the United Kingdom*, [GC], app. No. 22414/93, § 131.

⁸² Case Facts, Orion § 4.

⁸³ *Van Mechelen v. the Netherlands*, app. nos. 21363/93, 21364/93, 21427/93 and 22056/93, § 58.

⁸⁴ *Kennedy v the United Kingdom*, app. no. 26839/05, § 184; *Regner v. the Czech Republic*, app. no. 35289/11, § 148.



2.1.4.3. The scope of the margin of appreciation in national security.

[52] In *Stoll v. Switzerland* the Court affirmed that the Contracting States of the Council of Europe have adopted differing approaches in terms of secrecy, thereby claiming a certain margin of appreciation in this specific sphere. Hence, the Court is not in the position to define the variety of national interests of the Member States, in as much as it would imply overstepping its competences⁸⁵.

[53] Accordingly, the Court has clarified that the States enjoy a certain degree of freedom in the adoption of the measures which are deemed to be necessary for the protection of national security. Indeed, the Convention does not prescribe rules, nor it imposes obligations on the Member States in this specific field. Rather, the actions undertaken by the Contracting States in matters concerning national security may be subjected to an *ex post* check of their compatibility with the standards of human rights protection⁸⁶.

[54] Therefore, with regard to national interests, the Court's primary task pertains to the evaluation of the legitimacy of the interference and the sufficiency of the reasons provided for by the national authorities as a justification⁸⁷. By the same token, in the case *Yüksel Yalçinkaya v. Türkiye*, the Court has pointed out that it is not its role to decide whether or not such non-disclosure was necessary as it is for the national courts to assess the evidence before them⁸⁸.

[55] In this respect, the Respondent acknowledges that, in its case law, the Court has consistently afforded a wider margin of appreciation, that amounts to a "room for manoeuvre" for the Contracting States in certain fields such as national security⁸⁹. More precisely, the Court has dealt with the margin of appreciation and the balancing between conflicting interests in several ways without adopting a uniform approach.

[56] For instance, in *Leander v. Sweden* the Court has defined the notion of "necessity in a democratic society in the interests of national security" as implying the presence of a correspondence between the interference and the existence of a pressing social need, alongside with the requirement of the proportionality of such interference to the legitimate aim pursued.

⁸⁵ *Stoll v. Switzerland*, [GC], app. no. 69698/01, §§ 107, 137.

⁸⁶ Bigo, Didier, et al., *National Security and Secret Evidence in Legislation and before the Courts: Exploring the Challenges*, European Parliament; 2014, p. 45-51.

⁸⁷ *Stoll v. Switzerland*, §§ 136, 101, 107.

⁸⁸ *Yüksel Yalçinkaya v. Türkiye* Judgment, [GC], app. no. 15669/20, § 329

⁸⁹ *Leander v. Sweden*, app. no. 9248/81, § 116



Consequently, the Court clarifies that the scope of the margin of appreciation enjoyed by the national authorities in the field of national security is shaped by both the nature of the legitimate aim and the particular nature of the interference⁹⁰.

[57] Moreover, in accordance with the Court's subsidiary role, the State highlights that the breadth of the margin of appreciation is broadened where a European consensus is absent. Indeed, in those fields where the laws and experiences of the various Member States largely differ, the Court has consistently accepted national authorities' better position to address those issues. Therefore, the Respondent argues that the non-disclosure of an AI system's source code falls precisely within this category.

2.1.4.4. The overall fairness of the proceedings.

[58] In the present case, the Respondent submits that the denial to access the Orion's source code on the ground of national security reasons did not represent a violation of the Applicant's right to a fair trial.

[59] First, the State maintains that the restriction of the Applicant's access to the source code was legitimate given that the Orion system uses certain algorithms and methodologies, whose disclosure could compromise the protection of national security. Admittedly, the disclosure of Orion's source code would pose a risk for the investigations and it would constitute an interference with the privacy of other users⁹¹.

[60] Second, the Applicant argued that it was necessary to have access to Orion's source code to verify the reliability of the system and to contest its results, on which her conviction was based⁹². Indeed, when evidence relates to electronic information, it is not necessary to disclose it entirely to the defence as the right to disclosure does not equate to the right to access all the material⁹³.

[61] In the Applicant's view, the principle of the implies that the defence and the prosecution should be afforded equal opportunities to access evidence. The Respondent recalls the case *Sigurður Einarsson and Others v. Iceland*⁹⁴ to argue that the principle of the equality of arms

⁹⁰ Ibid. §§ 58, 59

⁹¹ Ibid. § 295.

⁹² Yüksel Yalçinkaya v. Türkiye Judgment, [GC], app. no. 15669/20, § 324.

⁹³ Ibid. § 329.

⁹⁴ *Sigurður Einarsson and Others v. Iceland*, app. no. 39757/15, § 83.



does not entail that the defence should be given the same powers of the police to investigate the case. Adopting the same logic, the Respondent holds that providing the applicant with the direct access to Orion's source code would place her at the same position of the prosecution. Moreover, the Respondent notes that, given that the prosecution is not required to provide the defence with identical investigative tools, the transmission of the expert reports and the opportunity to pose written questions to the Ministry sufficiently satisfied the requirements of the adversarial proceedings.

[62] As a conclusion, in the present case the denial of direct access to Orion's source code did not infringe upon the Applicant's right to a fair trial under Article 6 ECHR, more precisely on her possibility to effectively prepare her defence.

2.2. There has been no violation of Article 6 § 3, letter (b).

[63] The Respondent submits that there has been no violation of the Article 6 § 3 lett. b) given that the Applicant was granted the opportunity to properly organize her defence as already discussed in this submission.

[64] The Respondent acknowledges that this Court has interpreted this specific paragraph of Article 6 as a guarantee for the accused to have "the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings"⁹⁵.

[65] First, the Respondent argues that in the present case the Applicant was afforded all the adequate facilities and time to effectively prepare her defence. More precisely, Ms. Orwell was able to examine the reports produced by the experts appointed by the prosecution, as well as the report of the independent expert who had access to Orion's internal data. Nonetheless, the Applicant failed to effectively oppose to their conclusions. Furthermore, notwithstanding the Applicant's complaint concerning the lack of objectivity of Altair's expert, she didn't deny the positive results of Orion and, consequently, the expert's findings.

[66] Second, the Respondent states that the Applicant has consistently insisted on the necessity to obtain Orion's source code, training data and audit report to evaluate its reliability. Nonetheless, Ms. Orwell's request lacked convincing arguments towards the disclosure of the

⁹⁵ Leas v. Estonia, app. no. 59577/08, § 80.



data protected under national security. In this respect, the Respondent recalls that in *Leas v. Estonia* this Court has stated that whenever hard evidence is not disclosed to the defence, the latter may be asked to explain more substantively their request⁹⁶.

[67] Third, the Respondent maintains that the Applicant did not further substantiate her cause insofar as she did not adequately prove that she was a victim of identity theft. Indeed, Ms. Orwell claimed that all the information present in her public profile has been used to clone her identity through generative AI tools⁹⁷. In addition, she also stated that deepfakes have become progressively more difficult to detect even for experts. In this regard, the Respondent argues that the Applicant could have concentrated her defence on demonstrating that she was a victim of identity theft and called an expert to ascertain this specific point. On this ground, the Respondent states that the request to appoint an expert to demonstrate that her identity had been effectively manipulated wouldn't have been rejected, given that she was afforded all the facilities to benefit of a fair and adversarial proceeding.

[68] Finally, the Respondent concludes that the Applicant's right to have "adequate time and facilities for the preparation of her defence" was duly respected in the proceedings before the domestic courts.

3. CONCLUSIONS

[69] In light of the above submissions, the Respondent invites the Court to:

1. Declare inadmissible Ms. Orwell's application as it is manifestly ill-founded in regard to Article 35 of the Convention.
2. Should the Court find the Application admissible, declare the lack of violation of Article 6 § 1 and 6 § 3 lett. b) of the Convention.

⁹⁶ Ibid. § 81.

⁹⁷ Case Facts, § 8.