



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

Information Note on the Court's case-law 258

January 2022

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***Ekimdzhiev and Others v. Bulgaria - 70078/12***

Judgment 11.1.2022 [Section IV]

**Article 8**

**Article 8-1**

**Respect for correspondence**

**Respect for family life**

Inadequate legal safeguards against arbitrariness and abuse for secret surveillance, retention and access of communications data: *violations*

*Facts* – The applicants are two lawyers and two non-governmental organisations related to them. They claimed that the nature of their activities put them at risk of both secret surveillance and of having their communications data accessed by the authorities under the laws authorising that in Bulgaria. They did not allege that they had in fact been placed under surveillance or had had their communications data accessed by the authorities.

*Law – Article 8:*

(a) *Secret surveillance*

(i) *Admissibility*

The Court determined that the present complaint was not “substantially the same” as that examined in *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*. Despite the fact that two of the applicants were the same and that the gist of their grievance was identical, the present complaint was not based on the same facts. The system of secret surveillance in Bulgaria had evolved considerably since 2007; in cases such as the one at hand, where the complaint was based on the state of the domestic law, that domestic law and the way it was applied in general was the main fact under examination.

The Committee of Ministers’ ongoing review of the relevant Bulgarian laws and practice for the purpose of supervising the execution of *Association for European Integration and Human Rights and Ekimdzhiev* was also no bar to the admissibility of the complaint under Article 46. The Court’s task was to examine the complaint that the secret surveillance system, as it stood now – granted, partly as a result of general measures taken to abide by *Association for European Integration and Human Rights and Ekimdzhiev* – fell short of the requirements of Article 8. The Court therefore had jurisdiction to examine the complaint.

(ii) *Merits*

The laws governing secret surveillance in Bulgaria, as applied in practice, had significantly improved after they had been examined in *Association for European Integration and Human Rights and Ekimdzhiev*. However, they still fell short of the minimum safeguards against arbitrariness and abuse required under Article 8 in the following respects:

The internal rules governing the storage and destruction of materials obtained via surveillance had not been made accessible to the public;

The “objects” which might be placed under surveillance had not been defined in domestic law in a way so as to ensure that it could not serve as a basis for indiscriminate surveillance;

the excessive duration of the initial authorisation for surveillance on national-security grounds – two years – significantly weakened the judicial control to which surveillance was subjected;

the authorisation procedure, as it operated in practice, was not capable of ensuring that surveillance was resorted to only when “necessary in a democratic society”;

a number of lacunae existed in the statutory provisions governing the storing, accessing, examining, using, communicating and destroying of surveillance data;

the oversight system, as currently organised, did not comply with the requirements of sufficient independence, competence and powers;

the notification arrangements were too narrow; and

the dedicated remedy was not available in practice in all possible scenarios, did not ensure examination of the justification of each instance of surveillance (by reference to reasonable suspicion and proportionality), was not open to legal persons, and was limited in terms of the relief available.

Those shortcomings in the legal regime appeared to have had an actual impact on the operation of the system of secret surveillance in Bulgaria. Recurring scandals relating to secret surveillance suggested the existence of abusive practices, which appeared to be at least in part due to inadequate legal safeguards.

It followed that the Bulgarian laws governing secret surveillance did not fully meet the “quality of law” requirement and were incapable of keeping the “interference” entailed by the system of secret surveillance to what was “necessary in a democratic society”.

Conclusion: violation (unanimously).

(b) *Retention and accessing of communications data*

Under Bulgarian law, all communications service providers in the country had to retain all the communications data of all of their users for six months, with a view to making that data available to the authorities for certain law-enforcement purposes. Various authorities might then access that data.

The general retention of communications data by communications service providers and its access by the authorities in individual cases had to be accompanied, *mutatis mutandis*, by the same safeguards against arbitrariness and abuse as secret surveillance. However, the Bulgarian laws fell short of those minimum safeguards in the following respects:

the authorisation procedure was not capable of ensuring that retained communications data was accessed by the authorities solely when that was “necessary in a democratic society”;

no clear time limits had been laid down for destroying data accessed by the authorities in the course of criminal proceedings;

no publicly available rules existed on the storing, accessing, examining, using, communicating and destroying of communications data accessed by the authorities;

the oversight system, as currently organised, was not capable of effectively checking abuse;

the notification arrangements, as currently operating, were too narrow; and

there did not appear to be an effective remedy.

Those laws therefore did not fully meet the “quality of law” requirement and were incapable of keeping the “interference” entailed by the system of retention and accessing of communications data to what was “necessary in a democratic society”.

Conclusion: violation (unanimously).

Article 41: findings of violation constituted in itself sufficient just satisfaction in respect of non-pecuniary damage.

(See also *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria*, 62540/00, 28 June 2007, [Legal Summary](#); *Roman Zakharov v. Russia* [GC], 47143/06, 4 December 2015, [Legal Summary](#); *Centrum för rättvisa v. Sweden* [GC], 35252/08, 25 May 2021, [Legal Summary](#))

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