



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

Communicated on 3 December 2014

SECOND SECTION

Application no. 70838/13
Nevenka ANTOVIĆ and Jovan MIRKOVIĆ
against Montenegro
lodged on 25 October 2013

STATEMENT OF FACTS

The applicants, Ms Nevenka Antović and Mr Jovan Mirković, are Montenegrin nationals, who were born in 1969 and 1961 respectively and live in Podgorica. They are both university professors. They are represented before the Court by Mr V. Radulović, a lawyer practising in Podgorica.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Video-surveillance

On 1 February 2011 the Dean of the School of Mathematics of the University of Montenegro (*Prirodno-matematički fakultet*) informed the professors teaching there, amongst whom the applicants, that video surveillance would be installed in the auditoriums where the classes were held.

On 24 February 2011 the Dean issued a decision introducing video surveillance, which specified that the aim thereof was safety of property and people, safety of students and surveillance of teaching (*praćenje izvršavanja nastavnih aktivnosti*). Pursuant to the decision, access to the data collected thereby was protected by codes which were known only to the Dean. The data were to be preserved for a year.

On 14 March 2011 the applicants addressed to the Personal Data Protection Agency (*Agencija za zaštitu ličnih podataka*, “the Agency”) a complaint about the video surveillance and the collection of data on them without their consent. They requested that the cameras be removed and the collected data erased. They relied on the Personal Data Protection Act (see B.3 below).

On 21 March 2011 two of the Agency's Controllers, after visiting the School of Mathematics, issued a report (*zapisnik*) maintaining that the video surveillance was in accordance with the Personal Data Protection Act.

On 28 April 2011, upon the applicant's objection to the report, the Agency Council (*Savjet Agencije za zaštitu ličnih podataka*) issued a decision (*rješenje*) ordering the School of Mathematics to remove the cameras from the auditoriums within 15 days as the video surveillance was not in accordance with the Personal Data Protection Act, notably sections 10, 35 and 36 (see B.3 below). In particular, the Agency Council held that the reasons for the introduction of video surveillance provided by section 36 were not met, given that there was no evidence that safety of people and property was in jeopardy in the auditoriums, even less confidential data, and surveillance of teaching was not amongst the legitimate grounds for video surveillance. None of the parties initiated an administrative dispute before the courts against this decision.

On 24 January 2012 the School of Mathematics was served with the Agency Council's decision of 28 April 2011. The cameras were removed on 27 January 2012 at the latest. It would appear that on an unspecified date thereafter the collected data were also erased.

2. *Civil proceedings*

On 19 January 2012 the applicants filed a compensation claim against the University of Montenegro, the Personal Data Protection Agency and the State of Montenegro, for a violation of their right to private life, notably for unauthorised collection and processing of data on them. They submitted in particular that the interference with their private lives without any possibility of their control thereof was not envisaged by any piece of legislation and therefore was not in accordance with the law within the meaning of Article 8 § 2 of the Convention. They also maintained that it did not pursue any legitimate aim and was not necessary in a democratic society. They relied on the relevant provisions of the Personal Data Protection Act, Article 8 of the Convention and the relevant case-law of the Court.

On 27 December 2012 the Court of First Instance (*Osnovni sud*) in Podgorica ruled against the applicants. The court found that private life certainly encompassed activities from the business and professional sphere of life. It also held, however, that the University was a public institution performing activities of public interest, teaching being one of them (*poziv redovnog profesora [je] takođe javan*) and that thus video-surveillance in the auditoriums as public places could not violate the applicants' right to private life. It was a working area, just like a court-room or Assembly premises, where professors were never alone, and therefore they could not invoke privacy which could be violated, nor could the data collected thereby be considered personal data. The failure of the University to remove the cameras immediately was unauthorised, but it could not be qualified as interference with the applicants' private life and therefore was irrelevant. The court further held that such a conclusion was in accordance with the Court's case-law and cited that "the monitoring of the actions held in public [was] not interference with private life when these means just recorded (*bilježi*) what the others [could] see if they happened to be in the same place

at the same time”, and that “the monitoring of the actions of an individual in a public place by the use of photographic equipment which just instantaneously recorded visual data did not, as such, give rise to interference with the individual’s private life. An issue of interference with an individual’s private life may arise, however, once any footage (random or systematic) of such material becomes publicly available”. The court did not specify which judgment was cited in this respect. It concluded that the installation and use of video surveillance and the collection of data thereby did not violate the applicants’ right to privacy and therefore there was no mental anguish related thereto.

On 31 December 2012 the applicants appealed. They relied, *inter alia*, on Articles 6 and 8 of the Convention. They maintained, in particular, that the interference with their private lives was not in accordance with any law and was therefore contrary to Article 8 § 2 of the Convention, nor was it necessary in a democratic society. Furthermore, the Court of First Instance had not relied on any legal provision in ruling against them and had failed to assess the arguments submitted by them, thus making it unclear if it had neglected these arguments or wanted to reject them and, if so, on what grounds.

On 17 July 2013 the High Court (*Viši sud*) in Podgorica upheld the first-instance judgment, in substance endorsing the reasons contained therein. The High Court, in particular, held that the applicants’ submission that the first-instance ruling was contrary to Articles 6 and 8 of the Convention was unfounded as the applicants had provided no evidence in support of their claim and the first-instance court “sufficiently related the Court’s case-law to the case at issue (*dao jasan osvrt na odnos prakse Evropskog suda za ljudska prava i konkretnog slučaja*) [...]. The court considered the [applicants’] other arguments and found that they did not justify ruling otherwise in the present case [...]”.

The applicants did not file a constitutional appeal.

B. Relevant domestic law

1. Constitution of Montenegro 2007 (Ustav Crne Gore; published in the Official Gazette of Montenegro - OGM - no. 01/07)

Article 40 provides that everyone has the right to respect for private and family life.

Article 43 provides that everyone has the right to be informed about his personal data collected and the right to judicial protection in case of any misuse.

Article 24 § 1 provides that the guaranteed human rights and freedoms can be restricted only by means of law, to the extent allowed by the Constitution and necessary in an open and democratic society to satisfy the purpose for which the restriction was allowed.

Article 28 § 2 guarantees, *inter alia*, one’s privacy and personal rights.

Article 32 provides for the right to a fair trial.

Article 149 provides that the Constitutional Court shall rule on a constitutional appeal lodged in respect of an alleged violation of a human

right or freedom guaranteed by the Constitution, after all other effective legal remedies have been exhausted.

The Constitution entered into force on 22 October 2007.

2. *Montenegro Constitutional Court Act (Zakon o Ustavnom sudu Crne Gore, published in the OGM no. 64/08)*

Section 48 provides that a constitutional appeal may be lodged against an individual decision of a State body, an administrative body, a local self-government body or a legal person exercising public authority, for violations of human rights and freedoms guaranteed by the Constitution, after all other effective legal remedies have been exhausted.

Sections 49-59 provide additional details as regards the processing of constitutional appeals. In particular, section 56 provides that when the Constitutional Court finds a violation of a human right or freedom, it shall quash the impugned decision, entirely or partially, and order that the case be re-examined by the same body which rendered the quashed decision.

This Act entered into force in November 2008.

3. *The Personal Data Protection Act (Zakon o zaštiti podataka o ličnosti; published in the OGM nos. 79/08, 70/09 and 44/12)*

Section 10 provides that personal data can be processed only upon a previously obtained consent of the person whose data are processed, which consent can be revoked at any time.

Section 21 provides that the person responsible for handling the collected data shall inform the person whose data are collected about, *inter alia*, the legal ground for the data collection and its purpose, as well as the right of access to the data.

Section 35 (1) provides that public institutions (*javni sektor*) can carry out video surveillance of an access (*pristup*) to business premises.

Section 36 provides that video surveillance can be installed in business premises for reasons of safety of people or property or for the protection of confidential data if this cannot be achieved in another way.

Section 48 provides that the person responsible for handling the collected data shall also be responsible for the damage sustained by a violation of the rights provided by this Act, in accordance with general rules on the compensation of damage.

4. *The Obligations Act 2008 (Zakon o obligacionim odnosima; published in the OGM nos. 47/08 and 04/11)*

Sections 151, 206 and 207 of the Obligations Act, taken together, provide, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of his reputation, personal integrity, liberty or other personal rights (*prava ličnosti*) shall be entitled to seek injunctive relief, sue for financial compensation and request other forms of redress “which might be capable” of affording adequate non-pecuniary satisfaction.

Section 166 provides, *inter alia*, that a legal entity (*pravno lice*), which includes the State, shall be liable for any damage caused by one of its bodies

to a “third person” in the course of performing its functions or related thereto.

COMPLAINT

The applicants complain under Article 8 of the Convention that the unlawful installation and use of video surveillance in the auditoriums where they held classes violated their right to privacy.

QUESTIONS TO THE PARTIES

1. Have the applicants exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, was an appeal to the Montenegrin Constitutional Court an effective remedy in respect of the applicants' complaints? The Government are invited to indicate whether the Constitutional Court has already ruled in respect of any constitutional appeals relating to the right to respect for private life. Copies of any relevant decisions in this regard should also be submitted.

2. Has there been a violation of the applicants' right to respect for their private life, contrary to Article 8 of the Convention? In particular, has there been an interference with the applicants' right to respect for their private life, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see *Amann v. Switzerland* [GC], no. 27798/95, § 69, ECHR 2000-II)?