

EUROPEAN COURT OF HUMAN RIGHTS

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1.7.2008

Press release issued by the Registrar

CHAMBER JUDGMENT

LIBERTY & OTHER ORGANISATIONS v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of Liberty & Other Organisations v. the United Kingdom (application no. 58243/00).

The Court held unanimously that there had been a violation of Article 8 (right to respect for private and family life and correspondence) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage caused to the applicants, and awarded them 7,500 euros (EUR) for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicants are Liberty, British Irish Rights Watch and the Irish Council for Civil Liberties, a British and two Irish civil liberties' organisations based in London and Dublin, respectively.

The case concerned the applicant organisations' allegation that, **between 1990 and 1997, their telephone, facsimile, e-mail and data communications, including legally privileged and confidential information, were intercepted by an Electronic Test Facility operated by the British Ministry of Defence.**

The applicants lodged complaints with the Interception of Communications Tribunal, the Director of Public Prosecutions and the Investigatory Powers Tribunal to challenge the lawfulness of the alleged interception of their communications, but to no avail. The local courts found, in particular, that there was no contravention to the Interception of Communications Act 1985.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 September 1999.

Judgment was given by a Chamber of seven judges, composed as follows:

Lech Garlicki (Polish), President,
Nicolas Bratza (British),

Ljiljana Mijović (citizen of Bosnia and Herzegovina),
David Thór Björgvinsson (Icelandic),
Ján Šikuta (Slovak),
Päivi Hirvelä (Finnish),
Mihai Poalelungi (Moldovan), judges,

and also Lawrence Early, Section Registrar.

3. Summary of the judgment

Complaints

Relying on Articles 8 (right to respect for correspondence) and 13 (right to an effective remedy), the applicants complained about the interception of their communications.

Decision of the Court

Article 8

The Court recalled that it had previously found that the mere existence of legislation which allowed communications to be monitored secretly had entailed a surveillance threat for all those to whom the legislation might be applied. In the applicants' case, the Court therefore found that there had been an interference with their rights as guaranteed by Article 8.

Section 3(2) of the 1985 Act allowed the British authorities extremely broad discretion to intercept communications between the United Kingdom and an external receiver, namely the interception of "such external communications as described in the warrant".

Indeed, that discretion was virtually unlimited. Warrants under section 3(2) of the 1985 Act covered very broad classes of communications. In their observations to the Court, the British Government accepted that, in principle, any person who sent or received any form of telecommunication outside the British Islands during the period in question could have had their communication intercepted under a section 3(2) warrant. Furthermore, under the 1985 Act, the authorities had wide discretion to decide which communications, out of the total volume of those physically captured, were listened to or read.

Under section 6 of the 1985 Act, the Secretary of State was obliged to "make such arrangements as he consider[ed] necessary" to ensure a safeguard against abuse of power in the selection process for the examination, dissemination and storage of intercepted material. Although during the relevant period there had been internal regulations, manuals and instructions to provide for procedures to protect against abuse of power, and although the Commissioner appointed under the 1985 Act to oversee its workings had reported each year that the "arrangements" were satisfactory, the nature of those "arrangements" had not been contained in legislation or otherwise made available to the public.

Lastly, the Court noted the British Government's concern that the publication of information regarding those arrangements during the period in question might have damaged the efficiency of the intelligence-gathering system or given rise to a security risk. However, in the United Kingdom, extensive extracts from the Interception of Communications Code of Practice were now in the public domain, which suggested that it was possible for the State to make public certain details about the operation of a scheme of external surveillance without compromising national security.

In conclusion, the Court considered that the domestic law at the relevant time had not indicated with sufficient clarity, so as to provide adequate protection against abuse of power, the scope or manner of exercise of the very wide discretion conferred on the State to intercept and examine external communications. In particular, it had not set out in a form accessible to the public any indication of the procedure to be followed for examining, sharing, storing and destroying intercepted material.

The interference with the applicants' rights had not therefore been "in accordance with the law", in violation of Article 8.

Article 13

The Court did not consider it necessary to examine separately the complaint under Article 13.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

1 Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

2 This summary by the Registry does not bind the Court.

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