



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

THIRD SECTION

CASE OF VISLOBOKOV AND GORDON v. RUSSIA

(Applications nos. 31578/10 and 6059/11)

JUDGMENT

STRASBOURG

7 July 2022

This judgment is final but it may be subject to editorial revision.

In the case of Vislobokov and Gordon v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli, *President*,

Andreas Zünd,

Mikhail Lobov, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 16 June 2022,

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

PROCEDURE

1. The case originated in applications against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The Russian Government (“the Government”) were given notice of the applications.

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the secret surveillance in the context of criminal proceedings.

THE LAW

I. JOINDER OF THE APPLICATIONS

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

6. The applicants complained of the secret surveillance in the context of criminal proceedings. They relied, expressly or in substance, on Article 8 of the Convention, which reads as follows:

Article 8

“1. Everyone has the right to respect for his private ... life

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 in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

7. As to the admissibility of the complaint lodged by Ms Gordon, the second applicant, the Court notes that she is the mother of Mr Vislobokov, the first applicant, in whose respect the interception had been ordered and who had been using his mother’s phone numbers. These circumstances are sufficient to conclude that the second applicant had all reasons to believe that she could have been a victim of the interference with the right to respect her private life. The Government did not provide any evidence demonstrating that the interception measures ordered in respect of the first applicant had been narrowly tailored so as to exclude any interference with the rights of the second applicant (see *Kennedy v. the United Kingdom*, no. 26839/05, §§ 120-24, 18 May 2010). Thus, the second applicant could be regarded as a “victim” within the meaning of Article 34 of the Convention and the Government’s objection to this effect should be dismissed. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

8. As to the merits of the complaints, the Court reiterates that covert surveillance measures, including video and audio recording of the applicant’s communications, amount to an interference with his right to respect for his private life, within the meaning of Article 8 § 1 of the Convention, and are to be justified under Article 8 § 2 (see, for example, *Bykov v. Russia* [GC], no. 4378/02, § 72, 10 March 2009). It further reiterates that it is incumbent on the domestic courts to carry out an effective judicial review of the lawfulness and “necessity in a democratic society” of the contested surveillance measures and to furnish sufficient safeguards against arbitrariness within the meaning of Article 8 § 2 of the Convention (see *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, § 131, 7 November 2017).

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case there is nothing to suggest that the domestic courts which authorised the covert surveillance against the first applicant verified whether there was a “reasonable suspicion” against him or applied the “necessity in a democratic society” and “proportionality” test. Moreover, the refusal to disclose the surveillance authorisation to the applicants without any valid reason deprived them of any possibility to have the lawfulness of the measure, and its “necessity in a democratic society”, reviewed by an independent tribunal in the light of the relevant principles of Article 8 of the Convention.

10. To sum up, the Court considers that these complaints are admissible and disclose a breach of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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.”

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Akhlyustin v. Russia*, no. 21200/05, 7 November 2017, *Zubkov and Others*, cited above, *Dudchenko v. Russia*, no. 37717/05, 7 November 2017, *Moskalev v. Russia*, no. 44045/05, 7 November 2017 and *Konstantin Moskalev v. Russia*, no. 59589/10, 7 November 2017), the Court considers it reasonable to award jointly to the two applicants the sum indicated in the appended table and dismisses the remainder of the applicants' claims for just satisfaction.

13. The Court further considers it appropriate that the default interest rate 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that these applications disclose a breach of Article 8 of the Convention concerning the secret surveillance in the context of criminal proceedings;
4. *Holds*
 - (a) that the respondent State is to pay jointly to the two applicants, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

VISLOBOKOV AND GORDON v. RUSSIA JUDGMENT

Done in English, and notified in writing on 7 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina
Acting Deputy Registrar

Darian Pavli
President

APPENDIX

List of applications raising complaints under Article 8 of the Convention
(secret surveillance in the context of criminal proceedings)

No.	Application no. Date of introduction	Applicant's name Year of birth	Type of secret surveillance	Date of the surveillance authorisation Name of the issuing authority	Other relevant information	Specific defects	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses jointly to the two applicants (in euros) ¹
1.	31578/10 05/05/2010	Aleksandr Vladimirovich VISLOBOKOV 1990	interception of telephone communications	10/10/2008; Astrakhan Regional Court	Applicant not given a copy of the surveillance authorisation	the use of "surveillance" or "operative experiment" measures not accompanied by sufficient safeguards against arbitrariness ("quality of law")	7,500
2.	6059/11 05/01/2011	Galina Olegovna GORDON 1964	interception of telephone communications	10/10/2008; Astrakhan Regional Court	The applicant not given a copy of the surveillance authorisation. The applicant is the mother of the first applicant, in whose respect the interception had been established and who had been using his mother's phone numbers.	the use of "surveillance" or "operative experiment" measures not accompanied by sufficient safeguards against arbitrariness ("quality of law")	

¹ Plus any tax that may be chargeable to the applicants.