



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

FOURTH SECTION

CASE OF SAVOVI v. BULGARIA

(Application no. 7222/05)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Savovi v. Bulgaria,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ineta Ziemele, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 7222/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Bulgarian nationals, Mr Aleksandar Krastev Savov, Ms Donka Mihaylova Savova, Mr Mihail Aleksandrov Savov, Mr Damyan Aleksandrov Savov, and Mr Ilin Aleksandrov Savov (“the applicants”), on 14 February 2005.

2. The applicants were represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms N. Nikolova, of the Ministry of Justice.

3. The applicants alleged that they had been subjected to unlawful covert surveillance and that they had not had effective remedies in that respect.

4. On 26 April 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The application was later transferred to the Fourth Section of the Court, following the recomposition of the Court’s sections on 1 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1946, 1950, 1971, 1973 and 1980 respectively and live in Smolyan. The first and second applicants are spouses and the other applicants are their children. During the relevant period they all shared the same household.

A. The use of surveillance measures against the first applicant and the criminal proceedings in that respect

7. In the period between 25 July 1997 and 22 August 2001 the first applicant was the head of the Smolyan district police department.

8. On 7 January 1998 an inspection commission from the Inspectorate of the Ministry of the Interior (“the Commission”), acting in accordance with an order of the Minister of the Interior (“the Minister”), inspected the police department and informed the first applicant that his office and home had been subjected to covert surveillance by his inferiors. The next day the covert surveillance was terminated and the surveillance equipment removed. Three officers of the same department, Mr S.B., chief of the Criminal Police Division, Mr I.I., chief of the Group for Operative and Technical Information, and Mr G., chief of the Anti-Terrorist Division, were dismissed in connection with the incident.

9. In a report of 6 February 1998 the Commission established that on 4 December 1997 Mr S.B. had informed the Minister that he suspected the first applicant of links with criminal groups. On the following day Mr S.B. and Mr I.I. had requested a warrant for covert surveillance of the first applicant’s home and office. The chairman of the Plovdiv Military Court had issued the warrant on the same day and authorised two operations: surveillance of the applicants’ home in the period between 5 December 1997 and 4 February 1998, and of the first applicant’s office in the period between 6 December 1997 and 5 January 1998. The surveillance had started on 8 December 1997 without the requisite written authorisation of the Minister. The Commission did not draw any conclusion as to the lawfulness of the surveillance as such but limited the scope of its inspection to the conduct of the involved police officers. According to its report, Mr S.B. and Mr I.I. had committed serious breaches of the disciplinary rules in order to discredit the first applicant. It was further noted that some of the information gathered during the surveillance constituted a state secret which Mr S.B. had not been authorised to know. In the Commission’s opinion, the case revealed insufficient control by the Ministry of the Interior.

10. On 2 April 1998 the head of the Inspectorate reported the case to the military prosecuting authorities, in whom the power to investigate criminal offences committed by police officers was vested at the relevant time. There is no information as to whether the latter took any action.

11. On an unspecified date the Supreme Administrative Court quashed the dismissal of Mr S.B. and Mr I.I. in proceedings classified as confidential.

12. On 11 September 2001 the first applicant requested the Chief Public Prosecutor to open an investigation into the incident. On 27 November 2001 criminal proceedings were opened. The military investigator questioned the suspects and a number of witnesses.

13. In his explanations, Mr S.B. claimed that the Minister had given his consent for covert surveillance of the first applicant during a meeting between them on 4 December 1997.

14. The Minister stated that Mr S.B. and Mr I.I. had not informed him that they had requested surveillance measures against the first applicant. They had sent him several envelopes containing information but he had forwarded them to another officer without opening them. It was only later that he had learned about the surveillance of the first applicant.

15. According to witness statements, following the inspection members of the Commission had put the material obtained from the surveillance in a cardboard box and taken it away. The head of the Operative and Technical Information Service at the Ministry of the Interior stated that the material had not been received in that department and that he was not aware of its whereabouts.

16. On 25 March 2002 Mr S.B. and Mr I.I. were charged with an offence under Article 387 of the Criminal Code (see paragraph 37 below).

17. On 13 January 2003 the first applicant lodged a civil claim for damages in the context of the criminal proceedings.

18. On 4 September 2003 a prosecutor from the Plovdiv district military prosecutor's office terminated the proceedings and discontinued the first applicant's civil claim. He noted that the Minister had not approved the requests for secret surveillance in respect of the first applicant. However, during the inspection of 8 January 1998 the surveillance had been discontinued and the intelligence thus obtained had been delivered to the Chief Secretary of the Ministry of the Interior and had later been destroyed. The prosecutor therefore found that the first applicant had not suffered any damage, as the intelligence gathered had been destroyed. He further found that Mr S.B. and Mr I.I. had acted in accordance with section 17 of the SSMA, which only required the Minister to be informed about secret surveillance in urgent cases.

19. On 19 September 2003 the applicant appealed to the Plovdiv Military Court. He indicated several allegedly unclear points, among which: the reason why the case had been considered urgent; whether Mr S.B. and

Mr I.I. were competent to request the application of secret surveillance and the reasons for considering that no surveillance had taken place between 5 and 8 January 1998.

20. By a decision of 30 September 2003 the Military Court quashed the appealed order for lack of sufficient reasoning and remitted the case for further investigation. It noted that the public prosecutor had not explained why he deemed that there had been a situation of urgency justifying the application of section 17 of the SSMA, nor why the two accused had failed to inform the Minister immediately, as the SSMA required. It went on to hold that the possible surveillance of the first applicant for several days after the expiration of the permission had also not been investigated.

21. The investigator questioned the two accused. They stated that they had sent the requests to the Minister for approval on 18 or 19 December 1997, together with some of the material gathered.

22. By an order of 18 August 2004 a prosecutor from the Plovdiv district military prosecutor's office again terminated the proceedings. He found that the Minister had given oral permission for surveillance of the first applicant on 4 December 1997. The two accused had sent him the first envelope containing intelligence on 10 December 1997. The requests for covert surveillance had been sent on 19 December 1997 together with the second portion of intelligence. The last envelope had been sent on 26 December 1997. He found that while the Minister had not approved the secret surveillance in writing, he had in any event given oral permission and the two accused had acted pursuant to section 17 of the SSMA. The prosecutor noted that the Minister denied having given any oral permission for secret surveillance. However, he assumed that the Minister must have known about it, as the first results from it had been sent to him in December 1997. The prosecutor further found that in the period between 5 and 8 January 1998 secret surveillance was indeed still deployed, as time had been necessary for their dismantling, but no intelligence had been gathered during this period. He also held that although the Minister had not been informed immediately, this was a trivial breach of the procedure which did not amount to a criminal offence as no damage had been inflicted on the first applicant.

23. On 23 August 2004 the first applicant appealed further, reiterating his arguments and emphasising the Commission's finding that on 8 January 1998 his office was still under secret surveillance.

24. In a final decision of 8 September 2004 the Plovdiv Military Court dismissed the appeal and terminated the proceedings. It relied on the prosecutor's findings, and held that the accused officers had acted in accordance with the law and that the first applicant had not suffered any damage from their actions. Mr S.B. and Mr. I.I. had been dismissed on disciplinary grounds, but the Supreme Administrative Court had quashed the dismissal and ordered their reinstatement, thus finding that their actions

had been lawful. The court also held that the case had been urgent as it had concerned the head of the Smolyan District Police Department and that no secret surveillance had taken place outside the permitted time-limit.

25. According to the information made available to the Court, no investigation was ever opened against the first applicant in connection with any criminal activity or unlawful conduct.

B. The proceedings for insult and libel

26. On an unspecified date in 2001 the first applicant initiated private criminal proceedings against Mr S.B. and Mr I.I. for insult and libel, and joined a civil claim for damages, in relation to allegedly insulting statements made by them on a local radio station and in a newspaper in August 2001 relating to his personality and his work as head of the Smolyan District Police Department.

27. In a judgment of 9 February 2004 the Smolyan District Court acquitted the defendants of the charges of insult and found them guilty of libel, sentencing them to a fine. It also awarded damages to the first applicant.

28. On 24 June 2004 the Smolyan Regional Court quashed this judgment for breaches of procedure and remitted the case for fresh examination.

29. In a court hearing on 11 October 2004 the Smolyan District Court terminated the proceedings, as the statutory limitation period for the offences had expired. The court did not rule on the civil claim, as it found that after the remittal the first applicant should have been designated a civil claimant again. This had not been possible however as no hearing on the merits had taken place after the remittal.

30. On an unspecified date in 2006 the first applicant brought a civil action against Mr S.B. and Mr I.I. for insult and libel. In a judgment of 6 November 2008 the Plovdiv Regional Court partly allowed the action. On appeal on 18 May 2009 the Plovdiv Appeal Court quashed that judgment, holding that the first applicant had not proved that he had sustained any non-pecuniary damage in connection with the defendants' statements. On 17 February 2010 the Supreme Court upheld the judgment of the Plovdiv Appeal Court, with similar reasoning.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of 1991

31. The relevant provisions of the Constitution of 1991 are:

Article 32

“1. The private life of citizens shall be inviolable. Everyone shall have the right to be protected against unlawful interference with his private and family life and against encroachments on his honour, dignity and reputation.

2. No one may be spied on, photographed, filmed, recorded, or subjected to similar actions without his or her knowledge or despite his or her express disagreement, except in cases provided for by law.”

Article 33 § 1

“The home shall be inviolable. No one may enter or remain in it without the consent of its inhabitant, except in the cases expressly specified by law.”

Article 34

“1. The freedom and secrecy of correspondence and other communications shall be inviolable.

2. This rule may only be subject to exceptions with the permission of the judicial authorities, when necessary for uncovering or preventing serious offences.”

Article 41 § 2

“Citizens shall have the right to information from state bodies or agencies on any matter of legitimate interest to them, unless the information is a state secret or a secret protected by law, or affects the rights of others.”

B. The Special Surveillance Means Act of 1997

32. Under the Special Surveillance Means Act of 1997 (“the SSMA”), as in force at the relevant time, only several exhaustively listed bodies, including the regional directorates of the Ministry of the Interior, could request the use of special means of surveillance and draw on the intelligence obtained thereby (section 13 of the SSMA). Section 14 of the SSMA specified that it was the head of the respective service who could start the procedure for deploying such measures by lodging a written application with the relevant court.

33. After a judicial warrant had been issued, the Minister of the Interior or a deputy minister designated in writing by the Minister was to make a written order for the deployment of special means of surveillance (section 16). In urgent cases the deployment could start immediately upon the issue of the judicial warrant (section 17). However, in that case the Minister or the deputy minister was to be informed immediately (*ibid.*). In a judgment of 2005 (реш. № 504 от 2005 г. по н.д. № 1072/2004 г.) the

Supreme Court of Cassation found that the written approval of the Minister of the Interior was of a technical nature and could be given after the beginning of the surveillance, while the existence of a court warrant at the time of deployment of the surveillance measures was essential for their lawfulness. As regards what was considered an “urgent case”, in its judgment of 2010 (реш. № 481 от 2010 г. по в.н.о.х.д. № 763/2010 г.) the Sofia Court of Appeal stated that this issue was to be determined by the body conducting the surveillance and that its discretion was not amenable to judicial review.

34. The remainder of the SSMA provisions and other legislation relevant to the application of means of secret surveillance as well as judicial practice on this issue have been summarised in paragraphs §§ 7-54 of the Court’s judgment in the case of *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (no. 62540/00, 28 June 2007).

35. Following the Court’s judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above), on 14 October 2008 the Government laid before Parliament a bill for the amendment of the SSMA. The explanatory notes to the bill referred to the above-mentioned judgment and to the need to bring the Act in line with the requirements of the Convention. The bill was enacted on 15 December 2008 and came into force on 27 December 2008. Along with a host of other changes, the amendment created a National Bureau for Control over Special Surveillance Means, an independent body whose task was to oversee the services authorised to use such means. On 22 October 2009 Parliament adopted further amendments to the Act, abolishing the Bureau and replacing it with a special parliamentary commission vested with similar competence. Its powers included inspecting the premises where the information or documents connected with covert surveillance were kept or disposed of, requesting information from the bodies using surveillance measures, reporting to the Parliament, and making recommendations on the work of the competent bodies. It could also inform individuals, under certain conditions, that unlawful surveillance measures had been applied in respect of them.

C. The Criminal Code of 1968

36. Pursuant to Article 339a of the Criminal Code (CC) of 1968, the manufacture, use, sale and retention of special technical means for secret gathering of information without authorisation received in accordance with the law is an offence. The offence is aggravated if it is committed by an official in connection with his or her duties.

37. Article 387 of the CC provides that the abuse and excess of power and failure to carry out duties associated with an office held, resulting in damage being inflicted, is an offence.

D. The State and Municipalities Responsibility for Damage Act

38. Section 1 of the 1988 State and Municipalities Responsibility for Damage Act (“the SMRDA”), as amended in July 2006, provides as follows:

“The State and the municipalities shall be liable for damage caused to individuals and legal persons by unlawful decisions, actions or omissions by their organs and officials, committed in the course of or in connection with the performance of administrative action.”

39. Section 2(1) of the SMRDA provides for liability of the investigating and prosecuting authorities or the courts in six situations: unlawful detention; bringing of charges or conviction and sentencing, if the proceedings have later been abandoned or the conviction has been set aside; coercive medical treatment or coercive measures imposed by a court, if its decision has later been quashed as being unlawful; and serving of a sentence over and above its prescribed duration.

40. On 10 March 2009 a new point 7 was added to section 2(1). It provides that the State is liable for the damage which the investigating and prosecuting authorities or the courts have caused to individuals through the unlawful use of special surveillance means. There is no reported case-law under that provision.

41. According to the case-law the Supreme Court of Cassation and the Supreme Administrative Court, the liability provisions of the SMRDA – including those added after the Act was originally enacted – confer on the persons concerned a substantive right to claim damages, and have no retroactive effect (see *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, §§ 31-32, 8 March 2011).

E. Civil claims in criminal proceedings

42. The pertinent provisions of the Code of Criminal Procedure of 1974, applicable at the relevant time, and other relevant legislation and practice, have been summarised in paragraphs 22-29 of the Court’s judgment in the case of *Atanasova v. Bulgaria* (no. 72001/01, 2 October 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION ON ACCOUNT OF THE USE OF SPECIAL MEANS OF SURVEILLANCE AGAINST THE FIRST APPLICANT

43. The first applicant complained that the use of means of secret surveillance against him had not been in accordance with the law, and that he had not had at his disposal an effective remedy in that respect. He relied on Articles 8 and 13 of the Convention, which provide:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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.”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

44. The Government submitted that the first applicant had failed to exhaust the available domestic remedies, as he had not brought proceedings for damages under the SMRDA or under the general law of tort. As an alternative, the Government submitted that the first applicant should have submitted his application within six months of learning about the secret surveillance in January 1998.

45. The first applicant replied that the Government had not cited any case-law demonstrating the existence of effective domestic remedies in the relevant period. He stated that it was unlikely that a civil court would have re-examined the military court’s conclusions concerning the lawfulness of the interference. He also considered that the six-month time limit had started to run after the termination of the criminal proceedings in which he had brought a civil claim for damages.

46. The Court notes that in the present case, unlike in previous cases against Bulgaria about covert surveillance (see *Association for European Integration and Human Rights and Ekimdzhiiev* and *Goranova-Karaeneva*, both cited above), criminal proceedings were instituted by the authorities against officers responsible for a specific incidence of covert surveillance, about which the first applicant had been informed. The first applicant took an active part in those proceedings, including by joining a civil action for damages as a plaintiff against those accused (see paragraphs 12, 17, 19 and 23 above). The subject matter of the domestic proceedings was to establish whether or not the officers had acted in breach of the Criminal Code, and if so whether the first applicant had sustained damage and was entitled to compensation. These questions were directly relevant to the first applicant's complaint under Article 8 of the Convention. Without prejudice to its findings in respect of the first applicant's complaint under Article 13 of the Convention (see paragraphs 63-67 below), the Court considers that the first applicant cannot be reproached for having taken this course of action and having waited for the outcome of the criminal proceedings.

47. The Court cannot accept the Government's argument that, regardless of the proceedings against the police officers directly involved, the first applicant should have made a second attempt to obtain a ruling on essentially the same issues – the lawfulness of the secret surveillance and the damage he suffered – by bringing a separate action for damages against the State under the SMRDA. In any event, the Government have not demonstrated convincingly the practicability of such an action in a case such as the present one (see *Goranova-Karaeneva*, cited above, §§ 60-65, where the Court dismissed a similar objection by the respondent Government).

48. As to the six-month time-limit under Article 35 § 1 of the Convention, the Court refers to its findings in paragraph 46 above and reiterates that in the circumstance of the instant case the first applicant cannot be faulted for having waited for the outcome of the criminal proceedings against the two police officers before introducing his application with the Court. Therefore, given that the application was introduced on 14 February 2005, less than six months after the decision of the Military Court of 8 September 2004 to put an end to the criminal proceedings and the examination of the first applicant's civil claim, the Court is satisfied that the first applicant has complied with the six-month rule.

49. The Court further considers that the complaints under Articles 8 and 13 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 8

(a) The parties' submissions

50. The first applicant submitted that the covert surveillance against him had not been in accordance with the law. He maintained that Mr S.B. and Mr I.I. had not been among the officers authorised by the SSMA to request such measures. Furthermore, they had used the special means of surveillance without the requisite consent of the Minister, although there had been no indication that the case was urgent, and they had only informed the Minister about it ten days after it had started, in violation of section 34 of the SSMA. The first applicant also submitted that the covert surveillance against him had continued until 8 January 1998, three days after the expiration of the permission granted by the Military Court. He complained that the provisions of the SSMA were unclear and unforeseeable, in that they did not define in clear terms the cases in which surveillance measures could be used or what should be considered "an urgent case". Nor did they indicate the scope of the discretion conferred on the authorities. Finally, he complained that the intelligence obtained as a result of the secret surveillance had not been destroyed within the time-limits required by the SSMA.

51. The Government, referring to the report of the Inspectorate of the Ministry of the Interior, acknowledged that the national authorities had committed breaches of the procedure under the SSMA during the covert surveillance of the first applicant. However, in their view the surveillance had nevertheless been lawful, because it had been necessary for the investigation of a serious crime. The Government further acknowledged that Mr S.B. and Mr I.I. had not been competent to request permission for use of special means of surveillance. However, they had acted as a matter of urgency because the first applicant, then a high-ranking police officer, had been suspected of counterfeit money distribution. The Government further submitted that there was no indication that the first applicant had been adversely affected by the covert surveillance. In particular, the results from the covert surveillance had been destroyed and had not been made known to other individuals, apart from those authorised by the law to deal with the matter. The first applicant's career in the police had not been affected. The Government also stated that no data had been gathered from the monitoring devices in the period from 5 to 8 January 1998. The technical removal of the devices was a separate procedure, which took time and could not be carried out within the period of the authorised surveillance.

(b) The Court's assessment

52. It is undisputed between the parties that the tapping of the first applicant's conversations in his office and home amounted to an interference with his rights under Article 8. The Court sees no reason to hold otherwise.

53. Such interference will give rise to a breach of Article 8 unless it can be shown that it was "in accordance with the law", pursued one or more legitimate aims as defined in its second paragraph and was "necessary in a democratic society" to achieve those aims.

54. The Court notes at the outset that the lawfulness of the surveillance was never subjected to scrutiny by the domestic authorities. Indeed, the domestic courts examined the lawfulness of the acts of Mr S.B. and Mr I.I. and concluded that they had not committed a criminal or a disciplinary offence (see paragraphs 11 and 24 above). However, the scope of the review exercised by those courts was limited to those officers' criminal and disciplinary liability, an issue which is different from the question whether the rules for authorisation and deployment of surveillance measures laid down with reasonable clarity the authorities' powers in the domain of secret surveillance and whether those rules had been strictly complied with in the particular case.

55. While it is not disputed that the surveillance measures were based on the 1997 SSMA, the Court reiterates that the phrase "in accordance with the law" not only requires that the measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects. It reiterates that, in view of the risk of abuse intrinsic to any system of secret surveillance, such surveillance measures must be based on a law that is particularly precise. It is essential to have clear, detailed rules on the subject (see *Association for European Integration and Human Rights and Ekimdzhiev*, cited above, § 75, with further references). Consequently, the law must indicate the scope of any discretion conferred on the authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see *Amann v. Switzerland* [GC], no. 27798/95, § 56, ECHR 2000-II, and *Liberty and Others v. the United Kingdom*, no. 58243/00, § 62, 1 July 2008).

56. In *Association for European Integration and Human Rights and Ekimdzhiev* the Court found that the statutory procedure for authorising covert surveillance, if strictly adhered to, offered sufficient protection against arbitrary or indiscriminate surveillance (see §§ 79-84 of that judgment). In the instant case, however, the Court observes that the procedure for authorising the surveillance measures against the first applicant was surrounded by uncertainty. It notes, for example, that the surveillance was planned and carried out by two of the first applicant's

inferiors, Mr S.B. and Mr I.I. It is common ground between the parties that those officers were not heads of services listed in the SSMA as vested with the power to request and deploy covert surveillance (see paragraphs 32, 50 and 51 above). In the present case, however, the national authorities left it unclear whether, in the absence of prescribed competence, the decision of these officers to act had been compliant with the requirements of the national law. They also failed to examine whether in these circumstances it had been open to the Plovdiv Military Court to issue the requested warrants. While the domestic law clearly limited the grounds on which a permission for secret surveillance could be granted, the material made available to the Court reveals little information about the facts giving rise to those officers' suspicions against the first applicant and their justification. The Government failed to clarify this issue. It is also to be noted that Mr S.B. and Mr I.I. requested the Minister's authorisation eleven days after the deployment of the monitoring and not "immediately", as the statutory procedure required (see paragraphs 9, 22 and 33 above). Although the lawfulness of the surveillance under the national law was not fully examined by the domestic courts, the lack of clarity which emerges from the present case as to the circumstances in which the use of surveillance measures may be requested and granted, the persons who have the authority to request such measures, and their powers and obligations, sits ill, in the Court's opinion, with the requirements of paragraph 2 of Article 8 and the Court's case-law, according to which the relevant law must lay down with reasonable clarity the essential elements of the authorities' powers in the domain of secret surveillance (see *Malone v. the United Kingdom*, 2 August 1984, § 79, Series A no. 82).

57. The Court also notes that in *Association for European Integration and Human Rights and Ekimdzhiev* it expressed other concerns in respect of the safeguards provided by the domestic legislation against abuse, notably (a) the lack of *ex post facto* review by an independent body of the implementation of surveillance measures or of whether the material obtained through such measures would be destroyed within the statutory time-limit if the surveillance had proved fruitless; (b) the lack of regulations specifying with an appropriate degree of precision the manner of screening of such material, or the procedures for preserving its integrity and confidentiality and the procedures for its destruction; (c) the lack of an independent body to oversee and report on the functioning of the system of secret surveillance; and (d) the lack of independent control over the use of material falling outside the scope of the original application for the use of covert surveillance measures (see §§ 85-89 of that judgment).

58. The Court finds that these concerns are relevant to the instant case, seeing that the material obtained in respect of the applicant was not used in subsequent criminal proceedings and therefore no independent body has reviewed the lawfulness of the surveillance or the manner in which that

material had been disposed of (unlike *Goranova-Karaeneva*, cited above, §§ 49-51). Indeed, when the Commission arrived, the surveillance equipment was functioning and apparently no steps had been taken for its dismantling although the court warrant had expired three days before (see paragraphs 8 and 22 above). As to the manner in which the intelligence obtained in respect of the first applicant was handled and destroyed, the Court notes that it was taken away by members of the Commission in a cardboard box (see paragraph 15 above). The subsequent proceedings before the domestic authorities do not reveal if, when or how it was destroyed.

59. Against this background, the Court concludes that the domestic authorities failed to secure the requisite clarity and foreseeability of the law which served as the basis for the interference with the first applicant's rights under Article 8. This conclusion obviates the need for the Court to determine whether the interference was "necessary in a democratic society" for one of the aims enumerated therein (see *Association for European Integration and Human Rights and Ekimdzhiev*, cited above, § 93).

60. There has accordingly been a breach of Article 8 of the Convention.

2. Article 13

(a) The parties' submissions

61. The first applicant alleged that he did not have an effective remedy in respect of the unlawful interference with his Article 8 rights.

62. The Government referred to the Court's conclusions in *Association for European Integration and Human Rights and Ekimdzhiev*, cited above, and acknowledged that before 2008 the first applicant had had no domestic remedies in respect of his complaint under Article 8 of the Convention. However, in 2009 the SSMA had been amended and a special parliamentary commission had been created whose task was to oversee the services authorised to use covert surveillance measures. The Government observed that the commission was empowered, under certain conditions, to notify individuals of unlawful surveillance measures used in respect of them. Finally, they stated that the new point 7 of section 2(1) of the SMRDA introduced in March 2009 had made it possible to seek damages in respect of unlawful interception of communications.

(b) The Court's assessment

63. Article 13 guarantees the availability of a remedy at national level to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Thus, its effect is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention

complaint and to grant appropriate relief. It does not go so far as to require a particular form of remedy, Contracting States being afforded a margin of appreciation in conforming with their obligations in that respect. In the covert surveillance context, an “effective remedy” means a remedy that is as effective as can be, having regard to the restricted scope for recourse. Moreover, such a remedy is required only in respect of grievances which can be regarded as arguable (see *Goranova-Karaeneva*, cited above, § 57, with further references).

64. The Court has already found that until 2007 there were no avenues allowing persons subjected or suspected of being subjected to covert surveillance to vindicate their rights (see *Association for European Integration and Human Rights and Ekimdzhiiev*, cited above, § 102). In the present case, it notes that although criminal proceedings were instituted against the responsible officers, the court dealing with that case had a limited power of review in that it had to determine whether the officers had committed a criminal offence and not whether the requirements of the covert surveillance legislation had been strictly complied with (see paragraph 54 above). The Court has already intimated that the domestic courts did not deal with the first applicant’s allegations of unlawfulness in so far as they were not relevant to the charges against the two officers (see paragraph 59 above). The Supreme Administrative Court, which examined the lawfulness of the two officers’ dismissal, apparently limited its assessment to their compliance with the rules of discipline (see paragraph 11 above). As a consequence, the first applicant could not avail himself of any proceedings for compensation of the damage resulting from that surveillance.

65. In the present case, the only avenue suggested by the Government was a claim for damages under the new point 7 of section 2(1) of SMRDA Act, added in March 2009 (see paragraphs 40 and 62 above). However, the Court notes that in *Goranova-Karaeneva* it has already rejected the Government’s objection that an action under the SMRDA would be an effective remedy, noting that the new point 7 of section 2(1) of SMRDA had entered into force many years after the events at issue, and finding that the Government had failed to show that there was sufficient jurisprudence of domestic courts on claims concerning unlawful use of surveillance measures (see §§ 61-63 of that judgment). The Court, seeing that the amendment was introduced some eleven years after the covert surveillance in respect of the first applicant, observes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court therefore concludes that the possibility of bringing a claim under the new point 7 of section 2(1) of the SMRDA was not an effective remedy in the first applicant’s case.

66. The Government also observed that in 2009 a special parliamentary commission had been created with the aim of supervising the bodies using

covert surveillance. However, they did not suggest that that commission could provide the first applicant with an effective remedy in respect of his Article 8 complaints. Indeed, they mentioned that the commission could notify individuals of unlawful surveillance measures used in respect of them. However, that power, which the commission could exercise of its own motion, is not relevant to the present case as the first applicant was informed of the measures used against him as early as in 1998, when the surveillance was discontinued (see paragraph 8 above). The Government did not refer to another remedy, and the Court is not aware of any.

67. There has therefore been a violation of Article 13 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. The second, third, fourth and fifth applicants complained that they had also been subjected to covert surveillance in breach of Article 8 of the Convention, and that contrary to Article 13 they had not had effective remedies in that respect. The first applicant also complained under Article 6 § 1 of the Convention that he had been denied access to court in the 2001-04 criminal proceedings for libel because the domestic courts had not ruled on his civil claim.

69. The Court notes that the second, third, fourth and fifth applicants, as members of the first applicant's household, can claim to be direct victims of covert surveillance. Although the Court has found that there were no remedies allowing persons subjected or suspected of being subjected to covert surveillance to vindicate their rights (see paragraphs 64-67 above), those applicants did not, unlike the first applicant, take any steps to bring their grievances to the attention of the authorities with a view to obtaining redress. On that account, and seeing that they failed to lodge an application within six months after they had become aware of the covert surveillance, the Court finds that their complaints are inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention.

70. The Court has further examined the first applicant's complaint under Article 6 § 1 of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

71. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 1 and 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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.”

A. Damage

73. The first applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage for violations of the Convention in his case.

74. The Government contested this claim.

75. The Court considers that the first applicant must have suffered non-pecuniary damage as a result of the violations of the Convention found in the present case. Taking into account all the circumstances of the case, and deciding on an equitable basis, it awards him EUR 4,500 under this head.

B. Costs and expenses

76. The applicants sought EUR 3,252.80 for legal work undertaken by their lawyers. In support of this claim, they presented a contract and a time sheet for forty hours and forty minutes of legal work at the hourly rate of EUR 80. They further claimed EUR 50 for postage, stationery and copying expenses and EUR 106.57 for translation expenses. They submitted a contract for translation. They requested that EUR 300 of any award made under this head be paid directly to them (since they had already paid that sum to their lawyers) and the remainder to their lawyers, Mr M. Ekimdzhiev and Ms K. Boncheva.

77. The Government contested these claims as unsubstantiated and excessive.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, and noting that part of the application was declared inadmissible, the Court considers it reasonable to award the first applicant the sum of EUR 2,000. EUR 300 of that amount is to be paid into the first applicant's bank account, and the remainder into the bank account of his legal representatives.

C. Default interest rate

79. The Court 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. *Declares* the first applicant's complaints under Articles 8 and 13 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention in respect of the first applicant;
3. *Holds* that there has been a violation of Article 13 of the Convention in respect of the first applicant;
4. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian leva at the rate applicable at the date of settlement:
 - (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses, of which EUR 300 (three hundred euros) is to be paid to the first applicant himself, and the remainder is to be paid into the bank account of his legal representatives;
 - (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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Ineta Ziemele
President