



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KVASNICA v. SLOVAKIA

(Application no. 72094/01)

JUDGMENT

STRASBOURG

9 June 2009

FINAL

09/09/2009

This judgment may be subject to editorial revision.

In the case of Kvasnica v. Slovakia,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 April 2009 and 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 72094/01) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovakian national, Mr Roman Kvasnica (“the applicant”), on 11 July 2001.

2. The applicant was represented by Mr J. Drgonec, a lawyer practising in Bratislava. The Slovak Government (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

3. The applicant alleged, in particular, that his telephone communications had been interfered with in breach of Article 8 of the Convention.

4. By a decision of 26 September 2006 the Court declared the application partly admissible.

5. The applicant and the Government each submitted further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962 and lives in Piešťany.

A. Factual background

7. The applicant is a lawyer. He used to be a public prosecutor and is now a practising member of the Slovak bar association.

8. Between August 1999 and March 2001 the applicant acted as the legal representative of several industrial companies belonging to a group associated with a strategic steelworks in eastern Slovakia. For a period of time starting on 18 April 2001 he was on the board of directors of the company owning the works.

9. In 1999 the Minister of the Interior set up a special team of investigators to investigate large-scale organised criminal activities of a financial nature which were supposedly being committed in connection with a company belonging to the above group. The team was composed of officers from the financial police.

10. On an unspecified date the investigators charged an individual, I.C., with aggravated fraud.

B. Interference with the applicant's telephone communications

11. On an unspecified date the investigators applied for judicial authorisation to tap the applicant's telephone. At an unspecified time a judge of the Bratislava Regional Court granted the authorisation. The applicant's professional mobile phone was subsequently tapped.

12. In November 2000 the applicant learned that calls from his phone were being intercepted; that the interception was being carried out by the financial police; and that the contents of his telephone communications were known outside the police.

13. On 5 January 2001 the applicant received an anonymous letter confirming the above information and advising him that the interception had taken place from October to December 2000 and had been carried out at the request of opponents of his clients.

14. On 31 May 2001 and 1 June 2001 a daily paper published interviews with the Minister of the Interior and the chief of the Police Corps. From those interviews the applicant understood that there had been confirmation that the interception had actually taken place.

15. Verbatim records of the applicant's calls had been leaked to various interest groups, politicians and journalists, as well as to representatives of several legal persons.

16. Thus in September 2001 the daily *Sme* received by mail a transcript of the applicant's telephone conversation with a journalist of *Radio Free Europe*. On 13 October 2001 *Sme* published a statement by a politician who had declared at a press conference that he possessed approximately 300 pages of copies of transcripts of the applicant's telephone conversations.

17. In summer 2002 the applicant was informed that verbatim records of his conversations with third persons which had been made by the financial police were freely accessible on a website. They included conversations with his colleagues, clients, the representative of the other party in a case, and friends. The records had been manipulated in that they included statements which the applicant and the other persons involved had not made.

C. Investigation of the interference with the applicant's telephone communications

1. Complaints by the applicant and a police director

18. On 15 and 29 January 2001 the applicant informed the Inspection Service of the Ministry of the Interior ("the Inspection Service") that he had been warned in a letter signed "member of the Financial Police" about the interception of his telephone. He claimed that the interception was unlawful and unjustified and accused one or more unknown police officers of having abused their official authority. The applicant stated that an appropriate investigation should be carried out into the matter in accordance with the law.

19. The director of the special division of the financial and criminal police (*odbor zvláštnych úloh správy kriminálnej a finančnej polície*) lodged a criminal complaint as, on the basis of his own examination of the case file, he had come to the conclusion that the interception contravened sections 36 and 37 (1) of the Police Corps Act 1993 (see Relevant domestic law and practice below). This was so in particular because it had not been based on any specific suspicion against the person being targeted and no specific purpose had been indicated. In his view, the members of the special investigative team had abused their official authority within the meaning of Article 158 of the Criminal Code.

20. On 10 May 2001 the judge who had authorised the interception made a written statement to the President of the Regional Court. The judge stated that the request for the authorisation had met all formal and substantive requirements. In his view, the police director had no authority to challenge the authorisation. The judge therefore considered it inappropriate

to address the substance of the director's objections. He nevertheless remarked, in general, that requests for authorisation were made in writing, but were submitted in person. The officer submitting the request had presented the case orally and the oral presentation was usually more comprehensive than the written request. As requests for authorisation had to be handled with the utmost urgency, judges had had no realistic opportunity to examine the case file or to check that the request for authorisation corresponded to the contents of the case file. Furthermore, the information in the case file was often obtained from unverifiable sources. Judges therefore had to rely on the information in the request for authorisation, which presupposed a certain element of trust. The judge further observed that there had been an enormous increase in the workload concerning tapping and that this was due, *inter alia*, to an inter-agency agreement which had been reached under the auspices of the Ministry of Justice (see Relevant domestic law and practice below) and had extended the jurisdiction of the Bratislava Regional Court in this area. In his view, questions of jurisdiction should not be regulated by "agreements" but by statute, which was not the case in relation to tapping. The judge stated that telephone tapping had been authorised on three previous occasions in the course of the investigation into the suspected extensive criminal transactions within the industrial group mentioned above. He had thus had sufficient and detailed knowledge about the applicant's case. The judge associated himself completely with the decision taken, although the suspicion against the applicant might later have been dispelled. This was nothing unusual and happened in 10-20% of cases.

21. On 22 May 2001 the applicant asked the General Prosecutor to take measures with a view to eliminating unlawful interception and recording of telephone conversations.

22. On 20 June 2001 the Inspection Service questioned the applicant in connection with his complaint. According to the applicant, since then there has been no official communication concerning his complaint and he has not been informed of the outcome of the investigation.

23. On 21 June and 2 July 2001 the Inspection Service requested that the Ministry of the Interior discharge members of the special investigative team from the obligation of confidentiality in respect of the subject matter of the investigation. The Ministry agreed on 9 and 10 July 2001 respectively.

24. On 31 August 2001 the General Prosecutor's Office informed the applicant, in reply to his above request of 22 May 2001, that the framework for the interference was defined by Article 22 § 2 of the Constitution and the relevant statutory provisions including the Police Corps Act 1993. Decree no. 66/1992 defined the court's jurisdiction in such matters in cases where criminal proceedings had not been brought. The fact that the relevant issue was not governed by a law was only a formal shortcoming. Moreover, a draft law had been prepared to cover the relevant issue.

25. Between 5 and 20 September 2001 the Inspection Service questioned four members of the investigative team. Their depositions included, *inter alia*, the information that the operative part of the team had been colluding with the applicant; that the applicant had been in close contact with I.C. (see paragraph 10 above); that the applicant had been involved in several contractual transactions within the group, which had eventually harmed the interests of the steelworks; that the request for authorisation to tap the applicant's phone had been based on the suspicion that he had committed the offences of aggravated fraud (Article 250 of the Criminal Code) and money laundering (Article 255 of the Criminal Code); that the request had been drafted without consultation of the case file; that the interception had been necessary because it had not been possible to move the investigation forward without it; and that after the interception had been compromised the case file had been made available to various officials, including the Minister of Justice, who at that time also acted as the Minister of the Interior *ad interim*.

26. On 21 September 2001 the Inspection Service dismissed the criminal complaint by the police director. It noted that a "committee of experts specialising in operational tasks" had been set up and "had detected no breach of the applicable regulations". The interception had been authorised by a judge and had thus been lawful. There was no basis for scrutinising the judge's decision. In conclusion, there was no case to answer. The decision has never been served on the applicant.

27. According to the applicant, he had lodged some ten criminal complaints between 2001 and 2003 about the interception of his telephone conversations and mishandling of the verbatim records. Without submitting further details the applicant indicated that those complaints had been rejected without an appropriate examination of the facts.

2. Complaint by chief editor of *Sme*

28. The chief editor of the daily *Sme* filed a criminal complaint after receipt of a transcription of the applicant's telephone conversation with a journalist of *Radio Free Europe*. In the context of the proceedings a journalist of *Sme* was heard. On 14 November 2001 the police also heard the politician who had stated that he possessed 300 pages of copies of transcripts of the applicant's telephone conversations. The applicant was involved in the proceedings as the injured party.

29. The parties have not informed the Court about the outcome of the proceedings.

3. Complaint by police officer B.

30. In 2003 lieutenant colonel B., attached to the Inspection Service's department specialised in combating corruption and organised crime,

contacted the applicant and informed him that there was a general order within the Police Corps to reject all the applicant's complaints. The police officer had been obliged to leave the police after he had started criminal proceedings upon one of the applicant's complaints. In February and March 2003 that officer had complained to the Bratislava Higher Military Prosecutor's office and to the General Prosecutor's office about abuse of authority in the context of examination of the applicant's complaints.

31. The Government submitted a standpoint of the General Prosecutor dated 8 February 2007. It indicates that the above decision of the Inspection Service of 21 September 2001 had been taken in accordance with the law. As to the criminal complaints which officer B. had lodged in 2003, an investigator had set the case aside, on 19 July 2006, on the ground that no offence had been committed in the context of examination of the applicant's complaints. Finally, reference was made to the reply which the General Prosecutor's Office had sent to the applicant on 31 August 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution (Constitutional Law no. 460/1992 Coll., as applicable at the relevant time) and practice of the Constitutional Court

32. Pursuant to Article 19, everybody has the right to protection against unjustified interference with his or her private and family life (§ 2) and against the unjustified collection, publication or other misuse of personal data (§ 3).

33. Article 22 guarantees the secrecy of correspondence, other communications and written messages delivered by post, and of personal information (§ 1). The privacy of letters, other communications and written messages kept privately or delivered by post or otherwise, including communications made by telephone, telegraph and other means, cannot be violated by anyone except in cases specified by law (§ 2).

34. In proceedings no. II. ÚS 254/03 an individual alleged, *inter alia*, a breach of Article 8 of the Convention in that his telephone had been tapped unlawfully. On 17 December 2003 the Constitutional Court dismissed the complaint as being manifestly ill-founded. It established that the interception had been authorised by a regional court judge in accordance with the relevant provisions of the Police Corps Act 1993.

35. In proceedings no. I. ÚS 274/05 (judgment of 14 June 2006) the Constitutional Court found a breach of an individual's rights under Article 8 of the Convention on the ground that, contrary to the statutory requirement, two judicial decisions to authorise the interception of the plaintiff's telephone contained no specific reasons justifying the interference.

B. Code of Criminal Procedure (Law no. 141/1961 Coll., as in force at the relevant time)

36. The Code distinguishes between the procedure before the formal institution (commencement) of a criminal prosecution, which is governed by the provisions of Chapter 9, the procedure after the commencement of the prosecution but before the filing of the bill of indictment, known as the “preliminary proceedings” and governed by the provisions of Chapter 10, and the procedure in court which begins with the filing of the indictment and is governed by the provisions of Chapter 11.

37. The procedure before the institution of a criminal prosecution encompasses receiving and verifying information, obtaining documentation and explanations and securing evidence with a view to determining whether a criminal offence has been committed and whether it is justified to bring a formal prosecution in connection with it. As a general rule, eavesdropping and interception is not allowed at this stage of the proceedings (Article 158 § 4) unless such measures cannot be postponed or repeated within the meaning of Article 158 § 6.

38. The procedure before the commencement of a criminal prosecution ends with a formal decision either not to accept the criminal complaint (Article 158 § 2), or to refer the matter to the relevant authority dealing with minor offences or disciplinary or other matters (Article 159 § 1), or to refuse to take action (Article 159 §§ 1, 2 and 3), or to institute formal criminal proceedings (Article 160).

39. The scope of the jurisdiction and competence of criminal courts is defined in section 1 of Chapter 2. Proceedings at first instance are to be conducted before a district court unless the law provides otherwise (Article 16).

C. Police Corps Act 1993 (Law no. 171/1993 Coll., as in force at the relevant time)

40. The Act governs the organisation and powers of the police. Section 2 (1) defines the tasks of the police. These include serving (a) to protect fundamental rights and freedoms, life, health, personal safety and property; (b) to detect criminal offences and to identify the culprits; (c) to detect illegal financial operations and money laundering; (d) to investigate criminal offences and to examine criminal complaints; and (e) to combat terrorism and organised crime. The provisions relevant in the present case read as follows:

“Information technology devices

Section 35

For the purpose of this Act information technology devices are, in particular, electro-technical, radio-technical, photo-technical, optical and other means and devices or their combinations secretly used for

- a) search for, opening and examination of consignments and their evaluation while using forensic methods,
- b) interception and recording of telecommunications,
- c) obtaining image, sound or other recordings.

Section 36

1. The Police Corps is entitled to use information technology devices when complying with its tasks in the fight against terrorism, money laundering in the context of the most serious forms of criminal activities, in particular organised crime, ... tax evasion and unlawful financial operations, ... The preceding provision does not apply to contacts between an accused person and his or her defence counsel.

2. The Police Corps can use information technology devices also in respect of criminal activities other than those mentioned in sub-section 1 subject to the agreement of the person whose rights and freedoms will thereby be interfered with.

Conditions of use of information technology devices

Section 37

1. The Police Corps can use information technology devices only where the use of other means would render the investigation of criminal activities mentioned in section 36, identification of their perpetrators or securing evidence necessary for the purpose of criminal proceedings ineffective or considerably difficult.

2. Information technology devices can only be used subject to a prior written consent of a judge and for a period strictly necessary which however cannot exceed six months. That period starts running on the day when such consent has been given.

3. The judge who approved of use of information technology devices can, on the basis of a fresh request, extend the period, but for no longer than six months each time.

4. In exceptional cases, where no delay is possible and a written consent of a judge cannot be obtained, information technology devices can be used without such consent. However, the Police Corps must apply for a written approval by a judge without delay. If such consent is not given within 24 hours from the moment when the use of devices started or if the judge refuses to give his or her consent, the Police Corps must put an end to the use of information technology devices. Information thus obtained cannot be used by the Police Corps and they must be destroyed in the presence of the judge competent to decide on the request.

5. The Police Corps shall submit a request for approval of the use of information technology devices to a judge in writing; it must contain data about the person concerned, specify the device to be used, place, duration and reasons for its use.

6. The judge who gave consent to the use of information technology devices must examine on a continuous basis whether the reasons for their use persist; where such reasons no longer exist, the judge is obliged to immediately order that the use of the devices be stopped.

7. The Police Corps can use information technology devices without prior consent of a judge ... where the person whose rights and freedoms are to be interfered with has consented to such in writing...

Section 38

1. When using information technology devices the Police Corps must constantly examine whether the reasons for such use persist. Where those reasons are no longer valid, the Police Corps must immediately put an end to the use of an information technology device.

2. The Police Corps must inform the judge who gave consent to the use of information technology devices of the termination of such use.

3. Information obtained by means of information technology devices can be used exclusively for attaining the aim set out in section 36.

4. The use of information technology devices can restrict the inviolability of one's home, the privacy of correspondence and the privacy of information communicated only to the extent that it is indispensable.

5. Information obtained by means of information technology devices can exceptionally be used as evidence, namely where such information constitutes the only proof indicating that a criminal offence listed in section 36 was committed by a specific person and where such proof cannot be obtained by other means. In such case the relevant recording must be accompanied by minutes indicating the place, time, means and contents of the recording and the reason for which it was made."

41. Section 69 deals with police information systems and databases. The police are entitled to set up and operate information systems and databases containing information about persons and facts which are relevant for their work (subsection 1). The police have the duty to protect the data stored in such systems from disclosure, abuse, damage and destruction (subsection 2). If the data are no longer needed, they must be destroyed or stored so that they are not accessible to anyone except a court (subsection 3).

D. Privacy Protection Act 2003

42. Sections 35, 36(2), 37 and 38 of the Police Corps Act 1993 were repealed by Act 166/2003 Coll. on Protection of Privacy against Unjustified

Use of Information Technology Devices (“Privacy Protection Act 2003”) which entered into force on 21 May 2003.

43. The Act governs the use of information technology devices without the prior consent of the person concerned. It does not extend to the use of such devices in the context of criminal proceedings which is governed by the Code of Criminal Procedure (section 1).

44. Section 2 defines the authorities entitled to use such devices (Police Corps, Slovak Intelligence Service, Military Intelligence Service, Railways Police, Corps of Prison and Justice Guards and Customs Administration). The devices used must be secured against tampering. Personnel involved in using the devices must undergo a lie-detector test at intervals fixed by the head of the authority concerned.

45. Section 3 allows for use of information technology devices only where it is necessary in a democratic society for ensuring the safety or defence of the State, prevention or investigation of crime or for the protection of the rights and freedoms of others. The information thus obtained cannot be used for purposes other than one of those enumerated above.

46. Pursuant to section 4, such devices can be used subject to prior approval by a judge within whose jurisdiction the case falls. Their use should be limited to a period which is strictly necessary and it should not exceed six months unless the judge grants an extension. The judge involved is obliged to examine on a continuing basis whether the reasons for the use of such devices persist.

47. In exceptional cases specified in section 5 the police can use the devices without the prior consent of a judge. In such cases, the judge must be notified within one hour after the use of the devices has started and a request for authorisation of such use must be submitted within 6 hours. In case of disapproval by the judge of such interference the data obtained must be destroyed.

48. Sections 7 and 8 govern the use and disposal of data obtained and the liability of the State in case of failure by the authorities concerned to comply with the law.

49. Pursuant to section 9 the National Council of the Slovak Republic (the Parliament) shall examine at its plenary meeting, twice a year, a report of its committee set up for the purpose of supervising the use of information technology devices. The report must indicate any unlawful use of the devices established. The report can be made available to the media. The authorities entitled to use information technology devices must make available to the above committee all relevant information within ten working days following the committee’s request.

E. Decree of the Minister of Justice on the Rules of Procedure before District Courts and Regional Courts (Decree no. 66/1992 Coll.)

50. The decree was issued, *inter alia*, pursuant to Article 391a § 2 of the Code of Criminal Procedure, which authorised the Minister of Justice to lay down further details of the procedure before district courts and regional courts “in dealing with criminal matters”.

51. Section 45 (1) obliged the presidents of each regional court to assign one judge to deal with matters concerning use of information technology devices.

52. The decree of 1992 was repealed by Decree no. 543/2005 with effect from 1 January 2006.

F. Other regulations

53. On 29 March 2000 a conference took place under the auspices of the Ministry of Justice. Representatives of the Ministry, the regional courts, the head office of the police and the office of the Prosecutor General took part. The participants agreed that matters concerning authorisation of wiretapping would be handled by the regional court in the judicial district in which the agency requesting it had its seat.

G. Amendment no. 185/2002 Coll. to the Courts and Judges Act (Law no. 335/1991 Coll.)

54. The amendment entered into force on 16 April 2002. It introduced, *inter alia*, subsections 2 and 3 to section 13 of the Courts and Judges Act. They provide that, as a general rule, authorisation for monitoring telecommunications falls within the jurisdiction of the regional courts. Territorial competence is conferred on the regional court in the judicial district in which the authority seeking the authorisation has its seat.

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION AND THE SCOPE OF THE CASE

55. At the admissibility stage the Government objected that the applicant had not exhausted domestic remedies as he had not raised his complaint under Article 8 by way of an action for protection of his personal integrity.

56. On 26 September 2006 the Court dismissed that objection and declared admissible the complaint under Article 8 of the Convention concerning the interference with the applicant's telephone communications. The Court noted that in his reply to the observations submitted by the Government the applicant claimed that the interference had consisted not only in tapping his phone, but also in recording his phone calls, making transcripts and copies of the recordings and making the obtained information available to third parties. In that respect it invited the parties to submit information whether, apart from the tapping of the applicant's telephone, there had been other interference with his rights under Article 8.

57. The Government then raised a new objection, arguing that the applicant could have sought redress by means of a complaint under Article 127 § 1 of the Constitution enacted with effect from 1 January 2002. They relied on the Constitutional Court's decisions II. ÚS 254/03 and I. ÚS 274/05 delivered in 2003 and 2006 (see paragraphs 34 and 35 above). In a complaint to the Constitutional Court the applicant should have relied on his argument that he had officially learned about the interception from the Government's observations submitted on the present case on 25 June 2005.

58. As to the allegedly unlawful use of the transcripts of the conversations, their copying and distribution, in the Government's view the applicant could have sought redress by means of an action under Articles 11 et seq. of the Civil Code for protection of his integrity and, ultimately, before the Constitutional Court.

59. The applicant disagreed. He argued, *inter alia*, that he had introduced his application on 11 July 2001 and that no effective remedy before the Constitutional Court had been available at that time. He could not have obtained redress before the Constitutional Court.

60. The Court first notes that the Government did not raise at the admissibility stage the argument that the applicant should have sought redress before the Constitutional Court as regards the interception of his telephone. In any event, the Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with it (see *Baumann v. France*, no. 33592/96, § 47, 22 May 2001). It concurs with the applicant that at the time of introduction of the application he had been unable to effectively seek redress before the Constitutional Court (for recapitulation of the relevant domestic law see, for example, *Poláček v. Slovakia*, no. 58707/00, §§ 33-35, 15 November 2005). Accordingly, the Government's objection must be dismissed to the extent that it concerns the interception of the applicant's telephone, including the alleged shortcomings in the legislation on which it had been based.

61. As regards the alleged interference resulting from misuse and rendering public the contents of the records, the Court notes that the applicant explicitly referred to it in his reply to the Government's

observations, which was submitted to the Court on 6 September 2005. He submitted the relevant documents and arguments to substantiate that complaint on 22 November 2006, after the decision on the admissibility of the application had been adopted and in reply to questions put by the Court.

62. Those documents indicate that the relevant part of the application concerns specific events which occurred after the introduction of the application and which were being investigated subsequently (see paragraphs 16-17 and 27-28 above). In the above circumstances, the applicant's complaint about those events and any shortcomings in the related domestic procedure must be considered as having been introduced on 6 September 2005, when the applicant for the first time made a specific reference to them before the Court.

63. The Court concurs with the Government that prior to submitting that complaint to the Court the applicant should have sought redress, after having used the other remedies available, by means of a complaint pursuant to Article 127 § 1 of the Constitution enacted with effect from 1 January 2002.

64. It follows that the complaint of misuse of the records of the applicant's telephone conversations must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

65. Accordingly, the Court's examination in the context of the present application will be limited to the interception of the applicant's telephone conversations.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

66. The applicant complained that the interference with his telephone communications had been contrary to Article 8 of the Convention, which, in so far as relevant, provides:

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

A. The arguments of the parties

1. The applicant

67. The applicant emphasised that he had not committed any criminal or other offence and had never been charged. There could not have been any

legitimate reason for interfering with his phone calls. There was no evidence showing that the request for authorisation of the interception had complied with applicable requirements.

68. The judge who had authorised the interception of his phone had acknowledged that there had been a lack of legal rules concerning the territorial competence of regional courts in matters concerning wiretapping. The rules contained in Decree no. 66/1992 Coll. did not apply to wiretapping under the Police Corps Act, and the Minister of Justice who had issued that Decree had had no legislative power to make rules relating to that Act. Furthermore, the rules adopted at the Ministry of Justice conference on 29 March 2000 did not have the form and quality of “law”, *inter alia*, because they lacked the element of public accessibility.

69. The quality of the legal framework existing at the relevant time had not been sufficient in that it had not afforded the applicant adequate and effective safeguards against abuse. In particular, he had been completely excluded from the decision-making process concerning the interception of his phone calls; he had had no remedies in respect of it; and there had been no mechanism for independent scrutiny of the interception under the Police Corps Act 1993. Although the interception required the consent of a judge and the judge had the duty to examine on a continuous basis whether the grounds for it persisted, neither the judge nor the Inspection Service had any means of checking how the interception was being carried out in practice.

70. Finally, the applicant underlined that there had been no safeguards to identify telephone calls between him as a lawyer and criminal defendants as his clients.

2. The Government

71. The Government admitted that the applicant’s phone had been tapped and that this amounted to an interference with his rights under Article 8 of the Convention.

72. In their observations submitted at the admissibility stage the Government argued that the interference had been lawful and justified. In particular, the interception had been carried out under the Police Corps Act 1993 and had been duly authorised by the appropriate judge. The matter fell within the jurisdiction of the regional courts on the basis of Ministerial Decree no. 66/1992 Coll. The fact that there was no written legal rule as to which specific regional court had territorial jurisdiction in the matter had no impact on the effectiveness and independence of the judicial supervision that had been carried out in the applicant’s case. The legality of the interception had been examined and upheld by the Inspection Service.

73. There had been an extensive investigation of criminal activities within the industrial group with which the applicant had then been associated. He had been seeking inside information about the investigation and had been in active communication with I.C., who had been charged

with an “extremely serious criminal offence”. It had been necessary to tap his phone in the interests of conducting an effective investigation.

74. The Government further submitted that there had been a system of effective control in place in order to prevent abuse and that the applicant had had the full benefit of that system.

75. In the post-admissibility submissions, in reply to specific questions put by the Court, the Government’s Agent explained that the relevant documents were classified and that the law in force did not permit her to obtain them and to submit them to the Court. For that reason the Government’s Agent was not in a position to comment specifically on the merits of the case. Legislative change was envisaged with a view to preventing similar situations from recurring.

B. The Court’s assessment

1. The general principles

76. Telephone conversations are covered by the notions of “private life” and “correspondence” within the meaning of Article 8. Their monitoring amounts to an interference with the exercise of one’s rights under Article 8 (see, for example, *Lambert v. France*, 24 August 1998, § 21, *Reports of Judgments and Decisions* 1998-V).

77. Such an interference is justified by the terms of paragraph 2 of Article 8 only if it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 and is “necessary in a democratic society” in order to achieve the aim or aims.

78. The expression “in accordance with the law” under Article 8 § 2 requires, first, that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be compatible with the rule of law and accessible to the person concerned who must, moreover, be able to foresee its consequences for him, and compatible with the rule of law (see, among other authorities, *Kruslin v. France*, 24 April 1990, § 27; or *Liberty and Others v. the United Kingdom*, no. 58243/00, § 59-63, 1 July 2008, with further references).

79. In particular, the requirement of legal “foreseeability” in the special context of secret measures of surveillance, such as the interception of communications, cannot mean that an individual should be able to foresee when the authorities are likely to intercept his communications so that he can adapt his conduct accordingly. However, the domestic law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such measures. The Court has also stressed the need for safeguards in this connection. In its case-law on secret measures of surveillance, it has described an overview of the minimum

safeguards that should be set out in statute law in order to avoid abuses of power (see *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, no. 62540/00, §§ 75-77, 28 June 2007 and *Weber and Saravia v. Germany* (dec.), no. 54934/00, ECHR 2006-..., with further references).

80. As to the question whether an interference was “necessary in a democratic society” for achieving the legitimate aims, the Court has acknowledged that the Contracting States enjoy a certain margin of appreciation in assessing the existence and extent of such necessity, but this margin is subject to European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court (see, for example, *Barfod v. Denmark*, 22 February 1989, § 28, Series A no. 14). The Court has to determine whether the procedures for supervising the ordering and implementation of the restrictive measures are such as to keep the “interference” to what is “necessary in a democratic society”. In addition, the values of a democratic society must be followed as faithfully as possible in the supervisory procedures if the bounds of necessity, within the meaning of Article 8 § 2, are not to be exceeded (see *Lambert v. France* cited above, § 31, with further reference).

2. Application of the general principles to the present case

81. It has not been disputed that the applicant’s telephone was tapped and that the interception of his calls amounted to an interference with his right under Article 8 to respect for his private life and correspondence.

82. That interference had a statutory basis, namely the Police Corps Act 1993. It was designed to establish facts in the context of an investigation into suspected large-scale organised criminal activities of a financial nature and therefore to prevent crime, which is a legitimate aim under the second paragraph of Article 8.

83. The applicant has contested both the compliance with the law in issue and its quality, maintaining, in particular, that it was deficient in terms of safeguards against abuse.

84. In the particular circumstances of the case the applicant’s arguments concerning the lawfulness of the interference are closely related to the question as to whether the “necessity” test was complied with in his case. Accordingly, the Court will address jointly the “in accordance with the law” and “necessity” requirements. In these circumstances, and also considering the conclusion reached below and noting that the relevant provisions of the Police Corps Act 1993 were replaced by new, more comprehensive legislation offering a broader scope of guarantees within a relatively short time after the events complained of had occurred (see paragraphs 42-49 above and also, to the contrary, *Dumitru Popescu v. Romania* (no. 2), no. 71525/01, § 84, 26 April 2007), the Court does not consider it necessary to examine separately the applicant’s argument that the quality of the law in

force at the material time had not complied with the requirements incorporated in Article 8.

85. The Court notes that authorisation of and interception of one's telephone calls under the Police Corps Act 1993 were subjected to a number of conditions (see paragraph 40 above).

86. The respondent Government did not make available the relevant documents which were classified (see paragraph 75 above). On the basis of the documents before it the Court is not satisfied that the statutory conditions were complied with in their entirety in the applicant's case. For example, it has not been shown that the guarantees were met relating to the duration of the interference, whether there had been judicial control of the interception on a continuous basis, whether the reasons for the use of the devices remained valid, whether in practice measures were taken to prevent the interception of telephone calls between the applicant as a lawyer and criminal defendants as his clients. Similarly it has not been shown that the interference restricted the inviolability of applicant's home, the privacy of his correspondence and the privacy of information communicated only to an extent that was indispensable and that the information thus obtained was used exclusively for attaining the aim set out in section 36(1) of the Police Corps Act 1993.

87. In addition, statements by several police officers and the judge involved are indicative of a number of shortcomings as regards the compliance with the relevant law in the applicant's case (see paragraphs 19, 20 and 25 above). In particular, the director of the special division of the financial and criminal police had concluded that the interference in issue had not been based on any specific suspicion against the applicant and no specific purpose had been indicated in the relevant request. In his written statement the Regional Court judge who had authorised the interception remarked that similar requests were made in writing, but were submitted by the police investigators in person. The officer submitting the request presented the case orally and the oral presentation was usually more comprehensive than the written request. As requests for authorisation had to be handled with the utmost urgency, judges had no practical opportunity to examine the case file or to verify that the request for authorisation corresponded to the contents of the case file. Depositions of the four members of the financial police investigative team involved in the case included, *inter alia*, the information that the request for authorisation of the interception of the applicant's telephone had been drafted without a prior consultation of the case file. The documents before the Court contain no information indicating that those statements were unsubstantiated.

88. In these circumstances, the Court cannot but conclude that the procedure for ordering and supervising the implementation of the interception of the applicant's telephone was not shown to have fully complied with the requirements of the relevant law and to be adequate to

keep the interference with the applicant's right to respect for his private life and correspondence to what was "necessary in a democratic society".

89. There has therefore been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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."

91. The applicant stated that he sought the finding by the Court of a breach of his rights under Article 8 of the Convention which he considered appropriate satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* inadmissible the applicant's complaint under Article 8 of the Convention about interference resulting from the copying, misuse, distribution and publication of the transcripts of his telephone conversations;
2. *Dismisses* the Government's preliminary objection concerning the complaint about interception of the applicant's telephone;
3. *Holds* that there has been a violation of Article 8 of the Convention.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President