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Chamber judgment
Not Final¹

Uzun v. Germany (application no. 35623/05)

GPS SURVEILLANCE OF SERIOUS CRIME SUSPECT JUSTIFIED

Unanimously

No violation of Article 8 (right to respect for private and family life)
No violation of Article 6 § 1 (right to a fair trial)
of the European Convention on Human Rights

Principal facts

The applicant, Bernhard Uzun, is a German national who was born in 1967 and lives in Mönchengladbach (Germany). The case concerned his surveillance via the Global Positioning System (GPS) as part of a criminal investigation. It is the first case concerning GPS surveillance before the European Court of Human Rights.

In October 1995, the German Federal Public Prosecutor General (*Generalbundesanwalt*) instituted a criminal investigation against Mr Uzun and a presumed accomplice on charges of having participated in bomb attacks for which the so-called Anti-Imperialist Cell had claimed responsibility. This organisation was pursuing the armed combat abandoned since 1992 by the Red Army Faction (RAF), a left-wing extremist terrorist movement.

The Federal Office for Criminal Investigations (*Bundeskriminalamt*) was in charge of the investigation, which included visual surveillance of Mr Uzun during weekends, video surveillance of the entrance of the building in which he lived, phone tapping and the installation of transmitters in the car of his presumed accomplice, which they often used together. After the two men had detected and destroyed the transmitters, and in view of the fact that they avoided speaking to each other over the phone, the Prosecutor General ordered their observation via GPS. The Federal Office for Criminal Investigations installed a GPS receiver in the car of Mr Uzun's accomplice in December 1995, allowing it to determine the location of the car. This surveillance lasted until the two men were arrested in February 1996.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on the day the request is rejected.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In the criminal trial opened against the two men, the Düsseldorf Court of Appeal dismissed Mr Uzun's objection to the use of the GPS data as evidence, finding that it was covered by the Code of Criminal Procedure and that no court order had been required. In September 1999, the court convicted Mr Uzun of attempted murder and of four counts of causing an explosion and sentenced him to 13 years' imprisonment. It found that the two men had placed bombs in front of the houses of members or former members of Parliament and in front of a consulate. The evidence included data from the GPS surveillance, which was corroborated by information obtained by other methods of observation. Mr Uzun appealed, complaining in particular about the use of information obtained by GPS surveillance as evidence. In January 2001, the Federal Court of Justice (*Bundesgerichtshof*) dismissed his appeal.

His subsequent constitutional complaint was dismissed in April 2005 by the Federal Constitutional Court (*Bundesverfassungsgericht*). It pointed out that the interference with Mr Uzun's right to privacy by his surveillance via GPS had been proportionate in view of the gravity of the offences and the fact that he had evaded other measures of surveillance. It further found that the existing procedural safeguards were sufficient to prevent full surveillance of a person by which an exhaustive personal profile could be drawn up. However, the legislator had to observe whether, in view of technical developments, those safeguards were sufficient to grant an effective protection of fundamental rights and to prevent uncoordinated investigation measures by different authorities.

Complaints, procedure and composition of the Court

The applicant complained that his surveillance via GPS and the use of the data obtained thereby in the criminal proceedings both violated his rights under Article 8, and, having been the essential basis for his conviction, Article 6 § 1.

The application was lodged with the European Court of Human Rights on 24 September 2005.

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

Peer **Lorenzen** (Denmark), **President**,
Renate **Jaeger** (Germany),
Karel **Jungwiert** (Czech Republic),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia")
Ganna **Yudkivska** (Ukraine), **judges**,

and also Claudia Westerdiek, **Section Registrar**.

Decision of the Court

The Court first observed that although the investigating authorities had installed the GPS receiver in a car belonging to a third person, Mr Uzun's accomplice, they had clearly intended to obtain information on both suspects, as from their previous investigations the authorities had been aware that the men were using the car together. Information on the movements of the accomplice's car was linked to Mr Uzun by means of additional visual surveillance, and none of the domestic courts had expressed any doubts that he had been subjected to surveillance via GPS.

The authorities had systematically collected and stored data determining Mr Uzun's whereabouts and movements in the public sphere. They had further used it in order to draw up a pattern of his movements, to conduct additional investigations and to collect additional evidence at the places to which he had travelled, which was later used at the criminal trial. The Court found those factors sufficient to conclude that the GPS observance of Mr Uzun had interfered with his right to respect for his private life under Article 8.

As to whether that interference had been in accordance with the law, the Court considered that the surveillance at issue had a basis in the German Code of Criminal Procedure. The Court underlined that surveillance via GPS of movements in public places was to be distinguished from other methods of visual or acoustical surveillance in that it disclosed less information on a person's conduct, opinions or feelings and thus interfered less with his or her private life. The Court, therefore, did not see the need to apply the same strict safeguards against abuse it had developed in its case-law on the interception of telecommunications, such as the need to precisely define the limit on the duration of such monitoring or the procedure for using and storing the data obtained.

The Court considered that the German courts' unanimous findings that GPS surveillance was covered by domestic law had been reasonably foreseeable given that the relevant provisions provided for technical means to be used, in particular, "to detect the perpetrator's whereabouts". Domestic law moreover set strict standards for authorising GPS surveillance; it could be ordered only against a person suspected of a criminal offence of considerable gravity.

The Court welcomed the fact that German law had been changed subsequent to the investigation in Mr Uzun's case to reinforce the protection of the right of a suspect to respect for his private life by requiring a court order for systematic surveillance of a suspect for a period exceeding one month. However, even under the provisions in force at the relevant time, surveillance via GPS was subject to judicial control. The Court found that subsequent judicial review of Mr Uzun's surveillance by GPS had offered sufficient protection against arbitrariness in the circumstances of the case. Subsequent judicial review allowed for evidence obtained from an illegal GPS surveillance to be excluded and thus constituted an important safeguard, as it discouraged the investigating authorities from collecting evidence by unlawful means. The Court concluded that the interference with Mr Uzun's right to respect for his private life had been in accordance with the law.

The Court noted that the GPS surveillance of Mr Uzun had been ordered to investigate several counts of attempted murder for which a terrorist movement had claimed responsibility and to prevent further bomb attacks. It therefore served the interests of national security and public safety, the prevention of crime and the protection of the rights of the victims. It had only been ordered after less intrusive methods of investigation had proved insufficient, for a relatively short period of time – three months – and it had affected Mr Uzun only when he was travelling with his accomplice's car. Therefore, he could not be said to have been subjected to total and comprehensive surveillance. Given that the investigation concerned very serious crimes, the Court found that the GPS surveillance of Mr Uzun had been proportionate.

The Court unanimously concluded that there had been no violation of Article 8. It further unanimously held that, in view of those findings, no separate issue arose under Article 6 § 1.

The judgment is available in English and in French. This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further

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