



Grand Chamber hearing on complaints about surveillance systems in the case of Big Brother Watch and Others v. the United Kingdom

The European Court of Human Rights is holding a **Grand Chamber**¹ hearing today **Wednesday 10 July 2019 at 9.15 a.m.** in the case of **Big Brother Watch and Others v. the United Kingdom** (application no. 58170/13).

The case concerns complaints by journalists, individuals and rights organisations about three different surveillance regimes: (1) the bulk interception of communications; (2) intelligence sharing with foreign governments; and (3) the obtaining of communications data from communications service providers.

A recording of the hearing will be available from 2.30 p.m. on the Court's Internet site (www.echr.coe.int). After the hearing the Court will begin its deliberations, which will be held in private. Its ruling in the case will, however, be made at a later stage.

The three joined applications are *Big Brother Watch and Others v. the United Kingdom* (no. 58170/13); *Bureau of Investigative Journalism and Alice Ross v. the United Kingdom* (no. 62322/14); and *10 Human Rights Organisations and Others v. the United Kingdom* (no. 24960/15). The 16 applicants are organisations and individuals who are either journalists or are active in campaigning on civil liberties issues.

Procedure

The applications were lodged on 4 September 2013, 11 September 2014 and 20 May 2015 respectively, after Edward Snowden, a former US National Security Agency (NSA) contractor, revealed the existence of surveillance and intelligence sharing programmes operated by the intelligence services of the United States and the United Kingdom.

The applicants believe that the nature of their activities means that their electronic communications and/or communications data were likely to have been intercepted or obtained by the UK intelligence services.

Relying on Article 8 (right to respect for private and family life and correspondence), they complain in particular about the regimes for the bulk interception of communications, intelligence sharing and for the acquisition of data from communications service providers.

The second and third applications also raise complaints under Article 10 of the European Convention (freedom of expression) related to the applicants' work, respectively, as journalists and non-governmental organisations.

The third application relies in addition on Article 6 (right to a fair trial), in relation to the domestic procedure for challenging surveillance measures, and on Article 14 (prohibition of discrimination), combined with Articles 8 and 10, alleging the regime for the bulk interception of communications

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

discriminated against people outside the United Kingdom, whose communications were more likely to be intercepted and, if intercepted, selected for examination.

In its Chamber [judgment](#) of 13 September 2018, the European Court of Human Rights held, by five votes to two, that the bulk interception regime violated Article 8 of the Convention as there was insufficient oversight both of the selection of Internet bearers for interception and the filtering, search and selection of intercepted communications for examination, and the safeguards governing the selection of “related communications data” for examination were inadequate. In reaching that conclusion, the Chamber found that the operation of a bulk interception regime did not in and of itself violate the Convention, but noted that such a regime had to respect criteria set down in its case-law.

The Chamber also held, by six votes to one, that the regime for obtaining communications data from communications service providers violated Article 8 as it was not in accordance with the law, and that both the bulk interception regime and the regime for obtaining communications data from communications service providers violated Article 10 of the Convention as there were insufficient safeguards in respect of confidential journalistic material.

It further found that the regime for sharing intelligence with foreign governments did not violate either Article 8 or Article 10.

Lastly, the Chamber unanimously rejected complaints made by the third set of applicants under Article 6, about the domestic procedure for challenging secret surveillance measures, and under Article 14.

On 4 February 2019 the Grand Chamber Panel accepted the applicants’ request that the case be referred to the Grand Chamber.

The following organisations and states were granted leave to intervene in the written proceedings as third parties:

Chamber and Grand Chamber proceedings:

Access Now

Bureau Brandeis

Center for Democracy & Technology

Equality and Human Rights Commission and European Network of National Human Rights Institutions (ENNHRI)

Helsinki Foundation for Human Rights

Human Rights Watch

International Commission of Jurists (ICJ)

Open Society Justice Initiative

The Law Society of England and Wales

EDRI and Others (Ot Van Daalen/Project Moore)

National Union of Journalists

Media Lawyers Association

Article 19

Electronic Privacy Information Centre (EPIC)

Grand Chamber proceedings only:

France

Norway

The Netherlands

Mr David Kaye, UN Special Rapporteur on the promotion of the right to freedom of opinion and expression

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Robert **Spano** (Iceland),
Vincent A. **De Gaetano** (Malta),
Jon Fridrik **Kjølbro** (Denmark),
Paulo **Pinto de Albuquerque** (Portugal),
André **Potocki** (France),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Marko **Bošnjak** (Slovenia),
Tim **Eicke** (the United Kingdom),
Darian **Pavli** (Albania),
Erik **Wennerström** (Sweden),
Saadet **Yüksel** (Turkey), *judges*,
Paul **Lemmens** (Belgium),
Ivana **Jelić** (Montenegro),
Stéphanie **Mourou-Vikström** (Monaco), *substitute judges*,

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

Representatives of the parties

Government

Chanaka **Wickremasinghe**, *Agent*,
James **Eadie** QC and Julian **Milford**, *Counsel*,
Robert **Yardley**, Louise **Morgan**, Hugh **Mawby**, Thomas **Rutherford**, and James **Keay-Bright**,
Advisers;

For all the applicants

Ben **Jaffey** QC and Helen **Mountfield** QC, *Counsel*,

For the applicants in the case *Big Brother Watch and Others v. United Kingdom*

Ravi **Mehta**, *Counsel*,
Daniel **Carey**, *Adviser*,

For the applicants in the case *Bureau of Investigative Journalism and Alice Ross v. United Kingdom*

Conor **Mccarthy**, *Counsel*,

Rosa **Curling**, *Adviser*,

For the applicants in the case 10 Human Rights Organisations and Others v. United Kingdom

David **Heaton** and Gayatri **Sarathy**, *Counsel*.

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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.