

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

THIRD SECTION

CASE OF ANDREYEV v. RUSSIA

(Application no. 32711/13)

JUDGMENT

STRASBOURG

9 June 2022

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



In the case of Andreyev v. Russia,

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

Darian Pavli, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 May 2022,

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

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 April 2013.

2. The Russian Government ("the Government") were given notice of the application.

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

5. The applicant complained principally of the secret surveillance in the context of the criminal proceedings. He relied, expressly or in substance, on Article 8 of the Convention, which reads as follows:

Article 8

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

6. As to the admissibility of the complaint, Court has already established on a number of occasions, in the context of Article 8, that a judicial review which was incapable of examining whether the contested interference answered a pressing social need and was proportionate to the aims pursued could not be considered an effective remedy (see *Akhlyustin v Russia*, no. 21200/05, §§ 24-27, 7 November 2017). The Court has also emphasised

that applicants cannot be reproached for their attempt to bring their grievances to the attention of the domestic courts through the remedies which they mistakenly considered effective in the absence of evidence that they were aware or should have become aware of the futility of their course of action (compare, *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, § 107, 7 November 2017). Thus, the six-month period in the present application shall be calculated from the final decision in the proceedings used by the applicant (ibid, §§ 100-11). In this regard, the Court notes that the applicant has complied with the six months' requirement and that his complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

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

8. In *Bykov* judgment, the Court has concluded that the Russian legislation which permitted the police to conduct secret surveillance without judicial authorisation fell short of the standards of the quality of law set out in Article 8 of the Convention. In the Court's view, leaving the secret surveillance operation to the sole discretion of law enforcement authorities, the domestic law failed to provide adequate safeguards against various possible abuses (see *Bykov*, cited above, §§ 73-83).

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case. It considers that in the instant case the interception and recording of the applicant's communications conducted in the absence of a judicial authorisation were not accompanied by adequate safeguards against various possible abuses, were open to arbitrariness and inconsistent with the requirement of lawfulness.

10. Accordingly, there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Akhlyustin,* cited above; *Zubkov and Others,* cited above; *Dudchenko,* cited above; *Moskalev v. Russia,* no. 44045/05, 7 November 2017 and *Konstantin Moskalev v. Russia,* no. 59589/10, 7 November 2017), the Court considers it reasonable to award the sum indicated in the appended table.

13. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 8 of the Convention concerning the secret surveillance in the context of criminal proceedings;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 9 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

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

Application no. Date of introduction	Applicant's name Year of birth	Type of secret surveillance	Date of the surveillance authorisation Name of the issuing authority	Other relevant information	Specific defects	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
32711/13 02/04/2013	**Nikolay Rudolfovich ANDREYEV** 1967	operative experiment	no judicial authorisation	The applicant had been audio and video recorded by private individual during the "operative experiment" in his flat before the criminal proceedings. The criminal proceedings against the applicant ended on 08/11/2012, when the Moscow City Court upheld his conviction on appeal.	The use of "surveillance" or "operative experiment" measures not accompanied by sufficient safeguards against arbitrariness ("quality of law"), no judicial authorisation.	7,500

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