

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

THIRD SECTION

CASE OF KLYCHKOV v. RUSSIA

(Application no. 45204/15)

JUDGMENT

STRASBOURG

27 October 2022

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



In the case of Klychkov v. Russia,

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

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 6 October 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 10 September 2015.

2. The applicant was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg.

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

THE FACTS

4. The case concerns secret surveillance in the context of criminal proceedings. The applicant's details and information relevant to the application are set out in the appended table.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

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

> "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, the Court notes that the applicant brought his grievances to the attention of the domestic courts which examined his criminal case; he introduced his complaint before the Court within six months after his conviction had been upheld by the appellate court on 12 March 2015. Even though the Court has established that no effective

remedy is available to the applicants in Russia as regards the complaints similar to the one under examination (see, for example, *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, §§ 85-99, 7 November 2017), it discerns nothing in the materials submitted to it to suggest that the applicant was aware or should have become aware of the futility of such remedy (see, for similar reasoning, *Moskalev v. Russia*, no. 44045/05, § 27, 7 November 2017). The Court notes that the 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 (1) covert surveillance measures, including video and audio recording of private communications, amount to an interference with the right to respect for private life, within the meaning of Article 8 § 1 of the Convention, and (2) such interference is to be "in accordance with the law" and "necessary in a democratic society", for one of the purposes enumerated in Article 8 § 2 (see, for example, *Bykov v. Russia* [GC], no. 4378/02, § 72, 10 March 2009).

8. In *Bykov*, the Court has concluded that the Russian legislation which permitted the police to conduct secret surveillance, including interception and recording of private communication, 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 (ibid., §§ 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 v. Russia,* no. 21200/05, 7 November 2017; *Zubkov and Others,* cited above, 7 November 2017; *Dudchenko v. Russia,* no. 37717/05, 7 November 2017; *Moskalev,* cited above; 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 § 1 of the Convention concerning the secret surveillance in the context of the 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 27 October 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 § 1 of the Convention
(secret surveillance in the context of criminal proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	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]
45204/15 10/09/2015	**Rodion Vyacheslavovich KLYCHKOV** 1979	Oksana Vladimirovna Preobrazhenskaya Strasbourg	Operative experiment, interception and recording of telephone communications in the absence of a court order	31/10/2012, Moscow Regional Court	Post-factum authorisation, the evidence obtained as a result of the interception of communications served as a basis for the institution of the criminal proceedings against the applicant The applicant, a police officer at the relevant time, was found guilty of bribe taking. The final decision on the matter was taken by the Moscow City Court on 12/03/2015.	the use of "surveillance" or "operative experiment" measures not accompanied by sufficient safeguards against arbitrariness ("quality of law")	7,500

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