

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

THIRD SECTION

CASE OF POPOV v. RUSSIA

(Application no. 20298/18)

JUDGMENT

STRASBOURG

27 October 2022

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



In the case of Popov 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 20 April 2018.

2. The applicant was represented by Mr P.D. Kireyev, a lawyer practising in Krasnoyarsk.

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

THE FACTS

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 § 1 OF THE CONVENTION

6. The applicant complained of the interception of his telephone conversations with his counsel in the context of the criminal proceedings. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home 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."

7. In the leading case of *Dudchenko v. Russia,* no. 37717/05, §§ 101-11, 7 November 2017, the Court has already established that Russian law does not provide for any safeguards against abuse of power in cases where legally

privileged material has been acquired through measures of secret surveillance and that it does not meet the "quality of law" requirement.

8. 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 on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the surveillance measures applied to the applicant did not meet the requirements of Article 8 of the Convention as elucidated in the Court's case-law.

9. These complaints are therefore admissible and disclose a breach of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. 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."

11. 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 v. Russia,* nos. 29431/05 and 2 others, 7 November 2017, *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.

12. 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 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	Type of secret surveillance	Date of the surveillance authorisation Name of the issuing authority	Specific defects	Other relevant information	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
20298/18 20/04/2018	**Andrey Vasilyevich POPOV** 1973	interception of telephone communications	No information provided as to the surveillance authorisation given. The applicant submitted copies of the transcripts of his telephone communication with his lawyer of 13/09/2017, 14/09/2017 and 19/10/2017.	lack of safeguards in case of accidental interception of a suspect's communications with counsel ("quality of law"). The authorities recorded the applicant's telephone conversations with his counsel and used them as a basis for the bill of indictment in the criminal proceedings against him	The applicant learnt about the secret surveillance measures on 25/10/2017 when the Tsentralnyy District Court of Krasnoyarsk authorised his house arrest relying, inter alia , on the transcripts of his telephone conversations with his counsel.	7,500

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