

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

THIRD SECTION

CASE OF SEMENOV v. RUSSIA

(Application no. 13252/16)

JUDGMENT

STRASBOURG

27 October 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Semenov 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 29 January 2016.

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. He also raised other complaints under the provisions of the Convention.

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 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."

6. The Court reiterates that the measures aimed at interception of telephone communications amounted to an interference with the exercise of the rights set out in Article 8 of the Convention and that such interference will give rise to a breach of Article 8 of the Convention unless it can be shown

that it was "in accordance with law", pursued one or more legitimate aim or aims as defined in the second paragraph and was "necessary in a democratic society" to achieve those aims (see, among other authorities, *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, § 45, 8 March 2011). It further reiterates that it is the obligation of 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 v. Russia*, nos. 29431/05 and 2 others, § 131, 7 November 2017). The failure to comply with these requirements has led the Court to conclude to a violation of the Article 8 of the Convention (see, for example, *Dudchenko v. Russia*, no. 37717/05, §§ 93-100, 7 November 2017, in which it was established that the domestic courts failed to verify, when authorising covert surveillance in respect of the applicant, whether there was a "reasonable suspicion" against him and to apply the "necessity in a democratic society" and "proportionality" tests).

7. The Court does not lose sight that in earlier cases against Russia it has not established an availability of effective remedies for the applicants to exhaust prior to introducing a complaint before the Court (see, for example, *Zubkov and Others*, cited above, §§ 85-99). In this connection, it reiterates that the 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 (ibid., §107 *in fine*).

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 courts did not verify the existence of a "reasonable suspicion" and did not apply the "necessity in a democratic society test" when examining the applicant's complaints.

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

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

10. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see the appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes

that they also disclose violations of the Convention in the light of its well-established case-law (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, ECHR 2014 (extracts), concerning placement in a metal cage in the courtroom).

III. REMAINING COMPLAINTS

11. The applicant also raised other complaints under Article 6 of the Convention.

12. The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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."

14. 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, *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.

15. 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 complaints concerning the secret surveillance in the context of the criminal proceedings and the other complaints under the well-established case-law of the Court, as set out in the appended table, admissible, and the remainder of the application inadmissible;

2. *Holds* that these complaints disclose a breach of Article 8 of the Convention concerning the secret surveillance in the context of the criminal proceedings;

3. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see the appended table);

4. *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	Other relevant information	Specific defects	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
13252/16 29/01/2016	**Sergey Vasilyevich SEMENOV** 1977	collection of data from technical channels of communication, interception of telephone communications	07/08/2013, Altay Regional Court	The applicant raised the issue in the criminal trial in respect of him. The applicant was convicted by the court at the first level of jurisdiction on 02/09/2015.	the courts did not verify the existence of a "reasonable suspicion" and did not apply the "necessity in a democratic society test"	Art. 3 - use of metal cages and/or other security arrangements in courtrooms - from 22/10/2014 to 03/09/2015 during the trial at the Biysk Town Court of the Altai Region.	9,750

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