

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

THIRD SECTION

CASE OF ZAKHAROV v. RUSSIA

(Application no. 2331/14)

JUDGMENT

STRASBOURG

9 June 2022

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



In the case of Zakharov 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 15 December 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. He also raised an additional complaint under Article 8 of the Convention stemming from the same issue.

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:

> "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. 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. Such interference will give rise to a breach 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, *Zubkov and Others*

v. Russia, nos. 29431/05 and 2 others, §§ 120 and 122 *in fine*, 7 November 2017).

7. In the leading cases of *Bykov v. Russia* [GC], no. 4378/02, 10 March 2009, *Akhlyustin v. Russia*, no. 21200/05, 7 November 2017, *Zubkov and Others*, cited above, *Dudchenko v. Russia*, no. 37717/05, 7 November 2017, *Moskalev v. Russia*, no. 44045/05, 7 November 2017 and *Konstantin Moskalev v. Russia*, no. 59589/10, 7 November 2017, the Court has already found a violation in respect of the issues similar to those in the present case. In particular, in *Dudchenko*, the domestic courts' failure 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 has led the Court to conclude to a violation of the applicant's right set out in Article 8 of the Convention (see *Dudchenko*, cited above, §§ 97-100).

8. The Court also reiterates that an applicant cannot be reproached for an attempt to bring his grievances to the attention of domestic courts through the remedies which he mistakenly considered effective in the absence of evidence that he was aware or should have become aware of the futility of that course of action (compare, *Zubkov and Others*, cited above, § 107 *in fine*).

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 on the admissibility and merits of these complaints. There is no evidence that any information or document confirming the suspicion against the applicant was submitted to the courts which authorised interception of the applicant's telephone conversations. Nor is there any indication that those courts applied the test of "necessity in a democratic society", and, in particular, assessed whether the surveillance measures carried out against the applicant were proportionate to any legitimate aim pursued.

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

II. REMAINING COMPLAINTS

11. The applicant also raised other complaints under Article 8 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.

III. 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, *Zubkov and Others; Dudchenko; Moskalev;* and *Konstantin Moskalev,* all cited above), 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 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*
   (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	Specific defects	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
2331/14 15/12/2013	**Sergey Nikolayevich ZAKHAROV** 1970	Interception of telephone communications.	12/07/2012, Chelyabinsk Regional Court	The courts did not verify the existence of a "reasonable suspicion" and did not apply the "necessity in a democratic society test".	7,500

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