



The Court declares ill-founded an application concerning the surveillance of an insured person in public areas by investigators from a private insurance company

In its decision in the case of [Mehmedovic v. Switzerland](#) (application no. 17331/11) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the surveillance of an insured person (Mr Mehmedovic) and, indirectly, his wife, in public areas by investigators from an insurance company, with a view to ascertaining whether his claim for compensation, lodged following an accident, was justified. Mr and Ms Mehmedovic complained about the fact that they had been placed under surveillance, relying on **Article 8 (right to respect for private and family life)** of the Convention.

The Court found no appearance of a violation of Article 8 of the Convention and held that the application was manifestly ill-founded. In the first place, the Court noted that the insurance company's investigations, which had been conducted from a public place and were confined to ascertaining Mr Mehmedovic's mobility, were aimed solely at protecting the insurer's pecuniary rights. In this connection, the Court held, as it had in the previous case of *Verliere v. Switzerland*¹, that the domestic courts had found that the insurer had an overriding interest that meant that the interference with the applicant's personality rights was lawful. Secondly, the Court noted that the sparse information concerning Ms Mehmedovic, which had been gathered coincidentally and was of no relevance for the investigation, in no way constituted systematic or permanent gathering of data. In the Court's view, there had therefore been no interference with this applicant's private life.

Principal facts

The applicants, Elvir and Eldina Mehmedovic, are nationals of Bosnia and Herzegovina who were born in 1982 and 1983 respectively and live in Zug (Switzerland).

In October 2001 Mr Mehmedovic sustained physical injuries during a traffic accident in which he was a car passenger. He complained that he suffered from epilepsy attacks and pain in his left arm, and brought two compensation claims in respect of his inability to perform household tasks against the two drivers and their insurance companies, costing his claims at about 1,777,353 euros. The insurer providing third-party cover to Mr Mehmedovic hired a private detective agency to monitor him with a view to establishing whether in fact he was unable to perform household tasks. His activities were filmed over four days in October 2006 from locations that were accessible to the public. The photos, videos and surveillance report showed that Mr Mehmedovic was able, without too much difficulty, to carry loads, shop, vacuum, and clean and polish his vehicle. His wife appeared in six photographs, but was not easily identifiable. These documents were added to the case files in the actions brought by Mr Mehmedovic.

In May 2007 Mr and Ms Mehmedovic brought an action alleging a violation of their personality rights, but this was dismissed by the domestic courts. The Federal Supreme Court held, in particular, that an infringement of personality rights arising from surveillance of an insured person by a private investigator could correspond to overriding public or private interests, that was, it could be justified

¹ *Verliere v. Switzerland* (dec.), no. 41953/98, ECHR 2001-VII.

by the fact that neither the insurer nor all of its insured clients, taken collectively, could be required to make payments in respect of claims that were unjustified.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 March 2011.

Relying on Article 8 (right to respect for private and family life), Mr and Ms Mehmedovic complained that they had been placed under surveillance by investigators, hired by a private insurance company, for four days in October 2006.

The decision was given by a Committee of three judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,
Helen **Keller** (Switzerland),
María **Elósegui** (Spain),

and also Fatoş **Aracı**, *Deputy Registrar*.

Decision of the Court

Article 8 (right to respect for private and family life)

The Court noted that the relationship between an insured person and the insurer fell within the domain of private law. The Court further noted that the domestic courts had carried out a thorough analysis of the competing interests of the two parties and had held, in particular, that the insurer had a duty to verify whether the victim's claim for reparation was justified, as it was also acting in the interests of all the insured collectively. On that basis, they had concluded that the insurer was entitled to conduct private investigations and that the victim was under a duty to cooperate in establishing the facts and to accept that the insurer might conduct investigations, even without the insured person's knowledge, when that was necessary to achieve the aim pursued. They considered that in the present case the insurer's investigations, which were conducted from a public place and were confined to ascertaining Mr Mehmedovic's mobility, had been aimed solely at protecting the insurer's pecuniary rights. As in the *Verliere v. Switzerland* case (cited above), the courts had thus found that the insurer had an overriding interest that made the interference with the applicant's personality rights lawful.

With regard to Ms Mehmedovic, the Court considered that her allegations were manifestly ill-founded, in that the sparse information concerning her, gathered coincidentally and without relevance to the investigation, in no way constituted systematic or permanent gathering of data. There had therefore been no interference with her private life.

In consequence, the Court found that there was no appearance of a violation of Article 8 of the Convention and held that the application was manifestly ill-founded.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.