



## Right to disclosure of evidence under modern data circumstances: criminal proceedings were fair

In today's **Chamber judgment**<sup>1</sup> in the case of [Rook v. Germany](#) (application no. 1586/15) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 § 1 (right to a fair trial) taken together with Article 6 § 3 (b) (right to adequate time and facilities for the preparation of the defence)** of the European Convention on Human Rights.

The case concerned the fairness of criminal proceedings where around 80,000 items of telecommunication surveillance data had been produced and 14 million electronic files seized.

The Court found in particular that the defence had had sufficient access to the file and sufficient time to acquaint itself with the telecommunication surveillance data and the electronic files to prepare for the trial. The proceedings, considered as a whole, had therefore been fair.

### Principal facts

The applicant, Michael Rook, is a German national who was born in 1964 and lives in Quickborn (Germany). He was a senior manager and, most recently, managing director of a major retailer for consumer electronics in Germany and other European countries.

In February 2011 the Augsburg public prosecutor's office opened a criminal investigation against Mr Rook for taking bribes in commercial activity. In November 2011 he was taken into detention on remand. During the investigation wide-ranging telecommunication surveillance was carried out. A total of around 44,970 telephone calls and about 34,000 other data sets were stored. During searches of Mr Rook's home and of other premises some 14 million electronic files stored on data devices were seized.

The data were analysed by the police; around 1,100 of the electronic files and transcripts of 28 telephone conversations were considered as relevant to the case and were printed and included in the paper files. In November 2011 Mr Rook's lawyer was provided access to the paper investigation file. In November 2011 the lawyer asked to examine the audio files obtained. The public prosecutor's office decided to grant access and informed him that he could examine the data on the premises of the criminal police.

In February 2012 the public prosecutor's office indicted Mr Rook before the Regional Court on 91 counts of taking bribes in commercial activity. In March 2012 Mr Rook's lawyer applied for access to the audio files in the form of a copy on DVD or CD, but the application was rejected. On appeal, the Regional Court ordered that all data sets were to be copied to a computer kept at the prison where Mr Rook was detained, that the defence could listen to the audio files in prison, together with Mr Rook. Shortly afterwards, the computer with the copied audio data was deposited ready for examination in the prison.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In April 2012 Mr Rook's lawyer applied to be provided a copy of the 14 million electronic files. In May 2012 he was provided with a hard disc holding the electronic files in encrypted form. A special program was needed to read the data. His subsequent application that the cost of this special software should be borne by the state was rejected. After lodging a new request to be provided with the data in unencrypted form, he received discs with the electronic files, readable with software available free of charge online, in September 2012.

In December 2012 the Regional Court convicted him on 63 counts of taking bribes in commercial activity and sentenced him to five years and three months' imprisonment.

Mr Rook appealed, arguing in particular that his defence had been harmed because he and his lawyer had not had enough time to review the files of the telecommunication surveillance and the seized electronic data. In February 2014 the Federal Court of Justice quashed the Regional Court's judgment in respect of three counts of bribery in commercial activity, but dismissed Mr Rook's further appeal as ill-founded. In June 2014 the Federal Constitutional Court refused to admit his constitutional complaint.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 and 3 (b) (right to a fair trial and right to adequate time and facilities for the preparation of defence), Mr Rook complained that during the criminal proceedings against him he and his counsel had not been provided with sufficient and adequate access to audio files, text messages and electronic files which the authorities had seized during the investigation.

The application was lodged with the European Court of Human Rights on 2 January 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,  
 Angelika **Nußberger** (Germany),  
 André **Potocki** (France),  
 Mārtiņš **Mits** (Latvia),  
 Gabriele **Kucsko-Stadlmayer** (Austria),  
 Lətif **Hüseynov** (Azerbaijan),  
 Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1 taken together with Article 6 § 3 (b)

#### *(i) Access to the case file*

The Court observed that throughout the proceedings the authorities had granted Mr Rook's lawyer access to the paper investigation file and had provided him with a comprehensive overview of the accusations and evidence. They had also forwarded updates of that file at all times. Mr Rook had not claimed that data, files or documents which formed part of that file were not transmitted to his lawyer early enough in order to allow him to acquaint himself with them before or during the trial.

The Court considered further that there had been sufficient possibilities for Mr Rook's lawyer to discuss the investigation file in detail with him since the initial access to the paper file had been granted in November 2011, while the trial had started in June 2012 and had lasted until December 2012. Over that time access to the file had essentially been unrestricted.

Moreover, the enormous amount of telecommunication data and electronic files collected during the investigation had been included only to a minor extent in the paper file. As most of it had been considered irrelevant to the charges by the investigation authorities, it had been kept in storage on police computers. In that connection, the authorities had also essentially confined themselves to the investigation file and the evidence later produced in the hearing, neither Mr Rook's indictment nor conviction had been based on the electronic files or data. Against that background the time afforded to the defence to acquaint itself with the extensive results of the investigation had been sufficient.

Thus, the Court found that Mr Rook and his lawyer had been granted sufficient access to the file in order to allow for preparation for the trial.

*(ii) Disclosure of the telecommunication surveillance data*

The Court observed that the authorities had decided to allow for disclosure of the telecommunication surveillance data in its entirety and that Mr Rook's lawyer had had the possibility to examine it initially in the police premises, and later on additionally in the prison. Moreover, Mr Rook had never specified in what particular manner the restrictions in question had interfered with his ability to defend himself. The Government's argument that the data could not be examined without a police officer present in order to protect the rights of those whose conversations might have been recorded appeared reasonable.

The Court found furthermore that in view of the complexity of the criminal proceedings at issue it had not been necessary to allow Mr Rook's lawyer to read through and listen to each and every item of the telecommunication data. Rather, it had been sufficient to give him an effective opportunity to analyse it in order to identify what he considered to be of relevance. In that connection, the Court was mindful of the fact that modern investigation methods might produce enormous amounts of data whose integration into criminal proceedings should not cause unnecessary delays in cases.

Moreover, Mr Rook's lawyer had only examined the data 22 times within the space of more than one year, apparently never together with Mr Rook in prison. He had neither made use of the possibility to have a judicial employee replace him nor had Mr Rook's two other lawyers engaged in the analysing, listening and reading exercise. Also, Mr Rook would have known best what specific telecommunication data to look for. Therefore the authorities had provided the defence with an effective opportunity to identify the relevant files. In view of this, the Court found that Mr Rook had had sufficient time to acquaint himself with the telecommunication surveillance data.

*(iii) Disclosure of the electronic files*

The Court observed that Mr Rook's lawyer could have accessed, but never had, the electronic files in their entirety at the offices of the criminal police from the end of February 2012.

The Court considered it to be sufficient that he had had at least from September 2012, the day he had been provided with an unencrypted CD, until December 2012, the delivery of the judgment, amounting to three and a half months, to analyse the files to identify those which he considered relevant. The mere fact that the court proceedings had already begun had not rendered the preparatory time insufficient. The Court concluded that Mr Rook had had enough time to acquaint himself with the electronic files.

Accordingly, there had been no violation of Article 6 § 1 taken together with Article 6 § 3 (b).

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

**Press contacts**

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

**Somi Nikol (tel: + 33 3 90 21 64 25)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

**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.