



Regulations in Bulgaria on use of informers did not meet minimum Convention safeguards

In today's **Chamber judgment**¹ in the case of [Green Alliance v. Bulgaria](#) (application no. 6580/22) the European Court of Human Rights held, unanimously, that there had been a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned regulations issued in 2008 and amended in 2018, which allow Bulgaria's State Agency for National Security to infiltrate informers (known as "agents on cover" – *служители на прикритие*), into private entities or as members of a "liberal profession". Such agents conceal that they are working for the Agency but are not allowed to use covert surveillance techniques or equipment and are considered different from undercover agents (known as "agents under cover" – *служители под прикритие*). A claim brought by Green Alliance in 2018 before the Bulgarian courts for judicial review of the regulations was unsuccessful.

In the present judgment, the Court found that the regulations governing the use of "agents on cover" fell short of the minimum safeguards against arbitrariness and abuse required under Article 8. In particular, the grounds on which these agents could be deployed and the fields in which they could work were wide-ranging; there were no time-limits circumscribing their use; the procedure for deploying them did not ensure that they would only be used when "necessary in a democratic society"; no arrangements existed for their effective supervision; and there was no remedy in relation to their unlawful or unjustified use.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant association, Green Alliance, was founded in 2006 and is based in Kostenets (Bulgaria). Its objectives, as set out in its articles of association, concern issues relating to the protection of the environment.

Under regulations issued in 2008 and amended in 2018, Bulgaria's State Agency for National Security ("the Agency") can infiltrate "agents on cover" (*служители на прикритие*) into private entities or as members of a "liberal profession". "Agents on cover" may carry out intelligence and counterintelligence work for the protection of national security. Their tasks are set by the head of the Agency in each individual case. They may not arrest, search or interrogate people, or use firearms or physical force.

In October 2018 Green Alliance sought judicial review of the regulations as amended in 2018, arguing that in the absence of effective safeguards in relation to the use of such agents, they permitted abusive and disproportionate interferences with rights protected under Article 8 of the Convention. On 19 July 2021 a five-judge panel of the Supreme Administrative Court found, among other things, that the work of an "agent on cover" could not affect someone's private life, home or correspondence and the assertion that the regulations contravened Article 8 of the Convention was therefore baseless.

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.

Complaints, procedure and composition of the Court

Relying on Article 8, in particular, the applicant association complained that the 2008 regulations permitting the use of “agents on cover”, as amended in 2018, fell short of Convention requirements in various respects, especially in terms of safeguards, and thus enabled the Agency to deploy such agents in an arbitrary and abusive manner.

The application was lodged with the European Court of Human Rights on 19 January 2022.

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

Ioannis Ktistakis (Greece), *President*,
Peeter Roosma (Estonia),
Darian Pavli (Albania),
Úna Ní Raifeartaigh (Ireland),
Mateja Đurović (Serbia),
Mira Raycheva (Bulgaria),
Vasilka Sancin (Slovenia),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

The issue of whether the existence of the regulations in issue interfered with the rights of Green Alliance under Article 8 comprised two questions. Firstly, the question whether the work of an “agent on cover” could, in view of its characteristics, in principle interfere with such rights. If the answer to that first question was yes, secondly, whether the association could claim to be a victim of such interference on account of the mere existence of those regulations.

An “agent on cover” infiltrated into Green Alliance would have access to oral communications, letters, telephone conversations or electronic exchanges and would be more likely to report his or her findings than a member of the public. Such an agent would also be likely to have long-term access to its office or other premises. This infiltration into Green Alliance would therefore amount to an interference with its right to respect for its “correspondence” and “home” within the meaning of the Convention.

Having considered the regulations, the Court found that theoretically, any non-governmental organisation in Bulgaria could become the target of such measures, and thus possibly affected by the regulations in issue. That led to the question of whether there existed in Bulgaria an effective remedy that could alleviate suspicions that the Agency’s capacity to deploy “agents on cover” could be abused.

A special remedy put in place in 2009 with respect to “special means of surveillance” did not apply to “agents on cover”. Furthermore, a request for access to personal data processed by the Agency could not in practice provide information about its use of those agents. All examples of such requests showed that the Agency had systematically refused to disclose any information and that the Bulgarian administrative courts had consistently upheld those refusals. Nor could any public misgivings posed by the abusive deployment of “agents on cover” be dispelled by other possible remedies. The Court concluded that by pursuing to a conclusion its claim for judicial review of the regulations, Green Alliance had [used all the legal avenues available at national level](#) in respect of its complaint.

The Court went on to hold that the regulations governing the use of “agents on cover” fell short of the minimum safeguards against arbitrariness and abuse required under Article 8. The regulations provided that an “agent on cover” could be deployed if there was a “proven operational need” and specified that such a need existed if the Agency’s statutory tasks could not be undertaken in another way. Simply referring to “national security” when deploying such agents did not necessarily contravene the Convention but the absence of any effective scrutiny of the Agency’s decision to

deploy an “agent on cover”, or of a requirement to provide clear and concrete reasons demonstrating the need to deploy such agent in a specific case, raised a serious issue.

The Agency’s tasks extended across a wide range of domains, significantly broadening the potential scope for deploying “agents on cover”, and correspondingly increased the risk of arbitrariness or abuse. Theoretically any individual or private organisation in Bulgaria could be placed under surveillance by such agents, a situation which constituted a significant interference into individual privacy rights and could possibly dissuade civic participation.

There were no time-limits circumscribing the use of “agents on cover”; the procedure for deploying such agents did not ensure that they would only be used when “necessary in a democratic society”; no arrangements existed for effective supervision of the use of such agents; and there was no remedy in relation to their unlawful or unjustified use.

It followed that the Bulgarian domestic provisions on “agents on cover” did not meet the quality-of-law requirement and were incapable of keeping the interference with rights protected under Article 8 entailed by the use of such agents to what was “necessary in a democratic society”.

There had therefore been a violation of Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation of Article 8 of the Convention amounted to sufficient just satisfaction in respect of any non-pecuniary damage suffered by Green Alliance.

The judgment is available only in English.

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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.