



No effective safeguards in respect of the processing of data by Bulgaria's intelligence services

The case of [Kanev and Bulgarian Helsinki Committee v. Bulgaria](#) (application no. 45864/22) concerned the processing of data by Bulgaria's intelligence services.

In today's **Chamber** judgment¹ the European Court of Human Rights held, by five votes to two, that there had been a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

In 2021 Mr Kanev, chair of the Bulgarian Helsinki Committee, had asked Bulgaria's State Agency for National Security whether it had gathered intelligence about him or the association. The Agency had refused to disclose that information, and proceedings brought by Mr Kanev to challenge that refusal had been unsuccessful.

While it was necessary for States, for the purposes of national security, to have laws granting the authorities the power to collect and store information about people in databases which were not accessible to the public, the Court held that none of the potential safeguards against arbitrariness or abuse in that regard had been effective.

In particular, the courts reviewing the decision not to disclose the requested information had not seen the information in question, had not examined whether disclosure of that information could in fact harm the public interest and had fully deferred to the Agency's assessment in that regard. Furthermore, it did not appear that the Commission for the Protection of Personal Data had ever checked how the Agency processed operational data, in particular, whether it duly followed the statutory rules and regulations; nor had the Agency ever been called to report either to the Bulgarian Parliament or its government in that connection.

Principal facts

The applicants are the Bulgarian Helsinki Committee, an association founded in 1992 and based in Sofia, and its chair, Krasimir Ivanov Kanev, a Bulgarian national, who was born in 1958, and lives in Sofia.

In mid-2021, referring to protests held in the second half of 2020 and in early 2021 against the previous government, the then caretaker Minister of Internal Affairs stated publicly that several authorities, including the Agency, had been conducting secret surveillance of many people, including civil-society activists.

In June 2021 Mr Kanev asked the Agency whether it had gathered intelligence about him personally, about the association, its staff members or lawyers acting on its behalf, or whether any staff members had been recruited as informers. Following an amendment made to his request, in mid-July 2021 the Agency replied, refusing to disclose the information requested.

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.

Mr Kanev sought judicial review of that decision. In November 2021 the Sofia City Administrative Court dismissed the claim, finding that it had been within the Agency's discretion to assess whether to disclose the information requested.

In July 2022 the Supreme Administrative Court upheld that judgment. The lower court had been required to assess only whether the refusal to disclose the requested information had been lawful. Mr Kanev's request to the Agency had concerned its intelligence-gathering methods rather than any personal data collected by it. Information about those methods was classified, and the Agency had therefore correctly refused to disclose it. As regards specifically, "special means of surveillance", the only authority which could disclose whether such means had been used was a special authority, the National Bureau for Control of Special Means of Surveillance. Given that Mr Kanev could approach the Bureau himself, the Agency's refusal to disclose information could not be viewed as infringing Article 8 (right to respect for private and family life) of the European Convention. It had also been proper for the Agency not to disclose who had been recruited by it as an informer. The identities and personal data of people who had collaborated with the Agency were to remain secret. They could only be disclosed to the national security authorities or the judicial authorities in connection with a specific criminal case.

In June 2021, concurrently with his information request to the Agency, Mr Kanev lodged a request for information with the National Bureau asking whether "special means of surveillance" had been used with respect to him or other members of staff of the Committee or lawyers acting on its behalf. In August 2021 the Bureau informed Mr Kanev that its enquiries found no indication that "special means of surveillance" had been used unlawfully against him.

In 2023 Mr Kanev made a further request to the Agency and the Agency again refused to disclose the information.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 8 (right to respect for private and family life), Mr Kanev and the Bulgarian Helsinki Committee complained about an absence of clear rules on the circumstances in which the Agency could process data and the absence of effective safeguards in that regard.

The application was lodged with the European Court of Human Rights on 19 September 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),
Vasilka Sancin (Slovenia) and,
Mira Mihaylova Raycheva, *ad hoc Judge*,

and also Milan Blaško, *Section Registrar*.

Decision of the Court

It was necessary, for the purposes of protecting national security, for States to have laws granting the authorities the power to collect and store information about people in databases which were not accessible to the public. Those laws needed to be accessible, foreseeable and compatible with the rule of law. In particular, there needed to be effective safeguards against arbitrariness and abuse.

The fact that Mr Kanev and the association had been unable to access data relating to them that was being processed by the Agency or to obtain a clear response to their enquiry about whether such processing had taken place, could not in itself raise a concern under Article 8. It was the very absence of such information that ensured the efficacy of the Agency's work.

The Court went on to review the sort of safeguards which could ensure effective protection against arbitrariness and abuse in those circumstances and concluded that where a public authority limited or withheld information about how it used data in order to protect another legitimate interest (as was frequently the case with security and intelligence services), the only way would be to have an effective indirect-access or supervision mechanism in place capable of making up for the fact that the persons concerned could not challenge the measure directly and did not have all the information available to them.

The Court then considered the potential safeguards in relation to the processing by the Agency of operational data relating to the applicants and concluded that none of them had been effective.

Firstly, the proceedings for judicial review of the Agency's refusal to disclose the information could not be viewed as an effective safeguard. The courts had not seen the material (if there was indeed any) to which the Agency's decision related. They had not examined whether the disclosure of information could in fact harm or endanger any public interest – in particular, national security – and had deferred fully to the Agency's assessment of that point. It did not appear that the courts had conducted any review whether the Agency's refusal to confirm or deny intelligence-gathering with respect to Mr Kanev and the association had been justified.

Secondly, the Commission for the Protection of Personal data could not be viewed as an effective safeguard. Supervisory bodies of that sort could be an effective safeguard with respect to data processing by the authorities for law-enforcement and intelligence purposes only if they were able to directly access those data and any related information, so as to be able to check whether they were being processed in a manner which was consistent with the relevant data protection principles. The role of the Commission with respect to data processing carried out by the Agency for operational purposes was not clearly defined, nor did it appear, bar one exception, that the Commission had ever checked how the Agency processed operational data and, in particular, whether it duly followed the statutory rules and regulations.

Thirdly, the National Bureau could only supervise the use of "special means of surveillance", not all forms of intelligence gathering and related data processing carried out by the Agency. It was not a safeguard with respect to the overall manner in which the Agency processed information. The Court had, moreover, already identified shortcomings in relation to the processing of data about individuals obtained as a result of the use of "special means of surveillance" in [Ekimdzhev and Others v. Bulgaria](#) and it did not appear that those shortcomings had since been rectified.

Finally, there was no indication that the Agency had ever been called to the Bulgarian Parliament or its committees to report specifically on whether it had acted lawfully when processing data obtained as a result of its operations, nor was there any indication that the Agency had reported to the government the way in which it processed data obtained.

The Court concluded that neither Mr Kanev nor the Bulgarian Helsinki Committee had benefited from the minimum degree of protection against arbitrary and unlawful processing of their data by the Agency.

There had therefore been a breach of Article 8.

Just satisfaction (Article 41)

The Court held, by five votes to two, 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 the applicants.

Separate opinion

Judges Pavli and Ní Raifeartaigh expressed a joint dissenting opinion. This opinion is annexed to the judgment.

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.

Follow the Court on Bluesky [@echr.coe.int](https://bsky.app/profile/echr.coe.int), X [ECHR CEDH](https://twitter.com/ECHR_CEDH), [LinkedIn](https://www.linkedin.com/company/echr), and [YouTube](https://www.youtube.com/channel/UCR01111111111111111111).

Contact [ECHRPress](mailto:echrpress@echr.coe.int) to subscribe to the press-release mailing list.

Where can the Court's press releases be found? [HUDOC - Press collection](#)

Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Claire Windsor (tel: + 33 3 88 41 24 01)

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)

Jane Swift (tel: + 33 3 88 41 29 04)

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.