

**APPLICATIONS N° 32200/96 and 32201/96
(joined)**

Pierre HERBECQ and the Association 'LIGUL DES DROITS DE L'HOMME'
v/BELGIUM

DECISION of 14 January 1998 on the admissibility of the applications

Article 8, paragraph 1 of the Convention *Absence of legislation on filming for surveillance purposes where the data obtained is not recorded. In order to determine the scope of the protection provided by this provision the Commission examines whether there is any intrusion into an individual's privacy whether the data obtained relates to private or public conduct and whether such data is likely to be made available to the general public.*

On the facts which concern the surveillance of public places or premises lawfully occupied by private individuals the acts which may be observed would essentially be public conduct and since the data is not recorded they cannot be made available to the general public.

Article 13 of the Convention *The right recognised by this provision may be exercised only in respect of an arguable claim as defined in the case-law of the Convention organs.*

Article 25 of the Convention

- a) *The concept of 'victim' is autonomous. It must be interpreted independently of concepts of domestic law concerning such matters as interest or capacity to take legal proceedings.*
- b) *A person who is unable to demonstrate that he is personally affected by the application of the measure he criticises cannot claim to be the victim of a violation of the Convention.*

c) *An association may act on behalf of its members before the Commission only on condition that it identifies them and provides evidence of its authority to represent them*

d) *An association which cannot itself claim to be a "victim" may not introduce an application against a measure which is allegedly capable of affecting its members*

In the present case the applicant association cannot itself claim to be the victim of surveillance by means of non recording photographic equipment

e) *Can an applicant claim to be a victim under Article 8 of the absence of legislation regulating surveillance by means of non-recording photographic equipment? (Question left unresolved)*

THE FACTS

Application No 32200/96 was introduced by a Belgian citizen born in 1956. He is the Secretary General and spokesperson of the association "*Ligue des Droits de l'Homme*". He lives in Brussels.

Application No 32201/96 was introduced by an association registered under Belgian law whose registered office is in Brussels.

The applicants were represented before the Commission by Mr Patrick Charlier, the Director of the applicant association.

The facts, as submitted by the applicants, may be summarised as follows:

The Belgian Act of 8 December 1992 on the protection of private life with regard to the processing of personal data aims to transform into Belgian law the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (European Treaty Series No 108) which was drawn up under the auspices of the Council of Europe and opened for signature on 28 January 1981.

The Act of 8 December 1992 aims to ensure respect for privacy with regard to, first, "any operation or operations carried out in whole or in part by automated means and relating to the recording, storage, alteration, erasure or dissemination of personal data" and, secondly, "the recording, storage, alteration, erasure, retrieval or dissemination of personal data by non automated means" (sections 1(3) and 4(1)).

COMPLAINTS

1 The applicants observe that the Act of 8 December 1992 applies to visual data only when it has been processed and complain that there is no legislative provision governing forms of "video surveillance" which do not involve the recording of the visual data obtained. They note that surveillance by means of video cameras, both by public authorities and in the private sector, is developing very rapidly in Belgium, principally in order to enable a limited number of staff to monitor premises more comprehensively as well as to have a deterrent effect on people in the premises under surveillance.

The applicants submit that in the absence of any legislation regulating "video surveillance, it is impossible for people subject to such surveillance to know when it is occurring what means of challenging it they have, and to whom to address themselves where they suspect that they have been subjected to such surveillance. Since no one has this information everyone may feel obliged to censor their own behaviour so as to avoid doing anything or behaving in any way which could be interpreted by potential observers using such surveillance equipment". They argue that such surveillance may also have the effect of revealing "information, consisting in certain modes of behaviour or physical attitudes, which the individual in question may not have wished to divulge".

Citing the *Klass v Germany* judgment (Eur Court HR, judgment of 6 September 1978 Series A no 28) and a Commission Decision of 27 June 1994 (No 21482/93, D R 78-A p 119), the first applicant claims that the possibility that he is being subjected to unrecorded 'video surveillance' without his knowledge violates his right to respect for his private life as protected by Article 8 of the Convention.

The applicants observe in this regard, that other types of interference with private life are governed by legal provisions which are accessible and drafted with sufficient precision to protect anyone affected by them such as the Act of 30 June 1994 regulating listening-in to face-to-face or telephone conversations, the Act of 19 July 1991 on the profession of private detective which forbids spying on people or photographing people "in any place not accessible to the public, without the consent of the person in charge of such place or the persons concerned", a circular from the Minister of Justice of 24 April 1990 regulating observation in the context of combatting serious or organised crime, or the Act of 30 June 1994 on copyright and related rights, which prohibits the reproduction or publication of a portrait without the consent of the person portrayed or his successors in title for the twenty years following his death.

They add that, apart from the fact that this form of interference is not in accordance with any law, the legislature's failure to address it is not justified by any pressing social need. Moreover they argue, since there is no aim to this legislative inertia, it is difficult to see what could be balanced against the violation of privacy, so that the principle of proportionality under paragraph 2 of Article 8 has also been breached.

2 The applicants also consider that the impossibility of obtaining an injunction from any national court to oblige the legislature to remedy its failure to put in place a system of legal protection for the rights guaranteed by Article 8 of the Convention in the case of "electronic surveillance" constitutes a breach of Article 13 of the Convention taken in conjunction with Article 8 thereof

THE LAW

1 The Commission considers that, given the close links between the applications registered under the numbers 32200/96 and 32201/96, it is appropriate to join them pursuant to Rule 35 of its Rules of Procedure

2 The Commission must first examine the question whether the applicant association satisfies the conditions laid down in Article 25 of the Convention, which, in so far as relevant, provides as follows

"The Commission may receive petitions from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention "

Therefore, in order to be able to avail itself of this provision, an applicant must be able to claim to be a victim of a violation of the Convention

On this point, the applicant association explains that the situation in question constitutes an interference with its aims and objectives, which include the defence of *the principles of equality freedom and humanism on which all democratic societies are founded and which have been proclaimed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950*" It submits that since its *raison d'être* is under attack, it should be considered as a direct victim of the alleged violations within the meaning of Article 25 of the Convention It adds that an association should be recognised as an indirect victim where the direct victims of the alleged violation cannot apply to the Convention organs and where such association can demonstrate a particular and personal link with those victims It claims that, since it has standing to bring actions before the Belgian administrative and constitutional authorities, it should be considered as the natural defender of human rights which are being violated by primary or secondary legislation Therefore it maintains that it should be deemed an indirect victim of any violation which affects every individual under Belgian jurisdiction, having regard to this particular and personal link and to the fact that those individuals will not be able to take action against the violations of which they are victims, "because of the manifest disproportion, first between the seriousness of the violation as it affects each of these persons and the degree of effort required to

bring an individual application before the European Commission of Human Rights and, secondly, between the benefit which an individual applicant may derive and the sum of the benefits which will result for every person subject to Belgian jurisdiction if such an application succeeds"

The Commission recalls in this respect that the word "victim" as used in Article 25 of the Convention must be interpreted autonomously and independently of concepts of domestic law such as capacity to bring or take part in legal proceedings

An applicant cannot claim to be the victim of a breach of one of the rights or freedoms protected by the Convention unless there is a sufficiently direct connection between the applicant as such and the injury he claims to have suffered as a result of the alleged breach (see No 10733/84, Dec 11 3 85, D R 41, p 211)

In this connection the Commission recalls its case-law to the effect that someone who is unable to demonstrate that he is personally affected by the application of the law which he criticises cannot claim to be a victim of a violation of the Convention in that regard (see No 9939/82, Dec 4 7 83, D R 34, p 213)

The applicant association itself cannot be the subject of any surveillance measure using photographic equipment Its arguments cannot change this fact However, the Commission points out that there is nothing to prevent an association from acting on behalf of a certain number of individuals, on condition that it identifies them and shows that it has received specific instructions from each of them (see No 10983/84, Dec 12 5 86, D R 47, p 225)

It follows that the applicant association cannot claim to be a victim, as such, of the alleged violations of Articles 8 and 13 of the Convention

The complaints submitted by the applicant association are, therefore, incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 27 para 2 thereof

3 The first applicant alleges a violation of Article 8 para 1 of the Convention which provides that

"1 Everyone has the right to respect for his private and family life, his home and his correspondence

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 "

The question of entitlement to claim to be a victim of the alleged violation also arises in relation to this applicant (cf No 17187/90, Dec 8 9 93, D R 75, p 57, and *N v the United Kingdom* Comm Report 9 5 89, D R 67, p 123) However, the Commission does not consider it necessary to resolve this question, since the complaint is in any event manifestly ill-founded for the following reasons

Essentially, the first applicant maintains that the fact that there is no legislation governing the use of photographic systems where the visual data obtained is not recorded violates his right to respect for his private life in that it obliges him to censor his own behaviour in order to avoid doing anything or behaving in any way which could be interpreted by potential observers using such surveillance apparatus The Commission notes that the complaint as drafted does not appear to challenge the use of video cameras by the public authorities or by private individuals except in public places or premises lawfully occupied by them

The Commission does not consider it necessary to establish whether such a use of photographic systems is "in accordance with the law" within the meaning of the above-mentioned Article 8, since it considers that there has not in any event, been any interference with the applicant's private life, for the following reasons

In order to delimit the scope of the protection afforded by Article 8 against interference by public authorities in other similar cases, the Commission has examined whether the use of photographic equipment which does not record the visual data thus obtained amounts to an intrusion into the individual's privacy (for instance, where this occurs in his home), whether the visual data relates to private matters or public incidents and whether it was envisaged for a limited use or was likely to be made available to the general public (cf No 5877/72, Dec 12 10 73, Yearbook 16 p 328 and Eur Court HR, *Friedl v Austria* judgment of 31 January 1995, Comm Report of 19 5 94, para 48)

In the present case the Commission notes that the photographic systems of which the applicant complains are likely to be used in public places or in premises lawfully occupied by the users of such systems in order to monitor those premises for security purposes Given that nothing is recorded, it is difficult to see how the visual data obtained could be made available to the general public or used for purposes other than to keep a watch on places The Commission also notes that the data available to a person looking at monitors is identical to that which he or she could have obtained by being on the spot in person (see No 25547/94 Dec 6 9 95, unpublished) Therefore all that can be observed is essentially, public behaviour The applicant has also failed plausibly to demonstrate that private actions occurring in public could have been monitored in any way

Applying the above criteria, the Commission has reached the conclusion that there is, in the present case, no appearance of an interference with the first applicant's private life

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para 2 of the Convention

4 The first applicant also complains of a violation of Article 13 of the Convention. In this respect, it must be recalled that this provision recognises a right to an effective remedy before a national authority only in the case of an applicant who has raised "an arguable grievance" in terms of the Convention (see, for example, *Fur Court HR, Boyle and Rice v the United Kingdom* judgment of 27 April 1988, Series A no 131, p 23, para 52). The Commission considers that this is not the case in relation to the complaint examined above.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para 2 of the Convention

For these reasons the Commission,

ORDERS THAT APPLICATIONS No 32200/96 and No 32201/96 BE JOINED, and

by a majority,

DECLARES THE APPLICATIONS INADMISSIBLE