

Kopp v. Switzerland - 23224/94

Judgment 25.3.1998

Article 8

Article 8-1

Respect for correspondence

Respect for private life

Monitoring of a law firm's telephone lines on orders of the Federal Public Prosecutor: *violation*

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I. ARTICLE 8 OF THE CONVENTION

A. Government's preliminary objection

Reference to Court's case-law – applicant had complained in his administrative appeal to the Federal Council that tapping of his telephones had been illegal – consequently, he had raised in substance his complaint relating to Article 8.

Conclusion: objection dismissed (unanimously).

B. Merits of complaint

1. *Applicability*

Telephone calls from and to business premises may be covered by notions of "private life" and "correspondence" within meaning of Article 8 § 1 – not disputed.

2. *Compliance*

(a) Existence of interference

Interception of telephone calls constituted "interference by a public authority", within meaning of Article 8 § 2, with exercise of a right guaranteed to applicant under paragraph 1 – subsequent use of recordings made had no bearing on that finding.

(b) Justification for the interference

(i) *Whether interference was "in accordance with the law"*

- Whether there was a legal basis in Swiss law

Reference to Court's case-law – in principle, it was not for the Court to express an opinion contrary to that of Federal Department of Justice and Police and Federal Council on compatibility of judicially ordered tapping of applicant's telephone with sections 66(1) and 77 of the FCPA – Court could not ignore opinions of academic writers and Federal

Court's case-law on the question – interference complained of therefore had a legal basis in Swiss law.

- Quality of the law

Accessibility of the law: not in doubt in present case.

Law's "foreseeability" as to meaning and nature of applicable measures:

As interception constituted a serious interference with private life and correspondence, it had to be based on a "law" that was particularly precise, especially as the technology available for use was continually becoming more sophisticated.

Safeguards afforded by Swiss law not without value – however, contradiction between clear text of legislation which protected legal professional privilege when a lawyer was being monitored as a third party and practice followed in present case – law did not clearly state how, under what conditions and by whom distinction was to be drawn between matters specifically connected with a lawyer's work under instructions from a party to proceedings and those relating to activity other than that of counsel – above all, it was astonishing that in practice this task was assigned to an official of the Post Office's legal department, a member of the executive, without supervision by an independent judge – accordingly, applicant, as a lawyer, had not enjoyed minimum degree of protection required by rule of law in a democratic society.

Conclusion: violation (unanimously).

(ii) *Purpose and necessity of interference*

Having found a breach of one of the requirements of Article 8 § 2, Court not required to verify compliance with other two – not necessary to determine issue.

II. ARTICLE 13 OF THE CONVENTION

Applicant had expressly stated that he did not intend to pursue this complaint before Court.

Conclusion: Court not required to consider it of its own motion (unanimously).

III. ARTICLE 50 OF THE CONVENTION

Pecuniary damage: applicant unable to prove existence of causal connection between interception of his telephone calls and alleged loss – claim dismissed.

Non-pecuniary damage: finding of violation constituted sufficient compensation.

Costs and expenses: claim allowed in part.

Conclusion: respondent State to pay applicant specified sum for costs and expenses (unanimously).

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