



## Grand Chamber Panel's decisions

At its last meeting (Monday 4 February 2019), the Grand Chamber panel of five judges decided to refer two cases and rejected requests to refer 15 other cases<sup>1</sup>.

The following cases have been referred to the Grand Chamber of the European Court of Human Rights.

**Big Brother Watch and Others v. the United Kingdom** (applications nos. 58170/13, 62322/14 and 24960/15), which concerns complaints by journalists, individuals and rights organisations about three different surveillance regimes: (1) the bulk interception of communications; (2) intelligence sharing with foreign governments; and (3) the obtaining of communications data from communications service providers;

**Centrum för rättvisa v. Sweden** (no. 35252/08): which concerns a complaint brought by a public interest law firm alleging that legislation permitting the bulk interception of electronic signals in Sweden for foreign intelligence purposes breached its privacy rights.

### Referrals accepted

#### [Big Brother Watch and Others v. the United Kingdom \(application nos. 58170/13, 62322/14 and 24960/15\)](#)

The three joined applications are *Big Brother Watch and Others v. the United Kingdom* (no. 58170/13); *Bureau of Investigative Journalism and Alice Ross v. the United Kingdom* (no. 62322/14); and *10 Human Rights Organisations and Others v. the United Kingdom* (no. 24960/15). The 16 applicants are organisations and individuals who are either journalists or are active in campaigning on civil liberties issues.

The applications were lodged on 4 September 2013, 11 September 2014 and 20 May 2015 respectively, after Edward Snowden, a former US National Security Agency (NSA) contractor, revealed the existence of surveillance and intelligence sharing programmes operated by the intelligence services of the United States and the United Kingdom.

The applicants believe that the nature of their activities means that their electronic communications and/or communications data were likely to have been intercepted or obtained by the UK intelligence services.

Relying on Article 8 (right to respect for private and family life and correspondence), they complain in particular about the regimes for the bulk interception of communications, intelligence sharing and for the acquisition of data from communications service providers.

The second and third applications also raise complaints under Article 10 (freedom of expression) of the European Convention related to the applicants' work, respectively, as journalists and non-governmental organisations.

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The third application relies in addition on Article 6 (right to a fair trial), in relation to the domestic procedure for challenging surveillance measures, and on Article 14 (prohibition of discrimination), combined with Articles 8 and 10, alleging the regime for the bulk interception of communications discriminated against people outside the United Kingdom, whose communications were more likely to be intercepted and, if intercepted, selected for examination.

In its Chamber [judgment](#) of 13 September 2018, the European Court of Human Rights held, by five votes to two, that the bulk interception regime violated Article 8 of the Convention as there was insufficient oversight both of the selection of Internet bearers for interception and the filtering, search and selection of intercepted communications for examination, and the safeguards governing the selection of “related communications data” for examination were inadequate. In reaching that conclusion, the Chamber found that the operation of a bulk interception regime did not in and of itself violate the Convention, but noted that such a regime had to respect criteria set down in its case-law.

The Chamber also held, by six votes to one, that the regime for obtaining communications data from communications service providers violated Article 8 as it was not in accordance with the law, and that both the bulk interception regime and the regime for obtaining communications data from communications service providers violated Article 10 of the Convention as there were insufficient safeguards in respect of confidential journalistic material.

It further found that the regime for sharing intelligence with foreign governments did not violate either Article 8 or Article 10.

Lastly, the Chamber unanimously rejected complaints made by the third set of applicants under Article 6, about the domestic procedure for challenging secret surveillance measures, and under Article 14.

On 4 February 2019 the Grand Chamber Panel accepted the applicants’ request that the case be referred to the Grand Chamber.

### [Centrum för rättvisa v. Sweden \(no. 35252/08\)](#)

The applicant, Centrum för rättvisa, is a non-profit foundation which was set up in 2002 and represents clients in rights litigation, in particular against the State. It is based in Stockholm.

The application was lodged with the European Court of Human Rights on 14 July 2008.

The applicant foundation believes in particular that, because of the sensitive nature of its activities, there is a risk that its communications through mobile telephones and mobile broadband has been or will be intercepted and examined by way of signals intelligence.

Signals intelligence can be defined as intercepting, processing, analysing and reporting intelligence from electronic signals. In Sweden the collection of electronic signals is one form of foreign intelligence and is regulated by the Signals Intelligence Act. This legislation authorises the National Defence Radio Establishment (FRA), a Government agency organised under the Ministry of the Defence, to conduct the signals intelligence.

The foundation alleges that Swedish legislation and practice in the field of signals intelligence has violated and continues to violate its rights under Article 8 (right to respect for private and family life, the home and the correspondence) of the European Convention on Human Rights. It has not brought any domestic proceedings, arguing under Article 13 (right to an effective remedy) of the European Convention that there is no effective remedy in Sweden for its Convention complaints.

In its Chamber [judgment](#) of 19 June 2018, the European Court of Human Rights held, unanimously, that there had been no violation of Article 8 of the Convention.

The Chamber considered that the relevant legislation amounted to a system of secret surveillance that potentially affected all users of mobile telephones and the Internet, without their being notified. Also, there was no domestic remedy providing detailed grounds in response to a complainant who suspected that his or her communications had been intercepted. On that basis, the Court found it justified to examine the legislation in the abstract. The law firm could claim to be a victim of a violation of the Convention, although it had not brought any domestic proceedings or made a concrete allegation that its communications had actually been intercepted. The mere existence of the legislation amounted in itself to an interference with its rights under Article 8.

The Chamber went on to say that, although there were some areas for improvement, overall the Swedish system of bulk interception provided adequate and sufficient guarantees against arbitrariness and the risk of abuse.

When coming to that conclusion, the Chamber took into account the State's discretionary powers in protecting national security, especially given the present-day threats of global terrorism and serious cross-border crime.

Given those findings, the Chamber considered that there were no separate issues under Article 13 and held that there was no need to examine the foundation's complaint in that respect.

On 4 February 2019 the Grand Chamber Panel accepted the applicant's request that the case be referred to the Grand Chamber.

## Requests for referral rejected

Judgments in the following 15 cases are now final<sup>2</sup>.

### Requests for referral submitted by the applicants

**L.G. v. Belgium** (application no. 38759/14), [judgment](#) of 18 September 2018

**Pojatina v. Croatia** (no. 18568/12), [judgment](#) of 4 October 2018

**Kontalexis v. Greece (no. 2)** (no. 29321/13), [judgment](#) of 6 September 2018

**R.Š. v. Latvia** (no. 44154/14), [judgment](#) of 8 March 2018<sup>3</sup>

**Mutu and Pechstein v. Switzerland** (nos. 40575/10 and 67474/10), [judgment](#) of 2 October 2018<sup>4</sup>

### Requests for referral submitted by the Government

**Aliyev v. Azerbaijan** (nos. 68762/14 and 71200/14), [judgment](#) of 20 September 2018

**Stomatii v. the Republic of Moldova and Russia** (no. 69528/10), [judgment](#) of 18 September 2018<sup>5</sup>

**Kolobychko v. the Republic of Moldova, Russia and Ukraine** (no. 36724/10), [judgment](#) of 18 September 2018<sup>6</sup>

**Ibragim Ibragimov and Others v. Russia** (nos. 1413/08 and 28621/11), [judgment](#) of 28 August 2018

**Sava Terentyev v. Russia** (no. 10692/09), [judgment](#) of 28 August 2018

**Balogh and Others v. Slovakia** (no. 35142/15), [judgment](#) of 31 August 2018

<sup>2</sup> Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

<sup>3</sup> Referral request rejected as belated; pursuant to Article 44 § 2 of the Convention, the judgment of 8 March 2018 therefore became final on 8 June 2018.

<sup>4</sup> Request for referral submitted by Ms Pechstein.

<sup>5</sup> Request for referral submitted by Russia.

<sup>6</sup> Request for referral submitted by Russia.

**Engelhardt v. Slovakia** (no. 12085/16), [judgment](#) of 31 August 2018

**Agit Demir v. Turkey** (no. 36475/10), [judgment](#) of 27 February 2018

**Kasat v. Turkey** (no. 61541/09), [judgment](#) of 11 September 2018

[Request for referral submitted by by the applicant and the Government](#)

**Petrov and X v. Russia** (no. 23608/16), [judgment](#) of 23 October 2018

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