

## Secret surveillance “Gorilla operation” was not in accordance with the law

In today’s **Chamber judgment**<sup>1</sup> in the case of [Haščák v. Slovakia](#) (application nos. 58359/12, 27787/16 and 67667/16) 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 a surveillance operation (“the Gorilla operation”) carried out in 2005 and 2006 by the Slovak Intelligence Service and the intelligence material obtained by it.

The Court, citing its findings in substantially the same situation of the applicant in [Zoltán Varga v. Slovakia](#), highlighted the deficiencies in the applicable rules and procedures and the lack of external oversight of both the SIS operation and the retention by the SIS of some of the resulting data, and found that both had thus not been in accordance with the law for the Convention purposes.

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

### Principal facts

The applicant is a Slovak national who was born in 1969 and lives in Bratislava. He is a prominent businessman associated with an influential finance group and a business partner of the applicant in the case of [Zoltán Varga v. Slovakia](#) (nos. 58361/12 and 2 others).

Two surveillance warrants were issued by the Bratislava Regional Court in the mid-2000s, which had the aim of monitoring by the Slovak Intelligence Service (SIS) of Zoltán Varga and one other person. Mr Haščák submits that the other person was him. The warrants allowed the bugging of Mr Varga’s flat – the so-called “Gorilla operation” – resulting in, among other things, audio recordings and transcribed analytical summaries of the activity there.

The domestic authorities understood that the audio recording had been destroyed by the SIS in 2008. The summaries were archived by the agency with no one but a court having access.

In 2012 the Constitutional Court ruled on a complaint by Mr Varga, effectively annulling the warrants in so far as they concerned him, finding them to have been unjustified and unlawful and a violation of his fundamental rights.

Meanwhile, in 2011, material was anonymously published on the Internet purporting to be an SIS analytical summary of the operation, describing Mr Haščák discussing with others massive corruption in the privatisation of State-owned companies.

In 2018 in the course of an unrelated murder investigation, an audio recording was found, with the Public Prosecution Service making observations in 2021 which may be read as indicating that it was in fact the recording made by the SIS in the course of the Gorilla operation.

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](http://www.coe.int/t/dghl/monitoring/execution).

In response to the 2012 constitutional judgment of Mr Varga, the applicant attempted numerous legal avenues before judicial, executive as well as parliamentary authorities, among others to have the surveillance material destroyed.

In connection with these matters, a number of investigations were pursued, including suspected corruption (the “Gorilla investigation”). Mr Haščák argues that this investigation has focussed on him, notably given the number of times he has been interviewed in that connection, and related official comment on the matter, but no charge has been forthcoming.

## Complaints, procedure and composition of the Court

Relying on Articles 6 § 1 (right to a fair hearing within a reasonable time), 6 § 2 (presumption of innocence) and 8 (right to respect for private and family life/right to respect for correspondence), the applicant complained, in particular, that there had been a lack of effective supervision and review of the implementation of the two surveillance warrants, that the applicable framework provided no protection to individuals randomly affected by surveillance measures, and that the internal rules applicable to the retention of intelligence material were inadequate.

The three applications constituting this case were lodged with the European Court of Human Rights between 6 September 2012 and 11 November 2016.

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

Marko **Bošnjak** (Slovenia), *President*,  
Péter **Paczolay** (Hungary),  
Krzysztof **Wojtyczek** (Poland),  
Lorraine **Schembri Orland** (Malta),  
Ioannis **Ktistakis** (Greece),  
Davor **Derenčinović** (Croatia) and,  
Ladislav **Dudiš** (Slovakia), *ad hoc Judge*,  
and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### Article 8

As to the scope of the case, the Court noted that it involved no complaint of any leak of information by the SIS and no complaint concerning the practical and procedural status of the audio recording retrieved by the investigators in 2018.

The Court stated that to a significant extent, Mr Haščák’s Article 8 complaints are identical and arise from an identical factual and procedural background to that examined in *Zoltán Varga*. The Court therefore applied that case-law to the present case.

While there had been a basis in law, the operation had had numerous deficiencies, some of which had been recognised at the domestic level in response to complaints and actions of Mr Varga. Although the domestic courts made no such findings in the individual case of Mr Haščák, they were relevant to the assessment of his case.

The Court reiterated that, as in *Zoltán Varga*, when implementing the surveillance warrants the SIS had practically enjoyed discretion amounting to unfettered power, which had not been accompanied by a measure of protection against arbitrary interference, as required by the rule of law. Furthermore, that situation had been aggravated by the uncontested fact that Mr Haščák had not himself been the target of the surveillance under the first of the two warrants, in the light of his unchallenged argument that the law provided no protection to persons randomly affected by

surveillance measures, and by the fundamental uncertainty around the practical and procedural status of the audio recording retrieved in 2018, presumably of SIS provenance.

The Court had previously held in *Zoltán Varga* that the storing of the analytical material obtained in the surveillance operation had been subject to confidential rules with no external oversight. The retention had therefore not been in accordance with the law. The Court ruled that that also applied in the present case.

The implementation of the two warrants and the retention of the analytical material had thus been in violation of Article 8 of the Convention.

### Other articles

Concerning the reasonable time and presumption of innocence requirements under Article 6 §§ 1 and 2, as Mr Haščák had never been charged with a criminal offence, nor had any public statements by officials indicated that he had been, his complaints in this regard did not fall under Article 6 and thus had to be rejected.

### Just satisfaction (Article 41)

The Court held that Slovakia was to pay the applicant 9,750 euros (EUR) in respect of non-pecuniary damage.

*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.