



Unlawful surveillance by an insurance company of a road accident victim breached her right to privacy

In today's **Chamber** judgment¹ in the case of [Vukota-Bojić v. Switzerland](#) (application no. 61838/10) the European Court of Human Rights held, by six votes to one, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights;

and, unanimously, that there had been;

no violation of Article 6 (right to a fair trial) of the of the European Convention.

Ms Vukota-Bojić had been involved in a road traffic accident, and subsequently requested a disability pension. Following a dispute with her insurer on the amount of disability pension and years of litigation later, her insurer requested that she undergo a fresh medical examination, in order to establish additional evidence about her condition. When she refused, the insurer hired private investigators to conduct secret surveillance of her. The evidence that they obtained was used in subsequent court proceedings, which resulted in a reduction of Ms Vukota-Bojić's benefits. She complained that the surveillance had been in breach of her right to respect for private life, and that it should not have been admitted in the proceedings.

The Court held that the insurer's actions engaged state liability under the Convention, since the respondent insurance company was regarded as a public authority under Swiss law. It also held that the secret surveillance ordered had interfered with Ms Vukota-Bojić's private life, even though it had been carried out in public places, since the investigators had collected and stored data in a systematic way and had used it for a specific purpose. Furthermore, the surveillance had not been prescribed by law, since provisions of Swiss law on which it had been based were insufficiently precise. In particular, they had failed to regulate with clarity when and for how long surveillance could be conducted, and how data obtained by surveillance should be stored and accessed. There had therefore been a violation of Article 8.

The Court also found that the use of the surveillance evidence in Ms Vukota-Bojić's case against her insurer had not made the proceedings unfair. She had been given a fair opportunity to challenge the evidence obtained by the surveillance, and the domestic court had given a reasoned decision as to why it should be admitted.

Principal facts

The applicant, Savjeta Vukota-Bojić, is a Swiss national who was born in 1954 and lives in Opfikon (Switzerland). In August 1995, Ms Vukota-Bojić was struck by a motorcycle and fell on her back. She was initially diagnosed with cervical trauma and possible cranial trauma, and underwent several medical examinations which resulted in conflicting reports about her ability to work.

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.

On the basis of these reports, Ms Vukota-Bojić's insurer decided her entitlement to daily allowances should cease from April 1997. This decision was overturned by the Social Insurance Court of Zurich, which ordered further investigations to be carried out. These reports concluded that Ms Vukota-Bojić had brain dysfunction and that this had been caused by her accident. Meanwhile, on 21 March 2002, the local social security authority had granted Ms Vukota-Bojić a full disability pension.

On 14 January 2005, the insurer decided once again that Ms Vukota-Bojić's insurance-related benefits should cease. After this decision was also overturned by the Social Insurance Court, the insurer invited Ms Vukota-Bojić to undergo a further medical evaluation. She refused, which prompted the insurer to conduct secret surveillance on Ms Vukota-Bojić to establish her condition. The surveillance was carried out by private investigators on four different dates, lasting several hours each time. Investigators followed Ms Vukota-Bojić in public places over long distances. A surveillance report was prepared.

As a result of the report, the insurer confirmed its decision that Ms Vukota-Bojić's insurance-related benefits should cease. In April 2007, a neurologist appointed by the insurer, Dr H., released an anonymous expert opinion which concluded that Ms Vukota-Bojić was only incapacitated by 10%. The insurer decided to grant Ms Vukota-Bojić daily allowances and a pension at this rate.

Ms Vukota-Bojić appealed the insurer's decision, but on 29 March 2010, the Federal Court held that the insurer had been justified in asking Ms Vukota-Bojić to complete a further medical examination, that its surveillance of her had been lawful and that Dr H.'s report was persuasive on the issue of her entitlement to benefits. Ms Vukota-Bojić lodged a request with the court to clarify its decision, but this was dismissed.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life) of the European Convention, Ms Vukota-Bojić complained that the surveillance by private investigators had violated her right to a private life. Relying on Article 6 § 1 (right to a fair civil trial), she also complained that the Federal Court's decision to admit and give weight to Dr H.'s expert opinion and evidence obtained by surveillance in the course of its decision had infringed her right to a fair trial.

The application was lodged with the European Court of Human Rights on 14 October 2010.

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

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Georgios A. **Serghides** (Cyprus),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

[Article 8 \(right to respect for private and family life\)](#)

The Court held that the surveillance arranged by the insurer amounted to a violation of Ms Vukota-Bojić's right to a private life. First, the court noted that, since the insurer had been operating a state insurance scheme and was regarded in domestic law as a public authority, its actions could be imputed to the state.

Furthermore, while the surveillance had been conducted in public places only, the fact that the investigators had acted systematically, had compiled a permanent record on Ms Vukota-Bojić and that the information had been requested to help resolve an insurance dispute meant that Article 8 § 1 was engaged and Ms Vukota-Bojić's private life had been interfered with.

Moreover, that interference had not been "prescribed by law" as required by Article 8 § 2. While Swiss legislation did empower insurance companies to take "necessary investigative measures" and collect "necessary information" where an insured person had not been forthcoming with information, these provisions were insufficiently precise. In particular, they did not indicate when and for how long surveillance could be conducted, or include safeguards against abuse, such as procedures to be followed when companies are storing, accessing, examining, using, communicating or destroying information. This created a risk of unauthorised access to and disclosure of information.

The surveillance of Ms Vukota-Bojić had therefore been in breach of Article 8.

[Article 6 \(right to a fair trial\)](#)

The Court held that there had been no infringement of Article 6, in regard to the admission of evidence in court obtained by the surveillance, as well as Dr H.'s expert opinion based on that information. The proceedings, when taken as a whole, had been conducted in a fair manner. Ms Vukota-Bojić had had an opportunity to challenge the admissibility of the surveillance report and related evidence, and the Federal Court had given a reasoned decision as to why they should be admitted. Furthermore, the surveillance information and Dr H.'s opinion had not been the only evidence relied upon to support the Federal Court's decision, as the court had also emphasised the existence of other conflicting medical reports.

[Just satisfaction \(Article 41\)](#)

The Court held that Switzerland was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 in respect of costs and expenses.

Separate opinion

Judge Dedov expressed a dissenting opinion. This opinion is annexed to the judgment.

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.