



## Q&A on *Big Brother Watch and Others v. the United Kingdom*<sup>1</sup> and *Centrum för rättvisa v. Sweden*<sup>2</sup>

*This document is a tool for the press, issued in the context of notification of the above judgments. It does not bind the Court.*

### **Who made the complaints in these cases?**

The applicants are organisations, individuals that campaign on civil-liberties issues or journalists in the United Kingdom or Sweden. In *Big Brother Watch and Others*, three separate applications were made by different parties, which the Court decided to deal with together.

### **What were the applicants' complaints about?**

The applicants believed information of a private nature concerning them may have been or obtained by the intelligence services of the UK or Sweden, mainly through surveillance of communications crossing the national borders. The applicants in the case against the UK also complained about the receipt of intelligence from foreign governments and/or foreign intelligence agencies, and the obtaining of communications data from communications service providers.

### **What sort of surveillance were they talking about?**

Both cases principally concerned the interception of large quantities of communications and related communications data crossing national borders, which the intelligence agencies then filtered using search terms to find information that might be of intelligence value. This process, referred to in Sweden as signals intelligence, and in the UK as the bulk interception of communications, is therefore different in nature from the targeted interception of individuals' communications which has been the subject of many of the Court's previous judgments concerning secret surveillance.

### **What are signals intelligence and bulk interception of communications?**

Signals intelligence can be defined as intercepting, processing, analysing and reporting intelligence from electronic signals (internet browsing, email, text messages, and so forth). In the case of Sweden, interception of foreign radio signals was also concerned. Signals intelligence concerns both the content of communications and other information that can be deduced from communication data (location, contacts, and so forth). In the UK, the bulk interception of communications involved the interception of all communications flowing across certain specifically targeted cables, followed by the filtering and searching of those communications and related communications data in order to identify those of the greatest intelligence value.

### **What is the legislation governing signals intelligence and bulk interception in these countries?**

In Sweden the main legislation is the Signals Intelligence Act, which governs bulk collection of electronic signals. It is still in force.

In the UK at the relevant time section 8(4) of the Regulation of Investigatory Powers Act 2000 set out the framework for bulk interception. It has since been replaced by other legislation.

### **How did the applicants find out about the activities of these intelligence agencies?**

The activities of the intelligence agencies at issue in the *Big Brother Watch and Others* cases were initially revealed by Edward Snowden in 2013. He leaked documents from the National Security

<sup>1</sup> Applications nos. 58170/13, 62322/14 and 24969/15. See press release for more details

<sup>2</sup> Application no. 35252/08. See press release for more details.

Agency, a United States intelligence agency, which suggested that the UK's Government Communications Headquarters (GCHQ) was able to tap into and store huge volumes of data.

#### **Were any other States potentially involved?**

Yes. Both cases also concern the sending of intercepted material to foreign intelligence services. In addition, the applicants in the case against the UK complained separately about receipt of material from foreign intelligence services, particularly those of the USA.

#### **At the time of the events in question, what was the process for intercepting signals or communications for intelligence purposes?**

In Sweden, the National Defence Radio Establishment (FRA) had to apply to a specialist court for a permit to conduct signals intelligence.

In the UK, the Secretary of State issued warrants for the "interception of external communications". Intercepted material could not be selected to be read, looked at or listened to, "according to a factor which is referable to an individual who [was] known to be for the time being in the British Islands".

#### **What did the Court find in respect of the UK?**

The Court concluded that the bulk interception regime in the UK had suffered from three defects, namely: the absence of independent authorisation for bulk interception warrants; the failure to include the categories of search terms in the application for a warrant; and the failure to ensure that search terms linked to an individual (that is to say specific identifiers such as an email address) were subject to prior internal authorisation.

Because of those shortcomings, the bulk interception regime had been incapable of keeping the "interference" with citizens' private life rights to what had been "necessary in a democratic society". There had been a violation of Article 8 of the Convention.

However, it found that sufficient safeguards had been in place to protect against abuse and to ensure that UK authorities had not used requests for intercept material from foreign intelligence partners as a means of circumventing their duties under domestic law and the Convention.

#### **What did the Court find in respect of Sweden?**

The Court found that the main features of the Swedish bulk interception regime met the Convention requirements. However, the Court concluded that the regime suffered from three defects, namely: the absence of a clear rule on destroying intercepted material which did not contain personal data; the absence of a requirement in the Signals Intelligence Act or other relevant legislation that, when making a decision to transmit intelligence material to foreign partners, consideration was given to the privacy interests of individuals; and the absence of an effective *ex post facto* review. The measures in place did not guard against the risk of arbitrariness and abuse, leading to a violation of Article 8 of the Convention.

#### **What does the judgment mean for the UK and for Sweden?**

The cases will now go to the Department for the Execution of Judgments of the European Court of Human Rights, a unit of the Council of Europe which tries to help the States to achieve full, effective and prompt execution of the judgments. However, it should be noted that in the United Kingdom the relevant provisions of the Regulation of Investigatory Powers Act 2000, which were considered by the Grand Chamber in this judgment, have already been replaced with new legislation.

#### **Is this the first time that the European Court of Human Rights has examined a case of this type?**

No. The Court has previously examined bulk interception of cross-border communications in the cases *Weber and Saravia v. Germany* (no. 54934/00) and *Liberty and Others v. the United Kingdom* (no. 58243/00). However, it has examined far more cases of targeted interception of communications in the past.

**Did the Court award damages or costs?**

Yes, the Court held that Sweden had to pay Centrum för rättvisa 52,625 euros (EUR) in costs. It held that the UK had to pay EUR 227,500, EUR 90,000 and EUR 36,000 in costs to the applicants in the three joined cases respectively.

**Had the Court looked at those cases previously?**

Yes, the Court had previously issued judgments.

It found that that the British bulk interception regime violated Article 8 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.

It found no violation, however, against Sweden.

Those judgments have now been superseded by today’s Grand Chamber judgments.

**Which judicial formation ruled on this application?**

A Grand Chamber of the European Court of Human Rights.

**What is a Grand Chamber?**

A Grand Chamber is a group of 17 judges from different countries that deliver judgments in cases that have been referred to it by one of the parties or relinquished to it by a Court Chamber.

**Is this judgment final?**

Yes – the Grand Chamber’s judgments are final once delivered.