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Campaigners win vital battle against UK mass surveillance at European Court of Human Rights

The European Court of Human Rights has today ruled that UK laws enabling mass surveillance violate the rights to privacy and freedom of expression.

Judges found that:

- The UK's historical bulk interception regime violated the right to privacy protected by Article 8 of the European Convention on Human Rights (ECHR) and to free expression, protected by Article 10.

- The interception of communications data is as serious a breach of privacy as the interception of content, meaning the UK regime for bulk interception of communications data was unlawful.

- The UK's regime for authorising bulk interception was incapable of keeping the "interference" to what is "necessary in a democratic society".

The ruling comes as part of a five-year challenge to the UK's broad and intrusive spying powers, which were first revealed by the US whistle-blower Edward Snowden in 2013.

The case was brought by Amnesty International, Liberty, Privacy International and 11 other human rights and journalism groups – as well as two individuals – based in Europe, Africa, Asia and the Americas.

Megan Goulding, Lawyer for Liberty, said:

"This is a major victory for the rights and freedom of people in the UK. It shows that there is – and should be – a limit to the extent that states can spy on their citizens. Police and intelligence agencies need covert surveillance powers to tackle the threats we face today – but the Court has ruled that those threats do not justify spying on every citizen without adequate protections.

"Our Government has built a surveillance regime more extreme than that of any other democratic nation, abandoning the very rights and freedoms terrorists want to attack. It can and must give us an effective, targeted system that protects our safety, data security and fundamental rights."

Caroline Wilson Palow, General Counsel at Privacy International, said:

"Today's judgment rightly criticises the UK's bulk interception regime for giving far too much leeway to the intelligence agencies to choose who to spy on and when. It confirms that

just because it is technically feasible to intercept all of our personal communications, it does not mean that it is lawful to do so.

The judgment also rightly recognises that collecting communications data - the who, what, and where of our communications - is as intrusive as collecting the content. This is a significant and important enhancement of our privacy protections."

Lucy Claridge, Amnesty International's Strategic Litigation Director, said:

"Today's ruling represents a significant step forward in the protection of privacy and freedom of expression worldwide. It sends a strong message to the UK Government that its use of extensive surveillance powers is abusive and runs against the very principles that it claims to be defending.

"This is particularly important because of the threat that Government surveillance poses to those who work in human rights and investigative journalism, people who often risk their own lives to speak out. Three years ago, this same case forced the UK Government to admit GCHQ had been spying on Amnesty - a clear sign that our work and the people we work alongside had been put at risk."

The judgment is not yet final as it may still be referred to the Grand Chamber of the European Court of Human Rights. The judgment does have some room for improvement, as it does not go far enough in condemning bulk surveillance. It permits national governments a "wide margin of appreciation" in deciding whether to engage in bulk interception and greenlights vast intelligence sharing with the US National Security Agency (NSA).

Today's judgment

- The UK's historical bulk interception regime violated the right to privacy enshrined in Article 8 of the ECHR
- The safeguards governing the selection of bearers for interception, the selection of intercepted material for examination and the related oversight are not sufficiently robust to provide adequate guarantees against abuse. Of greatest concern, however, is the absence of robust independent oversight of the selectors and search criteria used to filter intercepted communications (para 346-347)
- The interception of communications data is as serious a breach of privacy as the interception of content and therefore the UK regime for bulk interception of communications data was unlawful as it did not strike a fair balance (para 357)
- Bulk interception also breaches the right to free expression protected by Article 10 of the ECHR (para 469-500).

Background to the case

The case began in 2013, following Edward Snowden's revelations that GCHQ was secretly intercepting, processing and storing data concerning millions of people's private communications, even when those people were of clearly of no intelligence interest (the 'Tempora' programme).

Snowden also revealed that the Government was accessing communications and data collected by the USA's National Security Agency and other countries' intelligence agencies. All of this was taking place without public consent or awareness, with no basis in law and with no proper safeguards.

The information collected and stored by the Government can reveal the most intimate aspects of a person's private life - where they go, who they contact, which internet sites they visit and when.
In 2014, the Investigatory Powers Tribunal - the highly secretive UK court which hears claims against GCHQ, MI5 and MI6 - ruled that these practices may in principle comply with the UK's human rights obligations. This was the finding challenged in the European Court of Human Rights.

However, during these initial proceedings, the Investigatory Powers Tribunal found that UK intelligence agencies had unlawfully spied on the communications of Amnesty International and South Africa's Legal Resources Centre - and that UK intelligence sharing with the US, which had been governed under a secret legal framework, was unlawful until disclosed during the proceedings.

Parties in the case

This case brought together three separate challenges from the following groups and individuals:

- The American Civil Liberties Union (ACLU), Amnesty International, Bytes for All, the Canadian Civil Liberties Association, the Egyptian Initiative for Personal Rights, the Hungarian Civil Liberties Union, the Irish Council for Civil Liberties, the Legal Resources Centre (South Africa), Liberty and Privacy International.
- Big Brother Watch, Open Rights Group, English PEN and Dr Constanze Kurz
- The Bureau of Investigative Journalism and Alice Ross

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Contact:
Liberty press office on 0207 378 3656 / 07973 831 128 /
pressoffice@libertyhumanrights.org.uk
Privacy International press office on 020 3422 4321 / **press@privacyinternational.org**
Amnesty International 020 30 365179/
press@amnesty.org