



October 2011

This factsheet does not bind the Court and is not exhaustive

Protection of personal data

General principles

Mere storage of information about an individual's private life amounts to interference within the meaning of Article 8 (right to respect for private life)

"The storing by a public authority of information relating to an individual's private life amounts to an interference within the meaning of Article 8. The subsequent use of the stored information has no bearing on that finding." (Leander v. Sweden, 26.03.1987, Kopp v. Switzerland, 25.03.1998, [Amann v. Switzerland](#), 16.02.2000)

[Amann v. Switzerland](#): telephone call to the applicant from the former Soviet embassy – to order a depilatory appliance advertised by him – intercepted by the public prosecutor's office, which requested the intelligence service to draw up a file on him. [Violations of Article 8](#) on account of the recording of the telephone call and because the creation and storage of the file were not "in accordance with the law", since Swiss law was unclear as to the authorities' discretionary power in this area.

The Court also takes into account the particular context in which information is obtained and stored, the nature of the information and the way in which it is used.

See, for example, [Peck v. the United Kingdom](#), 28.01.2003: [violation of Article 8](#) on account of the disclosure to the media of footage filmed in a street by a closed-circuit television (CCTV) camera installed by the local council, showing the applicant cutting his wrists.

Combating terrorism

"Democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction." [Klass and Others v. Germany](#), 06.09.1978, § 42.

Nevertheless, the Court, being aware of the danger, inherent in secret surveillance measures, "of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate". [Klass and Others v. Germany](#), § 49.

In this case, the Court found [no violation of Article 8](#): the law challenged by the applicants (imposing restrictions on the secrecy of mail, post and telecommunications) was found by the Court to be necessary in a democratic society in the interests of national security and for the prevention of disorder or crime (Article 8 § 2).

Modern scientific techniques

"The protection afforded by Article 8 of the Convention would be unacceptably weakened if the use of modern scientific techniques in the criminal-justice system were allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private-life interests."

[S. and Marper v. the United Kingdom](#), 04.12.2008.

Detained persons

The Court has frequently ruled on obstacles to detainees' correspondence.

- In a number of Polish cases (for instance [Pisk-Piskowski v. Poland](#), [Matwiejczuk v. Poland](#), [Przyjemski v. Poland](#)), the Court held that as long as the domestic authorities continued the practice of stamping "ocenzurowano" ("censored") on detainees' letters, the Court would have no alternative but to presume that those letters had been opened and their contents read, in [breach of Article 8](#).

In the judgment [Biśta v. Poland](#) (12.01.2010), the Court established, having regard to the relevant developments in the domestic practice, that there now was an effective remedy in Poland for prisoner complaints of censorship of correspondence with the Court (see subsequent inadmissibility decision [Mocny v. Poland](#) in November 2010).

- Hindrance of correspondence. For example: [Golder v. the United Kingdom](#), 21.02.1975.
[Violation of Article 8](#): the Court could not discern how the prevention of disorder could require the applicant to be prevented from corresponding with a lawyer with a view to exculpating himself of a charge against him.
- Interception of correspondence. For example: [Silver and Others v. the United Kingdom](#), 25.03.1983. [Violation of Article 8](#) as regards the letters intercepted because of the use of insulting language and [no violation of Article 8](#) as regards the letters containing clear threats.
- Restrictions on correspondence with the Court. For example:
[Campbell v. the United Kingdom](#), 25.03.1992: [violation of Article 8](#) on account of the opening of the applicant's correspondence with his solicitor and with the Commission.
[Cotlet v. Romania](#), 03.06.2003: hindrance of correspondence with the Court: [violations of Article 8](#) on account of the delays in forwarding letters from the applicant, the opening of his correspondence and the prison authorities' refusal to supply him with the necessary materials for his correspondence with the Court.

[Wisse v. France](#), 20.12.2005: case concerning the system for intercepting conversations between the applicants and their relatives in the visiting rooms at Ploemeur and Rennes Prisons.

[Violation of Article 8](#): as regards the recording of conversations in prison visiting rooms, French law did not indicate with sufficient clarity how the authorities were entitled to interfere in detainees' private lives, or the scope and manner of exercise of their discretion in that area.

Surveillance of communication

Telephone tapping

By the police

[Malone v. the United Kingdom](#), 02.08.1984: violation of Article 8 because the interception of the applicant's telephone conversations – in the context of his trial for handling stolen goods – and the “metering” of his calls (registration of the numbers dialled on a particular telephone) had not been in accordance with the law.

For the same reason, the Court found a violation of Article 8 in [Khan v. the United Kingdom](#), 12.05.2000 (surveillance of the applicant by means of a listening device in connection with his prosecution for drug-trafficking offences).

[A. v. France](#), 23.11.1993: recording by a private individual, with the assistance of a police superintendent in the context of a preliminary investigation, of a telephone conversation with the applicant, who, according to the individual concerned, had hired him to carry out a murder.

Violation of Article 8 since the recording had not been carried out pursuant to a judicial procedure and had not been ordered by an investigating judge.

[P.G. and J.H. v. the United Kingdom](#), 25.09.2001: case concerning the recording of the applicants' voices at a police station, following their arrest on suspicion of being about to commit a robbery.

Violation of Article 8: at the time of the events there had been no statutory system to regulate the use of covert listening devices by the police on their own premises.

[Van Vondel v. the Netherlands](#), 25.10.2007: the applicant was a police officer for the Criminal Intelligence Service. His telephone conversations with one of his informers had been recorded with devices provided by the National Police Internal Investigation Department, in the context of a parliamentary inquiry brought into criminal investigation methods in the Netherlands due to a controversy surrounding the North-Holland/Utrecht Interregional Criminal Investigation Team.

Violation of Article 8: the applicant had been deprived of the minimum degree of protection to which he had been entitled under the rule of law in a democratic society (the Court did not find it acceptable that the authorities had provided technical assistance which was not governed by rules providing guarantees against arbitrary acts).

Pending case [Kruitbosch v. Romania](#): audio and video recordings by police officers.

By a judicial authority

[Kruslin v. France](#), 24.04.1990: telephone tapping ordered by an investigating judge in a murder case.

Violation of Article 8 because French law did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion in this area.

See also [Wisse v. France](#) (cited above), [Halford v. the United Kingdom](#), 25.06.1997 (cited below) and [Klass and Others v. Germany](#), 06.09.1978 (cited above).

Bugging of a flat

[Vetter v. France](#), 31.05.2005: following the discovery of a body with gunshot wounds, the police, suspecting that the applicant had carried out the murder, installed listening devices in a flat to which he was a regular visitor.

[Violation of Article 8](#): French law did not indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion in relation to listening devices.

In [P.G. and J.H. v. the United Kingdom](#), 25.09.2001, the Court also found a [violation of Article 8](#) on account of the police's installation of a covert listening device at a flat used by one of the applicants, which was not in accordance with the law.

Messaging systems

[Taylor-Sabori v. the United Kingdom](#), 22.10.2002: use by the police of pager messages: interception of messages sent to the applicant – who was charged with conspiracy to supply a controlled drug – using a “clone” of his pager. [Violation of Article 8](#): there had been no statutory system to regulate the interception of pager messages transmitted via a private telecommunication system.

With regard to e-mails, see [Copland v. the United Kingdom](#) (cited below).

Secret surveillance database

[Shimovolos v. Russia](#), 21.06.2011 concerned the registration of a human rights activist in a secret surveillance security database and the tracking of his movement as well as related arrest. [Violation of Article 5 § 1 and a violation of Article 8](#): the database in which Mr Shimvolos' name had been registered had been created on the basis of a ministerial order which had not been published and was not accessible to the public. Therefore, people could not know why individuals were registered in it, what type of information was included and for how long, how it was stored and used or who had control over it.

Files and access to data

“Public information can fall within the scope of private life where it is systematically collected and stored in files held by the authorities. That is all the truer where such information concerns a person's distant past.” [Rotaru v. Romania](#), § 43.

Access to data (social services, national security)

[Gaskin v. the United Kingdom](#), 07.07.1989: on reaching the age of majority the applicant, who had been taken into care as a child, wished to find out about his past in order to overcome his personal problems. He was refused access to his file on the ground that it contained confidential information.

[Violation of Article 8](#), not because of the system of confidential information in itself but because the final decision following the denial of access to the applicant had not been taken by an independent authority.

[Segerstedt-Wiberg and Others v. Sweden](#), 06.06.2006: the applicants complained about the storage of certain information about them in Swedish Security Police files and the refusal to reveal the extent of the information stored. [Violation of Article 8](#) on account of the storage of the data, except as regards the first applicant, since the storage of information concerning bomb threats against her in 1990 was justified.

[No violation of Article 8](#): the interests of national security and the fight against terrorism prevailed over the interests of the applicants on access to information about them in the Security Police files.

[Violation of Article 13](#): no remedy available to secure the destruction of the files or the erasure or rectification of information kept in them.

Access to data kept by secret services

[Rotaru v. Romania](#), 04.05.2000: the applicant complained that it was impossible to refute what he claimed was untrue information in a file on him kept by the Romanian Intelligence Service (RIS). He had been sentenced to a year's imprisonment in 1948 for having expressed criticism of the communist regime.

[Violation of Article 8](#): the holding and use by the RIS of information about the applicant's private life had not been "in accordance with the law".

[Violation of Article 13](#) because it was impossible for the applicant to challenge the data storage or to refute the truth of the information in question.

[Haralambie v. Romania](#), 27.10.2009: [violation of Article 8](#), on account of the obstacles to the applicant's consultation of the personal file created on him by the secret service under the communist regime.

[Violation of Article 8](#). The Court found that neither the quantity of files transferred nor shortcomings in the archive system justified a delay of six years in granting his request.

See also the [pending case](#) of [Ioan Jarnea v. Romania](#).

[Turek v. Slovakia](#) 14.02.2006: case concerning a file kept by the former Czechoslovak communist security agency in which the applicant was registered as one of its agents. He was refused the necessary security clearance to work in the civil service.

[Violation of Article 8](#) on the ground that there was no procedure by which the applicant could have sought protection of his right to respect for his private life. The Court found that placing the burden of proof on the applicant when the applicable rules were secret had imposed an unrealistic and excessive burden on him.

Files kept by the judicial authorities

[Bouchacourt v. France, Gardel v. France and M.B. v. France](#), 17.12.2009: while reaffirming the fundamental role of protection of personal data undergoing automatic processing, particularly where such data were used for police purposes, the Court concluded that in the applicants' case their entry in the national sex offenders' database had [not breached Article 8](#).

[Dimitrov-Kazakov v. Bulgaria](#), 10.02.2011: the applicant's name was entered in the police registers, with reference to a rape, as an "offender", after being questioned about a rape, even though he had never been indicted for the offence. He was later subjected by the police to a number of checks related to rape complaints or disappearances of young girls. and about the lack of a remedy by which to have that complaint examined.

[Violation of Article 8](#) (the applicant's inclusion in the police file was not in accordance with the law)

[Violation of Article 13 in conjunction with Article 8](#)

[Khelili v. Switzerland](#), 18.10.2011: concerned the classification of a French woman as a "prostitute" in the computer database of the Geneva police for five years.

[Violation of Article 8](#)

With regard to biological data, see [S. and Marper v. the United Kingdom](#), 04.12.2008.

Medical data

[Chave v. France](#), 09.07.1991: file containing information about the applicant's compulsory placement in a psychiatric hospital, which had been declared unlawful.

Application inadmissible (manifestly ill-founded): personal files designed to safeguard health and the rights and freedoms of others were protected by appropriate confidentiality and access rules, being accessible only to exhaustively listed categories of persons from outside the psychiatric institution.

[Z. v. Finland](#), 25.02.1997: disclosure of medical information about the applicant, who was infected with HIV, in the context of proceedings concerning a sexual assault.

Violation of Article 8 on account of the publication of the applicant's identity and medical condition in the Helsinki Court of Appeal's judgment.

[M.S. v. Sweden](#), 27.08.1997: transmission to a social-security body of medical records containing information about an abortion performed on the applicant.

No violation of Article 8: the women's clinic had had relevant and sufficient reasons for forwarding the applicant's medical records, since the body in question had been responsible for examining her claim for compensation for a back injury.

[S. and Marper v. the United Kingdom](#), 04.12.2008: **violation of Article 8** on account of the indefinite retention in a database of the applicants' fingerprints, cell samples and DNA profiles after criminal proceedings against them had been terminated by an acquittal in one case and discontinued in the other case.

Pending cases: [Deceuninck v. France](#): the applicant complains about an order to take cell samples from him containing his genetic data, as a result of his conviction for digging up experimental crops of transgenic beetroot.

[Gillberg v. Sweden](#): concerns a professor's criminal conviction for refusing to comply with a court decision granting access to his research on hyperactivity and attention-deficit disorders in children to other researchers. Case [referred to Grand Chamber](#) in April 2011. Grand Chamber hearing on the case - 28 September 2011.

In an employment context

[Leander v. Sweden](#), 23.03.1987: use of a secret police file in the recruitment of a carpenter. He had been working as a temporary replacement at the Naval Museum in Karlskrona, next to a restricted military security zone, and after a personnel control had been carried out on him, the commander-in-chief of the navy decided not to recruit him. The applicant had formerly been a member of the Communist Party and of a trade union.

No violation of Article 8: the safeguards contained in the Swedish personnel-control system satisfied the requirements of Article 8. The Court concluded that the Swedish Government had been entitled to consider that the interests of national security prevailed over the applicant's individual interests in this case.

[Halford v. the United Kingdom](#), 25.06.1997: the applicant, who was the highest-ranking female police officer in the United Kingdom, brought discrimination proceedings after being denied promotion to the rank of Deputy Chief Constable over a period of seven years. She alleged that her telephone calls had been intercepted with a view to obtaining information to use against her in the course of the proceedings.

Violation of Article 8 as regards the interception of calls made on the applicant's office telephones.

[No violation of Article 8](#) as regards the calls made from her home, since the Court did not find it established that there had been interference regarding those communications.

[Copland v. the United Kingdom](#), 03.04.2007: the monitoring of the applicant's e-mails in the workplace was [in breach of Article 8](#), not being in accordance with the law.

**Contact:
Céline Menu-Lange
Tracey Turner-Tretz
+33 3 90 21 42 08**