PRIVACY INTERNATIONAL

Briefing on Privacy International Legal Case

10 Human Rights Organisations v. the United Kingdom

November 2017

Summary

On 7 November 2017, the European Court of Human Rights will hear a case against the UK Government, brought by Privacy International and nine other NGOs, joined together with similar applications by (i) Big Brother Watch, Open Rights Group, English Pen and Dr Constanze Kurz and (ii) Bureau of Investigative Journalism and Alice Ross.

This case raises novel and important issues of law and principle: it is the first time the European Court of Human Rights has been called upon to address directly the question of whether surveillance on the scale now taking place should be permitted and the minimum safeguards that are needed to meet the standards required by the European Convention on Human Rights in an age of digital communication.

The case challenges the UK's right to:

- intercept, in bulk, any communication that happens to traverse the UK and to store the content of these communications as well as any related communications data; and

- obtain similar bulk access to communications and data intercepted by the intelligence services of other states.

For more information on these practices, please see Privacy International's post on how bulk interception works.

Bulk surveillance is unlawful. Bulk interception and intelligence sharing practices challenged in this case are not in accordance with the law and are neither necessary or proportionate. These practices are a violation by the UK of Articles 8 (right to privacy), 6 (right to fair trial), 10 (freedom of expression) and 14 (prohibition on discrimination) of the European Convention on Human Rights.

This case in particular challenges the interception warrant regime under section 8(4) of the Regulation of Investigatory Powers Act 2000. This regime does not meet the minimum safeguards identified by the European Court of Human Rights in the case of Weber and Saravia v. Germany (decided in 2006). Given the vast technological changes and expanded interception capacity since Weber, the following additional safeguards, as identified by the European Court of Human Rights in Zakharov v. Russia and Szabó & Vissy v. Hungary, should also be in place:

- a requirement for objective evidence of reasonable suspicion of a serious crime or conduct amounting to a specific threat to national security in relation to the persons for whom the data is being sought;

- prior independent judicial authorisation;

- notification to enable the affected persons to exercise their right to challenge the interception.

Timeline of case

July 2013

Following the Snowden disclosures, Privacy International filed a case in the Investigatory Powers Tribunal, challenging the interception by the UK of vast quantities of electronic data on fibre optic cables, passing through the UK, and access to data intercepted in bulk by US authorities.

Nine other NGOs (American Civil Liberties Union, 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 and Liberty), submitted similar complaints and the Tribunal subsequently joined the cases.

December 2014

First Investigatory Powers Tribunal judgment that both UK bulk interception and UK access to US bulk surveillance were lawful in principle.

February 2015

Second Investigatory Powers Tribunal judgment that the UK Government's access to information gathered via US bulk surveillance was unlawful prior to the proceedings because the legal framework governing such access was secret.

March 2015

10 Human Rights Organisations filed application to the European Court of Human Rights challenging the UK's bulk interception of internet traffic and access to information gathered by the US through bulk surveillance.

April 2015

10 Human Rights Organisations filed Additional Submissions to European Court of Human Rights on the Facts and Complaints

June 2015

Third Investigatory Powers Tribunal judgment that the UK Government had conducted unlawful surveillance of two of the NGOs – Egyptian Initiative for Personal Rights and the Legal Resources Centre.

July 2015

10 Human Rights Organisations filed submissions to European Court of Human Rights in light of third Investigatory Powers Tribunal judgment.

The Investigatory Powers Tribunal issues a letter to the 10 Human Rights Organisations correcting its Third judgment, clarifying that the finding that the UK Government had conducted unlawful surveillance

of the Egyptian Initiative for Personal Rights, in fact, related to Amnesty International.

November 2015

European Court of Human Rights issued Statement of Facts and Questions to Parties

April 2016

UK Government filed Observations on merits

September 2016

10 Human Rights Organisations filed a Reply to the UK Government and a Factual Appendix

December 2016

UK Government filed further observations

September 2017

Applicants filed Consolidated Observations for the Hearing (10 Human Rights Organisations application joined together with Big Brother Watch and Others v. the UK and Bureau of Investigative Journalism and Alice Ross v. the UK.)

November 2017

European Court of Human Rights hearing