
COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

**CASE OF TAYLOR-SABORI v. THE UNITED KINGDOM**

*(Application no. 47114/99)*

*JUDGMENT*

*STRASBOURG*

*22 October 2002*

**FINAL**

*22/01/2003*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Taylor-Sabori v. the United Kingdom,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Sir Nicolas BRATZA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 29 May 2001 and 1 October 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case originated in an application (no. 47114/99) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, Sean Marc Taylor-Sabori ("the applicant"), on 1 October 1998.

2. The applicant, was granted legal aid, but never actually claimed it. He was represented by Bobbetts Mackan, a firm of solicitors practising in Bristol. The United Kingdom Government ("the Government") were represented by their Agent, Mr C.A. Whomersley, of the Foreign and Commonwealth Office.

3. The applicant complains, principally, under Articles 8 and 13 of the Convention that the interception of his pager messages by the police and subsequent reference to them at his trial amounted to an unjustified interference with his private life and correspondence which was not "in accordance with the law" and in respect of which there was no remedy under English law.

4. The application was originally allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. On 27 June 2000 the Court declared the applicant's complaint under Article 6 § 1 of the Convention inadmissible. On 29 May 2001 it declared his complaints under Articles 8 and 13 admissible. The Court decided, after consulting the parties, to dispense with a hearing (Rule 59 § 2 *in fine*).

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

8. The facts of the case, as submitted by the parties, may be summarised as follows.

9. Between August 1995 and the applicant's arrest on 21 January 1996, he was the target of surveillance by the police. Using a "clone" of the applicant's pager, the police were able to intercept messages sent to him. The pager system used by the applicant and intercepted by the police operated as follows: The sender, whether in the United Kingdom or overseas, would telephone the pager bureau in the United Kingdom via the public telephone network. The pager operator would key the message into a computer and read it back to the sender to confirm its accuracy. The computer message was transmitted via the public telephone system to the pager terminal, from where it was relayed by radio to one of four regional base stations and thence, again by radio, simultaneously to the applicant's and the police's clone pagers, which displayed the message in text.

10. The applicant was arrested and charged with conspiracy to supply a controlled drug. The prosecution alleged that he had been one of the principal organisers of the importation to the United Kingdom from Amsterdam of over 22,000 ecstasy tablets worth approximately GBP 268,000. He was tried, along with a number of alleged co-conspirators, at Bristol Crown Court in September 1997.

11. Part of the prosecution case against the applicant consisted of the contemporaneous written notes of the pager messages which had been transcribed by the police. The applicant's counsel submitted that these notes should not be admitted in evidence because the police had not had a warrant under section 2 of the Interception of Communications Act 1985 ("the 1985 Act") for the interception of the pager messages. However, the trial judge ruled that, since the messages had been transmitted via a private system, the 1985 Act did not apply and no warrant had been necessary.

12. The applicant pleaded not guilty. He was convicted and sentenced to ten years' imprisonment.

13. The applicant appealed against conviction and sentence. One of the grounds was the admission in evidence of the pager messages. The Court of Appeal, dismissing the appeal on 13 September 1998, upheld the trial judge's ruling that the messages had been intercepted at the point of transmission on the private radio system, so that the 1985 Act did not apply and the messages were admissible despite having been intercepted without a warrant.

### II. RELEVANT DOMESTIC LAW AND PRACTICE

14. By section 1 (1) of the 1985 Act, anyone who intentionally intercepts a communication in the course of its transmission by means of a public communications system is guilty of a criminal offence, unless the interception is carried out pursuant to a warrant issued in compliance with the Act.

15. At the time of the applicant's trial there was no provision in British law governing the interception of communications on a private system.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicant complained that the interception by the police of messages on his pager violated Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

He submitted that the police action amounted to an interference with his private life and correspondence, which was not "in accordance with the law" or "necessary in a democratic society".

17. The Government conceded that the interception by the police of messages sent to the applicant's pager was inconsistent with Article 8 in that it was not "in accordance with the law", although they added that this should not be taken as a concession that the action was not justified in the circumstances.

18. The Court notes that it is not disputed that the surveillance carried out by the police in the present case amounted to an interference with the applicant's rights under Article 8 § 1 of the Convention. It recalls that the phrase "in accordance with the law" not only requires compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law. In the context of covert surveillance by public authorities, in this instance the police, domestic law must provide protection against arbitrary interference with an individual's right under Article 8. Moreover, the law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to such covert measures (see *Khan v. the United Kingdom*, no. 35394/97, § 26, ECHR 2000-V).

19. At the time of the events in the present case there existed no statutory system to regulate the interception of pager messages transmitted via a private telecommunication system. It follows, as indeed the Government have accepted, that the interference was not "in accordance with the law". There has, accordingly, been a violation of Article 8.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

20. The applicant also contended there was no remedy available to him at national level in respect of his Article 8 complaint, contrary to Article 13, which provides:

> "Everyone whose rights and freedoms as set forth in [this] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

He relied on the above-mentioned *Khan* judgment as authority for the position that section 78 of the Police and Criminal Evidence Act 1985 ("PACE"), which allows the trial judge to exclude evidence in certain circumstances, could not provide an effective remedy to deal with all aspects of his complaint about unlawful surveillance.

21. The Government alleged that there had been no violation of the applicant's Article 13 rights, submitting that under section 78 of PACE the judge could have regard to Article 8 of the Convention when exercising his discretion to exclude evidence from trial proceedings. However, it did not appear that the applicant had ever submitted during his trial that the intercepted messages should be excluded from the evidence under section 78 on the basis that they had been obtained in breach of Article 8, and added that in the circumstances it cannot be said that such a submission would necessarily have failed. In this way, the Government claimed that the present case was distinguishable from the above-mentioned *Khan* case.

22. The Court recalls that Article 13 guarantees the availability of a remedy at national level to enforce the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Thus, its effect is to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, without, however, requiring incorporation of the Convention (see the above-mentioned *Khan* judgment, § 44).

23. The Court recalls its finding in the *Khan* judgment that, in circumstances similar to those of the applicant, the courts in the criminal proceedings were not capable of providing a remedy because, although they could consider questions of the fairness of admitting the evidence in the criminal proceedings, it was not open to them to deal with the substance of the Convention complaint that the interference with the applicant's right to respect for his private life was not "in accordance with the law"; still less was it open to them to grant appropriate relief in connection with the complaint (ibid.).

24. It does not appear that there was any other effective remedy available to the applicant for his Convention complaint, and it follows that there has been a violation of Article 13 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Non-pecuniary damage

26. The applicant claimed non-pecuniary damage for the invasion of his privacy. He drew attention to the facts that the interceptions took place over a long period of time (August 1995-January 1996) and were indiscriminate, in that every message on his pager was copied. He pointed out, furthermore, that since the Malone v. the United Kingdom judgment of 2 August 1984 (Series A no. 95), the Government had been aware of the need to regulate covert surveillance by the police.

27. The Government submitted that a finding of violation would constitute ample just satisfaction, since there was no evidence to suggest that, had proper procedures been in place at the relevant time, as they now were, the interceptions in question would not have been authorised.

28. The Court recalls that the violations it has found in this case relate to the fact that the interceptions by the police were not properly controlled by law. It considers that the findings of violation constitute sufficient just satisfaction for any non-pecuniary loss caused to the applicant by this failure.

### B. Costs and expenses

29. The applicant claimed legal costs and expenses as follows: GBP 918.00, exclusive of value added tax ("VAT"), for his solicitors, and the fees of two counsel, amounting to GBP 2,680.00 and GBP 3348.20, both exclusive of VAT.

30. The Government considered that the sums claimed were excessive, given that the application had not progressed beyond the written stage, that the Article 6 § 1 complaint was declared inadmissible on 27 June 2000 and that the Article 8 complaint did not raise any new issues not already established in the Court's case-law. The Government questioned whether it had been necessary to have engaged both leading and junior counsel to work on the case in addition to a solicitor, and whether it had been necessary for both barristers and the solicitor to visit the applicant in prison at a total cost of nearly GBP 4,700.00. The Government suggested that GBP 1,500, plus VAT, would be a reasonable sum.

31. The Court recalls that it will award legal costs and expenses only if satisfied that these were necessarily incurred and reasonable as to quantum. It agrees with the Government that this was a straightforward case, raising virtually identical issues to the above-mentioned *Khan* judgment. It awards EUR 4,800 in respect of costs and expenses, plus any VAT that may be payable.

### C. Default interest

32. The Court considers that the default interest should be fixed at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds* that there has been a violation of Article 13 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,800 (four thousand eight hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into pounds sterling at the rate applicable on the date of settlement;

(b) that simple interest at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President