

APPLICATIONS N° 23363/94 and N° 24082/94 (joined)

Ramin MANOUTCHERI and S K G v/FRANCE

DECISION of 13 September 1995 on the admissibility of the applications

Article 8, paragraph 1 of the Convention *Communication by telephone is included in the concepts of "private life" and "correspondence"*

Article 8, paragraph 2 of the Convention: *Secret surveillance of telecommunications Does domestic law indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the authorities and does it offer the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society? (Application declared admissible)*

Article 51 of the Commission's Rules of Procedure *Decision not to take into consideration the Government's observations, which they submitted out of time despite having been granted two extensions of the time limit in accordance with their request*

THE FACTS

The applicants are Iranian nationals and were born in 1959 and 1962 respectively. They are currently in custody in Villeneuve-les-Maguelone and Saint-Martin-de Ré prison.

The facts, as submitted by the applicants, may be summarised as follows

On 14 November 1990 Montpellier criminal court sentenced the applicants to ten and twelve years' imprisonment respectively for attempting to import three kilos of heroin illegally, for forming an association for the purpose of drug dealing and for

committing an offence under the customs legislation by attempting to import goods without declaring their origin.

The applicants made a preliminary application to the court for the evidence obtained from tapping their telephone line on 12 October 1989 to be excluded on the two following grounds of inadmissibility: first, that the police acted unlawfully in tapping the telephone line during their preliminary investigation and, secondly, that the investigating judge and the court were not in a position to ascertain whether the measures taken in the course of that investigation were lawful. The court found first of all that the investigation opened by the public prosecutor on 13 October 1989 into a possible drug trafficking offence was indisputably based on a report of heroin trafficking identifying one of the applicants, who had been contacted by telephone, as a suspect.

The court dismissed this preliminary application on the ground that: "it is rash, to say the least, to allege that the information contained in the police report could have been obtained only by tapping the telephone line ... without providing any evidence to substantiate such an allegation and given that knowledge of an imminent case of drug trafficking, and the identities or telephone numbers of persons where 'one of the applicants' could be contacted, could have been obtained without resorting to subterfuge or ruse .. "

The court went on to hold that the telephone surveillance was lawful under Article 8 of the Convention since it was permissible under Articles 81 and 151 of the Code of Criminal Procedure. It found that use of this investigative measure did undeniably amount to a serious interference with respect for private life and that such a practice must comply with certain requirements beyond those set out in the above-mentioned statutory provisions. On the facts, the court held that the telephone had been tapped by order of an investigating judge who had issued letters rogatory to this effect, on suspicion of a drug trafficking offence, and that the measure had not violated the rights of the defence

The applicants appealed and on 18 June 1991 Montpellier Court of Appeal upheld the lower court's judgment, dismissing the preliminary application for the evidence obtained by tapping the telephone line to be excluded. The Court of Appeal found that the applicants had been shown to be guilty by the very detailed statements of their co-defendant, "corroborated by those of the witnesses ... who had unequivocally and repeatedly accused both defendants".

The applicants appealed against this judgment on points of law.

In a decision of 11 May 1992, the Court of Cassation quashed the 18 June 1991 judgment on the ground that the prosecution's representative had taken part in the deliberations, contrary to Articles 510 and 591 of the Code of Criminal Procedure, and remitted the case to Montpellier Court of Appeal for a rehearing before different judges.

On 10 November 1992 Montpellier Court of Appeal upheld the 18 June 1991 judgment in its entirety. The applicants appealed to the Court of Cassation, arguing, as their sole ground of appeal, that the court's refusal to exclude the evidence from the telephone tapping violated Article 8 of the Convention.

On 15 November 1993 the Court of Cassation ruled the appeal by one of the applicants inadmissible on the ground that "the applicant had not signed the statement of grounds of appeal, which had been drawn up on his behalf by a member of the Montpellier Bar". It dismissed the other applicant's appeal on the ground that "the lower court specified, when dismissing the defendant's application for the evidence from the telephone tapping to be excluded, which had been submitted in the proper form prior to any submissions as to the merits and was now being re-submitted in his ground of appeal, that the application referred to a report drawn up by Montpellier Criminal Investigations Branch concerning the uncovering of an international heroin trafficking ring and linking a certain Reza Gorbani, implicated in a 'case in Madrid' which was tried in 15 July 1989, to one of the applicants. The Court of Appeal found the applicants' allegation that the information contained in the report could have been obtained only by telephone tapping to be 'hypothetical, to say the least'. Having examined the allegations and given the lack of any evidence that the telephone was actually tapped, the appeal can only be dismissed".

COMPLAINTS

1. The applicants complain of a violation of Article 8 of the Convention in so far as the interception and recording of telephone conversations by police officers constitute an infringement of their right to respect for their private life and their correspondence.
2. The second applicant complains of a violation of his right to a fair hearing within the meaning of Article 6 para. 1 of the Convention on the ground that his conviction was unsafe since it was secured solely on the evidence obtained by tapping the telephone line

PROCEEDINGS BEFORE THE COMMISSION

The applications were introduced on 5 January and 5 April 1992 and registered on 31 January and 3 May 1993.

On 22 February 1995 the Commission decided to join the applications and to communicate them to the respondent Government, inviting them to submit their written observations on the admissibility and merits of the complaint of telephone tapping submitted under Article 8 of the Convention

Despite being granted two extensions of the time-limit, which was initially fixed for 13 June 1995 and ultimately extended to 1 September 1995, the respondent Government submitted their observations on the admissibility and merits of the applications only by facsimile on 8 September 1995.

THE LAW

The substance of the applicants' claim is that the tapping and interception of their telephone conversations, on the investigating judge's instructions, amount to an unjustified interference with the exercise of their right to respect for their private life and their correspondence, contrary to Article 8 of the Convention which reads as follows

"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 "

The second applicant complains further that he did not have a fair hearing within the meaning of Article 6 para 1 of the Convention as his conviction was unsafe

The Government submitted observations requesting the Commission to find the applications manifestly ill-founded as regards the complaints of police telephone surveillance and inadmissible for non-exhaustion of domestic remedies as regards the allegations of telephone tapping by the judicial authorities, as the applicants had not sufficiently developed their grounds of appeal before the Court of Cassation

However, as the Government failed to submit their observations in time, despite being granted two extensions of the time-limit in accordance with their request, the Commission has decided not to take them into consideration

The issue before the Commission is whether, on the facts, the telephone surveillance amounts to an interference with the applicant's right to respect for his private life and correspondence, within the meaning of Article 8 para 1 of the Convention, which can be justified under paragraph 2 of that Article

The Commission recalls first that according to the case-law of the European Court, telephone conversations are included in the concepts of "private life" and "correspondence" within the meaning of Article 8. The interception of telephone conversations does therefore constitute an interference by a public authority with the exercise of a right guaranteed under Article 8 para 1 (see Eur Court HR, Klass and Others judgment of 6 September 1978, Series A no 28, p 21, para 41, Malone judgment of 2 August 1984, Series A no 82, p 30, para 64 and, more recently, Kruslin and Huvig judgments of 24 April 1990, in Series A no 176-A and 176 B, p 20, para 26 and p 52, para 25 respectively)

The Commission has undertaken a preliminary examination of the parties' submissions, taking particular note of the above-mentioned judgments of the European Court. It considers that this aspect of the applications raises serious issues under paragraph 2 of Article 8, particularly as to whether the national legal rules constituting the legal basis of the measure in question indicate with sufficient clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities and offer the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (see the above-mentioned *Kruslin* and *Huvig* judgments, p. 24, para. 36 and p. 56, para. 35 respectively)

These issues cannot be resolved at this stage of the examination of the applications, but require an examination on the merits. As the application cannot be ruled inadmissible for any other reason, this part of the applications cannot be declared manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

The Commission notes that the second applicant's further complaint, concerning an alleged violation of the fair trial principle guaranteed by Article 6 para. 1 of the Convention in that his conviction was unsafe, is closely related to the main complaint under Article 8 of the Convention and cannot therefore be declared manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATIONS ADMISSIBLE, without prejudging the merits