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EGMR (Nr. 47114/99) - Urteil vom 22. Oktober 2002 (Taylor-Sabori v. United Kingdom)

Recht auf Achtung des Privatlebens und der vertraulichen Korrespondenz
(Telekommunikationsüberwachung; gesetzliche Grundlage; Schutz bei modernen Formen der Individualkommunikation: hier pager-Systemen); **Recht auf eine Beschwerde im nationalen Recht (Befassung mit der Substanz der Beschwerde; Möglichkeit einer angemessenen Abhilfe und Auseinandersetzung mit der Konventionsbeschwerde bei ungesetzlichen Strafverfolgungseingriffen; Ungenügen eines etwaigen Ausschlusses von Beweismitteln; Inkorporation der EMRK).**

Art. 8 EMRK; Art. 13 EMRK; Art. 10 GG; Art. 2 Abs. 1 GG; Art. 1 GG; Art. 19 Abs. 4 GG; § 100a StPO

Leitsätze des Bearbeiters

1. Auch die staatliche Überwachung eines pager-Systems greift in Art. 8 EMRK (Recht auf Privatleben und vertrauliche Korrespondenz) ein. Die Rechtfertigung eines solchen Eingriffs setzt mindestens eine gesetzliche Grundlage im Sinne des Art. 8 Abs. 2 EMRK voraus. Im Kontext der geheimen Überwachung durch staatliche Stellen muss das nationale Recht einen Schutz gegen willkürliche Eingriffe in das Individualrecht des Art. 8 EMRK vorsehen. Das Gesetz muss hinreichend bestimmt sein, um dem Einzelnen adäquat die Umstände und Bedingungen zu beschreiben, unter denen staatliche Stellen zu geheimen Überwachungsmaßnahmen greifen dürfen.

2. Art. 13 EMRK garantiert einen nationalen Rechtsbehelf zur Durchsetzung der Substanz der Konventionsrechte und Konventionsfreiheiten. Die Form des Rechtsbehelfs ist den nationalen Rechtsordnungen nicht vorgegeben. Entscheidend ist, dass der Rechtsbehelf den zuständigen nationalen Stellen eine Befassung mit der Substanz der relevanten Konventionsbeschwerde ermöglicht und eine angemessene Abhilfe herbeiführen kann. Eine Inkorporation der EMRK ist hierfür nicht zwingend erforderlich.

3. Der von Art. 13 EMRK gewährte Rechtsschutz wird bei geheimen Überwachungsmethoden im Rahmen der Strafverfolgung nicht bereits dadurch gewährt, dass eine Möglichkeit besteht, im Wege der Abwägung eine Verwertung der durch die Überwachung gewonnenen Beweismittel auszuschließen.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

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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.

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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.

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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. 5

12. The applicant pleaded not guilty. He was convicted and sentenced to ten years' imprisonment. 6

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. 7

II. RELEVANT DOMESTIC LAW AND PRACTICE 8

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. 9

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. 10

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION 11

16. The applicant complained that the interception by the police of messages on his pager violated Article 8 of the Convention, which provides: 12

"1. Everyone has the right to respect for his private and family life, his home and his correspondence. 13

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." 14

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". 15

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. 16

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). 17

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. 18

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION 19

20. The applicant also contended there was no remedy available to him at national level in respect of his Article 8 20

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." 21

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. 22

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. 23

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). 24

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.*). 25

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. 26

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION 27

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FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention; 29

2. *Holds* that there has been a violation of Article 13 of the Convention; 30

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