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Danya Hamad
American University Washington College of Law

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ISSUES OF SURVEILLANCE IN BULGARIA: VIOLATION OF ARTICLE 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS by Danya Hamad*

In recent years, government surveillance has been a hot topic in the Balkan country of Bulgaria.¹ More specifically, there were some concerns by the general population regarding surveillance laws, the act of secret surveillance, and the system of retention and subsequent accessing of data.² In fact, in August 2021, a special parliamentary commission in Bulgaria found that Bulgarian special services eavesdropped on more than 900 Bulgarians during anti-corruption protests between 2020 and 2021.³ Many of those targeted were students, activists, politicians,

* Danya Hamad is an LLM student at American University Washington College of Law from Columbus, Ohio. Danya received her J.D. from Capital University Law School and her M.A. in International Relations from American University School of International Service with a concentration in International Negotiation and Conflict Resolution. She hopes to pursue a meaningful career in human rights and international criminal law.

¹ Court: *Bulgaria's Surveillance Laws Breach Rights Convention*, AP NEWS (Jan. 11, 2022), <https://apnews.com/article/europe-bulgaria-cae4e7f29e1b3d42ac1fd9bc6eb52eba>.

² Georgi Kantchev, *Bulgaria: A Muted Reaction to Mass Surveillance*, INDEX ON CENSORSHIP (Aug. 15, 2013), <https://www.indexoncensorship.org/2013/08/in-bulgaria-a-muted-reaction-to-mass-surveillance/>.

³ Tsvetelia Tsoleva, *Bulgaria's Surveillance Laws Breach European Human Rights Convention-ECHR*, REUTERS (Jan. 11, 2022), <https://www.reuters.com/world/europe/bulgarias-surveillance-laws-breach-european-human-rights-convention-echr-2022-01-11/>.

journalists, and others who spoke out against the corruption of the Bulgarian government.⁴

In *Ekimdzchiev and Others v. Bulgaria*, the European Court of Human Rights (ECtHR) took a further look into the issue of secret government surveillance and determined whether there are any flaws in the legal safeguards and oversight procedures around secret surveillance in relation to Article 8 of the European Convention on Human Rights (ECHR).⁵

Covert government surveillance is legal under Bulgarian law, specifically under the Special Surveillance Means Act of 1997 and Articles 172 through 176 of the Code of Criminal Procedure.⁶ The legislation prescribes the methods of secret surveillance that are permitted, including visual surveillance, covert intrusions, eavesdropping and tapping telephone and electronic communications, and several other methods.⁷ Furthermore, Bulgarian law permits the retention and access of such communication data by authorities for six months.⁸ Additionally, under Bulgarian law, surveillance methods are permitted to be used for matters of national security and as when it is necessary to prevent or detect a serious intentional offense.⁹ A serious intentional offense is one that is punishable by more than five years of imprisonment.¹⁰ Examples of such applicable offenses include murder and terrorism, with drug offenses and racketeering being the most common for which surveillance is invoked.¹¹

⁴ Rebecca Staudenmaier, *Bulgaria's Surveillance Laws Violate European Human Rights Code, Court Rules*, DW (Jan. 11, 2022), <https://www.dw.com/en/bulgarias-surveillance-laws-violate-european-human-rights-code-court-rules/a-60391345>.

⁵ *Ekimdzchiev and Others v. Bulgaria*, App. No. 70078/12, (Jan. 11, 2022), <https://hudoc.echr.coe.int/fre?i=001-214673>.

⁶ *Id.* ¶ 11.

⁷ Special Surveillance Means Act 1997, § 2(3) (Bulg.); Code of Crim. Proc., art. 172 § 1 (Bulg.).

⁸ *Ekimdzchiev*, App. No. 70078/12 at ¶ 286.

⁹ *Id.* ¶ 18.

¹⁰ *Id.*

¹¹ *Id.* ¶ 19.

In the present case, the petitioners are two Bulgarian nationals, Mihail Tiholov Ekimdzhiev and Aleksander Emilov Kashamov, and two non-governmental organizations, the Association for European Integration and Human Rights and the Access to Information Foundation.¹² The petitioners, who are Bulgarian lawyers, have asserted that given the nature of their activities they are at risk of secret surveillance and data retention, Bulgaria is violating their right to respect for private and family life under Article 8 of the ECHR.¹³ Article 8 of the ECHR provides:

(1) Everyone has the right to respect for his private . . . 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 in . . . the interests of national security, . . . for the prevention of disorder or crime . . .¹⁴

More specifically, the petitioners argued that under the current laws of Bulgaria, the communications of anyone within the country could be intercepted, the retained data of anyone could be accessed by authorities, and there were no sufficient safeguards in place to protect against potential arbitrary or abusive data access and secret surveillance.¹⁵

In its decision, the ECtHR found that Bulgaria's surveillance violated Article 8 because it lacked proper judicial oversight and because the lack of clear regulation, such as the process for warrant issuance, could lead to government abuse.¹⁶ Further, the ECtHR found issue with the oversight of the system and did not think that the National Bureau for Control of Special Means of Surveillance could provide effective guarantees against abuse since many of the Bureau's

members were sourced from the security services and did not have proper legal qualifications.¹⁷ Finally, the ECtHR found that Bulgaria's data access and retention process violated Article 8 due to lack of meaningful oversight raised concerns of potential arbitrary or abusive data access, due to there being no duty to examine individual complaints and the rules governing the work were not made available to the public.¹⁸

Therefore, the ECtHR ultimately concluded that the relevant Bulgarian legislation governing secret surveillance and the retention and accessing communications data violated Article 8.¹⁹ Lastly, the ECtHR recognized that an appropriate form of redress would be to make the necessary changes to domestic law to ensure that the domestic laws are compatible with the ECHR.²⁰

This case can signify a change in Bulgaria and the system of secret surveillance, given that the recent election in Bulgaria has created a few shifts within the government.²¹ More specifically, Bulgaria has been ranked as the most corrupt member state of the European Union.²² However, in the recent parliamentary election in Bulgaria—held in November 2021—a new centrist anti-corruption party won the election indicating that the newly formed Bulgarian government will not be tolerant of corruption thus leading to reform in the secret surveillance system in respect to its populations right to privacy.²³ Perhaps the best way to reform the system is to create a clearer and more effective system of regulation and oversight in

¹² *Id.* ¶ 3.

¹³ *Id.* ¶ 10.

¹⁴ Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 222.

¹⁵ *Id.* ¶ 250.

¹⁶ *Ekimdzhiev*, App. No. 70078/12 at ¶ 301.

¹⁷ *Id.* ¶ 281.

¹⁸ *Id.* ¶ 386.

¹⁹ *Id.* ¶ 419.

²⁰ *Id.* ¶ 427.

²¹ Blaga Thavard, *Towards a New Bulgaria or New Deception?*, NEW EASTERN EUR. (Feb. 11, 2022), <https://neweasterneurope.eu/2022/02/11/towards-a-new-bulgaria-or-a-new-deception/>.

²² Tsvetelia Tsoleva, *Bulgaria's Anti-Corruption Chief Resigns as Government Seeks Reforms*, REUTERS (Jan. 17, 2022), <https://www.reuters.com/world/europe/bulgarias-anti-corruption-chief-resigns-government-seeks-reforms-2022-01-17/>.

²³ Veselin Toshkov, *Anti-Corruption Party Wins Bulgarian Elections, Seeks Reforms*, AP NEWS (Nov. 15, 2021), <https://apnews.com/article/european-union-sofia-europe-bulgaria-elections-5708023ef10394f383953ab3f9a18b7c>.

order to prevent the violations of human rights under Article 8 of the Convention.