



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

THIRD SECTION

**CASE OF GLADKIY AND OTHERS v. RUSSIA**

*(Application no. 57143/11)*

JUDGMENT

STRASBOURG

30 September 2021

*This judgment is final but it may be subject to editorial revision.*



**In the case of Gladkiy and Others v. Russia,**

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli, *President*,

Dmitry Dedov,

Peeter Roosma, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 9 September 2021,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 19 August 2011.

2. The applicants were represented by Mr A. Kiryanov, a lawyer practising in Taganrog.

3. The Russian Government (“the Government”) were given notice of the application.

## THE FACTS

4. The list of the applicants and the relevant details of the application are set out in the appended table.

5. On 25 June 2010 the applicants were indicted on the charges of customs violations (smuggling). The criminal proceedings against them were subsequently discontinued.

6. The applicants complained under Articles 8 and 13 of the Convention of the secret surveillance in the context of criminal proceedings against them.

## THE LAW

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

7. The applicants complained that the interception of their telephone conversations in the course of the criminal proceedings against them had violated their right to respect for their private life, home and correspondence. They relied on 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.”

8. The Court reiterates that the measures aimed at interception of telephone communications amounted to an interference with the exercise of the rights set out in Article 8 of the Convention. Such interference will give rise to a breach of the Convention unless it can be shown that it was “in accordance with law”, pursued one or more legitimate aim or aims as defined in the second paragraph and was “necessary in a democratic society” to achieve those aims (see, among other authorities, *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, §§ 120 and 122 *in fine*, 7 November 2017).

9. In the leading cases of *Bykov v. Russia [GC]*, no. 4378/02, 10 March 2009, *Akhlyustin v. Russia*, no. 21200/05, 7 November 2017, *Zubkov and Others*, cited above, *Dudchenko v. Russia*, no. 37717/05, 7 November 2017, *Moskalev v. Russia*, no. 44045/05, 7 November 2017 and *Konstantin Moskalev v. Russia*, no. 59589/10, 7 November 2017, the Court has already found a violation in respect of the issues similar to those in the present case. In particular, in *Dudchenko*, the domestic courts’ failure to verify, when authorising covert surveillance in respect of the applicant, whether there was a “reasonable suspicion” against him and to apply the “necessity in a democratic society” and “proportionality” tests has led the Court to conclude to a violation of the applicant’s right set out in Article 8 of the Convention (see *Dudchenko*, cited above, §§ 97-100).

10. The Court also reiterates that the applicants cannot be reproached for their attempt to bring their grievances to the attention of the domestic courts through the remedies which they mistakenly considered effective in the absence of evidence that they were aware or should have become aware of the futility of their course of action (compare, *Zubkov and Others*, cited, above, § 107 *in fine*).

11. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. There is no evidence that any information or document confirming the suspicion against the applicants was submitted to the courts which authorised interception of the applicants’ telephone conversations. Nor is there any indication that those courts applied the test of “necessity in a democratic society”, and in particular assessed whether the surveillance measures carried out against the applicants were proportionate to any legitimate aim pursued.

12. These complaints are therefore admissible and disclose a breach of Article 8 of the Convention.

## II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

13. The applicants also raised a complaint under Article 13 of the Convention, given the relevant well-established case-law of the Court (see the appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose a violation of the Convention in the light of its well-established case-law (see, among other authorities, *Konstantin Moskalev*, cited above, concerning lack of an effective remedy in respect of the complaints about covert surveillance).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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.”

15. Regard being had to the documents in its possession and to its case-law (see, in particular, *Akhlyustin, Zubkov and Others, Dudchenko, Moskalev*, and *Konstantin Moskalev*, all cited above) the Court considers it reasonable to award the sums indicated in the appended table and dismisses the remainder of the applicants' claims for just satisfaction.

16. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that this application discloses a breach of Article 8 of the Convention concerning the secret surveillance in the context of criminal proceedings;
3. *Holds* that there has been a violation of Article 13 Convention as regards the other complaints raised under well-established case-law of the Court (see the appended table);

4. *Holds*

- (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.’

5. *Dismisses* the remainder of the applicants’ claims for just satisfaction.

Done in English, and notified in writing on 30 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina  
Acting Deputy Registrar

Darian Pavli  
President

GLADKIY AND OTHERS v. RUSSIA JUDGMENT

APPENDIX

Application raising complaints under Article 8 of the Convention  
(secret surveillance in the context of criminal proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Type of secret surveillance	Date of the surveillance authorisation Name of the issuing authority	Specific defects	Other complaints under well- established case- law	Amount awarded for non- pecuniary damage and costs and expenses <sup>1</sup>
57143/11 19/08/2011 (3 applicants)	<b>Yuriy Aleksandrovich GLADKIY</b> 1959  <b>Oleg Mikhaylovich CHUPROV</b> 1970  <b>Oleg Pavlovich KUCHERKOV</b> 1958	Kiryanov Aleksandr Vladimirovich Taganrog	interception of telephone communications	09/02/2010 Rostov Regional Court	the courts did not verify the existence of a "reasonable suspicion" and did not apply the "necessity in a democratic society test"	Art. 13 - lack of any effective remedy in domestic law	EUR 7,500 in respect of non-pecuniary damage to each of the applicant.  EUR 250 in respect of costs and expenses incurred in the proceedings before the Court jointly to all applicants

<sup>1</sup> Plus any tax that may be chargeable to the applicants.