



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

FOURTH SECTION

DECISION

Applications nos. 81993/17 and 81996/17
REPORTERS WITHOUT BORDERS, GERMAN SECTION
against Germany
and Niko HÄRTING against Germany

The European Court of Human Rights (Fourth Section), sitting on 29 September 2026 as a Committee composed of:

Faris Vehabović, *President*,

Anja Seibert-Fohr,

Sebastian Rădulețu, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the applications against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the applicants listed in the appended table (“the applicants”) on 30 November 2017;

the decision to give notice of the applications to the German Government (“the Government”), represented by their Agent, Ms N. Wenzel, of the Federal Ministry of Justice;

the observations submitted by the German Government and the observations in reply submitted by the applicants;

the comments submitted by the Council of Bars and Law Societies of Europe and by the German Federal Bar Association (*Bundesrechtsanwaltskammer*), who were granted leave to intervene by the President of the Section in application no. 81996/17;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applications concern the bulk interception and strategic monitoring of cross-border telecommunications by the Federal Intelligence Service (*Bundesnachrichtendienst* – BND). The applicants complained under Articles 8, 10 and 13 of the Convention.

2. The first applicant is an association defending freedom of the press and the second applicant is a lawyer.

3. The German bulk interception and strategic monitoring regime for cross-border telecommunications (for a general overview of the stages of a bulk interception process, see *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 325, 25 May 2021) has its legal basis in section 5 of the Act on restrictions on the secrecy of mail, post and telecommunications (*Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses* – also known as “the G 10 Act”). Bulk interception of cross-border telecommunications may be conducted upon an application by the BND in order to avert serious dangers faced by the Federal Republic of Germany. The selectors (identifiers relating to a known target or a specific risk area) applied must be suitable to acquire intelligence relating to matters regarding certain enumerated risk areas, such as, for example, international proliferation of weapons of war, internationally organised money laundering, human trafficking and international terrorism.

4. Pursuant to section 6(1) of the G 10 Act, the data collected must be examined without delay and, where they are neither necessary for the purposes set out in section 5 nor required for transmission to another entity, they must be deleted. Such deletion must be logged and these logs must be deleted at the end of the calendar year following the year in which the data were logged.

5. The G 10 Commission is a specialised, non-judicial body supervising the authorisation and implementation of surveillance measures. Section 15(5) of the G 10 Act stipulates as follows:

“The G 10 Commission shall decide of its own motion or on the basis of complaints whether restrictive measures are permissible and necessary. The Commission’s oversight powers shall extend to the full processing of the personal data obtained by virtue of this Act by federal intelligence services, including the decision on notification of data subjects ...”.

6. In the first half of 2013 a total of 12,523 selectors were applied (in the first half of 2012 the total was 14,469) and in the second half of that year the number of selectors was 12,575 (in the second half of 2012 the total was 12,967). On the basis of the selectors applied, a total of 15,401 telecommunications were retained and examined (in 2012 the total was 851,691). In addition to this, 716 sets of traffic data (in 2012 the total was 816) and 66 text messages (in 2012 the total was 36) were collected. Of the collected telecommunications, 118 were qualified as relevant for intelligence purposes (in 2012 the total was 288). The number of intercepted and initially retained telecommunications is unknown.

7. On 5 December 2014 and 30 June 2015 respectively the applicants lodged an application with the Federal Administrative Court, seeking a declaratory judgment to the effect that the BND had violated their right to privacy of telecommunications in the years 2012 and 2013 respectively by

having searched emails on a mass scale as part of strategic monitoring under section 5 of the G 10 Act (see paragraph 3 above). The applicants also requested that their data would not be stored or used any further and that any data sets that might have been retained be deleted.

8. The Federal Administrative Court conducted a hearing in respect of the admissibility of the applications. In two largely identically reasoned judgments of 14 December 2016 (BVerwG 6 A 2.15 and BVerwG 6 A 9.14), the Federal Administrative Court dismissed the applicants' applications as inadmissible because the applicants could not show that they had been victims of an interference with their right to privacy of telecommunications related to the strategic monitoring.

9. The court held that none of the applicants' communications had been qualified as relevant for intelligence purposes and had therefore not been retained by the BND. Furthermore, in the event that any purely national telecommunications, in contrast to cross-border telecommunications, had been intercepted as "by-catch", these were automatically deleted without a technical trace, and the court considered that this did not constitute an interference. With regard to the remaining intercepted telecommunications, it concluded that it could not be ruled out that telecommunications of the applicants had been automatically searched with the help of selectors or manually by analysts. However, the telecommunications would have either not matched the selectors or had initially matched but would have been discarded as irrelevant for intelligence purposes immediately after being examined by an analyst, pursuant to section 6 of the G 10 Act (see paragraph 4 above), or would have been deleted on account of privacy considerations or to safeguard particular protected communications, such as those between lawyers and their clients. The Federal Administrative Court further held that, because the BND had complied with its obligation to delete all unnecessary data without a trace and without delay, it was no longer possible to establish whether such interference had taken place, that is, whether any of the applicants' communications had indeed been intercepted. The obstacles to initiating review proceedings arising on account of the deletion of the data combined with a lack of notification of the subjects were, in the specific circumstances, justified on account of the fact that the interference had been limited, that the intercepted telecommunications had been categorised as irrelevant and deleted without a trace and without delay, that bulk interception had not constituted a targeted surveillance, that notification would have required further investigation to identify the person behind the communication, and that preserving the data for potential court proceedings would have aggravated the initial, limited interference for a vast number of persons, whose data would otherwise have been deleted without delay. For the same reasons, the short retention period for logged data set out in section 6(1) of the G 10 Act (see paragraph 4 above) was reasonable. The court further pointed out that the lack of access to a court was compensated

for by the possibility of complaining about the surveillance and the bulk interception before the G 10 Commission, under section 15 of the G 10 Act (see paragraph 5 above).

10. On 27 February 2017 the applicants lodged constitutional complaints directly challenging the judgments of the Federal Administrative Court and indirectly challenging section 6(1) of the G 10 Act, which stipulates that logged data must be erased at the end of the calendar year following the year when they were logged, as an obstacle to judicial review.

11. The applicants submitted that the Federal Administrative Court had failed to reach a conclusion on whether the applicants had been affected by the bulk interception regime and as a result had not carried out an effective judicial review of the interception. They argued that, in cases where surveillance had occurred in secret, the victim status had to be based on probability and not on certainty. Moreover, the Federal Administrative Court had arbitrarily interpreted the absence of a notification obligation as an intention on the part of the legislature that a judicial review should be ruled out. In addition, they alleged that the court had erred when holding that the analysis of intercepted telecommunications had constituted only a limited interference up to the point when the data was qualified as relevant for intelligence purposes. Lastly, the applicants argued that the short retention period set out in section 6(1) of the G 10 Act was unconstitutional because the retention period would generally have lapsed by the time the type and scope of the monitoring measures became public knowledge following the publication of reports by the Parliamentary Oversight Panel (*Parlamentarisches Kontrollgremium*).

12. On 26 April 2017 the Federal Constitutional Court refused to admit the constitutional complaints for adjudication (1 BvR 458/17 and 1 BvR 456/17). It briefly stated that the applicants had failed to satisfy the substantiation requirements by not sufficiently corroborating that their access to court and the possibility of a judicial review had been affected by the short retention period for logged data (see paragraphs 4 and 11 above). The court did not provide further reasons.

13. The applicants complained under Article 8 of the Convention, and the first applicant in addition under Article 10 of the Convention, of an excessive interception of emails by the BND in 2013 and 2012 respectively, arguing that it was likely that, in view of their activities, emails sent by them had been intercepted and read. Both applicants further complained that they had not had an effective remedy for the purposes of Article 13 of the Convention by which to complain of a breach of their Convention right(s) by the surveillance measures in question.

THE COURT'S ASSESSMENT

14. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

A. Alleged violation of Article 8 of the Convention

15. The Court observes at the outset that the applicants complained in the proceedings before the Federal Administrative Court about the bulk interception and strategic monitoring by the BND specifically in the years 2012 and 2013 respectively, but not about bulk interception by the BND as such.

16. In reply to the Government's non-exhaustion objection the Court will assess whether the applicants exhausted the remedy of a constitutional complaint, which is considered effective (see *Marchitan v. Germany* (dec.), no. 22448/07, 19 January 2010), in compliance with the formal requirements laid down in domestic law. The relevant general principles in this respect have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-72, 25 March 2014, with further references). In the context of bulk interception, the Court has also emphasised that it is not open to the Court to examine new legislation before the domestic courts have first had the opportunity to do so (compare *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 270, 25 May 2021).

17. While the Court notes that the applicants lodged constitutional complaints, it also observes that in those complaints (see paragraph 11 above), they directly challenged the judgment of the Federal Administrative Court, indirectly challenged the provision in section 6(1) of the G 10 Act (see paragraph 4 above) and made very specific arguments why the Federal Administrative Court and section 6(1) of the G 10 Act had impeded their access to a court with a view of obtaining a judicial review of the bulk interception. The applicants challenged neither section 5 of the G 10 Act (see paragraph 3 above) nor the bulk interception and strategic monitoring regime as such before the Federal Constitutional Court. The Court also observes that the applicants did not explain in their application to the Court why their constitutional complaints were limited to the lack of access to judicial review proceedings, why they did not challenge the bulk interception regime as such before the Federal Constitutional Court and why they extended their complaints before the Court to the bulk interception regime (in the years 2012 and 2013 respectively).

18. In the light of the above and, in particular, of the specific and limited complaints before the Federal Constitutional Court, the Court considers that the applicants have not exhausted domestic remedies concerning their complaints under Article 8 of the Convention in so far as those complaints go

beyond the alleged lack of judicial review proceedings against the bulk interception in 2012 and 2013 respectively. Accordingly, these parts of the applicants' complaint under Article 8 of the Convention must be rejected under Article 35 §§ 1 and 4 of the Convention.

19. In so far as the alleged lack of judicial review proceedings against the bulk interception in 2012 and 2013 respectively is concerned, the Government argued that the applicants have failed to sufficiently substantiate their claim in their constitutional complaints and thus failed to exhaust domestic remedies. The Court considers that in the present case it can leave this question unanswered since this part of the applicants' complaint is inadmissible for other reasons.

20. At the outset, the Court notes that the Federal Administrative Court examined the applicants' complaints in detail and held a public hearing concerning the admissibility of the applicants' applications (see paragraph 8 above). In its reasoned judgments, the court held that none of the applicants' data had been qualified as relevant for intelligence purposes and, therefore, retained by the BND (see paragraph 9 above). The Court therefore considers that the applicants had access to a judicial review in so far as the last stage of the bulk interception process was concerned (see *Big Brother Watch and Others*, cited above, § 325), specifically the subsequent retention of data and use of the "final product". It also notes that through the proceedings, the applicants obtained certainty that their data had not been retained.

21. Regarding the preceding stages of the bulk interception process – interception and initial retention, application of specific selectors and examination by analysts – the applicants' application was declared inadmissible by the Federal Administrative Court for lack of victim status.

22. The Court reiterates that in previous cases, in which applicants had had no knowledge whether their data had been intercepted and retained or not, it held that an effective remedy, which did not necessarily depend on notification to the interception subject, should have been available to anyone who suspected that his or her communications had been intercepted by the intelligence services, either to challenge the lawfulness of the suspected interception or the Convention compliance of the interception regime (see *ibid.*, §§ 357-58, and *Centrum för rättvisa v. Sweden* [GC], no. 35252/08, §§ 271-72, 25 May 2021, with further references). However, such a remedy did not necessarily have to be before a judicial body, as long as the body was independent of the executive branch and ensured the fairness of the proceedings, offering, in so far as possible, an adversarial process. The Court further held that the decisions of such authority had to be reasoned and legally binding with regard to, *inter alia*, the cessation of unlawful interception and the destruction of unlawfully obtained and/or stored intercepted material (see *Big Brother Watch and Others*, cited above, § 359, and *Centrum för rättvisa*, cited above, § 273).

23. The Court therefore concludes that a judicial *ex post* review is not required for secret bulk interception regimes, such as the one indicated in section 5 of the G 10 Act (see paragraph 3 above). In the present case, and as stated by the Federal Administrative Court (see paragraph 9 above), the applicants had at their disposal a non-judicial review procedure before the G 10 Commission, which they did, however, not avail themselves to.

24. Accordingly, the applicants' complaint under Article 8 of the Convention concerning a lack of judicial review proceedings against the bulk interception regime is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Articles 10 and 13 of the Convention

25. Both applicants also complained under Article 13 of the Convention and the first applicant raised additional complaints under Article 10 of the Convention (see paragraph 13 above).

26. Having regard to its considerations and findings regarding the applicants' complaint under Article 8 of the Convention (see paragraphs 15 - 24 above) the Court considers that the applicants' complaints under Articles 10 and 13 of the Convention must be likewise rejected as inadmissible in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 22 October 2026.

Simeon Petrovski
Deputy Registrar

Faris Vehabović
President

REPORTERS WITHOUT BORDERS, GERMAN SECTION v. GERMANY
AND HÄRTING v. GERMANY DECISION

APPENDIX

List of cases:

No.	Application no.	Case name	Applicant Place of Residence	Represented by
1.	81993/17	Reporters Without Borders, German Section v. Germany	REPORTERS WITHOUT BORDERS, GERMAN SECTION Berlin	Christof ELSSNER
2.	81996/17	Härting v. Germany	Niko HÄRTING Berlin	Christof ELSSNER