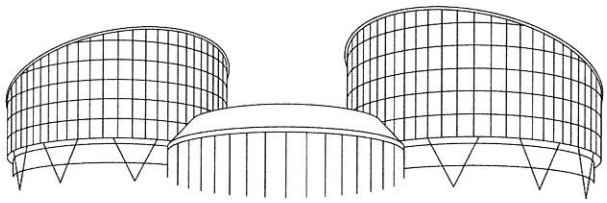

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

Application no. 35252/08
by CENTRUM FÖR RÄTTVISA
against Sweden
lodged on 14 July 2008

STATEMENT OF FACTS

THE FACTS

The applicant, Centrum För Rättvisa, is a Swedish non-profit public interest law firm which was established in 2002 and which has its seat in Stockholm. It is represented before the Court by Mr C. Crafoord and Mr G. Strömmer, two lawyers practising in Stockholm.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may for the purpose of the present communication be summarised as follows.

The Swedish National Defence Radio Establishment (*Försvarets radioanstalt*, hereinafter "FRA") is a civil government agency conducting signals intelligence by order of other Swedish government agencies and the Swedish government itself. At the time of the lodging of the application in July 2008, legally unregulated intelligence work was conducted by FRA on wireless communications. On 1 January 2009, a package of laws (jointly referred to as *FRA-lagen*, hereinafter "the FRA Act") entered into force, authorising FRA to conduct signals intelligence on wireless and wired communications. The act was subsequently amended in several parts and the amendments entered into force on 1 December 2009.

The applicant firm's allegations concerning Swedish state practice and legislation on secret surveillance measures concern the following three time periods:

a) from the establishment of the applicant firm in 2002 to the entry into force of the FRA Act on 1 January 2009,
b) from 1 January 2009 to the entry into force of the amended FRA Act on 1 December 2009 and
b) from the entry into force of the amended FRA Act on 1 December 2009 and onwards.

COMPLAINTS

The applicant firm complains that Swedish state practice and legislation concerning secret surveillance measures have violated and continue to violate its rights under Article 8 of the Convention. It also complains that it has had no effective domestic remedy through which to challenge this violation.

Concerning the first of the abovementioned time periods, FRA allegedly conducted unregulated signal intelligence on wire communications, which raises an issue under Article 8. With regard to the remaining two time periods, the issue raised is that the signal intelligence conducted under the FRA Act is not "in accordance with law" or "necessary in a democratic society" within the meaning of Article 8. During all three time periods, moreover, the applicant firm claims not to have had any effective domestic remedy through which it could challenge the breach of its rights. Thus, its rights under Article 13 have been and continue to be violated.

The applicant firm outlines several aspects of the FRA Act and its incompatibility with the Convention. It acknowledges that several improvements to the act have been made in the above-mentioned amendments, but holds that these are insufficient. The applicant firm points out, *inter alia*, that in its case-law on secret measures of surveillance, the Court has developed certain minimum standards that should be set out in statute law in order to avoid abuses of power: the nature of the offences which may give rise to an interception order; a definition of the categories of people liable to have their communications intercepted; a limit on the duration of interception; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which the data may or must be erased or destroyed. According to the applicant, the FRA Act, both in its original and its amended version, includes only one of these safeguards, being the limit on the duration of an interception. As to the issue of domestic remedies, the applicant alleges, *inter alia*, that certain supervisory powers by the Swedish Standing Committee of the Constitution (*Konstitutionsutskottet*), Parliamentary Ombudsperson (*JO*), Chancellor of Justice (*JK*), Data Inspection Board (*Datainspektionen*) and State Inspection of Defence Intelligence (*SIUN*, *Statens Inspektion för Försvars-underrättelseverksamheten*) are not sufficient to constitute effective remedies on a national level. It refers to, *inter alia*, case law in which the Court has ruled that certain remedies made available by the Swedish Parliamentary Ombudsperson, Chancellor of Justice, Records Board (*Registernämnden*) and Data Inspection Board cannot, whether considered

on their own or in the aggregate, be said to satisfy the requirements of Article 13.

Concerning its victim status, the applicant firm refers to the Court's case law and argues that the mere existence of legislation which allows a system for the secret monitoring of communications entails a risk of surveillance for all those to whom the legislation may be applied, irrespective of any measures actually taken. Moreover, it points out that the mere risk that a law could be applied to an applicant is sufficient for him to hold victim status under the Convention. According to the applicant firm, the same reasoning is to be applied to unregulated state practice. Regarding the first time period, it argues that as the signals intelligence conducted by FRA was not regulated, it is impossible to know the likelihood of the communications of the applicant firm having been intercepted. However, as the applicant firm communicates daily both nationally and internationally through, *inter alia*, mobile telephony, it has at least been subject to the risk of interception. As to the subsequent two time periods, it argues that the FRA Act authorises FRA to have access to all cross-border communications and that it thus directly affects all users of such communications, including the applicant. It points out that it maintains daily cross-border telephone and e-mail communications with, *inter alia*, foreign clients and organisations as well as international institutions such as the Court. The applicant firm adds that there is a risk that clients and other organisations will end their cooperation with the applicant firm due to the risk of surveillance of their communications. The applicant firm further argues that its victim status should be seen in the light of its special role as a public interest firm. It points out that it represents exposed individuals who often reveal personal information in e-mails and telephone calls to the firm. Their counterpart is, in most cases, the state and the issues involved are often controversial. Moreover, the applicant firm points out, it works to influence public opinion and expresses criticism of state authorities such as the FRA. The work of the firm in this regard is communicated to national and international media. It is a known fact, the applicant alleges, that persons and organisations that have a role in influencing public opinion, such as by political views, run a higher risk of being subject to surveillance by the state.

QUESTION TO THE PARTIES

Can the applicant firm claim to be a victim of a violation occasioned by the mere existence of Swedish state practice and legislation concerning secret surveillance measures within the meaning of Article 34 of the Convention? In particular, in each of the three time periods specified by the applicant firm, what remedies concerning secret surveillance measures were/are available to the public at the national level and what was/is the risk of such measures being applied to the applicant (see the recent authority *Kennedy v. the United Kingdom*, no. 26839/05, § 124, 18 May 2010)?