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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Action plan

Case of *Centrum för Rättvisa. v. Sweden* (Application 35252/08), Judgment of 25 May 2021, final on 25 May 2021

Case summary

The case concerns the proportionality and safeguards of the Swedish legislation regulating signals intelligence and the Court found that there had been a violation of Article 8 of the Convention.

The Court found, in particular, that although the main features of the Swedish signals intelligence regime met the Convention requirements on quality of law, the regime nevertheless suffered from three shortcomings: the absence of a clear rule on destroying intercepted material which did not contain personal data; the absence of a requirement in the Signals Intelligence Act or other relevant legislation that, when deciding to transmit intelligence material to foreign partners, consideration was given to the privacy interests of individuals; and the absence of an effective *ex post facto* review. With regard to the latter, the Court also highlighted the structural nature of the problem (§§ 359–360).

Individual measures

The just satisfaction awarded (EUR 52 625) was paid to the applicant on 7 July 2021 (costs and expenses) by bank transfer. Evidence is supplied.

As the legal costs have been paid to the applicant, the Government considers that the violation has been remedied and that no further individual measures need to be taken.

General measures

On 9 September 2021, in a government bill entitled *Behandling av personuppgifter vid Försvarsmakten och Försvarets radioanstalt* ('Personal Data Processing at the Swedish Armed Forces and the National Defence Radio Establishment', Govt Bill 2020/21:224), the Government proposed a new Act on Personal Data Processing at the National Defence Radio Establishment.

Under the Government's proposal, the new act will contain provisions imposing a requirement for the National Defence Radio Establishment, before deciding to transmit intelligence material to foreign partners, to analyse and assess whether a foreign data recipient provides sufficient protection for that data. The shortcomings identified by the Court concerning the legislation of the transmission of intelligence of material to foreign partners, will thus partly be remedied through the proposed provision (§ 326–330).

Under the proposed provision, the National Defence Radio Establishment may only transfer personal data to another country or to an international organisation if this is necessary in order for the National Defence Radio Establishment to perform its duties within the framework of international foreign intelligence and security cooperation and:

1. the transfer is directed to a foreign intelligence or security organisation or to an intelligence or security body of an international organisation;
2. secrecy does not prevent a transfer; and
3. the recipient guarantees sufficient protection for the personal data.

All three criteria must be met for a personal data transfer to be permitted.

The third point requires that a certain level of protection is in place for it to be permissible to transfer personal data to another country or to an international organisation. The government bill on which the provision is based makes it clear that the National Defence Radio Establishment must assess all circumstances surrounding the transfer and conclude that the protective measures are sufficient. If a receiving state is a party to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data or another international agreement containing provisions on data protection and data subjects' rights, appropriate protective measures can generally be considered to be in place. Whether the data processor in the other country or in the international organisation has a duty of confidentiality that encompasses the transferred data, and whether there is a guarantee that the personal data will not be used for any purpose other than that for which it was transferred are other factors that can be taken into account. The same applies to commitments by the recipient not to transfer the personal data elsewhere, or not to use the personal data after a specific date or to destroy it (Govt Bill 2020/21:224, p. 224).

The proposed provision can be found in the *appendix*.

It is proposed that the new act replaces the 2007 Act on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment. Under the Government's proposal, the new act will enter into force on 1 January 2022. The proposed new act was approved by the Riksdag on 24 November 2021.

On 14 October 2020, in the government bill *Totalförsvaret 2021–2025* ('Total defence 2021–2025'), the Government announced that during the period 2021–2025, an inquiry should be tasked with reviewing the 2008 Signals Intelligence Act (Govt Bill 2020/21:30, p. 155).

In Government Bill 2020/21:224, the Government made it clear that the previously announced review of the 2008 Signals Intelligence Act should include the need for additional measures as a result of the Court's judgment (Govt Bill 2020/21:224, pp. 157–158.)

Publication and dissemination

The judgment in English and a summary in Swedish have been published on the Government's website: [Målet Centrum för rättvisa mot Sverige i Europadomstolen - Regeringen.se](#). The Government has distributed a report containing a summary of the judgment in Swedish, with a copy of the judgment attached, to the relevant authorities, *inter alia*, the National Defence Radio Establishment, the Foreign Intelligence Inspectorate, the Foreign Intelligence Court, the Parliamentary Ombudsmen, the Chancellor of Justice and the Swedish Bar Association.

The Government's conclusions

The Government will submit updated information in its next Action Plan to the Committee of Ministers, i.e. by 25 May 2022.

Appendix

Chapter 2

Transfer of personal data to a recipient abroad

Section 20

Personal data processed pursuant to this Act may only be transferred to another country or to an international organisation if this is necessary in order for the National Defence Radio Establishment to perform its duties within the framework of international foreign intelligence and security cooperation and:

1. the transfer is directed to a foreign intelligence or security organisation or to an intelligence or security body of an international organisation;
2. secrecy does not prevent a transfer; and
3. the recipient guarantees sufficient protection for the personal data.

The Government may, pursuant to Chapter 8, Article 7 of the Instrument of Government, issue regulations whereby transfers may also take place in cases other than those specified in Section 1, point 1.

The Government may also decide on such transfer in an individual case.