

# European Court of Human Rights: secret surveillance in Poland violates citizens' privacy rights

**28 May, 2024:** According to the precedent judgment announced today by the European Court of Human Rights, the operational-control regime, the retention of communications data, and the secret-surveillance regime under the Anti-Terrorism Act in Poland violate the right to privacy. The activists from Poland's Panoptykon Foundation and the Helsinki Foundation for Human Rights, and the human rights lawyer who filed the application, expect the government to change the respective legislation without further delay.

The judgment comes as a result of an application filed in 2017 by Wojciech Klicki and Katarzyna Szymielewicz (Panoptykon Foundation), Dominika Bychawska-Siniarska and Barbara Grabowska-Moroz (Helsinki Foundation of Human Rights), and advocate Mikołaj Pietrzak.

In their applications, they argued that the oversight of the Polish secret services' activities is illusionary and violates their rights as active citizens. Today's judgement goes further: the lack of effective oversight affects all citizens, irrespective of their occupation.

## What has to change?

"Today's judgment clearly indicates the need to reform Polish regulations in the scope of surveillance. Especially the operational-control regime, the communication data regime, and the secret-surveillance regime under the Anti-Terrorism Act need to be changed. This is the only way to guarantee that the right to privacy will be respected" – said attorney Małgorzata Mączka-Pacholak, who represented the applicants. "The Court indicated that the application of existing national legislation also leads to the violation of privacy. So, both the law and the practice must be changed, also in relation to the lawyers' professional privilege" – she emphasises.

The applicants call for immediate reaction from the Polish government. "We have advocated for scrutiny over secret services for years now. The current government coalition obliged themselves to introduce such reform. The judgment indicates clearly what needs to be amended. We expect the government to present their action plan" – said Wojciech Klicki of Panoptykon Foundation.

## The extent of surveillance in Poland

In 2022 the Police applied 9,781 wiretaps but only 13 percent of cases (1,308) brought evidence for further penal proceedings. The remaining cases were sent to the Police archives and the people subject to surveillance remain unaware and cannot question the fact they were targeted.

The Tribunal indicated that the judiciary control in Poland is ineffective. The court only knows what the agency applying for authorisation of surveillance decides to reveal to the court. A “yes” is just a formality. A “no” – requires a written justification and is subject to appeal by the state agency. This mechanism creates a strong incentive for courts to rubber stamp motions filed by the police or other state agencies to allow surveillance. As a result the courts authorise as much as 99 percent of motions for wiretapping.

Also, wiretapping is just one, rather exceptional means of surveillance. Other means, like access of law enforcement to telecommunication metadata (billings, localisation), remain outside any form of external oversight. The court requires in its judgement that this be addressed by the state in its legislation.

\*\*\*

Case Pietrzak and Bychawska-Siniarska and Others v. Poland (applications nos. 72038/17 and 25237/18)

[Judgment \[FR\]](#)

[Press release \[EN\]](#)