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Hungary, European Court of Human Rights, Hüttl v. Hungary no. 58032/16, 29 September 2022

Member State

Hungary

Topic

rule of law

Sector

Predictive Justice

Deciding Court Original Language

European Court of Human Rights

Deciding Court English translation

European Court of Human Rights

Registration N

Application no. 58032/16

Date Decision

29 September 2022

ECLI (if available)

ECLI:CE:ECHR:2022:0929JUD005803216

National Follow Up Of (when relevant)

NO

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

Article 8 of the Europen Convention on Human Rights

Szabó and Vissy v. Hungary, no. 37138/14, 12 January 2016; Leja v. Latvia, no. 71072/01, § 46, 14 June 2011

Subject Matter

The applicant, a human rights lawyer alleged that he had been tapped during a phone call with a Member of the European Parliament in 2015. After his complaint to the relevant ministries had been dismissed, he turned to the National Security Committee of the Parliament which did not launch any investigation. The applicant filed a complaint to the ECtHR under Article 8 of the Europen Convention on Human Rights.

Legal issue(s)

secret surveillance, national security surveillance, lack of adequate and effective safeguards, the right to respect for private and family life

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Request for expedited/PPU procedures

NO

Interim Relief

NO

National Law Sources

Act of CXXV of 1995 on National Security Services (National Security Act), Act CXII of 2011 on the right to informational self-determination and on the freedom of information (Data Protection Act)

Facts of the case

The applicant is a practising lawyer, working also for a Hungarian human rights NGO. In 2015, when having a phone conversation with a Member of the European Parliament, the call was interrupted. Subsequently, the MEP heard back fragments of their conversation. The MEP made a post on this issue on social media. The applicant first filed a complaint to the 3 competent ministries based on the 1995 National Security Act. His complaint was dismissed on the grounds that he was not subjected to unlawful secret surveillance. Then the applicant submitted a complaint to the Parliament's National Security Committee which failed to open any investigations. The applicant argued before the ECtHR that he was potentially subjected to secret surveillance and there were no remedial measures available, violating his right to respect for private and family life.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

First, as a preliminary objection, the government argued for the complaint to be declared inadmissible on the grounds that the available domestic remedies were not exhausted as criminal proceedings or investigations by the Data Protection Authority (DPA) could have been instituted by the applicant. The applicant argued that initiating criminal proceedings for illicit access to data or illegal covert information gathering was unsuitable to remedy his essential grievance. At the same

time, the DPA investigation could have the same objectives as those proceedings he used. The ECtHR held that applicants are entitled to choose the remedy they think is suitable for addressing the grievances they allegedly suffered. So, exhausting a remedy having the same objective as the one previously had been pursued is not required. The government's preliminary objections were therefore dismissed.
Second, the ECtHR cited the Szabó and Vissy case and upheld the general principles of this judgment (see Impact on Legislation/Policy). It explicitly cited para 89 of this judgment which held that secret surveillance for national security purposes under the Hungarian legislation could potentially include anyone, the decision was within the realm of the executive and no assessment of strict necessity was required. Therefore, the government could easily gather masses of data concerning anyone, outside of the original scope of the operations. As no effective remedies, let alone judicial ones were provided it led to a violation of Article 8 of the Convention.
Thirdly, the Hungarian government suggested the departure from the ECtHR's findings in Szabó and Vissy due to the availability of the DPA investigation, so the ECtHR examined the adequacy of this remedy. The question was whether the DPA enquiry could constitute an additional safeguard making the Hungarian legislation "sufficiently precise, effective and comprehensive on the ordering, execution and potential redressing of such measures". The ECtHR observed that the Data Protection Authority could conduct inquiries regarding data processing operations in the field of law enforcement, national security and defence sectors. However, its power to access the relevant data is limited by the statutory exemption of certain data categories. Regarding these data, the DPA could only rely on the information obtained by the ministries after conducting its own enquiries, and no external, independent supervision is provided regarding these data categories. Hence, the DPA must rely solely on the opinion of the minister who may have a direct interest in maintaining the secrecy of the data concerned. The ECtHR relied also on the DPA 2019 Annual Report which raised constitutional concerns about the limits of its powers to access data, essentially precluding the DPA from directly accessing the data for some data categories. As a result, the ECtHR upheld the findings of the Szabó and Vissy judgment and found a violation of Article 8 in the Hüttl case.

Relation of the case to the EU Charter

No

Relation between the EU Charter and ECHR

No

Use of Judicial Interaction technique(s)

No

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

No

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

No

Strategic use of judicial interaction technique (purpose aimed by the national court)

No

Impact on Legislation / Policy

1. In the Szabó and Vissy v. Hungary case, the applicants, working at that time for a Hungarian non-governmental ""watchdog"" organisation critical of the government, argued that they could potentially be subjected to intrusive measures, namely secret surveillance within the framework of intelligence gathering for national security, which is not subject to judicial control. They claimed that the Anti-Terrorism Task Force (TEK) established in 2011 within the police force to combat terrorism, had sweeping prerogatives to pursue investigations such as secret house searches, checking and monitoring postal mail and electronic communications. The laws did not determine any particular rules on the circumstances in which this measure could be ordered. Also, the Justice Minister was in charge of authorizing secret surveillance, and the laws imposed no specific obligation on the authorities to destroy any irrelevant intelligence obtained. The applicants complained about the violation of Articles 6, 8 and 13 of the Convention.
They first challenged the relevant laws before the Hungarian Constitutional Court for the violation of their right to privacy. However, the HCC, in Decision No. 32/2013. (XI. 22.), dismissed the majority of their claims on the grounds that external control of such surveillance was provided by the Parliament's National Security Committee and the Commissioner For Fundamental Rights (""Ombudsman""), sufficient to ensure the right to privacy. The HCC set out as a ""constitutional requirement"" that for the external control to be effective, the justice minister is obliged to give reasons for its decision authorizing secret surveillance.
The applicants turned to the ECtHR. They challenged the relevant legislation in general, and not any specific interception activity, so the ECtHR examined the legislation itself and the safeguards built into the system of secret surveillance. The ECtHR first noted that, according to its case law, national legislation should provide adequate and effective guarantees against the abuse of state power when secret surveillance measures are taken. Regarding the Hungarian legal framework, it held that by safeguarding national security, the relevant legislation pursued a legitimate aim, so the question was whether the interference was necessary in a democratic society which, in this particular case, involved also the assessment of the interference being in accordance with the law. The applicant complained that the Hungarian legislation was insufficiently clear and failed to meet the foreseeability test. The ECtHR argued that according to the rules under scrutiny, virtually any person could potentially be subjected to secret surveillance, allowing unlimited surveillance of a large number of citizens.
The ECtHR reiterated that in cases of surveillance, the abuse is potentially easy in individual cases and can have harmful consequences to the democratic society, so control by an independent body, normally a judge, should be the general rule. All the other solutions should be the exception and require close scrutiny. The ECtHR, in the Klass and Others case, found a combination of oversight mechanisms shorn of judicial oversight lawful, but in this case, the initial control was provided by an official qualified for judicial office. However, in the Hungarian case, the available monitoring mechanisms were insufficient for the following reasons. (1) Secret surveillance under Hungarian laws is authorized by the Justice Minister which constitutes an eminently political supervision, failing to safeguard the assessment of strict necessity regarding persons and the premises concerned by the interception activity. (2) The Minister should present a general report at least twice a year to the Parliament's National Security Committee, but this procedure lacks sufficient public scrutiny and does not seem to provide redress to individual grievances. (3) The complaint to the Minister of Home Affairs seems to have little relevance as individuals subjected to secret surveillance are not notified of the application of such measures,

and the Minister does not seem sufficiently independent either. (4) Supervision by the Commissioner for Fundamental Rights seems also inadequate. Overall, the ECtHR found a violation of Article 8 of the Convention.
2. In late 2024, more than 8 years after the delivery of the ECtHR judgment in the Szabó and Vissy v. Hungary case, the Hungarian government has yet failed to comply with the findings of the ECtHR and bring the domestic legislation in line with the Convention requirements. The relevant laws have not changed and lack adequate and effective safeguards against abuse of powers when national security surveillance is pursued.

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Connected national caselaw / templates

N/A

(Link to) full text

https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219501%22]}

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