

Ms. Irene Khan
UN Special Rapporteur on the promotion and protection
of the right to freedom of opinion and expression

Subject: Pegasus spyware use in Hungary

Dear Special Rapporteur Khan,

As you are aware and included in your recent report on Hungary, the Hungarian government used Israeli spyware called Pegasus to surveill hundreds of individuals, including journalists. The Hungarian Civil Liberties Union provides legal assistance to those who were admittedly or potentially spied on by the Hungarian government. In the following letter, we wish to inform you about the facts and subsequent legal procedures.

1. Facts

As reports surfaced about the use of the Pegasus spyware in 2021¹, Hungarian journalists realized that they - and many others - were surveilled by their own government. It has long been known that the Hungarian secret services have almost unlimited powers to monitor citizens. The collection of data is not subject to strict conditions and is authorised not by an independent body, but by the Minister of Justice, who is obviously committed to the members of the government who may initiate the surveillance on political grounds. As in Hungary, within the broad category of journalists it was specifically investigative journalists who have been targeted by Pegasus, political intentions serve as a probable explanation of the selection criteria, namely, journalists who had a role in unveiling state corruption found themselves in the crosshairs.

In the Pegasus case, fears have not turned out to be unfounded: the phones of Hungarian citizens were hacked without any conceivable valid national security reason. Several journalists, activists, lawyers and business people found out that their phones were infected with Pegasus. First, the Hungarian government denied any association with the spyware, but later admitted its use, while emphasizing that any surveillance that happened was in accordance with Hungarian law. As the Hungarian legislation is extremely permissive when it comes to state surveillance of individuals, this may not have been untrue. However, the Hungarian legislation has been found in violation of the European Convention on Human Rights years ago,² but has never been amended to meet international human rights standards of privacy and free speech rights.

¹<https://www.theguardian.com/news/2021/sep/21/hungary-journalist-daniel-nemeth-phones-infected-with-nso-pegasus-spyware>

² Szabó and Vissy v. Hungary, application no. 37138/14

2. Violation of freedom of expression and freedom of the press

The possibility of unlimited surveillance has far-reaching consequences.

The fear of being observed encourages people to practice self-censorship in their private and public lives. Data gained by means of surveillance may make blackmail material or provide legal grounds for future SLAPP-procedures initiated with the intention to paralyse media outlets less significant in size. Basic institutions of the rule of law are also violated, such as freedom of the press when journalists cannot protect their sources. These institutions are intended to counterbalance the overbearing power of the state, but their proper functioning is made impossible by surveillance. Nor can a fair election be held if those in power can see their opponents' strategies and discourage their supporters by allowing surveillance. To feel that anyone can be watched is to paralyse critical citizen action.

3. Legal procedures

The Hungarian Civil Liberties Union launched several national legal procedures to reveal the human rights violations that stem from the use of the Pegasus spyware. However, as the Hungarian law is very permissive with the state when it comes to the lawfulness of surveillance, we expect limited remedy from the Hungarian procedures. The detailed description of these procedures is available on our website: <https://hclu.hu/en/pegasus-whats-new>

As there are several international aspects to the abuses—the spyware was produced by an Israeli company and an EU citizen living in Hungary was targeted with it—we are also launching international proceedings.

INVESTIGATION BY THE ATTORNEY GENERAL OF ISRAEL

Because of the difficulties of Hungarian law enforcement, it was vital to ensure that not only the Hungarian authorities were to act in investigating the abuses. This is why we contacted Israeli human rights lawyer Eitay Mack, who has been fighting Israeli arms exports to autocracies for more than a decade. With his help, we were able to file a complaint with the Israeli Attorney General on behalf of three of our clients. We asked him to investigate whether a criminal offence had been committed when the NSO Group obtained a state export licence for Pegasus knowing that such a spy weapon could be more easily misused by the government in Hungary than in other countries.

MASS LITIGATION BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS (ECTHR)

The ECtHR already ruled in 2016, in the case Szabó and Vissy v Hungary, that the authorisation procedure for secret surveillance is unlawful. According to the court it is unclear under what conditions this tool can be used; the authorisation is granted by the Minister of Justice, not by a body independent of the government; and the conduct of the surveillance is not controlled by an independent body. In the more than six years since then, the government has amended the National Security Act nearly 20 times (!), but none of those amendments remedied the shortcomings. The government argues to the Council of Europe that the analysis required for the amendments is time-consuming. The unsustainability of the government's position was also explained in our letter³ to the Council of Europe's Committee of Ministers.

Anyone can claim before the ECtHR that their fundamental rights are being violated simply because of poorly regulated surveillance powers of secret services in their country. A finding of a violation is not automatic: the applicant must allege a likelihood of being subjected to surveillance. Since it is impossible to obtain direct evidence of this, they can do so by showing that there are inadequate safeguards over surveillance in the country concerned and that they have a high-risk status for surveillance. This is true in the case of journalists, civil society workers or anyone else who might fear that if confronted by their government, it might try to take action against them by illegal means. Ultimately, the Court will consider each case on its own merits, taking into account the applicant's status and the national security arrangements in the country concerned, to determine whether the applicant's fear of surveillance is well founded.

In the case of Hungary, the ECtHR has already ruled that there are inadequate safeguards when it comes to surveillance; meanwhile, the situation of civil society and the independent press has deteriorated, as the government openly treats them as a national security risk. As an example, in 2016/17, three senior government politicians, including the Prime Minister, argued that NGOs labelled as members of the “Soros network” should be dealt with by the secret services. It is also worth remembering that in 2020, the Ministry of Foreign Affairs ordered reports from Hungarian embassies in the European Union on journalists visiting those countries for training in order to counter “attempts to interfere” by the “Soros organisations”. Since then, quite a few journalists have indeed been found to have been attacked by Pegasus software—although not members of the civil society (yet).

In this environment, all Hungarian CSOs and the independent journalistic sector can justifiably claim that the government could use secret service tools against them. We have therefore launched a mass action before the ECtHR with human rights lawyer Balázs Tóth on behalf of the journalists and civil society workers concerned.

³ [https://hudoc.exec.coe.int/ENG#{%22EXECIdentifier%22:\[%22DH-DD\(2022\)157E%22\]}](https://hudoc.exec.coe.int/ENG#{%22EXECIdentifier%22:[%22DH-DD(2022)157E%22]})

Based on these facts and information, we kindly ask you to consider taking the steps that are available under your mandate to enforce freedom of expression and freedom of the press in Hungary. In case further clarification is needed, please do not hesitate to contact us.

Budapest, July 27, 2022

Sincerely yours,



Stefánia Kapronczay
executive director, HCLU