

The lack of independent control over secret state surveillance

– the use of Pegasus in Hungary

1. Introduction

In 2021, an international investigative journalism project¹ revealed that the Hungarian government had used the Pegasus spyware to hack the phones of journalists, lawyers, businessmen, activists, and opposition politicians—persons whose activities are politically sensitive for the government.² The scandal highlighted the serious problem that human rights advocates had been aware of for a long time: **the current Hungarian legislation on secret state surveillance is prone to misuse and lacks proper checks and balances that can protect citizens from unlawful surveillance.** While the use of secret surveillance as a method to undermine the activities of individuals who act as checks and balances on the government is unacceptable in democratic societies, in Hungary, it is just one of many alarming traits of the regime: **it is intertwined with the erosion of democracy, the rule of law, human rights, and the free press.**

The use of national security services as a means of systemic oppression and undermining democracy is a question of the rule of law, and not one of national security. It does not, therefore, fall under the national security competencies of member states, and EU institutions, have the competence to investigate such cases.

2. Legal background and fundamental rights concerned

The Hungarian government has almost unlimited powers to secretly monitor individuals without any independent oversight, for the following main reasons.

- a. **Surveillance operations lack judicial oversight at their outset, during the course of the operations, and after they have ended.**
- b. Any secret surveillance for national security purposes can be authorised by the Minister of Justice and **may be renewed for an indefinite period of time.**
- c. **The grounds for ordering secret surveillance are broad:** it may be ordered if the data necessary for the performance of national security services' tasks specified in the National Security Act cannot be obtained by other means.³
- d. No effective legal remedies exist for persons concerned.
- e. **Judges do not have the jurisdiction to declassify unlawfully classified data.**
- f. No protections exist for certain privileged professions, e.g. journalists or attorneys.

These deficiencies lead to systemic violations of a very diverse group of rights. Such uncontrolled secret state surveillance, without effective safeguards or remedies, has a chilling

¹<https://www.theguardian.com/news/series/pegasus-project>

²See the investigation in English:

<https://www.direkt36.hu/en/leleplezodott-egy-durva-izraeli-kemfegyver-az-orban-kormany-kritikusait-es-magyar-ujsgirokat-is-celba-vettek-vele/>

³ Article 53 (2) of Act CXXV. of 1995 on the National Security Services

effect on journalism by undermining source protection, investigative journalism, and pluralistic public discourse, thereby threatening the **freedom of the press**. Similarly, the fear of being observed encourages people from all walks of life to practise self-censorship in their private and public life, clearly in violation of the **right to privacy**. The **right to a fair trial** and the **rule of law** are seriously violated when privileged attorney-client communications can be intercepted without appropriate safeguards. In addition to the above, the threat to the aforementioned rights may discourage EU citizens from residing and working in Hungary, harming the **free movement of persons and services in the EU**.

For a detailed description of the deficiencies of the legislation as well as the legal actions that the HCLU has taken so far, see our webpage at <https://hclu.hu/en/pegasus-case>, which gives a detailed description of the Pegasus case in Hungary.

4. International proceedings

Although the Hungarian Data Protection Authority (NAIH) concluded that all instances of surveillance adhered to the letter of the law, international organisations have called attention to systemic abuses. In its [report](#)⁴, the PEGA Committee of the European Parliament found that “[t]he use of Pegasus in Hungary appears to be part of a calculated and strategic campaign to destroy media freedom and freedom of expression by the government.” The European Parliament also [concluded](#) that “major contraventions and maladministration in the implementation of Union law have taken place in Hungary.”⁵

The Parliamentary Assembly of the Council of Europe [found](#) that the “Pegasus surveillance spyware has been illegally deployed for political purposes to spy on journalists, opposition politicians, lawyers, prosecutors and civil society actors, apparently as part of a system or an integrated strategy” in Hungary.⁶

The European Court of Human Rights has already ruled in *Szabó and Vissy v. Hungary* ([37138/14](#)) that “[g]iven that the scope of the measures could include virtually anyone, that the ordering is taking place entirely within the realm of the executive and without an assessment of strict necessity, [...] and given the absence of any effective remedial measures, let alone judicial ones.”, the Hungarian legislation violated Article 8 of the Convention. In *Hüttl v. Hungary* ([58032/16](#)) it added that the Data Protection Authority could not exert external, independent scrutiny over the national security services. Hungary has failed to execute the Szabó and Vissy judgement for years, which caused the Committee of Ministers of the Council of Europe to note “with deepest concern that, almost seven years after the Court’s judgment in Szabó and Vissy became final, despite the authorities having confirmed the need for a

⁴ A9-0189/2023

⁵ European Parliament recommendation of 15 June 2023 to the Council and the Commission following the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware ([2023/2500\(RSP\)](#))

⁶ Resolution 2513 (2023)

legislative reform already in 2017 and notwithstanding the Committee's repeated calls in this respect, no written information was provided by the authorities.”

5. Recommendations

- **Judicial oversight is the cornerstone of the lawfulness of state secret surveillance.** The Hungarian government shall immediately install this safeguard in the surveillance procedure. **Judicial authorisation of all secret surveillance measures as well as the possibility to contest any known or suspected surveillance before the courts have to be introduced in the Hungarian legal system.**
- Hungary has been stalling the execution of the Szabó and Vissy and Hüttl judgements for years. **The government shall implement the ECtHR's judgements immediately.**