



EÖTVÖS KÁROLY
POLICY INSTITUTE

**The President of the Committee of Ministers
Department for the Execution of Judgments of the European Court of Human Rights
DGI - Directorate General of Human Rights and Rule of Law
Council of Europe
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Budapest, 30 November 2017

Dear President,

As the representative of Eötvös Károly Policy Institute, a Hungarian nongovernmental watchdog organization under Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments, I submit this communication letter on the execution and implementation of the ECtHR Judgment of 12 January 2016 in the case of Szabó and Vissy v. Hungary (application No. 37138/14).

I, the undersigned László Majtényi was the legal representative of the applicants, Mr. Máté Szabó and Ms. Beatrix Vissy before the ECtHR in the abovementioned case. At the time of introducing the application, the applicants were staff members of Eötvös Károly Policy Institute, where I hold the position of the chairperson. Privacy protection and issues concerning informational self-determination have always played a crucial role in shaping our institute's character.

Eötvös Károly Institute (EKINT) is convinced that the implementation of the Judgment was not successful, despite the fact that more than a year have passed since the Judgment came final. For the successful implementation of the Judgment, a conceptual amendment of the relevant domestic legal framework would be needed, which is still awaiting to be carried out. According to the updated action report of 25 September 2017, this necessity is not questioned by the Hungarian Government, but the draft bill published on the website of the Hungarian Ministry of Interior this summer (BM/8652/2017) still has not been submitted to the Parliament. Even if it happened, the planned amendment could not fulfil its intended role in harmonizing the Hungarian legal framework with the ECtHR standard for the following reasons.

1. EKINT expressly asked the Government to ensure public and professional debate on the draft bill which is of utmost social importance. The Government ignored the opinions of experts and civil organizations and omitted to respond to their comments in public.
2. From the aspect of the constitutionality of secret information gathering it is particularly important which organ is responsible for exerting external control over surveillance. While the ECtHR recommends judicial control, the draft bill assigns this task to the National Authority for Data Protection and Freedom of Information without pointing out why it chose the authority instead of the courts. The Government shall introduce judicial control, and if it refuses to do so, it shall explain why it wishes to divert from the regulation model pointed out by the Strasbourg Court. The need for further explanation is underlined by the fact that in case of secret information gathering is triggered upon suspicion of crime, judicial control mechanisms are available, and the judiciary holds the necessary professional experience in the field in question.




3. According to the draft bill the authority would be entitled to the ex-post review of the ministerial authorisation for secret surveillance. The ECtHR, however, held that without prior authorisation by the independent organ secret surveillance can be conducted only in emergency and in exceptional cases. The Government shall endow the independent organ, ideally the courts, not with ex-post but with prior competences.

4. To ensure ex-post remedy, the draft bill introduces a new instrument: a complaint on surveillance can be submitted to the National Authority for Data Protection and Freedom of Information. However, the instrument in its present form does not meet the requirements stipulated by the ECtHR and is not suitable to protect fundamental rights. The Government shall take steps to ensure that persons affected are informed about their interception when it no longer poses a threat to national security, to provide transparent legal remedy mechanisms and to review the extremely long deadlines set for the examination of complaints.

5. To ensure predictability the draft bill attempts to determine the scope of persons possibly affected by secret surveillance, to define the conditions of application and to consider the principle of necessity and proportionality. However, since these provisions leave a wide margin of appreciation and gain real meaning in the course of the application of law, EKINT is of the viewpoint that supervision by an independent judicial authority is indispensable.

Driven by the reasons listed above, I am convinced that for the sake of implementation of the Judgment it is inevitable that the Committee of Ministers continue the monitoring of the execution process.

Sincerely,



László Majtényi DSc