



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 12 June 2014

**SECOND SECTION**

Application no. 37138/14  
Máté SZABÓ and Beatrix VISSY  
against Hungary  
lodged on 13 May 2014

**STATEMENT OF FACTS**

The applicants, Mr Máté Szabó and Ms Beatrix Vissy, are Hungarian nationals, who were born in 1976 and 1986 respectively and live in Budapest. They are represented before the Court by Mr L. Majtényi, a lawyer practising in Budapest.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

Act no. CXLVII of 2010 defines combatting terrorism as one of the tasks of the police. Within the force, a specific Anti-Terrorism Task Force (“TEK”) was established as of 1 January 2011. Its competence is defined in section 7/E of Act no. XXXIV of 1994 on the Police, as amended by Act no. CCVII of 2011.

Under this legislation, TEK’s prerogatives in the field of secret intelligence gathering include secret house search and surveillance with recording, opening of letters and parcels, as well as checking and recording the contents of electronic or computerised communications, all this without the consent of the persons concerned.

The authorisation process of these activities is dependent on the actual competence exercised by TEK, namely, whether it is within the framework of secret surveillance linked to the investigation of certain particular crimes enumerated in the law (section 7/E (2)) or to secret surveillance within the framework of intelligence gathering for national security (section 7/E (3)).

Whereas the scenario under section 7/E (2) is as such subject to judicial authorisation, the one under section 7/E (3) is authorised by the Minister of Justice, in order to (i) prevent terrorist acts or in the interests of Hungary’s national security or (ii) rescue Hungarian citizens from capture abroad in war zones or in the context of terrorist acts.

“Section 7/E (3) surveillance” takes place under the rules of the National Security Act under the condition that the necessary intelligence cannot be obtained in any other way. Otherwise, the law does not contain any particular rules on the circumstances in which this measure can be ordered, as opposed to “section 7/E (2) surveillance”, which is conditional on the suspicion of certain serious crimes. The time-frame of “section 7/E (3) surveillance” is 90 days, which can be prolonged for another 90-day period by the Minister; however, the latter has no right to learn about the results of the ongoing surveillance when called on to decide on its prolongation. Once the surveillance is terminated, the law imposes no obligation on the authorities to destroy any irrelevant intelligence obtained.

The applicants filed a constitutional complaint on 15 June 2012, arguing in essence that the sweeping prerogatives under section 7/E (3) infringed their constitutional right to privacy.

On 18 November 2013 the Constitutional Court dismissed the complaint on the merits. It held in essence that, in the context of national security, the external control of any surveillance authorised by the Minister was represented by Parliament’s National Security Committee (which had the right to call the Minister to account both in general terms and in concrete cases) and by the Ombudsman, and that this scheme was sufficient to guarantee respect for the applicants’ constitutional right to privacy.

This decision was published in the Official Gazette on 22 November 2013.

## COMPLAINTS

The applicants complain under Article 8 of the Convention that they can be potentially subjected to unjustified and disproportionately intrusive measures within the framework of “section 7/E (3) surveillance”, in particular for want of judicial control. In their view, the latter issue also represents a violation of their rights under Articles 6 and 13.

### **QUESTIONS TO THE PARTIES**

1. Can the applicants claim to be potential victims for the purposes of Article 34 (see *Klass and Others v. Germany*, 6 September 1978, Series A, no. 28)?

2. Does the possibility that the applicants can be subjected to “section 7/E (3) secret surveillance” without judicial control represent an unjustified/disproportionate potential interference with their rights under Article 8?

3. Does the absence of judicial control amount to frustration of the applicants’ right to access to a court, as guaranteed by Article 6 § 1, in the determination of their civil (privacy) rights? Alternatively, is there an effective remedy available to the applicants, as required by Article 13, in respect of the alleged grievance of their Article 8 rights?