

DFF

Digital
Freedom Fund

The Digital Freedom Fund (DFF) supports partners in Europe to advance digital rights through strategic litigation. This is one of a series of case studies, which highlight the work of DFF's grantees working to protect digital rights.

Key actors

Hungarian Civil Liberties Union (HCLU)

HCLU is a human rights NGO based in Hungary. It seeks to ensure that citizens are informed about their fundamental human rights and are empowered to enforce their rights against unfair interference by those in positions of authority. HCLU monitors legislation, pursues strategic litigation, offers free legal aid assistance, provides training, and launches awareness-raising media campaigns in order to inform and mobilise the public.

HCLU is supporting three clients who have reason to believe they were subjected to unlawful surveillance by Hungarian intelligence agencies. The three plaintiffs (a human rights activist, an anti-government protester and a student activist) are each pursuing separate cases. None of the plaintiffs know whether they have been targeted for surveillance, which means they have no way of knowing whether their right to privacy has been violated.

“ **We want to bring to light any possible government surveillance carried out against civil society, and understand how they are doing it.**

Ádám Rempört, HCLU

Pardavi, Várady and Békés Cases Case facts at a glance

Case names and courts:

Márta Pardavi v. Information Office (the Pardavi case)
Metropolitan Court of Budapest (Civil Section);
Metropolitan Court of Budapest (Administrative Section)

Zsolt Várady v. Constitutional Protection Office
(the Várady case)
Metropolitan Court of Budapest (Civil Section)

Gáspár Békés v. Hungary (the Békés case)
European Court of Human Rights

Legal team: Dr Tivadar Hüttl and Dr Levente Baltay

Case goals:

These cases seek to demonstrate that citizens have a right to access information about suspected unlawful surveillance against them, and to secure justice where their rights have been violated.

Background to the case

HCLU is deeply concerned about the Hungarian government's reported use of invasive and unlawful surveillance. In Hungary, intelligence services are not required to inform citizens that they have been the subject of surveillance, or to provide them with the data collected about them. This makes it extremely difficult to challenge suspected unlawful surveillance.

In order to address this, HCLU is supporting three clients who have reason to believe they were subjected to surveillance. In each of the cases they have started out by using 'subject access requests', a mechanism by which individuals can obtain information about their personal data. The initial focus of the litigation is on trying to access the data that has been collected about them, as well as how it was collected and who collected it. Once they have this data they will then be in a position to challenge the actual surveillance processes used by the government.

HCLU wants to obtain rulings from the national courts that ensure necessary safeguards are provided for individuals who suspect they have been subject to surveillance. However, should that fail, it intends to bring all the cases before the European Court of Human Rights. If that does happen, HCLU hopes that the European Court of Human Rights will urge Hungary to review, and subsequently revise, its legislation relating to surveillance.

“ **It's a hot potato. Our legal arguments have been strong. But the courts don't want to decide, because it's a politically sensitive issue.**

Tivadar Hüttl, HCLU

Sharing real life stories to protect fundamental rights

HCLU recognises the value of humanising the stories behind these cases. It uses a powerful awareness-raising strategy, which puts the individuals in these cases front and centre. It is a vitally important way of communicating the dangers of secretive surveillance as it helps citizens to put themselves in another person's shoes. If others can imagine what it feels like to live their life without knowing whether they are being watched by the state, they will be more inclined to take action and show their support for challenging the surveillance regime.

HCLU communicates in a variety of ways, including newsletters, press releases, posts on Facebook, and the HCLU website to draw attention to these cases. It is also planning to launch a video to make the issues accessible and captivating for a larger audience.

As well as drawing attention to the real life stories in these cases, HCLU's awareness-raising strategy is helping to demonstrate how citizens can use the courts to legally enforce their fundamental rights. This is part of a larger aim to build a community of people who recognise that fundamental rights need protection.

“ We have to make people more aware of what civil society is for, to get their attention and understanding.

Dr Márta Pardavi, Hungarian Helsinki Committee

Dr Márta Pardavi quote sourced from: <https://legal-dialogue.org/marta-pardavi>

Challenging a government surveillance system shrouded in secrecy

When states spy excessively and secretly on their citizens it creates a pervasive climate of unease and distrust. As well as potentially harming the reputation and freedom of the individual concerned, it also deters other citizens from outwardly scrutinising and criticising state actions. It is also particularly chilling when the government unlawfully targets the political opposition, threatening a healthy civil society. Unlawful surveillance has a pernicious effect on free speech and open dialogue, discourages whistleblowing and prevents investigative journalism. Overall, excessive surveillance corrodes democracy, the founding stone of a healthy, just society.

A key challenge in cases like Pardavi, Várady and Békés, is that the suspected surveillance is shrouded in secrecy. Activists and political opposition leaders may have reason to believe that they have been the subject of state surveillance, but without notification or confirmation they have no way of assessing whether it has happened, and to what extent.

HCLU is using strategic litigation to demonstrate that citizens can use the courts to legally enforce their fundamental human rights. It wants to demonstrate that the government has to respond to requests for information about suspected surveillance. It wants to show that the courts can protect the rights of people who have been a victim of unlawful state surveillance.

“ We litigate because we want to show people that fundamental rights are enforceable through the courts and that courts can be a helpful tool in protecting those rights.

Máté Dániel Szabó, HCLU



DFF's support



Financial assistance

DFF provided financial support that enabled HCLU to take on this litigation.



DFF strategy meetings and workshops

HCLU staff have attended a series of DFF events, including strategy meetings and workshops. These events provide a valuable opportunity to learn from other practitioners in what is a relatively small field. Many of the digital rights cases are new, and decisions are still pending, but these convenings provide the opportunity to discuss ideas with one another, and creatively address ways to overcome shared challenges.



Making connections

HCLU have benefitted from DFF's support with networking and capacity building. They welcome the opportunity to connect with other digital rights organisations that are in a position to offer advice and support in relation to their litigation.

“ I think this series of strategy events is the best thing that DFF does. For the digital rights community, it is very useful. After these sessions people have more ideas and can be more creative in building their cases.

Máté Dániel Szabó, HCLU