European Court of Human Rights: *Klaudia Csikós v. Hungary*

IRIS 2025-1:1/26

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The European Court of Human Rights (ECtHR) has added a new wagon to its locomotive judgment in the case of Goodwin v. United Kingdom (IRIS 1996-4:1/4) on the protection of journalistic sources. The recent judgment in the case of Klaudia Csikós v. Hungary summarises and applies the court's case law robustly protecting journalistic sources against secret surveillance by the police or other government agencies (see also Sergey Sorokin v. Russia, IRIS 2022-9:1/17 and Big Brother Watch a.o. v. the United Kingdom, IRIS 2021-7:1/20). The ECtHR found that the Hungarian authorities failed to address the journalist's grievances and that there were no adequate procedural safeguards for the applicant journalist to challenge the alleged use of secret surveillance against her to discover her journalistic sources. The ECtHR, unanimously found a violation both under Article 8 (right to privacy) and Article 10 (freedom of expression and information) of the European Convention on Human Rights (ECHR)

The applicant in this case is Klaudia Csikós, a journalist regularly reporting on court cases and criminal investigations. She complained that the phone she used, which her employer had provided, had been tapped between 3 and 6 November 2015. The (alleged) secret telephone tapping by the police had gathered evidence for the criminal prosecution of a police officer, T., on charges of abuse of authority for having shared secret information with Csikós. She raised her concerns about the monitoring of her telephone conversations with the National Defence Service under the Police Act, the Minister of the Interior and the National Security Committee of Parliament under the National Security Act, arguing that the secret surveillance measure had been used in respect of her and had been applied without judicial authorization. Each of Csikós' requests or complaints, however, have been dismissed. Lastly, she requested leave to access the documents produced in the context of the criminal proceedings against T. from the National Defence Service and, subsequently, from the Budapest Administrative and Labour Court, seeking access to information about the surveillance measures. However, none of these authorities provided any clarification as to the question whether Csikós had been subjected to covert information gathering and if so, whether the measure had been proportionate to her individual circumstances and whether it had been authorized by a judge.

In 2016, Csikós lodged a complaint with the ECtHR, arguing that her rights under Articles 8 and 10 ECHR had been violated because of the tapping of her telephone

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calls. She also argued that she had been denied an effective remedy in that connection, invoking her right under Article 13 ECHR. The ECtHR found it appropriate to consider the matter under Articles 8 and 10 ECHR concurrently, and to examine from that perspective the complaint about lack of effective remedy.

The ECtHR reiterated that protecting journalistic sources is one of the cornerstones of freedom of the press: "Without such protection, sources may be deterred from assisting the press in informing the public about matters of public interest. As a result, the vital public watchdog role of the press may be undermined, and the ability of the press to provide accurate and reliable information may be adversely affected. Therefore, any interference with the right to protection of journalistic sources must be attended to legal procedural safeguards commensurate with the importance of the principle at stake. First and foremost among these safeguards is the guarantee of a review by a judge or other independent and impartial decision-making body with the power to determine whether a requirement in the public interest overriding the principle of protection of journalistic sources exists prior to the handing over of such material and to prevent unnecessary access to information capable of disclosing the sources' identity if it does not" (see also Sanoma Uitgevers BV t. the Netherlands, IRIS 2010-10:1/2). The ECtHR clarified that even in situations of urgency, a procedure should exist to identify and isolate, prior to the exploitation of the material by the authorities, information that could lead to the identification of sources from information that carries no such risk. Applying these principles, the ECtHR analysed the question whether Csikós had been able to complain in an effective manner about the alleged ordering of the surveillance measure, while the alleged absence of judicial authorisation was analysed as a separate issue.

The ECtHR found it relevant that in Hungarian law, no provision was made for any form of notification of secret surveillance measures. It, therefore, accepted that Csikós was unlikely to find out whether her communications had been intercepted, making it inherently difficult for her to eventually seek a remedy for the presumed measure. Furthermore, it did not appear that Csikós had access to an independent and impartial body with jurisdiction to examine any complaint of unlawful interception, independently of a notification that such interception had taken place. Although Csikós had raised her concerns about the monitoring of her telephone conversations with several relevant authorities, none of these authorities provided any clarification as to the question whether she had been subjected to covert information gathering and if so, whether the measure had been proportionate to her individual circumstances and whether it had been authorised by a judge.

The ECtHR also observed that covert information gathering could be ordered under section 69 of the Police Act, allowing such a measure without any restrictions on the persons subject to those measures. While the legislation set

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out the criminal offences which could give rise to interception, it did not describe the categories of persons who could be subjected to surveillance and did not provide for exceptions or limitations. Furthermore, there was no guarantee that any consideration was given to whether the interception of communications involved confidential journalistic sources, or that it was open to the judge to refuse to authorise a measure so as to protect sources from being revealed. Neither was there a requirement of any balancing of the aims pursued by the application of secret surveillance measures and the ramifications of the tapping of a journalist's telephone. In light of these considerations, and in particular the domestic authorities' failure to address Csikós' grievances, the ECtHR found that no adequate procedural safeguards were in place for the applicant journalist to challenge the alleged use of secret surveillance against her to discover her journalistic sources. There has therefore been a violation of Articles 8 and 10 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case of Klaudia Csikós v. Hungary, Application no. 31091/16, 28 November 2024

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