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CENTER FOR DEMOCRACY
& TECHNOLOGY

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European Court of Human Rights
The Registrar
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Council of Europe
67075 Strasbourg-Cedex
France

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Re: Request for leave to intervene
Case of *Szabó and Vissy v. Hungary*, Application No 37138/14

27 August 2014

Dear Sir/Madam

1. In accordance with Rule 44(3) of the Rules of Court, the Center for Democracy & Technology ('CDT') respectfully requests leave to submit a third-party intervention in the case of ***Szabó and Vissy v. Hungary* (Application No. 37138/14)**. The case was communicated to the respondent Government on 12 June 2014. Permission is sought to intervene by way of written comments.
2. CDT is a non-governmental organisation that works to advance human rights online, and is committed to finding forward-looking and technically-sound solutions to the most pressing challenges facing users of electronic communications technologies. Since its founding 20 years ago, CDT has played a leading role in shaping policies, practices and norms that empower individuals to use these technologies effectively as speakers, entrepreneurs and active citizens. Whilst based in Washington, DC, CDT has an international presence in Brussels and London, and its staff includes a specialist in European human-rights law.
3. CDT has particular expertise in counterterrorism surveillance laws and practices, and has long worked to protect the fundamental right to privacy in this context. For example, the organisation released a report last year that includes a comparative and normative analysis of systematic government access to personal data in 13 countries, particularly as part of surveillance activities.¹ CDT's expertise is both legal and technological,

¹ IRA RUBENSTEIN ET AL., SYSTEMATIC GOVERNMENT ACCESS TO PERSONAL DATA: A COMPARATIVE ANALYSIS (2013), available at www.cdt.org/systematic-access.



and it has experience in evaluating and contributing to both judicial and non-judicial surveillance oversight bodies. As a result, the organisation considers that it is especially well-placed to assist the Court by way of a third-party intervention in the present case.

4. CDT believes this case raises essential questions concerning the supervision of secret surveillance programmes, including the role of the judiciary in ensuring that those programmes comply with the right to respect for private life and correspondence. The organisation also believes that the case raises important questions concerning the right to an effective remedy for violations of the right to private life that arise from secret surveillance activities. As these matters are of global importance, the Court may benefit from a legal analysis undertaken by an organisation with a global perspective.

General scope of the intervention

5. CDT has noted the Court's questions to the parties, particularly the question of whether 'the possibility that the applicants can be subjected to "section 7/E (3) secret surveillance" without judicial control represent[s] an unjustified/disproportionate potential interference with their rights under Article 8' of the Convention. The organisation has also noted the Court's question as to whether an effective remedy is available to the applicants for the alleged violation of their Article 8 rights, as Article 13 requires.
6. With respect to these two issues, CDT believes it is in a position to provide the Court with submissions that would be of assistance.

Alleged violation of Article 8

7. In the event that the Court finds that the applicants qualify as potential victims under Article 34 of the Convention, the Court (as it has indicated) will need to consider whether the secret surveillance regime at issue in the case constitutes a disproportionate interference with the applicants' Article 8 rights in the absence of judicial oversight. In line with the Court's case-law concerning judicial control over clandestine surveillance programmes, CDT will first assess the implications of governments' increasing technological capabilities where communications surveillance is concerned. In particular, CDT will assess the extent to which these new technological surveillance capabilities can be employed in a manner consistent with Article 8 in the absence of judicial oversight. More broadly, the organisation will draw upon its expertise in surveillance oversight programmes and the requirements of the right to respect for private life in articulating a set of criteria for determining whether a non-judicial oversight programme is capable of meeting the requirements of Article 8.
8. CDT's in-depth understanding of the technological aspects of modern surveillance programmes, and the manner in which the relevant

technologies have evolved in recent years, will inform this legal evaluation. We expect that the global range of our expertise and our strong familiarity with the technologies that underlie modern communications surveillance will distinguish our submissions from those of the applicants, and we also expect that our approach to the legal analysis under Article 8 will not duplicate theirs.

Alleged violation of Article 13, taken together with Article 8

9. Similarly, CDT will draw upon its lengthy experience in contributing to and assessing surveillance oversight mechanisms, as well as the Court's jurisprudence, in evaluating the specific necessary elements of an effective remedy for violations of Article 8 rights that occur in the course of secret surveillance programmes.
10. Especially in light of the growing number and diversity of secret surveillance programmes both within the Contracting States and globally, CDT believes the question of what constitutes an effective remedy in this context (including in the absence of overall judicial control) is one of profound public interest. The organization expects that its submissions in this respect will differ significantly from those of the applicants.

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11. If granted leave to intervene, CDT will comply with the Court's restrictions on the length of the intervention, and will not comment on the particular facts of the case.
12. The Court is invited to direct its response to this request, and any questions that pertain to it, to Ms St Vincent at the address above, or to sstvincent@cdt.org.

Yours sincerely,



Gregory T. Nojeim
Senior Counsel and Director, Freedom, Security and Technology Project

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