

Facts of the case described in the indictment:

The Minister directing the Civil National Security Services (hereinafter: Minister for Civil National Security Services), the 2nd accused in the criminal case, met in the building of the Parliament the Director-General of the Office of National Security Services of the Republic of Hungary (hereinafter: Office), the 1st accused in the case as well as the Deputy Head of the Federal Security Service of the Russian Federation (hereinafter: "FSB"). At that time the Deputy Head of FSB was a well known figure in government circles and had visited Hungary several times.

It was discussed at the meeting, inter alia, that officials of the Office had been leaking information to unauthorized persons. The Deputy Head of FSB offered that by using polygraph tests FSB officials could help finding the persons leaking information.

Although the 2nd accused, the Minister for Civil National Security Services was aware that the polygraph testing of officials of the Office by another service was an intelligence activity, and in this way the Russian Federation may obtain information that could be used against the Republic of Hungary, he accepted the offer and instructed the 1st accused, the Director-General of the Office working in his subordination to cooperate with officials of the Russian Federation.

Having regard to the verbal instruction given by the 2nd accused, by the Minister for Civil National Security Services, an agreement was made with X.Y. Colonel, a person assigned for cooperation by the Russian party, that two foreign officials would arrive in Hungary for 7-10 days to carry out the polygraph tests. In order to have that task performed, the 1st accused, the Office's Director-General instructed a psychologist of the Office – who was in a head of division position – to make a list of questions for the polygraph tests and to cooperate during the tests with persons who were pretended to be Bulgarian psychologists for conspiracy purposes but who were in fact FSB officials. The 1st accused, the Office's Director-General designated 16 official staff members of the Office to undergo the polygraph tests. Some of the 16 official staff members were already in senior positions, while others were to be promoted to senior positions.

Afterwards, the two FSB officials, who were to carry out the polygraph tests, arrived in Hungary.

Upon instructions of the 1st accused, the Office's Director-General sound and image recording equipment were covertly installed in an office room designated to be the scene of the polygraph tests, so that the tests could be surveilled from a nearby office. The 1st accused, the Office's Director-General intended to keep secret not only the fact that the tests would actually be carried out by FSB officials, but the information itself that tests would be done. Accordingly, cover stories were made up to prevent staff members of the Office from moving around at the scene of the tests when they were being carried out.

The polygraph tests were in fact carried out. Upon the instruction of the 1st accused, the Office's Director-General it was not documented that foreign nationals assigned to do the tests had entered the Office's building. They did not enter the building through the main entrance and they were escorted and transported by the 3rd accused.

During the polygraph tests one of FSB officials was staying in the office room, and he was operating the equipment used for the tests without communicating with the persons subjected to the polygraph tests. Simultaneously, the other FSB official and two interpreters were staying in a nearby room used as the end point for the sound and image recorders. This other person was surveilling the polygraph tests, and in view of what had been interpreted by the two interpreters he sometimes determined the course of the tests by asking questions and giving instructions.

The Office's psychologist first gave general information to the persons subjected to the polygraph tests about the process of polygraphing, and afterwards he recorded the psychological medical history of the tested person including his/her life history and way of life. Afterwards, he informed the tested person about the concrete questions of the test, and they discussed the questions one by one. After this exploration the questions were recorded by the technical equipment. The foreign officials gradually broadened the priorly consulted set of questions and criteria during the tests. After enquiring about the tested persons' life history, the topics which the set of questions were broadened with shifted towards the aim of testing psychological reactions needed for setting up the persons' psychological profiles. Next, factors of attachments and ties, fears, reliability, compromising of reputation, instability factors, foreign relations, reaction modes and pressuring factors were examined.

The Office's psychologist indicated to the 1st accused, the Office's Director-General several times that the line of the tests deviated from the priorly agreed course of the polygraph test. The Director-General, however, gave the instruction that the tests should be continued under the direction of the foreign officials.

Out of the 16 tested persons 11 persons were subjected to so-called additional control tests in accordance with the foreign officials' instructions.

Due to the activity of the 1st accused, the Office's Director-General, of the 2nd accused, the Minister for Civil National Security Services, and of the 3rd accused the FSB officials obtained information about the person, personality, possible vulnerabilities, the spotting and recruitment of official staff members of the Office, some of whom were already in senior positions while others were to be promoted to such positions. As a result, the Office's vulnerability increased, which posed a threat to the international interests of the Republic of Hungary.

After the position of the 1st accused, the Director-General of the Office had terminated, this Director-General position was filled by the 4th accused. The 4th accused learnt from the Office's psychologist that his predecessor had given instructions for polygraph tests to be done in the central building of the Office and introduced the persons carrying out the polygraph tests as Bulgarian psychologists. These persons were in fact FSB officials. The former Director-General assigned persons to undergo the polygraphs tests, some of whom were in senior positions while others were to be promoted to senior positions. In the course of the polygraph tests the Russian officials deviated from the priorly agreed set of questions and asked questions focusing specifically on the tested persons' vulnerability to anything that could damage their reputations, their vulnerability and their spotting and recruitment to secret intelligence service.

After the whistleblowing the 4th accused instructed the Office's psychologist to write a detailed report about the polygraph tests and the experiences thereof, and ordered an examination into the polygraph tests. The Homeland Security Department was entrusted with the task of examination.

The examination verified what had been written by the psychologist of the Office. Having regard to this the 4th accused wrote a memorandum to the 2nd accused, the Minister for Civil National Security Services. The detailed report was sent attached to the memorandum. In the memorandum the 4th accused indicated to the 2nd accused that "due to the circumstances and as the report shows there is reasonable ground to believe that a potential risk situation has been created for persons who are still in the Service, therefore, effective protective security measures need to be taken. Circumstances of the creation of the situation and the tests indicate that the person making possible and allowing for the polygraph tests facilitated the tests with highly sensitive and protected

information. Based on this, my professional opinion is that coincidence or ignorance were not at play here, the intent, however, is not known”.

The 2nd accused read the memorandum and wrote “do as discussed” on it. Accordingly, although in their official capacity both the 2nd accused and the 4th accused were aware of acts raising the suspicion of espionage, they took no actions to initiate a criminal case. Instead, the 4th accused gave instructions only for protective security actions to prevent persons subjected to the polygraph tests from obtaining sensitive information which the Russian officials would be interested to know.

Afterwards, the 4th accused received the information from the partner national security service that the intelligence of the Russian Federation had obtained information about Hungary from an informant who had been recruited to become an official. According to the received information the informant was a high-positioned person working for national security services. In response to the received information the 4th accused ordered that a monitoring should be carried out, and it was the Homeland Security Department again that carried out the monitoring. The monitoring also discovered that upon the instruction of the 1st accused, the former Director-General of the Office, Russian nationals had carried out polygraph tests of staff members of the Office.

Even at this point the 4th accused failed to file a criminal complaint although he was aware of the conclusions of the examination, and he wrote on the final report of the examination that:

- The activity and chit-chatting of the 1st accused caused grave damages to the Hungarian-American relations,
- His activity during the (psychological) tests caused irreparable damages to the Office.
- His relation with Russian officials is a fact, leaking information is proven.
- He was dismissed from the Office, his further isolation is an important task.
- It cannot be identified what kind of relationship has developed between him and the Russians (in lack of our offensive intelligence capacities), but it is tragic. I hereby shall make a report to You, the Minister for Civil National Security Services.”

A criminal procedure for the felony of espionage could only be initiated after the National Protective Service – based upon the available information – had filed criminal charges in the case.

In his final motion the prosecutor expanded the indictment as follows:

- The act threatened not only the international interests but also the national security interests of Hungary.
- The 4th accused, having been instructed so by the 2nd accused, the Minister for Civil National Security Services did not take measures to establish the liability of the involved persons, nor did he file criminal charges, so that the 1st accused would avoid criminal conviction.

The facts of the final acquitting judgement of the Military Council of the Kaposvár SZTKb.I.1/2015/37. differ from the facts of the indictment as follows:

- it was not documented that the 1st accused acted upon the instruction of the 2nd accused Minister for Civil National Security Services when he agreed with the Deputy Head of FSB to use a polygraph,
- the final judgement does not conclude that the foreign officials gradually broadened the previously consulted set of questions, shifting from questions concerning way of life and life history to questions necessary to set up the person’s psychological profile. In spite of the

deviation from the original questions the Director-General of the Office of National Security Services gave the instruction to continue the tests under the direction of the foreign officials.

The judgement stated that:

- the meeting and negotiations of the 2nd accused Minister for Civil National Security Services, the Deputy Head of the Federal Security Service of the Russian Federation and the 1st accused in the Parliament could not be proven;
- the psychologist carrying out the tests and the interpreters ensured that no personal sensitive information was accessible to Russian citizens;
- no information had been provided to justify that such data became available to the Russian security service or any other Russian organ for national security;
- no information had been provided to justify that the tested persons were attempted to be recruited, or that the national and international interests of the Office or of Hungary became endangered due to the tests.