

Case number: NAIH / 2020/593 /

(NAIH / 2019/6364)

Subject: Partial decision granting the application

## DECISION

The National Authority for Data Protection and Freedom of Information (hereinafter: the Authority)

(

hereinafter referred to as the "Applicant")

with a forensic expert (

..

hereinafter referred to as the Applicant) on behalf of the Applicant representing his own and his minor child

the data protection proceedings concerning the non - fulfillment of the data subject 's requests for the exercise of the rights of the data subject

take the following decisions in official proceedings.

I. The Applicant grants the request in part and finds that the Applicant has not made it complete

the right of access to the Applicant's own personal data

request, thereby violating the processing of personal data of natural persons

the free movement of such data and Directive 95/46 / EC

Regulation (EU) 2016/679 repealing Regulation (EU) No

Article 15 (3) of the Data Protection Regulation).

II. Instructs the Applicant to take 15 (fifteen) days from the date of the final adoption of this decision

provide the Applicant with a copy of the audio recording made during the expert examination.

III. The part of the application that was made during the expert examination of the Applicant's minor child

affected the release of the sound recording by the Applicant.

A II. The applicant shall be required to take the measure provided for in point 15 from the date on which the measure is taken must provide written confirmation, together with the supporting evidence, within

Towards an authority.

ARC. In view of the fact that the administrative time limit has been exceeded, the Authority shall, by order, HUF 10,000, ie the payment of HUF 10,000 to the Applicant by bank transfer or postal order.

There is no administrative remedy against this decision, but from the date of notification within 30 days of the action brought before the Metropolitan Court in an administrative action can be challenged. The emergency does not affect the running of the time limit for bringing an action. The application is lodged with the

It shall be submitted to the Authority, by electronic means, which shall forward it together with the case file to the court. The request for a hearing must be indicated in the application. The whole personal for non-exempt persons, the fee for the court review procedure is HUF 30,000, a is subject to the right to record material taxes. Legal representation in proceedings before the Metropolitan Court obligatory.

#### EXPLANATORY STATEMENT

##### I. Procedure and clarification of the facts

On 15 August 2019, the Applicant submitted an application to the Authority stating that

On July 31, 2019, at 2:00 pm, he participated in a forensic expert examination of the Applicant. The

2

at that time he wanted to get a full sound recording with him and a full sound recording with his little girl the same day. He sent this request by e-mail on 1 August 2019

sent to the Applicant. In its reply, the Applicant informed the Applicant that -

as he acted on a court secondment, the audio material produced during the investigation was used exclusively by the secondee

authority. The Applicant repeated his request on 5 August 2019, for which the

received a similar reply from the Applicant and referred the Applicant to the seconding court.

The application submitted to the Authority did not contain the information necessary to identify the Applicant

data, a firm request for a decision to remedy the alleged infringement, and

proof of the right of representation for a minor, the Authority will therefore ask the Applicant to remedy these deficiencies he called. The Applicant has complied with the Authority's request for rectification, which is necessary for identification at the same time as sending their details and sending the child's birth certificate in its application, it requested the Authority to instruct the Applicant to act on its own behalf and on behalf of the applicant to exercise his right to exercise his right as a minor.

The Authority's case concerns the right to information self-determination and freedom of information

2011 CXII. Act (hereinafter: the Information Act). Personal data pursuant to Section 60 (1)

In order to enforce the right to protection of personal data, the data subject has initiated a data protection authority request to this effect.

The Authority notified the Applicant of the initiation of the data protection authority procedure at the same time requested information from the Applicant as to why he had not done so in order to clarify the facts on behalf of the Applicant's own personal data and on behalf of the minor child the subject of the data processing sending a copy of the secondment order.

According to the information provided by the Applicant, in the case of an official secondment of an expert, both a expert opinion and the documentation on which the opinion is based shall be provided only by the delegating authority you can forward it to. In this connection, the Applicant also signed a consent form stating this contained the fact. The Applicant attached the statement to the reply and sent it to the a copy of the secondment order. The reply also stated that the Applicant was the Applicant informed him by e-mail that he could only receive the requested information from the seconding authority.

Upon learning of the content of the secondment order, the Authority shall inform the Applicant asked for a statement that in his professional opinion at the hearing of the child what was said by the child by the Applicant as the child's father

whether the knowledge infringes the rights or legitimate interests of the child. He requested information that if whether the Applicant has informed the seconding authority of this fact. The child also asked a copy of the statement of consent to the sound recording recorded during the examination of the

Court of Justice (hereinafter referred to as "the Court")

. s. on the basis of an investigation ordered by the

sending a copy of the expert opinion.

In his reply, the expert explained that, as he had previously stated, if the posting court gave permission to do so, he would release the data to the Applicant. The statement

further issued on 31 October 2019 to the Applicant on the conversation with him

written material authorized by the court.

With regard to the child's material, he made a statement that what the child had said

if they become known to the father, they may violate the rights of the child because the subject of the lawsuit is parental responsibility.

settlement of supervisory rights. The subject of the study is the parenting ability of the child

and the impact of parental parenting practices on the child's development

forms. With this judicial information, the seconding authority, in this case the Court,

and procedural law governs the nature of the parties to an opinion requested by the Court

gain insight. At the same time, he draws the Applicant's attention to the fact that since he is a

3

interested in the proceedings, apply to the Court for the disclosure of the information requested by him and, if so, to the Court will be at your disposal.

The Authority subsequently requested a copy of the above-mentioned court ruling, again requesting it

requested an expert opinion and a statement from the Applicant stating that the

the data controller itself, or

Bt. The Applicant stated that the court a

designated him and the Bt in the secondment order, he sent the resolution, but the expert opinion

still not, and again referred to the permission of the seconding court for the release of the document.

The Authority imposed a procedural fine of HUF 20,000 for failing to send the expert opinion a

For the Applicant, which has been paid by the Applicant, at the same time for the new information request, the

provided information that since the investigation was carried out by the

Court ordered, so the Court

asked the President for a resolution on the release of documents. According to the attached letter, the Applicant

requested a resolution from the seconding court on whether I could "issue [the Applicant]

experts about him and his child and his child's mother

my opinion. "

In its next order, the Authority emphasized to the expert that the Authority was requesting for itself

to send the expert opinions, as was precisely what his previous orders provided for. THE

Applicant in response to this order was sent to the Applicant as well as made about his child

expert opinion and opinion.

## II. Applicable legal requirements

Pursuant to Article 2 (1) of the GDPR, the GDPR applies to this data processing.

The relevant provisions of the GDPR in the present case are the following:

According to Article 4 (1) of the GDPR, personal data are "identified or identifiable as natural

any information relating to the person ("data subject") [...]"

GDPR Article 4 2. "processing" means the automated processing of personal data or files

any operation or set of operations performed in a non-automated manner, such as collection,

record, organize, segment, store, transform or change, query, view,

by use, communication, transmission, distribution or otherwise making available,

harmonization or interconnection, restriction, deletion or destruction;

GDPR Article 4 7. "controller" means a natural or legal person, public authority or agency

or any other body that has the purposes and means of processing personal data independently

or together with others; if the purposes and means of the data processing are

determined by the law of the Member State, the controller or the specific conditions for the designation of the controller

may be determined by Union or Member State law;

According to Article 5 (1) (a) of the GDPR, "personal data must be processed lawfully and fairly and in a manner which is

transparent to the data subject ("lawfulness, fairness and  
procedure and transparency")"

According to Article 12 (3) of the GDPR, "The controller shall, without undue delay, but in any case within one month of receipt of the request, inform the data subject in accordance with Articles 15 to 22.

on the action taken in response to a request under Article. If necessary, taking into account the application complexity and number of applications, this deadline may be extended by a further two months. THE

the controller shall inform the data subject of the extension of the time limit within one month of receiving the request, indicating the reasons for the delay. If affected electronically

4

the information shall be provided, as far as possible, by electronic means, unless the person concerned requests otherwise. "

Under Article 12 (4) of the GDPR, "if the controller does not take action against the data subject

without delay, but no later than one month after receipt of the request

inform the data subject of the reasons for not taking action and of the

lodge a complaint with a supervisory authority and have the right to a judicial remedy ',

the information referred to in Articles 13 and 14 and the information referred to in Articles 15 to 22. and Article 34 and the measure shall be provided free of charge.

According to Article 15 (3) of the GDPR, "the controller shall be the data subject

provide a copy of the data to the data subject. For further copies requested by the data subject,

the controller may charge a reasonable fee based on administrative costs. If the data subject has submitted the application electronically, the information will be widely used electronically

shall be provided in a format other than that requested by the data subject '.

According to Article 23 (1) (i) GDPR, "Union or Member State law applicable to the controller or processor may restrict the application of Articles 12 to 22 by means of legislative measures. Article 34 and Article 34.

and Articles 12 to 22. the scope of the rights and obligations set out in Article 5 in respect of its provisions in accordance with the rights and obligations set out in Article

fundamental rights and freedoms and a necessary and proportionate measure to protect

protection of the rights and freedoms of others. "

According to Article 58 (2) of the GDPR, "Acting in the corrective capacity of the supervisory authority:

(b) reprimand the controller or the processor if his or her data processing activities have infringed the provisions of this Regulation;

(c) instruct the controller or processor to comply with a request from the data subject to exercise his or her rights under this Regulation;

(d) instruct the controller or processor to carry out its data processing operations, where applicable in a specified manner and within a specified period, in accordance with the provisions of this Regulation; "

According to Article 77 (1) of the GDPR, "Without prejudice to other administrative or judicial remedies, all parties concerned shall have the right to lodge a complaint with a supervisory authority, in particular the habitual residence, place of employment or in the Member State of the alleged infringement

- if the data subject considers that the processing of personal data concerning him or her infringes this Regulation. "

Infotv. Pursuant to Section 2 (2), the GDPR is there

shall apply with additions to the provisions set out in Infotv. Pursuant to Section 60 (2)

a request to initiate an official data protection procedure in Article 77 (1) of the GDPR

may be submitted in a specific case.

Infotv. According to Section 60 (1), "the exercise of the right to the protection of personal data

the Authority shall, at the request of the data subject, initiate a data protection authority procedure ".

Unless otherwise provided by the GDPR, the data protection authority proceedings initiated upon request shall be

CL of 2016 on general administrative order. Act (hereinafter: Act)

shall apply with the exceptions specified in the Information Act.

Infotv. Pursuant to Section 61 (1) (a), in its decision in a data protection official procedure, the Authority

as defined in the GDPR in connection with data processing operations covered by the GDPR

may apply legal consequences.

Pursuant to Article 58 (2) (b), (c) and (d) of the General Data Protection Regulation

the data controller or the processor, acting in accordance with the corrective powers of the competent authority, if

its data processing activities have infringed the provisions of this Regulation; instructs the data controller or the

data controller in order to comply with the data subject's exercise of his or her rights under this Regulation

application; instructs the controller or processor to perform its data processing operations

bring this Regulation into line with the provisions of this Regulation

provisions. Infotv. 75 / A. § pursuant to Article 83 of the General Data Protection Regulation

Exercise the powers set out in paragraphs 2 to 6, taking into account the principle of proportionality,

in particular by the legislation on the processing of personal data or the European

In the event of a first breach of the rules laid down in a binding act of the Union

to remedy the breach in accordance with Article 58 of the General Data Protection Regulation, in particular

it takes action by alerting the controller or processor.

Infotv 75 / A. The Authority shall exercise the powers provided for in Article 83 (2) to (6) of the GDPR

proportionality, in particular by providing personal data

legislation or a binding act of the European Union

in the event of a first - time infringement, to remedy the infringement - Article 58 of the GDPR.

in particular by alerting the controller or processor

to take action.

31/2008 on the operation of forensic experts. (XII. 31.) IRM Decree on Clinical and

Mental hygiene adult and child psychological examination under the heading 20 / A. § (3)

provides that "in the course of an investigation, the expert shall be the person or his / her subject

with the written consent of his legal representative, he may make a sound recording. "

A 20 / B. § (5), "the expert shall be the clinical and mental hygiene adult and child

retention of data on forensic experts generated during a psychological examination

and on the right to self-determination of information and freedom of information

acts in accordance with the law. The data generated during the investigation is only authorized by law



person, in particular another expert seconded to the case. "

Act XXIX of 2016 on forensic experts. Section 40 (2) of the Act (hereinafter: the Act)

“the expert in respect of the facts and information which came to his notice in the course of his activities confidentiality, only the authority shall be informed of the facts and information relating to the case, and may provide information to another body or person authorized to process the data '.

The Act According to § 42:

"1. The expert shall process the personal data processed by him in the course of his activities, unless otherwise provided by law, immediately after the termination of the secondment or the performance of the assignment.

limits.

2. Upon completion of the secondment or assignment, the expert shall act in accordance with paragraph 1

limited handling of personal data activities professional, methodological, disciplinary

from the restriction in order to verify its compliance and legality

for a period of ten years from the date of entry into force of this Regulation

disciplinary proceedings against him and the procedure on which the forensic expert's assessment is based

and another body or person authorized to process personal data

you can forward it to.

5. The expert shall have access to the personal data of the data subject concerning the data which he / she processes refuses to exercise his right on the instructions of the posting or commissioning person in order to prevent or prosecute criminal offenses and to protect the rights of the data subject or others.

(6) Data transmitted to an expert during an investigation shall be deemed to be data pursuant to paragraph (5)

generated data, source of data, purpose, legal basis, duration of data processing, data processor

name, address and activity related to the processing, and - the personal data subject

in the case of transfers of personal data, the legal basis and the recipient of the transfer. "

6

The Act According to Section 45 (2), “the secondment must include:

(l) where appropriate, an instruction from the authority to the expert to the person concerned

refuse to exercise the right of access to personal data

Act CXXX of 2016 on Civil Procedure. According to the Act (new Pp.): Section 357 (2) "The court has no an order rejecting or rejecting a unilateral application, but an order rejecting a time-limit before it becomes final. "

Act III of 1952 on the Code of Civil Procedure in force until 31 December 2017 Act (old Pp.) 227.

§ (2) "The court is not bound by an order concerning the conduct of proceedings or a decision rejecting a unilateral application, but an order which the court may change it only before it becomes final (Section 228). "

Act V of 2013 on the Civil Code (Ptk.) 4: 161. § [Legal representation of the child]

The right and obligation of parents exercising parental responsibility over the protection of their children shall be the responsibility of the child property matters.

4: 163. § [Exclusion of legal representation due to conflict of interest]

(1) A parent may not represent his or her child in a matter unless otherwise provided by this Act. in which he, his spouse, partner, direct relative or his or her legal representative standing another person is the opposite party to the child.

Ákr. Section 13 (1) If the personal proceedings of the client are not prescribed by law, (a) is replaced by his legal representative or by a person authorized by him or his legal representative; and (b) the customer and his representative together can also act.

Ákr. § 51. If the authority

(b) the administrative time limit was exceeded and there was no need to take a decision with pending effect, an amount corresponding to a fee or charge for the conduct of the proceedings, failing which it shall pay ten thousand forints to the applicant client, who shall also be exempted from paying the costs of the proceedings.

III. Evidence taken into account in the Authority's decision and its assessment:

The Authority's proceedings were aimed at deciding whether the Applicant had lawfully denied a

The exercise of the applicant's right of access under Article 15 of the GDPR is regarding the data recorded during the audio recording of your minor child. The right of access The request concerned the sound recordings made during the forensic examination, and therefore the subject of the request for information submitted to the Applicant was not the completed expert opinion.

### III.1. Regarding the Applicant's own data:

The legal basis for the recording of the expert examination is the consent of the data subject, a 31/2008. (XII. 31.) IRM Decree 20 / A. § (3).

The recording of what a natural person has said by means of a sound recording is, according to the GDPR's definition, data processing, the recorded sound is the personal data of the data subject.

7

The GDPR defines a data controller as one who has the purposes and means of data management by definition, the law of a Member State may do so. The domestic legislation, the Act defines the expert as the data controller and the materials on which the preparation is based respect. (Section 40 (1), Section 42 (1) - (3), (5) - (6) of the Act).

In the case under investigation, the Data Controller shall be deemed to be the data controller because of the expert examination

a court order seconding him personally appointed him to carry out the expert examination.

The Act According to Section 42 (6), the data handled by the expert shall be provided, inter alia, to the expert data transmitted and data generated during the investigation.

The data processing of an expert is special in that the data processing is ordered by a court or authority establish the expert who is seconding the expert and the expert is attached to that secondment. The Act it does not specify the scope of the processed data - it does not know this due to the nature of the task and defines the data recorded during the study as data processed by the expert.

Data provided by the data subject during the investigation (test, by completing a questionnaire) given his answers, recorded in the test report, sound recording data, etc.) clearly constitute the personal data of the data subject.

Article 15 of the GDPR specifies the scope of the right of access to be provided upon request

request for a copy of the data pursuant to Article 15 (3)

is also eligible. In the present case, the Applicant shall use the data provided by the expert and provided by the

he asked for a transcript of what he had said during the investigation. So access

the subject of the exercise of that right was not the expert opinion which drew the conclusions drawn by the expert

but also the data provided by the data subject or the minor under his / her legal representation

were data provided by a child.

With regard to the substances on which the opinion is based, the expert shall act as data controller as described above

as such, it has the right to decide independently on data management issues. Rights of the data subject

must be ensured by the controller.

The Act The scope of data transmission set out in Section 42 (2) does not preclude the transfer to the data subject

enforcement of its own data. The data controller shall provide the data subject with his or her own data

not conceptually transmit to him, but in the context of the right of access to the data

provide access in the form of a copy on request.

The Act The secrecy contained in Section 40 (2) shall apply to other bodies and persons,

the information provided by the data subject shall not be considered confidential to him. The person concerned a

the owner of the data provided by him, who may also grant an exemption from confidentiality with him

in contrast, confidentiality cannot be interpreted. The Act Section 40 (2) provides for whom

information may be provided in the context of confidentiality, while the data subject may provide it

not the right to information but the right to access the data provided.

Under Article 15 (3) of the GDPR, the data subject is therefore entitled to a

the right to request a copy. Enforcement of the data subject in accordance with Article 12 (5) and Article 15

may be limited in accordance with Article 4 (4). Pursuant to Article 15 (4)

the right to claim must not adversely affect the rights and freedoms of others.

Article 23 (1) (i) of the GDPR allows Member States to legislate

introduce a restriction on the application of the enforcement sections of the

to protect the rights of the data subject or others. The Act Section 42 (5) of the Decree is Article 23

Constitutes a restriction within the meaning of paragraph 1 (e).

8

The expert gave it only in justified cases, in the order of the seconding authority or court may refuse to exercise the data subject's right of access in accordance with Article 15 (4) of the GDPR.

pursuant to paragraph 1 of the Act. Section 42 (5) provides. Failing that, the person concerned the fundamental right to information self-determination cannot be restricted.

In the present case, the Applicant has made a request for access dated 1 August 2019

replied within the time limit set out in Article 12 (3) of the GDPR and informed that

for what reason you did not comply with the access request. The Applicant on 5 August 2019

He also replied to his repeated request within the time-limit, the same day. However, with these

at the same time did not inform the data subject of the provisions of Article 12 (4) of the GDPR,

that the person concerned may apply to the Authority for non - compliance with the application or may avail himself of the the right to judicial enforcement.

The Authority therefore finds that the Applicant has infringed Article 12 (4) of the GDPR included.

After the commencement of the official proceedings, the Applicant shall record the audio recording at the request of the court accordingly handed over to the Applicant on 31 October 2019.

In the Authority's view, the transmission of the subtitle does not comply with the requirement to copy the sound recording the full content of the description is not the same as the sound recording. THE

sound recording contains extra data than the written transcript of what the individual has said, since

other conclusions can be drawn about the person based on the recordings (eg pace of speech,

excited / calm state of mind, low / high volume, etc. Based on). For the Applicant, the recorded voice,

no transfer of personal data has taken place.

In addition to the subject, the voice of the expert is also recorded on the recording. About recording the audio itself

the expert decides, 31/2008. (XII. 31.) of the IRM Decree 20 / A (3)

the written consent of the subject is required, which consent has been verified in the proceedings. The punishment

Acting in accordance with Section 459 (12) (e) of Act C of 2012 on the Code

the person is considered to be an expert in court or other official proceedings. That is, in these proceedings a

an expert performs a public task, he / she appears in an expert capacity, so in the performance of the public task he / she

does not communicate what is said as an individual. Consequently, the exercise of the rights of the person concerned

nor can it be denied by reference to it.

On the basis of the above, the Authority concludes that the measure taken by the Applicant

during which the Applicant did not comply with its request for access to its own data

in its entirety, and instead of publishing the sound recording,

Article 15 (3) of the GDPR.

In the light of the infringement found, the Authority will amend Annex II to the operative part of the decision. at point

Pursuant to Article 58 (2) (c) of the GDPR, it instructed the Applicant to request access

by issuing a copy of the sound recording.

III.2. Regarding the data of the minor child:

The Applicant also requested the publication of an audio recording of the examination of the minor child.

The Civil Code. mentions the protection of personal data as a right of personality in § 2:43 e). The Civil Code.

2:54. § (1), the rights of the individual can be enforced in person, which is therefore

the person concerned may exercise himself or herself or the Civil Code. 2:14. §, the legal representative may act on behalf of

the minor, so he or she also exercises the right of access to the child's data. Minor is legal

9

representative of parents in the Civil Code. 4: 161. § of the parent exercising parental responsibility. The GDPR

in the case of the concept of parent, use a parental responsibility practitioner.

The request for access to the processing of the child's data as a legal representative of the parent

may be submitted by a supervising parent. The Applicant has the right of representation in the child's registry

confirmed by an extract.

As the legal representative, the Applicant wished to exercise the data subject on behalf of the minor child

so that, acting on behalf of the minor, he wished to have access to a copy of the sound recording as a data subject.

Pursuant to Article 15 (3). However, mainly in the field of childcare,

in litigation concerning the settlement of the right of contact and parental custody - as a basis for the preparation of an expert opinion

may be concerned about the release of data or sound recordings

contain information about the parent requesting the data that

disclosure to the data subject would harm the legitimate interests of the child.

As mentioned above, Article 23 (1) (i) of the GDPR provides for the possibility of a

Member States to introduce a restriction on enforcement through legislation

in order to protect the rights of the data subject or others. The Act

Section 42 (5) is a restriction in accordance with Article 23 (1) (e) of the Decree.

The expert shall be bound by professional secrecy in accordance with Section 40 (2), and

it may be the case that the minor has been provided with such information during the expert examination

which are adversely affected by the legal representative

may have consequences. The expert spoke at the hearing of the child in accordance with the Act. Section 40 (2)

may communicate only to those entitled under it, the lawful person may act as such

representative by submitting a request for access, but the Authority considers that there is a conflict of interest

In that case, the expert may initiate a refusal of access.

According to the Authority, this means that the expert may refuse access

to the parent in respect of the child's details if instructed to do so by the outsourcer. As a data controller

consider that, for reasons specified by law ("in order to protect the rights of the data subject or others")

whether it is justified to initiate a refusal of access to the delegate and, if so

reason for non-existence, the right to provide access - and the provision of copies provided for in the Regulation -

there is an obligation. However, if the data controller is an expert, the reason for the refusal

circumstances, the posting authority shall decide whether to refuse to provide a copy.

It should also be noted that the Authority considers the expert to be confidential

obligation to the parent, both parents, with regard to what the minor has said

exists. Within the framework of the obligation of confidentiality, the Act Pursuant to Section 40 (2), the expert is a  
is bound by the obligation of professional secrecy with regard to facts and data which come to its knowledge in the course of  
its activities,

only the authority and the data are entitled to process the facts and data concerning the case  
may provide information to another body or person, which is a standard obligation of confidentiality  
also practice towards the parent.

Subject to the cited legal provision - data generated during the expert examination  
as explained in the previous point

in the case of a right of access, the holder of the right of access and the data subject protected by the right to confidentiality  
coincides, not in the case of the minor, because in the case of the minor the person is the person concerned  
(child) is not the same as the person exercising the right of access to the data subject (legal  
representative). Thus, the exemption from professional secrecy cannot be considered automatic either. THE  
III of the Code of Professional Ethics for Psychologists Chapter 5.5 on confidentiality so  
provides that "[...] Within this, he may share the secret entrusted to him with the parent, provided that the  
the child is not harmed by this. However, if the psychologist considers the child  
the disclosure of confidential information which has come to its notice may continue to be seriously prejudiced

10

keep it. "

The Authority considers that it is desirable for the expert to be the minor after the examination of the child

In each case, it assesses what is said by the appellant in the light of the subject - matter of the proceedings and the  
whether, in accordance with the terms of the secondment, it does not apply to what the child has said

conflict of interest between the child and either parent. It must be judged by the child

whether it is not adversely affected to know what has been said by one or both parents

with consequences for the child. The Civil Code. according to the parent may not represent the child in such a way

in a case in which he himself is an adversary to the child, so the right of access is in this



In this case, by this legal representative, the Civil Code. cannot be exercised on the basis of

The Authority's position is that in such a case, notwithstanding the possible secondment order

did not prohibit access - in the professional judgment of the expert as data controller

however, it may be necessary to restrict the right of access subject to the right to confidentiality, or

on its own initiative. After all, the findings of the investigation form the basis of the

restriction, the expert will find during the investigation that what the child has said about the parent

it is against the best interests of the child to do so, it must be recorded in advance in the order of secondment

not always.

Since Pp. The relevant provision of the

nor is there any obstacle to the procedure outlined in the context of court proceedings.

In a previous investigation by the Authority, the President of the Hungarian Chamber of Judicial Experts is a minor

In connection with his expert examination, he presented the following:

"During the psychological examination - especially in divorce proceedings, child placement

in cases where parents are often detrimental to the child in asserting their interests

- special care and caution is required,

can only be determined at any time by the acting expert.

In child placement cases, where there are many times extremely negative tempers among parents

significant mental strain, a loyalty conflict for the child,

a psychological examination involving a child with a significant risk in itself, possibly

intervention with psychological harms and traumatic factors. Optimally, this a

can be reduced by a forensic expert. However, this can only be ensured if

if the safe atmosphere of the expert examination can be protected by the expert.

Handing over the materials of a psychological examination would mean that the psychologist is a person

pass on data concerning the safety and mental integrity of the child, whose competence is neither

has no experience in assessing the resulting adverse effects on the child

circumstances.

When using test data in an expert opinion, the expert shall also ensure that:

e.g. only those elements of the child's exploration that are relevant to the posting should be removed, which do not provoke retaliation against the child by the opposing parent. ”

The Authority also shares the validity of the professional reasons, in its opinion the expert competence to decide whether to initiate a lawful investigation based on the experience of the investigation refusal to grant the child's request for access with respect to its substances, as set out in Art. Section 42 (5) provides.

In the case examined in the present proceedings, upon receipt of the application of the data subject, the Requested Expert shall not initiated a refusal by the seconding court to comply with the request for access

11

instruction, however, in the official proceedings he stated that the recording was made by the Applicant may violate the rights of the child concerned.

On 5 February 2020, the Applicant put a question to the trial court requesting a court's decision whether to issue the expert opinion to the Applicant, but his question is not a concerned the data and audio material which is the subject of the present proceedings.

So the expert did not ask the referring court for a decision on access to the data.

However, in the Authority's view, for the reasons set out above, it is lawful representative's access to the personal data of the data subject is lawful in the Civil Code legally restricted by the GDPR did not find a violation.

Therefore, in the absence of such an order from the seconding court, the Authority will not order it in the present case either the Applicant to issue a copy of the audio recording of the child 's hearing because it according to the professional statement of the expert, it would violate the rights and legitimate interests of the data subject. For this reason

the Authority rejected the part of the application that was addressed to the Applicant was instructed to release the sound recording. Legislation restricting the right sets an exception to the main rule and should therefore be interpreted strictly in all cases. The exception rule cannot become the rule. As regards the lawfulness of the refusal, the controller has a burden of proof, the principle of accountability must be applied here as well. Restriction of the right of access it cannot become a routine, a common practice of simplifying the procedure, only then it is legal to live if it better serves the interests of the parties. The legality of this restriction shall be assessed by the Authority and, if necessary, revise it, oblige the controller to release the data.

The Authority shall not instruct the expert to make a request which is contrary to the interests of the data subject draws the attention of the Applicant and the experts in general to the fact that in the case of the exercise of the right of access by a legal representative of a minor, all examine the admissibility of the application in relation to the conflict of interest, and in any case, if the circumstance giving rise to the refusal is detected, obtain it from the delegate an instruction from a court / authority to refuse a request for access a by amending the secondment order.

ARC. Legal consequences:

IV.1. The Authority grants the Applicant's request in part and Article 58 (2) (b) GDPR condemns the Applicant for violating Article 12 (4) of the GDPR and Article 15 (3).

Pursuant to Article 58 (2) (c) of the GDPR, the Authority instructs the Applicant to comply with the Applicant's request for access, send it to the Applicant's expert examination a copy of the sound recording and certify that it has taken place to the Authority.

IV.2. In the Authority's view, the Applicant is concerned with the exercise of the right concerned failure to act may be attributed to the general practice of seconded experts back, which makes the execution of the data subject's claim conditional on the order of the seconding court. THE The Authority 's experience, after examining several expert data processing, can be outlined as follows:

seconded forensic experts are generally unaware that they are data controllers

themselves to meet the data processing requests of data subjects for peer review

in particular Article 15 (3) of the GDPR

the obligation to provide a copy - and in any case instruct the applicant to the delegate. THE

The Authority intends to achieve a change in this erroneous practice, inter alia, in this Decision

explained.

12

IV.3. In the course of the procedure, the Authority exceeded the Infotv. One hundred and fifty days according to Section 60 / A

(1)

administrative deadline, therefore Ákr. It pays ten thousand forints to the Applicant on the basis of Section 51 b).

V. Other issues

The Authority shall provide information on personal data pursuant to Article 57 (1) (e) of the GDPR

In the event of a violation of the right to protection of 2:43. § and 2:52. § under damages

the possibility of going to court to pay.

The powers of the Authority shall be exercised in accordance with Infotv. Section 38 (2) and (2a) determine the jurisdiction of

the country

covers the whole territory.

The decision is based on Ákr. 80-81. § and Infotv. It is based on Section 61 (1). The decision is based on Ákr. § 82

Shall become final upon its communication pursuant to paragraph 1. The Ákr. § 112, § 116 (1), respectively

pursuant to Section 114 (1), there is an administrative action against the decision

redress.

\*\*\*

The rules of the administrative lawsuit are set out in Act I of 2017 on the Rules of Administrative Procedure (a

hereinafter: Kp.). A Kp. Pursuant to Section 12 (1) by decision of the Authority

The administrative lawsuit against the court falls within the jurisdiction of the court Section 13 (3) a)

Pursuant to point (aa) of the Act, the Metropolitan Court has exclusive jurisdiction. A Kp. Section 27 (1)

(b), legal representation is mandatory in litigation falling within the jurisdiction of the Tribunal. A Kp. § 39

(6) of the application for the entry into force of the administrative act

has no suspensive effect.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic

CCXXII of 2015 on the general rules of public administration and trust services. Section 9 of the Act

Under paragraph 1 (b), the client's legal representative is required to communicate electronically.

The time and place of the submission of the application is Section 39 (1). The trial

Information on the possibility of requesting the maintenance of the It is based on § 77 (1) - (2). THE

the amount of the fee for an administrative lawsuit in accordance with Act XCIII of 1990 on Fees. Act (hereinafter:

Itv.) 45 / A. § (1). From the advance payment of the fee, the Itv. Section 59 (1)

and Section 62 (1) (h) shall release the party initiating the proceedings.

If the obligated customer does not adequately demonstrate compliance with the required obligations, the Authority shall:

considers that it has not fulfilled its obligations within the time allowed. The Ákr. According to § 132, if a

the obligor has not complied with the obligation contained in the final decision of the authority, it shall be enforceable.

The Ákr. Section 133 of the Enforcement - unless otherwise provided by law or government decree

ordered by the decision-making authority. The Ákr. Under section 134 of the enforcement - if

a law, a government decree or, in the case of a municipal authority, a decree of a local government

unless otherwise provided - by the state tax authority. Infotv. Section 61 (7)

to carry out a specific act contained in a decision of the Authority

the decision as to the obligation to conduct, tolerate or stop

shall be carried out by the Authority.

Budapest, May 28, 2020

Dr. Attila Péterfalvi

President

c. professor