

Case number: NAIH / 2019/363/2.

History: NAIH / 2018/6408 / H

Subject: Breach of the principle of accuracy

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Before the National Authority for Data Protection and Freedom of Information (hereinafter referred to as the Authority) [...]

Applicant (hereinafter: Applicant) [...] (hereinafter: Debtor) to the wrong telephone number

to establish the unlawful processing of personal data relating to notifications sent to

shall take the following decision in the data protection authority proceedings initiated at the request of:

1. The Authority shall be the Applicant

grant your request

and finds that the Debtor has not complied with the principle of accuracy and that

therefore, the Applicant instructs the Debtor to promote the rights of the data subject

for a period of time to verify the accuracy of the data

to limit.

The Authority shall request the Debtor to inform the Applicant of the accuracy of the data

the results of the audit and the action taken as a result of the audit!

Proof of the action taken shall govern the initiation of judicial review

within 30 days of the expiry of the time limit for bringing proceedings.

2. The Authority shall charge the Debtor for any unlawful processing of data by it

HUF 500,000, ie five hundred thousand forints

data protection fine

obliges to pay.

No procedural costs were incurred during the official proceedings, so it was not ordered to pay them

Authorities.

The Authority shall impose the fine within 15 days of the expiry of the time limit for bringing an action

centralized revenue collection target settlement forint account (10032000-01040425-00000000

Centralized direct debit IBAN: HU83 1003 2000 0104 0425 0000 0000)

to pay. When transferring the amount, NAIH / 2018/6408. JUDGE. number should be referred to.

If the Debtor fails to meet the obligation to pay the fine within the time limit, a late payment allowance is obliged to pay. The amount of the late payment allowance is the statutory interest affected by the delay equal to the central bank base rate valid on the first day of the calendar half-year. Fines and penalties in the event of non - payment of the allowance, the Authority shall order enforcement of the decision; recovery of late payment in the form of taxes. Fines and penalties for late payment recovery is carried out by the National Tax and Customs Administration.

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 application must be submitted to the Authority, electronically, which is the case forward it to the court together with his documents. The request for a hearing must be indicated in the application.

For those who do not benefit from full personal exemption, the judicial review process its fee is HUF 30,000, the lawsuit is subject to the right to record material fees. In the proceedings before the Metropolitan Court legal representation is mandatory.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

In its application received by the Applicant on 13 October 2018, the Applicant is a data protection authority initiated the procedure and requested that the Authority examine it in its notification the data management of the Debtor in a detailed case.

As stated in the Petitioner's application, from the Debtor by telephone - the [].]

phone number - received credit card notifications via text message,

despite the fact that the Debtor is not a customer. The Applicant by telephone on August 8, 2018

lodged a complaint through [...] on the basis of the minutes attached by the Applicant

provided with an identifier. The complaint with error ID [...] was as follows:

"No customer receives SMS notifications. You want to make a complaint. To the name of the telephone number [....] [...] SMS goes to credit card account debt from the phone number [...]. The bank indicated several times does not wish to receive an inquiry as it is not a customer of the bank. He requests that the case be investigated and stop SMSing. "

The Applicant was notified by the Debtor on [...]. By letter dated 3 September 2018, that he had taken the necessary action on the basis of the complaint, nevertheless as presented by the Applicant according to the Applicant received again on 6 October 2018 by telephone in a text message notification from the Debtor.

The request is based on the 2011 Act on the Right to Self-Determination of Information and Freedom of Information CXII. on the basis of Section 60 (1) of the Act (hereinafter: the Information Act) on 14 October 2018 data protection authority proceedings initiated NAIH / 2018/6408 / H. number.

The Authority has issued NAIH / 2018/6408/2 / H. by order No. with reference to the General Administrative CL of 2016 on Public Order. (hereinafter: the Act) to the Applicant to fill in the gaps on the basis of which the Applicant attached his subscription contract, which supported the Applicant's claim that the telephone number [...] is the Applicant's telephone number. The hooked up subscription contract was concluded on 17.05.2017.

The Authority invited the Debtor to make a statement in order to clarify the facts, to which sent its declaration (hereinafter: Declaration No 1).

The Debtor stated in his statement No. 1 that the "Applicant 09.09.2018. another day complained that he was still receiving sms from the phone number previously listed.

We have repeatedly sent a letter to our client requesting data clarification. Bank is trying to reach the Customer in such cases, however, this often takes time, as the the number and speed of available channels is limited. "

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The Debtor is entitled to stated in the statement that they could not be asked to do so by the Applicant a document by which the Applicant substantiates the authenticity of his claim, as the Applicant does not

With an obligation in any legal relationship. "As the Bank cannot request a document from the Applicant in which he substantiates the authenticity of his claim, as he has no legal relationship with him or would lead to excessive data management that is disproportionate to the purpose to be achieved, thus He chose to contact his client as a less restrictive means of remedying the problem. "

The Debtor is entitled to notwithstanding the provisions of the statement, sent to the Applicant the [...]. number a letter forwarded by the Applicant to the Authority, in which letter No. 1 above. statement contrary to what was written, the Debtor requested that the Applicant certify the subscription contract attaching a copy that the telephone number affected by the application is the telephone number of the Applicant. Debtor No. 1. According to the statement, "The Bank shall, at the request of a third party, as described above Not the telephone number provided by your customer and managed in connection with the provision of services the data, which is also a bank secret, is the owner of the data entitled. Based on the information of the Bank, the telephone number is not the Applicant, but another person, the Bank personal information of one of your customers. And as such, it is also a bank secret, so there is no way to delete it mode. Bank tried to contact its Customer in order to remedy the problem, which is today has not been successful for days. "

From Statement No. 1, as quoted below, the Debtor is a cashier for its customer keep an account, and who in connection with this so-called. It also uses a mobile banking service. "Regarding the Bank's data management activities, the telephone number is not or not exclusively marketing partly to confirm certain transactions (using a so-called Onetime-password) and partly as part of the necessary to provide account information on transactions. "

The Authority invited the Debtor to make a further statement and replied within the deadline (the hereinafter referred to as "Declaration No 2").

According to Declaration No. 2, the Customer of the Debtor - who is not the Applicant - on 15 August 2007. provided the Debtor with the telephone number affected by the application - [...] - on the day of opening the account. At the time of concluding the contract, the customer was personally identified by the Debtor, later by the was not identified by phone before sending text messages.

The Debtor sent a confirmation letter on July 10, 2018 and September 14, 2018

to your customer. As stated in the Debtor's Declaration No. 2, the Debtor requested a subscription contract from the Applicant in a letter dated 3 September 2018 for the following reasons:

"Our Bank has requested the subscription contract from the Applicant in order to actually to make sure that the telephone number affected by the request is no longer available to our Customer based on which the phone number affected by the request could be deleted from our system. THE presentation of the contract would have been sufficient, however, the Applicant is not a Customer of our Bank The Bank's proposal is to send a copy of the contract volt..."

At the request of the Authority, the Debtor explained what he meant to the Applicant as follows in connection with what they wrote in their letter [...] under that they had done the "necessary steps ":

"As described above, the Bank contacted the Customer with a data clarification letter a available channel by post. In this letter, the Bank requests that the Customer do so fulfill its contractual obligation (this provision is, inter alia, the Bank's General Business

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Terms and Conditions and the Privacy Notice) and if applicable report to the Bank. As the Bank does not know any other contact details of the Customer (eg no secondary telephone number), could not start the process on another channel. "

As regards the measures taken, point 4 of Declaration No 2 states that

"Our bank has, of course, taken steps to prevent further misrepresentations happen. In addition, we maintain our previous position that requesting a subscription contract not always a suitable solution in terms of data management, however, the case is all In view of the circumstances, we did not see any other way of resolving the dispute. We reiterate that our Customer did not contact us despite repeated calls With our bank to clarify the contact details. "

According to the response sent to the Debtor Applicant:

"We would like to inform you that the telephone number is based solely on the order of our Customer our mode of modification in our system. Our bank has taken the necessary steps to do so in order for our Customer to initiate the modification of the data. If the problem If it still exists, please send our Bank the contract certifying that that the telephone number is your property. "

No. 2. According to the statement, "It is a further argument that it cannot be modified at the request of a third party the Bank may not cancel the telephone number or that it is part of an existing contract with the Customer which the Bank may not unilaterally amend despite the announcement. "

II. Applicable law

On the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC

Article 2 (1) of Regulation (EU) No 2016/679 (hereinafter referred to as the General Data Protection Regulation) the Regulation should apply to personal data in a partially or fully automated manner and the non-automated processing of data which are part of a registration system or are part of a registration system they want to do.

Pursuant to Article 5 (1) (d) of the General Data Protection Regulation, personal data: they must be accurate and, where necessary, kept up to date; all reasonable measures must be taken in order to ensure that personal data are inaccurate for the purposes of data processing deleted or corrected immediately ("accuracy").

Pursuant to Article 12 (1) of the General Data Protection Regulation, the controller is appropriate take measures to ensure the processing of personal data by the data subject all the information referred to in Articles 13 and 14 and Article 34 each piece of information in a concise, transparent, comprehensible and easily accessible form, in a clear manner and provide any information addressed to children, in particular, in plain language

in the case of. The information shall be provided in writing or otherwise, including, where appropriate, by electronic means must also be provided. Oral information may be provided at the request of the data subject, provided otherwise the identity of the data subject has been established.

Pursuant to Article 12 (2) of the General Data Protection Regulation, the controller shall assist the data subject 15-22. exercise of their rights under this Article. In the cases referred to in Article 11 (2), the data controller concerned 15-22. failure to comply with his request to exercise his rights under Article unless he proves that the person concerned cannot be identified.

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Pursuant to Article 12 (3) of the General Data Protection Regulation, the controller is unjustified without 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. Pursuant to Article 12 (4) of the General Data Protection Regulation, if the controller does not do so measures at the request of the data subject without delay, but at the latest at the time of the request within one month of receipt of the measure and that the person concerned may lodge a complaint with a supervisory authority and may reside with the right to judicial redress.

Pursuant to Article 18 (1) (a) of the General Data Protection Regulation, the data subject is entitled to that, at the request of the controller, restrict the processing if the data subject disputes the personal data accuracy, in which case the limitation shall apply to the period during which the data controller check the accuracy of personal data.

Pursuant to Article 58 (2) of the General Data Protection Regulation, the supervisory authority is the investigating authority acting under the authority of:

"(C) instruct the controller or processor to comply with this Regulation

the exercise of his rights under this Regulation;

(g) order personal data in accordance with Articles 16, 17 and 18 respectively

rectification or erasure of data and restrictions on data processing, as well as Article 17 (2)

shall notify the addressees with whom it is addressed in accordance with paragraph 1 and Article 19

or with whom personal data have been communicated. "

Due to the nature of the infringement - infringement of the rights of the victims concerned - the upper limit of the fine that can be imposed is the general one

EUR 20 000 000 pursuant to Article 83 (5) (b) of the Data Protection Regulation, or the Debtor

up to 4% of total world market turnover in the preceding business year.

III. Authority decision

III.1. The examined data management

The Applicant contacted the Debtor by telephone on 8 August 2018

submitted in which he asked the Debtor not to use his telephone number or send to anyone else

person's account debt sms. The petition of the Applicant was filed on September 3, 2018.

dated - [...]. s. - the Debtor sent a reply letter.

The Debtor shall send letters requesting clarification of the data sent on the basis of the Applicant's notification to

customer on July 10, 2018 and September 14, 2018. The Applicant nevertheless continues

also - also on October 6, 2018 - received an sms message from the Debtor owing to another person

therefore applied to the Authority on 13 October 2018.

The telephone number data that is the subject of the procedure is considered to be the personal data of the Applicant, thus the

pursuant to Article 4 (2) of the General Data Protection Regulation

storage and use is considered data management.

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III.2. Principle of accuracy

The Applicant has repeatedly objected to the use of his telephone number, questioning the

accuracy because another person's phone number was used in his case and asked not to

they will be used hereafter.

The Debtor took the "necessary measures" following the complaint, which was done to his client by post

did not restrict the processing. In the Authority 's view, the

Debtor contacted his client with a letter requesting clarification of the data, appropriate but not considered as a sufficient measure.

The current written contract concluded with the Debtor's customer on 15 August 2007, contains the Applicant's telephone number as an accounting document. However, in the contract the telephone number listed in is not suitable for taking the steps necessary to perform the contract, a to send transaction notifications and signals to the customer, because already with the Obligor personal data of a non-legal third party.

The Authority agrees with the Obligor that the data controller has no obligation to delete data in the case of the accuracy of data previously provided to your customer becomes questionable on the basis of a third party report and it is not proven that the data is no longer over the customer but the notifier is entitled to dispose of it.

However, the actions taken by the controller on the basis of the notification should promote accuracy and prevent the use of inaccurate data. In such case in the opinion of the Authority, the data controller is inaccurate in taking reasonable steps should be temporarily restricted.

In view of the above, the data management of the Debtor, the sending of sms to the telephone number stored by it it could only be considered lawful as long as it was presumed that the registered telephone number was when it becomes doubtful as a result of the Applicant's notification, the Debtor shall take action to should have limited the processing of data until the situation is clarified, the accuracy of the data until inspection. The Debtor has not fulfilled this obligation because the Applicant even after the accuracy and up-to-dateness of the data processed has been called into question sent an SMS and used the phone number to send notifications, in violation of Article 5 (1) (d) of the General Data Protection Regulation.

The principle of accuracy requires not only from the Debtor but also from the data subject measures, so that the data subject also has to cooperate, which is contractual in the case of relationships, Act V of 2013 on the Civil Code 6:62. § (1)

can also be traced back to a regulated obligation to cooperate and provide information. The contract on the basis of the relationship and the resulting obligation to cooperate, the Debtor 's customer a He should have replied to the letter of formal notice sent by the debtor, and even before that, the after the changes have taken place, he should have notified the person without undue delay the Debtor about the change in the data. That didn't happen, however, that's no reason to the Debtor continues to use the data and does not grant any waiver in connection with the data restriction measures.

III.3. Obligation of data controllers to facilitate the exercise of data subject rights

Article 12 (1), (2), (3) and (4) of the General Data Protection Regulation contain provisions on facilitating the exercise of the rights of data subjects.

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In its reply letter dated 3 September 2018, the Debtor notified the Applicant that that he took action at the request of the data subject and, moreover, called on the subscriber by attaching a copy of the contract, certify that the telephone number requested is a phone number. However, the Debtor only partially acted with his actions towards his client fulfill its obligations regarding the principle of accuracy.

The Debtor shall be notified to the Applicant pursuant to Article 12 (2) of the General Data Protection Regulation instead of an invitation, he should have informed him by presenting the subscription contract you can prove that the phone number is your personal information, in this case the general privacy shall delete the inaccurate data from the register pursuant to Article 5 (1) (d) of this Regulation.

If the Applicant does not wish to present the subscription contract, the Debtor shall phone number data processing is required to check the accuracy of the data for a period of time.

In the Authority's view, the Applicant would have had the opportunity to do so on the basis of this information recognize the impact that specific measures and your own decisions will have on privacy. Stakeholders can get to know the person through appropriate information

the processing of data relating to their data and thus the exercise of their right to self-determination of information, however, the Applicant did not receive such information.

The Debtor did not facilitate the exercise of the rights of the data subject by sending an invitation to the Applicant, because it was partly misleading, since requesting a copy of the subscription contract was

Debtor was not eligible. To manage this data carrier and get to know its data content a

Applicant could have given him consent.

In view of the above, the Authority concludes that the Debtor is subject to Article 12 of the General Data Protection Regulation (2).

III.4. Legal consequences

4.1. The Authority grants the request of the Applicant and Article 58 (2) of the General Data Protection Regulation.

condemns the Debtor pursuant to paragraph 1 (b) because of its data processing activities

infringed Article 5 (1) (d) and Article 12 (2) of the General Data Protection Regulation

pursuant to Article 58 (2) (b) of the General Data Protection Regulation

the Obligated to implement restrictions on the handling of telephone number data and to inform the

Obligated to take action on your personal data.

4.2. As to whether the imposition of a data protection fine is justified, the Authority

Article 83 (2) of the Data Protection Regulation and Infotv.75 / A. § considered ex officio

all the circumstances of the case. The Authority considers it necessary to impose a fine as it is an affected right

measures relating to the obligation to facilitate the exercise of

the processing of data relating to incomplete processing is the subject of an official matter.

The amount of the fine was determined by the Authority acting in accordance with its statutory discretion.

In imposing the fine, the Authority took into account the following general data protection considerations

on the basis of the criteria set out in Article 83 (2) of the Regulation:

- In the case of the Debtor, the pre-tax profit of the current year in 2017 was HUF 31 billion.
- As regards the nature of the infringement, it assessed that the principle had been infringed and that the did not facilitate the exercise of the rights of the data subject.

- The Authority assessed that the Debtor did not take measures to comply with the data processing as a serious violation.

to limit the accuracy of the data.

- Despite the repeated complaints of the Applicant, it did not promote the accuracy of the data

principle, did not restrict data processing, therefore illegal data processing

it has existed for a long time.

- As regards the gravity of the infringement, the Authority considered that the

the Debtor's failure to notify the customer of any change in data may also have contributed to the Debtor

unlawful data processing, which does not relieve the Debtor of its own obligations

but partly reduces its responsibility in this regard.

- It was also assessed as a mitigating circumstance that the general obligation to convict the Debtor

due to a breach of the data protection regulation has not yet taken place, and the Defendant is in breach

cooperated in its exploration.

In view of the above, the data protection fine imposed is a token amount and does not approach

maximum fine that may be imposed.

ARC. Rules of procedure

The present was decided by Ákr. § 80 (1), § 81 (1), and Infotv. Section 61 (1)

based on paragraph

The decision is based on Ákr. Pursuant to Section 82 (1), it becomes final upon its communication.

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

whole

country.

The Ákr. Pursuant to § 112 and § 116 (1) and § 114 (1)

there is an administrative remedy against him.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a

hereinafter: Kp.). A Kp. Pursuant to Section 12 (2) (a) by decision of the Authority

The administrative lawsuit against the court falls within the jurisdiction of the court Section 13 (11)

the Metropolitan Court has exclusive jurisdiction. 2016 on Civil Procedure

CXXX. Act (hereinafter: Pp.) - the Kp. Applicable pursuant to Section 26 (1) - Section 72 provides for legal representation in litigation falling within the jurisdiction of the Tribunal. Kp. Section 39 (6)

according to - unless otherwise provided by law - the filing of the application by the administrative has no suspensory effect on the entry into force of the act.

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. Act (a

hereinafter: the e-administration Act), the client's legal representative pursuant to Section 9 (1) (b) obliged to communicate electronically.

The place and time 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:

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Itv.) 44 / 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 Debtor does not duly prove the fulfillment of the prescribed obligations, the Authority shall

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

The debtor has not complied with the obligation contained in the final decision of the Authority, it is enforceable.

The decision of the Authority Pursuant to Section 82 (1), it becomes final with the communication. The Ákr. 133.

§, unless otherwise provided by law or government decree - a

ordered by the decision-making authority. The Ákr. Pursuant to § 134, enforcement - if law,

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

by the state tax authority. Infotv. Pursuant to Section 60 (7), the Authority

to perform a specific act, to behave in a specific manner,

the Authority shall enforce the decision in respect of the obligation to tolerate or discontinue implements.

Budapest, February 8, 2019

Dr. Attila Péterfalvi

President

c. professor