

Registration number: NAIH / 2019/5421/5.

Subject: Ex officio decision

in an official data protection procedure

DECISION

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

(hereinafter: the Debtors) in the area of their property ([...])

was initiated ex officio on 8 July 2019 to examine the lawfulness of related data processing

in an official data protection procedure

1. Notes that the Debtors have installed the façade of the property under number [...]

with the two cameras facing the public area, illegal data processing

have been or are being carried out in accordance with Article III of the explanatory memorandum. as explained in point.

2. Instructs the Debtors to comply with this Decision within 30 days of its becoming final

within the framework of the unlawful camera surveillance referred to in point 1, data processing

bring their operations into line with the legal provisions by:

they change the angle of view of the affected cameras and the corresponding masking and distortion function

are applied.

The measures provided for in point 2 shall be taken by the Debtors from the time the measure is taken

within 8 days of receipt of the supporting evidence.

to the Authority. In the event of non-compliance with the obligation under point 2, the Authority shall order a

implementation of this Decision.

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 court will act in a simplified lawsuit in which the

the court shall act in accordance with the rules of out-of-court settlement. The request for a hearing shall be made by:

must be indicated in the application. For those who do not benefit from full personal exemption a

the fee for court review proceedings is HUF 30,000, the lawsuit is subject to the right to record material fees. THE
Legal representation is mandatory in proceedings before the Metropolitan Court

EXPLANATORY STATEMENT

I. Facts

I.1. The Authority received a notification in which the notifiers objected to being Debtors

both public and private space with cameras located on their property ([...])

observed.

In view of the above, the Authority first attempted in a letter dated 30 April 2019

to inform the Debtors about the initiation of the investigation procedure in which the facts have been clarified

within 15 days of receipt

by setting a deadline - asked questions. The letter was received on May 22, 2019 with the message "not sought"
back to the Authority.

Subsequently, the Authority resent the request to the Debtors on 28 May 2019,

however, he returned to the Authority on 18 June 2019 with the word "did not seek" again.

Given that the facts could not be disclosed in the investigation, the Authority

closed the investigation and in the case on the right to information self - determination and the

CXII of 2011 on freedom of information Act (hereinafter: the Information Act) Section 55 (1)

initiated a data protection authority proceeding under point (a) (b).

I.2. In order to clarify the facts, the Authority called on the Debtors to reply to the

questions about the circumstances of the data processing.

By letter dated 18 July 2019, the Debtors informed the Authority that the cameras

In the picture, the garden of the public or the adjacent residential property is masked, so the system

it can only record its own garden. To support this, they are enclosed by the camera system

images of the observed area.

It was submitted that the operators of the camera system are the Obligors. Data recorded by the camera a

is recorded on the data recorder in the attic, the recorded data will be deleted automatically after 3 days. THE

No one other than the obligors has access to the data, no data processor for data management they take advantage of. The system was developed by [...] Kft. (Registered office: [...]), the company a copy of the contract is attached by the Debtors.

The cameras were equipped for security purposes, the operation of the cameras is personal and CXXXIII of 2005 on the protection of property and the rules of private investigation. based on the provisions of the law.

Four cameras are mounted on the outside of the housing. Type: Hikvision Turret HD-TVI outdoor camera. The cameras can be accessed via the Internet with a mobile application. The cameras only take pictures they record, not sound. Only Debtors have access to the recordings, and they are third parties will not be transmitted to persons.

Due to masking, the camera does not record anything from the adjacent plot and house. Attached in support of this, snapshots showing the viewing angle of the cameras, as well as a copy a site plan of the property, indicating the location and viewing angle of the cameras.

Based on the snapshots attached by the Debtors showing the viewing angle of the cameras, Cameras No. 2 - due to inadequate obscuration - the public area in front of the property fence is one part is also observed.

The Defendants further submitted that the whistleblowers had filed a complaint with the police due to an operated camera system. In the Criminal Division of the [...] Police Headquarters in the case proceedings were initiated, however, the proceeding was terminated due to the availability of no criminal offense could be established on the basis of the data or the means of proof.

I.3. In order to fully clarify the facts, the Authority contacted [...]

Police station to provide information on the main measures taken in the case and the outcome of the proceedings.

Upon request, the [...] Police Department informed the Authority that the [...]

Harassment proceedings were reported to the Criminal Department of the Police Department suspected of misconduct and the proceedings were resumed after reclassification

against a perpetrator unknown on suspicion of obtaining data. During the procedure

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It has been established that the [...] no. of the four security cameras mounted on the property below

the angle of view of two cameras faces the adjacent property at number [...].

The cameras were installed by [...] Kft. (Hereinafter: Kft.) On behalf of the owner. The Ltd.

During the hearing of a witness, his representative stated that the installation of the cameras and the

at the time of commissioning (April 18, 2018), the viewing angles of the cameras were immediately adjusted

masking, and then, at the request of the customer, on July 12, 2018, after the police data collection a

the masking of the angles of view of the cameras has been modified in such a way that compared to the previous ones

multiple masking has been set. The software masking on the footage recorded by the cameras became so

set to save only recordings that are owned exclusively by the owner

what happened on his property is recorded. The owners do not know the symbol that restricts the recording unit,

combination of letters and numbers, and do not have the ability to handle masking software

nor with his knowledge.

Based on the findings of the investigation, the [...] Police Headquarters took it on 27 July 2018

In its decision, the procedure was initiated in accordance with Act XC of 2017 on Criminal Procedure. Section 398 (1) (c) of the

Act

terminated in view of

The victims lodged a complaint against the decision to close the proceedings. The [...] District

The Public Prosecutor's Office annulled the decision terminating the decision of 7 September 2018

placed it outside. Subsequently, the [...] Police Department carried out further investigative actions

carried out, which included an on-the-spot inspection. In the process, the

central mounting unit for property-mounted cameras. The central mounting unit and on it

A forensic IT expert was appointed ex officio to examine the recordings.

The IT expert made the following findings:

Active masking was detected on the active recordings detected on the hard disk (07.01.2017 - 11.07.2019)

claiming that there was no change in masking during this period. Given that the recordings are deleted after 5 days, it could not be established beyond a reasonable doubt that 2019. when masking was set before January 7th. Software masking change the settings, edit the symbol code used to unlock the device, is not possible without knowing the username / password pair.

The [...] Police Department discovered by the expert on the hard drive of the Hikvision Digital Recorder and then You have viewed and deleted the "Deleted" video files that you saved and restored to found the same masking in the oldest playable recording made on July 6, 2018 as the investigative act of the research carried out on 12 July 2018 under number [...] during the execution of the images. According to the recordings saved by the expert After July 12, 2018, the masking set for recordings was changed, much more obscured interface has been set.

The [...] Police Headquarters is prohibited on the basis of available data and means of proof data acquisition did not establish the commission of a criminal offense. The investigation established that that the cameras were mounted for security reasons and the central recording of the cameras was recorded software masking has also been set up on the unit, thus ensuring that the owners personal data, private secrets, trade secrets or business information relating to residents under [...] do not know the secret.

Based on the above, the [...] Police Headquarters decided to terminate the proceedings. The victim complaint against the termination decision through his authorized legal representative

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submitted. The [...] District Prosecutor's Office dated 23 July 2019. decision on the complaint rejected it and upheld the termination decision.

II. Applicable legal provisions

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) 2016/679 (hereinafter referred to as the General Data Protection Regulation)

the General Data Protection Regulation applies to personal data in part or

fully automated processing of personal data and the processing of personal data

which are part of a registration system

which are intended to be part of a registration system. The general

Infotv. Pursuant to Section 2 (2), the

The General Data Protection Regulation shall apply with the additions indicated therein.

Pursuant to Article 2 (2) of the General Data Protection Regulation, the Regulation does not apply

processing of personal data if it:

(a) carried out in the course of activities outside the scope of Union law;

(b) by Member States in the activities covered by Chapter 2 of Title V of the TEU

performed;

(c) by natural persons exclusively in the course of their personal or domestic activities;

(d) the prevention, investigation, detection and prosecution of criminal offenses by the competent authorities

carried out for the purpose of conducting criminal proceedings or enforcing criminal sanctions, including:

protection against and prevention of threats to public security.

According to recital 18 of the General Data Protection Regulation, the Regulation does not

applicable to the processing of personal data by a natural person solely for personal or

in the context of a home activity, which is thus no professional or business

activity. It is considered a personal or home activity

such as correspondence, directory storage, and said personal and domestic activities

social networking and online activities. E

However, this Regulation shall apply to controllers and processors who:

for the processing of personal data in the course of such personal or domestic activities

tools are provided.

According to Article 4 (1) of the General Data Protection Regulation, "personal data: the identified or

any information relating to an identifiable natural person ("data subject"); identifiable by a
a natural person who, directly or indirectly, in particular by an identifier, e.g.
name, number, location data, online identifier or physical, physiological,
genetic, intellectual, economic, cultural or social identity
identifiable by that factor. " According to point 2 of that article, 'data processing: personal data
performed on data or files in an automated or non-automated manner
an operation or set of operations, such as collecting, recording, organizing, segmenting, storing,
transformation or alteration, query, insight, use, transmission of communication, distribution
or otherwise made available, through coordination or interconnection,
restriction, cancellation or destruction. " According to point 7, "data controller: the a
any natural or legal person, public authority, agency or any other body which:
determine the purposes and means of the processing of personal data, either individually or in association with others;
if the purposes and means of the processing are defined by Union or Member State law, the controller
or specific aspects of the designation of the controller are also governed by Union or Member State law
may determine. "

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Pursuant to Article 6 of the General Data Protection Regulation, the processing of personal data is limited to
is lawful if and to the extent that at least one of the following is met:

(a) the data subject has given his or her consent to the processing of his or her personal data for one or more specific
purposes

treatment;

(b) processing is necessary for the performance of a contract to which one of the parties is a party;

or to take action at the request of the data subject prior to the conclusion of the contract

required;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is in the vital interests of the data subject or of another natural person

necessary for its protection;

(e) the exercise of a public interest or the exercise of official authority vested in the controller

necessary for the performance of its task;

(f) processing for the legitimate interests of the controller or of a third party

necessary, unless the interests of the data subject take precedence over those interests

or fundamental rights and freedoms which call for the protection of personal data,

especially if the child concerned.

Point (f) of the first subparagraph shall not apply to the performance of their duties by public authorities

data management.

Infotv. Pursuant to Section 60 (1), the enforcement of the right to the protection of personal data

To that end, the Authority shall, at the request of the data subject, initiate a data protection authority procedure and

may initiate ex officio data protection proceedings.

Infotv. Pursuant to Section 61 (1) (a), it was taken in a data protection official proceeding

In its decision, the Authority Data management specified in Section 2 (2)

defined in the General Data Protection Regulation in the context of

may apply legal consequences. Article 58 (2) (b) of the General Data Protection Regulation

The supervisory authority shall condemn the controller or the processor if

data processing activities have infringed the provisions of this Regulation or the same paragraph (d).

instructing the controller, acting in accordance with

that its data processing operations are carried out, where appropriate in a specified manner and within a specified period of

time;

bring it into line with the provisions of this Regulation.

III. Decision

III.1. Person of the data controller

In their declaration to the Authority, the Debtors, as the operator of the camera system,

themselves have been clearly identified as data controllers and as this is a questionable fact of the proceedings

In addition, according to the Debt Statement, the cameras were used by their persons and they were equipped and commissioned to ensure the security of their property the company named above, and therefore as determining the purpose and means of data management the Authority considered the Debtors to be data controllers.

III.2. Legality of camera data processing

Under the General Data Protection Regulation, the image of the data subject is considered personal data. Affected the identified or identifiable natural person. In all these respects, if one If a natural person can be identified based on the recording, the captured image is personal data capture is considered data management.

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Using cameras / camera systems based on their location and angle of view they may be able to observe another private area or a public area, different make recordings related to your property that may be offended by persons monitored by the camera personal rights and privacy.

Data management by a privately operated camera / camera system is a GDPR if it does not qualify as household data processing, ie if it is subject to general data protection

The exception in Article 2 (2) (c) of this Regulation shall not apply to it. In this personal or domestic activities referred to in

Examples are given in this recital, such as correspondence, directory storage, personal and home activities on social networks

networking and other online activities. However, it is important to emphasize that - as it is

The Court of Justice of the European Union has ruled in the so-called Rynes judgment¹ - for private purposes the exception for data processing should be interpreted narrowly.

In view of the above, the camera surveillance which is the subject of the present proceedings, in so far as to the extent that it extends to persons outside the controller's private property

- does not fall under that exception. It cannot be considered as personal or domestic

the processing of data in the framework of the activity is the camera for security purposes

data processing with a surveillance system in the privacy of the data controller

directed to the outside.

In the absence of a proper legal basis, a camera operated by private individuals is exclusively their own

you can observe the area you own, so its viewing angle cannot be on public areas or on the ground

and private property owned by another. Care should be taken when adjusting the angle of view of the camera

that it does not extend beyond the boundaries of its own property or that it passes by

your privacy is not harmed. If the viewing angle cannot be entirely your own property

directed to the area and extending beyond other private or public areas, the camera is masked

should be provided and the area in question should be covered, or by applying an appropriate legal basis

the conditions for lawful data processing must be created.

The Authority found that the Debtors were adjacent to the cameras they operated

property is not observed, the cameras were properly masked in this regard.

He found, however, that the camera images attached by the Debtors were No. 1 and No. 2

cameras, although masked, are not covered by the camera

for the whole of the observed public area, so they are part of the public area before the property fencing

are kept under surveillance, making it possible for those present and traveling in the public area to do so

monitoring, as well as the operation of high-definition HD cameras up to those involved

also to identify.

Considering, therefore, that the Debtors with the cameras they operate in such a way

take a picture that its masking function is inadequate, resulting in

public space is also monitored, their data processing cannot be considered as household data processing.

Based on the above, the data processing of the Debtors falls within the scope of the General Data Protection Regulation

in which case the lawfulness of the data processing is subject to a general rule

the existence of a legal basis governed by Article 6 of the Data Protection Regulation.

The Debtors did not indicate the legal basis for their data processing during the proceedings,

nor was it in any way probable that they would have a

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C 212/13. Case No - <http://curia.europa.eu/juris/document/document.jsf?docid=160561&doclang=EN>

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with the consent of the stakeholders in the public area or that the camera monitoring is necessary to enforce their legitimate interests, which take precedence against the interests or fundamental rights and freedoms of those concerned.

In view of all this, the Authority found that by providing the No. 1 and No. 2 cameras observe the public area in front of their property, the Debtors have violated the general data protection Article 6 of the Regulation, as they have been or are being handled by cameras without a proper legal basis the personal data of data subjects passing through the observed public area.

In view of the above, the Authority has condemned the infringement under Article 58 (2) (b) of the GDPR.

Obligated because their data processing activities violated the regulation. The Authority shall also:

Pursuant to Article 58 (2) (d) of the GDPR, the Debtors bring their operations into line with the provisions of the Regulation.

ARC. Other issues

Unless otherwise provided in the General Data Protection Regulation, the Data Protection Authority

CL of the General Administrative Procedure Act 2016. Act (hereinafter:

Ákr.) Shall apply with the exceptions specified in the Infotv.

Infotv. According to Section 38 (2), the task of the Authority is to protect personal data,

and the right of access to data in the public interest and in the public interest

monitoring and facilitating the enforcement of personal data within the European Union

facilitating the free movement of According to paragraph (2a) of the same section, the general data protection

Hungary shall exercise the responsibilities and powers laid down in this Decree for the supervisory authority

in the General Data Protection Regulation and e

exercised by the Authority as defined by law.

This decision is based on Articles 80-81 of the Act. § and Infotv. It is based on Section 60 (1).

The decision is based on Ákr. Pursuant to Section 82 (1), it becomes final upon notification of the decision.

The Ákr. § 112 and § 116 (1), and Art. Pursuant to Section 114 (1) a

There is an administrative remedy against the decision.

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), the Authority

The administrative lawsuit against the decision of the Criminal Court falls within the jurisdiction of the court. Section 13 (11)

The Metropolitan Court shall have exclusive jurisdiction pursuant to On civil procedure

on the 2016 CXXX. Act (hereinafter: Pp.) - the Kp. Pursuant to Section 26 (1)

applicable - legal representation in a lawsuit falling within the jurisdiction of the tribunal pursuant to § 72

obligatory. Kp. Pursuant to Section 39 (6), unless otherwise provided by law, the application

has no suspensory effect on the entry into force of the administrative 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 referred to as the Customer's legal representative pursuant to Section 9 (1) (b) of the E-Administration Act obliged to communicate electronically.

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

Information on the simplified procedure and the possibility of requesting a hearing a

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Kp. Section 77 (1) - (2) and Section 124 (1) and (2) (c), and (5)

based on paragraph The amount of the fee for an administrative lawsuit shall be determined in accordance with Act XCIII of 1990 on Fees.

Act (hereinafter: Itv.) 45 / A. § (1). Advance payment of the fee

under the Itv. Section 59 (1) and Section 62 (1) (h) exempt the proceedings

initiating party.

If the Applicant does not duly demonstrate the fulfillment of the required obligation, the Authority shall considers that it has failed to fulfill its obligations within the prescribed period. The Ákr. According to § 132, if the debtor has not complied with an obligation contained in the final decision of the authority, it shall be enforceable. The Authority decision of the Ákr. Pursuant to Section 82 (1), it becomes final with the communication. The Ákr. Section 133 enforcement, unless otherwise provided by law or government decree ordering authority. The Ákr. Section 134 of the Enforcement - if law, government decree or in the case of a municipal authority, the decree of the local government does not provide otherwise - the carried out by a state tax authority. Infotv. Pursuant to Section 61 (7) in the decision of the Authority to perform a specific act, conduct or tolerate a specific act to stop aimed at obligation with regard to the decision implementation the Authority.

Budapest, December 6, 2019

Dr. Attila Péterfalvi

President

c. professor

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