

Registration number:

NAIH / 2019/860/4

Object:

decision was initiated ex officio

in official proceedings

H AT PRICE O Z AT

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

(address: [...]) (hereinafter referred to as the “Debtors”) in the field of real estate under number [...]

ex-officio data protection on the subject of data processing with a camera surveillance system

in official proceedings

1. Notes that the debtors have installed on the façade of the property under number [...] and

illegal data processing has taken place and is still taking place with the cameras operated by

Justification III. as explained in point.

2. Instructs the Debtors to comply with this decision within 30 days of its final adoption

eliminate illegal camera surveillance in accordance with point 1, their data processing operations

bring them into line with legal provisions by making the affected cameras

their angle of view is adjusted or an appropriate masking and distortion function is used.

The measures provided for in point 2 shall be taken by the Debtor from the date of taking the measure

must provide written confirmation, together with the supporting evidence, within

Towards an authority. In the event of non-compliance with the obligation under point 2, the Authority shall order the decision

implementation.

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.

IND O K O L ÁS

I.

The process and clarification of the facts

I. 1. On 18 July 2018, the Authority received a complaint against the Debtors, in which a

The complainant requested the Authority to provide cameras installed in the area of property [...], which monitor, dismantle and, if possible, sanction both private and public space

it.

On the basis of the complaint received, an investigation procedure was initiated in which the Authority clarified the facts. In order to do so, he contacted the Debtors.

In a letter dated 10 September 2018, the Debtors provided information to the Authority

however, it did not fully address the issues raised

replies, the Authority again requested information from the Debtors.

In their letter dated 2 October 2018, the Debtors repeatedly failed to provide adequate information

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

CXII of 2011 (hereinafter: the Information Act), Section 55 (1) (b) and

§ (1), it closed the investigation procedure and initiated official proceedings ex officio.

I. 2. In the ex officio data protection authority proceedings, the Authority repeatedly called on the

They are obliged to provide information with their data management in order to clarify the facts

connection. By letter dated 21 November 2018, the Debtors informed the a

Authority that the camera system consists of 4 cameras, two of which are pseudo-cameras. The cameras operators to the Data Controller and the Data Controller [subject to formal considerations] [...]

it counts as. According to their statement, the cameras were equipped for security and personal security purposes, because they felt threatened by an earlier debate. Notwithstanding the express request of the Authority,

The obligors did not indicate the legal basis for the data processing in their reply. The Debtors according to their statements, the cameras have a masking function on the neighbor's private area towards the public space, which can be eliminated on a computer with internet access from the cameras do not have and do not transfer the data to third parties. According to them, the data subjects were informed orally about the data processing with the camera. The Debtors also criminal proceedings pending at the [...] Police Headquarters with case number [...] obtaining documents to prove that the equipment of the cameras has suffered was justified by the acts. The Debtors attached an expert opinion to their application - in which the company installing the cameras has certified that the camera system is 2 cameras pseudo-camera - and a photo of the house marked by the cameras was attached location and snapshots of the two sharp cameras.

According to the snapshots taken from the viewing angle of the cameras sent by the Debtors a adjacent properties are obscured using the masking feature, however, the property The public space before is not obscured by the masking function, so both cameras monitor public space. The Authority has contacted the [...] Police Headquarters to clarify the facts, which sent a snapshot of the recording of camera 2 captured on June 7, 2018, and informed the Authority that the recording was distorted at the time of seizure; it was not masked, so you can see the garden part of the adjoining property on it.

II.

Applicable legislation

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, GDPR) shall apply to the processing of personal data in a partially or fully automated manner processing of personal data in a non-automated manner which are part of a registration system or which are part of a

intended to be part of a registration system.

Pursuant to Article 2 (2) of the General Data Protection Regulation, the Regulation does not shall apply to the 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 course of activities covered by Chapter 2 of Title V of the TEU;
- (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 public security protection against and prevention of such threats.

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According to recital 18 of the General Data Protection Regulation, the Regulation does not applicable to personal data provided by a natural person solely for personal or domestic use any professional or business activity 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 should apply to controllers and processors who are personal means of processing data in the context of such personal or domestic activities 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: is the natural or a legal person, public authority, agency or any other body that is personal determine the purposes and means of data processing, either individually or in association with others; if that the purposes and means of the processing are determined 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. "

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.

The Infotv. Section 2 (2)

the general data protection regulation applies with the additions indicated therein.

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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 With the data management operations specified in Section 2 (2)

in this context, the legal consequences set out in the General Data Protection Regulation

you can apply. According to Article 58 (2) (b) of the General Data Protection Regulation, the supervisory

authority shall condemn the controller or the processor if it acts as a data controller

has infringed the provisions of this Regulation or, in accordance with point (d) of the same paragraph,

the supervisory authority, acting in its corrective capacity, shall instruct the controller to

where appropriate, within a specified manner and within a specified period of time

with the provisions of this Regulation.

III.

Decision

III.1. Person of the data controller

Under Article 4 (7) of the General Data Protection Regulation, the controller is therefore natural

or a legal person [...] which independently or for the purposes and means of processing personal data

defined together with others [...]. However, the GDPR is also familiar with the concept of a common data controller, which

under Article 26 where there are two or more purposes and means of data processing

jointly determined by the controller.

[...] In his statement to the Authority himself, as the operator of the camera system

clearly designated as a controller and as this is not a questionable fact during the proceedings and because [...] stated that the cameras were personal and property was installed and entrusted with the installation work above to ensure its safety therefore, as the person determining the purpose and means of the data processing, the Authority considered a data controller.

However, in their joint statement in the official procedure, the Clients that the camera systems are operated jointly - [...] their role as data controller was denied by "Only in the light of formal considerations" is considered to be a controller.

However, in the Authority's view, by jointly operating the camera system, its equipment has been jointly decided, the purpose of the data processing has been jointly defined, therefore [...] also qualifies as a data controller and the Clients carry out joint data management with the camera system during its application.

### III.2. Legality of camera data processing

Under the General Data Protection Regulation, the image of the data subject is considered personal data.

An identified or identifiable natural person is concerned. In all these respects, if a recording can be used to identify a natural person, then the captured image personal data, the taking of a picture is considered data management.

Use of cameras / camera systems - based on their location and angle adjustment

They may be suitable for observing another private or public area, other make recordings related to your property that may be offended by persons monitored by the camera personal rights and privacy.

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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 judgment<sup>1</sup> - 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.

The Authority found that Camera No. 1, although camouflaged, is the property

the public area in front of the fence is monitored. The Authority further concluded that

camera no. monitors public areas outside the data controller's property.

Clearly based on the statement sent by the [...] Police Department and the attached photo

it can be seen that the setting angle of the camera No. 2 belongs to the adjacent private area

was directed to the front yard and public area before the proceedings were initiated, ie to the Debtors.

no masking function was used during this period.

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 and other private areas are also monitored, their data processing cannot be considered as household

data management.

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 one of the general data protection rules

the existence of a legal basis governed by Article 6 of the Regulation. The Authority has called on several occasions

data controllers to indicate the legal basis for their data processing, however



Debtors did not comply during the proceedings, nor was it likely to do so

in such a way that they have adequate data subject consent to the processing, or that

camera surveillance is necessary to enforce their legitimate interests, which take precedence

enjoy 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

they observe the public area in front of their property as well as the adjacent private area

pre-garden was monitored prior to the initiation of the proceedings and that this

the legal basis for the data processing was not specified during the proceedings, the Debtors violated the

Article 6 of the General Data Protection Regulation, as it has been or is being treated without a proper legal basis

personal data of the data subjects.

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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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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 questions

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

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

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.

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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 a case falling within the jurisdiction of the Tribunal. Kp. Section 39 (6)

unless otherwise provided by law, the date of filing of the application

has no suspensory effect on the entry into force of an 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 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 lawsuit and the possibility to request a hearing can be found in the CC.

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

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

(hereinafter: Itv.) 44 / A. § (1). From the advance payment of the fee is

Itv. Section 59 (1) and Section 62 (1) (h) shall release the party instituting the proceedings.

If the Applicant does not duly prove 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 a

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the final decision of the competent authority has not been complied with, it shall be enforceable. The Authority

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

enforcement is the decision, 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 60 (7) in the decision of the Authority

to perform a specific act, conduct or tolerate a specific act

the Authority shall enforce the decision with regard to the standstill obligation.

Budapest, June 26, 2019

Dr. Attila Péterfalvi

President

c. professor

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