

Book number: NAIH / 2019/3633/10.

Object:

Decision granting the application

order revoking a procedural fine

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

hereinafter referred to as "the Applicant"), at the request of the Chief Executive Officer of [...] [...] on 11 April 2019.

[...] ('the Applicant') was the subject of an official data protection procedure against

NAIH / 2019/3633/4. by order of 7 June 2019, registered under number.

Company) as a customer, makes the following decisions:

I.1. The Authority shall grant the applicant 's request, and

I.1.1. notes that the Applicant and the Company (hereinafter: the Debtors) are the Applicant

illegal data processing has taken place and is still taking place with a camera installed and operated on the property

continue with recital III. as explained in point

I.1.2. prohibits the Debtors from surveillance with a camera on the Applicant's property

resume and order its cessation, as well as the recording of illegally made recordings

destruction,

I.1.3. prohibits the Debtors from further infringement.

I.2. The Authority shall retain its own motion

I.2.1. finds that the data processing of the Debtors violated the provisions of the

protection of individuals with regard to the processing of personal data and on the free movement of such data,

and Regulation (EU) 2016/679 repealing Directive 95/46 / EC (a

hereinafter referred to as the General Data Protection Regulation) is fair and purposeful

the principle of data processing, the data processing was carried out without a proper legal basis, therefore the Authority

I.2.2. condemns the Company for its unlawful data processing and

800,000 HUF, ie eight hundred thousand forints

data protection fine

obliges to pay;

I.2.3. the Applicant is convicted of unlawful data processing by him and

gives a warning.

II. In the order of the Authority in the certificate application dated September 4, 2019 of the Company

and NAIH / 2019/3633/7. order imposing a procedural fine

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withdraw.

I.1.2. the obligors from the taking of the measure

within 15 days of receipt of the supporting evidence.

to the Authority.

The Authority shall impose a data protection fine within 30 days of the final adoption of this Decision

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, the NAIH / 2019/3633 JUDGE. number should be referred to.

If the Company fails to meet its penalty payment deadline, the above

is required to pay a late payment surcharge on the account number. The amount of the late payment allowance is the statutory interest,

which corresponds to the central bank base rate in force on the first day of the calendar half-year affected by the delay me.

I.1.2. the obligation provided for in point 1, as well as the data protection fine and the late payment allowance the Authority shall order the enforcement of the decision.

There is no administrative remedy against the decision under point I above, but a

within 30 days of the communication with the action brought before the Metropolitan Court

can be challenged in a lawsuit. The application shall be submitted to the Authority, electronically, which shall be

forward it to the court together with the case file. Indicate the request for a hearing in the application

must. For non-personal tax exemptions, judicial review

the fee for the proceedings is HUF 30,000, the lawsuit is subject to the right to record fees. Before the Metropolitan Court legal representation is mandatory in these proceedings.

A II. There is no place for an independent appeal against the order under point 1, only on the merits of the case may be challenged in an appeal against a decision taken.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

I. 1. On 11 April 2019, the Applicant submitted a request to the Authority, according to which the number [...] [...]

the owner of the adjoining property, the owner of the neighboring property,

It monitors with requested surveillance cameras. The Applicant attached to the contents of the application a

[...] Department of Administration of the Mayor's Office of the City with County Rights (hereinafter: Administrative Department)

Recorded by the administrator of the Department on 7 March 2019 under number [...]

hereinafter referred to as the "Protocol") and a camera installed on the Applicant's property

photography. According to the Applicant 's announcement, the Applicant has taken the recordings to several authorities and also used by a service company. To prove this, marked with a case number of nine

listed the statements made against him by the Applicant.

According to the Applicant, it arose in the listed cases, except for the Minutes

did not receive any documents. There are several photographs in the Minutes (20180920, DSCN1101,

DSCN1107, DSCN1128, DSCN1312, DSCN0232, DSCN0233) and the video file (2019-01-05-1252-57, 2019-01-05-12-56-44,

2019-01-10-04-42-18, 20190126_100205053 , 2019-01-12 13-57-49,

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20190126_130403,

20190126_133843,

20180424_160713,

20180507_084444,

the

20190210_130353), the content of which was declared by the Applicant to the Administrative Board.

Department clerk. According to the recorded minutes, the 2019-01-12 13-57-49, the 20190126_130403, the 20190126_133843 video files on the activities of the Applicant and the Applicant's father photographs DSCN0232 and DSCN0233, the Applicant 20180424_160713, 20180507_084444, for video files named 20190210_130353, the Applicant's father is shown.

The Applicant requested the Authority to oblige the Applicant to dismantle the cameras and prohibit further infringement.

I. 2. A formal data protection procedure was initiated before the Authority on 12 April 2019, on which the Authority notified the Applicant in his order and invited him to make a statement in order to clarify the facts up.

According to the Applicant's statement dated 8 May 2019, the property under number [a] there is a data-recording camera on the ceiling "by a private investigator commissioned by them placed. This is the entrance to one of the workshops of the [...] Kft device under surveillance '. As an attachment, the Applicant attached the instruction manual of the camera and an image of the adjustment angle.

According to the Applicant's statement, the camera will be operated by the Company on February 2018

On the basis of a power of attorney dated 28, a copy of which is attached - who is an illegal activity is investigating the continuation of the "No other fixed assets can be found on our property, other pictures and videos are taken by a detective using a mobile device ".

According to the Applicant's statement, "the camera only records images, it does not record sound. The data is recorded by the detective on an SD card that is part of the camera. He enters at random the recorder is powered by a power supply. We have been authorized to if the detective is not on our property and we hear noises in the current insert the bottom of the camera plug. To the SD card of the device, for the detective only he has access rights, and he also periodically transfers its contents to his computer. The storage

it lasts only as long as the fact that the recordings obtained for the purpose of proof are usable is to the competent authorities and will be deleted in any case thereafter! (Egyes) Some there is camera surveillance during the day when we are at home. 24 hour service neither the camera nor the detective performs. It is not even justified because the persons concerned do not live at their affected premises! "

"Only live image access is the sole detective's power to take photographs

I understand, or video videotaping, the evidence that can be used by the competent authorities are / have been transmitted. The remote camera does not provide live image access because the no such device is connected to the camera on site! It only happens in the form of a review and a captured image of the camera that is processed by the detective. Photo or video recordings will be / has been handed over as part of an authority or court proceeding as as a means of proof. The documented data, the private investigator described in the law store properly. I do not have access to the information stored, unless if I am present on my property at the same time as the data logger is operating and I see it in person events. "

"The camera is not connected to a router, there is no internet access. It is possible to connect a on our device, but we only have power consumption ".

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The Applicant informed the Authority that the type of camera installed by the Company is Global CCTV Outdoor Camera with SD card record.

According to the Applicant's statement, "the persons concerned in the form of a personal request informed the investigator at their premises under [...], both parties [...] became clearly aware brought in, if they do not stop their illegal activities at this site, then everything using a tool (photo, video, etc.) you will gain proof of exactly what is going on on the property concerned, without a permit, despite the prohibition decision '.

The power of attorney concluded between him and the Company on 28 February 2018 is attached by the Applicant.

a copy of which, within the framework of the Requested Private Investigation activity, inter alia instructed the Company to 'detect irregularities, fraud and other collect information that suggests a crime, using images, voice recorders, and other means document. Documented information (data) as described in data protection laws store it and, if necessary, issue it to the authority or court. During the above investigation, in public institutions, local governments, authorities to act on my behalf BETWEEN THE LEGAL FRAMEWORK. "

The Applicant also attached several photographs, of which May 8, 2019 at 18:43:38. a time-stamped camera image shows the Applicant's property.

The Applicant also sent a document entitled "Camera with SD Card Recorder", according to the part number of the installed camera, BD-403V-A. Based on the description of the camera when moving Shoots at 12 fps, 1 fps. "After connecting the camera to a network is in continuous recording mode, the function can be turned off with the remote control ". According to the description, a You can view the recordings on the camcorder using the remote control and remove the SD card the "video material can be viewed on a PC".

I.3. The Authority subsequently adopted NAIH / 2019/3633/4. in the order number as a client involved the Company, of which it also notified the Applicant and the Applicant, and made a statement he called. The Company received the order on June 14, 2019, however, within the specified 15-day deadline NAIH / 2019/3633/7. registration number

In his order, he repeatedly called on the Company to make a statement and imposed a procedural fine of HUF 50,000 ordered him to pay.

I.4. By letter received on 9 September 2019, the Company requested the revocation of the procedural fine, whereas he was informed that he had sent the requested statement and documents by post on 24 June 2019. However, he could not prove this because it is a plain mail item and not in a recommended form has been sent to the Authority. The Company attached to the letter the requested statement and documents.

Attached to the application of the Company, the agreement between the Company and the Applicant of April 2017

Authorizations dated 15 and 28 May 2018.

According to the document dated 15 April 2017, the Applicant authorized the Company to

to 'visit [...] (resident under... ..) on the designated property and continue Mediation between the two

based on the subject of the Order. If it fails, investigate a

"Entrepreneur" (...). Investigate irregularities, fraud and more

collect information that suggests a crime, using images, voice recorders, and other means

document ”.

According to the document dated 28 May 2018, the Applicant authorizes the Company to

that his neighbor, i.e. on the property owned by the Applicant, “without permission

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activity and the work in progress there and the associated sound activity

to observe it, record it with a technique. The documented information (data)

store it as described in the data protection laws and, if necessary, for the authority or court

give it out. ”

The Company also attached what he wrote and to the Applicant as a natural person

addressed to the address of the applicant, in which he informed the Applicant, inter alia, that

if he does not comply with the summons, “it was made in the course of my Order

information, data, photographs held without legal notice

we will start ”. Document dated April 28, 2017

The Company also attached a letter dated 24 June 2019 stating that the Authority

NAIH / 2019/3633/4. on the questions referred in its order no.

According to the Company's reply, a piece of camera was installed on the property under number [...], a

under the roof structure of the filagoria, which observed the “assembly” hall of the adjoining property. THE

surveillance by the camera is still in the knowledge of Mr. [...] since before the cameras were installed about it

has been informed in writing ’.

"I can't make the camera recordings available because its contents have been saved

on a storage medium. It was closed under legal conditions and handed over to the Client. (...)

The attention of [the Principal] was drawn to the fact that its contents could only be made available to the authority (rapporteur) to hand over '.

An assignment contract has been concluded between the Applicant and the Company, which is between the Applicant and the Company

It was aimed at resolving the "bad" neighborly relationship between the applicant. "In the event of a failed operation, the company will investigate the illegal acts and have audio and video recording as a means of proof for the authority '.

"The camera shots were applied randomly as it only captured the image respectively sound when your operator [...] was present during the recording. The data is stored on a memory card, which is included with the camera. The camera was housed in a box that had a lock. So i a stranger could not open it. Recording was made and stored for 60 days and then deleted or official has been used '.

"Only [...] has access to the camera, it has not been operated by anyone else. The camera is inside data logger, not equipped with an online system, so there was no remote data transfer. The recordings like it was prepared as a means of proof and its storage became as defined by law stored. Apart from the data processor, no other person (third party) had access to the data opportunity".

"The camera is not online and has not been connected to a router. Data backup is internal memory or extended memory card ".

The camera is a 12-mega pixel Hunting Camera not online type.

The affected party (...) was personally contacted on the basis of the power of attorney of the Client on 15.04.2017, a copy of the Power of Attorney has been handed over to Mr. [...]. Oral and Content of the Power of Attorney Mr [...] was informed of the investigative acts. In the process, his attention was drawn to it

also about camera surveillance.

Since 25 May 2018, data has been recorded 23 times with the wild camera referred to in point 7. THE recordings were made at random intervals or at the notice of the Principal when the

According to the client, suspicious acts took place on the property. After recording, the memory

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card has been removed from the data logger, it can be stored on the lockable iron plate stored at the headquarters of [...] Kft. stored in a cassette. At the request of the authority (Principal), the completed recordings on a data carrier (memory card) has been saved. It was placed in the sealed unit, which was sealed and dated.

The unit has been handed over to the Principal so that it can provide it to the authority. Principal attention has been drawn to the fact that opening the unit is against the law (NAIH) and endangers the the legal aspect and use of the real content of the means of proof.

No telephone image or sound recording was recorded, only data was recorded with the fixed camera. The no copies were made of the recordings made because it would be of concern during the proof as well plus a source of media danger. The completed recordings (data) are transferred to the authority (Principal) was given, no additional copies were made. Media (memory cards) has been deleted 60 within one day '.

„The company (...) carries out its work in accordance with Act CXXXIII of 2005. prepared in accordance with the law. "

Attached to the Company's statement is the "Digital Infrared Tracking Camera User manual HC-300M "16-page document. The user manual

According to him, "the digital hunting camera with MMS function automatically works day and night works. It can be activated by the movement of a person or animal in the field of view of the camera, and automatically take a photo (up to 12 Megapixels) or 1080p wide video or HD video creates (WVGA or QVGA). You can take color pictures or videos during the day, but it's bad only black and white monochrome images and videos can be taken in low light conditions.

Supports 2G / GSM / MMS / SMTP / SMS standards "(General description 1.1)

A 2.1. "In test mode, the camera automatically switches to power save mode,

if you do not receive any instructions for 3 minutes. It will turn on again anytime you move

senses ". A 3.1.2. According to the Video Settings menu item, the "Audio" menu item can be turned on and off set.

A 3.1.5. According to the SMTP Menu settings, "the camera can send images to the user's mobile phone via MMS forward".

A 3.3. According to the SMS command code menu item, the camera can "operate in both mms and smtp modes". "THE the camera takes a picture and sends the "Capture" message using the SIM card after * 500 * received an order ".

Use the "* 505 * command to take a picture and send it to the mobile device from which the SMS was sent. THE the camera takes a picture and sends the "Start capturing" message to the SIM card after

You have received the command * 505 *. The camera sends the image via MMS or smtp, regardless of whether camera is in MMS or SMTP mode. "

According to Annex I, the camera operates at a distance of 20 meters in night mode, reaction speed 1.1

seconds, the image resolution can be 12/8/5 MP, the video resolution is 1080P / 720P / VGA. The recording is "Auto", able to control sms.

The Company also attached the 2019/00092 dated February 7, 2019. copy of invoice number, certifying that you have purchased the H-300A game camera referred to.

II. Applicable legal provisions

Pursuant to Article 2 (1) of the General Data Protection Regulation, for the processing of data in the present case the general data protection regulation applies.

Act CXII of 2011 on the right to information self-determination and freedom of information. Act (a hereinafter: Infotv.) pursuant to Section 2 (2) of the General Data Protection Decree shall apply with the additions provided for in

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Infotv. Enforcement of the right to the protection of personal data pursuant to Section 60 (1)

the Authority shall, upon request, initiate an official data protection procedure and of its own motion

initiate proceedings against the data protection authority. The data protection authority procedure is the general administrative CL of 2016 on Public Order. (hereinafter: Ákr.) shall apply with the additions specified in the Infotv. and the derogations according to the general data protection decree.

According to recital 148 of the General Data Protection Regulation, "The provisions of this Regulation in order to strengthen compliance with the rules in the event of any breach of this Regulation in addition to or instead of appropriate measures imposed by the competent authority under this Regulation - including administrative fines. In the event of a minor infringement of this Regulation, or if the fine likely to be imposed is disproportionate to a natural person reprimand may be imposed instead of a fine. However, due attention should be paid to the nature, gravity, duration, intentional nature and measures to reduce the extent of the damage suffered and the extent of liability, previous infringements in this area, the way in which the supervisory authority became aware of the whether the controller or processor is complying with it measures imposed and whether it applies a code of conduct and any other aggravating or attenuating circumstance. For the imposition of sanctions, including administrative fines appropriate procedural guarantees in accordance with the general principles of Union law and the Charter, including effective legal protection and the right to a fair trial shall apply. "

Article 4 (1) of the General Data Protection Regulation states: "" personal data: 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 Article 4 (2) of the General Data Protection Regulation: "data processing: on personal data or any operation on automated or non - automated data files, or a set of operations such as collecting, recording, organizing, segmenting, storing, or transforming

change, query, view, use, communicate, transmit, distribute or otherwise

harmonization or interconnection, restriction, deletion,

or destruction '.

According to Article 4 (7) of the General Data Protection Regulation: "controller shall mean the natural or legal person

person, public authority, agency or any other body that provides personal data

determine the purposes and means of its management, alone or in association with others; if the data management

purposes and means are determined by Union or Member State law, the controller or the controller

Union or Member State law may lay down specific criteria for the designation of

According to Article 4 (11) of the General Data Protection Regulation: "consent of the data subject: data subject

voluntary, specific and well-informed and unambiguous declaration of will,

by which the statement concerned or the act of confirmation is unequivocally expressed,

consent to the processing of personal data concerning him or her '.

Under Article 5 (1) (a), (b) and (c) of the General Data Protection Regulation:

data:

(a) be processed lawfully and fairly and in a manner which is transparent to the data subject

("legality, fairness and transparency");

(b) collected for specified, explicit and legitimate purposes and not processed

in a way incompatible with those objectives; not in accordance with Article 89 (1)

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considered incompatible with the original purpose for the purpose of archiving in the public interest, scientific

and further processing for historical research or statistical purposes ("purpose limitation")

(c) be appropriate and relevant to the purposes for which the data are processed; and

should be limited to what is necessary ("data saving"); "

Under Article 5 (2) of the General Data Protection Regulation: "The controller shall be responsible for

shall be able to demonstrate such compliance

("Accountability"). "

According to Article 6 (1) (a) of the General Data Protection Regulation: "Personal data

is lawful only 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

to treat

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

to take steps at the request of the data subject before concluding 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. "

According to Article 6 (2) of the General Data Protection Regulation: "The provisions of this

In order to adjust the application of the rules on data processing, Member States shall

may be maintained or introduced in order to comply with points (c) and (e) of paragraph 1

provisions specifying the specific rules on data processing

requirements and in which further measures are taken to ensure the lawfulness of data processing

and fairness, including in Annex IX. other specific as defined in Chapter

data management situations. "

According to Article 7 (1) of the General Data Protection Regulation: "If the processing

consent, the controller must be able to prove that the data subject

consent to the processing of your personal data. "

According to Article 26 (1) of the General Data Protection Regulation: "Where the purposes and purposes of the processing assets are jointly defined by two or more data controllers

are considered. The joint controllers shall determine this in a transparent manner in an agreement between them

obligations under this Regulation, in particular the rights of the data subject

and making available the information referred to in Articles 13 and 14

sharing of responsibilities for their responsibilities, except where and to the extent that

if and when the division of responsibilities for data controllers is governed by the EU law applicable to them

or determined by the law of a Member State. The agreement may provide a contact point for those concerned

to mark."

According to Article 58 (2) of the General Data Protection Regulation: "The supervisory authority shall be corrective acting under the authority of:

(a) warn the controller or processor that certain data processing operations are planned

its activities are likely to infringe the provisions of this Regulation;

(b) condemn the controller or the processor if he or she has breached his or her data processing activities

the provisions of this Regulation;

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(c) instruct the controller or processor to comply with the conditions laid down in this Regulation

request for the exercise of his rights;

(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;

(e) instruct the controller to inform the data subject of the data protection incident;

(f) temporarily or permanently restrict the processing, including the prohibition of the processing;

(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;

(h) withdraw a certificate or instruct a certification body in accordance with Articles 42 and 43

revoke a certificate issued by the. or instruct the certification body not to issue the

a certificate if the conditions for certification are not or are no longer met;

(i) impose an administrative fine in accordance with Article 83, depending on the circumstances of the case

in addition to or instead of the measures referred to in this paragraph; and

(j) order the flow of data to a recipient in a third country or to an international organization

suspension. "

Under Article 83 (2), (5) and (7) of the General Data Protection Regulation:

2. Administrative fines shall be imposed in accordance with Article 58 (2), depending on the circumstances of the case

It shall be imposed in addition to or instead of the measures referred to in points (a) to (h) and (j). When deciding

whether it is necessary to impose an administrative fine or the amount of the administrative fine

In each case, due account shall be taken of the following:

(a) the nature, gravity and duration of the breach, taking into account the processing in question

the nature, scope or purpose of the infringement and the number of persons affected by and affected by the infringement

the extent of the damage suffered;

(b) the intentional or negligent nature of the infringement;

(c) the mitigation of damage caused to the data subject by the controller or the processor

any measures taken to

(d) the extent of the responsibility of the controller or processor, taking into account the

and the technical and organizational measures taken pursuant to Article 32;

(e) relevant infringements previously committed by the controller or processor;

(f) the supervisory authority to remedy the breach and the possible negative effects of the breach

the degree of cooperation to alleviate

(g) the categories of personal data concerned by the breach;

(h) the manner in which the supervisory authority became aware of the infringement, in particular that:

whether the breach was reported by the controller or processor and, if so, what

in detail;

(i) if previously against the controller or processor concerned, on the same subject matter

- has ordered one of the measures referred to in Article 58 (2), the person in question

compliance with measures;

(j) whether the controller or processor has kept itself approved in accordance with Article 40

codes of conduct or approved certification mechanisms in accordance with Article 42;

and

(k) other aggravating or mitigating factors relevant to the circumstances of the case, such as:

financial gain or avoidance as a direct or indirect consequence of the infringement

loss.

[...]

5. Infringements of the following provisions in accordance with paragraph 2 shall not exceed 20 000 000

With an administrative fine of EUR 1 million or, in the case of undertakings, the previous financial year in full

up to 4% of its annual worldwide turnover,

the higher amount shall be charged:

(a) the principles of data processing, including the conditions for consent, in accordance with Articles 5, 6, 7 and 9;

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(b) the rights of data subjects under Articles 12 to 22. in accordance with Article

(c) the transfer of personal data to a recipient in a third country or to an international organization

transmission in accordance with Articles 44 to 49. in accordance with Article

d) the IX. obligations under the law of the Member States adopted pursuant to this Chapter;

(e) the instructions of the supervisory authority pursuant to Article 58 (2) or the temporary processing of data

or a request to permanently restrict or suspend the flow of data

failure to provide access in breach of Article 58 (1).

[...]

7. Without prejudice to the corrective powers of the supervisory authorities under Article 58 (2),

each Member State may lay down rules on the

whether an administrative or other body performing a public function may be imposed

fine and, if so, the amount. "

Infotv. 75 / A. § "the Authority shall comply with Article 83 (2) to (6) of the General Data Protection Regulation

shall exercise its powers in accordance with the principle of proportionality, in particular by:

legislation on the processing of personal data or binding European Union law

for the first time in the event of a breach of the rules laid down in

in accordance with Article 58 of the General Data Protection Regulation

alert the controller or processor. "

Infotv. Pursuant to Section 61 (1) (bg): "In data protection official proceedings

the Authority may impose a fine in its decision '.

Article VI of the Basic Law Article 5 (3) states that "everyone has the right to the protection of personal data concerning him or her

(...) "

2005 on the rules for the protection of persons and property and the rules governing the activities of private investigators

year CXXXIII. According to Section 1 (1) (c) of the Act (hereinafter: the Act): "The scope of this Act

as a sole proprietor or a sole proprietorship or business association (hereinafter together:

private investigator in person. "

The Svv. Under Section 1 (4), "for the purposes of this Act, a design and installation activity

the design, installation, installation and maintenance of electronic or mechanical security systems;

installation, operation, supervision, maintenance, repair, including unassembled,

operated for surveillance purposes or, as authorized by law, the recording of sound or images

electronic surveillance system (hereinafter referred to as "space surveillance system") (...)

activities in the field of

The Svv. According to Section 16 (1), "a person performing an activity falling within the scope of this Act

has no official powers (...). "

The Svv. Pursuant to Section 34 (1) (c) "In order to perform the contract, the private investigator image and sound recording within the framework of the contract defining the obligation, personal data in compliance with the rules on the protection of the individual and the rights of the individual, or you can use ".

Act XXXIV of 1994 on the Police. Act (hereinafter: Rtv.) § 1 (2) 1a. point according to "the police are different in the Basic Law, in this law and by the authority of the law law prevention, law enforcement, public administration and law enforcement exercise its powers of general investigative authority under the Criminal Procedure Act carry out the detection of criminal offenses as specified and from the criminal offense recovery of assets'.

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The Ákr. Section 9 states that "for the purposes of this Act, an authority is a body, organization or person by (a) law, government decree or municipal authority in a municipal matter a regulation authorizes the exercise of official authority or a law authorizes the exercise of official authority designates. The matter falling within its competence shall not be withdrawn from the authority. "

The Ákr. 53. (1), "who, in the course of the proceedings, is guilty of a time limit or time limit may submit a request for a certificate which has not been submitted. The application for a certificate shall be decided by the authority in the course of which the omission occurred. (...) Failure to meet the deadline the omission shall be remedied at the same time as the application, if the conditions are met. "

III. Decision

III.1. Person of the data controller

According to the definitions in the General Data Protection Regulation, a person's face, image, voice as personal data, taking a picture, and any operation on the data and is considered data management.

According to Article 4 (7) of the General Data Protection Regulation, a controller is a natural person who determines the purposes and means of the processing of personal data, alone or together with others.

In order to determine the quality of the data controller, it is not necessary that the data controller get to know and access personal data, but it is enough to make a meaningful decision with regard to data management.

According to his statement, the Applicant did not get to know the completed recordings and photographs content, but also the purpose of the data processing and its means "using all means (photo, video, etc.)"

wanted to gather evidence of the "illegal activity" carried out by the Applicant. In addition, the

Applicant submitted to the requested authorities the processed video and image recordings received from the Company.

Therefore, the Applicant is considered to be a data controller under the General Data Protection Regulation

the purpose of data management independently, while the means of data management - as described below - with the Company

jointly determined.

The Company performed its activities on behalf of the Applicant. Come on

He said the data collection was not just a recorded camera but also a mobile device

but this was not the case on the basis of the available documents and statements proven.

The Company undertook in several mandates to collect evidence with the Applicant

and take photos and videos. The tool used - which

type differs from that specified in the statement given by the Applicant - purchased by the Company,

installed and operated. Declaration by the Applicant and the Company on the type of camera installed

and differs in its mode of operation. As set out in point I, it can be concluded that a

the type of camera and its operation was decided by the Company, which was determined by the Applicant and the Company agreements concluded between These authorizations - April 2017, February 2018,

May 28, 2018 - according to reports of irregularities, fraud and other criminal offenses

recording, collecting, documenting information, deciding how to do it, and these

proceedings were entrusted to the Company. Memory card in the camera

was also handled by the Company, according to the Applicant's statement "to the SD card of the device

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only the detective has the right to access the contents of the detective from time to time

the completed recordings are "processed" by the Company in the form of "review". THE

According to a company statement, "after recording, the memory card is removed from the data recorder

it was stored in a lockable iron cassette stored at the headquarters of [...] Kft. The authority (Principal)

At the request, the completed recordings were saved on a data carrier (memory card). "

According to Article 4 (7) of the General Data Protection Regulation, the controller is the natural or

a legal person that controls the purposes and means of the processing of personal data, independently or with others

together. Data processing according to Article 4 (2) of the General Data Protection Regulation a

performed on personal data or data files in an automated or non-automated manner

any operation or set of operations, such as collecting, recording, organizing, storing,

also conversion, viewing, use, transmission, deletion.

Pursuant to the above, although the purpose of the data processing was determined by the Applicant, it is

data management tools have been selected by the Company. At the request of the Applicant

undertook to monitor the Applicant 's property and to collect evidence, within the framework of which the

The Company installed and operated the recording camera on the recorded personal data

the Company performed operations independently - viewing the recordings, of which by the Applicant

copying of the activities carried out on the data carrier - which are for data management purposes

are considered. The Company has undertaken the professional execution of the camera in accordance with the "legislation".

all as a company that operates a 'reliable, lawful and professional

perform. The Company has independently decided on the activities to be carried out with the recordings made

the Applicant did not specify the processes and the conditions of data management for this

did not give instructions. Therefore, the Company with respect to the impugned data processing

is considered a data controller.

It is common for a data controller to work with others to make a substantive deal with data management decisions, in which case the data controllers will be joint data controllers. Then it is

data controllers must enter into an agreement with each other specifying what

fulfill their obligations under the General Data Protection Regulation. Among the Debtors

The “powers of attorney” drawn up on the Company's letterhead, referred to in

required that the documented information (data) be provided to the Company “in accordance with

as described in the Data Protection Laws ”.

Pursuant to the above, the Applicant has determined the purpose of the data processing - on the neighboring property

monitoring of the ongoing activity - and also participated in the definition of the asset when the

The applicant was instructed to observe “using all means (photo, video, etc.)” a

Company.

At the same time, the Company has chosen the means and method of data management - as described in

He also sent a statement to the Authority and the attached “Digital Infrared Tracking Camera

User Manual HC-300M ”when you decide

the type of camera you want to use and how you will record the evidence. In addition, the Company

stored the memory cards, processed the recordings made, selected the ones that the

subsequently used, copied them onto data media and handed them over in a stamped ‘unit’ to the

Applicant to forward to the appropriate authorities, bodies, after which it is completed

and deleted unused recordings after 60 days.

The Authority therefore concluded that the Applicant and the Company qualify as a joint data controller.

The fact that several data controllers are involved in data management does not mean that they are responsible

would be joint and several. In the case of a natural person controller, to the Authority

consider recital 148 of the General Data Protection Regulation,

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and under Article 83 (2), examine, inter alia, the liability of the controller

and other aggravating or mitigating circumstances relevant to the circumstances of the case factors. Because the Applicant and the Company have different stages of data management and different to the extent that they are involved, all relevant to the present case should be assessed in the light of the circumstances.

III. 2. The legal basis for the recording, the principle of lawful data management

III.2.1. Activities of the Applicant

In the application of the Applicant and in the declarations sent by the Debtors, Based on the contents of the documents, it can be stated that the purpose of the Applicant is the Company the activity of the Applicant's property, which he considers to be illegal, with the participation of the was monitored and documented with video and audio recording devices (which is still an activity in order for the collected image and sound material to be transferred by the Applicant to the Applicant. before public authorities and other bodies.

The Applicant first requested this in the power of attorney dated 15 April 2017

Company, as follows: "investigate the business of the" contractor "(...), gather information, document it with images, sound recorders and other means ”.

This intention was confirmed by the Applicant in the further letters dated 28 February 2018 and 28 May 2018.

as well as in a letter to the Authority from the Applicant

stated that “other images and videos are taken using a mobile device by a detective”.

The Applicant informed the Authority that it was “illegal to observe and investigate

the continuation of the activity ”. According to point 8 of the Applicant's statement

"The persons concerned" have been informed that they are being investigated by a private investigator and

if they “do not stop their illegal activities at this site, then all means

using (photo, video, etc.) will gain proof of exactly what is going on

real estate ”.

On the basis of the declarations and the documents and photographs available to the Authority a

The Applicant applied the Applicant 's activity, its illegality with its own means, a

With the help of the company, he sought to quasi-own a kind of official authority.

to support.

In its orders, the Authority stated to the Debtors the legal basis on which they were prepared recordings of the Applicant, however, none of them was able to put forward a plea which comply with Article 6 (1) of the General Data Protection Regulation.

The Applicant, through the Company, informed and drew the Applicant 's attention to the fact that if it does not cease its activities at the site, "all assets will collect evidence, but this does not mean that the Applicant has consented for the processing of personal data and the Szvtv. nor does it allow contrary to personal data protection legislation for private investigators data management. Nor is the fact that the Applicant has an appropriate legal basis for data processing used the images and sound recordings made in proceedings before various authorities, a list of which was also attached by the Applicant.

Collection of personal data pursuant to Article 5 (1) (b) of the General Data Protection Regulation they can only be done for a legitimate purpose, they must not be treated in a way incompatible with that purpose.

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The Applicant has initiated proceedings against the Applicant before several authorities and other bodies, for which he intended to use the observations made as evidence, but the observation carried out continuously and systematically when, according to the Company's statement - which otherwise, it did not provide any evidence - it took more than twenty shots in 2018. between 25 May and June 2019, ie it did not take into account necessity and proportionality requirement in order to achieve the objective. The Applicant asserted powers with which authorities are empowered by law (statutory) authorization and guarantees. Each continued its monitoring activities to that end after the initiation of the proceedings with the assistance of the Company to gather evidence "on behalf of the authorities" to extended beyond the legal opportunities available to him as a citizen.

According to the Applicant, it was therefore necessary to take the recordings in order to be able to obtain them to prove the illegal activity carried out by the Applicant on the adjacent property. The Authority may, where appropriate, justify the initiation of proceedings or taking a photograph or video to substantiate the applicant's allegations on the condition and conduct considered illegal.

Making such recordings can in many cases be suitable for either others or the plot infringe on the privacy of the person making the statement.

During the recording, data management takes place, which must comply with the general the rules of the Data Protection Regulation.

Accordingly, it is governed by Article 6 (1) of the General Data Protection Regulation one of the legal bases must exist for the processing to be lawful.

According to Article 6 (1) of the General Data Protection Regulation, it is appropriate for data processing the consent of the data subject may also be the legal basis, which, as explained above, is not the case here from the fact that the Debtors have informed the Applicant that they did not legitimize the observation or report to the Applicant nor its consent.

In the case of a legitimate interest as a legal basis, it must be examined, in addition to assessing the interests of the parties, that it:

whether data management is necessary, appropriate, proportionate, or whether there are other ways that do not involve involves data management or minor interference with the privacy of the data subject, which is also follows from the basic requirements of data saving. There are several in determining a legitimate interest a conjunctive condition must be fulfilled: real, present, well - founded, unambiguous and must be legal.

The controllers did not demonstrate that a balancing test had been carried out in this context, nor did the statements or documents obtained during the proceedings support why there was a need for more than two years of observation by the owners of the neighboring property

to continue to monitor the privacy of the offender concerned

they have made their report or report on the activity. Although the Applicant previously a

He approached the Authority about the fact that the Applicant is also conducting camera surveillance of the property, however the Authority in NAIH / 2019/3582. the Applicant's application in the investigation procedure No.

investigated and found that the documents and statements attached to the investigation procedure

based on which the Applicant has set up the camera in accordance with the law and thus its data management

considered as household data management. This fact cannot be a reason for the Requested

To use unnecessary camera surveillance with the Applicant as “retaliation”

against.

Given that no adequate legal basis has been established either in advance or during the proceedings,

and due to the scale of the observation, the Authority considered that the data processing exceeded

necessary and proportionate, the Authority therefore found that the Applicant had infringed

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Article 6 (1) of the General Data Protection Regulation and Article 5 of the General Data Protection Regulation.

the principle of lawful data processing set out in Article 1 (1).

III.2.2. Activities of the Company

The Debtors are the operator of the adjacent property operating the camera under investigation

persons, including the Applicant, could be kept under continuous control or total surveillance a

without a proper legal basis in the light of the above. Although it was formed among the Debtors, it is the subject of the present investigation

The authorizations in force for the period after 25 May 2018

for monitoring “as described in data protection laws” and the “legal framework in force

However, this activity may not be carried out by any legislation, not even

referred to in Szvtv. neither authorizes either the Applicant nor the Company.

The Svv. Section 16 states that the private investigator does not have the right to perform his or her activities

authority and, in accordance with Section 34, the private investigator may only record images and sound in person

data protection and privacy rights, and

you can use.

The activity performed by the private investigator (the Company) cannot correspond to the conceptual elements of the “investigation” defined in Be., Nor does the private investigator have any provisions in the Rtv.

nor with the investigative powers listed in Be. An investigation may be carried out by an investigating authority, while an activity carried out by a private investigator is not an activity carried out by an authority

the means available to the investigating authority may not be used lawfully

within the legal framework. The Ákr. administrative authorities

make the case within their competence or necessary to clarify the facts

gathering evidence, which also does not allow for jurisdiction over individual proceedings

and the competent authorities should be taken over by a person who does not have

authorized to proceed.

In the present case, the Applicant and his father, as natural persons, in private ownership

The Company took the recordings made by the Applicant on behalf of the Applicant. THE

Based on the assignment contracts and agreements concluded between the obligors, the Applicant

commissioned the Company to gather evidence, which then determined the observation

how the camera should be turned on and what type of camera is used

use for monitoring, as well as a memory card that contains the recordings you have made

It was managed by the Company, the recordings on it were viewed, cut and copied to a data carrier,

the copies were handed over to the Applicant for use before authorities and other bodies

procedures and then deleted the original recordings after 60 days. All this is not

comply with the rules on the protection of personal data, the Authority has established that

that the data processing carried out by the Company has taken place without a proper legal basis.

Given that the legislation referred to - primarily the General Data Protection Regulation

- does not allow an individual to himself or herself or with the assistance of another

systematically, using a video and audio recorder for several years, observe others

private territory, individuals residing and operating there, and
nor for a private investigator to make a natural person for another private area
recordings without their consent, therefore the observation is contrary to the above
the principle of lawful data management.

In view of the fact that no adequate legal basis has been raised either in advance or during the proceedings
due to the scale of the observation, the Authority considers that the processing is
exceeded what was necessary and proportionate, and the Authority therefore concluded that the Company

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violated the Svv. For the protection of personal data contained in Section 34 (1) (c)
Article 6 (1) of the General Data Protection Regulation and the general
the principle of lawful data processing enshrined in Article 5 (1) of the Data Protection Regulation.

III.3. The scope of data managed by the Debtors, the principle of data saving

As of 2017, the Applicant has authorized the Company to observe the
Applicant activity and collect data, take pictures and videos. The Applicant
According to the submissions, they have been used in at least nine cases
case numbers have also been attached to support this. These include those recorded on March 7, 2019
There is also a report during which several video and photo recordings were presented to the Applicant, which
part of it showed the activity of the Applicant and his father. According to the Applicant 's statement
also the installed camera monitors the entrance of one of the workshops of the Applicant's premises.
In addition, according to the statement received by the Company on September 9, 2019, "a
camera surveillance is still ongoing with Mr ["] '.

According to the information of the Company, data has been recorded 23 times since 25 May 2018
with a wild camera. In addition, according to the User Manual sent to the camera
its basic operation is based on the fact that it switches on automatically without human intervention if the
detects movement in the field of view, the recording mode is "Auto", ie leaving the human
able to record events in your field of vision without intervention. Daylight conditions

The quality of video recordings can be as high as HD, plus the camera

It is also suitable for recording audio (this can be turned off).

Based on the above, it can be concluded that the camera is installed by the Company on the instructions of the Applicant
recorded image and video recordings for the management of which, as explained above, a

In connection with the initiation of proceedings due to the Applicant's complaints against the Applicant
there was no valid legal basis and the Company was not authorized to collect such evidence.

In addition, the Debtors made recordings in the hope that a

The applicant's activities are recorded, on the basis of which they can be prosecuted at a later stage
that is, the purpose of the recording was an uncertain future event. The continuous
monitoring was therefore not necessary and not proportionate in the present case, taking into account
and III.3. also not to initiate an official procedure
the level of data management required by the Debtors for years is required.

Accordingly, the Debtors have violated the provisions of the
subject to the purpose set out in Article 5 (1) (b) and (c) of the General Data Protection Regulation
and the principle of data retention when, in the absence of investigative powers and legislative authority, even
the Company notwithstanding the provisions on the protection of personal data, the Applicant
processed the personal data of the Debtors, as well as the scope of the data processed by the Debtors
limited to what was necessary, as the proceedings continued after the initiation of the individual proceedings
the recordings were collected in order to initiate any further proceedings.

III. 5. Examination of the Company's application for certification

By letter received on 9 September 2019, the Company informed the Authority that a
He complied with the Authority's request on 24 June 2019, but the letter was not mailed and / or
he gave it in the form of a return receipt, so he cannot prove it happened. However, the Authority
sent the requested document, declaration to the
statement. Therefore, the Authority Pursuant to Section 54, it was decided that the certificate
uphold the application and revoke its order imposing the procedural fine.

III. 6. Sanction and justification applied:

III.6.1. Fine

The Authority examined of its own motion whether a data protection fine against the Company was justified imposition. In this context, the Authority referred to Article 83 (2) of the General Data Protection Regulation, Infotv. Section 61 (4) (b) and Infotv. 75 / A. § considered all the circumstances of the case, and found that no warning had been given in respect of the infringement found in the present proceedings is a proportionate and non-dissuasive sanction and a fine should therefore be imposed. In this circle above all, the basic data protection of the Company's activities due to a breach of the relevant legal provisions and the unfairness of the data processing it is necessary to impose a fine despite the fact that against the Company no data breach has previously been identified.

In determining the amount of the fine, the Authority took into account the fact that the Company Infringements under Article 83 (5) (a) of the General Data Protection Regulation a constitute a higher category of fines.

In imposing the fine, the Authority considered that the following factors also had an impact on the imposition of the fine relevant and taken into account as follows.

The Authority considered as an aggravating factor that:

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-

monitoring by the Company seriously violates the protection of personal data legal requirements with which the Company should be aware, this despite the Sv. and in breach of the rules of the General Data Protection Regulation, and personal data protection regulations for this activity in general prior to the application of the Data Protection Regulation, which provides the basis for the

the intentional nature of the infringement;

data processing violates several basic data protection requirements;

data management will run continuously from 25 May 2018 and its circumstances will be general

despite the fact that the Data Protection Regulation has become applicable, it has not been revised

circumstances and is still ongoing;

the Company has given the impression that it is acting professionally in compliance with all regulations;

the completed recordings were managed by the Company, viewed, stored and stored by the Company

copied in such a form that they are intended to be initiated by the (official)

be able to initiate proceedings.

The Authority took into account as an attenuating circumstance that

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the Applicant and his / her family member are not living on the observed property, the a

[..] Kft

and infringing on the privacy of a family member as if they were a permanent resident

the Company would have observed serving residential real estate;

and - although he saw no reason to apply a warning instead of a data protection fine

-, the fact that the Company condemned neither the Infotv. Nor the general

has not yet taken place due to a breach of the Data Protection Regulation.

In this regard, however, it should be noted that since the lawful conduct

pursuit is a fundamental expectation of all law enforcers, in itself the fact that

the authority has not yet been found guilty of any illegality by the Authority

mitigating circumstances.

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According to the 2018 consolidated financial statements of the Company, the amount of own revenues is HUF 40 million

was, so the data protection fine imposed does not exceed the maximum fine that can be imposed.

Included in Article 83 (2) of the General Data Protection Regulation, but explicitly in the draft

unnamed aspects were reviewed by the Authority but not considered relevant in the case.

III.6.2. Warning

The Authority examined of its own motion whether a data protection fine against the Applicant was justified.

imposition. In this respect, the Authority referred to recital 148 of the General Data Protection Regulation, a

Article 83 (2) of the Infotv. Section 61 (4) (b) and Infotv. 75 / A. §

considered all the circumstances of the case. The Authority found that the data processing of the Requested

Article 5 (1) and Article 6 (1) of the General Data Protection Regulation

conflicts. The Debtors are considered to be a joint data controller, however, the Applicant

responsibility for data processing is less, as he did not

that is, the technical details and professionalism of the recordings.

Therefore, the Authority found that the applicant had been identified in the present proceedings

in the case of an infringement, the warning is a proportionate and dissuasive sanction and therefore a fine

used a warning instead.

ARC. Other issues:

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 Ákr. According to Section 50 (5), "it does not count towards the administrative deadline - if it is contingent

there is no place to make a decision - the duration of the client's omission or delay '.

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 and § 116 (1),

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

redress.

The Ákr. Pursuant to Section 135 (1) (a), the debtor is entitled to the statutory interest rate

is obliged to pay a late payment allowance if it fails to meet its payment obligation on time.

The Civil Code. 6:48. § (1), in the case of a debt owed, the debtor is in arrears

valid on the first day of the calendar half-year affected by the delay

shall pay default interest at the same rate as the basic interest.

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. A Kp. Section 39 (6)

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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 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 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 Debtor fails to duly prove the fulfillment of the prescribed 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

the Authority shall enforce the decision in respect of the standstill obligation

implements.

Budapest, October 22, 2019

Dr. Attila Péterfalvi

President

c. professor