

Antecedent:

Subject: Ex officio decision

in an official data protection procedure

NAIH / 2020/8723/3.

DECISION

The National Data Protection and Freedom of Information Authority (hereinafter referred to as the Authority) is the [...]; (the hereinafter referred to as the "Required") on 14 March 2019

personal communications in connection with the sending of unsolicited political SMS messages sent to
in an ex officio data protection authority proceedings concerning the processing of personal data
makes decisions:

1. The Authority notes that by sending the Debtor on 14 March 2019 without legal basis
has violated the General Data Protection Regulation 6.

Article.

2. The Authority shall prohibit the Debtor from matching the "acquaintance" telephone numbers in its possession
goes beyond the processing of personal or domestic data without a legal basis
activity.

3. Due to the violation set forth in clause 1, the Debtor - by providing additional data protection
In the event of a finding of an infringement, the present infringement, as
will take greater account of the past,
gives a warning.

No procedural costs were incurred in the proceedings and the Authority did not order them to be borne.

There is no administrative remedy against this decision, but it has been available since its notification

Within 30 days, an application addressed to the Metropolitan Court may be challenged in an administrative lawsuit.

The application must be submitted to the Authority electronically, which will forward it together with the case file
to the court. The request to hold a hearing must be indicated in the application. The whole personal
for those who do not benefit from an exemption, the fee for the court review procedure is HUF 30,000;

subject to the right to record material duty. Legal representation is mandatory in proceedings before the Metropolitan Court

EXPLANATORY STATEMENT

I. Facts

The Authority received several submissions in which the complainants complained that in 2019.

On 14 March, the following unsolicited political SMS messages were received from [...]:

Gyurcsány, not Orbán! Army Review of the National Coalition (Our Country, MIÉP, FKGP): March 15 Square

On the 15th from 3 p.m. Cannon fire, palmette, etc. Info: www.kuruc.info "Complainants about these SMS messages sent in response they asked the sender to delete their phone number, i.e. their personal data.

1.

In view of the above, the Authority considered it appropriate to initiate an official control of its own motion

Obligation to monitor compliance with the requirements of the General Data Protection Regulation

in order to.

In order to find out the details of the subscribers belonging to the telephone numbers, the Authority contacted the

phone number providers. For all telephone numbers, service providers have stated that

the subscriber is [...] Kft. (registered office: [...]). In order to establish the facts, the Authority contacted [...]

Ltd., according to which the user of the subscriptions is the Debtor at the time of sending the message

and only has information about sending unsolicited messages.

At the request of the Authority, [...] Kft.

a copy of the order letter stating "2019. to the event on March 15, the it

I want to send an SMS in the days before. Please provide SMS numbers for this

please send a copy of the order confirmation letter from [...] Kft.

provide SMS sending numbers that are the same as in the notifications

phone numbers.

The Authority issued its decision of 15 July 2019, NAIH / 2019/3172/12. In its order No

It is obliged to comment on the questions asked by the Authority in order to clarify the facts

connection. The Authority's first request was returned to the Authority with a "did not search" indication

in its reply to the Authority 's repeated request, the Debtor stated that he sent the offended SMS, an invitation to the ceremony on 15 March as regards the content of the SMS. volt. Sending SMS did not have a specific selection method, it was sent to old friends as is found phone numbers in your phone's Gmail account. You don't know exactly how many phone numbers sent an SMS, but those who have indicated that they do not wish to receive any more messages case.

In order to clarify the facts, the Authority will issue NAIH / 2019/3172/13. further in case number contacted [...] Kft. with questions. In connection with the service provided by [...] Kft provided information that their company provides an SMS sending service, which includes the customer has the option to send text messages purchased by himself or purchased phone numbers. Due to volume discounts, the service is under the company name running, the company is contracting to mobile operators. The SMS is sent by the customer of the service at its own discretion. The use of SMS sending numbers is not checked for the content of the messages the customer is responsible. There are several ways to send an SMS, all the way to your device from entering a message manually to using your phone as a modem for anyone to use within its own sphere of competence.

2.

Given that, on the basis of the information revealed during the official control, it is likely that that the Debtor has breached the provisions of the General Data Protection Regulation, the Authority shall Act CXII of 2011 on the right to information self-determination and freedom of information. Act (a hereinafter referred to as the Infotv.) on the initiation of ex officio data protection official proceedings pursuant to Section 60 (1) decided.

The Authority shall issue NAIH / 2020/8723. notified the Debtor to the Data Protection Authority and to make a statement in order to clarify the facts. The Debtor a

In its reply to the Authority's request, it stated that it maintained its previous statement.

II. Applicable legal provisions

The protection of individuals with regard to the processing of personal data and such on the free movement of personal data and repealing Directive 95/46 / EC Pursuant to Article 2 (1) of Regulation 2016/679 ('the General Data Protection Regulation'), general data protection regulation applies to all or part of personal data automated processing of personal data and non-automated processing of personal data which are part of a registration system or which are intended to be part of a registration system. Covered by the General Data Protection Regulation Infotv. Pursuant to Section 2 (2), the general data protection decree is indicated therein shall apply mutatis mutandis.

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

According to recital 18 of the General Data Protection Regulation, the Regulation does not apply to a personal data by a natural person solely for personal or domestic activity which cannot therefore be carried on by any professional or commercial activity context. Personal or domestic activities include correspondence, address bookkeeping, and on social networks as part of those personal and domestic activities she is in touch and online activities. However, this Regulation shall apply to data controllers and processors who use personal data for such personal or domestic activities means are provided for its management.

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 means of an identifier such as a name, number, location data, online identification or physical, physiological, genetic, on the basis of one or more factors relating to his or her intellectual, economic, cultural or social identity identifiable. "

According to point 2 of the same article, "data processing: on personal data or data files any operation or set of operations performed in an automated or non - automated manner, such as collecting, recording, organizing, sorting, storing, transforming or altering, querying, viewing, by use, communication, distribution or otherwise making available, harmonization or interconnection, restriction, deletion or destruction. "

According to Article 4 (7) of the General Data Protection Regulation, "controller" means the natural or legal 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 purposes of data management and its means are determined by Union or Member State law, the controller or the designation of the controller may be determined by Union or Member State law. "

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

- (a) the data subject has consented to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which one of the parties is a party; or necessary to take steps at the request of the data subject before concluding the contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) the processing protects the vital interests of the data subject or of another natural person necessary;
- (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 is necessary for the protection of the legitimate interests of the controller or of a third party, unless the interests or fundamental rights of the data subject take precedence over those interests and freedoms which necessitate the protection of personal data, in particular where they are concerned child.

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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), in order to enforce the right to the protection of personal data the Authority may initiate ex officio data protection proceedings.

Infotv. Pursuant to Section 61 (1) (a), in a decision made in a data protection authority proceeding the Authority for Infotv. In connection with the data processing operations specified in Section 2 (2) it may apply the legal consequences set out in the General Data Protection Regulation.

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

(a) alert the controller or processor to certain of its intended processing activities

likely to infringe the provisions of this Regulation;

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

(c) instruct the controller or processor to comply with the data subject's rights under this Regulation. request for the exercise of that right;

(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 the rectification of personal data in accordance with Articles 16, 17 and 18 respectively;

or deletion of data processing and Article 17 (2) and Article 19

order the notification of the recipients with whom or with whom the personal data are held

data were provided;

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

revoke the certificate issued or instruct the certification body not to issue the 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 paragraph 1; and

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

suspension.

III. Decision

III.1. Person of the data controller

Pursuant to Article 4 (7) of the General Data Protection Regulation, a natural person who:

determine the purposes and means of the processing of personal data, either individually or in association with others, considered as a controller.

According to the statement contained in the Debtor's reply to the Authority

SMS messages referenced in his complaint - which is an SMS message for a ceremony on March 15th

was an invitation - he sent it to "old friends" on the phone numbers stored in his phone and Gmail account.

According to the facts revealed during the official inspection, the Debtor prior to sending the SMS

contacted a company that provides an SMS service and numbers to send an SMS

ordered from [...] Kft.

In view of these, the Authority, as the person determining the purpose and means of data processing, shall:

He considered the debtor to be a data controller.

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III.2. Legality of the processing of personal telephone numbers

An individual's telephone number is personal under Article 4 (1) of the General Data Protection Regulation¹

considered as data. The general provisions of the GDPR, on the one hand, and the sectoral legislation and, thirdly, the provisions of the contract with the service provider, where applicable.

If personal data is processed and used in any way, this is done

the purpose is defined and an appropriate legal basis for data processing is needed, ie personal data

in accordance with Article 6 (1) of the General Data Protection Regulation³

must have one of the following legal bases.

III.2.1. Applicability of the household exception

Pursuant to Article 2 (2) (c) of the General Data Protection Regulation, the following shall not apply

the provisions of the General Data Protection Regulation on the processing of personal data by a natural person only

personal or home activities, such as none at all

cannot be linked to a professional or business activity (so-called private data processing). Such

For example, correspondence and address storage can be considered as private data management, if the natural person is

Thus, data is stored for personal and home activities in the context of communication, online

use it in the course of its activities. Data management can therefore only and exclusively fall outside the scope of data protection

if it is for private purposes only. In that case, it is no longer considered

processing of data for private purposes if it goes beyond private use, such as the exchange of messages

it is not sent in its own name, not from its own telephone number or for private purposes, and it also uses the SMS sending service provided by a company in advance for sending messages.

In view of the fact that in its letter dated 9 March 2019, the Debtor contacted [...] Kft.

the company will provide it with SMS sending numbers for the purpose of being provided by the company

SMS numbers from phone numbers to an event on March 15, 2019, in the days before

be able to send, and according to the reports, the Debtor shall send the SMS messages about this, provided by [...] Kft.

4 telephone numbers ([...]) and taking into account that it is a well-known fact that the Debtor

has been actively politicizing for more than a decade, and that at the time the SMS was sent, the event in question

one of the organizers, [...] as Vice-President, and that the SMS

his text named several parties and politicians ["Neither Gyurcsány nor Orbán! National cooperation

Army parade (Our Country, MIÉP, FKGP): March 15 at 3 pm from 3 p.m. Gunfire. Palmette, etc. Info:

www.kuruc.info "], not explicitly in his own name, by signing,

can be considered as a message. On the basis of all this, the Authority therefore concluded that the Debtor was investigated

data processing can be linked to its political activities, ie not to sending messages

took place exclusively in the course of his personal or domestic activities and cannot therefore be regarded as such

private data management.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 concerning the processing of

personal data by natural persons

free movement of such data and repealing Directive 95/46 / EC (hereinafter referred to as the GDPR)

2

GDPR Article 4 1. "personal data" shall mean any information relating to an identified or identifiable natural person ("data subject"); identifiable by a

a natural person who, directly or indirectly, in particular by means of an identifier such as a name, number, location, online identifier or

on the basis of one or more factors relating to the physical, physiological, genetic, mental, economic, cultural or social identity of the natural person

identifiable; "

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Article 6 GDPR (1) "The processing of personal data shall be lawful only if and to the extent that at least one of the following conditions is met:

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

(b) processing is necessary for the performance of a contract to which one of the parties relates or which, prior to the conclusion of the contract,

necessary to take action at its request;

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

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the protection of the legitimate interests of the controller or of a third party, unless those interests take precedence;

enjoy the interests or fundamental rights and freedoms of the data subject which require the protection of personal data, in particular where the data subject child.

Point (f) of the first subparagraph shall not apply to the processing of data by public authorities in the performance of their tasks. "

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III.2.2. Proof of the legal basis for data processing

Since the provisions of III.2.1. As explained in point 1, data management is not considered to be general processing of private data under Article 2 (2) (c) of the Data Protection Regulation

The provisions of the General Data Protection Regulation apply and in connection with telephone numbers data processing - thus in connection with the political activity of the Debtor with political content and purpose of sending an SMS message - the lawfulness of the purpose of data management and the lawfulness of data management

it is necessary to define a supporting legal basis for which the processing of personal data is general

Article 6 (1) of the General Data Protection Regulation can take place.

Instead of indicating the legal basis for the data processing, the Debtor argued in his reply that the sent messages to old friends on phone numbers found in your phone and Gmail account.

The grounds on which the processing of personal data may be lawful may be general

Article 6 (1) of the Data Protection Regulation lists exhaustively and to the controller any

legal basis (s), you must be able to prove its existence.

Given that the Debtor is the appropriate legal basis for the lawfulness of the data processing has not proved its existence, its processing is not in accordance with the provisions of the General Data Protection Regulation considered lawful, the Authority therefore found that the Debtor had breached the general Article 6 of the Privacy Regulation by having your phone number stored in your phone and Gmail account sent an SMS with political content without a legal basis.

III.3. Legal consequences

Pursuant to Article 58 (2) (f) of the General Data Protection Regulation, the Authority prohibits the He is obliged to use the “acquaintance” telephone numbers in his / her possession without a proper legal basis activities that go beyond the processing of personal or domestic data uses.

In addition to the above legal consequence, the Authority will issue a warning to the Debtor in his view, the application of the warning is also appropriate, with sufficient deterrent effect compliance with the General Data Protection Regulation instructions for taking, implementing and enforcing measures.

Based on the above, the Authority has decided in accordance with the operative part.

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.

This decision is based on Articles 80-81 of the Act. § and Infotv. It is based on Section 61 (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)

there is an administrative remedy against him.

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

hereinafter: Kp.). A Kp. Pursuant to Section 12 (1), it is against the decision of the Authority
administrative lawsuit falls within the jurisdiction of the court, the lawsuit is subject to the Kp. Section 13 (3) (a) (aa)
The Metropolitan Court shall have exclusive jurisdiction pursuant to A Kp. Section 27 (1) (b)
legal representation is mandatory in litigation within the jurisdiction of the tribunal. Kp. Section 39 (6)
according to - unless otherwise provided by law - the filing of the application by the administrative

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has no suspensory effect on the entry into force of the act.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic
CCXXII of 2015 on the general rules of public administration and trust services. Act (a
hereinafter: E-Administration Act) Section 9 (1) (b) of the Client's legal representative
obliged to keep in touch.

The time and place of the submission of the application is Section 39 (1). The simplified
Information on the lawsuit and the possibility to request a hearing can be found in Kp. Section 77 (1) - (2)
and Section 124 (1) and (2) (c) and (5), respectively. 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) exempts the party initiating the proceedings.

Budapest, December 16, 2020

Dr. Attila Péterfalvi

President

c. professor

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