

Case number: NAIH / 2020/2555.

History: NAIH / 2019/3261.

Subject: Partial decision granting the application

order partially terminating the proceedings

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

(hereinafter referred to as the "Applicant") against [...] (hereinafter referred to as the "Debtor")

The telephone number used by the Applicant, as well as the address details and e-mail of the Applicant

The following decisions were taken in the data protection authority proceedings concerning the unlawful handling of Title II brings:

I. In its decision, the Authority shall, in so far as the applicant claims that the Authority:

establish that the telephone number [...] has been misused

gives place and

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

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

paragraph.

II. In the Authority's decision, the part of the Applicant's application seeking a determination from the Authority

illegal handling of the Applicant's address data and e-mail address

rejects.

III. The Authority shall issue the Debtor ex officio due to the unlawful data processing carried out by it

HUF 300,000, ie three hundred thousand forints

data protection fine

obliges to pay.

The data protection fine shall govern the initiation of legal proceedings

15 days after the expiry of the time limit or, in the case of a review, by the court

within the Authority's centralized collection account for centralized revenue collection (1003200001040425-00000000

Centralized collection account IBAN: HU83 1003 2000 0104 0425 0000

0000). When transferring the amount, NAIH / 2019/3261. JUDGE. should be

to refer to.

If the Debtor fails to meet its obligation to pay the fine on time, it shall be in arrears

must pay a supplement. The rate of the late payment interest is the statutory interest, which is in arrears

equal to the central bank base rate valid on the first day of the calendar half-year concerned. The fine and the

in the event of non-payment of the late payment allowance, the Authority shall order the enforcement of the decision, the fine

and the recovery of late payment in the manner of taxes. Fines and penalties for late payment

shall be recovered by the National Tax and Customs Administration.

ARC. In its part of the Authority ordering the cancellation of the Applicant's telephone number

initiated a data protection official procedure

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terminates.

V. In view of the fact that the Authority exceeded the administrative deadline, HUF 10,000, ie ten thousand

HUF to the Applicant, at his choice, by bank transfer or postal order

to pay.

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

Authorities.

I, II., III. and the order set out in points IV and V

There is no right of appeal by administrative means, but within 30 days of the notification the Capital City

It may be challenged in an administrative action before the General Court. The application is lodged with the

It must be submitted to the authority, electronically, which will forward it to the court together with the case file. THE

a request for a hearing must be indicated in the application. Not in full personal exemption

for the beneficiaries, the fee for the court review procedure is HUF 30,000, the right to record the material fee per lawsuit

falls below. Legal representation is mandatory in proceedings before the Metropolitan Court.

EXPLANATORY STATEMENT

I. Procedure and clarification of the facts

The Applicant submitted a petition on March 29, 2019, in which it was a data protection official procedure initiated.

According to the information provided in the application, by the Debtor's agent on 12.02.2019. on the day of a service order with a file number [...] for delivery to the Applicant's address for service. The document is a She was taken over by the applicant's husband, who informed the representative that the summons had been addressed to him for several years lives abroad abroad. The petitioner's husband also informed the representative that scanned, you can email the debtor to the debtor, there is no other option at will.

On the day of receipt of the above-mentioned document, the Applicant spoke by telephone at the person representing the Debtor who provided the document to whom the Applicant has will settle the claim within a maximum of 2-3 days to the specified account number and amount will be paid in person by the Applicant. The Debtor's representative is the telephone did not inform the Applicant during the meeting that the telephone conversation or the your name and phone number will be recorded and you will not be notified at a later date will be treated as a customer.

The Applicant paid the debt claimed by the Debtor on 13 February 2019. On February 15, 2019, the Applicant received an SMS notification from the Debtor to his / her telephone, referring to the registration number [...]. a debt has been notified, failing which enforcement is envisaged. After that, more An SMS exchange took place, in which the Applicant indicated that the payment had been made, however, another and new calls came. The texts of the SMS did not contain the name of the debtor and the no specific person was named in the address.

The Applicant attached a copy of the following documents to the application:

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the Debtor 01.01.2019. on the day of [...], no. letter addressed to

[...] By the Applicant on 13.02.2019. performed on

cash receipt,

payment

payment

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payment request and correspondence from the Debtor to the telephone number [...] (15 February 2019, 16, 26, 13 March),

[...] Complaint handling policy,

Deletion of personal data sent by the applicant to the e-mail address [...] on 16 February 2019

application of the data subject, accompanied by a pdf request containing the relevant data subject form,

02/16/2019 a power of attorney issued to the Applicant 's husband on the day of

On behalf of the petitioner in the cases of the Debtor [...].

The content of the request did not comply with the right to information self - determination and

CXII of 2011 on freedom of information Act (hereinafter: Infotv.) Infotv. Section 60 (5)

Therefore, the Authority called on the Applicant to rectify the deficiencies

Applicant met the deadline. The Applicant submitted that the "SMS

[...] as the consignor 'and informed the Authority that the [...]

telephone number belongs to the subscription of [...], which the Applicant is entitled to use as a representative.

He confirmed his claim with a copy of [...] 's invoice. The Applicant also attached a such

a copy of the invoice, according to which [...], as the biller, re-invoiced the telephone fee to the Applicant for.

In his statement, the Applicant requested that the Authority declare the Debtor illegal

the instruction of the data subject and instruct the Debtor to provide personal data (telephone number, e-mail address,

address).

At the request of the Authority, the Debtor stated that he would not process the Applicant's personal data, only the aggrieved telephone number was recorded in their records provided by the Applicant to

Together with the obligation that since the debtor is permanently abroad, this a

they can reach him as a contact on a phone number in case of a problem. The phone number [...] can be found in

He is obliged in his system not to the Applicant but to his client, ie to collect

fixed to the debtor of the desired claim, who is a person other than the Applicant. The Applicant a

He sent a letter to the debtor on 16 February 2019 requesting data management information and

requested the deletion of your personal data. According to the Debtor's statement, the aggrieved telephone number

03/23/2019 deleted from their system on A statement by the Debtor that a

telephone number was not stored in connection with the Applicant, shall be supported by the Debtor [...]

also a copy of the SMS messages sent to the telephone number, as there is no reference to the name of the Applicant,

only for a registration number used to identify your client's case. Attached by the Debtor

According to the documents of the applicant, the case identifier in the SMS messages is not the Applicant, but the

It can be linked to the case of the applicant's relative [...].

As the Debtor stated that the "aggrieved telephone number - as a point of contact

Number provided by the Applicant - has been recorded in our system for the Customer ", therefore a

The Authority called on the Debtor to prove the Applicant's

for the period up to the time of cancellation. The Debtor a

At the request of an authority, he could not prove the telephone number recorded in his system

the existence of an informed consent.

II. Applicable law

On the protection of individuals with regard to the processing of personal data and

on the free movement of such data and repealing Directive 95/46 / EC

Article 2 (1) of Regulation (EU) No 2016/679 (hereinafter referred to as the General Data Protection Regulation)

the Regulation should apply to personal data in a partially or fully automated manner

and the non-automated processing of data which

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are part of a registration system or are part of a registration system

they want to do.

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

the Authority shall, at the request of the data subject,

to initiate proceedings.

Unless otherwise provided in the General Data Protection Regulation, data protection was initiated upon request

CL of the General Administrative Procedure Act 2016. Act (a

hereinafter referred to as the Act) shall apply with the exceptions specified in the Infotv.

The Ákr. Pursuant to § 36, the application is submitted by the customer in writing or in person

a statement requesting that an administrative procedure or a decision of the authority be instituted, or

legitimate interest. Infotv. 60. (2) of the Data Protection Act

request for the initiation of an official procedure pursuant to Article 77 (1) of the General Data Protection Regulation

may be submitted in the case provided for in Article 77 (1) of the General Data Protection Regulation

Subject to paragraph 1, any person concerned shall have the right to lodge a complaint with a supervisory authority if:

the data subject considers that the processing of personal data concerning him or her violates the general

data protection regulation.

The Ákr. Pursuant to Section 47 (1) (c), the authority shall terminate the proceedings if the proceedings

it has become obsolete.

According to Article 4 (1) of the General Data Protection Regulation, "personal data" means 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 a factor.

According to Article 4 (2) of the General Data Protection Regulation, "data processing" means the processing of 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, transmit, distribute or otherwise harmonization or interconnection, restriction, deletion, or destruction.

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

Pursuant to Article 11 (2) of the General Data Protection Regulation, if provided for in paragraph 1 of this Article in those cases, the controller may prove that he is not in a position to identify inform the data subject accordingly, if possible in an appropriate manner. In such cases, 15-20. article shall not apply unless the data subject has the right to exercise his rights under those Articles provides additional information to enable it to be identified.

Pursuant to Article 12 (2) of the General Data Protection Regulation, the controller shall facilitate the affected 15-22. exercise of their rights under this Article. In the cases referred to in Article 11 (2) the data controller shall fulfillment of his request to exercise his rights under Article he may not refuse it unless he proves that the person concerned cannot be identified.

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Under Article 12 (3) of the General Data Protection Regulation, the controller is unjustified without delay, but in any case within one month of receipt of the request inform the data subject in accordance with Articles 15 to 22. on the action taken in response to a request under Article. Need In view of the complexity of the application and the number of applications, this time limit shall be extended by two additional periods may be extended by one month. The extension of the deadline by the data controller shall be the reasons for the delay

within one month of receipt of the request. If

the person has submitted the application electronically, the information shall be made possible, if possible, electronically unless otherwise requested by the data subject.

Pursuant to Article 15 (1) of the General Data Protection Regulation, the data subject is entitled to:

receive feedback from the data controller on the processing of your personal data

is in progress and if such data processing is in progress, you are entitled to personal

access to data and the following information:

(a) the purposes of the processing;

(b) the categories of personal data concerned;

(c) the recipients or categories of recipients with whom the personal data are held

have been or will be communicated, including in particular to third country consignees, and

international organizations;

(d) where applicable, the intended period for which the personal data will be stored or, failing that

possible criteria for determining this period;

(e) the data subject's right to request personal data concerning him or her from the controller

rectification, erasure or restriction on the processing of such personal data

against its treatment;

(f) the right to lodge a complaint with a supervisory authority;

(g) if the data were not collected from the data subject, all available sources

information;

(h) the fact of automated decision-making referred to in Article 22 (1) and (4), including:

profiling and, at least in these cases, the logic used

understandable information about the significance of such data processing and for the data subject

what are the expected consequences.

Infotv. Pursuant to Section 38 (2), the Authority is responsible for the protection of 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

The Ákr. Pursuant to Section 27 (1), the authority is entitled to the client and other participants in the proceedings

specified in the law governing the natural identity of the customer

personal data and, unless otherwise provided by law, to clarify the facts

essential for accessing and processing other personal data. On request

in the opening proceedings, it must be presumed that the applicant client is necessary to clarify the facts

consent to the processing of personal data, including special data.

III. Decision:

III.1. It is a question of treating the telephone number [...] as personal data

According to the Applicant's statement, the subscriber of the telephone number [...] is not the Applicant, but [...], the Applicant, however, is the user of this phone number.

Pursuant to Article 2 (1) of the General Data Protection Regulation, the Regulation applies to the processing of data data processing relating to the data of a natural person.

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CLXXIX of 2011 on the rights of nationalities. pursuant to Section 2 (2) of the Act [...] is legal

an organization with a personality, i.e. a phone number associated with your subscription contract

a non-natural person can be directly identified on the basis of

However, given that the telephone number subscribed by the legal entity can be linked to the Applicant,

as a representative, he is the user, making and receiving a call directly with him

connection may be established, or in this case during the contact with the Applicant this

has used a phone number and can be clearly contacted with his or her person, making him or her personal

Article 4 (1) of the General Data Protection Regulation.

III.2. Principle of accuracy

The data controller's measures must and must be such as to promote the principle of accuracy

prevent the use of inaccurate data.

Subject to the above, the Customer is the customer of the telephone number used by the Applicant recorded as a telephone number and text messages addressed to the customer to the Applicant's telephone number was not sent under Article 5 (1) (d) of the General Data Protection Regulation lawful because the Employee of the Debtor knew at the time of recording the data that it had been recorded by him phone number does not belong to the customer and the customer is not the source of the data. The Authority shall inform the Applicant and the

He has established from the Debtor's statements that the Applicant's telephone number is the Debtor's customer was recorded as data without the Applicant being the Customer of the Debtor would have been entitled to act on behalf of the petitioner, as the procedure of the Applicant did not have a power of attorney.

Based on the above, the Authority found that the Debtor had violated the general data protection Article 5 (1) (d) of that Regulation.

III.3. Based on the appropriate information required to process the Applicant's personal data, proof of a clear, voluntary and concrete contribution

Recital 32 of the General Data Protection Regulation is based on consent requires that, with a clear affirmative action, a voluntary, specific, informed consent given to the controller by the general data protection must be able to prove it in accordance with Article 7 (1) and Article 5 (2) of that Regulation.

An employee of the Debtor when collecting the personal data of the Applicant (continued with the Applicant) during a telephone conversation) was aware that the Applicant handles, collects, therefore, he should have sought the consent of the Applicant for the inclusion of personal data and this he should have been able to prove the existence of the legal basis a posteriori. However, the Debtor - a call from the Authority has not provided the Authority with any audio material or document would have confirmed the existence of the consent. Thus, the General Data Protection Regulation (32) did not demonstrate compliance with the requirements set out in recital 7 and Article 7 for the period up to the time of cancellation.

Based on the above, the Authority found that the Debtor had not proved that the Applicant had the consent of the Applicant to process his personal data, ie consent in the absence of a legal basis, entered the telephone number in his system, in breach of the general Article 6 (1) of the Data Protection Regulation.

III.4. The Applicant's request for access and deletion of data submitted to the Debtor

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The Applicant also submitted its request for access and deletion of data on 16 February 2019

To the obligor.

The Debtor shall comply with the deadline set out in Article 12 (3) of the General Data Protection Regulation

in accordance with Article 15 (1) of the General Data Protection Regulation on 07 March 2019

informed electronically that no claim was being registered in his name and referred to

may not provide information to third parties on case no.

According to the documents attached by the Debtor, the case identifier in the SMS messages is not

may be linked to the case of the Applicant but also to the applicant's relative [...]. The Applicant is the Debtor

was not listed in the register as a client or agent.

Pursuant to Article 12 (2) of the General Data Protection Regulation, the controller is concerned

may refuse to comply with your request for erasure if it proves that the data subject does not exist

way to identify. The Debtor stated during the proceedings that he was not in the

to identify the Applicant in its register, so that its application for cancellation can only be

following the communication of the additional information on 7 March 2019

fulfilled. Given that the Debtor is in breach of the principle of accuracy of the Applicant

the telephone number used by the applicant has been recorded by his / her client, therefore the Applicant's request for

cancellation has not been made

was unable to do so without providing additional information as it could not identify it. The accessory

After providing the information, the Debtor deleted the personal data from the

from the register.

In view of the above, the Debtor has not infringed Article 15 (1) of the General Data Protection Regulation.

as the telephone number provided for contact purposes is not relevant to the Applicant

treated as personal data, but - III.2. In the light of the findings set out in point

The debtor should have noticed that it was not the data of his client, but a person

who has not contacted the Debtor as a debtor.

The Debtor complied with Article 11 (2) of the General Data Protection Regulation and

the inaccurate data has been deleted from its records.

III.5. Request for an order to delete the telephone number

In the part of the application requesting the deletion of the telephone number, the Authority Section 47 (1) c)

terminates the proceedings as the proceedings have become devoid of purpose, the Debtor shall

it no longer handles data management.

According to the screenshot of the Debtor's statement and records, the telephone number is 2019.

It was canceled on 03.23, ie before the start of the data protection authority proceedings.

III.6. Illegal handling of the applicant's address and e-mail address

According to the Debtor's statement, only the [...] telephone number is the Applicant's personal data

recorded in his records.

The Declaration of the Applicant and the screenshots attached by him and the

by electronic means only - the Authority has established from correspondence that the Debtor

only illegally handled the Applicant's telephone number data as it was not addressed to the Applicant

the demand for payment, but also to the customer previously notified of the common address. This is supported by the

A statement by the Applicant that the Applicant's husband has taken over the

letter and a "brother-in-law" note on the acknowledgment of receipt, indicating that the Debtor

his client lives abroad as a way of life. From the statements of the Debtor and the Applicant, as well as a

From the screenshots supporting the applicant 's allegations, it can be seen that

The Applicant has sent a notification about the debt of its client only by SMS to the Applicant

for.

According to the documents attached to the e-mail address of the Applicant, the Debtor replies to the data subject's requests.

Based on the above, the Authority concluded that the Applicant's address and e-mail address were not handled unlawfully by the Debtor.

III.7. Legal consequences

The Authority granted the Applicant's request in part and Article 58 of the General Data Protection Regulation

(2) b) condemns the Debtor for his data processing activities

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

Article 6 (1) of the Data Protection Regulation.

The above infringements necessitated the imposition of a legal sanction by the Authority acting in accordance with its statutory discretion.

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

imposition. In this context, the Authority shall comply with Article 83 (2) of the General Data Protection Regulation and Infotv.75 / A. § considered ex officio all the circumstances of the case and found that a

in the case of an infringement detected in the present proceedings, the warning is neither proportionate nor dissuasive therefore a fine should be imposed.

In imposing the fine, the Authority took into account the following factors:

- The infringement is moderate because the Debtor also committed an infringement of the principle of data management. (Article 83 (2) (a) of the General Data Protection Regulation)
- Infringement caused by unlawful data processing due to negligent conduct of the Debtor, caused by its data management practices. (Article 83 (2) (b) of the General Data Protection Regulation)
- The Authority assessed the fact that the Debtor was the subject of official proceedings as an attenuating circumstance at the request of the Applicant, after the necessary identification, deleted the phone number from your system. (Article 83 (2) (c) of the General Data Protection Regulation)
- Not to convict the Debtor for violating the General Data Protection Regulation

took place. (Article 83 (2) (e) and (i) of the General Data Protection Regulation)

- Based on the Debtor's income statement for 2018, its pre-tax profit is HUF 23,000,000

volt. The data protection fine imposed shall not exceed the maximum fine that may be imposed.

- By imposing a fine, the Authority's specific preventive purpose is to encourage the Debtor to review the practice of data recording and telephone number data management.

Infringement by the Debtor Article 83 (5) (a) of the General Data Protection Regulation

It constitutes an infringement in the higher category of fines. The infringement

Article 83 (5) of the General Data Protection Regulation

EUR 20 000 000 or the total world market turnover for the preceding business year

not more than 4%.

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Article 83 (2) of the General Data Protection Regulation applies to the imposition of fines.

the following provisions of paragraph 1 were not taken into account because they were not relevant in the present case relevant: points (d), (f), (g), (h), (j) and (k).

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.

The Ákr. § 112 and § 116 (1) and § 114 (1), respectively

there is an administrative remedy against him.

The rules of administrative litigation are laid down in Act I of 2017 on the Procedure of Administrative Litigation (a hereinafter: Kp.). A Kp. Pursuant to Section 12 (2) (a) by decision of the Authority

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

the Metropolitan Court has exclusive jurisdiction.

Act CXXX of 2016 on Civil Procedure. Act (hereinafter: Pp.) - the Kp. Section 26 (1)

applicable pursuant to § 72 of the General Court in a lawsuit falling within the jurisdiction of the General Court representation is mandatory. Kp. Pursuant to Section 39 (6), unless otherwise provided by law, a the filing of an application does not have suspensory effect on the entry into force of the administrative act.

A Kp. Section 29 (1) and with this regard Pp. Applicable in accordance with § 604, electronic

CCXXII of 2015 on the general rules of public administration and trust services. Act (a

hereinafter referred to as the Customer's legal representative pursuant to Section 9 (1) (b) of the E-Administration Act obliged to communicate electronically.

The time and place of the submission of the application is Section 39 (1). The 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 does not duly prove the fulfillment of the prescribed obligations, the Authority shall

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

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

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

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

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

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

by the state tax authority.

During the procedure, the authority exceeded the Infotv. One hundred and twenty days in accordance with Section 60 / A (1)

administrative deadline, therefore Ákr. Pursuant to Section 51 b), it pays ten thousand forints to the Applicant.

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Pursuant to Section 46 (1) (a) of the Act, the authority rejects the application if the procedure

there is no statutory condition for initiating proceedings, and this law is different

has no legal effect.

The Ákr. Section 47 (1) (a) states that the authority shall terminate the proceedings if a
would have been the subject of the rejection of the application, but for a reason after the initiation of the proceedings
came to the attention of the authority.

Budapest, March 9, 2020

Dr. Attila Péterfalvi

President

c. professor