

Case number: NAIH-646- /2022

History: NAIH-6586- /2021

Administrator:

Subject: approving the request

decision

H A T A R O Z A T

Before the National Data Protection and Freedom of Information Authority (hereinafter: Authority) [...]

applicant ([...]; hereinafter: Applicant) arrived on August 6, 2021, the [...] website

(hereinafter: website) operator, i.e. with [...] Kft. ([...]; hereinafter: Applicant)

against the illegal data processing identified in connection with the photograph published on the website

data protection authority initiated following your request for the determination of the subject

procedure, the Authority makes the following decisions:

I.

The Authority grants the Applicant's request and

1) condemns the Applicant, in view of the fact that the Applicant's personal data a

on the protection of natural persons with regard to the management of personal data

and on the free flow of such data, as well as outside the scope of Directive 95/46/EC

in violation of Article 6 of Regulation (EU) 2016/679 (hereinafter: GDPR)

unlawfully handled when the data on its website to third parties

made available;

2) obligates the Applicant to record the photograph and other personal data of the Applicant

delete the caption from your website! To the Applicant, the action has been taken

must provide creditable proof to the Authority after this decision has become final

within 30 days.

II.

The Authority ex officio dismissed the Petitioner due to the violations established in point I

in warning

favors

There is no place for administrative appeal against this decision, but from the announcement

within 30 days with a claim addressed to the Capital Tribunal in a public administrative case

can be attacked. The letter of claim must be submitted electronically to the Authority in charge of the case

forwards it to the court together with its documents. The request to hold the hearing must be indicated in the claim. THE

for those who do not receive a full personal tax exemption, the administrative court fee is 30,000

HUF, the lawsuit is subject to the right of material levy recording. Legal representation in proceedings before the Metropolitan

Court

obligatory.

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I. Procedure of the procedure

(1)

The Applicant arrived at the Authority on August 6, 2021 via e-paper service

submitted a request for a data protection official procedure against the Requester in his letter,

in which he complained that an image was displayed on the website without his consent

photograph depicting him, on the following subpage:

[...]

The Applicant is responsible for the investigation of the case, related to the handling of personal data

to establish a violation of rights and to request the data controller to remedy the violation of rights asked the Authority, and also requested information about who the website is operator and user of the domain.

The Authority dated 13 August 2021, NAIH-6586-2/2021. in order no He invited the Applicant to fill in the gaps in his application, to which the Applicant - the 2021. came to the Authority on August 30 - he complied in his letter.

The Authority dated September 10, 2021, NAIH-6586-4/2021. in order no in order to clarify the facts, he invited the registrar of the [...] website to make a statement, a [...] Kft. ([...]), to which a reply was received on September 21, 2021.

The Authority dated September 10, 2021, NAIH-6586-5/2021. in order no notified the Applicant of the start of the official data protection procedure and the facts in order to clarify it, he called for information on specific issues.

On October 14, 2021, the Respondent sent it to the questions contained in the above order gave his answers, in relation to which the Authority requested clarification and the Respondent NAIH-6586-8/2021 asked additional questions based on his statements. no in its execution.

The Applicant is NAIH-6586-8/2021. on November 26, 2021 sent your answers.

The Authority NAIH-6586-10/2021 dated December 20, 2021. in order no informed the Applicant that the evidence procedure in the official data protection procedure was completed and drew attention to document inspection and further proof for the possibility of exercising the right to submit motions. By the same token in its decision, the Authority referred to the Application submitted during this official procedure to verify the representation authority of the person(s) signing their statements.

At the same time, the Authority NAIH-6586-11/2021. also the Applicant in order no informed about the completion of the evidence procedure and document inspection and evidence

on the possibility of exercising the right to submit a motion.

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(10) E-mail containing a request for inspection of documents on behalf of the Applicant on January 12, 2022 arrived at the Authority.

(11) The Authority NAIH-646-2/2022. in his order no. he called the Applicant that your document inspection request to the legislation governing the official data protection procedure provide it in an appropriate manner in person, by post or via an e-paper service in. Furthermore, the Authority repeatedly called the Applicant on behalf of the person making the statement to prove the right of representation of person(s).

(12) The Applicant sent by post - received at the Authority on January 27, 2022 - in his letter, he complied with the provisions of the Authority's order.

(13) The Authority NAIH-646-5/2022. in order no. the Respondent document inspection limited to his request, the personal data that he cannot recognize approved except for information.

(14) In the letter received by the Authority on February 18, 2022, the Respondent repeatedly requested, for the Authority to designate a possible date for document inspection.

(15) On March 7, 2022, the Respondent received the order approving his document inspection request,

however, the dates provided by the Authority for document inspection - March 17, 2022, 10:00 a.m. and 13:00 March 22, 2022 - did not appear on any of them.

II. Fact

(16) In the application received by the Authority on August 6, 2021, the Applicant submitted that a photograph depicting him was displayed on the website without his consent on the following subpage:

[...].

Below the photograph showing the likeness of the Applicant, the following sentence can be read: "[...], born [...] - [...] entrepreneur - overbiller - unemployed money [...]."

(17) The Applicant also submitted that due to the fact that he is the data controller on the website cannot be identified, you cannot initiate the deletion of your personal data. The Applicant in his opinion, if the data controller discloses his name, address, or that without his consent they upload a recording without his permission, which is clearly identifiable as a violation of the law yes.

(18) The Applicant asked the Authority to establish the fact of unlawful data processing, call on the data controller to remedy the infringement, as well as inform the Applicant a about the website operator and domain user.

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(19) The Applicant, in response to the Authority's request to fill in the gaps, clarified its request, according to requests to establish the unlawful publication and data management of the photograph taken of him.

(20) The Applicant also emphasized that between him, as a private individual, and the website there is no professional relationship, but the [...] Kft., which he manages as managing director, is contracted contract with [...] Kft. for the provision of mechanical construction activities. The Applicant it is likely that his photograph was published on the website in connection with this, however, he emphasized that the company cannot be identified solely with his person because that other persons are also owners and at the same time managers of [...] Kft.

(21) The Applicant added to his request that, in addition to establishing illegal data processing requests the deletion of the image along with the following text: "[...], born [...] in Denmark - [...] entrepreneur - overbiller - unemployed money [...]."

(22) Information sent to the Authority by [...] Kft. - as the registrar of the website according to the domain owner of the website is a company called [...].

(23) The Authority is the Respondent submitted that the Respondent can be considered data controller.

(24) Publication of the Applicant's personal data (photo, name, place of birth, occupation) in response to the question regarding its purpose and legal basis, the Respondent explained that a Four years ago, the applicant borrowed HUF 600 million for mechanical works, however, he did not complete the task, which is why 269 apartments, about a thousand people, cannot to move in. The Respondent also emphasized that he is an expert assigned by the notary public established that he performed work worth no more than HUF 400 million, of which a According to the respondent's opinion, the possibility of embezzlement may even arise. The Applicant presented that it appeared on the website of the Respondent due to the desperate request of the customers content examined during this procedure.

(25) Regarding the source of the published personal data, the Respondent stated that one of the buyers conducted a video interview with the Applicant, who consented to the recording, and thus the also for publishing pictures. Upon the Authority's invitation to this effect, the Respondent did not disclose the customer's home address, instead of two phone numbers.

(26) In the same statement dated October 13, 2021, the Respondent stated that it had already removed the objectionable content from his page.

(27) However, based on an internet search conducted by the Authority on October 22, 2021, the content containing the Applicant's personal data was still available on the website.

(28) At the request of the Authority, the Respondent stated that it contained the consent of the Applicant no statement was recorded, according to his point of view this would not have complied with data protection either regulations.

(29) In addition, the Respondent sent the already mentioned, - Due to the Applicant's omission - missed an expert opinion assigned by a notary public regarding works, as well as the opinion of the Performance Certification Expert Body.

(30) With the duration of availability of the content objected to by the Applicant on the website regarding this, the Respondent stated that "This can be measured in days at most." THE the availability of the content detected by the Authority and according to the Claimant's statement given to a question regarding the reason for the contradiction between removal, dated November 26, 2021 in his answer, the Respondent denied the contradiction, according to his claim, "the whole page is part has been removed."

(31) On April 7, 2022, the Authority checked the subpage again, where - contrary to With what was described by the applicant - the objectionable content was found unchanged, i.e A photograph showing the likeness of the Applicant, containing the Applicant's personal data below with the inscription: "[...], born on [...] - [...] entrepreneur - overbiller - unemployed money [...]."

(32) The Authority noticed that the statements sent by the Respondent during the procedure the name of the signatory was not indicated on any of them, nor in the text of the statements ("Undersigned [...] Kft."), both in the text below the signatures ("Sincerely: [...] Kft.") only the company name is included. In addition, October 13, 2021 and 2021 The image of the signatures on the statements dated November 26 are different, so it cannot be established beyond any doubt that it is from the same person are derived from.

(33) Repeated decision made by the Authority regarding the certification of representation rights upon request, the Respondent confirmed by sending a statement and a copy of the signature address

the right of representation of the person making the statement.

III. Applicable legislation

Article 2 (1) of the GDPR: This regulation shall be applied in the personal data section or for handling it in an automated manner as a whole, as well as those personal data a for processing in a non-automated manner, which are part of a registration system form or which are intended to be part of a registration system.

GDPR Article 4, point 1: "personal data": identified or identifiable natural any information relating to a person ("data subject"); the natural can be identified a person who, directly or indirectly, in particular an identifier such as a name, number, location data, online identifier or physical, physiological, one concerning your genetic, intellectual, economic, cultural or social identity can be identified based on several factors;

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Article 4 point 2 GDPR:

"data management": personal data or data files any operation or set of operations performed in an automated or non-automated manner, such as the collection, recording, organization, segmentation, storage, transformation or change, query, access, use, communication, transmission, distribution or other means by item, coordination or connection, restriction, deletion or destruction.

Article 6 (1) of the GDPR: Processing of personal data only when and to the extent that legal if at least one of the following is met:

- a) the data subject has given his consent to the processing of his personal data for one or more specific purposes for its treatment;
- b) data management is necessary for the performance of a contract in which the data subject is one of the parties, or to take steps at the request of the data subject prior to the conclusion of the contract required;

- c) data management is necessary to fulfill the legal obligation of the data controller;
- d) the data processing is for the vital interests of the data subject or another natural person necessary for its protection;
- e) the data management is in the public interest or for the exercise of public authority delegated to the data controller necessary for the execution of the task carried out in the context of;
- f) data management to enforce the legitimate interests of the data controller or a third party necessary, unless the interests of the data subject take precedence over these interests or fundamental rights and freedoms that require the protection of personal data, especially if a child is involved.

Point f) of the first subparagraph cannot be applied by public authorities in the performance of their duties for data management.

(3) The legal basis for data management according to points c) and e) of paragraph (1) shall be the following to determine:

- a) EU law, or
- b) the law of the Member State to which the data controller falls.

The purpose of data management must be determined with reference to this legal basis, and paragraph (1) e) with regard to the data management referred to in point, it must be necessary for some public interest or a task performed in the context of the exercise of a public authority delegated to the data controller for its execution. This legal basis may include the application of the rules contained in this regulation adjusting provisions, including those governing the legality of data management by the data controller general conditions, the type of data subject to data management, the data subjects, those a legal entities with which personal data can be disclosed, as well as the purposes of such data disclosure, that is restrictions on the purpose of data management, the duration of data storage and the data management operations, as well as other data management procedures, such as legal and fair data management measures necessary to ensure it, including IX. other specified in chapter regarding specific data management situations. EU or Member State law must have a public interest purpose

serve and must be proportionate to the legitimate aim to be achieved.

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Article 58 (2) of the GDPR: Acting within the corrective powers of the supervisory authority:

b) condemns the data manager or the data processor if its data management activities

violated the provisions of this regulation.

g) in accordance with the provisions of Articles 16, 17 and 18, orders personal data

rectification or deletion, or limitation of data management, as well as Article 17 (2)

in accordance with paragraph and Article 19, orders the notification of the recipients with whom

or with which the personal data was disclosed;

GDPR Article 77 Paragraph 1: Without prejudice to other administrative or judicial remedies,

all data subjects have the right to complain to a supervisory authority – in particular a

according to your usual place of residence, your place of work or the place of the alleged infringement

in a Member State - if, according to the judgment of the data subject, the processing of personal data concerning him

violates this regulation.

CXII of 2011 on the right to information self-determination and freedom of information. law

(hereinafter: Infotv.) § 2, paragraph (2): Personal data is defined in the European Regulation (EU) 2016/679

falling within the scope of the parliamentary and council decree (hereinafter: general data protection decree).

III-V of the General Data Protection Regulation. and VI/A. In Chapter, as well as § 3. 3., 4.,

6., 11., 12., 13., 16., 17., 21., 23-24. point, paragraph (5) of § 4, § 5 (3)-(5), (7) and (8)

paragraph, paragraph (2) of § 13, § 23, § 25, § 25/G. § (3), (4) and (6)

in paragraph 25/H. § (2), 25/M. in paragraph (2) of § 25/N. § 51/A.

in paragraph (1) of § 52-54. §, § 55 (1)-(2), § 56-60. § 60/A. §

(1)-(3) and (6), points a) and c) of § 61 § (1), § 61 (2) and (3)

paragraph, paragraph (4) point b) and paragraphs (6)-(10), paragraphs 62-71. in §, in § 72,

in paragraphs (1)-(5) of § 75, 75/A. § and with the additions specified in Annex 1

should be used.

Infotv. Validation of the right to the protection of personal data based on § 60, paragraph (1).

in order to do so, the Authority will initiate a data protection official procedure at the request of the data subject.

CL of 2016 on the general administrative procedure for the official data protection procedure.

law (a

Defined in Infotv

with additions and deviations according to the general data protection regulation.

hereinafter: Ákr.) rules shall be applied

Infotv. 75/A. §: The Authority is contained in paragraphs (2)-(6) of Article 83 of the General Data Protection Regulation

exercises its powers taking into account the principle of proportionality, in particular by a

relating to the processing of personal data - in legislation or the European Union is mandatory

in the case of the first violation of the regulations specified in the act, the violation

for its remedy - in accordance with Article 58 of the General Data Protection Regulation - primarily the

takes action with the warning of a data controller or data processor.

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Infotv. 60/A. Section (1): Administrative deadline in the official data protection procedure

one hundred and fifty days, which does not include the data necessary to clarify the facts

the time from the notification to its completion.

The Ákr. According to § 51, subsection (1), point b), if the Authority exceeds the administrative deadline, the

of a fee payable for the conduct of a procedure or administrative according to the Act on Fees

administrative fees paid for official procedures or for the use of administrative services

an amount corresponding to the service fee (hereinafter: fee), failing which, HUF ten thousand

pays the requesting client, who is also exempt from paying the procedural costs.

ARC. Decision

IV.1. Legal basis for data management

First of all, the Authority established that it is a likeness of the Applicant, as well as below

information in a legible caption (name, place of birth, occupation) Article 4 GDPR

1. of personal data, and the publication of this data on the website a

It is classified as data management in Article 4, point 2 of the GDPR.

personal data available

On the objected subpage

so

data processing takes place, so the personal data managed by the Applicant is entitled to it

protection according to the General Data Protection Regulation and carried out by the Respondent

data management must comply with the rules of the General Data Protection Regulation.

with the theorem

THE

based on the above, a third of the Applicant's personal data to the Respondent

activities that result in its sharing with other persons fall under the scope of the GDPR

belongs, in which case one of the basic conditions for the legality of data management is a

The existence of a legal basis regulated in Article 6 (1) GDPR.

The Applicant's personal data - by publishing them on its website

- made it accessible to anyone.

The Respondent does not consent to the data management as evidenced by the consent of the Applicant

had. According to the Respondent, the Applicant "contributed the data, so a

recording, to publish the images", however, the Applicant did this with that video recording

which was made during an interview based on the available data,

and a frame of which was later recorded on the objected subpage, the mar

with quoted description. Noting that if, according to the claim of the Respondent, a

In that case, the applicant would have given his consent to the recording of the video

nor is the photo recording - or the personal data indicated under it - on the website

regarding its publication, the consent referred to by the Respondent is its proof

would not be considered the legal basis for the data management that is the subject of this procedure. THE

The applicant provided the Authority with the name of that person and the telephone number of the person who, according to the Applicant's presentation, had the Applicant's video recording with its consent for the preparation, however, the Authority will use the given name and

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did not consider a telephone number to be sufficient to prove the legal basis for data processing. With this regarding the Authority as necessary

keeps noting that the specific case

given that the person concerned, i.e. the Applicant, is particularly unlikely

circumstances

his contribution in a particularly negative color

indicative, - from its reality

regardless - to publish a description that is unpleasant for him.

The Authority called on the Requested Party to indicate its data management

legal basis, however, for the publication of the photograph and the personal data indicated below

the relevant legal basis was not identified and verified during the procedure. THE

In the respondent's statement, in relation to the consent according to his claim, so

stated that "We did not record the statement in the context of the conversation, obviously

the recording would not have met the data protection regulations either.". The Applicant is a consentor

he did not factually dispose of in his statement, or the existence of any other legal basis for the Respondent didn't prove it either.

The Authority found that although the Respondent referred to the fact that the

at the desperate request of customers, the Applicant's picture and personal information were published on the website caption containing your data, however, this declaration is not suitable for data management either its legal purpose, nor in accordance with the regulations or to determine the legal basis for verification.

Considering the circumstances of the case, the Authority found that the Applicant the handling of his personal data was done without a legal basis, therefore the Respondent violated the Article 6 (1) GDPR.

In view of the above, the Authority granted the Applicant's request, Article 58 (2) of the GDPR on the basis of paragraph f) the Applicant's personal data a obliged to delete it from the website.

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IV.2. Other findings of the Authority

In his application, the Applicant stated that he was not aware of the operator of the website and about the identity of the domain user. In this regard, the Authority records that the facts during his clarification, he noticed that the Economic Competition Office was held at [...] during its competition supervision procedure - among other things - it revealed that the [...] website operated by the Applicant. It was also sent to the Authority by [...] Kft according to information, the domain owner of the website is a company called [...].

During the procedure, the Authority exceeded Infotv. 60/A. One hundred and fifty according to paragraph (1) of § day administrative deadline, therefore the Applicant is subject to the Ákr. Section 51, paragraph (1) point b). is entitled to ten thousand forints, the payment of which must be indicated in writing according to - it is possible by bank transfer or postal order.

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IV.4. Legal consequences

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The Authority, granting the request of the Applicant, Article 58 (2) point b) of the GDPR

condemns the Applicant for violating the provisions of Article 6 of the GDPR.

After the Authority granted the Applicant's request, the infringement was terminated and the personal

in order to restore data protection in Article 58 (2) point g) of the GDPR

on the basis of its powers, obliges the Applicant to take pictures and the Applicant's other

delete your personal data from the sub-page and instructs the Applicant that in the future

refrain from such behavior.

(47) The Authority ex officio examined whether data protection was justified against the Application

imposition of a fine. In this context, the Authority has Article 83 (2) of the GDPR and Infotv. 75/A.

considered all the circumstances of the case based on §. Given the circumstances of the case a

Authority found that the

in the case of a violation of the law

a warning is a proportionate and dissuasive sanction, therefore the imposition of a fine is not

required.

during this procedure

revealed

(48) In its decision, the Authority took into account that the Respondent's conviction is general

due to a violation of the data protection regulation has not yet taken place. The Authority did not reveal any

system-level data management deficiencies, which are a larger number

to infringement

would refer.

(49) Based on all the circumstances of the case, it can be assumed that without imposing a fine, the Respondent must fully comply with the Authority's decision and ensure that the Applicant protection of your personal data. The Authority will specifically check this decision fulfillment, and in case of non-fulfilment, a procedural fine can be imposed, or another data protection penalty official procedure in the event of a violation of the law a when establishing legal consequences, the present violation as an antecedent with increased weight will take into account.

can start. Another privacy policy

A. Other questions

(50) The competence of the Authority is defined by Infotv. Paragraphs (2) and (2a) of § 38 define its jurisdiction covers the entire territory of the country.

(51) The decision in Art. 80-81 § and Infotv. It is based on paragraph (1) of § 61. The decision is Acr. Based on § 82, paragraph (1), it becomes final upon its publication.

(52) The Art. Based on § 112, § 116, paragraph (1), and § 114, paragraph (1), the against the decision and the termination order, there is an administrative lawsuit as a remedy.

(53) The rules of administrative proceedings are laid down in Act I of 2017 on Administrative Procedures (the hereinafter: Kp.) is defined. The Kp. Based on Section 12 (1), the Authority the administrative lawsuit against his decision falls under the jurisdiction of the court, the lawsuit is referred to the Kp. 13.

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On the basis of § (3) point a) point aa) the Metropolitan Court has exclusive jurisdiction.

The Kp. Pursuant to § 27, paragraph (1) point b) in a lawsuit within the jurisdiction of the court, the legal representation is mandatory. The Kp. According to paragraph (6) of § 39, the submission of the statement of claim a does not have the effect of postponing the entry into force of an administrative act.

(54) The Kp. Paragraph (1) of § 29 and, in view of this, Pp. According to § 604, it is applicable of 2015 on the general rules of electronic administration and trust services

CCXXII. Act (hereinafter: E-Administration Act) according to Section 9 (1) point b) of the the client's legal representative is obliged to maintain electronic contact.

(55) The time and place of filing the statement of claim is determined by Kp. It is defined by § 39, paragraph (1). THE information on the possibility of a request to hold a hearing in Kp. Section 77 (1)-(2)

based on paragraph The amount of the administrative lawsuit fee is determined by the 1990 Law on Fees

XCIII. Act (hereinafter: Itv.) 45/A. Section (1) defines. The fee is in advance

from the payment of the Itv. Paragraph (1) of § 59 and point h) of § 62 (1) exempt it

party initiating the procedure.

(56) If the Obligor does not adequately certify the fulfillment of the prescribed obligation, a

The authority considers that the obligation was not fulfilled within the deadline. The Akr. § 132

according to, if the obligee did not comply with the obligation contained in the final decision of the authority

enough, it is enforceable. The Authority's decision in Art. According to paragraph (1) of § 82 a

becomes final with notification. The Akr. Pursuant to § 133, enforcement - if you are a law

government decree does not provide otherwise - it is ordered by the decision-making authority. The Akr.

Pursuant to § 134, enforcement - if it is a law, government decree or municipal regulation

in official matters, the decree of the local government does not provide otherwise - the state

undertaken by the tax authority. Infotv. Based on Section 60 (7) in the Authority's decision

to carry out a specified act, conduct, or tolerate

regarding the obligation to stop, the Authority will implement the decision

undertakes.

dated: Budapest, April 7, 2022

In the absence of President Dr. Attila Péterfalvi:

Dr. Győző Endre Szabó

vice president

