

István Ujhelyi
MEP European Parliament
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B-1047 Brussels
Belgium

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By e-mail only

Ref: OUT2021-00160

Dear Mr Ujhelyi,

Thank you for your letter related to the alleged use of spyware by public authorities in Hungary, in which you draw the European Data Protection Board's (EDPB) attention to specific aspects related to the right to the protection of personal data.

First of all, I would like to underline that the EDPB and its members pay particular attention to the current developments related to the interferences with the fundamental rights to privacy and data protection through surveillance measures, notably following the Pegasus media revelations and its implications in several Member States.

The EDPB is competent in the matter of the alleged use of the Pegasus software mainly if and as far as it is deployed for purposes under the GDPR and the LED.

I would like to also underline that according to the applicable Union law the European Data Protection Board (EDPB) does not have the same competences, tasks and powers as national supervisory authorities. Indeed, at national level, the assessment of alleged infringements of the GDPR, or of the EU overall data protection framework, falls within the competence of the responsible and independent national supervisory authority and, when it comes to matters falling under Union law, subject to the cooperation and consistency mechanisms set out in the GDPR and the LED. Within these mechanisms, one of the EDPB's tasks is the promotion of cooperation and effective bilateral and multilateral exchange of information between the supervisory authorities.¹

In light of the most recent CJEU case law, the EDPB recalls in this context that access, retention and further use of personal data by public authorities within the remit of surveillance measures must not exceed the limits of what is strictly necessary, assessed in the light of the Charter, otherwise it "cannot be considered to be justified, within a democratic society".²

Furthermore, the EDPB already had the occasion to make clear that the protection of journalists and their sources is a cornerstone of the freedom of the press.

¹ Article 70(1)(u) GDPR, Article 51(1)(h) LED.

² CJEU, Case C-623/17, Privacy International, §81

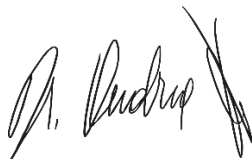
In relation to the matter raised in your letter, I would like to refer to the official statement of the Hungarian data protection supervisory authority (SA), published on 5 August 2021 regarding its measures to address the issue.³

This statement informs that, in accordance with its competences and with the Act CXII of 2011 on the right to informational self-determination and on the freedom of information (Privacy Act) Art. 51/A section (1), the Hungarian SA initiated an ex officio procedure in this case. Until the end of this investigation, and in line with the applicable procedure, the Hungarian SA is not able to share any information with the public on this topic.

Concerning the particular case at stake, the Hungarian National Authority for Data Protection and Freedom of Information, as national supervisory authority, has competency to carry out the investigation procedure regarding the alleged use of spyware by Hungarian authorities. In line with the applicable legal framework, the Hungarian SA has indeed powers to investigate matters related to secret surveillance and processing of classified information.

To conclude, I wish to reassure you that the EDPB will continue to pay special attention to the developments of personal data processing related to surveillance measures in Member States and will remain ready to support all members of the EDPB, including the Hungarian supervisory authority, in such matters.

Yours sincerely,



Andrea Jelinek

³ *"An international investigation has revealed that a spyware so called Pegasus developed by Israeli NSO has been installed into the phones of certain target persons. "*

Available: <https://www.naih.hu/tajekoztatok-kozlemenyek>