



Case No: NAIH-8218-2/2022

Deborah Brown
Senior researcher and advocate

On digital rights
Human Rights Watch

Dear Madam,

In your request to the Nemzeti Adatvédelmi és Információszabadság Hatóság (Hungarian National Authority for Data Protection and Freedom of Information, hereinafter: Authority) you informed the Authority on behalf of Human Rights Watch (HRW) that HRW is conducting a research project on the use of data by political parties in the course of the Hungarian parliamentary elections of 3 April 2022 and, in relation to this, you requested the Authority to share its observations, information and experiences on the issues indicated in your request.

In the order of the questions in the request, the Authority provides the following information:

1-2. The Authority received several hundred complaints and notifications in the period directly preceding the elections and in the weeks following the day of the election concerning citizens contacted for campaign purposes by e-mail or phone (by way of calls or text messages) and by post:

(i) Complaints received in relation to the opposition:

- Most of the complaints (**altogether 138**) were related to the receipt of text messages addressed to the complainant, but without any information on the controller, to phone numbers in the personal use of the data subjects, in the days preceding the day of the elections. Based on the notifications, the Authority launched ex officio investigations under case numbers NAIH-4360/2022 and NAIH-5243/2022, in the course of which it is first to identify the person of the controller and then examine the lawfulness of the data processing practice. These procedures are currently in progress.
- A large number of complaints (**altogether 112**) were submitted in the days preceding the day of the elections because of unsolicited campaign calls of political content. Based on these notifications, the Authority also launched an ex officio investigation under case number NAIH-4949/2022; the procedure is in progress in the course of which the Authority will first identify the person of the controller and then examine the lawfulness of the data processing practice.
- **10 complaints** were submitted concerning the fact that the data subject received campaign purpose letters addressed to them by post in the days preceding the day of the elections. In these cases, the data subjects were informed, inter alia, of the fact that pursuant to Section 153(1)(a) of Act XXXVI of 2013 on the Election Procedure, candidates may request the disclosure of the names and addresses of voters included in the electoral rolls of their constituency and that data subjects can submit a request to forbid the issue of their data in the manner indicated.
- In the course of this year's parliamentary elections, voters had an opportunity to request data online from the National Elections Office whether their personal data are included in the

nomination form of a candidate for Members of Parliament in 2022. Owing to the fact that the personal data of data subjects were included in the nomination form of a candidate while the voter did not support the given candidate with their recommendation - **14 notifications** were received.

Of these, the Authority referred two notifications to the National Police Commission (notifications filed under case numbers NAIH-3366/2022 and NAIH-3438/2022); the Authority's data protection procedure under case number NAIH-3385/2022 was suspended until the conclusion of the criminal procedure in progress.

The Authority did not launch investigations concerning the other notification because according to the Authority's position, the confirmation received from the election office verifies only the nomination form, which includes the recommendation of the given voter, the nominating organisation and the person collecting the recommendations, which can be associated with the form. It is, however, not possible or difficult to prove afterwards by official means who was the actual person, who wrote the personal data and signatures on the recommendation sheet, who the actual person was who signed the form or forged the signature, which is a precondition to establishing the lawfulness of the use of the other personal data indicated on the nomination form.

- In addition to the above, **4 complaints** were sent to the Authority in the months preceding the elections concerning unsolicited political e-mails, of which an investigation was launched in one case, which is still in progress; no procedure was launched in relation to the other three complaints because the complainants did not respond to the Authority's call for providing additional information.
- Moreover, **6 notifications** were received, in which the notifiers objected to the lawfulness of the data collection on an online platform in support of the candidates of Normális Élet Pártja (Party of Normal Life). In relation to these notifications, the Authority's ex officio data protection procedure is in progress under case number NAIH-3747/2022.

(ii) Complaints received in relation to the ruling party

- The Authority received several notifications objecting to unsolicited text messages encouraging the election of Fidesz-Magyar Polgári Szövetség (Fidesz Hungarian Civic Alliance) sent in the days directly preceding the day of the election. As a result of these notifications, the Authority launched an ex officio investigation under case number NAIH-5542/2022, in which currently the verification of the facts of the case is in progress.
- Under case number NAIH-4652/2022, the Authority's data protection procedure launched upon request is in progress concerning the sending of unsolicited e-mails.
- **2 other complaints** were received objecting to unsolicited campaign calls prior to the elections, one of which is under investigation, while in the other the complainant received a letter of general information on steps that can be taken with regard to unsolicited calls, because the phone number called was accessible as a company subscription in the internet directory.
- **1 request** was received by the Authority to launch its data protection procedure because of a campaign letter received by mail; this procedure was terminated because the complainant failed to answer the Authority's call to provide additional information.
- In the months preceding the elections, **2 complaints** were received concerning unsolicited government calls of political content related to the war situation in the Ukraine. In one case, the complainant received information on the steps that can be taken in relation to unsolicited phone calls; in the other case, the investigation was terminated because the complainant failed to answer the Authority's call to provide additional information.

- **3 complaints** were received on account of Hungary's Government sending government campaign letters related to personal income tax reimbursement by mail. Of these, investigation was terminated in two cases because the complainants failed to answer the Authority's call to provide additional information, while in the third case the Authority's investigation did not establish an infringement of the law (NAIH-3415/2022).
- **4 notifications** objected to political marketing letters signed by Viktor Orbán sent by the Hungarian State Treasury in relation to the 13th monthly pension and pension premium. In 3 of these cases, the Authority established that there was no infringement (in one case the investigation is still in progress).
- **2 notifications** objected to the sending of a letter by the Nemzeti Agrárgazdasági Kamara (Hungarian Chamber of Agriculture) signed by Viktor Orbán. The investigation launched in relation to one of these notifications was terminated because the notifier failed to answer the Authority's call for additional information, while in the other case (NAIH-4385/2022), the Authority established an infringement by the Hungarian Chamber of Agriculture and issued a reprimand.

3. The Authority based its statement published on 2 April 2022 on the results of the investigations of complaints submitted to it, and formulated their conclusion in it. Several investigations were conducted in the spring of 2022 in cases not published on its website, in which data subjects complained that although they have given their consent to the Prime Minister's Cabinet Office for the processing of their data for the purpose of subsequent contact in the course of their registration for coronavirus vaccination, yet they found it to be an infringement that they received newsletters related not only to the vaccination or the coronavirus.

In relation to these complaints, the Authority established that the data subjects by checking the empty checkbox consented to the processing of their e-mail addresses qualifying as their personal data by their concrete and active behaviour, excluding any doubt for the purposes of sending newsletters and for maintaining contact. Another mandatory notional element of the data subject's consent is that the consent be based on appropriate information. Therefore, also in relation to the purpose of processing, the Authority considers the content of the Privacy Statement in the website vakcinainfo.gov.hu published at the time of launching the website and accessible on an ongoing basis as relevant, which was directly accessible to the data subjects at the point of subscription, to be the one that was examined by the Authority, with the following content:

*"If you wish to remain in contact with the Government of Hungary, by clicking on the button at the end of the form **"I consent to the processing of my contact data provided in accordance with the Privacy Statement for the purpose of subsequent contact until I withdraw it"** you give your consent voluntarily to the processing of your contact data provided (name, address, e-mail address, phone number) by the Prime Minister's Cabinet Office on behalf of the Government of Hungary **for the purpose of further contact, requesting your opinion, providing information and sending e-mails** until you withdraw your statement of consent as set forth in GDPR Article 6(1)(a). In such cases, your data will be stored following the transfer of the data by Idomsoft Zrt. of 1134 Budapest, Tüzér utca 41 as processor."*

GDPR Article 5(1)b sets forth the requirement of purpose limitation, according which personal data *"shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes shall, in accordance*

with Article 89(1), not be considered to be incompatible with the initial purposes (“purpose limitation”).” Based on the Privacy Statement referred to, the controller and its processor had an unambiguously indicated specific purpose in “additional contact, requesting your opinion, providing information and sending e-mails”; it did not even indirectly referred to the fact that the indicated purpose of processing would have only been sending newsletters related to vaccination or the coronavirus, such a narrowing of purpose was not given either beside the checkbox or in the Privacy Statement. Hence the information was easily accessible and easy to understand, the data subjects could freely withdraw their consent at any time, and the Privacy Statement referred to this possibility, as well as to how to do it.

4. The 4th question of the request to the Authority did not concern the 2022 elections indicated as the subject matter of the research project, but the procedure of the Authority launched ex officio to investigate the lawfulness of the general data processing practice of Fidesz-Magyar Polgári Szövetség (hereinafter: Fidesz) in 2019. Within this, you expect the Authority’s explanation expressly concerning “*why [the Authority] failed to examine the broader concerns related to the lawfulness of processing the data in the database*” as “*allegedly the statements of independent politicians, NGOs and private individuals include that the database maps out the political associations of voters without valid consents, including non-Fidesz supporters, and that they keep these data in between electoral cycles*”.

In your request, you refer to several articles published on Internet platforms in October 2019 at the time of the 2019 municipal elections, according to which Fidesz activists recorded data on the voters visited prior to the elections, such as “supportive”, “uncertain”, “rejects”, “not at home”, “wrong address”, “other”, “handicapped”, “deceased”, “moved”.

In 2019, the Authority received several notifications, which queried the lawfulness of data processing by Fidesz in relation to the building up of the database of sympathizers and those related to individual signature collections and civic initiatives, as well as the order of administering cases related to ensuring data subject’s rights. Based on these notifications, the Authority launched an ex officio investigation under case number NAIH-2019/8568 to examine the general data processing practice of Fidesz.

The Authority’s investigation concerned the records of Fidesz sympathizers and the periodic records related to the survey of intentions to participate in the elections and the lawfulness of data processing in relation to these.

It was in relation to the latter, i.e. the periodic records, that the data types referred to in the articles were collected, in relation to which the Authority clarified the circumstances of the data processing taking place, and made it clear that an important conceptual element of consent to processing is informed consent. The Authority established that Fidesz failed to provide fully appropriate information compliant with requirements of GDPR to the data subjects in the course of processing in relation to the periodic records related to the survey of the intention to participate in the elections.

The Authority’s call is accessible in Hungarian here: <https://naih.hu/adatvedelmi-allasfoglalasok/file/347-part-adatkezelesenek-vizsgalata>. The statements related to the circumstances objected to in the articles are detailed in Section II. 3 of the call.

The Authority also calls attention to the fact that it separately addressed these issues in Section II of its recommendation concerning certain data protection requirements related to processing by political parties and organisations issued on 19 February 2020: <https://naih.hu/adatvedelmi-ajanlasok>.

5. In relation to the independence of the Authority, **no authoritative forum in this regard has formulated any doubt substantiated by legal arguments or facts ever since the inception of the Authority.**

Not even the question put by Members of the European Parliament for the Commission, referred to in your request, **contain any allegation** questioning the independence of the Authority, but merely requests the Commission to investigate this, although in terms of its nature the issue can be regarded as a unambiguous political manifestation as the Members of the European Parliament are politicians and formulated this question in that capacity. In this regard, it should be noted that **the European Commission has not questioned the independence of the Authority in any form whatsoever** despite the initiative of the Members of the European Parliament referred to.

At the same time, we regard **the Venice Commission as an authoritative forum** in relation to the Authority's independence, which made the following statements:

Venice Commission:

„30. [...] *The current version of the Act [CXII of 2011 on Informational Self-determination and Freedom of Information] **includes particularly detailed provisions aiming at guaranteeing - directly and, in most cases, indirectly – the Authority's independence. It is worth saying that some of these guarantees may not always be found in corresponding legislation of other European countries.***

31. *A formal guarantee of independence is provided in article 38.5 of the Act:*

*“(5) The Authority **shall be independent, subordinated only to law; it may not be given instructions** as to the performance of its tasks, and shall perform its tasks separately from other bodies, **free of any influence.** Tasks for the Authority may only be established by law.”*

32. *In more concrete terms, **the Venice Commission notes that,** under art. 52 of the Act, the Authority is **entrusted with extensive supervision and intervention powers:** on the one hand it is **provided with the investigative powers necessary to carry out its tasks** (the right of access to contentious data, the right to conduct interrogations), and on the other hand it **is entitled to initiate legal proceedings** (pursuant to art. 1 al. 1 and 2 of the Additional Protocol).*

33. ***Additional independence guarantees are linked to the function of president of the Authority.** These include: **its stability** (art. 40. 3 which provides for a term of nine years, and art. 45, which defines clearly and exhaustively the grounds for dismissal by the appointing authority and allows the President to defend himself in court); **its importance amongst other high level public functions** (art. 40, providing for a salary equal to that of a minister); the President's **impartiality** (articles 40.2 and 40.1 setting out strict conditions and incompatibilities associated to the function)*

34. *Article 39 **guarantees the budgetary autonomy of the Authority** (through a specific financial appropriation distinct from that of the public administration and specifically allocated by the Parliament without Government intervention), which is very rare at international level. By the same provision, the Authority is exempted from the annual budgeting principle, thereby **enjoying a remarkable financial flexibility.**”¹*

We are convinced that the activity of our Authority is fully compliant with the requirements the applicable international and EU law as well as the Hungarian Constitution, governing the full independence of the Authority. To date, no statement refuting this conviction of ours has been made by an authoritative forum in this regard. We are certain that it is unambiguous for

¹ See 672/2012 - Opinion on Act CXII of 2011 on informational Self-determination and Freedom of Information of Hungary; accessible at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)023-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)023-e)

experts monitoring our activities that there can be no doubt concerning the independence of our activities.

6. In relation to the cases under the indicated case numbers, please be informed that all the cases were closed as follows:

- In cases NAIH2019/3382, NAIH/2019/4692, NAIH/2019/5251, NAIH/2019/6872, NAIH/2019/7144, NAIH/2019/7250 and NAIH/7324, the complainants received general information facilitating the exercise of their data subject's rights.
- In cases NAIH/2019/3898 and NAIH/2020/4633, infringements were established.
- In cases NAIH/2019/5434 and NAIH/2020/5380, the Authority terminated its investigation because of the termination of the processing objected to.
- In case NAIH/2019/4467, the Authority informed the notifier in the public interest of the procedure launched to investigate the general data processing practice of Fidesz.
- In cases NAIH/2019/6771 and NAIH/2019/6802, the Authority conducted audits. As a result, the Authority waived the launching of its data protection procedure as it established in both cases that the infringement alleged in the notification – according to which activists of the parties Momentum, DK, MSZP, Párbeszéd and LMP were unauthorized to process personal data in the course of the collection of nominations and created a database on the basis of the images in the articles enclosed – as it was not substantiated that they actually did this and it could not be clarified who exactly bore the responsibility of the controller with regard to the alleged database construction. The Authority remedied the concerns arising in the course of its audit in its recommendation referred to above.
- Under case number NAIH/2020/5089 (case number in 2021: NAIH-724/2021), the Authority conducted an ex officio investigation of the processing carried out in the course of the use of software (Digitribe, WinWith.Me, Voter Relationship Manager) associated with DatAdat Professional Kft. against this company, as several notifications were received concerning the company, with reference to articles published on Internet news sites. In the course of its investigation, the Authority established that although the company is not currently the owner of these items of software, there is an undisputable connection between the company and the current owner of the software, i.e. DatAdat OÜ, and the individual items of software are also closely interrelated. No infringement related to the processing of personal data could be established in this case.

We trust that our answers to your questions have provided adequate information; should you require any further information, our colleagues are glad to be at your service – even on the occasion of the online meeting indicated by you.

Budapest, 9 November 2022

Yours sincerely,

Dr. Attila Péterfalvi
President
Honorary university professor