

From: European Data Protection Supervisor
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To: UJHELYI István <istvan.ujhelyi@europarl.europa.eu>
Sent at: 31/08/21 09:57:43
Subject: C 2021-0770 - D(2021) 1778

Dear Mr Ujhelyi,

Please find attached, for your attention, a letter signed by Mr Wojciech Rafał Wiewiórowski concerning the case in reference.

Kind regards,

EDPS Secretariat



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WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

Mr István UJHELYI
Member of European Parliament
Vice-Chair of the Committee on
Transport and Tourism
B - 1047 Brussels

Brussels, 31 August 2021

WRW/AC/vm/ D(2021) 1778 C 2021-0770

Dear Mr Ujhelyi,

I would like to thank you for your letter of 10 August 2021 regarding the use of the spyware Pegasus.

I have noted with the utmost concern the reporting that the Pegasus spyware was used against Hungarian journalists ('the Pegasus Case')¹.

The use of targeted digital surveillance tools clearly interferes with the fundamental rights to privacy and protection of personal data in the EU and it may adversely affect freedom of expression.

The distribution and use of spywares is a long-standing serious concern, on which the EDPS has notably issued an opinion² and a corresponding alert³. At that time, the EDPS had recalled that *'[T]he processing of personal data within the scope of EU law by the competent authorities for law enforcement purposes should also respect the standards and safeguards laid down in the EU Charter of Fundamental Rights. Article 7 of the Charter enshrines the right of privacy, for which the protection of personal data can be of fundamental importance. Thus the intrusion into the virtual domicile through spyware, exploits, or similar devices, should be considered a violation of one's privacy'*.

As the EDPS is the independent authority of the European Union (EU) responsible for the supervision of the processing of personal data by EU institutions and bodies, it does not have

¹ <https://www.amnesty.org/en/latest/news/2021/07/the-pegasus-project/>, <https://forbiddenstories.org/case/the-pegasus-project/>

² European Data Protection Supervisor, Opinion 8/2015 on the dissemination and use of intrusive surveillance technologies, https://edps.europa.eu/sites/default/files/publication/15-12-15_intrusive_surveillance_en.pdf

³ https://edps.europa.eu/press-publications/press-news/press-releases/2015/edps-issues-alert-intrusive-surveillance_en



the competence to investigate the specific case that you have brought to my attention, regardless its possible merits.

However, I appreciate that several MEPs have already addressed parliamentary questions on 20 July 2021 to the Commission inquiring, among other things, whether the Commission will investigate a possible breach of the EU Treaties, the Charter of Fundamental Rights of the EU, the General Data Protection Regulation ('GDPR') and the Law Enforcement Directive⁴. In this respect, you may be aware that the Commission reportedly announced on 20 July 2021 that it is gathering information on the Pegasus Case⁵.

I take due note of your request to discuss the matter at the level of the European Data Protection Board ('EDPB'). I consider the matter to be of the utmost importance and I will therefore recommend to the EDPB Chair to have the issue of spywares addressed in one of the next EDPB plenary meetings.

Yours sincerely,

[e-signed]

Wojciech Rafał WIEWIÓROWSKI

⁴ https://www.europarl.europa.eu/doceo/document/P-9-2021-003661_EN.html ;
https://www.europarl.europa.eu/doceo/document/P-9-2021-003661_EN.html

⁵ <https://www.euractiv.com/section/digital/news/commission-to-look-into-pegasus-affair-reynders-says/>